

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8974 SENATE RESOURCES

...what philosophers had been saying for a century: that modern life, as the magazine put it, "can be uncomfortable." This theme — that technology isolates individuals, thereby generating mistrust and despair — is hardly original. It was the favorite topic in college bull sessions half a century ago.

While conceding such angst observations aren't novel, the magazine credits their revival to the Unabomber's well-publicized polemic and to the insights of evolutionary psychologists.

Yet, it also exposes the flaws in contemporary liberal, conservative and revolutionary political ideologies, including environmentalism, libertarianism and the Unabomber's own rationale for violence. For these would exacerbate rather than diminish what is arguably the greatest threat

Durkheim.

These were among the literary works undergraduates in the 1950s were required to read. At that time, most college curricula included mandatory study of Western heritage — called general education — designed to promote shared intellectual experiences and values. But student protests killed such "gen ed" courses in the 1960s.

Now, Time has resurrected this concern for what was then called "the modern condition" — but credits its articulation not to philosophers or novelists but, in keeping with the spirit of today, to scientists and terrorists. And thereby, the magazine calls attention to a problem for which neither environmentalists nor their critics have an answer.

To environmentalists, technology is evil because it "destroys" nature. And big government, they say, is desirable because it can mandate return to the good old days, when people lived in caves and didn't have

Both dissolve the friendship, trust and cooperation that make viable culture possible.

Culture is nothing more than a network of shared values that bind people together, thereby promoting social harmony. Since, as the ancient Greeks knew, it ultimately rests on friendships, it survives only in relatively small and stable communities where relations between individuals are possible.

Hence, excessive size or mobility kills culture. When communities grow too large or too transient to sustain relationships, they die. Yet since virtually every political ideology today favors either big government or big business, they all promote these destructive conditions.

By revering free markets, libertarians would allow multinational corporations to grow and move unimpeded in their quest for lower costs and cheaper labor.

tion.

The appearance of the Time article, therefore, may signal that the 1960s generation, which 30 years ago rejected general education, finally realizes that the greatest problem we face is neither ozone depletion nor species extinction, but the very cultural collapse that gen ed was designed to avert.

If so, they will soon realize that the current gaggle of ideologies make matters worse. Rather than appeal to polarizing political agendas, we must revive an educational system dedicated to a common core of learning, seek to sustain small-town culture and find ways to encourage more intimate and stable working conditions.

As B. F. Schumacher said, "Small is beautiful." This is another forgotten idea that perhaps Time magazine should recycle as well.

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## Letters to the editor

KDN 9/20/95

### Public schools

EDITOR, Daily News:

I want to join Alaska's National Teacher of the Year, Elaine Griffin, and U.S. Secretary of Education Richard Riley in encouraging all Alaskans to "go back to school" this year.

America Goes Back to School is a national campaign to encourage Americans to support family and community involvement in public schools. It is sponsored by the Family Involvement Partnership in Learning and the U.S. Department of Education.

Studies show that family and community support for education results in safer schools and students learning more. America Goes Back to School challenges all of us, parents,

grandparents, community leaders, education professionals, and lay people, to rally around our local schools making a commitment to support school improvement and community involvement throughout the year. Your support further improves our schools, and shows our children that we care and want them to be successful.

Ms. Griffin has invited all Alaska state legislators to spend a day this semester in a classroom to observe firsthand the challenges and successes of public education. The more Alaska's citizens experience their schools, the better things will become for our students.

Your support for family involvement in children's learning can make a positive difference. Please support your local schools, and use this opportunity to get involved in education.

Sincerely,

SHIRLEY J. HOLLOWAY, Ph.D.

Department of Education

### Land sale law

EDITOR, Daily News:

Alaskans who paid \$8 for a Department of Natural Resource's packet for its land auction and homestead parcels should know that the auction portion of that land sale is open not only to Alaskans, but also to anyone from the Lower 48 who antes up the money.

Entitled "Land for Alaskans", the DNR packet gives the impression that the land sale is for Alaskans only, but it is not. In fact, the Alaska marketing and Tourism Council promoted the packet in a press release to the Lower 48.

The sale is within the law. However,

it is a poor move on the part of this administration to trumpet the availability of Alaska lands outside the state.

We've seen what happens to residents in New Mexico, Montana, Idaho, and Colorado when moneyed outsiders make a land grab. The result is highly inflated land values unaffordable to most local residents.

Alaskans should be given first priority on Alaska lands. Sen. Robin Taylor has prefiled a bill to accomplish this, and I cosponsored it.

If you are concerned about Alaskans getting first priority for Alaska land, I suggest you contact DNR Commissioner John Shively and let him know what you think of this land sale.

Sincerely,  
LOREN LEMAN  
State Senator

## Today in history

By The Associated Press  
Today is Wednesday, Sept. 20, the 253rd day of 1995. There are 102

the New York Stock Exchange in the aftermath of railroad bond defaults and bank failures.

In 1963, in a speech to the U.N. General Assembly, President Kennedy proposed a joint U.S.-Soviet expedition to the moon.

Five years ago: Demanding equal time, Iraq asked U.S. networks to broadcast a message by President Saddam Hussein in response to President Bush's

by few people except demented - ck  
cars.  
So what does he do now? He can just go through life sitting in bookstores, smiling and scribbling his name.

not just his domestic help, but absolute strangers.  
He favors gun controls and believes in a woman's right to choose abortion. What kind of Republican talk is that? And who knows what other liberal views

common sense to tie its own shoelaces.  
That's true, but the few opinions Powell has shared with us sound more Democratic than Republican. And maybe he would be a good choice to pull the Democratic Party out of its funk,

1968 in Chicago!  
But chances are that the only person who'd come away from Chicago with a throbbing head next year would be Clinton.  
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## Point of view

# Commissioner says he has open mind on land sales

By JOHN SHIVELY

There are two parts to this year's land offering: a homestead program that is restricted (by statute) to Alaska residents, and a sealed bid auction that is not. The homestead program allows Alaskans to acquire state land by proving up and paying survey costs, or through purchase.

The sealed bid auction parcels will be sold to the highest bidders. We have made it clear in all our publicity that the homestead program is for Alaskans only. We have also told people that the auction is not restricted to Alaskans. However we have not promoted this land disposal outside of Alaska. In fact, DNR has intentionally avoided national media or use of the state's Internet newswire

so as to minimize outside interest.

Certain land disposal programs (specifically the lottery program) do allow us to restrict participation to Alaskans. However the lottery program is more expensive to conduct.

Because the DNR land disposal staff has been largely eliminated due to budget cuts, we have decided to make the land disposal process more efficient. The sealed bid auction is easier to administer, and requires fewer staff than the lottery method and probably will increase the money received by the state. Our statutes do not allow us to restrict this type of land offering to Alaskan residents.

I anticipate that despite being open to non-residents, the participants will, for

the most part, still be Alaskans. During the first month of the filing period, only 129, or about 5.6 percent, of the 2275 land offering brochures had outside mailing addresses. Most of the calls and letters our information offices have received from outside are people looking for free land - they will be disappointed to find the land they can qualify for is not free. To participate in the auction, one must submit a 5 percent bid deposit which may discourage people from bidding without looking at the land.

Because current law does not allow me to restrict sealed bid sales to Alaskans, the legislature is the proper forum to address any change. While the administration has not taken a position on Senator Taylor's proposed legislation to

restrict auction sales to Alaskans, we should consider the advantages of and being available to outsiders.

When Alaska became a state, state land was considered a mechanism to encourage settlement of Alaska, including settlement by outsiders desiring to move to Alaska.

Also, one of our goals is to get a fair return for Alaska residents from their land. We do not restrict the sale of our oil and gas, timber, or fish resources to Alaskans, as this would significantly reduce the value we get for those resources. I have an open mind on whether we should so restrict land sale.

(John Shively is state commissioner for the Department of Natural Resources)

## Today in history

By The Associated Press

Today is Monday, Oct. 2, the 275th day of 1995. There are 90 days left in the year.

Today's Highlight in History.

On Oct. 2, 1944, Nazi troops crushed the two-month-old Warsaw Uprising, during which 250,000 people were killed.

On this date:

In 1780, British spy John Andre was hanged in Tappan, N.Y.

In 1835, the first battle of the Texas Revolution took place as American settlers defeated a Mexican cavalry near the Guadalupe River.

In 1869, political and spiritual leader Mohandas K. Gandhi was born in

Porbandar, India.

In 1890, comedian Groucho Marx was born in New York.

In 1919, President Wilson suffered a stroke that left him partly paralyzed.

In 1939, the Benny Goodman Sextet recorded "Flying Home."

In 1941, German armies began Operation Typhoon - an all-out drive against Moscow.

In 1950, the comic strip "Peanuts," created by Charles M. Schulz, was first published in nine newspapers.

In 1958, the former French colony of Guinea in west Africa proclaimed its independence.

In 1959, "The Twilight Zone" made

its debut on CBS television.

In 1967, Thurgood Marshall was sworn in as an associate justice of the U.S. Supreme Court; he was the first black appointed to the highest court.

In 1975, President Ford welcomed Japan's Emperor Hirohito to the United States.

In 1984, Richard W. Miller became the first FBI agent to be arrested and charged with espionage. Miller was tried three times; he was sentenced to 20 years in prison, but was released after nine years.

Ten years ago: Actor Rock Hudson died at his home in Beverly Hills, Calif., at age 59 after battling the deadly disease

AIDS.

Five years ago: The U.S. Senate voted 90-9 to confirm the nomination of Judge David H. Souter to the Supreme Court. President Bush, trying to muster acceptance for a \$500 billion package of tax increases and spending cuts, asked Americans in a televised address to support the plan.

One year ago: U.S. soldiers in Haiti detained several leaders of the country's pro-army militias as part of an effort to dismantle armed opposition to restoration of elected rule. Actress Harriet Nelson ("The Adventures of Ozzie & Harriet") died in Laguna Beach, Calif., at age 85.

21 out of state

1995 AUCTION LIST - Hometown order

APPARENT HIGH BIDDER	BID AMT.	PARCEL NO.	HOME TOWN
SONNICHSEN, GARY	\$105,199.00	412	Anchor Point
BAFFREY, MICHAEL	\$45,045.45	418	Anchorage
BOSEK, REBECCA L.	\$30,001.00	133	Anchorage
BYWATER, JOHN T., SR.	\$5,100.00	66	Anchorage
FLANIGAN, STEVEN W.	\$7,500.00	167	Anchorage
GRAY, GARY	\$8,000.00	98	Anchorage
HARTRIGSEN, DENNY	\$20,010.00	178	Anchorage
HEIM, LYNDON	\$1,515.15	395	Anchorage
HERSHEY, LISA M.	\$10,123.00	118	Anchorage
HINMAN, DAVID	\$7,802.00	8	Anchorage
HOLSMAN, JOHN D.	\$9,998.00	162	Anchorage
HOOD, RICHARD A., JR.	\$6,013.00	76	Anchorage
HUTWAGNER, JOHN B.	\$10,000.00	143	Anchorage
JACKSON, FRANK, JR.	\$9,004.00	113	Anchorage
JONES, CHARLES J.	\$21,501.00	106	Anchorage
KALAR, LONNIE C.	\$34,000.00	134	Anchorage
KAVANAUGH, TIMOTHY J.	\$3,002.60	100	Anchorage
KIM, YOUNG HYON	\$25,000.00	108	Anchorage
LAIRD, THOMAS	\$10,000.00	84	Anchorage
LAWS, WILLIAM W.	\$48,001.00	407	Anchorage
LEWIS, CYNTHIA D.	\$20,000.00	92	Anchorage
LEWIS, STEPHEN T.	\$26,000.00	180	Anchorage
LYNCH, WESLEY	\$8,101.00	154	Anchorage
MERO, DAVID E.	\$8,105.00	155	Anchorage
MORGAN, TIMOTHY S. & EMMIE M.	\$12,253.50	89	Anchorage
NELSON, RONALD D.	\$28,000.00	139	Anchorage
NIMS, JINNIE	\$6,002.00	92	Anchorage

237

33 not award

204

actual, not!

APPARENT HIGH BIDDER	BID AMT.	PARCEL NO.	HOME TOWN
PENN, DAVID E.	\$8,125.00	246	Anchorage
RALL, DIANNA *	\$11,400.00	393	Anchorage
RAY, KEVIN	\$4,665.00	93	Anchorage
REDFORD, MARION W.	\$11,210.00	103	Anchorage
REDFORD, DANIEL A. SR.	\$11,800.00	105	Anchorage
RICHARDS, JAN	\$1,050.00	398	Anchorage
SCHAUGAARD, GAYLEN B.	\$30,101.00	137	Anchorage
SIN, YU CHOL	\$17,000.00	107	Anchorage
STEPHAN, SHAWN	\$4,600.00	46	Anchorage
TOMSIC, JOHN E.	\$11,998.00	104	Anchorage
VIKDAL, JEFFREY	\$8,100.00	68	Anchorage
VIKDAL, TABATHA M.	\$5,100.00	49	Anchorage
WAGNER, ROGER A.	\$16,724.00	179	Anchorage
WILLIAMSON, HOWARD J.	\$6,048.00	52	Anchorage
WITHINGTON, JASPER	\$9,583.00	101	Anchorage
CORBIN, ADAM J.	\$17,981.00	389	Anderson
DUGGER, TIMOTHY E.	\$7,311.00	359	Anderson
SANDEN, DAVID D.	\$7,750.68	34	Auke Bay
FERGUSON, PATRICIA M.	\$12,117.00	164	Bethel
STEYER, JUDITH E.	\$10,153.00	420	Bethel
O'SHEA, JAMES	\$5,899.00	41	California
ROSN, JAMES S.	\$25,112.00	136	Chugiak
KELLEY, JAMES A.	\$14,009.00	421	Colorado
YEO, WILLIAM R. & JUDITH L.	\$32,000.00	5	Colorado
WOLF, ROBERT A. & ROBIN L.	\$34,505.00	410	Copper Center
PAYNE, JESS *	\$19,313.31	405	Delta Jct.
OWEN, PATRICIA A.	\$17,714.14	349	Denali Park

APPARENT HIGH BIDDER	BID AMT.	PARCEL NO.	HOME TOWN
BOUKER, DAVID F.	\$25,251.00	177	Dillingham
NAGEL, JIM	\$27,000.00	181	Dillingham
JENNY, GEORGE	\$6,126.00	36	Douglas
CRANE, BARBARA L.	\$58,803.00	417	Eagle River
CRANE, ROBERT L.	\$38,869.00	416	Eagle River
WAFER, JAMES T.	\$8,001.01	90	Eagle River
GARNER, KEITH A.	\$9,100.00	247	Eielson AFB
KAZENOFF, PETER/MIGLIACCIO, NICK	\$2,025.00	316	Ester
ALASKA ENERGY ALTERNATIVES	\$12,666.50	256	Fairbanks
BARKER, HERBERT W.	\$16,000.00	354	Fairbanks
BECK, SUSAN M.	\$10,005.68	307	Fairbanks
BERGLIN, MARJLYN	\$3,717.81	396	Fairbanks
BOWMAN, MICHAEL P.	\$7,211.00	305	Fairbanks
BREWER, WILLIAM, JR.	\$8,770.00	365	Fairbanks
BROTHERTON, SELENA	\$10,258.00	306	Fairbanks
BROWN, CHRIS & EVERETT, SARA	\$12,100.00	284	Fairbanks
CABANIS, JAN	\$10,580.00	308	Fairbanks
CAROLAN, MATTHEW	\$13,101.00	343	Fairbanks
CARTER, TOM	\$16,388.00	254	Fairbanks
CARTER, DENISE J.	\$12,151.00	252	Fairbanks
CHMELIK, FRANK J., JR.	\$24,260.00	144	Fairbanks
CHRISTIAN, PETER	\$5,200.00	344	Fairbanks
COOK, KURT	\$10,500.00	341	Fairbanks
DE BAUN, GERARD B., JR.	\$9,859.82	282	Fairbanks
DYKES, BOB	\$5,003.00	390	Fairbanks
EVERTS, ROBERT D.	\$16,151.00	253	Fairbanks
FIELDS, JOSEPH LAURENCE	\$5,401.00	335	Fairbanks

APPARENT HIGH BIDDER	BID AMT.	PARCEL NO.	HOME TOWN
GEIER, HANS	\$3,245.00	394	Fairbanks
GOING, JO	\$13,556.00	267	Fairbanks
HOLDMANN, GWEN	\$4,630.00	336	Fairbanks
HORVATH, MICHAEL P.	\$16,001.00	241	Fairbanks
J & J SERVICES	\$4,601.00	338	Fairbanks
KATER, BRUCE	\$56,005.00	385	Fairbanks
KNIGHT, CHARLES W.	\$3,020.00	402	Fairbanks
LUTSCH, CHRISTINE RAE	\$9,300.00	295	Fairbanks
LYNCH, MOIRA	\$15,025.00	251	Fairbanks
MARKIEWICZ, ALAN	\$7,500.00	374	Fairbanks
MARTIN, JUDITH A.	\$13,000.00	223	Fairbanks
MC NALLY, BEVIN/HUE, KINGLIN	\$12,000.00	297	Fairbanks
MC CLOSKEY, PATRICIA	\$10,557.00	286	Fairbanks
MORACK, JOHN	\$17,364.00	268	Fairbanks
PERRY, DENVER	\$14,493.00	355	Fairbanks
PRUETT, MARLEN S.	\$15,003.00	234	Fairbanks
PRUETT, TAMMY S.	\$10,100.00	233	Fairbanks
REITZ, BEVERLY	\$37,652.00	350	Fairbanks
ROOF, BEVERLEY JEAN	\$6,500.00	310	Fairbanks
SCHOEN, RICHARD K.	\$20,000.00	285	Fairbanks
SHOULTYS, SHAWN PAUL	\$20,602.00	261	Fairbanks
SNYDER, CHRIS	\$19,802.00	221	Fairbanks
SPENCER, LEONARD R.	\$30,202.99	239	Fairbanks
TODD, CHRIS	\$14,258.00	309	Fairbanks
TOMSHA, MARK	\$34,700.00	388	Fairbanks
MC GINNIS, P. LEANNE	\$6,750.00	153	Georgia
BECKER, DANA	\$9,950.00	193	Glennallen
MITCHELL, WARREN A.	\$8,300.00	200	Glennallen

APPARENT HIGH BIDDER	BID AMT.	PARCEL NO.	HOME TOWN
REED, JON D.	\$10,540.00	194	Glennallen
SEAGER, ELAINE & SHANNON	\$12,775.00	187	Glennallen
WALDEN, JAMES L.	\$6,912.00	192	Glennallen
WEBSTER, RICHARD M.	\$7,002.00	188	Glennallen
DE BLAUW, DOROTHY M.	\$1,621.00	397	Healy
DE BLAUW, DONALD V.	\$4,050.00	401	Healy
FORSBERG, LINDA A.	\$13,020.00	328	Healy
HALPERIN, DAVID S.	\$11,700.00	347	Healy
LIDGARD, CYNTHIA	\$33,186.00	424	Healy
O'CONNOR, DANIEL R. & GINA	\$35,000.00	422	Healy
PRICE, WILLIAM	\$18,551.00	351	Healy
DETRICK, SHIREEN	\$6,789.01	245	Juneau.
GAY, PAUL L.	\$36,200.00	17	Juneau
GILLILAND, GARY M.	\$14,150.00	31	Juneau
JOHNS, GLENN E., JR.	\$6,000.00	380	Juneau
NOEL, JIM	\$4,520.00	43	Juneau
YOUNG, WILLIAM L. & SHERRY L.	\$33,644.29	3	Juneau
KNOLL, WILLIAM H.	\$4,011.00	99	Kenai
REPPER, RICHARD & WEBER, IRENE	\$12,201.00	190	Kenai
SMEDLEY, DENNIS L.	\$16,666.00	189	Kodiak
KAZENOFF, PETER **	\$1,901.00	317	Manley Hot Springs
MEDER, JAMES	\$10,350.00	117	Michigan
DUPEY, KRISTIE A.	\$23,002.00	414	Minnesota
BICKLEY, JOSEPH KING	\$13,600.00	287	Montana
REDISKE, WILLY W.	\$9,978.00	123	Nikiski
ADAMS, CHARLIE, JR.	\$7,480.00	366	North Pole
CARR, ROBERT W.	\$30,099.00	222	North Pole

APPARENT HIGH BIDDER	BID AMT.	PARCEL NO.	HOME TOWN
GLOTFELTY, JOHN	\$13,001.00	406	North Pole
LARSON, KARLA J.	\$12,019.70	356	North Pole
POWELL, RALPH	\$46,333.33	4	North Pole
WOODS, VAN E. & CAROLYN S.	\$7,000.00	345	Ohio
STEWART, DAVID	\$56,000.00	386	Oklahoma
MEYER, CHRISTOPHER BRENT	\$13,000.00	298	Oregon
COONS, RICHARD M. & LINDA J.	\$15,000.00	318	PA
PEARSON, JAMES & JUDITH	\$12,001.00	411	Palmer
STENGER, JEFF	\$12,042.00	392	Palmer
PORTER, GINNIE S.	\$30,001.00	18	Pelican
STEPANENKO, VICTOR	\$50,102.00	21	Pelican
YOUNG, STEVE & CHERYL	\$33,547.92	23	Pelican
ANDERSON, MARK D.	\$7,250.00	37	Petersburg
CARR, RICHARD T.	\$32,570.00	16	Petersburg
DENKO, JAMES & KELLY	\$36,000.00	7	Petersburg
GOODRICH, TIM/GOUDIMA, VERA	\$6,200.00	39	Petersburg
HILL, THOMAS, SR.	\$3,525.00	325	Petersburg
MEDALEN, HAROLD	\$28,137.00	6	Petersburg
PEELER, ALFRED W.	\$30,000.00	38	Petersburg
REITZ, MICHAEL J.	\$31,670.00	346	Petersburg
SILVA, LEWIE D.	\$6,298.00	42	Petersburg
JONES, SHERRY J.	\$26,309.00	135	Quinhagak
MILLER, MIKE	\$8,100.00	57	Seward
MILLER, SHERRIE	\$8,200.00	56	Seward
SHEA, SEWARD B.	\$16,300.00	216	Seward
BOWERS, ANTON T.	\$35,111.11	11	Sitka
DICK, PATRICIA LEE	\$31,111.00	19	Sitka
DICK, RONALD EUGENE	\$32,222.00	20	Sitka

APPARENT HIGH BIDDER	BID AMT.	PARCEL NO.	HOME TOWN
MILLER, MARTHA E.	\$6,700.00	160	Sitka
STOCKER CONSTRUCTION, INC.	\$6,300.00	391	Sitka
TORGESON, DUANE	\$20,000.00	353	Sitka
BOETTCHER, DEBORAH	\$16,025.36	240	Skagway
HALL, MARTIN K.	\$15,001.00	185	Soldotna
KASO, WALTER	\$10,050.00	97	Talkeetna
KINGSBURY, BRIAN A.	\$5,120.00	170	Talkeetna
MC KINNEY, DEBRA L.	\$6,565.65	312	Teller
MORLEY, PAUL	\$5,555.55	311	Teller
MC GINNIS, JOHN W.	\$16,250.00	166	Tennessee
MC GINNIS, NANCY W.	\$12,250.00	171	Tennessee
COOK, MEL K.	\$27,150.00	26	Thorne Bay
FLAHERTY, THERESA	\$30,007.00	25	Thorne Bay
IBBETSON, DONNA M.	\$18,551.00	29	Thorne Bay
LEHTO, BILL A.	\$30,002.00	28	Thorne Bay
MC CALLEN, EDWARD M.	\$25,000.00	30	Thorne Bay
ROE, ROBERT E. & JOANN	\$23,640.00	27	Thorne Bay
LANCASTER, KATHLEEN M.	\$3,620.00	176	Tok
STOUT, MICHELLE Y.	\$6,361.57	249	Tok
PETRESCU, EUGENE M.	\$4,700.00	94	Valdez
REISWIG, WILLIAM H. & SHEILA M.	\$28,111.23	145	Valdez
BLACKBURN, PATRICK JOHN	\$1,852.00	326	Virginia
HUFF, MARK L. & HELEN L.	\$8,000.00	109	Ward Cove
MARECEK, FRANK	\$20,005.00	408	Ward Cove
BAKER, DENNIS MIKE	\$25,500.00	35	Washington
CARROLL, DAVID & MARLANE	\$10,007.00	163	Washington
COOPER, THOMAS LEE	\$26,500.00	40	Washington
MOF, SCOTT & DIANE	\$42,525.25	32	Washington

APPARENT HIGH BIDDER	B / MT.	PARCEL NO.	HOME TOWN
RAINE, MARK	\$33,252.00	1	Washington
SEAL 95 L.L.C.	\$72,094.92	2	Washington
SHAMP, MARK L.	\$42,077.00	22	Washington
ANDERSON, MARY C.	\$7,701.00	157	Wasilla
CASE, NORMAN	\$26,100.00	147	Wasilla
DAVIS, MICHAEL R.	\$11,300.00	161	Wasilla
FISHBACK, LELAND	\$31,019.00	415	Wasilla
KOHANES, ART	\$700.00	404	Wasilla
MORLOCK, RICHARD & AUDRY	\$27,001.00	130	Wasilla
SCOTT, JOCELYN M.	\$5,100.00	95	Wasilla
STRANGE, PHILIP	\$36,485.00	409	Wasilla
VON AH, MICHAEL T.	\$12,777.00	165	Wasilla
Total	\$3,486,217.53		

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\*\* PENDING REVIEW OF PARCEL #316 WHICH WAS DRAWN FIRST

**1995 AUCTION LIST  
PARCELS WON BY OUT-OF-STATE APPLICANTS**

PARCEL NO.	APPARENT HIGH BIDDER AND SECOND HIGH BIDDER	BID AMT.	HOME TOWN
1	RAINE, MARK McMILLIN, JAMIE KUHN, RICHARD	\$33,252.00 30,010.00 30,005.00	Washington Illinois Juneau
2	SEAL 95 L.L.C. TURNER, GREG W.	\$72,094.92 71,000.00	Washington Auke Bay
5	YEO, WILLIAM R. & JUDITH L. NO OTHER BIDS	\$32,000.00	Colorado
22	SHAMP, MARK L. JONES, COLLEEN	\$42,077.00 41,506.00	Washington Juneau
32	MOE. SCOTT & DIANE McWILLIAMS, GARY & PEGGY S.	\$42,525.25 31,600.00	Washington Wranglell
35	BAKER, DENNIS MIKE *BOWERI, ANTON T	\$25,500.00 26,311.16	Washington Sitka
40	COOPER, THOMAS LEE OMUNDSON, DANIEL B	\$26,500.00 26,438.20	Washington Fairbanks
41	O'SHEA, JAMES NO OTHER BIDS	\$5,899.00	California
117	MEDER, JAMES HERSHEY, LISA M	\$10,350.00 10,136.00	Michigan Anchorage
153	McGINNIS, P. LEANNE REAGAN, CARL D. & HEIDI W. NO OTHER BIDS	\$6,750.00 6,002.00	Georgia Florida
163	CARROLL, DAVID & MARLANE SCHENKER, ROBERT H	\$10,007.00 9,333.33	Washington Anchorage
166	McGINNIS, JOHN W ANDERSON, DENNIS & Elizabeth	\$16,250.00 14,251.00	Tennessee Wasilla
171	McGINNIS, NANCY W *McGINNIS, JOHN W. NO OTHER BIDS	\$12,250.00 13,250.00	Tennessee Tennessee
287	BICKLEY, JOSEPH KING NO OTHER BIDS	\$13,600.00	Montana
298	MEYER, CHRISTOPHER BRENT NO OTHER BIDS	\$13,000.00	Oregon

PARCEL NO.	APPARENT HIGH BIDDER AND SECOND HIGH BIDDER	BID AMT.	HOME TOWN
318	COONS, RICHARD M. & LINDA J. CARRICK, K. & TAVENNER, M.	\$15,000.00 7,002.00	PA Unalaska
326	BLACKBURN, PATRICK JOHN *WETHINGTON, JASPER NO OTHER BIDS	\$1,852.00 1933.00	Virginia Anchorage
345	WOODS, VAN E. & CAROLYN S. ANDERSON, JEFFREY N.	\$7,000.00 6,350.00	Ohio Fairbanks
386	STEWART, DAVID SARAUER, PETER H.	\$56,000.00 15,789.47	Oklahoma Fairbanks
414	DUPEY, KRISTIE A. SCOTT, JOCELYN & COLLEEN	\$23,002.00 22,560.00	Minnesota Wasilla
421	KELLEY, JAMES A. NO OTHER BIDS	\$14,009.00	Colorado

\* NOT ELIGIBLE BECAUSE BIDDER HAD ALREADY WON A PARCEL IN THIS AUCTION

#### SUMMARY:

Of the 21 parcels with out-of-state apparent high bidders, 9 had either no eligible Alaskan bidders, or no other bidders at all. 11 parcels had Alaskan second high bidders. 1 parcel had an out-of-state second high bidder, followed by several Alaskan bids

# Alaska State Legislature

Chairman,  
Judiciary Committee

Vice Chairman,  
Transportation Committee

Member,  
Resources Committee  
Western Legislative Forestry Task Force



*Senator Robin L. Taylor*

State Capitol  
Juneau, Alaska 99801-1192  
907/465-3873  
Fax 907/465-3922

352 Front Street  
Ketchikan, Alaska 99901  
907/225-8088  
Fax 907/225-0713

## SPONSOR STATEMENT

### SENATE BILL 190

Senate Bill 190 was introduced to correct a situation which allowed ten percent of the state land sold at the first public auction since 1991 to be purchased by non-residents. This in a state where only about one percent of the land is in private ownership.

Current law restricts the homestead program to Alaska residents, but no such provision is made for the sale of other land, sold at auction. As a result, of the 204 parcels actually sold in 1995, 21 went to out-of-state bidders. In eleven cases, these non-residents beat out otherwise qualified state residents.

Imagine how it must feel to the resident of Fairbanks who submitted a bid on state land, only to be beat out by a resident of Washington state by \$61.80. Or the Wasilla couple who lost their chance at owning a piece of Alaska to a Minnesota woman by \$442? Or the Anchorage woman who lost out to a man from Michigan by \$214?

To add insult to injury, the availability of state land to out-of-state residents was actually promoted on the Internet by the Alaska Tourism Marketing Council. A Council spokesman said they were trying to promote the "Alaska mystique". Maybe the Council thinks there is something mystical about the shortage of private land in Alaska, but the average Alaskan is more frustrated than mystified.

**Sponsor Statement-SB 190**  
**Page Two**

SB 190 would restrict participation in the public auction of state land to people who have been residents of the state for at least one year prior to the sale. I would further amend that provision, placing no such restriction on the disposal of commercial, industrial or agricultural land. I don't believe we want to inhibit those who would purchase land for growth and development. But the sale of recreational and residential property, like the homestead program, should be restricted to folks who have already made an investment by residing in this great state.

**SB**

**1988**






# Alaska State Legislature

Official Business

State Capitol  
Juneau AK 99801

## MEMO

TO: George Utermohle, Legal Counsel  
via fax: X2029

FROM: Annette E. Kreitzer, Aide to  
Senate Resources Committee 

DATE: March 8, 1996

RE: CS SB 198(RES)

---

Please prepare a Resources Committee Substitute for SB 198 (LS1287F) using the following language. I need the CS by Tuesday at 2:00 p.m. for distribution to Resources Committee members.

1. Delete the legal description of the critical habitat area in the LS1287F draft and use the description as written in your LS11287G draft (I can fax it back to you if this is an attorney/client issue - Mary from Senator Torgerson's office provided me with a copy).

2. Page 1, Line 3:

Insert Purpose and Intent Language:

The purpose of the Homer Airport Critical Habitat Area is to provide an area for enhancing winter browse for the moose herd in the lower Kenai Peninsula area, and for guaranteed public access to and continued public fishing, hunting and trapping activities and opportunities in the area, consistent with maximum sustained yield. It is the intent of the 19th Legislature that the State of Alaska shall not purchase lands which may be required for future development of the Homer Airport.

3. Page 6, Lines 19-20:

Following "management plan for the critical habitat area." Insert:

The plan shall allow guaranteed access to and continued public fishing, hunting and trapping activities and opportunities in the area.



*Final version 3/13/96 5/10/96*

WORK DRAFT

WORK DRAFT

WORK DRAFT

9-LS1287K

Utermohle

3/11/96

**CS FOR SENATE BILL NO. 198(RES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE RESOURCES COMMITTEE**

Offered:  
Referred:

Sponsor(s): **SENATOR TORGERSON**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act establishing the Homer Airport Critical Habitat Area."**

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

3     • **Section 1. PURPOSE.** The purpose of the Homer Airport Critical Habitat Area is to  
4 provide an area for enhancing winter browse for the moose herd in the lower Kenai Peninsula  
5 area and for guaranteed public access to and continued public fishing, hunting, and trapping  
6 activities and opportunities in the area, consistent with maximum sustained yield.

7     • **Sec. 2.** AS 16.20 is amended by adding a new section to read:

8             **Sec. 16.20.630. HOMER AIRPORT CRITICAL HABITAT AREA**  
9             **ESTABLISHED.** (a) The following described area is established as the Homer  
10             Airport Critical Habitat Area:

11                     (1) **Tract A:**

12                             **Township 6 South, Range 13 West, Seward Meridian**

13                                     **Section 21: that portion of the S1/2NE1/4 upland of the**  
14                                     **ordinary high water line of Beluga Lake, comprising 9.3 acres,**  
15                                     **more or less;**

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## (2) Tract B:

Township 6 South, Range 13 West, Seward Meridian

Section 21: that portion of the NE1/4 upland of the ordinary high water line of Beluga Lake that is encompassed by a boundary beginning at the section corner common to Sections 15, 16, 21, and 22, Township 6 South, Range 13 West, Seward Meridian; thence proceeding South 00 degrees 01 minute 00 seconds East along the section line common to Sections 21 and 22, Township 6 South, Range 13 West, Seward Meridian, to the point of intersection with a line located 1,520 feet South of and parallel to the northern section line of Section 21, Township 6 South, Range 13 West, Seward Meridian; thence along the line located 1,520 feet South of and parallel to the northern section line of Section 21, Township 6 South, Range 13 West, Seward Meridian, to the point of intersection with the ordinary high water line of Beluga Lake; thence in a northwesterly direction along the meanders of the ordinary high water line of Beluga Lake to the point of intersection with the West boundary line of NE1/4, Section 21, Township 6 South, Range 13 West, Seward Meridian, being common to the center quarter line of Section 21, Township 6 South, Range 13 West, Seward Meridian; thence North 00 degrees 01 minute 00 seconds West along the West boundary line of NE1/4, Section 21, Township 6 South, Range 13 West, Seward Meridian, to the point of intersection with the section line common to Sections 16 and 21, Township 6 South, Range 13 West, Seward Meridian; thence East along the section line common to Sections 16 and 21, Township 6 South, Range 13 West, Seward Meridian, to the point of beginning; comprising 70.4 acres, more or less;

## (3) Tract C:

Township 6 South, Range 13 West, Seward Meridian

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Section 15: S1/2SW1/4, comprising 80 acres, more or

less;

(4) Tract D:

Township 6 South, Range 13 West, Seward Meridian

Section 22: that portion of the NW1/4 northwesterly of a line parallel to, northwesterly of, and 750 feet perpendicular from the monumented runway centerline of the Homer Airport, comprising 60 acres, more or less;

(5) Tract E, comprising 74 acres, more or less:

Township 6 South, Range 13 West, Seward Meridian

Section 15: those portions of SW1/4SE1/4 and E1/2SE1/4 northwesterly of a line parallel to, northwesterly of, and 750 feet perpendicular from the monumented runway centerline of the Homer Airport;

Section 22: that portion of the NW1/4NE1/4 northwesterly of a line parallel to, northwesterly of, and 750 feet perpendicular from the monumented runway centerline of the Homer Airport;

(6) Tract F:

Township 6 South, Range 13 West, Seward Meridian

Section 22: those portions of Government Lots 5 and 6 southeasterly of a line parallel to, southeasterly of, and 850 feet perpendicular from the monumented runway centerline of the Homer Airport, comprising 4 acres, more or less;

(7) Tract G, comprising 2.7 acres, more or less:

Township 6 South, Range 13 West, Seward Meridian

Section 22: that portion of Government Lot 9 southeasterly of a line parallel to, southeasterly of, and 850 feet perpendicular from the monumented runway centerline of the Homer Airport;

Section 22: that portion of the NW1/4NE1/4

1 southeasterly of a line parallel to, southeasterly of, and 850 feet  
2 perpendicular from the monumented runway centerline of the  
3 Homer Airport.

4 (b) Notwithstanding AS 16.20.500 - 16.20.530, the land in Township 6 South,  
5 Range 13 West, Section 21 described in (a) of this section is subject to the following:

6 (1) the right of unobstructed passage by aircraft over the land;

7 (2) the right of aircraft to use the airspace above the land without  
8 restrictions on noise, dust, or fumes, other than those imposed under federal and state  
9 laws governing air and water quality;

10 (3) the authority of the Department of Transportation and Public  
11 Facilities to

12 (A) prohibit the construction of obstructions and permanent  
13 structures on the land;

14 (B) clear the land and keep the land clear, including removal  
15 of trees, brush, soil, berms, hills, irregularities in the topography, stockpiles,  
16 rocks, buildings, structures, and other obstructions;

17 (C) prohibit or remove an activity, installation, or object on the  
18 land that

19 (i) creates electrical interference with radio  
20 communication or navigational instruments of aircraft or the Homer  
21 Airport;

22 (ii) may enhance bird habitat on or in the vicinity of the  
23 Homer Airport;

24 (iii) hinders the ability of pilots to distinguish between  
25 airport lights and other lights;

26 (iv) results in glare in the eyes of pilots using the Homer  
27 Airport;

28 (v) impairs visibility in the vicinity of the Homer  
29 Airport; or

30 (vi) endangers the landing, departure, or maneuvering of  
31 aircraft at the Homer Airport;

1 (D) prohibit development on the land for any purpose, other  
2 than public access across the land;

3 (E) require

4 (i) approval of the Department of Transportation and  
5 Public Facilities for the design and construction of access across the  
6 land;

7 (ii) relocation of access across the land as necessary to  
8 satisfy applicable standards of airport design, safety, and security;

9 (F) install navigational aids on the land; and

10 (G) enter upon the land for the purpose of enforcing or  
11 implementing this subsection.

12 (c) Notwithstanding AS 16.20.500 - 16.20.530, the land in Township 6 South,  
13 Range 13 West, Sections 15 and 22 described in (a) of this section is subject to the  
14 following:

15 (1) the right of unobstructed passage by aircraft over the land;

16 (2) the right of aircraft to use the airspace above the land without  
17 restrictions on noise, dust, or fumes, other than those imposed under federal and state  
18 laws governing air and water quality;

19 (3) the authority of the Department of Transportation and Public  
20 Facilities to

21 (A) prohibit the construction of obstructions and permanent  
22 structures extending above the imaginary surface of the Homer Airport as  
23 determined under regulations of the Federal Aviation Administration;

24 (B) clear the land and keep the land clear of obstructions  
25 extending above the imaginary surface of the Homer Airport as determined  
26 under regulations of the Federal Aviation Administration, including removal of  
27 trees, brush, soil, berms, hills, irregularities in the topography, stockpiles, rocks,  
28 buildings, structures, and other obstructions;

29 (C) prohibit or remove an activity, installation, or object that

30 (i) creates electrical interference with radio  
31 communication or navigational instruments of aircraft or the Homer

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Airport;

(ii) may enhance bird habitat on or in the vicinity of the

Homer Airport;

(iii) hinders the ability of pilots to distinguish between  
airport lights and other lights;

(iv) results in glare in the eyes of pilots using the Homer  
Airport;

(v) impairs visibility in the vicinity of the Homer  
Airport: or

(vi) endangers the landing, departure, or maneuvering of  
aircraft at the Homer Airport;

(D) enter upon the land for the purpose of enforcing or  
implementing this subsection.

(d) The Department of Fish and Game shall cooperate with the Department of  
Transportation and Public Facilities in implementing (b) and (c) of this section.

(e) Neither the Department of Fish and Game nor another person may create,  
develop, or enhance bird habitat within the Homer Airport Critical Habitat Area.

(f) The state land described in (a) of this section may not be transferred to  
municipal or private ownership or to another state agency unless covenants or  
easements in the land, containing provisions substantially similar to (b) and (c) of this  
section, are reserved to the Department of Transportation and Public Facilities for the  
benefit of the Homer Airport.

(g) The Department of Fish and Game shall establish and appoint an advisory  
committee to work with the department and advise on the management of the Homer  
Airport Critical Habitat Area. If the department develops a management plan for the  
critical habitat area, the department shall consult with the advisory committee, and the  
plan must allow guaranteed access to and continued public fishing, hunting, and  
trapping activities and opportunities in the area. Among appointments to the advisory  
committee, the department shall include

(1) industry and commercial users and hunters, trappers, fishermen, and  
recreational users recommended by the City of Homer;

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- (2) an official representing the City of Homer; and
- (3) a representative of the Department of Transportation and Public Facilities.

# Alaska State Legislature

Committee Chair  
Community & Regional Affairs

Committee Vice-Chair  
Labor & Commerce

Committee Membership  
Legislative Council



District Address:  
145 Main St. Loop, Suite 226  
Kenai, AK 99611  
(907) 283-2690; fax 283-9267

Session Address:  
State Capitol, Room 427  
Juneau, AK 99801-1182  
(907) 465-2828; fax 465-4779

*Senator John Torgerson*

## CSSB 198(RES) Homer Airport Critical Habitat Area

The Work Draft 9-LS128\K, dated 3/11/96, for CSSB 198(RES) does three things.

- (1) Provides a new Purpose section, for moose habitat and for guaranteed public access.
- (2) Minor language revisions in Section 2 to reflect concerns of ADOT Survey Section regarding appropriate language for property descriptions. Affected subsections are (1), (2), (4), (6), and (7).
- (3) New language inserted in Section 2, subsection(g) to reflect stated purpose. Inserted language begins on page 6, line 26 and is

"and the plan must allow guaranteed access to and continued public fishing, hunting, and trapping activities and opportunities in the area."

(JT:maj:CSSB198(RES):3/13/96)

03/01/96

LEGISLATIVE TELECONFERENCE NETWORK

LTN1405

11:52:31 N

CONFERENCE DISPLAY PAGE 05 - PARTICIPANTS BY SITE

L325

TCN 60421 (S) T/C DATE: 03/01/96 TIME: 11:30 to 12:30 STATUS: 5 IN-PROG

SITE: LIO HOM VTS HOMER

1 MR.	ROY E.	HOYT JR.		T 01 SB 198
	PO BOX 2121	HOMER	AK 99603	(907)235-6387
2 MR.	PAUL	SEATON		T 01 SB 198
	58360 BRUCE DR.	HOMER	AK 99603	(907)235-6342
3 MS.	MARLA	MCPHERSON		T 01 SB 198
	PO BOX 3585	HOMER	AK 99603	(907)235-6109
4 MR.	GINO	DEL FRATE	AD7&G	O 01 SB 198
	3298 DOUGLAS ST.	HOMER	AK 99603	(907)235-8191
5 MS.	DAISY	BITTER		T 01 SB 198
				(907)000-0000

MSG: 1410 NO FURTHER INFORMATION

ENTER Pg# 06 PF2 NextC# ynnnn PF3 Exit PF5 Update PF7 Bwd PF8 Fwd PF12 Quit

SB198

03/01/96

LEGISLATIVE TELECONFERENCE NETWORK

LTN1403

09:09:41 N

CONFERENCE DISPLAY PAGE 03 - PARTICIPATING LIOs

L375

TCN 60421

T/C DATE: 03/01/96 TIME: 11:30 to 12:30

STATUS: 3 ANNOUNCED

LIO	NAME	ROOM	ADDRESS	ROOM#	MODERATOR
<del>CCR</del>	<del>CORDOVA</del>	<del>705</del>	<del>2ND STREET</del>	<del>ZZZ</del>	<del>ZZZ LOCATION STAFF</del>
•	HOM	HOMER	126 W PIONEER #4	ZZZ	ZZZ LOCATION STAFF
	JNU	JUNEAU	CAPITOL	CAP205	ZZZ LOCATION STAFF

MSG: 1410 NO FURTHER INFORMATION

ENTER Pg# 04 PF2 NextC# ynnnn PF3 Exit PF4 Menu PF5 Update PF7 Bwd PF8 Fwd

# Alaska State Legislature

Committee Chair  
Community & Regional Affairs

Committee Vice-Chair  
Labor & Commerce

Committee Membership  
Legislative Council



District Address:  
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Kenai, AK 99811  
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Session Address:  
State Capitol, Room 427  
Juneau, AK 99801-1182  
(907) 465-2828; fax 465-4779

*Senator John Torgerson*

## SPONSOR STATEMENT

### SB 198 - HOMER AIRPORT CRITICAL HABITAT AREA

The Department of Transportation currently has an interest in 1,042.31 acres of uplands and tide and submerged lands for the Homer Airport. SB 198 would transfer 300.4 acres to the Alaska Department of Fish and Game, to be managed as a critical habitat area. Approximately 741.91 acres of land will continue to be dedicated for airport purposes after the creation of the Critical Habitat Area.

The primary purpose of the CHA is to protect the existing area for wintering and calving moose and nesting waterfowl and shorebirds. However, the legislation specifically restricts enhancement activity for waterfowl and shorebirds. No effort will be allowed to increase existing populations through creation of additional nesting sites, feeding programs, or other enhancement activities. Enhancement for browse area for moose is not restricted, and the areas set aside for the CHA are outside the fenced runway.

Future expansion plans have been reviewed by the Department and the local jurisdiction, the City of Homer. The Department initially recommended an area of about 75 acres in size as future expansion. Concerns were expressed by some local residents about that removal and the issue was brought before the City of Homer. The City Council supported the full 300 acre area, without any removal for future expansion. Given the local government support, the Department then provided the legal description for the full 300 acres.

This legislation provides for an Advisory Committee to work with the department and advise on the management of the Area, including a representative of the Department of Transportation and Public Facilities.

This legislation required substantial interaction with the Department of Transportation, to ensure that their interests in a public improvement were adequately protected. All drafts of the bill has been reviewed by the Department and subsequently corrected as recommended by the Department.

(JT: ma); SB 198: 2/14/96)

MAR-01-1996 14:24

JUNEAU INT'L AIRPORT

907 789 1227 P.01

Post-it™ brand fax transmittal memo 7571		# of pages = 3
To: Annette Kiebo	From: Dave Miller	
Co.	Co.	
Dept.	Phone # 789-7821	
Fax # 465-3810	Fax # 789-1227	

# AVIATION SAFETY IN ALASKA

## Safety Study

Safety Study NTSB/SS-95/03  
Nocion 6465A

National Transportation  
Safety Board



Washington, D.C.  
November 1995

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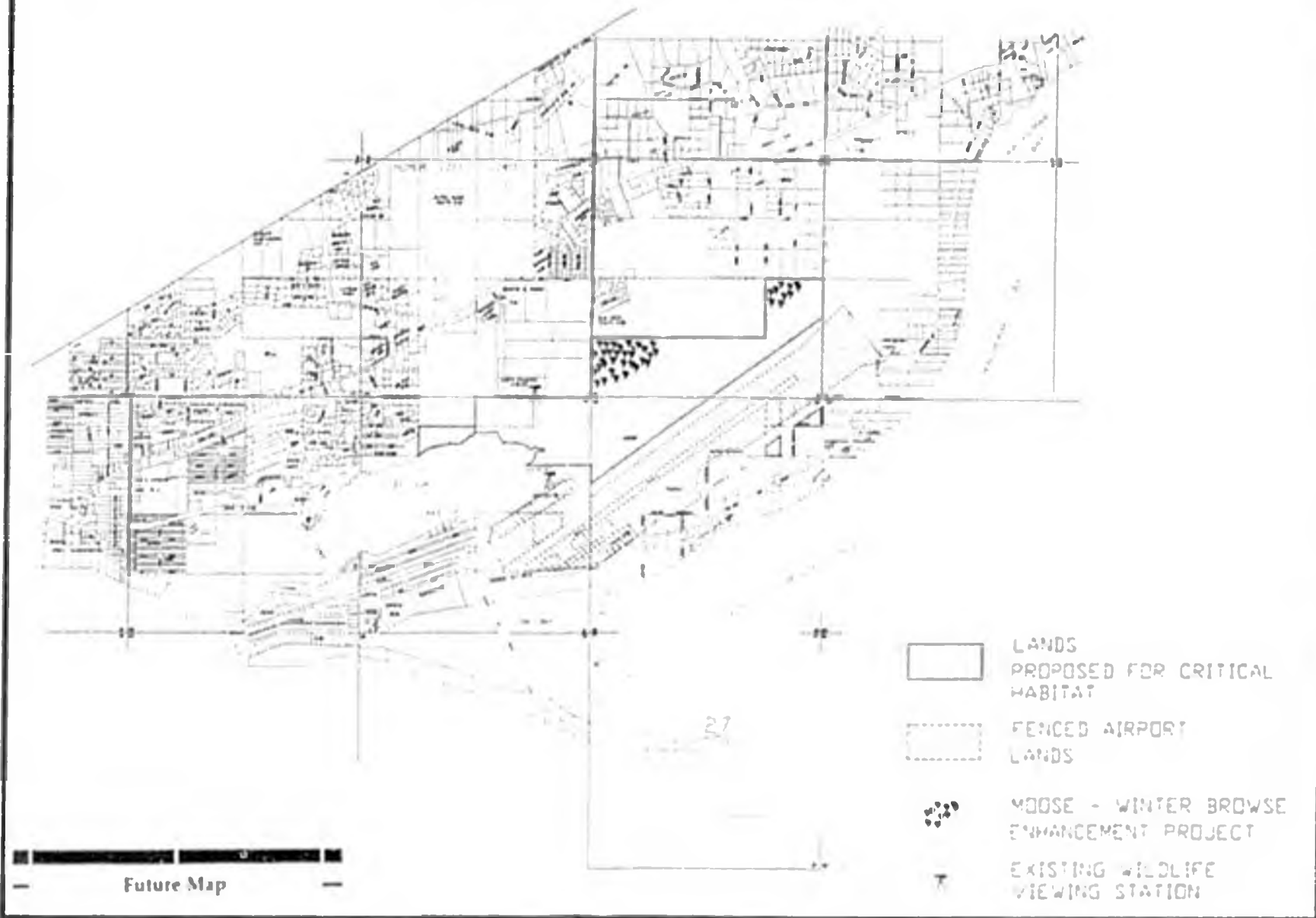
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THE FOLLOWING DOCUMENT  
HAS NOT BEEN FILMED  
BUT IS AVAILABLE IN THE  
ORIGINAL FILE

# PROPOSED HOMER AIRPORT CRITICAL HABITAT AREA



*Omni/Heard*

FEB 19 1996

Nancy Lord  
P. O. Box 558  
Homer, Alaska 99603

(907) 235-8252 phone  
(907) 235-8253 fax

Feb. 16, 1996

Senator Loren Leman, Chair  
Senate Resources Committee  
Alaska Legislature  
Juneau, AK 99811  
FAX 465-3810

Dear Loren:

I'm pleased to hear that SB 198, establishing the Homer Airport Critical Habitat Area, has been scheduled for a hearing by your committee next Wed., Feb. 21.

Protection of moose winter habitat around the Homer airport has long been of high interest to the people of Homer, and proposals to establish some sort of protective designation go back many years. Since the completion of the Homer Airport Plan, it has been possible to say with some certainty which lands are non-essential to airport operations and future growth--this is the bill before you. The specific proposal was developed by an ad hoc task force of Homer-area folks over the course of several years, with a great deal of input from the community and the Departments of Transportation and Fish and Game. As one member of this task force, I can vouch for the large amount of community-spirited volunteerism by a variety of people that went into the effort. We all very much appreciate Senator Torgerson's sponsorship.

SB 198 has received resolutions of support from both the Homer City Council and the Kenai Peninsula Borough Assembly (unanimous in both cases.) Many other groups, organizations, etc. have also formally endorsed the bill; I'm sure Sen. Torgerson will supply you with this information.

This letter is simply to thank you for taking up SB 198 and to encourage you to pass the bill from committee just as soon as possible. We are, of course, very eager to see the bill move through both houses by May. If you have any questions or desire any more information, please don't hesitate to call me. I wish you a good year in Juneau and thank you for all your hard work on resource issues.

Sincerely,

  
Nancy Lord

cc: Sen. John Torgerson



ROY E. HOYT JR.

PO BOX 2121

HOOPER A. AK 99501-2121

4915 HOCH-LEIT RD

FAIRBANKS AK 99707

## HOMER AIRPORT CRITICAL HABITAT AREA

To give you insight into my aviation background, I commenced flying in January 1942 and have been a military, commercial, executive or pleasure pilot and closely associated aviation ever since. I was an air traffic controller for more than thirty years, all in Alaska, and an air traffic facility manager for over twenty of those years. I was the manager at the Homer FSS for 9½ years prior to retirement in June 1991. I have a detailed knowledge of the Homer airport and its surroundings.

It was I who, with the help of FAA Flight Standards and Airports Divisions, insisted the perimeter fence around the airport be constructed some two years prior to when Alaska DOT had planned it. I initiated the suspension of the Homer airport certification a year later because airport tenants and DOT employees would not keep the fence gates closed and secured, allowing moose, sandhill cranes and just about anything else to freely roam the airport confines.

Some forty two years ago, in the military, I was involved in an aircraft accident caused by a canadian goose coming through the windshield. I was giving night flying instruction. It was just turning dark or dusk. The goose hit my student in the head breaking his neck and killing him. Had I not been very close to an airfield at the time of the bird strike and a highly proficient pilot I never would have been able to get the airplane on the ground. I too would have been a fatality. You don't see bird prior to a strike you hear or feel it when it happens. The recent accident at Elmendorf AFB where 24 lives were lost due to ingestion of birds should give you cause for thought and the front page of Sunday's Anchorage Daily News should really scare you.

Historically there have been problems with all kinds of birds at the Homer airport. I contend that it is irresponsible to have this critical habitat area adjacent to the airport. It is impossible to enhance the area for moose without enhancing it for birds. A sign that says "BIRDS PROHIBITED" will not be very effective. By creating this critical habitat area the state is certainly increasing their liability for any aircraft accident caused by a bird strike. If it inflicts death, injury or property damage to any degree it could precipitate lawsuits of unlimited damages. The area ties up some property that could be used for industrial development later on without any danger to present moose habitat. Since this area is entirely within the city limits of Homer the residents deserve the right to vote on its establishment.

I was in hopes that perhaps logic, common sense and good judgement would prevail somewhere along the line concerning this legislation. I as well as a number of others are fed up with those that are putting our four legged and feathered friends ahead of the lives of humans.

*Roy E. Hoyt Jr*



# Alaska State Legislature

Please enter into the record my testimony to the S/Resource  
 committee name  
 committee on Senate Bill 198 dated March 1, 1996  
 bill/subject

Homer's economy is based in large part on its tourism industry. People visit, and live in Homer because of the natural values which provide a higher quality of life.

I believe that creation of a critical habitat area encompassing the area of Pelego wetlands is important to the community of Homer and to the moose herd which relies on it for its very survival. I'd also like to note that there will not be increased risk to aircraft from bird activity because this area is a critical habitat area. In fact, the bird populations are in decline now, and even when they were thriving, there was no significant danger. Please protect this prime

Signed: Palmas Semina / moose habitat!  
 Testifier

Representing (Optional)  
PO Box 2100, Homer AK 99635-9999  
 Address  
735-7186  
 Phone No

e-mail from George West - paraphrase his comments regarding bird populations and the aircraft hazard issue at Beluga Wetlands Critical Habitat Area

At the time when the BWCHA task force was formed, there was a healthy colony of 40 pairs of Arctic and Aleutian Terns nesting in the marsh. Since that time, the number of nesting terns has dwindled to 2 or 3 pairs. A few pairs of Mew Gulls currently nest on the islands, and several species of ducks (wigeon, mallard, and shoveler) may also nest there, as do a couple pairs of Sandhill Cranes. During the period when there were more nesting birds in this area, the task force was not aware of any problems with aircraft.

Dr. West would like to assure Senator Torgerson that, even with critical habitat status, there will continue to be increased pressure on the habitat and birds - from surrounding urbanization and from recreational use - mainly people, kids and dogs. So there will be fewer, not more birds to present a hazard to aircraft in the years to come. The effect of designating critical habitat status to Beluga Wetlands will be to benefit the moose more than the birds, and should not pose an increased hazard to aircraft.



HOMER SOCIETY OF NATURAL HISTORY  
PRATT MUSEUM  
3779 Bartlett Street  
Homer, Alaska 99603  
(907)235-8635

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March 21, 1995

Derek Stonorov  
Co-Chair, Beluga Wetlands Task Force  
51795 East End Road  
Homer, Alaska 99603

Dear Derek:

The Board of Directors of the Homer Society of Natural History, representing about 800 members, reviewed the proposal for formation of a critical habitat area for the Beluga Wetlands at their meeting on March 7, 1995. Board members were unanimously in favor of the proposal.

It is gratifying to see a proposal such as this which can provide so many benefits and for which there does not seem any reason for rejection. Many thanks to you and other task force members for all your work on this.

Sincerely,

Jack W. Lentfer  
President, Board of Directors



# Alaska State Legislature

(Senate Resources)

Please enter into the record my testimony to the Townson  
(SBRA) committee name  
committee on Beluga Wetlands dated March 1 '96  
bill/subject

I am in support of preservation  
of the Beluga Wetlands  
Critical Habitat Area.

Signed: [Signature] Suzanne Townson

Testifier  
self

Representing (Optional)  
PO Box 3162

Address  
235 - 1052

Phone No.

AK <sup>in</sup> copy

February 21, 1996

Senator Loren Lehman, Chair  
Senate Resources Committee  
Room 113  
State Capitol  
Juneau, Alaska 99801

Re: Resources Committee hearing this afternoon  
concerning S.B. 198, Homer Airport Critical  
Habitat Area

Dear Senator Lehman,

I had hoped to visit with you personally about the above bill, however, our schedules appear to preclude that. In as much as I am unable to testify this afternoon, I herewith share some thoughts.

Establishment of this Critical Habitat Area has been a desire of the greater Homer community for many years. The need for was driven home during the winter of 91-92 when we lost over 60 moose to starvation due to deep snows.

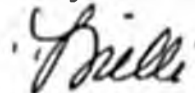
This bill is the culmination of over 10 years of work, it enjoys the support both the City of Homer, the Borough Assembly, eleven groups, DOT and DNR. It is compatible with airport use, it will not inhibit future airport expansion and it will ensure a food source for our beloved local moose herd. It certainly will be a plus for the tourism industry on which Homer is more and more relying. Establishment of this critical habitat area is very important to the people of Homer.

It is our hope that this bill will find its way through the Legislature this year. In order for that success it must move in a timely fashion through the committee process. I appeal to you to aid us in this endeavor.

Your assistance and support in passing this bill along today will be very greatly appreciated.

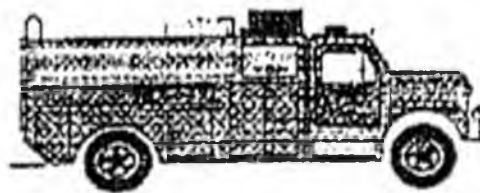
With best regards to you.

Very sincerely,



Mildred "Milli" Martin  
P.O. Box 2652  
Homer, AK 99603  
907-235-6652 phone/FAX

*State of Alaska D.O.T.  
Homer Airports & Highways*



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*2336 Kachemak Drive  
Homer, Alaska 99603  
907-235-5217 or 235-8872  
Fax: 907-235-2498*

**FAX TRANSMISSION COVER SHEET**

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*Date: 1-18-96*

*To: Harry Gregoire  
Mayor*

*Subject: HABITAT AREA*

*Fax: 235-3140*

*Sender: Mike Moran. DL*

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**YOU SHOULD RECEIVE 3 PAGE(S). INCLUDING THIS COVER SHEET.**

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# MEMORANDUM

STATE of ALASKA

D.O.T & P.F. Homer

TO: Mr. Harry Gregoire  
Homer City Mayor

DATE: 1/18/1996

FILE NO:

THRU:

PHONE NO: 235-5217 or 8872

SUBJECT: Airport Wetlands

FROM: Mike Morawitz  
Homer Airport Manager

On reviewing the proposal for beluga wetland habitat area, I find it lacking important facts, and seems to be a very one sided proposal. Following are some of the facts from working around airports and wild life.

1. First and foremost. Wild life, animals or fowl, do NOT mix with airports. It has been proven time and time again, many people have paid that price with their lives. The Federal regulations at a certified airport strictly govern an agency, like the state, in keeping wildlife off of the runway, and airport area. Control is even down to dogs. While on an airport, they are required to be on a leash.

The numerous man hours and expense, at this little airport, it takes to keep the wild live off of the runway, airport area, is staggering at times.

So, to quote the task force committees statement, "ESTABLISHMENT OF THE BELUGA WETLANDS CRITICAL HABITAT AREA WILL NOT INTERFERE WITH AIRPORT OPERATIONS OR SAFETY." This comment is completely, unsubstantiated and false, in all forms, past, present or future.

2. The arctic terns on Lampert lake are just a few foot away from the airport runway, eagles and other fowl are becoming more and more of a frequent concern at the airport. Encouraging more wild life and fowl around an airport is simply asking for a major disaster.

3. During the fall, winter and spring the moose beat a path around the entire airport, about 3 to 4 foot outside of the fence. There are numerous gates in the fence for the public and tenants. Some of these gates are on a security card system. They open with a card and close automatically with a timer, which is set at 30 to 60 seconds. The moose have gotten so use to the traffic and people they enter while the gate is open, after the traffic goes through.

Then the massive expense and man-hours begin to try to get the moose out of the fenced area. Helicopters have been hired in the past, at \$500 per hr. to help in assisting in herding the moose out.

Luring more moose into this area will cause more hazards and cost to the airport, along with the additional road, car hazards, which has been proven.

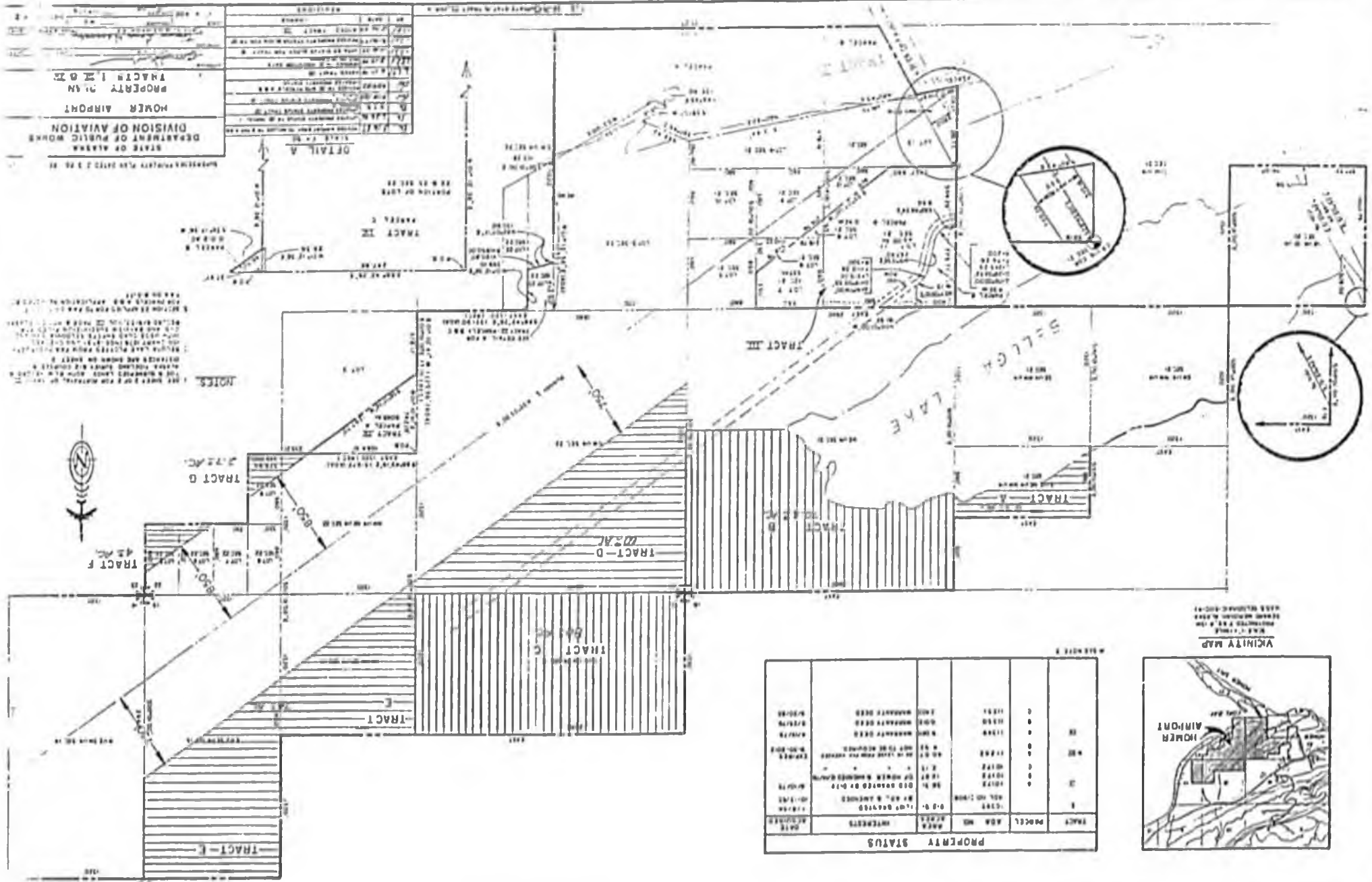
4. The fish and wild life agency has been called in the past to kill coyotes that have been on the runway. A major problem to aircraft. An airplane hit and killed a coyote on the Homer runway. The wild life is nice to look at, but is deadly to aircraft.

There is a lot more information on this subject of wild life and fowl at or around airports. The vast majority is NOT conducive to airport safety. There are many liabilities safety issues and FAA regulations to consider before these lands are made a critical habitat area.

In closing, I support wild life habitat areas. I do not support these areas when they are only a few hundred feet from the flying public. This would be a form of RUSSIAN ROULETTE.

Extensive studies and input from all parties involved, need to be incorporated before this Habitat area is finalized.

# ADOT Map



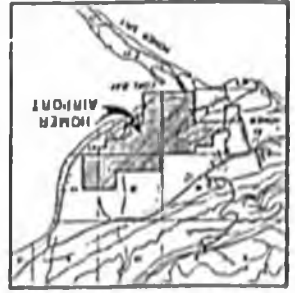
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**NOTES:**

1. SEE TRACT A FOR THE MATERIALS OF THE...
2. THE BOUNDARY LINES SHOWN ON THIS...
3. THE LOTS ARE PLACED FROM THE...
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TRACT	ACRES	AREA	PERCENTAGE
TRACT A	1.22	...	...
TRACT B	4.2	...	...
TRACT C	...	...	...
TRACT D	...	...	...
TRACT E	...	...	...

TRACT	ACRES	AREA	PERCENTAGE
TRACT A	1.22	...	...
TRACT B	4.2	...	...
TRACT C	...	...	...
TRACT D	...	...	...
TRACT E	...	...	...



# Alaska State Legislature

Committee Chair  
Community & Regional Affairs

Committee Vice-Chair  
Labor & Commerce

Committee Membership  
Legislative Council



District Address:  
145 Main St. Loop; Suite 220  
Kenai, AK 99611  
(907) 283-2690; fax 283-9207

Session Address:  
State Capitol, Room 427  
Juneau, AK 99801-1182  
(907) 465-2828; fax 465-4779

*Senator John Torgerson*

## Sectional Analysis

### SB 198 - HOMER AIRPORT CRITICAL HABITAT AREA

Section 1. New section AS 16.20.630,

subsection (a) setting forth legal description for included properties, Tract A through and including Tract G;

subsection (b) specific restrictions applicable to Tracts A and B;

subsection (c) specific restrictions applicable to Tracts C, D, E, F, and G;

subsection (d) language requiring ADF&G cooperation with ADOT in implementing restrictions set forth in subsection (b) & (c);

subsection (e) language prohibiting bird habitat enhancement, development, and creation within the C.H.A.;

subsection (f) protective covenant and easement language for land transfers which may be needed to implement the C.H.A.;

subsection (g) establishes an advisory committee for management of the C.H.A.;

(JT: maj; SB 198: 2/14/96)

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Committee Vice-Chair  
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Kenai, AK 99611  
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(907) 465-2828; fax 465-4779

*Senator John Torgerson*

## Support Summary

### SB 198 - Homer Airport Critical Habitat Area

1. Letters of Support: Support letters have been received from numerous individuals, from petitions circulated on the area, and the following groups.

Homer Charter Association	National Wildlife Federation
North Pacific Fisheries Association	Cook Inlet Seiners Association
U.S. Fish and Wildlife Service	Homer Society of Natural History
Kachemak Bay Conservation Society	Paul Banks Elementary School
South Peninsula Sportsmen's Association	
Kachemak Bay State Park Citizen's Advisory Board	
Homer Fish and Game Advisory Committee	

2. Public Meetings: The City of Homer has had the issue before them at both City Council meetings and Planing and Zoning Commission meetings four times in the past year. At each meeting, the overwhelming public comment has been in support of the concept. Senator Torgerson held a meeting in Homer in October of 1995 and again the predominant public comments were in favor of the concept.

3. Local Government Support: Both the Kenai Peninsula Borough Assembly and the Homer City Council have passed resolutions supporting the Critical Habitat Area Concept.

(JT: maj: SB 198: 2/14/96)

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## SB 198 - Narrative

### HOMER AIRPORT CRITICAL HABITAT AREA

The Department of Transportation currently has an interest in 1,042.31 acres of uplands and tide and submerged lands for the Homer Airport. SB 198 would transfer 300.4 acres to the Alaska Department of Fish and Game, to be managed as a critical habitat area. Approximately 741.91 acres of land will continue to be dedicated for airport purposes after the creation of the Critical Habitat Area.

This legislation is the direct result of constituent interest, dating back to the mid 1980's. When the Anchor River-Fritz Creek Critical Habitat Area was formed in May of 1985, this area was reviewed for potential inclusion. At that time, the expansion needs of the Homer airport were uncertain and so consideration of the area was dropped.

The primary purpose of the CHA is to protect the existing area for wintering and calving moose and nesting waterfowl and shorebirds. However, the legislation specifically restricts enhancement activity for waterfowl and shorebirds. No effort will be allowed to increase existing populations through creation of additional nesting sites, feeding programs, or other enhancement activities.

The proposed acreage is a prime winter range for moose. From November to April, up to 100 moose feed on willows and other browse (from a Homer bench population of 200-400). These lowlands provide moose with a food supply, resting and hiding cover, and an environment in which snow accumulations are normally very small.

Willows in the Homer area have been greatly over browsed and many moose have not survived the winters. In 1992, at least 48 moose died from starvation in the Homer area. A key component of this legislation is to allow moose habitat enhancement by willow planting or other manipulation of the browse.

This legislation also serves to enhance the economic opportunities for the area. "Watchable wildlife" is a tremendous tourism inducement. People enjoy walking the beaches of the Homer Spit and will also welcome the opportunity to explore the habitat area. Recreation and viewing can be enhanced with signage, platforms, trails, and additional educational activities. Wildlife viewing in the area has its greatest potential in the fall, winter and spring, and so this proposal offers the opportunity to extend the tourism season.

Adjacent to the proposed area is the Paul Banks Elementary School. This location provides a ready opportunity for the students to visit the area and study the habitat. Interest has already been expressed for their participation in activities like a willow planting program.

The Homer Airport Master Plan (1985) designated the area as "non-essential lands", noting specifically:

"The area of the Beluga Lake wetlands and associated woodlands outside the developed area or extended building restriction line are non-essential for aviation-related uses." ... "Therefore, it is recommended that the area shown on the Land Use Plan as non-essential be transferred to the State of Alaska Department of Fish and Game or other appropriate State of Alaska agency for management as open space for the purpose of preserving wetlands and wildlife habitat values. Restrictive covenants or other requirements should transfer with title restricting land use to open space, prohibiting construction of structures, and preserving an aviation easement for floatplanes using Beluga Lake and other aircraft operating in the vicinity of the Homer Airport. "

In terms of capital improvements, activity is underway or is soon expected, on projects that include extending the runway safety and overrun areas, improved taxiways, and road access to Beluga Lake. An environmental assessment for those projects was completed in 1992. The assessment specifies conducting construction activities at times and in a manner which will minimize disturbance to wildlife and habitat. Significant wetland habitat will be lost by the development, and so a mitigation plan is required by federal law.

An appropriate mitigation measure is protection of the remaining wetlands as a critical habitat area. The Department has recognized the benefit of such mitigation and has formally requested this office's assistance in the process.

A new terminal and parking area was constructed in 199\_. Future expansion plans have been reviewed by the Department and the local jurisdiction, the City of Homer. The Department initially recommended an area of about 75 acres in size as future expansion. Concerns were expressed by some local residents about removal and the issue was brought before the City of Homer. The City Council subsequently supported the full 300 acre area, without any removal for future expansion.

Given the local government support, the Department then provided the legal description for the full 300 acres, commenting specifically about the unavailability of State funds for land acquisition for future expansion.

Finally, this legislation provides for an Advisory Committee to work with the department and advise on the management of the Area, including a representative of the Department of Transportation and Public Facilities.

This legislation required substantial interaction with the Department of Transportation, to ensure that their interests in a public improvement were adequately protected. All drafts of the bill has been reviewed by the Department and subsequently corrected as recommended by the Department.

7  
Homer Airport Master Plan  
prepared for <sup>H12</sup> DOT. 11/85

Public ice skating that occurs adjacent to the Beluga Lake city park should be restricted to that portion of the lake surface outside the State airport boundaries. No official recreational use of any portion of the designated floatplane landing basin should be allowed, in the interest of public safety.

2. NON-ESSENTIAL LANDS

The existing and proposed facilities shown on the revised Airport Layout Plan will be sufficient to meet all forecast demand to the year 2000, given current projections. The area of the Beluga Lake wetlands and associated woodlands outside the developed area or extended building restriction line are non-essential for aviation-related uses.

The Alaska Aviation System Plan establishes statewide policy regarding development, operation, and management of airport facilities. It indicates that where land on airports is determined by a master plan to be non-essential and not likely to be needed in either the short or long term, the DOT&PF should initiate action to dispose of such land as soon as practical, provided certain criteria are met, and following established state procedures.

Among those criteria are that the land is evaluated by other State of Alaska natural resource agencies to determine if economically valuable or environmentally sensitive resources exist on the property. In the Homer case, this airport master plan has identified the non-essential lands as having high quality for protection of wetlands and wildlife habitat value.

Therefore, it is recommended that the area shown on the Land Use Plan as non-essential be transferred to the State of Alaska Department of Fish and Game or other appropriate State of Alaska agency for management as open space for the purpose of preserving wetlands and wildlife habitat values. Restrictive covenants or other requirements should transfer

with title restricting land use to open space, prohibiting construction of structures, and preserving an aviation easement for floatplanes using Beluga Lake and other aircraft operating in the vicinity of the Homer Airport. The transfer should take place as soon as practical, provided the guidelines for nonessential lands in the Alaska Aviation System Plan are first met.

### 3. OFF-AIRPORT LAND USE RECOMMENDATIONS

The following recommendations address potential land use conflicts that have been identified in the master plan.

- (a) Encourage the City of Homer to acknowledge and plan for noise emissions from seaplane activity on Beluga Lake. As new residential development occurs along the uplands both north and south of Beluga Lake, the potential for noise conflicts between residential areas and floatplane operation can be expected to increase. Because no alternative floatplane landing basin exists in Homer, Beluga Lake must be protected as a public floatplane basin.
- (b) Discourage the development of the proposed Homer Spit Camp-ground within or adjacent to the designated approach zone to Runway 3, adjacent to the airport, based on the interest of public safety.
- (c) The City of Homer should be encouraged to control the location of noise-sensitive land uses within the extended approach zone to Runway 27, adjacent to the airport. While no runway extension is planned, this area will be subject to increasing noise emissions as aviation activity levels increase.
- (d) Support the City of Homer objective of encouraging commercial and industrial land use and discouraging residential or other

**SB**

**199**



# SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189 Session: State Capitol, Juneau, AK 99801 (907) 465-2095

## SPONSOR STATEMENT

### Senate Bill 199: Environmental and Health and Safety Self-Audits

I introduced SB 199 to promote voluntary compliance with existing environmental laws through self-evaluation. This legislation forges a relationship between regulators and private business that is less adversarial and more cooperative. It proposes that government should not measure its regulatory success by the number of court cases or disciplinary actions leveled against private companies. Success should, instead, be measured by environmental improvement through compliance with standards.

State and federal agencies are beginning to recognize that self-auditing makes sense. Governments are not able to fund inspectors to check on all businesses. The EPA has its "Common Sense Initiative", OSHA has its STAR program and even the Governor's Safety Advisory Council is looking at a program called Volunteers in Partnership.

However, many of these programs want self-reporting, but offer no protection for companies which voluntarily report a violation and correct that violation.

During my years as a consulting engineer, I've seen instances in which a law such as SB 199 could help businesses become partners in improving our environment. As an Executive Committee member of the Energy Council, I have heard the testimony of other energy producing states about the benefits of similar self-audit laws.

Government should view businesses as partners with the mutual interest of protecting our environment. But, because of the complexity of environmental and health and safety laws, many businesses are unwittingly in danger of being out of compliance with regulations.

Having the freedom to conduct internal audits for the purpose of correcting violations found will provide an incentive for Alaskans to be even better corporate citizens. It will enable businesses, especially smaller ones, to take a hard look at operations without fear of agency reprisal.

**SECTIONAL ANALYSIS FOR  
Senate Bill 199: Environmental and Health and Safety Self-Audits**

Prepared by: Annette Kreitzer, Staff to  
Sponsor, SENATOR LOREN LEMAN

**Section 1:**

Adds a new section to the Code of Civil Procedure, Chapter 25: Evidence, Presumptions, Public Records and Privileges.

**Sec. 09.25.450 creates the Audit Report Privilege.**

- Self-Audit reports are not admissible as evidence, nor are they subject to discovery in civil, criminal or administrative proceedings.
- Environmental and Health and Safety Self-Audits cannot be obtained by a state agency.
- Self-Audits must be identified as privileged. They are to be labeled. Failure to label the report does not constitute a waiver of the audit privilege.
- A person claiming that the self-audit privilege applies has to make the basic case.

**Sec. 09.25.455 sets out the conditions or Exceptions for Waiver of the privilege.**

- Privilege can be waived.
- Disclosing information in the Audit Report so that the problem can be corrected is NOT a waiver of the privilege.
- No one who receives the information under these conditions and signs a confidentiality agreement with the owner/operator can release the information (Class B misdemeanor).
- Gives added protection to the clerk-typist who has no reason to know the document is privileged and disseminates the report inadvertently.

**Sec. 09.25.460 and 09.25.465 EXCEPTION: DISCLOSURE  
REQUIRED BY COURT OR ADMINISTRATIVE HEARINGS OFFICIAL  
and NONPRIVILEGED MATERIALS**

These sections set out the tests for claiming the privilege and identify nonprivileged materials.

The privilege does not apply if:

- the privilege is asserted for a fraudulent purpose;
- a portion of the report is actually information required by a regulatory agency to be reported under state or federal law;
- an agency acquired the information on its own;
- the information was obtained from someone not involved in preparing the audit report; or
- a portion of the audit shows the company did not act promptly to correct a violation it discovered.

The court may impose sanctions if a person claimed the privilege for nonprivileged materials.

**Sec. 09.25.470. COURT REVIEW AND DISCLOSURE.**

This section sets out the procedures for the court to follow when a state agency wants to obtain an audit prepared under this legislation.

**Sec. 09.25.475. VOLUNTARY DISCLOSURE; IMMUNITY**

Grants limited immunity from an administrative, civil or criminal penalty for a violation disclosed IF the violation is corrected within a reasonable time. The violation cannot have resulted in injury to anyone at the site, or in substantial off-site harm to persons, property or the environment.

Immunity does not apply if:

- the violation was knowingly committed;
- people were hurt; or
- the violation was committed recklessly by any agent of the owner/operator.

To receive immunity, a facility conducting a self-audit must give notice to the appropriate regulatory agency that it is going to begin an audit. The notice must include:

- facility or portion of facility to be audited;
- time audit is to begin; and
- general scope of the audit.

Audit must be completed within six months, unless the regulatory agency approves an extension.

Bad actors are not protected. Immunity does not apply if:

- person repeatedly or continuously commits serious violations; and
- does not attempt to bring the operation into compliance.

**Sec. 09.25.480. CIRCUMVENTION BY REGULATION PROHIBITED.**

Purpose of this Act cannot be circumvented by regulations or conditions imposed by regulatory agencies.

**Sec. 09.25.485. RELATIONSHIP TO OTHER RECOGNIZED PRIVILEGES.**

This act has no effect on existing privileges under state law such as attorney-client, public officials' or reporters' privileges.

**Sec. 09.25.490. DEFINITIONS**

**Section 2.** Adds Self-Audit privilege to Code of Criminal Procedure.

**Section 3.** Amends Alaska Rules of Appellate Procedure

**Section 4.** Privilege applies to audits conducted on or after the effective date of the Act.

FISCAL NOTES FOR SB 199 WILL BE  
FORTHCOMING FROM DEPARTMENTS AFTER  
INITIAL HEARING AND BEFORE BILL IS  
DISCHARGED FROM COMMITTEE.

(January 30, 1996)

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 199

Revision Date: \_\_\_\_\_  
Title: An Act relating to environmental audits and health and safety audits ...  
Sponsor: Senators Leman and Pearce  
Requestor: \_\_\_\_\_

Department Affected: Environmental Conservation  
BRU: Department-wide  
Component: Department-wide

COMPONENT SERIAL NO. 633

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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	44.0	44.0	44.0	44.0	44.0	44.0
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
<b>TOTAL OPERATING</b>	<b>44.0</b>	<b>44.0</b>	<b>44.0</b>	<b>44.0</b>	<b>44.0</b>	<b>44.0</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF March	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	26.0	26.0	26.0	26.0	26.0	26.0
1005 GF/Program Receipt	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
1052 Oil Resp	18.0	18.0	18.0	18.0	18.0	18.0
<b>TOTAL</b>	<b>44.0</b>	<b>44.0</b>	<b>44.0</b>	<b>44.0</b>	<b>44.0</b>	<b>44.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

The bill makes Audit Reports privileged; such reports may not be disclosed except by court order. The bill, as written, is so broad that the department would have difficulty enforcing or ensuring statutory and regulatory compliance. The department would incur additional contractual costs with the Department of Law for legal assistance to determine what documents for which privilege is asserted are, in fact, privileged.

Prepared by: Larry Jones *Darius Joly*  
Division: Director, Division of Administrative Services

Phone: 465-5010  
Date: 1/29/96

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

Date: 1/29/96

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*Request: 1/29/96 CS*

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 199

Revision Date: 1/31/96 Dept. Affected: DOT&PF  
 Title: An Act relating to environmental audits and health and safety audits...Appellate Procedure 202, ...and 611 BRU: AIA; FIA  
 Sponsor: Senator Leman Component: Administration  
 Requester: Governor's Legislative Office COMPONENT SERIAL NO. 613:619

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

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

**ANALYSIS:** (Attach a separate page if necessary)

Senate Bill 199 may result in tort liability if the existing language is left in place. The majority of airports are owned and managed by the Department of Transportation and Public Facilities, and Senate Bill 199, as written, would limit the amount of information that could be legally obtained from tenants who conduct voluntary environmental audits on leased parcels of land. Since the Department of Transportation and Public Facilities is responsible for environmental impacts caused by tenant activities, it is recommended that Senate Bill 199, Section 09.25.465 "Nonprivileged Materials" be amended to add: "materials required in public lease agreements, permits, and licenses"

Prepared by: Loren Rasmussen, P.E. Phone: 465-3900  
 Acting Director  
 Division: Engineering and Operations Date: 1/31/96  
 Approved by: *Joseph L. DeLeon* Date: 1/31/96  
 Commissioner  
 Agency: Department of Transportation and Public Facilities

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*Registered in the CS 1/31/96 file part 2/10/96*

# FISCAL NOTE

STATE OF ALASKA

BILL NO. SB199

1996 LEGISLATIVE SESSION

Revision Date: Original Dept Affected Military & Veterans Affairs  
 Title: An Act relating to environmental audits and BRU: Alaska National Guard  
health and safety audits to determine compliance with... Component: Office of the Commissioner  
 Sponsor: Senator(s) Leman, Pearce  
 Requestor: \_\_\_\_\_ Component Serial No. 414

Expenditures/Revenues	(Thousands of Dollars)					
	FY97	FY98	FY99	FY00	FY01	FY02
<b>OPERATING EXPENDITURES</b>						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE	(Thousands of Dollars)					
	FY97	FY98	FY99	FY00	FY01	FY02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ none

POSITIONS	FY97	FY98	FY99	FY00	FY01	FY02
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Carol Carroll, Director Phone: 465-4730  
 Division: Administrative Services Date: 23-Jan-96  
 Approved by Commissioner: *Carol Carroll* Date: 23-Jan-96  
 Agency: Military & Veterans Affairs

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB199

Revision Date: Original Dept Affected: Natural Resources  
 Title: An Act relating to environmental audits and BRU: Management and Administration  
health and safety audits to determine compliance with... Component: Commissioner's Office  
 Sponsor: Senator(s) Leman, Pearce  
 Requestor: \_\_\_\_\_ Component Serial No. 423

Expenditures/Revenues (Thousands of Dollars)

	FY97	FY98	FY99	FY00	FY01	FY02
<b>OPERATING EXPENDITURES</b>						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>						
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

	FY97	FY98	FY99	FY00	FY01	FY02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>						

Estimate of any current year (FY96) cost: \$ none

POSITIONS

	FY97	FY98	FY99	FY00	FY01	FY02
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

\* There will be a fiscal impact associated with implementation of this legislation, however it cannot be determined at this time.

Prepared by: Nico Bus, Acting Director Phone: 465-2406  
 Division: Support Services Date: 31-Jan-96  
 Approved by Commissioner: [Signature] Date: 31-Jan-96  
 Agency: Natural Resources

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSSB 199(RES)

Revision Date: \_\_\_\_\_ Dept. Affected: Fish and Game  
 Title: Environmental Audits BRU: Habitat and Restoration  
 Component: Stream and Refuge  
 Sponsor: Senator Leman  
 Requester: Senate Resources COMPONENT SERIAL NO. 2099

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES	60.0	60.0	60.0	60.0	60.0	60.0
TRAVEL	2.0	2.0	2.0	2.0	2.0	2.0
CONTRACTUAL	4.0	4.0	4.0	4.0	4.0	4.0
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>66.5</b>	<b>66.5</b>	<b>66.5</b>	<b>66.5</b>	<b>66.5</b>	<b>66.5</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	66.5	66.5	66.5	66.5	66.5	66.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>66.5</b>	<b>66.5</b>	<b>66.5</b>	<b>66.5</b>	<b>66.5</b>	<b>66.5</b>

Estimate of any current year (FY96) cost: \$ 0

**POSITIONS**

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

**ANALYSIS:** (Attach a separate page if necessary)

Because of its broad definition of information that is privileged, SB199 would require a new habitat biologist to be assigned to monitor operations that are regulated by the Habitat and Restoration Division. The additional staff is need to detect violations and to allow the state to develop is own independent information to ensure compliance with its Title 16 laws and regulations.

Prepared by: Janet Kowalski *Janet Kowalski* Phone: 465-4105  
 Division: Habitat and Restoration Division Date: 5/8/96  
 Approved by Commissioner: *BCB* Date: 2-2-96  
 Agency: \_\_\_\_\_

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**SENATE COMMITTEE REF RT  
First Committee of Referral**

DATE: 2/2/96

FURTHER: Finance

Date of 5-Day Notice: 1-18-96  
(in accordance with Uniform Rule 23)

DATE TURNED  
..INTO OFFICE: 3-12-96

The Resources Committee considered SB 199

"An Act relating to environmental audits and health and safety audits."

and recommends:

- be replaced with CS SB 199 ( RES )
- adopt previous CS ( )
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Robert L. Taylor</i>	✓	<i>James Hoff</i>	✓		
<i>James Woodcock</i>	✓				
<i>Richard Hatfield</i>	✓				
CHAIR: <i>Steven A. Rosen</i>	✓				

**NEW FISCAL NOTE(S):**

Department                      Date      Zero      Fiscal

DE: Department with	2/2/96		4.40
DE: PE	3/3/96	✓	
DNR/Commissioner's Office	3/1/96	✓	
DE: PE	2/2/96	✓	
DE: PE (copy)	3/1/96		66.5

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date      Zero      Fiscal


APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

## Summary of Changes -- CS for Senate Bill 199, Version "F"

### Environmental, Health and Safety Self-Audit Legislation

March 11, 1996

Note: line & page references in brackets refer to CSSB 199 (RES), draft 9-LS1312C, dated 02/22/96.

#### Section 09.25.450      AUDIT REPORT PRIVILEGE

1) In Section 09.25.450(b)(2)(A) the legislation provides that "a person who conducted a portion of the audit but did not personally observe the relevant physical events" may not be compelled to testify about or produce documents protected by the self-audit privilege.

Version F gives more precise meaning to this clause, clarifying that the protection applies to a person who prepared all or a portion of the audit.

The term "physical events" was criticized as being too vague. The new version changes this term to instances or events being reviewed for compliance.

Likewise, it has been suggested that the phrase "did not personally observe" is vague in meaning. The new version changes this language to "did not personally observe or participate in..." [Page 2, lines 7-8]

2) The language in Section 09.25.450(c) has been changed to maintain consistency with the changes described above: "who has actually observed or participated in instances or events being reviewed for compliance may testify about those instances or events..." [Page 2, lines 13-14]

3) Section 09.25.450(d) provides that "An employee of a state agency may not request, review," etc., an audit report during inspections. This language has been changed to "A regulatory agency and an employee of a regulatory agency may not request, review...", etc.

The substantive change is dropping the word "state", which broadens the scope of the provision. The applicability of this provision and other parts of the bill to federal regulators has yet to be determined by the courts, but the sponsor does not wish to preclude any such potential applications through delimitative language in the bill. [Page 2, line 17]

#### Section 09.25.455      EXCEPTION: WAIVER

1) Section 09.25.455(a) provides that the audit privilege does not apply if it is "expressly waived by the owner or operator who prepared the audit..." In order to clarify the meaning of this clause, the new CS adds the words in writing, e.g., "expressly waived in writing by the owner or operator..." This will diminish the possibility that a verbal communication might be misconstrued as a waiver of privilege. [Page 2, line 26]

2) A new subsection (e) is added to 09.25.455 as follows: "(e) Disclosure of a portion of an audit report after waiver of the privilege under (a) of this section, after

disclosure under (b) of this section, or through any other means may not be construed to waive the privilege established under AS 09.25.450 for any other part of the audit report."

Several federal courts have established a 4-part test to help determine claims of self-critical analysis privilege. One of the tests requires that information for which privilege is claimed must have been kept confidential. The new subsection clarifies that a disclosure of part of an audit report does not jeopardize the privilege for all the report. [Page 3, line 27]

#### Section 09.25.465 NONPRIVILEGED MATERIALS

1) The language in Section 09.25.465(a) has been supplemented for purposes of clarity. New sentence reads "The privilege under AS 09.25.450 does not apply to that part of an audit report which contains" [Page 3, lines 26-27]

2) In Section 09.25.465(a)(1), the words "federal or state" have been dropped from both references to "federal and state environmental or health and safety law". The definition of "environmental or health and safety law" in Section 09.25.490 already defines this term as including both federal and state statutes, so the use of the words in this section is redundant. [Page 3, lines 30-31]

3) Section 09.25.465(a)(1) also adds language clarifying that information that must be maintained or reported to receive a license or to enter into a lease agreement with a government entity is not considered privileged information.

New paragraph reads as follows: " (1) a document, communication, datum, report, or other information required by a regulatory agency to be collected, developed, maintained, or reported under an environmental or health and safety law, under a permit issued under an environmental or health and safety law, as a requirement for obtaining, maintaining, or renewing a license, or as a requirement under a contract with the state;" [Page 3, lines 28-31]

4) Section 09.25.465(a)(2) provides that "information obtained by observation, sampling, or monitoring by a regulatory agency" is not considered privileged material. However, confusion exists on the point of whether the phrase "by a regulatory agency" modifies just the word "monitoring" or also "observation" and "sampling".

In order to clarify this, the new CS rewords the sentence as follows: "information that a regulatory agency obtains by observation, sampling or monitoring;" [Page 4, lines 1-2]

5) The wording of Section 09.25.465(a)(3) has been amended as follows: "information that a regulatory agency obtains from a source that was not involved in the compilation or preparation of the environmental or health and safety audit report."

The words "that a regulatory agency obtains" are added to make this sentence consistent with the changes cited above to 09.25.465(a)(2).

The addition of "compilation" clarifies the intent of this section, which is that even persons involved in an audit report in a tangential sense (e.g., clerical staff who copied the documents) are considered to have been "involved" in the audit's preparation. Consequently, information obtained from such persons would not fall under the definition of nonprivileged materials contained in this section. [Page 4, lines 3-4]

#### Section 09.25.475 VOLUNTARY DISCLOSURE; IMMUNITY

1) New language is added to Section 09.25.475(a). The revised text is as follows: "Except as provided by this section, a person who makes a voluntary disclosure of a violation of an environmental or health and safety law is immune from an administrative, civil, or criminal penalty for the violation disclosed, for a violation based on the facts disclosed, and for a violation discovered because of the disclosure that was unknown to the person making the disclosure."

The new language is added to address the concern that information contained in a voluntary disclosure might reveal violations that were not identified as such in the disclosure report. It is not clear in the original language of the bill that owners and operators would be granted immunity for such violations, and this could create a disincentive for voluntary disclosure. Furthermore, this concern could lead some owners or operators to initiate a separate legal review after the completion of an audit report and before disclosure is made to the appropriate regulatory agency. The resulting delay is not in the public interest. It is the intent of the sponsor to encourage the prompt reporting of violations and related facts. [Page 4, lines 7-10]

2) New language has been added to Section 09.25.475(b)(3); revised paragraph reads as follows: " (3) an investigation of the violation was not independently detected by an agency with enforcement jurisdiction before disclosure was made using certified mail; under this paragraph, the agency has the burden of proving that an investigation of the violation was initiated or the violation was detected before receipt of the certified mail;"

This change was made to tighten the requirements that an agency would have to meet in order to argue that immunity does not apply on the grounds the violation was independently detected or already under investigation. The agency would be required to present dated documents or some other convincing evidence to demonstrate its case. [Page 4, lines 16-18]

3) Section 09.25.475(b)(5) has been amended; new wording is as follows: " (5) the person who makes the disclosure initiates, within a reasonable amount of time, an appropriate effort to achieve compliance, pursues that effort with due diligence, and corrects or implements a series of measures designed to remedy the noncompliance within a reasonable time;"

This change was made to address concern that bringing an entity into compliance or correcting the results of previous noncompliance can occasionally be a lengthy process. The change in wording recognizes this reality. [Page 4, lines 21-23]

4) Section 09.25.475(b)(6) has been amended. New wording as follows: " (6) the person making the disclosure cooperates with the appropriate agency in connection with an investigation of the issues identified in the disclosure and agrees under terms of a confidentiality agreement to disclose to the agency, on request of the agency, the part of the audit report that describes the implementation plan or tracking system developed to correct past noncompliance, improve current compliance, or prevent future noncompliance."

The new language addresses concerns about the audit report privilege applying even to the portion of the audit dealing with compliance efforts. Administration representatives argued that it was unreasonable to require an entity to "cooperate with the appropriate agency" on the efforts to achieve compliance, but then deny the regulatory agency access to the compliance plan.

The new language in paragraph (6) provides that the compliance portion of the self-audit, which is defined in Section 09.25.490(a)(1)(C), may be requested by a regulatory agency. If it is requested, the regulated entity is required to disclose such information as a condition for claiming immunity. However, such disclosure will be made only under terms of a confidentiality agreement, which means the information disclosed is still considered privileged and cannot be disclosed to third parties. [Page 4, lines 24-26]

5) In Section 09.25.475(b)(7), the word substantial is added before "injury" for consistency purposes. New paragraph reads: "(7) the violation did not result in substantial injury to one or more persons at the site or substantial off-site harm to persons, property, or the environment." [Page 4, line 27]

6) The wording of Section 09.25.475(d)(1) has been changed. The phrases "intentionally or" and "or was responsible for the commission of" have been deleted. Revised paragraph reads as follows: "(1) person who made the disclosure knowingly committed the disclosed violation;"

These revisions were required because the meaning of "intentionally" and "was responsible for" is subjective. A person could "intentionally" undertake a certain action while being unaware that the action violated regulations. Likewise, an owner or operator could be deemed to be "responsible for" virtually everything that happens under his or her watch. The sponsor believes this exception to the immunity provision is very broad and might work against the intent of the bill. [Page 5, lines 3-4]

7) The word substantial is added before "off-site harm" in Section 09.25.475(d)(2). This change is made for consistency purposes, similar to the change described in #5 above. [Page 5, line 7]

8) In Section 09.25.475(d)(4), the word substantial is added again before "off-site harm", for purposes of consistency. [Page 5, line 15]

9) Technical changes have been made to Section 09.25.475(e): the words "factors such as" have been deleted before the 1-5 list of mitigating factors. [Page 5, line 20]

10) A new paragraph (g) has been added to 09.25.475 which reads as follows: "(g) a regulatory agency may not initiate an inspection, monitoring, or other investigative activity based solely on the receipt of a notice under (f) of this section. The agency has the burden of proving that an inspection, monitoring, or other investigative activity initiated after receipt of a notice under (f) of this section was not initiated based solely on the receipt of the notice."

This language addresses concerns that the self-audit notice, which is required in order to be eligible for immunity, might serve to provoke an investigation that would otherwise not have occurred. If such an investigation were to discover violations before the regulated entity is able to complete an audit report, the immunity provisions would not be applicable. This creates a disincentive for self-auditing and is counter to the intent of the sponsor.

The new section (g) expressly prohibits the initiation of an investigation based solely on the receipt of a self-audit notice. The sponsor recognizes that investigations may occur at the same time a self-audit is being performed, because of a regular inspections schedule or because information was received from a source not involved in the audit report. In such circumstances, however, the regulatory agency has the burden of proving

that the investigation was initiated for valid reasons and not as a result of receiving a self-audit notice. [Page 6, line 8]

11) The wording of Section 09.25.475(g)(1) has been amended as follows: "repeated an unreasonable number of times or continuously committed [serious] violations that are the same as, or similar to, the violation for which immunity is sought under this section; and..."

The phrase "unreasonable number of times" modifies the word "repeated", which is too vague (repeated can mean, at a minimum, twice). In addition the word "serious" (before "violations") is deleted because it is too vague. Instead, the revised text denies immunity when the violations disclosed are the same or similar to violations that have already been an issue previously and have been a repeated problem for the regulated entity. [Page 6, line 11]

**Section 09.25.480 CIRCUMVENTION BY  
REGULATION PROHIBITED**

1) The entirety of Section 09.25.480 is deleted. The circumvention of statutes by means of regulation is already prohibited under AS 44.62.030. [Page 6, lines 19-21]

**Section 09.25.485 RELATIONSHIP TO OTHER  
RECOGNIZED PRIVILEGES**

1) A clarifying amendment has been made to this section. Revised wording is as follows: "AS 09.25.450 - 09.25.490 do not limit, waive, or abrogate the scope or nature of a statutory or common law privilege, including the work product doctrine, the attorney-client privilege, and any other privilege recognized by a court with appropriate authority in this state." [Page 6, lines 22-25]

**Section 09.25.490 DEFINITIONS**

1) The definition of "environmental or health and safety audit" has been changed in Section 09.25.490(a)(2). Revised definition: "environmental or health and safety audit" means a voluntary [systematic] evaluation, review, or assessment of compliance with environmental or health and safety laws or a permit issued under those laws conducted randomly, regularly, spontaneously, or in response to a particular event by an owner or operator, an employee of the owner or operator, or an independent contractor of..." [remainder of definition unchanged]

The substantive change is the deletion of "systematic" and its replacement with randomly, regularly, spontaneously, or in response to a particular event.

One accepted definition of "systematic" is "purposefully regular", which might be construed as meaning periodic, and thus have the effect of excluding audits that are done on the spur of the moment or which are not part of a regularly-scheduled plan. It is the intent of the sponsor to encourage non-regular audits that may be initiated because a problem is suspected. The existing language might create an incentive to delay investigation until the next regularly scheduled audit. Such a delay is not in the public interest. [Page 7, lines 25-28]

9-LS1312\F  
Lauterbach  
3/9/96

CS FOR SENATE BILL NO. 199(RES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATORS LEMAN, Pearce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to environmental audits and health and safety audits to  
2 determine compliance with certain laws, permits, and regulations."

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

4 • Section 1. AS 09.25 is amended by adding new sections to read:

5 ARTICLE 5. PRIVILEGES AND IMMUNITIES  
6 RELATED TO DISCLOSURE OF CERTAIN SELF-AUDITS.

7 Sec. 09.25.450. AUDIT REPORT PRIVILEGE. (a) Except as provided in  
8 AS 09.25.455 - 09.25.475, an audit report is privileged and is not admissible as  
9 evidence or subject to discovery in

10 (1) a civil action, whether legal or equitable;

11 (2) a criminal proceeding; or

12 (3) an administrative proceeding.

13 (b) A person, when called or subpoenaed as a witness, may not be compelled  
14 to testify or produce a document related to an environmental or health and safety audit

1 if

2 (1) the testimony or document discloses an item listed in  
3 AS 09.25.490(a)(1) that was made as part of the preparation of an environmental or  
4 health and safety audit report and that is addressed in a privileged part of an audit  
5 report; and

6 (2) for purposes of this subsection only, the person is a

7 (A) person who conducted all or a portion of the audit but did  
8 not personally observe or participate in the relevant instances or events being  
9 reviewed for compliance;

10 (B) person to whom the audit results are disclosed under  
11 AS 09.25.455(b); or

12 (C) custodian of the audit results.

13 (c) A person who conducts or participates in the preparation of an  
14 environmental or health and safety audit and who has actually observed or participated  
15 in instances or events being reviewed for compliance may testify about those instances  
16 or events but may not be compelled to testify about or produce documents related to  
17 the preparation of or a privileged part of an environmental or health and safety audit  
18 or an item listed in AS 09.25.490(a)(1).

19 (d) A regulatory agency and an employee of a regulatory agency may not  
20 request, review, or otherwise use an audit report during an agency inspection of a  
21 regulated facility or operation or an activity of a regulated facility or operation.

22 (e) To facilitate identification, each document in an audit report shall be  
23 labeled "COMPLIANCE REPORT: PRIVILEGED DOCUMENT," or labeled with  
24 words of similar import.

25 (f) A party asserting the privilege described in this section has the burden of  
26 establishing the applicability of the privilege.

27 Sec. 09.25.455. EXCEPTION: WAIVER. (a) The privilege in AS 09.25.450  
28 does not apply to the extent the privilege is expressly waived in writing by the owner  
29 or operator who prepared the audit report or caused the report to be prepared.

30 (b) Disclosure of an audit report or information generated by an environmental  
31 or health and safety audit does not waive the privilege established by AS 09.25.450

1 if the disclosure is made

2 (1) to address or correct a matter raised by the environmental or health  
3 and safety audit and is made only to

4 (A) a person employed by the owner or operator, including  
5 temporary and contract employees;

6 (B) a legal representative of the owner or operator;

7 (C) an officer or director of the regulated facility or operation  
8 or a partner of the owner or operator; or

9 (D) an independent contractor retained by the owner or  
10 operator;

11 (2) under the terms of a confidentiality agreement between the person  
12 for whom the audit report was prepared or the owner or operator of the audited facility  
13 or operation and a

14 (A) partner or potential partner of the owner or operator of the  
15 facility or operation;

16 (B) transferee or potential transferee of the facility or operation;

17 (C) lender or potential lender for the facility or operation;

18 (D) government official or a state or federal agency; or

19 (E) person or entity engaged in the business of insuring,  
20 underwriting, or indemnifying the facility or operation; or

21 (3) under a claim of confidentiality to a government official or agency  
22 by the person for whom the audit report was prepared or by the owner or operator.

23 (c) A party to a confidentiality agreement described in (b)(2) of this section  
24 who violates that agreement is liable for damages caused by the disclosure and for  
25 other penalties stipulated in the confidentiality agreement.

26 (d) Information that is disclosed under (b)(3) of this section is confidential and  
27 is not subject to disclosure under AS 09.25.110 - 09.25.125.

28 (e) Disclosure of a portion of an audit report after waiver of the privilege  
29 under (a) of this section, after disclosure under (b) of this section, or through any other  
30 means may not be construed to waive the privilege established under AS 09.25.450 for  
31 any other part of the audit report.

1           Sec. 09.25.465. NONPRIVILEGED MATERIALS. (a) The privilege under  
2 AS 09.25.450 does not apply to that part of an audit report that contains

3                   (1) a document, communication, datum, report, or other information  
4 required by a regulatory agency to be collected, developed, maintained, or reported  
5 under an environmental or health and safety law, under a permit issued under an  
6 environmental or health and safety law, as a requirement for obtaining, maintaining,  
7 or renewing a license, or as a requirement under a contract with the state;

8                   (2) information that a regulatory agency obtains by observation,  
9 sampling, or monitoring; or

10                  (3) information that a regulatory agency obtains from a source that was  
11 not involved in the compilation or preparation of the environmental or health and  
12 safety audit report.

13           (b) This section does not limit the right of a person to agree to conduct and  
14 disclose an audit report.

15           Sec. 09.25.475. VOLUNTARY DISCLOSURE; IMMUNITY. (a) Except as  
16 provided by this section, a person who makes a voluntary disclosure of a violation of  
17 an environmental or health and safety law is immune from an administrative, civil, or  
18 criminal penalty for the violation disclosed, for a violation based on the facts disclosed,  
19 and for a violation discovered because of the disclosure that was unknown to the  
20 person making the disclosure.

21           (b) A disclosure is voluntary for the purposes of this section only if

22                   (1) the disclosure was made promptly after knowledge of the  
23 information disclosed is obtained by the person;

24                   (2) the disclosure was made in writing by certified mail to an agency  
25 that has regulatory authority with regard to the violation disclosed;

26                   (3) an investigation of the violation was not initiated or the violation  
27 was not independently detected by an agency with enforcement jurisdiction before the  
28 disclosure was made using certified mail; under this paragraph, the agency has the  
29 burden of proving that an investigation of the violation was initiated or the violation  
30 was detected before receipt of the certified mail;

31                   (4) the disclosure arises out of a voluntary environmental or health and

1 safety audit:

2 (5) the person who makes the disclosure initiates, within a reasonable  
3 time, an appropriate effort to achieve compliance, pursues that effort with due  
4 diligence, and corrects or implements a series of measures designed to remedy the  
5 noncompliance within a reasonable time;

6 (6) the person making the disclosure cooperates with the appropriate  
7 agency in connection with an investigation of the issues identified in the disclosure and  
8 agrees under terms of a confidentiality agreement to disclose to the agency, on request  
9 of the agency, the part of the audit report that describes the implementation plan or  
10 tracking system developed to correct past noncompliance, improve current compliance,  
11 or prevent future noncompliance; and

12 (7) the violation did not result in substantial injury to one or more  
13 persons at the site or substantial off-site harm to persons, property, or the environment.

14 (c) A disclosure is not voluntary for purposes of this section if it is a report  
15 to a regulatory agency required solely by a specific condition of an enforcement order  
16 or decree.

17 (d) The immunity established by (a) of this section does not apply and an  
18 administrative, civil, or criminal penalty may be imposed under applicable law if the

19 (1) person who made the disclosure knowingly committed the disclosed  
20 violation;

21 (2) person who made the disclosure recklessly committed or was  
22 responsible for the commission of the disclosed violation and the violation resulted in  
23 substantial injury to one or more persons at the site or substantial off-site harm to  
24 persons, property, or the environment;

25 (3) offense was committed intentionally or knowingly by a member of  
26 the person's management or an agent of the person and the person's policies or lack  
27 of prevention systems contributed materially to the occurrence of the violation; or

28 (4) offense was committed recklessly by a member of the person's  
29 management or an agent of the person, the person's policies or lack of prevention  
30 systems contributed materially to the occurrence of the violation, and the violation  
31 resulted in substantial injury to one or more persons at the site or substantial off-site

1       harm to persons, property, or the environment.

2               (e) A penalty that is imposed on a person for violation of an environmental or  
3 health and safety law when the person has made a voluntary disclosure under (a) of  
4 this section but is not granted immunity because of (d) of this section may, to the  
5 extent appropriate and not prohibited by law, be mitigated by

6                       (1) the voluntariness of the disclosure;

7                       (2) efforts by the disclosing party to conduct environmental or health  
8 and safety audits;

9                       (3) remediation;

10                      (4) cooperation with government officials investigating the disclosed  
11 violation; and

12                      (5) other relevant considerations.

13               (f) In order to receive immunity under this section, a facility conducting an  
14 environmental or health and safety audit must give notice by certified mail to an  
15 appropriate regulatory agency of the fact that it is planning to commence the audit.  
16 The notice must specify the facility or portion of the facility to be audited, the date the  
17 audit will begin and end, and the general scope of the audit. Immunity under this  
18 section is available only for information and documents first produced or obtained  
19 during the time period specified in the notice. The notice may provide notification of  
20 more than one scheduled environmental or health and safety audit at a time. Once  
21 initiated, an audit shall be completed within the time period specified in the notice  
22 unless an extension is approved by the governmental entity with regulatory authority  
23 over the regulated facility or operation based on reasonable grounds.

24               (g) A regulatory agency may not initiate an inspection, monitoring, or other  
25 investigative activity based solely on the receipt of a notice under (f) of this section.  
26 The agency has the burden of proving that an inspection, monitoring, or other  
27 investigative activity initiated after receipt of a notice under (f) of this section was not  
28 initiated based solely on the receipt of the notice.

29               (h) ~~The immunity under this section does not apply if a court or administrative~~  
30 ~~law judge finds that the person claiming the immunity has, on or after the effective~~  
31 ~~date of this Act.~~

1 (1) repeated an unreasonable number of times or continuously  
2 committed violations that are the same as, or similar to, the violation for which  
3 immunity is sought under this section; and

4 (2) not attempted to bring the facility or operation into compliance, so  
5 as to constitute a pattern of disregard of environmental or health and safety laws; in  
6 order to be considered a pattern, the person must have committed a series of violations  
7 that were due to separate and distinct events within a three-year period at the same  
8 facility or operation.

9 (i) A violation that has been voluntarily disclosed and to which immunity  
10 applies must be identified in a compliance history report as being voluntarily disclosed.

11 Sec. 09.25.485. RELATIONSHIP TO OTHER RECOGNIZED PRIVILEGES.  
12 AS 09.25.450 - 09.25.490 do not limit, waive, or abrogate the scope or nature of a  
13 statutory or common law privilege, including the work product doctrine, the attorney-  
14 client privilege, and any other privilege recognized by a court with appropriate  
15 authority in this state.

16 Sec. 09.25.490. DEFINITIONS. (a) In AS 09.25.450 - 09.25.490,

17 (1) "audit report" means a report that includes each document and  
18 communication, other than those set out in AS 09.25.465, produced from an  
19 environmental or health and safety audit; general components that may be contained  
20 in a completed audit report include

21 (A) a report, prepared by an auditor, monitor, or similar person,  
22 that may include a description of the scope of the audit, the information gained  
23 in the audit, findings, conclusions, recommendations, exhibits, and appendices;  
24 the types of exhibits and appendices that may be contained in an audit report  
25 include supporting information that is collected or developed for the primary  
26 purpose of and in the course of an environmental or health and safety audit,  
27 including

28 (i) interviews with current or former employees;

29 (ii) field notes and records of observations;

30 (iii) findings, opinions, suggestions, conclusions,  
31 guidance, notes, drafts, and memoranda;

- 1 (iv) legal analyses;
- 2 (v) drawings;
- 3 (vi) photographs;
- 4 (vii) laboratory analyses and other analytical data;
- 5 (viii) computer generated or electronically recorded
- 6 information;
- 7 (ix) maps, charts, graphs, and surveys; and
- 8 (x) other communications associated with an
- 9 environmental or health and safety audit;
- 10 (B) memoranda and documents analyzing all or a portion of the
- 11 materials described in (A) of this paragraph or discussing implementation
- 12 issues; and
- 13 (C) an implementation plan or tracking system to correct past
- 14 noncompliance, improve current compliance, or prevent future noncompliance;
- 15 (2) "environmental or health and safety audit" means a voluntary
- 16 evaluation, review, or assessment of compliance with environmental or health and
- 17 safety laws or a permit issued under those laws conducted randomly, regularly,
- 18 spontaneously, or in response to a particular event by an owner or operator, an
- 19 employee of the owner or operator, or an independent contractor of
- 20 (A) a regulated facility or operation; or
- 21 (B) an activity at a regulated facility or operation;
- 22 (3) "environmental or health and safety law" means
- 23 (A) a federal or state environmental or occupational health and
- 24 safety law; or
- 25 (B) a rule, regulation, or municipal ordinance adopted in
- 26 conjunction with or to implement a law described by (A) of this paragraph;
- 27 (4) "intentionally" has the meaning given in AS 11.81.900;
- 28 (5) "knowingly" has the meaning given in AS 11.81.900;
- 29 (6) "owner or operator" means a person who owns or operates a
- 30 regulated facility or operation;
- 31 (7) "penalty" means an administrative, civil, or criminal sanction

1 imposed by the state to punish a person for a violation of a statute or rule; the term  
2 does not include a technical or remedial provision ordered by a regulatory authority;

3 (8) "recklessly" has the meaning given in AS 11.81.900;

4 (9) "regulated facility or operation" means a facility or operation that  
5 is regulated under an environmental or health and safety law.

6 (b) To fully implement the privilege established under AS 09.25.450 -  
7 09.25.490, the term "environmental or health and safety law" shall be construed  
8 broadly.

9 \* Sec. 2. AS 12.45 is amended by adding a new section to read:

10 Sec. 12.45.052. PRIVILEGE RELATING TO CERTAIN SELF-AUDITS. An  
11 audit report based on an environmental or health and safety audit is privileged under  
12 AS 09.25.450 - 09.25.490.

13 \* Sec. 3. APPLICABILITY. The privilege created by AS 09.25.450 - 09.25.490, added  
14 by sec. 1 of this Act, applies to environmental or health and safety audits that are conducted  
15 on or after the effective date of this Act.




# Alaska State Legislature

Official Business

State Capitol  
Juneau AK 99801

MEMO

TO: Terri Lauterbach  
Legal Services  
via fax: X2029 this page only

FROM: Annette Kreitzer, Aide to  
Senate Resources Committee   
PHONE: X4907

DATE: March 11, 1996

RE: Senate CS for SB 199(RES)

---

Please prepare a FINAL Senate Resources CS for SB 199 with the following change.

1. Page 1, Line 12:

Following "an administrative proceeding" Insert:

except for workers' compensation proceedings.

Please deliver the FINAL to Senator Loren Leman's office, Room 115 of the Capital. No other changes were adopted by the committee. Call if you have questions.

# STATE OF ALASKA

## DEPARTMENT OF LABOR

### OFFICE OF THE COMMISSIONER

LLR 1-4  
X LLR 1-1  
TONY KNOWLES, GOVERNOR

X SB 199

P.O. BOX 21149  
JUNEAU, ALASKA 99802-1149  
PHONE: (907) 465-2700  
FAX: (907) 465-2784

March 5, 1996

The Honorable Loren Leman  
Alaska State Legislature  
Alaska State Capitol, Room 115  
Juneau, AK 99801-1182

Dear Senator Leman:

In response to your memo of March 4, 1996, regarding CS for Senate Bill No. 199, the Department of Labor offers the following comments.

CS for SB 199(RES) could adversely affect the enforcement activities of the department's Occupational Safety and Health (OSH) section by restricting inspector access to documents relevant to an employer's compliance with OSH regulations. AS 18.60.083 provides for the right of entry and inspection, and allows an inspector to inspect and investigate places of employment and to question employers, owners and employees. Papers and records are routinely reviewed. CS for SB 199(RES) would prohibit OSH from using or reviewing audit reports during inspections. Audit reports are defined broadly in CS for SB 199(RES), and includes information commonly reviewed during an inspection.

CS for SB 199(RES) defines non-privileged documents as documents "required by a regulatory agency" to be maintained. While OSH requires "audits" only in certain regulations (i.e., Process Safety Management), information found in audits not specifically required by regulation can establish employer knowledge of an unsafe condition and can be the basis for a willful citation. If this information were to be considered a part of an audit report, it could be withheld from an inspector.

Employers would be immune from penalties if they voluntarily disclosed an audit report. AS 18.60.095 establishes penalties for violations of OSH standards and makes no provisions for immunity from penalties. Penalties may be reduced for mitigating factors, as provided for in the OSH compliance manual.

The Honorable Loren Leman

-2-

March 5, 1996

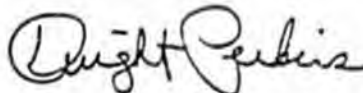
Ultimately, this bill would jeopardize Alaska's Occupational Safety and Health requirement to be "at least as effective as" the federal OSHA program.

Regarding Workers' Compensation, the department proposes the following change to Section 1, line 12, of CS for SB 199(RES):

(3) an administrative proceeding, except for workers' compensation proceedings. *see key 1/17/96 - v. 000000000*

Enclosed is a copy of a letter from Richard Terrill, Acting Regional Administrator, USDOL, OSHA, in which he expresses Region X's concerns regarding CS for SB 199(RES). Thank you for the opportunity to comment on this bill.

Sincerely,



Dwight Perkins  
Special Assistant to  
the Commissioner

Enclosure

cc: Al Dwyer, Director, LS&S  
Paul Grossi, Director, WC

U. S. DEPARTMENT OF LABOR

Occupational Safety & Health Administration  
1111 Third Avenue, Suite 715  
Seattle, Washington 98101-3212



RECEIVED  
Department of Labor

Refer to: FSO/snd  
Alaska SIC (potential)

MAR 04 1996

Office of the Commissioner

February 28, 1996

The Honorable Tom Cashen  
Commissioner, Alaska Department of Labor  
P.O. Box 21149  
Juneau, AK 99802-1149

Dear Commissioner Cashen:

My staff was asked by the AKOSH Anchorage office to review and provide comment regarding proposed legislation known as Alaska Senate Bill No. 199. Your staff in Anchorage provided an initial analysis of the Bill with "program effects" to the Alaska 18(b) program.

Should this Bill be passed by the Alaska Legislature and signed by the Governor, we are in basic agreement with the analysis and conclusion as prepared by the AKOSH Anchorage office concerning potential effect of the Bill to the Alaska occupational safety and health program. It appears the term "audit report," as currently written, may impact Alaska's ability to: (1) conduct (in some cases) thorough investigations, and (2) assist in establishing willful violations. Additionally, the Bill provides immunity from penalties in certain situations.

I appreciate the opportunity to provide input and to be kept informed as to potential changes and impacts regarding the Alaska safety and health program. If there are questions with respect to the above comments, or if you feel additional input is necessary, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard S. Terrill".

Richard S. Terrill  
Acting Regional Administrator

cc: Al Dwyer, Director  
Barry Noll, Area Director  
Jeff Carpenter, Industrial Hygienist  
Duane Houck, Asst. Chief of Consultation



# SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258 8189 Session: State Capitol Building, Anchorage, AK 99501 (907) 465-2095

## F A X M E M O R A N D U M

**TO:** DWIGHT PERKINS, DEPT. OF LABOR  
**FROM:** MIKE PAULEY <sup>JTP</sup> OFFICE OF SEN. LEMAN  
**DATE:** MARCH 4, 1996  
**RE:** ADDITIONAL INFO. ON SELF-AUDIT BILL.  
**PAGES:** 3 (INCLUDING COVER MEMO)

As a follow-up to the information that was faxed to you on March 1, the following is a concise, 2-page summary which explains the changes that were made in the CS for Senate Bill 199.

The text references in this briefing memo refer to the page & line numbers of the original bill. If you don't already have a copy and would like one, please let us know and we will fax one to you promptly.

Again, Sen. Leman would very much appreciate any written comments you might have on this legislation prior to the hearing on the afternoon of March 6. Thank you for your consideration.

4/6/96 5:24 PM

9-LS1312/C  
Lauterbach  
2/22/96

CS FOR SENATE BILL NO. 199(RES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATORS LEMAN, Pearce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to environmental audits and health and safety audits to  
2 determine compliance with certain laws, permits, and regulations."

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

4 \* Section 1. AS 09.25 is amended by adding new sections to read:

5 ARTICLE 5. PRIVILEGES AND IMMUNITIES

6 RELATED TO DISCLOSURE OF CERTAIN SELF-AUDITS.

7 Sec. 09.25.450. AUDIT REPORT PRIVILEGE. (a) Except as provided in  
8 AS 09.25.455 - 09.25.475, an audit report is privileged and is not admissible as  
9 evidence or subject to discovery in

10 (1) a civil action, whether legal or equitable;

11 (2) a criminal proceeding; or

12 (3) an administrative proceeding.

13 (b) A person, when called or subpoenaed as a witness, may not be compelled  
14 to testify or produce a document related to an environmental or health and safety audit

1 if

2 (1) the testimony or document discloses an item listed in  
3 AS 09.25.490(a)(1) that was made as part of the preparation of an environmental or  
4 health and safety audit report and that is addressed in a privileged part of an audit  
5 report; and

6 (2) for purposes of this subsection only, the person is a

7 (A) person who conducted a portion of the audit but did not  
8 personally observe the relevant physical events;

9 (B) person to whom the audit results are disclosed under  
10 AS 09.25.455(b); or

11 (C) custodian of the audit results.

12 (c) A person who conducts or participates in the preparation of an  
13 environmental or health and safety audit and who has actually observed physical events  
14 of violation may testify about those events but may not be compelled to testify about  
15 or produce documents related to the preparation of or a privileged part of an  
16 environmental or health and safety audit or an item listed in AS 09.25.490(a)(1).

17 (d) An employee of a state agency may not request, review, or otherwise use  
18 an audit report during an agency inspection of a regulated facility or operation or an  
19 activity of a regulated facility or operation.

20 (e) To facilitate identification, each document in an audit report shall be  
21 labeled "COMPLIANCE REPORT: PRIVILEGED DOCUMENT," or labeled with  
22 words of similar import.

23 (f) A party asserting the privilege described in this section has the burden of  
24 establishing the applicability of the privilege.

25 Sec. 09.25.455. EXCEPTION: WAIVER. (a) The privilege in AS 09.25.450  
26 does not apply to the extent the privilege is expressly waived by the owner or operator  
27 who prepared the audit report or caused the report to be prepared.

28 (b) Disclosure of an audit report or information generated by an environmental  
29 or health and safety audit does not waive the privilege established by AS 09.25.450  
30 if the disclosure is made

31 (1) to address or correct a matter raised by the environmental or health

1 and safety audit and is made only to

2 (A) a person employed by the owner or operator, including  
3 temporary and contract employees;

4 (B) a legal representative of the owner or operator;

5 (C) an officer or director of the regulated facility or operation  
6 or a partner of the owner or operator; or

7 (D) an independent contractor retained by the owner or  
8 operator;

9 (2) under the terms of a confidentiality agreement between the person  
10 for whom the audit report was prepared or the owner or operator of the audited facility  
11 or operation and a

12 (A) partner or potential partner of the owner or operator of the  
13 facility or operation;

14 (B) transferee or potential transferee of the facility or operation;

15 (C) lender or potential lender for the facility or operation;

16 (D) government official or a state or federal agency; or

17 (E) person or entity engaged in the business of insuring,  
18 underwriting, or indemnifying the facility or operation; or

19 (3) under a claim of confidentiality to a government official or agency  
20 by the person for whom the audit report was prepared or by the owner or operator.

21 (c) A party to a confidentiality agreement described in (b)(2) of this section  
22 who violates that agreement is liable for damages caused by the disclosure and for  
23 other penalties stipulated in the confidentiality agreement.

24 (d) Information that is disclosed under (b)(3) of this section is confidential and  
25 is not subject to disclosure under AS 09.25.110 - 09.25.125.

26 Sec. 09.25.465. NONPRIVILEGED MATERIALS. (a) The privilege under  
27 AS 09.25.450 does not apply to

28 (1) a document, communication, datum, report, or other information  
29 required by a regulatory agency to be collected, developed, maintained, or reported  
30 under a federal or state environmental or health and safety law or under a permit  
31 issued under a federal or state environmental or health and safety law;

1 (2) information obtained by observation, sampling, or monitoring by  
2 a regulatory agency; or

3 (3) information obtained from a source not involved in the preparation  
4 of the environmental or health and safety audit report.

5 (b) This section does not limit the right of a person to agree to conduct and  
6 disclose an audit report.

7 Sec. 09.25.475. VOLUNTARY DISCLOSURE; IMMUNITY. (a) Except as  
8 provided by this section, a person who makes a voluntary disclosure of a violation of  
9 an environmental or health and safety law is immune from an administrative, civil, or  
10 criminal penalty for the violation disclosed.

11 (b) A disclosure is voluntary for the purposes of this section only if

12 (1) the disclosure was made promptly after knowledge of the  
13 information disclosed is obtained by the person;

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15 that has regulatory authority with regard to the violation disclosed;

16 (3) an investigation of the violation was not initiated or the violation  
17 was not independently detected by an agency with enforcement jurisdiction before the  
18 disclosure was made using certified mail;

19 (4) the disclosure arises out of a voluntary environmental or health and  
20 safety audit;

21 (5) the person who makes the disclosure initiates an appropriate effort  
22 to achieve compliance, pursues that effort with due diligence, and corrects the  
23 noncompliance within a reasonable time;

24 (6) the person making the disclosure cooperates with the appropriate  
25 agency in connection with an investigation of the issues identified in the disclosure;  
26 and

27 (7) the violation did not result in injury to one or more persons at the  
28 site or substantial off-site harm to persons, property, or the environment.

29 (c) A disclosure is not voluntary for purposes of this section if it is a report  
30 to a regulatory agency required solely by a specific condition of an enforcement order  
31 or decree.