

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9603 SENATE LABOR & COMMERCE

1 if

2 (1) the audit report is privileged under (a) of this section and is
3 inadmissible in the same proceeding;

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

(C) The following persons may claim the privilege:
(3) for purposes of this subsection only, the person is a

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

12 (B) person to whom ^{Confidential self-evaluation & analysis is} (the audit) results are disclosed under
13 AS 09.25.455(b); or

14 (E) custodian of the audit results.

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

21 (d) A regulatory agency and an employee of a regulatory agency may not
22 request, review, or otherwise use an audit report that is privileged under (a) of this
23 section during an agency inspection of a regulated facility, operation, or property or
24 an activity of a regulated facility, operation, or property.

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

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

30 (g) This section may not be construed to

31 (1) prevent a regulatory agency from issuing an emergency order,

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1 seeking injunctive relief, independently obtaining relevant facts, conducting necessary
 2 inspections, or taking other appropriate action regarding implementation and
 3 enforcement of an applicable environmental or health and safety law, except as
 4 otherwise provided in AS 09.25.475; or

5 (2) authorize a privilege for uninterrupted or continuous environmental
 6 or health and safety audits.

7 **Sec. 09.25.455.** ^{Waiver + Disclosure} **Exception: waiver** (a) The privilege in AS 09.25.450 does
 8 not apply to the extent the privilege is expressly waived in writing by the owner or
 9 operator who prepared the audit report or caused the report to be prepared.

10 (b) Disclosure of ^{that part of} an audit report or information ^{consisting of confidential self-evaluation}
 11 or health and safety ^{or analysis} audit does not waive the privilege established by AS 09.25.450
 12 if the disclosure is made only

13 (1) to address or correct a matter raised by the environmental or health
 14 and safety ^{audit} audit and is made only to

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

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

18 (C) an officer or director of the regulated facility, operation, or
 19 property;

20 (D) a partner of the owner or operator; or

21 (E) an independent contractor retained by the owner or operator;

22 (2) under the terms of a confidentiality agreement between the ^{owner or operator} person
 23 ^{who prepared the audit report or caused the audit report to be prepared} [for whom the audit report was prepared or the owner or operator of the audited
 24 facility, operation, or property] and

25 (A) a partner or potential partner of the owner or operator of the
 26 facility, operation, or property;

27 (B) a transferee or potential transferee ^{was indirect} of the facility, operation,
 28 or property;

29 (C) a lender or potential lender for the facility, operation, or
 30 property;

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

1 (E) a person or entity engaged in the business of insuring,
2 underwriting, or indemnifying the facility, operation, or property; or

3 (3) under a claim of confidentiality to a government official or agency?
4 by the ^{owner or operator} person ^{owns} for whom the audit report was prepared or by the owner or operator.

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

8 ^{becomes new(c)} (d) ^{any documents consisting of} Information that is disclosed under (b)(3) of this section is confidential and
9 is not subject to disclosure under AS 09.25.110 - 09.25.125.

10 (e) Disclosure of a portion of an audit report after waiver of the privilege,
11 under (a) of this section, after disclosure under (b) of this section, or through another
12 means may not be construed to waive the privilege established under AS 09.25.450 for
13 another part of the audit report.

14 **Sec. 09.25.460. Exception: disclosure required by court or administrative**
15 **hearing officer.** (a) A court or administrative hearing officer with competent
16 jurisdiction may require disclosure of a portion of an audit report in a civil or
17 administrative proceeding if the court or administrative hearing officer determines,
18 after an in camera review consistent with the appropriate rules of procedure, that the

19 (1) privilege is asserted for ^{in mind of} a fraudulent purpose;

20 (2) portion of the audit report is not subject to the privilege under
21 AS 09.25.465;

22 (3) portion of the audit report shows evidence of noncompliance with
23 an environmental or health and safety law and appropriate efforts to achieve
24 compliance with the law were not promptly initiated and pursued with reasonable
25 diligence after discovery of noncompliance; or

26 (4) audit report was prepared for the purpose of avoiding disclosure of
27 information required for an investigative, administrative, or judicial proceeding that,
28 at the time of the report's preparation, was imminent or in progress.

29 (b) A party seeking disclosure under this section has the burden of proving that
30 (a) of this section applies.

31 **Sec. 09.25.465. Nonprivileged materials.** (a) The privilege under

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AS 09.25.450 does not apply to that part of an audit report that contains

(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 or lease with the state;

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

(3) information that a regulatory agency obtains from a source that was not involved in [compiling, preparing, or] conducting the environmental or health and safety audit report;

(4) a document, communication, [datum, report,] or other information collected, developed, or maintained in the course of a regularly conducted business activity or regular practice other than an environmental or health and safety audit;

(5) a document existing before the commencement of, and independent of, the environmental or health and safety audit; or

(6) a document prepared after the completion of, and independent of, the environmental or health and safety audit.

(b) An audit report is not privileged and is admissible as evidence and subject to discovery in a proceeding relating to pipeline rates, tariffs, fares, or charges.

(c) An audit report is not privileged and is admissible as evidence and subject to discovery if the report was commenced after the owner or operator knew of an impending inspection or investigation by a regulatory agency.

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

Sec. 09.25.475. Voluntary disclosure; immunity. (a) 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 or civil 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.

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- 1 (b) A disclosure is voluntary for the purposes of this section only if
- 2 *✓ on amz* (1) the disclosure is made promptly after knowledge of the information
15 days disclosed is obtained by the person;
- 3
- 4 (2) the disclosure is made in writing by certified mail to an agency that *✓*
- 5 has regulatory authority with regard to the violation disclosed;
- 6 *3* (3) an investigation of the violation was not initiated or the violation
- 7 was not independently detected by an agency with enforcement jurisdiction before the *✓*
- 8 disclosure was made using certified mail; under this paragraph, the agency has the
- 9 burden of proving that an investigation of the violation was initiated or the violation
- 10 was detected before receipt of the certified mail;
- 11 *1* (4) the disclosure arises out of a voluntary environmental or health and *✓*
- 12 safety audit;
- 13 (5) the person making the disclosure initiates, within a reasonable time, *✓*
- 14 an appropriate effort to achieve compliance, pursues that effort with due diligence, and *✓*
20 days
(d) 1, 2, 3
- 15 corrects or implements a series of measures designed to remedy the noncompliance
- 16 within a reasonable time;
- 17 (6) the person making the disclosure cooperates with the appropriate *(E)*
- 18 agency in connection with an investigation of the issues identified in the disclosure and
- 19 agrees under terms of a confidentiality agreement to disclose to the agency, on request
- 20 of the agency, the part of the audit report that describes the implementation plan or
- 21 tracking system developed to correct past noncompliance, improve current compliance,
- 22 or prevent future noncompliance; and
- 23 *X* (7) the violation did not result in substantial injury to one or more
- 24 persons at the site or substantial off-site harm to persons, property, or the environment.
- 25 *(E)* (c) A disclosure is not voluntary for purposes of this section if it is a report *✓*
run thru
- 26 to a regulatory agency required solely by a specific condition of an enforcement order
- 27 or decree.
- 28 (d) The immunity established by (a) of this section does not apply and an *✓*
covered under 480
- 29 administrative or civil penalty may be imposed under applicable law if
- 30 *✓* (1) the person who made the disclosure *intentionally* or *recklessly* committed the
- 31 disclosed violation;

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

?

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

✓

8 (4) the offense was committed recklessly by a member of the person's
9 management or an agent of the person, the person's policies or lack of prevention
10 systems contributed materially to the occurrence of the violation, and the violation
11 resulted in substantial injury to one or more persons at the site or substantial off-site
12 harm to persons, property, or the environment.

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13 (e) An administrative or civil penalty that is imposed on a person for violation
14 of an environmental or health and safety law when the person has made a voluntary
15 disclosure under (a) of this section but is not granted immunity because of (d) of this
16 section may, to the extent appropriate and not prohibited by law, be mitigated by

17 (1) the voluntariness of the disclosure;

18 (2) efforts by the disclosing party to conduct environmental or health
19 and safety audits; *+ complete*

20 (3) remediation;

21 (4) cooperation with government officials investigating the disclosed
22 violation;

23 (5) the nature of the violation; and

24 (6) other relevant considerations.

25 (f) In order to receive immunity under this section, a facility conducting an
26 environmental or health and safety audit must give notice by certified mail to an
27 appropriate regulatory agency of the fact that it is planning to commence the audit.
28 The notice must specify the facility or portion of the facility to be audited, the date the
29 audit will begin and end, and the general scope of the audit. Immunity under this
30 section is available only for violations that are revealed through or discovered as a
31 result of information and documents first produced or obtained during the time period

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1 specified in the notice. The notice may provide notification of more than one
2 scheduled environmental or health and safety audit at a time. Once initiated, an audit
3 shall be completed within the time period specified in the notice except that the audit
4 period may be extended once for up to 60 days if the facility gives notice of the
5 extension and its duration to the appropriate regulatory agency by certified mail before
6 the original time period expires.

7 (g) A regulatory agency may not initiate an inspection, monitoring, or other
8 investigative activity based solely on the receipt of a notice under (f) of this section. ✓
9 The agency has the burden of proving that an inspection, monitoring, or other
10 investigative activity initiated after receipt of a notice under (f) of this section was not
11 initiated based solely on the receipt of the notice.

12 ✓ (h) The immunity under this section does not apply if a court or administrative
13 law judge finds that the person claiming the immunity has

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

17 ✓ (2) not attempted to bring the facility, operation, or property into
18 compliance, so as to constitute a pattern of disregard of environmental or health and
19 safety laws.

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

22 (j) A person is not immune under this section if the disclosure is in a
23 proceeding relating to pipeline rates, tariffs, fares, or charges.

24 (k) A person may not be required to waive immunity as a condition of a
25 compliance plan or similar agreement.

26 **Sec. 09.25.485. Relationship to other recognized privileges.** AS 09.25.450 -
27 09.25.490 do not limit, waive, or abrogate the scope or nature of a statutory or
28 common law privilege, including the work product doctrine, the attorney-client
29 privilege, and any other privilege recognized by a court with appropriate authority in
30 this state.

31 **Sec. 09.25.490. Definitions.** (a) In AS 09.25.450 - 09.25.490,

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

5 (A) a report, prepared by an auditor, monitor, or similar person *did not start until the date the audit began r =*
 6 that may include a description of the scope of the audit, the information gained *See 09.25.490*
 7 in the audit, findings, conclusions, recommendations, exhibits, and appendices;
 8 the types of exhibits and appendices that may be contained in an audit report
 9 include supporting information that is collected or developed for the primary
 10 purpose of and in the course of an environmental or health and safety audit,
 11 including

- 12 (i) interviews with current or former employees;
 13 (ii) field notes and records of observations;
 14 (iii) findings, opinions, suggestions, conclusions, *See 09.25.490*
 15 guidance, notes, drafts, and memoranda;
 16 (iv) legal analyses;
 17 (v) drawings;
 18 (vi) photographs;
 19 (vii) laboratory analyses and other analytical data;
 20 (viii) computer generated or electronically recorded
 21 information;
 22 (ix) maps, charts, graphs, and surveys; and
 23 (x) other communications associated with an
 24 environmental or health and safety audit;

25 (B) memoranda and documents analyzing all or a portion of the
 26 materials described in (A) of this paragraph or discussing implementation
 27 issues; and

28 (C) an implementation plan or tracking system to correct past
 29 noncompliance, improve current compliance, or prevent future noncompliance;
 30 however, "audit report" does not include formal communications or agreements
 31 between an owner or operator and the appropriate agency regarding a

1 compliance implementation plan or strategy;

2 (2) "environmental or health and safety audit" means a voluntary,
3 confidential, critical, internal, and retrospective review, evaluation, or analysis of
4 current or past conduct, practices, and occurrences and their resulting consequences,
5 including an assessment that is a part of the owner's or operator's compliance
6 management system, that is conducted randomly, regularly, or in response to a
7 particular event by an owner or operator or by an employee or independent contractor
8 of an owner or operator and is

9 (A) conducted in the expectation that it will be confidential; and

10 (B) specifically and exclusively designed and undertaken for the
11 purpose of determining compliance with environmental or health and safety
12 laws or a permit issued under those laws;

13 (3) "environmental or health and safety law" means

14 (A) a federal or state environmental or occupational health and
15 safety law; or

16 (B) a rule, regulation, or municipal ordinance adopted in
17 conjunction with or to implement a law described by (A) of this paragraph;

18 (4) "intentionally" has the meaning given in AS 11.81.900;

19 (5) "knowingly" has the meaning given in AS 11.81.900;

20 (6) "owner or operator" means a person who owns or operates a
21 regulated facility, operation, or property;

22 (7) "penalty" means an administrative or civil sanction imposed by the
23 state to punish a person for a violation of a statute or rule; the term does not include
24 a technical or remedial provision ordered by a regulatory authority;

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

26 (9) "regulated facility, operation, or property" means a facility,
27 operation, or property that is regulated under an environmental or health and safety
28 law.

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

NOTES TO DECISIONS

Public official. — The president of the University of Alaska is a public officer for purposes of AS 09.25.110. *Carter v. Alaska Pub. Employees Ass'n*, 663 P.2d 916 (Alaska 1983).

Sec. 09.25.230. [Renumbered as AS 09.25.400.]

Article 3. Privilege of Public Officials and Reporters.

Section	Section
300. Claiming of privilege by public official or reporter	340. Extent of privilege
310. Challenge of privilege before superior or supreme court	350. Application of privilege in other courts
320. Challenge of privilege before other bodies	360. AS 09.25.300 — 09.25.390 do not abridge other privileges
330. Order subject to review	390. Definitions for AS 09.25.300 — 09.25.390.

Sec. 09.25.300. Claiming of privilege by public official or reporter. Except as provided in AS 09.25.300 — 09.25.390, a public official or reporter may not be compelled to disclose the source of information procured or obtained while acting in the course of duties as a public official or reporter. (§ 1 ch 115 SLA 1967)

Reviser's notes. — Formerly AS 09.25.150. Renumbered in 1994, at which time "AS 09.25.300 — 09.25.390, a public official or reporter may not" was substituted for "AS 09.25.150 — 09.25.220, no public official or reporter may" to reflect the renumbering and to conform the section to current style of the Alaska Statutes.

Cross references. — For court rule recognizing statutory privileges, see Evid. R. 501.

Opinions of attorney general. — As to parameters of deliberative processor executive privilege, see Nov. 5, 1992, Op. Att'y Gen.

Collateral references. — 81 Am. Jur. 2d, Witnesses, §§ 285 et seq., 524 et seq.
98 C.J.S., Witnesses, §§ 432-440, 450-457.

Right of one against whom testimony is offered to invoke privilege of communication between others, 2 ALR2d 645.

Admissibility of recordings in evidence as affected by privileged nature of communications, 58 ALR2d

1024; 57 ALR3d 746; 58 ALR3d 598.

Construction of statute creating privilege against disclosure of communications made to stenographer or confidential clerk, 96 ALR2d 159.

Propriety and prejudicial effect of comment or instruction by court with respect to party's refusal to permit introduction of privileged testimony, 34 ALR3d 775.

Communications to social worker as privileged, 50 ALR3d 563.

Privilege of newsgatherer against disclosure of confidential sources or information, 99 ALR3d 37.

Testimony before or communications to private professional society's judicial commission, ethics committee, or the like, as privileged, 9 ALR4th 807.

Construction and application, under state law, of doctrine of "executive privilege," 10 ALR4th 355.

Reports of pleadings as being within privilege for reports of judicial proceedings, libel and slander, 20 ALR4th 576.

Sec. 09.25.310. Challenge of privilege before superior or supreme court.

(a) When a public official or reporter claims the privilege in a cause being heard before the supreme court or a superior court of this state, a person who has the right to question the public official or reporter in that proceeding, or the court on its own motion, may challenge the claim of privilege. The court shall make or cause to be made whatever inquiry the court thinks necessary to a determination of the issue. The inquiry may be made instantaneously by way of questions put to the witness claiming the privilege and a decision then rendered, or the court may require the presence of other witnesses or documentary showing or may order a special hearing for the determination of the issue of privilege.

(b) The court may deny the privilege and may order the public official or the reporter to testify, imposing whatever limits upon the testimony and upon the right of cross-examination of the witness as may be in the public interest or in the interest of a fair trial, if it finds the withholding of the testimony would

(1) result in a miscarriage of justice or the denial of a fair trial to those who challenge the privilege; or

(2) be contrary to the public interest. (§ 1 ch 115 SLA 1967)

AS 09.25.100 —

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1) as paragraph (7)
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Discovery Rules Rule 26

CIVIL RULES

Rule 26

or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subparagraph; and (ii) with respect to discovery obtained under section (b)(4)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) *Claims of Privilege or Protection of Trial Preparation Materials.* When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) *Protective Orders.* Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the judicial district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition, after being sealed, be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or other person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) *Timing and Sequence of Discovery.* Except when authorized under these rules or by order of the court or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by paragraph (f). Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) *Supplementation of Disclosures and Responses.* A party who has made a disclosure under paragraph (a) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired if ordered by the court or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its disclosures under paragraph (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under subdivision (a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) *Meeting of Parties; Planning for Discovery.* Except when otherwise ordered, the parties shall, as soon as practicable and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by subparagraph (a)(1), and to develop a proposed discovery plan. The plan shall indicate the parties' views and proposals concerning:

(1) what changes should be made in the timing or form of disclosures under paragraph (a), including

Rule 502. Required Reports Privileged by Statute.

A person, corporation, association, or other organization or entity, either public or private, making a return or report required by law to be made has a privilege to refuse to disclose and to prevent any other person from disclosing the return or report, if the law requiring it to be made so provides. A public officer of an agency to whom a return or report is required by law to be made has a privilege to refuse to disclose the return or report if the law requiring it to be made so provides. No privilege exists under this rule in actions involving perjury, false statements, fraud in the return or report, or other failure to comply with the law in question.

(Added by SCO 364 effective August 1, 1979)

Rule 503. Lawyer-Client Privilege.

(a) **Definitions.** As used in this rule:

(1) A client is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services.

(2) A representative of the client is one having authority to obtain professional legal services and to act on advice rendered pursuant thereto, on behalf of the client.

(3) A lawyer is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(4) A representative of the lawyer is one employed to assist the lawyer in the rendition of professional legal services.

(5) A communication is confidential if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) **General Rule of Privilege.** A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client, (1) between the client or the client's representative and the client's lawyer or the lawyer's representative, or (2) between the client's lawyer and the lawyer's representative, or (3) by the client or the client's lawyer to a lawyer representing another in a matter of common interest, or (4) between representatives of the client or between the client and a representative of the client, or (5) between lawyers representing the client.

(c) **Who May Claim the Privilege.** The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer at the time of the communication may claim the privilege but only on behalf of the client. The authority to do so is presumed in the absence of evidence to the contrary.

(d) **Exceptions.** There is no privilege under this rule:

(1) **Furtherance of Crime or Fraud.** If the services of the lawyer were sought, obtained or used to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud; or

(2) **Claimants Through Same Deceased Client.** As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction; or

(3) **Breach of Duty by Lawyer or Client.** As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer; or

(4) **Document Attested by Lawyer.** As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(5) **Joint Clients.** As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

(Added by SCO 364 effective August 1, 1979; amended by SCO 1153 effective July 15, 1994)

Annotations**Cases**

Defendant was a "client" within the meaning of the attorney-client privilege when she communicated with an employee of a law firm in order to obtain legal advice, notwithstanding that the law firm had not yet accepted her case and that only raw facts, not legal points, were discussed. *Amer. Nat. Water Mattress Corp. v. Manville*, Op. No. 2477, 642 P2d 1330 (Alaska 1982).

In drunk driving prosecution in which the defendant had an independent blood test performed, by hospital personnel at his request to verify the accuracy of the police intoximeter examination, admission of expert testimony regarding the blood test did not violate the attorney-client privilege, since no lawyer participated in defendant's decision to take the blood test, nor did it violate the physician-patient privilege, since the physician-patient privilege does not apply in criminal cases. *Russel v. Municipality of Anchorage*, Op. No. 514, 706 P2d 687 (Alaska App. 1985).

Statements protected by the privilege shown that the informant acting at the ex. *Langdon v. Chas. 1983*.

While the attorney regarding acts while seeking representation which pertain to *Bristol Bay Hou. (Alaska 1989)*.

An attorney for information than required to testify nonprivileged matter, Op. No. 3458.

Plaintiff would plaintiff could pro consulted the attorney plaintiff's employment within the civil fraud accordingly, trial ex subpoena for the in whether he had motion sought was not *Munn v. Bristol Bay P2d 188 (Alaska 1985)*.

Services sought crime or a bad faith attorney-client privilege Co., Op. No. 3606.

Before engaging applicability of the attorney-client privilege a factual basis adequate reasonable person the review evidence to exception applies. C Op. No. 3606, 794 1

In action by tort for bad faith inaction performance and pay the obligee discover, reserve the insurance the claims; the existence a protected confidential of facilitating the review is it prepared in and *Mosse v. Intern. Fid. 1990*.

Where the state his own experts, thereby relying on the work defense, the blood sample of the defendant's attorney-client privilege. *Bire (Alaska App. 1992)*.

Attorney-client privilege of borough board of advice from board's avoid legal liability in *North Star Bor., Op.*

Statements made by an insured to an insurer are not protected by the attorney-client privilege unless it can be shown that the insurer, in receiving such communications, was acting at the express direction of counsel for the insured. *Langdon v. Champlon*, Op. No. 3291, 752 P2d 999 (Alaska 1988).

While the attorney-client privilege protects communications regarding acts which the client may have committed prior to seeking representation, it will not protect communications which pertain to ongoing or future wrongdoing. *Munn v. Bristol Bay Housing Authority*, Op. No. 3458, 777 P2d 188 (Alaska 1989).

An attorney for a party is no more entitled to withhold information than any other potential witness, and may be required to testify at a deposition or trial as to material, nonprivileged matters. *Munn v. Bristol Bay Housing Authority*, Op. No. 3458, 777 P2d 188 (Alaska 1989).

Plaintiff would be entitled to depose defendant's attorney if plaintiff could present a prima facie case that defendants consulted the attorney for the purpose of interfering with plaintiff's employment relationship, since such conduct comes within the civil fraud exception to the attorney-client privilege; accordingly, trial court erred in quashing plaintiff's notice and subpoena for the taking of the deposition without considering whether he had made a prima facie showing that the information sought was not protected by the attorney-client privilege. *Munn v. Bristol Bay Housing Authority*, Op. No. 3458, 777 P2d 188 (Alaska 1989).

Services sought by a client from an attorney in aid of any crime or a bad faith breach of a duty are not protected by the attorney-client privilege. *Central Const. Co. v. Home Indem. Co.*, Op. No. 3606, 794 P2d 595 (Alaska 1990).

Before engaging in an in camera review to determine the applicability of the "crime of fraud" exception to the attorney-client privilege, the judge should require a showing of a factual basis adequate to support a good faith belief by reasonable person that in camera review of the materials may review evidence to establish the claim that the crime-fraud exception applies. *Central Const. Co. v. Home Indem. Co.*, Op. No. 3606, 794 P2d 595 (Alaska 1990).

In action by tort claim obligee against insurance company for bad faith inaction by the insurance company as surety on performance and payment bonds, trial court erred in denying the obligee discovery of the existence and amount of any loss reserve the insurance company may have established regarding the claims; the existence and amount of a loss reserve is not a protected confidential communication made for the purpose of facilitating the rendition of professional legal services nor is it prepared in anticipation of litigation. *Loyal Order of Moose v. Intern. Fidellty*, Op. No. 3626, 797 P2d 622 (Alaska 1990).

Where the state had DWI defendant's blood tested by its own experts, thereby obtaining blood test results without relying on the work of anyone hired or consulted by the defense, the blood sample itself, although drawn on the advice of the defendant's attorney, was not covered by the attorney-client privilege. *Birch v. State*, Op. No. 1198, 825 P2d 901 (Alaska App. 1992).

Attorney-client privilege was applicable to executive session of borough board of equalization which was called to obtain advice from board's attorney on how board members could avoid legal liability in tax dispute. *Cool Homes v. Folklanks North Star Bor.*, Op. No. 4016, 860 P2d 1248 (Alaska 1993).

The obligation of confidentiality imposed by Professional Conduct Rule 1.6(a) does not expand the attorney-client privilege codified in Evidence Rule 503. *Downie v. Superior Court*, Op. No. 1389, 888 P2d 1306 (Alaska App. 1995).

The fact of communication of public information from an attorney to a client is not protected by the attorney-client privilege. *Downie v. Superior Court*, Op. No. 1389, 888 P2d 1306 (Alaska App. 1995).

A defense attorney may be compelled to testify concerning whether she informed her client of his trial date. *Downie v. Superior Court*, Op. No. 1389, 888 P2d 1306 (Alaska App. 1995).

The attorney-client privilege only ceases to exist for ongoing and future wrongdoing, not past wrongdoing. *Matter of Mendel*, Op. No. 4223, 897 P2d 68 (Alaska 1995).

Deposition questions to attorney regarding attorney's authority to represent client would require disclosure of confidential communications made for the purpose of facilitating the rendition of professional services to the client, thus the answers to the questions fell within the scope of the attorney-client privilege. *Matter of Mendel*, Op. No. 4223, 897 P2d 68 (Alaska 1995).

Rule 504. Physician and Psychotherapist-Patient Privilege.

(a) Definitions. As used in this rule:

(1) A patient is a person who consults or is examined or interviewed by a physician or psychotherapist.

(2) A physician is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.

(3) A psychotherapist is (A) a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, (B) a person licensed or certified as a psychologist or psychological examiner under the laws of any state or nation or reasonably believed by the patient so to be, while similarly engaged, or (C) a person licensed as a marital or family therapist under the laws of a state or nation so to be, while similarly engaged.

(4) A communication is confidential if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(b) General Rule of Privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communi-

cations made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional conditions, including alcohol or drug addiction, between or among the patient, the patient's physician or psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(c) **Who May Claim the Privilege.** The privilege may be claimed by the patient, by his guardian, guardian ad litem or conservator, or by the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

(d) **Exceptions.** There is no privilege under this rule:

(1) **Condition an Element of Claim or Defense.** As to communications relevant to the physical, mental or emotional condition of the patient in any proceeding in which the condition of the patient is an element of the claim or defense of the patient, of any party claiming through or under the patient, of any person raising the patient's condition as an element of his own case, or of any person claiming as a beneficiary of the patient through a contract to which the patient is or was a party; or after the patient's death, in any proceeding in which any party puts the condition in issue.

(2) **Crime or Fraud.** If the services of the physician or psychotherapist were sought, obtained or used to enable or aid anyone to commit or plan a crime or fraud or to escape detection or apprehension after the commission of a crime or a fraud.

(3) **Breach of Duty Arising Out of Physician-Patient Relationship.** As to a communication relevant to an issue of breach, by the physician, or by the psychotherapist, or by the patient, of a duty arising out of the physician-patient or psychotherapist-patient relationship.

(4) **Proceedings for Hospitalization.** For communications relevant to an issue in proceedings to hospitalize the patient for physical, mental or emotional illness, if the physician or psychotherapist, in the course of diagnosis or treatment, has determined that the patient is in need of hospitalization.

(5) **Required Report.** As to information that the physician or psychotherapist or the patient is required to report to a public employee, or as to information required to be recorded in a public office, if such report or record is open to public inspection, or as to information or matters contained in or reasonably raised by a report submitted under AS 08.64.336, other than information that would establish the identity of a patient, unless the court finds that it is necessary to admit the identifying information in order to serve the interests of justice.

(6) **Examination by Order of Judge.** As to communications made in the course of an examination ordered by the court of the physical, mental or emotional condition of the patient, with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise. This exception does not apply where the examination is by order of the court upon the request of the lawyer for the defendant in a criminal proceeding in order to provide the lawyer with information needed so that the lawyer may advise the defendant whether to enter a plea based on insanity or to present a defense based on the defendant's mental or emotional condition.

(7) **Criminal Proceeding.** For physician-patient communications in a criminal proceeding. This exception does not apply to the psychotherapist-patient privilege.

(Added by SCO 364 effective August 1, 1979; amended by SCO 850 effective January 15, 1988; by SCO 1108 effective January 15, 1993; and by SCO 1153 effective July 15, 1994)

NOTE: SCO 1108 incorporated changes in Evidence Rule 504(a)(3) made by the legislature in ch. 129 § 12 SLA 1992. This legislation added the language in subparagraph (a)(3), "or (C) a person licensed as a marital or family therapist under the laws of a state or nation or reasonably believed by the patient so to be, while similarly engaged."

SCO 1108 was entered for the sole reason that the legislature has mandated the above amendment. If ch. 129 § 12 SLA 1992 is invalidated by a court of competent jurisdiction, SCO 1108 shall be considered automatically rescinded.

Annotations

Cases

The state enactment of the child abuse reporting statute did not abrogate the psychotherapist/patient privilege in child abuse cases. *State v. R.H.*, Op. No. 375, 683 P2d 269 (Alaska App. 1984).

Child abuse reports are not open to the public and therefore are not within the exception to the psychotherapist/patient privilege for information required to be recorded in a public office and open to public inspection. *State v. R.H.*, Op. No. 375, 683 P2d 269 (Alaska App. 1984).

Where court-ordered psychiatric examination of defendant clearly pertained to a child protection proceeding, the exception to the psychotherapist/patient privilege for certain court-ordered examination did not apply to testimony before a grand jury investigating a criminal charge against defendant, since preparing evidence for the grand jury was not the purpose for which the psychiatric examination was ordered. *State v. R.H.*, Op. No. 375, 683 P2d 269 (Alaska App. 1984).

In drunk driving prosecution in which the defendant had an independent blood test performed by hospital personnel at his request to verify the accuracy of the police intoximeter examination, admission of expert testimony regarding the blood test did not violate the attorney-client privilege, since no

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lawyer participated in defendant's decision to take the blood test, nor did it violate the physician-patient privilege, since the physician-patient privilege does not apply in criminal cases. *Russell v. Municipality of Anchorage*, Op. No. 514, 706 P2d 687 (Alaska App. 1985).

Defense counsel in a personal injury action may engage in informal ex parte interviews with a plaintiff's treating physician, but the physician cannot be compelled to submit to such interviews. *Langdon v. Chumpton*, Op. No. 3249, 745 P2d 1371 (Alaska 1987).

The psychotherapist-patient privilege is waived unless someone acts at trial to exercise the privilege. *Clifton v. State*, Op. No. 826, 758 P2d 1279 (Alaska App. 1988).

Where defendant told his minister, who was also a certified counselor, that he had sexually abused a child, the minister's report of the crime to the police did not violate the psychotherapist-patient or communication with clergy privileges. *Walstad v. State*, Op. No. 1165, 818 P2d 695 (Alaska App. 1991).

Admission at children's court waiver hearing of expert testimony concerning psychological evaluation of defendant that had been submitted pursuant to court order in previous delinquency proceeding did not violate psychotherapist-patient privilege. *M.R.S. v. State*, Op. No. 1334, 867 P2d 836 (Alaska App. 1994).

Basic principles of statutory construction provide guidance in interpreting this Rule. *M.R.S. v. State*, Op. No. 4219, 897 P2d 63 (Alaska 1995).

Communications made in the source of a court-ordered examination do qualify as "confidential communications" for purpose of this rule. *M.R.S. v. State*, Op. No. 4219, 897 P2d 63 (Alaska 1995).

Admission of a 1990 court-ordered psychological examination of a juvenile at a 1992 waiver hearing violated the juvenile's psychotherapist-patient privilege. *M.R.S. v. State*, Op. No. 4219, 897 P2d 63 (Alaska 1995).

Rule 505. Husband-Wife Privileges.

(a) Spousal Immunity.

(1) *General Rule.* A husband shall not be examined for or against his wife, without his consent, nor a wife for or against her husband, without her consent.

(2) *Exceptions.* There is no privilege under this subdivision.

(A) In a civil proceeding brought by or on behalf of one spouse against the other spouse; or

(B) In a proceeding to commit or otherwise place his spouse, the property of his spouse or both the spouse and the property of the spouse under the control of another because of the alleged mental or physical condition of the spouse; or

(C) In a proceeding brought by or on behalf of a spouse to establish his competence; or

(D) In a proceeding in which one spouse is charged with:

(i) A crime against the person or the property of the other spouse or of a child of either, whether such crime was committed before or during marriage.

(ii) Bigamy, incest, adultery, pimping, or prostitution.

(iii) A crime related to abandonment of a child or nonsupport of a spouse or child.

(iv) A crime prior to the marriage.

(E) In a proceeding involving custody of a child.

(F) Evidence derived from or related to a business relationship involving the spouses.

(b) Confidential Marital Communications.

(1) *General Rule.* Neither during the marriage nor afterwards shall either spouse be examined as to any confidential communications made by one spouse to the other during the marriage, without the consent of the other spouse.

(2) *Exceptions.* There is no privilege under this subdivision:

(A) If any of the exceptions under subdivision (a) (2) of this rule apply; or

(B) If the communication was made, in whole or in part, to enable or aid anyone to commit or plan to commit a crime or a fraud; or

(C) In a proceeding between a surviving spouse and a person who claims through the deceased spouse, regardless of whether such claim is by testate or intestate succession or by inter vivos transaction; or

(D) In a criminal proceeding in which the communication is offered in evidence by a defendant who is one of the spouses between whom the communication was made; or

(E) In a proceeding under the Rules of Children's Procedure; or

(F) If the communication was primarily related to an act made in the context of a business relationship involving both spouses or the spouses and third parties.

(Added by SCO 364 effective August 1, 1979; amended by SCO 823 effective August 1, 1987)

Annotations

Cases

Where defendant forcibly entered his wife's residence without permission and shot her boyfriend in her presence, wife's testimony against defendant was permissible under the "necessity" or "crimes-against-the-other" exception to the privilege against adverse spousal testimony. *Loesch v. State*, Op. No. 2202, 620 P2d 646 (Alaska 1980).

When there is conclusive evidence that a marriage is in fact destroyed, the trial court may properly rule that the state's interest in a spouse's testimony outweighs the defendant

judge is examining the *in camera* submission. Although the submission generally will consist of affidavits, the judge may direct that witnesses appear before the judge, without the government or the other party present, to give testimony.

(iii) If the judge finds that there is a reasonable possibility that the informant can give the testimony sought, and if the government elects not to disclose the informant's identity, the judge shall, either on motion of a party or sua sponte, dismiss criminal charges to which the testimony would relate if the informant's testimony is material to guilt or innocence. In criminal proceedings in which the informant's testimony is not material to guilt or innocence and in civil proceedings the judge may make any order that justice requires.

(iv) Evidence submitted to the judge shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the government.

(3) *Legality of Obtaining Evidence.*

(i) When a defendant challenges the legality of the means by which evidence was obtained by the prosecution and the prosecution relies upon information supplied by an informer to support its claim of legality, if the judge is not satisfied that the information was received from an informer reasonably believed to be reliable or credible the judge may require the identity of the informer to be disclosed. In determining whether or not to require disclosure, the judge shall hear any evidence offered by the parties and both the defendant and the government shall have the right to be represented by counsel.

(ii) If the judge determines that disclosure of the informant's identity is necessary, upon request by the prosecution the disclosure shall be made to the court alone, not to the defendant. The judge may, if necessary, examine the informant or other witnesses about the informant, but such examination will be *in camera* and neither the defendant nor the prosecution shall be present or represented.

(iii) If disclosure of the identity of the informer is made to the court and not to the defendant, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the prosecution.

(Added by SCO 364 effective August 1, 1979; amended by SCO 1153 effective July 15, 1994)

Annotations

Cases

This rule protects only the identity of an informant, and not the information he or she provides. *Balentine v. State*, Op. No. 538, 707 P2d 922 (Alaska App. 1985).

To the extent the privilege for informants' identities denies the constitutionally guaranteed trial rights of a defendant, it may not be applied. *Balentine v. State*, Op. No. 538, 707 P2d 922 (Alaska App. 1985).

Trial court's decision not to compel disclosure of information relating to the case obtained by police through calls to the "crime stoppers" program, a program which solicits information from the public concerning crimes under investigation, did not substantially impair the fairness of defendant's trial, or otherwise impermissibly infringe upon his constitutionally protected trial rights. *Balentine v. State*, Op. No. 538, 707 P2d 922 (Alaska App. 1985).

The informer's privilege of this rule applied to airline employees who found marijuana while searching a package and reported it to the police. *Peterson v. State*, Op. No. 1139, 813 P2d 685 (Alaska App. 1991).

In drug case where an issue was whether the police investigation was the product of an illegal search by police informants, and the state asserted its privilege not to identify the informants, upon which the judge conducted an *in camera* hearing in which he questioned the informants using questions submitted by the defendant and the state and concluded that the identity of the informants did not have to be revealed, the defendant was entitled to see the transcript of the *in camera* hearing with all information deleted that might identify the informants. *Peterson v. State*, Op. No. 1139, 813 P2d 685 (Alaska App. 1991).

Rule 510. Waiver of Privilege by Voluntary Disclosure.

A person upon whom these rules confer a privilege against disclosure of the confidential matter or communication waives the privilege if the person or the person's predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter or communication. This rule does not apply if the disclosure is itself a privileged communication.

(Added by SCO 364 effective August 1, 1979; amended by SCO 1153 effective July 15, 1994)

Rule 511. Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege

Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if the disclosure was (a) compelled erroneously or (b) made without opportunity to claim the privilege.

(Added by SCO 364 effective August 1, 1979)

Annotations

Cases

This rule deals only with disclosures that were impermissible when originally made — that is, disclosures as to which a contemporaneous claim of privilege would have succeeded but for an erroneous ruling or the lack of opportunity for objec-

Sectional Analysis -- SB 41

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

Prepared by: Mike Pauley, Staff to Sponsor SENATOR LOREN LEMAN
Last updated: Tuesday, January 21, 1997

Section 1: Statement of legislative findings and intent.

- Performance-based standards are increasingly replacing the traditional command-and-control approach of enforcing environmental and health and safety regulations; this shift will lead to the integration of environmental and health and safety protections with normal operating procedures.
- The legislature intends to foster this integration by creating a responsible incentive program that will encourage voluntary, critical self-evaluations by regulated entities.
- The public has a strong interest in promoting routine self-audits by regulated entities. This can best be achieved by recognizing a qualified privilege that will help preserve the free flow of information generated by self-audits. Additionally, self-auditing can be encouraged by extending limited immunity to those entities which voluntarily report and correct regulatory noncompliance.

Section 2: Establishes privileges and immunities for certain self-audits.

Sec. 09.25.450 Establishes a qualified privilege for audit reports.

- Audit reports are not admissible as evidence or subject to discovery in civil or administrative proceedings (except for workers' compensation proceedings).
- A person who conducts a privileged audit, or who is in possession of privileged audit report documents, may not be compelled to testify about the audit or produce documents from the audit report.
- Regulatory agencies and their employees cannot obtain audit reports (except as provided in Section 09.25.460).
- All audit report documents must be labeled "COMPLIANCE REPORT: PRIVILEGED DOCUMENT" or similar words.
- The person claiming the audit privilege has the burden of proving its applicability to the case at hand.
- This section does not prevent a regulatory agency from conducting necessary inspections, taking appropriate enforcement actions, etc., except as provided in AS 09.25.475.
- No privilege is extended for uninterrupted or continuous environmental or health and safety audits.

Sec. 09.25.455 **Establishes an exception to the privilege through the use of waivers.**

- The audit privilege can be waived in writing by the owner or operator who prepared the audit report or caused it to be prepared.
- Disclosure of an audit report does not cause the privilege to be waived if the disclosure is made to an employee, contractor, lawyer, or other person involved in addressing or correcting any matter raised in the audit.
- Disclosure of an audit report does not cause the privilege to be waived if it is made under terms of a confidentiality agreement with a government agency, an insurer or underwriter, a lender, etc.

Sec. 09.25.460 **Establishes an exception to the privilege through disclosure required by court or administrative hearing officer.**

- A court or administrative hearing officer may conduct an *in camera* review of audit report documents for which privilege is claimed. Disclosure can be required if it is determined that the privilege is fraudulently asserted, or if the audit report reveals evidence of noncompliance which was not corrected promptly.
- The party seeking disclosure has the burden of proving that the exception to the privilege is appropriate in the case at hand.

Sec. 09.25.465 **Describes materials not protected by privilege.**

- Privilege does not apply to documents or other information required by an agency to be reported or maintained as part of an existing environmental or health and safety law.
- Privilege does not apply to information a regulatory agency obtains from its own observation or monitoring, or information obtained from a party not involved in preparing the audit report.
- Privilege does not apply to documents which existed prior to the commencement of an audit, or which were produced after the completion of the audit; nor does privilege apply to documents or information developed or maintained in the course of a regularly conducted business activity.

Sec. 09.25.475 **Establishes limited immunity for voluntarily reported violations.**

- An entity voluntarily disclosing violations identified through a self-audit will be immune from civil and administrative penalties, provided that action is promptly taken to correct the noncompliance and prevent its future recurrence.
- Disclosure of noncompliance must be reported in writing by certified mail to the appropriate regulatory agency. Disclosure must occur promptly after discovery of the noncompliance.

Sec. 09.25.475 (continued)

- Immunity is not available for violations independently detected by an agency prior to disclosure.
- Immunity is not available for violations resulting in substantial on-site injury or substantial off-site harm. Immunity can be denied if a court or administrative hearing officer finds that the person requesting immunity has a history of similar violations and a pattern of disregard for environmental or health and safety laws.
- Regulated entities can only qualify for the immunity by providing advance notice of intent to conduct an audit. Notice must specify scope and duration of audit and must be completed within the specified time, unless an extension is requested. Agencies may not initiate an inspection or other investigative activity based solely on the receipt of an audit notice.

Sec. 09.25.485 Relationship to other recognized privileges.

- This section clarifies that the act has no effect in limiting or abrogating any other existing privilege in statute or common law, such as the work product doctrine or attorney-client privilege.

Sec. 09.25.590 Definition of terms.

- "environmental or health and safety audit" means a voluntary, confidential, critical, internal, and retrospective review, evaluation, or analysis of current or past conduct, practices, and occurrences and their resulting consequences, including an assessment that is part of the owner's or operator's compliance management system. The review must be undertaken exclusively for the purpose of determining compliance with environmental or health and safety laws.
- "audit report" includes each document and communication produced from an environmental or health and safety audit, including an implementation plan or tracking system to correct past noncompliance and prevent future noncompliance. The audit report can include exhibits and appendices containing information that is collected or developed *for the primary purpose of and in the course of* an audit, including interviews with employees, field notes, drawings, photographs, maps, graphs, legal analyses, etc.

Section 3: Amends Alaska Statute 12.45.

- Establishes an audit report privilege in Title 12 of Alaska statutes.

Section 4: Applicability.

- Clarifies that the privilege created in Section 2 of the Act applies only to audits conducted on or after the effective date of the act.

U.S. Department of Labor

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

Telephone: (206) 553-5930
FAX: (206) 553-6499



Reply to the Attention of: STP 1-1/rs

April 23, 1996

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

Dear Commissioner Cashen:

Per your request we have performed a preliminary review of Alaska Senate Bill 199 regarding privileges and immunities related to disclosure of certain self-audits. Based on this review, it appears that the Bill, as written, would substantially impact current enforcement of the state's occupational safety and health laws. It is our opinion that the provisions of the Bill would materially change the burden of proof for safety and health standards violations classified as willful, making it much more difficult to sustain a willful violation.

We might concur in a provision to disallow the state from citing retroactively violations that an employer finds, himself, in the course of an internal audit (a policy we believe might actually be in the interest of safety); but this legislation attempts to hold an employer immune and create a new privilege disallowing the state to use the employer's business records as evidence of knowing or intentional wrong doing when the state finds subsequent violations, a sort of corporate right against self-incrimination. We believe that, if enacted into law, this legislation could leave the Alaska occupational safety and health program in a situation in which it could be reasonably argued that the program is less effective than the federal program and subject to plan withdrawal proceedings.

Again, please be aware that this assessment is preliminary. We would be pleased to provide an in-depth review and legal analysis if you so desire; however, such an analysis would require significantly more time to complete.

Sincerely,

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

Richard S. Terrill
Acting Regional Administrator

U. S. DEPARTMENT OF LABOR

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



RECEIVED
Department of Labor
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Office of the Commissioner

Refer to: FSO/snd
Alaska SIC (potential)

February 28, 1996

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

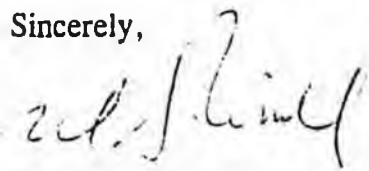
Dear Commissioner Cashen:

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,


Richard S. Terrill
Acting Regional Administrator

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

*Statement on Senate Bill 41
before the Senate Labor & Commerce Committee
by Mike Pauley, staff to sponsor Senator Loren Leman*

Thursday, January 23, 1997

Thank you, Mr. Chairman. For the record, my name is Mike Pauley, staff for the sponsor, Senator Leman.

Senate Bill 41 creates an incentive system which will encourage businesses and other regulated entities to conduct voluntary self-audits of their internal operations. The purpose of these audits is to identify and correct any noncompliance with environmental or occupational health and safety regulations.

Senate Bill 41 is very similar to Senate Bill 199 which was considered in the last legislature. Senate Bill 199 was approved by the Senate and also by the House Resources Committee. It was pending in the House Finance Committee when the legislature adjourned last year.

As Senate Bill 199 worked its way through the committee process, many changes and improvements were made as a result of suggestions from the business community as well as the Departments of Law, Labor, and Environmental Conservation. Altogether, there were 10 different versions of the bill drafted. When drafting Senate Bill 41, the sponsor used as a base text the very last version of Senate Bill 199 from last year. This was the version approved by the House Resources Committee. A few changes were made to this text, but it is important to point out that almost all the amendments and improvements made over the course of last year are incorporated into the bill that is before you today.

Senate Bill 199 was endorsed by the Alaska Municipal League, the Alaska Chamber of Commerce, the Alaska Oil and Gas Association, the Alaska Miners Association, the Alaska Forest Association, and many other trade and industry groups. Representatives from some of these organizations will be testifying before the committee today to express support for Senate Bill 41. I expect their testimony will describe how the incentives in SB 41 work to encourage self-auditing. Therefore, to avoid repetition, I will offer just a very brief explanation of the substance of this bill. Senate Bill 41 establishes two incentives to encourage self-audits.

The first incentive is limited immunity. Entities that conduct voluntary self-audits will be immune from civil and administrative penalties for violations discovered, provided several conditions are met. The regulated entity must take action to correct the identified problem and prevent its future recurrence. Immunity is not available for violations causing substantial off-site damage or serious on-site injury. In addition, there are several other conditions that must be met, but the ones I've described are among the most important.

The second incentive is qualified privilege. Reports generated from voluntary self-audits will be considered privileged and therefore not admissible as evidence or subject to discovery in civil or administrative proceedings. This provision recognizes that an audit report by its very nature is a self-incriminating document: it discovers problems, identifies what personnel or management deficiencies are responsible, and recommends corrective action. Studies show that many businesses opt not to perform audits out of fear that the resulting reports will be used by agencies or hostile third parties as a "road map to prosecution". As with the immunity benefit, the privilege has limitations. Privilege can be overcome if it is asserted for a fraudulent purpose, or if the regulated entity has failed to take required actions to correct areas of noncompliance.

In closing, I would like to make two points of clarification.

First, there is a section of the bill that the sponsor intends to remove as part of a planned committee substitute. On the last page of the bill, there is a section 3 which recognizes a new self-audit privilege in the Code of Criminal Conduct. One of the changes that was made from last year's bill is that privilege will only be applicable in civil and administrative cases, but not in criminal cases. After discussions with the bill's drafter, it was determined that Section 3 on page 12 is no longer necessary. Accordingly, it is the intent of the sponsor to remove this language.

The second clarification concerns a number in the sponsor statement. At the bottom of the statement, reference is made to 18 states that have approved self-audit incentive laws. I've been made aware in recent days that two additional states have approved self-audit laws, including Ohio which enacted a law in December. Therefore, the correct number is 20.

That concludes my statement. I'd be happy to take any questions from committee members.

Testimony on SB 41 from the Division of Medical Assistance.

The definition in SB 41 of environmental or health and safety law is so broad that it may negatively impact critical functions of the Department of Health and Social Services related to the Medicaid Program.

The Division of Medical Assistance, in administering the Medicaid Program, is charged with licensing and certifying health care entities, and assuring that payments to providers are accurate, and linked to services actually rendered.

The division certifies health care entities operating in Alaska under a contract with the federal government; certification allows a provider to bill Medicare and Medicaid. Facilities surveyors look at not only the physical plant of a facility but all of the patient care and financial records to determine if the care provided is safe and correctly documented. Entities are encouraged to complete program reviews and audits, but if these records could be kept from the state, potentially life-threatening situations could go undetected.

The division also conducts active programs of surveillance and utilization review and audits of health care providers to assure that payments for health care services are correct. As required by federal law, a provider fraud unit exists in the Department of Law to pursue those providers who intentionally seek funds to which they are not entitled. Cases involving provider misconduct and fraud are time consuming and costly for the state to pursue. The audit privilege under SB 41 would create the perfect avenue for a dishonest person to conceal illegal activities by preventing access to the very records necessary to verify that services were correctly provided and billed, or demonstrating the provider's mental state in order to prove fraud and program abuse. Additionally, a provider could claim an audit privilege which would prevent the division from imposing sanctions relating to program abuse; sanctions described in regulations include recoupment of inappropriately paid funds. This would place the state in the position of being unable to collect funds which the state is required by federal law to return to the federal government within 60 days of identification of an erroneous payment.

The Medicaid Rate Advisory Commission within the department shares similar audit concerns as the division. The commission is charged with setting rates of payment for health care facilities under the Medicaid Program. Commission auditors rely on access to facility records, self audits, and cost reports in the complex rate setting process. Lack of access to any of the numerous documents necessary to determine that rates are in compliance with the federal "Boren Amendment", to assure that payments relate to economically efficient operation, would add further complexity to the rate setting process.

The Department of Health and Social Services believes that in order to protect the significant public investment in the Medicaid Program, and guarantee the health and safety of Alaskans who receive care in facilities, that the committee should adopt an amendment to SB 41 that deletes all references to "health and safety" audits.

**TESTIMONY OF RANDY RUEDRICH, PRESIDENT OF THE ALASKA
CHAPTER OF THE INTERNATIONAL ASSOCIATION OF DRILLING
CONTRACTORS BEFORE THE SENATE LABOR AND COMMERCE
COMMITTEE
ON SENATE BILL NO. 41**

Good morning Mr. Chairman. My name is Randy Ruedrich, and I am pleased to appear here today in my capacity as President of the Alaska Chapter of the International Association of Drilling Contractors ("IADC") to testify in support of SB 41, a bill to establish a new privilege for voluntary health, safety and environmental self audits, and a qualified immunity for conditions that are discovered and reported in the course of these audits.

The IADC represents all eight of the drilling contractors currently operating in the state. IADC members employ approximately 750 individuals. Alaska's drilling contractors are an integral part of the state's oil industry.

The IADC strongly supports responsible, cost-effective incentive programs to encourage voluntary compliance with health, safety and environmental laws. We believe that the "self-audit" concept is one that deserves your serious consideration, and we feel that, as introduced, this bill represents a good start toward the goal of encouraging continued improvements in Alaska industries' compliance with health, safety and environmental laws.

Speaking from my experience in the oil industry, I can attest to the effectiveness of properly supervised self-evaluation and self-regulation as a way to meaningfully improve health and safety and environmental performance. The customary practices in our worldwide industry were jolted by a severe event in the North Sea in 1988. An extensive inquiry initiated by the British government following that North Sea event resulted in a series of findings and recommendations regarding the future health, safety and environmental regulation of the oil industry. Lord Cullen, who presided over the

inquiry, did not accept the concept that government or a given trade group or special interest group could determine the best regulatory framework or plan for the industry as a whole. Rather, he found that the proper way to proceed was for each entity (operator, drilling contractor and other service companies) to develop their own health, safety and environmental compliance plans appropriate for managing their unique assets. He further instructed the industry to implement the plans developed, and then to initiate a practice of continual audit of their progress and correction of any ^{identified} shortcomings, with appropriate verification to the competent authority.

Many of us working in Alaska today worked in that environment in the early 1990's and found it extremely beneficial. In fact, the industry's formal contracting practices in Alaska, as well as the rest of the United States, have evolved to parallel that system initially developed in Britain -- Say what you are going to do with regard to protecting the health and safety of your workers and the environment in which you work; do what you say you will do; and, finally, prove that you have accomplished what you set out to do.

This "self-audit" legislation will encourage further improvements in the health, safety and environmental performance of Alaska's oil industry and, as such, is in everybody's best interest. It is good for the state because it will encourage continued protection of our quality of life. It is good for employees because it will improve safety in the workplace. Finally, it is good for business because it will enable industry to conduct critical self-evaluative reviews of day-to-day operations without fear of adverse legal consequences. Moreover, with an amendment which we are proposing, SB 41 will specifically enable operators and drilling contractors to more readily share the results of these self-evaluative reviews in order to promote their mutual interest in ensuring healthy and safe working conditions and environmental compliance in Alaska oilfield operations.

It should be emphasized that in Alaska, owners of drilling rigs have been focusing on improving their health and safety records for nearly three decades. In the mid-1970's,
IADC testimony on SB 41, p. 2

the industry typically experienced approximately 25 lost time accidents per 100 man years worked. In the early 1980's, the number of lost time accidents had been reduced to the upper teens per 100 man years. By 1988, we were seeing fewer than ten lost time accidents per 100 man years. With the continuing effort to improve the workplace, and to train people to operate safely and take an active role in eliminating hazards in the workplace, in 1996, Alaska drilling contractors experienced fewer than two lost time accidents per 100 man years worked.

Our industry has made similar strides on the environmental side. During the 1970's and early 1980's, drilling rigs discharged over 1000 barrels of fluids per day to the surface environment. In the late 1980's, all drilling rigs were converted to closed systems, and the industry ceased using surface reserve pits, thereby resulting in significant reduction in the amount of fluids discharged to the surface. During the 1990's, carefully developed fluid transfer policies were established; and, as an example of the progress made in a few short years, my company, Doyon Drilling, lost on average less than a quart of non-hazardous fluids per day in 1996 while handling approximately four million gallons of fluids per day.

With that degree of progress, we have seen many policies and practices evolve. It is our intent to continue to improve. But there are artificial risks associated with any company's or industry's decision to engage in health and safety or environmental auditing of its operations. Alaska's businesses need to be able to conduct intensive and searching inquiries into their practices, operations and policies without having to worry that an enforcement agency or other litigant will use the results of such inquiries against them.

For this reason we find SB 41 extremely beneficial in that it allows us to concentrate on the reduction of the remaining deficiencies in the system, rather than focusing on the legal nuances of protecting audits and restricting the sharing of those with other entities in the workplace. Health and safety and environmental protection will be enhanced by this legislation. The bill would require a company to correct any deficiencies

that might be discovered in order to preserve the audit privilege, and creates strong incentives for making sure that adequate internal policies are in place to ensure compliance. The legislation will promote voluntary corrective action and increase compliance, while reducing the expenditure of resources -- private and public -- on unproductive regulatory command-and-control and associated litigation to compel compliance.

From the standpoint of our industry, SB 41 does need to be amended to make it clear that, where a drilling contractor causes a health and safety and environmental audit to be prepared of the drilling contractor's operations, that report may be disclosed to the operator for whom the drilling contractor is performing drilling services. The bill allows disclosure of audit reports in certain circumstances without waiving the privilege. We are concerned that the bill may not cover an exchange between an independent contractor and its principal, a practice which is becoming an increasingly common and salutary feature of the operator-drilling contractor relationship in Alaska. The new environmental audit privilege should be made expressly applicable to these disclosures. This will enable operators and drilling contractors to engage in aggressive self-evaluation and to work closely together to identify remaining opportunities to improve our performance.

Suggested amendments for this purpose are attached.

Page 3, line 17 : Revise to read as follows:

"... in instances or events being reviewed for compliance may *be compelled to* testify about those instances ..."

COMMENT: Technical clarification that seems to better articulate the purpose of (b)(3)(B).

Page 3, line 28-29: Revise to read as follows:

"(f) The party asserting the privilege described in this section has the burden of establishing the applicability of the privilege audit report privilege. If an audit report is privileged under (a) of this section, the person for whom the audit report was prepared or the owner or operator of the audited facility, operation or property may assert the privilege described in this section to prevent the admission or discovery of the audit report, or the compelling of testimony or production of documents relating to such audit, from itself or from the person who conducted all or a portion of the audit or from a person to whom the audit report or information generated by the audit was disclosed under Sec. 09.25.455(b).

COMMENT: This amendment would make it clear that the privilege against discovery of an audit report can be invoked by the individual, partnership or corporation for whom the audit was prepared, even if the person who prepared the audit or a person to whom it was disclosed without losing the privilege fail to assert the privilege when discovery or testimony is sought.

Page 5, line 4: Add new (b)(4) reading as follows

"(4) by an independent contractor to an owner or operator who has retained the independent contractor to perform services at a facility, operation or property, where the audit report was prepared by or for the independent contractor and such disclosure is required by the contract between the owner or operator and the independent contractor."

COMMENT: This amendment is necessary to recognize and promote the emerging trend whereby oil and gas operators in Alaska are seeking to require oil field service companies to audit their health and safety and environmental compliance status as a condition to being retained to provide services. Under these evolving services contracts, the service company must disclose the audit results to the operator. By making the new environmental audit privilege expressly applicable to these required disclosures, the bill would, with this amendment, encourage more aggressive and informative contractor self-auditing.

Page 8, lines 5-7: Revise to read as follows:

"(3) the offense was committed intentionally or knowingly by a member of the person's management or an agent of the person and the person's policies or *its failure to have in place systems reasonably capable of minimizing the potential for such offenses by the person's management or agents*~~lack of prevention systems~~ contributed materially to the occurrence of the violation; or"

COMMENT: The original language would seem to make a company an absolute guarantor that its management or agents will not intentionally or knowingly violate health and safety or environmental laws. This is not realistic, especially where the violations are willful. The substitute language would require a company to have in place internal systems and procedures that are reasonably capable of preventing a manger or agent from knowingly violating the law, while recognizing that it is impossible always to anticipate or control the actions of a rogue employee.



**Testimony of Jack E. Phelps, Executive Director
In support of SB 41
Offered to the Senate Labor & Commerce Committee
January 30, 1997**

Mr. Chairman, members of the committee:

My name is Jack Phelps and I am Executive Director of the Alaska Forest Association, the forest products industry trade group for Alaska. The timber industry and the Association support the concept of environmental and safety self audits, now embodied in Senate Bill 41.

The Association believes that environmental laws do not exist to provide job security and a source of income for bureaucrats. Their purpose is not to maintain the flow of federal dollars to the state. Rather, their true purpose is to protect the environment. Likewise, the true purpose of safety laws is to protect people. Self audits promote these true purposes. It is the legislature's responsibility to ensure that environmental and safety laws do not overreach these purposes and become unnecessary impediments to economic development. SB 41 is a good step in that direction.

Too often, companies, especially smaller companies, can ill afford to contact agencies regarding known or suspected problems. They fear the result of such contacts will be crippling fines or the discovery of new, unsuspected problems which could put them out of business. With the self audit concept embodied in law, companies will be given new incentive to work towards compliance, and the assurance that agencies will truly be available to help them achieve compliance without the threat of bankruptcy.

The concepts developed in SB 41 are not untried. 20 other states, notably Texas, have implemented environmental self audits with a good measure of success. While it may require a shift of emphasis for some state agencies, similar laws can work equally well in Alaska.

The AFA appreciates the 20th Legislature's commitment to developing practical efficiencies in government's interaction with private industry. SB 41 is a prime example of those efforts. The AFA also appreciates the sponsor's willingness to work with companies in Alaska's resource development industries to ensure the present bill reflects their needs in the real world. Please move SB 41 out of committee today so that the Judiciary Committee can consider it as soon as possible.

Thank you for the opportunity to testify on this important piece of legislation.

-ed (*ēd*) *v.* **-it-ed, -it-ing, -its.** [Back-formation < EDITOR.]

a. To prepare for publication or presentation, as by adapting or recting. **b.** To prepare an edition of for publication <edit a collection of Jefferson's letters> **2.** To supervise the publication of. **3.** To delete <edited the longest clause sequence out> **4.** To put together the component parts of (e.g. a film) by cutting, combining, splicing. —**ed'it** *n.*

word history: The verb *edit* was derived in English from the *n* *editor*, and not vice versa as one would expect. The process by which *edit* was formed is called back-formation. By this process a suffixable thought to be an affix is removed from what is incorrectly considered to be a base word, and the base becomes a new word in its own right. *Editor* can thus be analyzed as a verb *edit* plus the noun *or* *-or*. The English word *editor*, however, was borrowed from Latin *editor* and is recorded 150 years earlier than the verb *edit*.

tion (*i-dish'ən*) *n.* [Ofr. < Lat. *editio*, publication < *edere*, to publish < *ex-*, out + *dare*, to give.] **1. a.** The entire number of copies of a publication printed from a single typesetting or other form of reproduction. **b.** A single copy from this group. **c.** A facsimile of an original publication having substantial changes or additions. **2. a.** Any of various forms in which something, as a publication, is issued <produced a variorum edition of Melville> **b.** One closely similar to an original: VERSION. **3.** All the copies of a single preparation of a paper <the late city edition>

or (*ēd'i-tōr*) *n.* [LLat., publisher < Lat. *edere*, to publish. —see *OR*.] **1.** One who edits, esp. as an occupation. **2.** One who writes editorials. **3.** A device consisting of a splicer and viewer and used to edit film. **4.** Computer Sci. A routine that performs editing operations. —**ed'itorship** *n.*

o-ri-al (*ēd'i-tōr'ē-əl, -tōr'*) *n.* **1.** An article in a publication expressing the opinion of its publishers or editors. **2.** A commentary on radio or television expressing the opinion of the station or network. —**adj.** **1.** Of, concerning, or pertaining to an editor. **2.** Of the nature of an editorial. —**ed'i-tō-ri-al-ly** *adv.*

ri-al-ize (*ēd'i-tōr'ē-ə-līz', -tōr'*) *vi.* **-ized, -iz-ing, -iz-es.** To express an opinion in or as if in an editorial. **2.** To present an opinion in the guise of an objective report. —**ed'i-tō-ri-al-i-za-tion** *n.* **-i-zer** *n.*

in chief *n., pl. editors in chief.* The editor bearing final responsibility for the policies and operations of a publication.

ite (*ē'dā-mīt'*) *n.* [After *Edom*, a region of ancient Palestine] a member of a Semitic people living in an area southeast of the Red Sea in ancient times. —**E'dom-it-ish** *adj.*

ed'ic (*ē'dē-tē-ē'*) *n.* [Abbr. of *ethylenediaminetetraacetic acid*.] A chelating agent, $C_{10}H_{16}N_2O_8$, used as a chelating agent.

able (*ēj'ə-kā-bəl*) *adj.* [EDUC(ATE) + -ABLE.] Capable of being educated.

te (*ēj'ə-kāt'*) *v.* **-cat-ed, -cat-ing, -cates.** [ME *educaten* < Lat. *educare*.] —**vt.** **1. a.** To provide with training or knowledge, especially schooling: TEACH. **b.** To provide with training for a specific purpose, as a vocation. **2.** To provide with information: INFORM. **3.** To cultivate or develop the mental or moral growth of. —**vi.** To instruct another or others.

history. It has often been said that *educate* means "to bring a person's talents as opposed to putting in knowledge or information. This is an interesting idea, but it is not quite true in the etymology of the word. *Educate* comes from Latin *educare*, "which is derived from a specialized use of Latin from *e-*, "out," and *ducere*, "to lead") meaning "to assist at the raising of a child."

ed (*ēj'ə-kā'tīd*) *adj.* **1.** Having an education. **2. a.** Exhibiting a degree of schooling or instruction. **b.** Cultured: cultivated. **3.** Involving experience and some factual knowledge <an educated opinion>

tion (*ēj'ə-kā'shən*) *n.* **1.** The act or process of educating or being educated. **2.** The knowledge or skill obtained or developed through the process: LEARNING. **3.** The field of study concerned with the process of learning and learning pedagogy.

ional (*ēj'ə-kā'shən-əl*) *adj.* **1.** Of or pertaining to education: EDUCATIONAL <an educational tour> —**ed-i-onal-ly** *adv.*

ional television *n.* **1.** Public television. **2.** A video system for transmitting instructional material.

ive (*ēj'ə-kā'tiv*) *adj.* Educational.

-ee- *suff.* [Alteration of *-y-*.] **1. a.** One resembling <goatee> a particular kind of <bootee> —Used often as a diminutive. **2. c.** Connected with <bargee>

eel (*ēl*) *n., pl. eel or eels.* [ME *ele* < OE *æl*.] **1.** A long snake-like marine or freshwater fish of the order Anguilliformes or Apodes, esp. *Anguilla rostrata* of eastern North America or *A. anguilla* of Europe, migrating from fresh water to the Sargasso Sea to spawn. **2. A fish** related to or resembling the eel.

eel-grass (*ēl'grās'*) *n.* **1.** A submerged aquatic plant of the genus *Zostera*, growing along the North Atlantic coast and having narrow, grasslike leaves. **2.** A similar or related plant, as tape grass.

eel-pout (*ēl'pout'*) *n., pl. eelpout or -pouts.* [ME **elepout* < OE *æle-puta*.] Any of various marine fishes of the family Zoarcidae, with an elongated body and a large head.

eel-worm (*ēl'wūrm'*) *n.* An often parasitic nematode worm, as the vinegar eel.

e'en¹ (*ēn*) *n.* EVENING 1, 2a.

e'en² (*ēn*) *adv.* Even.

-eer *suff.* [Ofr. *-ier* < Lat. *-arius, -ary*.] One associated with, concerned with, or engaged in <balladeer>

e'er (*ār*) *adv.* Ever.

erie or eery (*ir'ē*) *adj.* **-ri-er, -ri-est.** [ME *eri*, fearful < OE *eor*, cowardly.] **1. a.** Arousing fear or dread: WEIRD. **b.** Supernatural in aspect or character: MYSTERIOUS <an erie presence in the castle> **2. Scot.** Frightened or intimidated by superstition. —**ce'ri-ness** *n.*

ef (*ēf*) *n.* The letter *f*.

efface (*i-fās'*) *vt.* **-faced, -fac-ing, -fac-es.** [Fr. *effacer* < Ofr. *Lat. ex-*, out + *Lat. facies*, face.] **1.** To make indistinct or erase by or as if by rubbing. **2.** To conduct (oneself) inconspicuously or humbly. —**ef-face'a-ble** *adj.* —**ef-face'ment** *n.* —**ef-fac'er** *n.*

effect (*i-fēkt'*) *n.* [ME < Ofr. < Lat. *effectus*, p.part. of *efficere*, to accomplish < *ex-*, out + *facere*, to make.] **1.** Something brought about by an agent or cause: RESULT. **2.** The way in which something acts on or influences an object <the effect of music on the mentally ill> **3.** The capacity or power to achieve the desired result: INFLUENCE. **4.** The condition of being in full force or execution <The law had an immediate effect on traffic violations.> **5. a.** Something that produces a specific impression or supports a general design or intention <vivid lighting effects> **b.** A particular impression <an effect of graciousness> **c.** The production of a particular impression <screams and carries on just for effect> **6. a.** The basic meaning. **b.** Purport: intention. **7. effects.** Movable goods: PROPERTY. —**vt.** **-fect-ed, -fect-ing, -fects.** **1.** To bring into existence. **2.** To bring about. —**in effect.** **1.** In fact: ACTUALLY. **2.** In essence: VIRTUALLY. **3. EFFECTIVE** **3.** —**take effect.** To become operative. —**ef-fect'er** *n.* —**ef-fect'i-ble** *adj.*

*** syns:** EFFECT, CONSEQUENCE, FRUIT, ISSUE, OUTCOME, RESULT, SEQUEL, SEQUENT, UPSHOT *n.* **core meaning:** something brought about by a cause <The effect of good advertising is increased sales.> **ant:** cause

effective (*i-fēk'tiv*) *adj.* **1.** Having an expected or intended effect. **2.** Producing or designed to produce a desired effect. **3.** In effect: OPERATIVE <The new requirements are effective immediately.> **4.** Existing in fact: ACTUAL <an abrupt increase in the effective demand> **5.** Prepared for use or action, esp. in warfare. —**n.** A combat-ready soldier or piece of military equipment. —**ef-fec'tiv-ly** *adv.* —**ef-fec'tive-ness, ef-fec'tiv'i-ty** *n.*

*** syns:** EFFECTIVE, EFFECTUAL, EFFICACIOUS, EFFICIENT, PRODUCTIVE *adj.* **core meaning:** producing or able to produce a desired effect <an effective cold remedy> **ant:** ineffective

effec-tor (*i-fēk'tōr*) *n.* **1.** An organ at the end of a nerve that activates either gland secretion or muscular contraction. **2. Computer Sci.** A device for producing a desired change in an object in response to input.

effec-tual (*i-fēk'chō-əl*) *adj.* EFFECTIVE **2.** —**ef-fec'tual'ity, ef-fec'tual-ness** *n.* —**ef-fec'tual-ly** *adv.*

effec-tuate (*i-fēk'chō-āt'*) *vt.* **-at-ed, -at-ing, -ates.** [Med. Lat. *effectuare* < Lat. *efficere*. —see EFFECT.] To bring about: EFFECT. —**ef-fec'tu-a-tion** *n.*

effem-i-nate (*i-fēm'ə-nit*) *adj.* [ME *effeminat* < Lat. *effeminatus*, p.part. of *effeminare*, to make feminine < *ex-*, from + *femina*, woman.] **1.** Having qualities or characteristics more often associated

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in the government for civil penalties under this chapter enforceable in an administrative agency where there is no jury trial. *Atlas Roofing Co., Inc. v. Occupational Safety and Health Review Commission*, 1977, 97 S.Ct. 261, 430 U.S. 442, 51 L.Ed.2d 464.

Procedures of the Commission in issuing citations and imposing penalties do not violate U.S.C.A.Const. Amend. 7. *Penn-Dixie Steel Corp. v. Occupational Safety and Health Review Commission*, C.A.7, 1977, 553 F.2d 1078.

Provision of this section permitting assessment of civil penalty of up to \$1,000 for each nonserious violation of this chapter does not impose criminal penalty and jury trial is not required under U.S.C.A.Const. Amend. 6 in order to impose such penalty. *Mohawk Excavating, Inc. v. Occupational Safety and Health Review Commission*, C.A.2, 1977, 549 F.2d 859.

Proceeding looking to imposition of sanction for violation of regulations promulgated under authority of this chapter is not an action at common law within meaning of U.S.C.A.Const. Amend. 7 and, hence, no jury trial right arises. *Clarkson Const. Co. v. Occupational Safety and Health Review Commission*, C.A.10, 1976, 531 F.2d 451.

Civil penalty provisions of this chapter were neither inconsistent with jury trial guaranty in criminal cases under U.S.C.A.Const. Amend. 6 nor were they inconsistent with jury trial guaranty in civil cases under U.S.C.A.Const. Amend. 7. *Bloomfield Mechanical Contracting, Inc. v. Occupational Safety and Health Review Commission*, C.A.3, 1975, 519 F.2d 1257.

The "civil penalties" provided for violations of this chapter are regulatory rather than punitive notwithstanding contention that penalties are criminal in nature and thus entitle an employer to such rights as trial by jury, proof beyond a reasonable doubt, and confrontation of witnesses. *Beall Const. Co. v. Occupational Safety and Health Review Commission*, C.A.8, 1974, 507 F.2d 1041.

13. Questions considered

Court of Appeals has jurisdiction to consider constitutionality of this chapter when appeal is taken pursuant to provision of this section permitting assessment of civil penalty of not more than \$10,000 for each violation. *Mohawk Excavating, Inc. v. Occupational Safety and Health Review Commission*, C.A.2, 1977, 549 F.2d 859.

24. Interest

Penalty imposed under this chapter does not fall outside general rule proscribing pre-judgment interest on penalties. *Marshall v. Painting by C.D.C., Inc.*, D.C.N.Y.1980, 497 F.Supp. 653.

25. Admissibility of evidence

Administrative law judge did not improperly exclude evidence that employer was being harassed by Secretary of Labor's alleged selective enforcement of this chapter on ground that such evidence went to reasonableness of proposed penalties, since Secretary's enforcement actions were not relevant to the abatement dates or penalty assessments. *Turner Communications Corp. v. Occupational Safety and Health Review Commission*, C.A.5, 1980, 612 F.2d 941.

President of pipe-laying company was not only individual whose state of mind would be relevant in determining whether corporation violated this chapter by willfully failing to shore or slope trench prior to cave-in resulting in death of workman, and corporation could be found guilty based on acts, conduct and inferentially the states of mind of superintendent, foreman and backhoe operator, all of whom had been given authority. *U.S. v. Dye Const. Co.*, C.A.Colo.1975, 510 F.2d 78.

26. Sufficiency of evidence—Generally

Whether the Secretary's proof is adequate to meet burden placed upon him in proving serious violation of this chapter must necessarily rest in good discretion of the Commission as trier of facts, and must necessarily vary with facts of each case and indeed with capabilities and range of proof in each case. *Usery v. Hermitage Concrete Pipe Co.*, C.A.6, 1978, 584 F.2d 127.

27. — Miscellaneous cases

Evidence that employer had failed to install protective barriers on dies which were in use and had failed to install an adequate barrier on the die which caused the accident in question sustained determination that the employer's violation was wilful. *A. Schonbek &*

Co., Inc. v. Donovan, C.A.2, 1981, 646 F.2d 799.

28. Findings

Fact that administrative law judge did not expressly indicate finding that employer knew or could have known, with the exercise of reasonable diligence, of hazardous practice was not a fatal flaw to finding of serious violation of this chapter, where his opinion indicated that he believed employer should have known of the practice. *Austin Bldg. Co. v. Occupational Safety and Health Review Commission*, C.A.10, 1981, 647 F.2d 1063.

Findings of Administrative Law Judge, who should have indicated evidentiary basis for his conclusion that possible accumulation of excess fumes and smoke due to inadequate ventilation in employee's work space created substantial probability of death or serious physical injury to him, and that employer with reasonable diligence could have known of violation, but who made no such findings and simply concluded that violation was serious, did not comport with minimum requirements of Administrative Procedure Act, section 551 et seq. and 701 et seq. of Title 5, and thus were inadequate to sustain charges that employer was in serious violation of regulations governing ventilation and exposure of welders to fluoride compounds. *Bethlehem Steel Corp. v. Occupational Safety and Health Review Commission*, C.A.3, 1979, 607 F.2d 1069.

Exoneration of employer by Commission of nonliability of the employer based on ground that no evidence indicated that employer was on notice of its truck driver's lack of common sense and judgment in operating boom on truck near high voltage lines and that there was no notice to employer that driver would choose such obviously dangerous position from which to attempt to unload could not be sustained in absence of any factual finding as to employer's safety program which was the crux of case. *Brennan v. Butler Lime & Cement Co.*, C.A.7, 1975, 520 F.2d 1011.

§ 667. State jurisdiction and plans

(a) Assertion of State standards in absence of applicable Federal standards

Nothing in this chapter shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 655 of this title.

(b) Submission of State plan for development and enforcement of State standards to preempt applicable Federal standards

Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health

standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 655 of this title shall submit a State plan for the development of such standards and their enforcement.

(c) Conditions for approval of plan

The Secretary shall approve the plan submitted by a State under subsection (b) of this section, or any modification thereof, if such plan in his judgment—

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State,

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 655 of this title which relate to the same issues, and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce,

(3) provides for a right of entry and inspection of all workplaces subject to this chapter which is at least as effective as that provided in section 657 of this title, and includes a prohibition on advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan.

(7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.

(d) Rejection of plan; notice and opportunity for hearing

If the Secretary rejects a plan submitted under subsection (b) of this section, he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.

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al safety or health issue with respect to promulgated under section 655 of this title, the development of such standards and

or approval of plan

plan submitted by a State under subsection (b) of this section, if such plan in his

or agencies as the agency or agencies of the State, the plan throughout the State,

ment and enforcement of safety and health issues, which standards are or will be at the place and healthful employment and places of work promulgated under section 655 of this title, and which standards, when applied, are distributed or used in interstate commerce, compelling local conditions and do not

entry and inspection of all workplaces at least as effective as that provided in section 655, and a prohibition on advance notice of

agencies that such agency or agencies of the State, and qualified personnel necessary for the enforcement of such standards,

agencies that such State will, to the extent of its resources, and maintain an effective and comprehensive health program applicable to all employees of the State and its political subdivisions, and the standards contained in an approved

State to make reports to the Secretary of the same extent as if the plan were not in

agency will make such reports to the Secretary, retaining such information, as the Secretary may require.

and opportunity for hearing

submitted under subsection (b) of this section, submitting the plan due notice and doing,

(e) Discretion of Secretary to exercise authority over comparable standards subsequent to approval of State plan; duration; retention of jurisdiction by Secretary upon determination of enforcement of plan by State

After the Secretary approves a State plan submitted under subsection (b) of this section, he may, but shall not be required to, exercise his authority under sections 657, 658, 659, 662, and 666 of this title with respect to comparable standards promulgated under section 655 of this title, for the period specified in the next sentence. The Secretary may exercise the authority referred to above until he determines, on the basis of actual operations under the State plan, that the criteria set forth in subsection (c) of this section are being applied, but he shall not make such determination for at least three years after the plan's approval under subsection (c) of this section. Upon making the determination referred to in the preceding sentence, the provisions of sections 654(a)(2), 657 (except for the purpose of carrying out subsection (f) of this section), 658, 659, 662, and 666 of this title, and standards promulgated under section 655 of this title, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 658 or 659 of this title before the date of determination.

(f) Continuing evaluation by Secretary of State enforcement of approved plan; withdrawal of approval of plan by Secretary; grounds; procedure; conditions for retention of jurisdiction by State

The Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

(g) Judicial review of Secretary's withdrawal of approval or rejection of plan; jurisdiction; venue; procedure; appropriate relief; finality of judgment

The State may obtain a review of a decision of the Secretary withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within thirty days following receipt of notice of such decision a petition to modify or set aside in whole or in part the action of the Secretary. A copy of such petition shall forthwith be served upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of Title 28. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is not supported by substantial evidence the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of

the United States upon certiorari or certification as provided in section 1254 of Title 28.

(h) Temporary enforcement of State standards

The Secretary may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under subsection (b) of this section, or two years from December 29, 1970, whichever is earlier.

(Pub.L. 91-596, § 18, Dec. 29, 1970, 84 Stat. 1608.)

Historical Note

References in Text. This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub.L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables volume.

Codification. Section 666 of this title, referred to in subsec. (e), was in the original section 17 of Pub.L. 91-596. Subsecs. (a) to (g) and (i) to (l) of such section 17 are

classified to section 666 of this title. Subsec. (h) of such section 17 amended section 1114 of Title 18, Crimes and Criminal Procedure, and enacted note set out thereunder.

Effective Date. Section effective 120 days after Dec. 29, 1970, see section 34 of Pub.L. 91-596, set out as a note under section 651 of this title.

Legislative History. For legislative history and purpose of Pub.L. 91-596, see 1970 U.S. Code Cong. and Adm. News, p. 5177.

Cross References

Grants to States for administration and enforcement of programs contained in approved State plans, see section 672 of this title.

Loans by Secretary of Agriculture to assist farmers or ranchers in compliance with standards under an approved State plan, see section 1942 of Title 7, Agriculture.

West's Federal Forms

Enforcement and review of decisions and orders of administrative agencies, see § 851 et seq. Supreme Court—

Jurisdiction on certificate, see § 321 et seq.

Jurisdiction on writ of certiorari, see § 221 et seq.

West's Federal Practice Manual

Coverage, government employees, state and local, see § 10407.

State plans, see § 10420.

Code of Federal Regulations

Approved state plans for enforcement of state standards, see 29 CFR 1952.1 et seq. Procedures for—

Evaluation and monitoring of approved state plans, see 29 CFR 1954.1 et seq.

State agreements, see 29 CFR 1901.1 et seq.

Withdrawal of approval of state plans, see 29 CFR 1955.1 et seq.

State plans for development and enforcement of state standards—

Generally, see 29 CFR 1902.1 et seq.

Applicability to state and local government employees in states without approved private employee plans, see 29 CFR 1956.1 et seq.

Changes in, see 29 CFR 1953.1 et seq.



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

SB 41: Twentieth Legislature

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

While the Alaska Environmental Lobby whole-heartedly supports industry's efforts towards voluntarily compliance with environmental and health/safety regulations, we strongly oppose SB 41. Achieving compliance with regulations will require industry and government to work together. However, the broad language of SB 41 cripples our ability to enforce protection of Alaska's environment and public welfare. This legislation greatly obstructs efforts to find the balance between incentives for responsible monitoring and effective enforcement of regulations. The Alaska Environmental Lobby opposes SB 41 because:

- This is a bill of secrecy. It would keep information vital to the public's health and safety hidden from review by the agencies we depend upon to enforce our health and safety laws and from the legal system we depend upon to remedy violations of these laws. It limits employees' right to know. It limits the right to know of property owners near to potentially polluting industries. This bill allows secrecy to replace corporate responsibility and accountability.
- This is a bill of amnesty to industries that conceal or condone noncompliance. Immunity from civil and administrative penalties is bad public policy and effectively rewards non-compliance. Non-compliance can often result in economic gain. If a violation results in an economic gain over a non-violator, attempts should be made to recover the economic gain. Additionally, penalties and fines are the main tools that regulators have to encourage compliance. This bill lets crimes go unpunished and encourages violators to profit at the expense of law-abiding competitors.
- This is a full-employment bill for attorneys. This bill will create more confusion, litigation and expense regarding the enforcement of regulations. Many questionable aspects of this bill will only be answered during litigation. The "construed broadly" language in the definitions will pull in all manner of federal, state, and municipal laws.

Environmental and health/safety regulations are passed out of necessity: industry has a less than admirable record of self-regulating. The public's health and safety must continue to be protected, particularly in today's heated competitive climate when industry is more likely to cut corners for economic advantage.

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER, SIERRA CLUB • ALASKA FRIENDS OF THE EARTH
ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY • CLEAN AIR COALITION • DENALI CITIZENS' COUNCIL
DENALI GROUP, SIERRA CLUB • JUNEAU AUDUBON SOCIETY • JUNEAU GROUP, SIERRA CLUB
KACHEMAK BAY CONSERVATION SOCIETY • KENAI PENINSULA AUDUBON SOCIETY • KNIK CANOERS AND KAYAKERS
KODIAK GROUP, SIERRA CLUB • KODIAK AUDUBON SOCIETY • LYNN CANAL CONSERVATION • NORTHERN ALASKA ENVIRONMENTAL CENTER
PRINCE WILLIAM SOUND CONSERVATION ALLIANCE • SIERRA CONSERVATION SOCIETY • SOUTHEAST ALASKA CONSERVATION COUNCIL • TONGASS CONSERVATION SOCIETY

1/28/97



COMPANY	LETTER DATE	AUDIT PERIOD	FACILITY - REGION	DOV DATE
1) ASARCO, INC.	5/26/95	5/30/95 @ 8 am	AMARILLO - AMARILLO	1/19/96
2) HOECHST CELANESE, CHEMICAL GROUP	6/2/95	6/05/95 @ 9 am	PASADENA - HOUSTON	
3) CHAMPION INTERNATIONAL CORPORATION	6/14/95	6/95 - 12/95	CAMDEN - BEAUMONT	
4) CHAMPION INTERNATIONAL CORPORATION	6/14/95	6/95 - 12/95	CORRIGAN - BEAUMONT	
5) CENTRAL & SOUTH WEST SERVICES, INC.	8/15/95	6/26/95 @ 8:30 am	VICTORIA - CORPUS	
6) STERLING CHEMICALS	8/19/95	6/26/95 @ 8 am	TEXAS CITY - HOUSTON	1/26/96 2/12/96 9/20/95 10/20/95
7) MONTELL POLYOLEFINS, USA, INC.	6/23/95	7/31/95 - 8/4/95	PASADENA - HOUSTON	
8) EXXON COMPANY, USA	6/23/95	6/26/95 - 12/26/95	BAYTOWN - HOUSTON	
9) SIMPSON PASADENA PAPER COMPANY	7/18/95	7/95 - 12/95	PASADENA - HOUSTON	
10) UNIV. OF TEXAS AT BROWNSVILLE	7/18/95	7/24/95 - 8/14/95	BROWNSVILLE - HARLINGEN	
11) UNIV. OF TEXAS OF THE PERMIAN BASIN	7/18/95	7/3/95 - 7/21/95	ODESSA - ODESSA	
12) UNIV. OF TEXAS, PAN AMERICAN	7/18/95	8/7/95 - 9/4/95	EDINBURG - HARLINGEN	
13) HUNTSMAN CORPORATION	7/24/95	7/25/95 - 7/26/95 @ 9 am	PORT ARTHUR - BEAUMONT	
14) UNIV. OF TEXAS AT SAN ANTONIO	7/24/95	Completion by 8/15/95	SAN ANTONIO - SAN ANTONIO	
15) UNIV. OF TEXAS AT TYLER	7/24/95	Completion by 8/15/95	TYLER - TYLER	
16) CENTRAL & SOUTH WEST SERVICES, INC.	7/25/95	9/11/95 @ 1 pm	VERNON - ABILENE	
17) HOECHST CELANESE, CHEMICAL GROUP	7/25/95	7/27/95 @ 7:30 am	PAMPA - AMARILLO	
18) UNION CARBIDE CORPORATION	7/25/95	7/26/95 @ 8:30 am	SEADRIFT - CORPUS	
19) PHILLIPS PETROLEUM COMPANY	7/26/95	Completion on 7/28/95	FREEPORT - HOUSTON	
20) PHILLIPS PETROLEUM COMPANY	7/26/95	Completion on 7/28/95	JONES CREEK - HOUSTON	
21) SEAGAS PIPELINE COMPANY, BLUE RIDGE	7/26/95	8/14/95	BLUE RIDGE - ARLINGTON	
22) SEAGAS PIPELINE COMPANY, MADISONVILLE	7/26/95	Completion on 7/28/95	MADISONVILLE - WACO	
23) SEAGAS PIPELINE COMPANY, RICHMONT	7/26/95	Completion on 7/28/95	ROSEBERG - HOUSTON	
24) SEAGAS PIPELINE COMPANY, TEAGUE	7/26/95	8/07/95	TEAGUE - WACO	
25) SEAGAS PIPELINE COMPANY, TERRELL	7/26/95	8/14/95	TERRELL - ARLINGTON	
26) SEAGAS PIPELINE COMPANY, TRINITY	7/26/95	8/07/95	CORSICANA - ARLINGTON	
27) SEAGAS PIPELINE COMPANY, WALLER	7/26/95	Completion on 7/28/95	WALLER - HOUSTON	
28) MONSANTO, THE CHEMICAL GROUP	8/2/95	8/17/95 @ 8 am	HOUSTON - HOUSTON	
29) ARCO CHEMICAL COMPANY	8/4/95		BAYPORT - HOUSTON	
30) ALLIED - APICAL COMPANY	8/7/95	8/08/95 - 10/95 (by 1/96)	PASADENA - HOUSTON	11/10/95
31) ALCOA - ALUMINUM COMPANY OF AMERICA	8/8/95	9/19/95 - 9/28/95	ROCKDALE - WACO	
32) MARATHON OIL COMPANY	8/11/95	8/14/95 - 8/18/95	TEXAS CITY - HOUSTON	
33) PILGRIM'S PRIDE CORPORATION	8/11/95		MOUNT PLEASANT - TYLER	
34) EXXON COMPANY, USA - ALAZAN	8/14/95	10/16/95	KLEBERG CO. - CORPUS	
35) EXXON COMPANY, USA - CARTHAGE	8/14/95	8/21/95	PANOLA CO. - TYLER	
36) EXXON COMPANY, USA - CLEAR LAKE	8/14/95	9/10/95	HARRIS CO. - HOUSTON	
37) EXXON COMPANY, USA - GRETA	8/14/95	10/09/95	REFUGIO CO. - CORPUS	
38) EXXON COMPANY, USA - KING RANCH	8/14/95	9/11/95	KLEBERG CO. - CORPUS	
39) EXXON COMPANY, USA - LAGUNA LARGA	8/14/95	10/16/95	KLEBERG CO. - CORPUS	
40) EXXON COMPANY, USA - NINE MILE PT.	8/14/95	10/16/95	ARANSAS CO. - CORPUS	
41) EXXON COMPANY, USA - STILLMAN	8/14/95	8/28/95	KENEDY CO. - CORPUS	
42) EXXON COMPANY, USA - TOM O'CONNOR	8/14/95	10/09/95	REFUGIO CO. - CORPUS	
43) EXXON COMPANY, USA - VIBORAS	8/14/95	8/28/95	BROOKS CO. - CORPUS	
44) PHILLIPS PETROLEUM COMPANY	8/14/95	8/14/95 - 8/18/95	BORGER - AMARILLO	
45) OXYCHEM - OCCIDENTAL CHEMICAL CORP.	8/17/95	8/21/95 - 8/25/95	CORPUS CHRISTI - CORPUS	12/12/95
46) UNIV. OF TEXAS HEALTH CENTER AT TYLER	8/17/95	8/28/95	TYLER - TYLER	
47) MULLINS MANUFACTURING COMPANY, INC.	8/18/95	8/21/95 @ 9 am	DALLAS - ARLINGTON	

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COMPANY	LETTER DATE	AUDIT PERIOD	FACILITY - REGION	DOV DATE
48) PHILLIPS PETROLEUM COMPANY	8/18/95	10/09/95	PASADENA - HOUSTON	
49) PHILLIPS PETROLEUM COMPANY	8/18/95	8/21/95	DUMAS - AMARILLO	
50) PHILLIPS PETROLEUM COMPANY	8/18/95	9/11/95	BORGER - AMARILLO	
* UNIV. OF TEXAS - PAN AMERICAN	8/21/95	8/28/95 (Rescheduled)	EDINBURG - HARLINGEN	
51) UNIV. OF TEXAS AT AUSTIN	8/21/95	8/21/95	AUSTIN - AUSTIN	
52) STERLING CHEMICALS, INC. (CLASS 1 INJT.)	8/22/95	2nd Wed. of each month	TEXAS CITY - HOUSTON	
53) DIAMOND SHAMROCK REFINING COMPANY	8/30/95	10/02/95	THREE RIVERS - SAN ANTONIO	2/13/96
54) DIAMOND SHAMROCK REFINING COMPANY	8/30/95	11/01/95	SUNRAY - AMARILLO	
55) LONE STAR INDUSTRIES, INC.	8/30/95	8/30/95 @ 5 pm - February	MARYNEAL - ABILENE	
58) LA GLORIA OIL AND GAS COMPANY	9/5/95	9/06/95 - 8/08/95	TYLER - TYLER	
57) EXXON CHEMICAL COMPANY	9/7/95	9/11/95 - February	BAYTOWN - HOUSTON	
58) VALERO REFINING COMPANY	9/11/95	8/12/95 @ 8 am	CORPUS CHRISTI - CORPUS	
59) CENTRAL & SOUTH WEST SERVICES, INC.	9/15/95	9/25/95 @ 10:30 am	SAN ANGELO - SAN ANGELO	
60) HOLNAM TEXAS LIMITED PARTNERSHIP	9/19/95	10/11/95 @ 8 am - March	MIDLOTHIAN - ARLINGTON	
61) UNION CARBIDE CORPORATION	9/20/95	9/21/95 @ 7:30 am	SEADRIFT - CORPUS	
62) THE UNIV. OF TEXAS AT ARLINGTON	9/25/95	On or about 10/03/95	ARLINGTON - ARLINGTON	
63) SGS-THOMSON MICROELECTRONICS	9/26/95	9/27/95 - 12/27/95	CARROLLTON - ARLINGTON	
64) ENCYCLE / TEXAS, INC.	9/27/95	9/27/95 @ 10 am	CORPUS CHRISTI - CORPUS	
65) OWENS-CORNING FIBERGLAS CORP.	9/27/95	10/05/95 @ 8 am	AMARILLO - AMARILLO	2/15/96
66) PHILLIPS PETRO. CO. - SPRABERRY PLANT	9/28/95	12/4/95 - 12/8/95 @ 8 am	EULESS - ARLINGTON	
67) PHILLIPS PETRO. CO. - ARLINGTON TERM.	9/28/95	11/13/95 - 11/17/95 @ 8 am	MIDLAND - ODESSA	
68) PHILLIPS PETRO. CO. - BENEDEUM TERM.	9/28/95	12/4/95 - 12/8/95 @ 8 am	RANKIN - ODESSA	
69) PHILLIPS PETRO. CO. - HOUSTON CHEMICAL	9/28/95	10/9/95 - 10/13/95 @ 8 am	PASADENA - HOUSTON	
70) PHILLIPS PETRO. CO. - ANDECTOR FIELD	9/28/95	10/18/95 - 10/20/95 @ 8 am	GOLDSMITH - ODESSA	
71) PHILLIPS PETRO. CO. - SWEENEY REFINERY	9/28/95	10/23/95 - 10/27/95 @ 8 am	SWEENEY - HOUSTON	
72) CENTRAL & SOUTH WEST SERVICES, INC.	9/30/95	10/9/95 @ 9 am	HARLINGEN - HARLINGEN	
73) HOECHST CELANESE CORPORATION	10/2/95	10/9/95 @ 9 am	CORPUS CHRISTI - CORPUS	10/31/95
* HOECHST CELANESE CORPORATION	10/2/95	Continuation from 7/25/95	PAMPA - AMARILLO	
74) CHEVRON U.S.A., INC. - GALENA PARK	10/3/95	10/3/95	GALENA PARK - HOUSTON	
75) SHELL CHEMICAL COMPANY	10/9/95	10/18/95 @ 7 am	DEER PARK - HOUSTON	
76) LA GLORIA OIL & GAS COMPANY	10/11/95	10/18/95	TYLER - TYLER	
77) ELF ATOCHEM NORTH AMERICA, INC.	10/12/95	10/16/95	HOUSTON - HOUSTON	
78) AVAIL, INC.	10/13/95	9/1/95	FORT WORTH - ARLINGTON	
79) AVAIL, INC.	10/13/95	9/1/95	MCALLEN - HARLINGEN	
80) AVAIL, INC.	10/13/95	9/1/95	DALLAS - ARLINGTON	
81) HOECHST CELANESE CORPORATION	10/18/95	10/18/95	PAMPA - AMARILLO	10/23/95
82) CELANESE ENGINEERING RESINS, INC.	10/17/95	11/13/95 @ 9 am	BISHOP - CORPUS	
83) UNION CARBIDE CORPORATION	10/18/95	10/19/95 @ 7:30 am	SEADRIFT - CORPUS	
84) LA GLORIA OIL AND GAS COMPANY	10/23/95	10/25/95	TYLER - TYLER	
85) HUNTSMAN CHEMICAL CORPORATION	10/23/95	10/23/95 @ 9 am	PASADENA - HOUSTON	
86) HARRISBURG / WOOLLEY, INC.	10/25/95	10/25/95	ODESSA - ODESSA	12/20/95 1/22/96 12/20/95 2/6/96 10/26/95
87) HARRISBURG / WOOLLEY, INC.	10/25/95	Next several weeks	HOUSTON - HOUSTON	
88) LOUISIANA - PACIFIC CORPORATION	10/27/95	On or before 12/1/95	EL PASO - EL PASO	
89) NAVAJO REFINING COMPANY	11/1/95	Extended until 12/17/95	TEXAS CITY - HOUSTON	
* STERLING CHEMICALS, INC.	11/2/95	11/29/95 @ 8:30 am	AUSTIN - AUSTIN	
90) TEXAS INSTRUMENTS, INC.	11/6/95	11/7/95; 11/13/95 - 11/16/95	TEXAS CITY - HOUSTON	
91) UNION CARBIDE CORPORATION	11/6/95			

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COMPANY	LETTER DATE	AUDIT PERIOD	FACILITY - REGION	DOV DATE
92) UNIV. OF TEXAS AT AUSTIN	11/8/95	11/14/95	AUSTIN - AUSTIN	
93) LORAL VOUGHT SYSTEMS	11/8/95	11/13/95 - 11/16/95 @ 7 am	GRAND PRAIRIE - ARLINGTON	
* CHEVRON U.S.A COMPANY, GALENA PARK	11/8/95	10/3/95 - Confirmation letter	GALENA PARK - HOUSTON	
94) ENRON CORP METHANOL COMPANY	11/8/95	11/14/95 @ 8:30 am	PASADENA - HOUSTON	
95) VASTAR RESOURCES, INC.	11/13/95	12/11/95 @ 10 am -12/15/95	CARTHAGE - TYLER	
96) VASTAR RESOURCES, INC.	11/13/95	12/11/95 @ 10 am -12/15/95	JOAQUIN - BEAUMONT	
97) DALLAS MORNING NEWS, INC.	11/14/95	11/14/95 - 12/31/95	PLANO - ARLINGTON	
98) MONSANTO	11/14/95	11/27/95 @ 8 am	ALVIN - HOUSTON	
89) HOECHST CELANESE CORPORATION	11/15/95	11/29/95 @ 8 am	SEABROOK - HOUSTON	
100) EXXON CHEMICAL AMERICAS (EXXON CO.)	11/15/95	11/27/95 @ 8 am	BAYTOWN - HOUSTON	
101) HOECHST CELANESE CORPORATION	11/16/95	11/27/95 @ 1 pm	PASADENA - HOUSTON	
102) CENTRAL & SOUTH WEST SERVICES, INC.	11/18/95	11/28/95 @ 1 pm	SAN ANGELO - SAN ANGELO	
* SGS - THOMSON MICROELECTRONICS, INC.	11/20/95	Continuation until 3/27/95	CARROLLTON - ARLINGTON	
103) ELF ATOCHEM NORTH AMERICA, INC.	11/21/95	11/27/95	BEAUMONT - BEAUMONT	
104) SHELL OIL PRODUCTS COMPANY	11/21/95	11/27/95 @ 8 am	ODESSA - ODESSA	
105) OXYCHEM - OCCIDENTAL CHEMICAL CORP.	11/22/95	12/4/95 @ 8 am	DALLAS - ARLINGTON	
106) ALCOA - ALUMINUM COMPANY OF AMERICA	11/30/95	12/4/95 @ 7:15 am	POINT COMFORT - CORPUS	
107) OXYCHEM - OCCIDENTAL CHEMICAL CORP.	12/1/95	12/12/95 @ 8 am	ALVIN - HOUSTON	
108) VALERO ENERGY CORPORATION	12/4/95	12/95 @ 8 am	CARRIZO SPRINGS - SAN ANTONIO	
109) PHILLIPS 66 COMPANY - PHILLIPS PTR. CO.	12/4/95	12/11/95 - 12/13/95	ELKHART - TYLER	
110) EXXON CHEMICAL AMERICAS	12/5/95	12/6/95 @ 8 am	BAYTOWN - HOUSTON	
111) SUNBELT CEMENT INC. (received 12/7/95)	12/7/95	12/8/95	NEW BRAUNFELS - SAN ANTONIO	
112) CITY OF LUBBOCK (1st letter dated 11/16/95)	12/7/95	12/7/95 - 6/7/96	LUBBOCK - LUBBOCK	
113) OXYCHEM - BASIC CHEMICALS GROUP	12/8/95	12/4/95 - 12/11/95	DALLAS - ARLINGTON	
114) VALERO ENERGY CORPORATION	12/11/95	12/12/95 @ 8 am	PALESTINE - TYLER	
115) HOECHST CELANESE	12/13/95	12/14/95 @ 7:30 am	PASADENA - HOUSTON	
116) LA GLORIA OIL AND GAS COMPANY	12/14/95	12/15/95	TYLER - TYLER	
117) CUPLEX, INC.	12/14/95	1/15/96	GARLAND - ARLINGTON	
* STERLING CHEMICALS (ext. of audit period)	12/15/95	7/17/95 - 1/17/96	TEXAS CITY - HOUSTON	
* CHAMPION INTRN'L CORP (ext. of audit period)	12/19/95	Within 180 days (thru 6/96)	CORRIGAN - BEAUMONT	
* CHAMPION INTRN'L CORP (ext. of audit period)	12/19/95	6/95 - 3/96	CAMDEN - BEAUMONT	
118) CROWN CENTRAL PETRO. CORP. (La Gloria)	12/21/95	12/22/95	TYLER - TYLER	
119) ELF ATOCHEM NORTH AMERICA, INC.	1/3/96	1/15/96 & 1/29/96	HOUSTON - HOUSTON	
120) CHEMICAL WASTE MANAGEMENT, INC.	1/8/96	1/31/96 - 6/96	PORT ARTHUR - BEAUMONT	
121) MONSANTO, THE CHEMICAL GROUP	1/10/96	1/15/96 @ 8 am	ALVIN - HOUSTON	
* MONSANTO (separate ltr. to TDH - received 2/29)	1/10/96	1/15/96 @ 8 am	ALVIN - HOUSTON	
122) GENERAL MOTERS CORPORATION		1/22/96 @ 2 pm	WICHITA FALLS - ABILENE	
123) LYONDELL PETROCHEMICAL COMPANY	1/12/96	1/17/96 @ 8 am	MATAGORDA - HOUSTON	
124) OXYCHEM - OCCIDENTAL CHEMICAL CORP.	1/15/96	1/23/96 @ 8 am	CORPUS CHRISTI - CORPUS	
125) CENTRAL & SOUTH WEST SERVICES, INC.	1/18/96	1/29/96 @ 10 am	LAREDO - HARLINGEN	
126) MONTANA POWER COMPANY (MPC)	1/18/96	1/29/96 @ 9 am	JEWETT - WACO	
127) UNION CARBIDE CORP.	1/22/96	1/22/96 @ 4 pm - 2/2/96	SEADRIFT - CORPUS	
128) LYONDELL PETROCHEMICAL COMPANY	1/25/96	1/29/96	CHANNELVIEW - HOUSTON	
129) TEXAS DRYDOCK, INC. - SOUTH YARD	1/25/96	2/1/96 @ 8 am	SABINE PASS - BEAUMONT	
130) TEXAS DRYDOCK, INC. - DOCK YARD	1/25/96	2/1/96 @ 8 am	PORT ARTHUR - BEAUMONT	
131) TEXAS DRYDOCK, INC. - MAIN YARD	1/25/96	2/1/96 @ 8 am	ORANGE - BEAUMONT	
132) TEXAS DRYDOCK, INC. - NORTH YARD	1/25/96	2/1/96 @ 8 am	PORT ARTHUR - BEAUMONT	
133) TEXAS DRYDOCK, INC. - PIER FACILITY	1/25/96	2/1/96 @ 8 am	ORANGE - BEAUMONT	
134) TEXAS DRYDOCK, INC. - CENTRAL YARD	1/25/96	2/1/96 @ 8 am	PORT ARTHUR - BEAUMONT	

COMPANY	LETTER DATE	AUDIT PERIOD	FACILITY - REGION	DOV DATE
135) VASTAR RESOURCES, INC.	1/29/96	2/20/96 @ 10 am	FREER - CORPUS & HARLINGEN	
136) SIMPSON PASADENA PAPER COMPANY	1/31/96	1/96 - 6/96	PASADENA - HOUSTON	
137) OXYCHEM - OCCIDENATL CHEMICAL CORP.	2/5/96	2/12/96 @ 8:00 am	PASADENA - HOUSTON	
138) DOW CHEMICAL COMPANY	2/6/96	2/8/96 @ 12:00 pm	FREEPOR - HOUSTON	
* VASTAR RESOURCES, INC.	2/9/96	POSTPONED	FREER - CORPUS & HARLINGEN	
139) STERLING CHEMICALS - TETF SYSTEMS	2/12/96	2/15/96 - 8/15/96	TEXAS CITY - HOUSTON	
140) PHELPS DODGE REFINING CORPORATION	2/16/96	2/18/96 @ 7 am	EL PASO - EL PASO	
141) CENTRAL & SOUTH WEST SERVICES, INC.	2/16/96	2/26/96 @ 1 pm	BLACKWELL - SAN ANGELO	
142) TEXAS ELECTRIC COOPERATIVES, INC.	2/20/96	2/26/96 @ 8 am	AUSTIN - AUSTIN	
143) OXYCHEM - OCCIDENTAL CHEMICAL CORP.	2/20/96	2/28/96 - 3/1/96	CORPUS CHRISTI - CORPUS	
144) ASARCO, INC. - COPPER REFINERY	2/22/96	3/11/96 @ 8 am	AMARILLO - AMARILLO	
145) CHEMICAL WASTE MANAGEMENT, INC.	2/22/96	2/22/96 - 3/15/96	PORT ARTHUR - BEAUMONT	
146) COMPAQ COMPUTER CORPORATION	2/22/96	2/27/96	HARRIS CO. - HOUSTON	
147) GENERAL MOTORS CORPORATION	2/27/96	3/4/96 @ 2 pm	ARLINGTON - ARLINGTON	
148) LYONDELL PETROCHEMICAL COMPANY	2/27/96	2/28/96 @ 8 am	PASADENA - HOUSTON	
149) CAPITOL CEMENT	3/4/96	3/7/96 @ 9 am	SAN ANTONIO - SAN ANTONIO	

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PAGE 08

U. S. DEPARTMENT OF LABOR

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



January 27, 1997

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

Dear Commissioner Cashen:

Per your request, we have performed a preliminary review of Alaska Senate Bill 41 regarding privileges and immunities related to disclosure of certain self-audits.

Alaska Senate Bill 41 would impose very substantial limitations upon Alaska's authority to investigate accidents and illnesses in the workplace, to document the causes of those accidents and illnesses, and to administer a program of fair and effective enforcement. One of the most basic responsibilities Congress placed upon states which elect to maintain their own, federally-approved occupational safety and health plan is to provide standards, and a system for the enforcement of those standards, which are "at least as effective as" the standards and enforcement program implemented by federal OSHA.

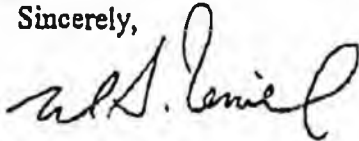
No system of employer privileges and immunities comparable to the one envisioned in SB 41 has ever been applicable under the federal Occupational Safety and Health Act, and indeed, federal court decisions make it clear that a self-audit privilege would be inconsistent with section 8 of that Act. Nor, to my knowledge, has any other state with a federally-approved OSHA plan ever implemented such a privilege.

SB 41 would create an evidentiary privilege enabling employers to withhold information customarily relied upon by safety and health investigators, federal and state, not only in cases involving alleged willful violations but many other routine circumstances as well. OSHA standards and regulations dealing with chemical process safety, confined spaces, workplace respiratory hazards, occupational noise, and a wide variety of other hazards all involve some degree of self-policing by the employer, documentation of which would be largely unavailable outside the company if SB 41 were enacted. Investigation of OSHA cases involving such diverse issues as multi-employer work site responsibilities, the general duty clause, and whistleblower protection cases would be impeded.

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In summary, the employer privileges and immunities proposed in this bill would significantly impair the credibility and effectiveness of Alaska OSHA's enforcement program. Because an effective enforcement program is a statutory mandate for all state plans, enactment of such a provision by the state would seriously undermine the continued approvability of the Alaska OSHA program, and may result in a recommendation to the Assistant Secretary that federal approval and funding for the Alaska program be withdrawn.

Sincerely,



Richard S. Terrill
Acting Regional Administrator

cc: Paula White, Director, Federal-State Operations.
Frank Strasheim, Deputy Assistant Secretary

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030
FAX: (907) 465-3068

January 28, 1997

The Honorable Loren Leman
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Leman:

I appreciate this opportunity to share with you our concerns regarding SB 41, relating to environmental, health and safety audits.

The Department of Health and Social Services has a number of concerns regarding the potential impact of your bill on various functions and responsibilities related to the Medicaid Program. These functions include the licensing of health care facilities under state law at AS 18.20, the certification of health facilities that the department does under contract with the Health Care Financing Administration to assure that the facilities meet acceptable standards (certification allows a facility to bill Medicare and Medicaid for health care services rendered), the auditing and utilization functions related to assuring that appropriate payments are made for services, and the auditing functions performed by the Medicaid Rate Advisory Commission in setting facility rates paid under Medicaid. The Department of Law also performs provider fraud investigations of the Medicaid providers under contractual arrangements with the department, and share the department's concerns.

All of these functions are designed, and required under federal law, to assure that quality care is provided in a safe environment, that payments are accurately made for services appropriate for the clients needs, that the payment levels are adequate to meet the standards in federal law. The department fears that the audit privilege under SB 41 would create the perfect avenue for a dishonest person to conceal illegal activities by preventing access to the very records necessary to verify that services were correctly provided and billed, or demonstrating the provider's mental state in order to prove fraud and program abuse. Additionally, a provider could claim an audit privilege which would prevent the division from imposing sanctions relating to program abuse; sanctions described in regulations include recoupment of inappropriately paid funds. This would place the state in the position of being unable to collect funds which the state is required by federal law to return to the federal government within 60 days of identification of an erroneous payment.

The Medicaid Rate Advisory Commission auditors rely on access to facility records, self audits, and cost reports in the complex rate setting process. Lack of access to any of the numerous documents necessary to determine that rates are in compliance with the federal "Boren Amendment", to assure that payments relate to economically efficient operation, would add further complexity to the rate setting process.

Senator Loren Lemman
January 28, 1997
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The department believes that no public purpose would be served by allowing any audit privileges related to the functions previously described. The department believes that in order to protect the significant public investment in the Medicaid Program, and guarantee the health and safety of Alaskans who receive care in facilities, that the committee should exclude the Department of Health and Social Services from the purview of this bill.

Thank you for your consideration of this request. Please contact me if you need any additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen Perdue".

Karen Perdue
Commissioner

Committee Aide

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 23, 1997

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 260-5100
FAX: (907) 276-3637

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2311
FAX: (907) 451-2648

P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99511-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

Honorable Loren Lemam
Chairman, Senate Labor and Commerce Committee
State of Alaska
State Capitol
Juneau, Alaska 99801-1182

Re: Senate Bill No. 41; An Act relating to
environmental audits and health and safety
audits to determine compliance with certain
laws, permits, and regulations.

Dear Senator Lemam:

I have reviewed Senate Bill 41 and I am concerned that it may compromise or even jeopardize Alaska's federally approved and federally funded OSHA program. In order to understand how this bill may affect Alaska's OSHA program, it is important to understand the relationship between Alaska's OSHA program and the federal OSHA program.

In the mid-1970's, the U.S. Congress enacted the Occupational Safety and Health Act ("OSHA"). 29 U.S.C. § 650. Congress gave the U.S. Department of Labor the power to promulgate workplace safety standards. Congress also gave the U.S. Department of Labor the right to enter workplaces and conduct inspections. 29 U.S.C. § 657. In 29 U.S.C. § 657, Congress gave the U.S. Department of Labor the authority to subpoena persons and documents when it conducts inspections.

In the Occupational Safety and Health Act, Congress also provided that the U.S. Department of Labor could approve a state enforcement OSHA plan so long as the state OSHA plan was as effective as federal OSHA. 29 U.S.C. § 667. There are about 25 federally approved state enforcement plans.

Honorable Loren Leman
Chairman, House Resources Committee
Our file: 661-97-080

January 23, 1997
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In 29 C.F.R. § 1952.240, the U.S. Department of Labor approved Alaska's state plan because it is as effective as the federal program. AS 18.60.030(5). Consequently, the U.S. Department of Labor oversees Alaska's state OSHA program and substantially funds the program.

Senate Bill 41, in my opinion, will make our state OSHA program less effective than the federal OSHA program in two ways.

First, Senate Bill 41 creates a privilege for "audits." The federal OSHA program has no such privilege. Currently, when the Alaska Department of Labor conducts its investigation, it, like the U.S. Department of Labor, can subpoena documents from an employer. AS 18.60.083. This bill will prevent the Alaska Department of Labor from subpoenaing audit information that the U.S. Department of Labor can subpoena. Documents, such as audits, can provide very important evidence, particularly in cases where an employer has willfully violated an OSHA regulation. AS 18.60.095(a). It is very difficult to prove an employer's state of mind; often the Alaska Department of Labor must weigh the employer's word against an employee's word. Under Senate Bill 41, the Department would not be able to obtain audit information which might demonstrate that the employer knew of the violation and knowingly chose not to correct the violation. In contrast, the U.S. Department of Labor could obtain this information during its inspection.

Second, Senate Bill 41 provides immunity in certain situations. The U.S. Department of Labor does not provide employers with immunity. Consequently, the U.S. Department of Labor could bring OSHA citations against employers, that the Alaska Department of Labor could not bring.

I am only aware of one state that has expanded the audit privilege/immunity beyond environmental audits. To my knowledge, only Texas has expanded the audit privilege/immunity to "health and safety audits." Texas does not have a federally approved state enforcement OSHA plan. Consequently, the U.S. Department of Labor conducts workplace safety inspections in Texas. Federal OSHA enforcement would not be affected by the Texas law.

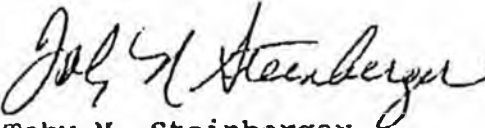
Honorable Loren Leman
Chairman, House Resources Committee
Our file: 661-97-080

January 23, 1997
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Alaska would be the first state, which has a federally approved OSHA state plan, that passed a law expanding the audit privilege/immunity to workplace safety inspections.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Toby N. Steinberger
Assistant Attorney General

Enclosure

TNS:akb

cc: Honorable Commissioner Tom Cashen
Department of Labor
Patrick Pourchot, Legislative Director
Office of the Governor
Dwight Perkins, Special Assistant
Department of Labor
Deborah Behr, Assistant Attorney General
Legislation & Regulations Section
Department of Law
Marie Sansone, Assistant Attorney General
Department of Law
Chrystal Smith, Legal Administrator
Department of Law

Sectional Analysis -- SB 41

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

Prepared by: Mike Pauley, Staff to Sponsor SENATOR LOREN LEMAN
Last updated: Tuesday, January 21, 1997

Section 1: Statement of legislative findings and intent.

- Performance-based standards are increasingly replacing the traditional command-and-control approach of enforcing environmental and health and safety regulations; this shift will lead to the integration of environmental and health and safety protections with normal operating procedures.
- The legislature intends to foster this integration by creating a responsible incentive program that will encourage voluntary, critical self-evaluations by regulated entities.
- The public has a strong interest in promoting routine self-audits by regulated entities. This can best be achieved by recognizing a qualified privilege that will help preserve the free flow of information generated by self-audits. Additionally, self-auditing can be encouraged by extending limited immunity to those entities which voluntarily report and correct regulatory noncompliance.

Section 2: Establishes privileges and immunities for certain self-audits.

Sec. 09.25.450 Establishes a qualified privilege for audit reports.

- Audit reports are not admissible as evidence or subject to discovery in civil or administrative proceedings (except for workers' compensation proceedings).
- A person who conducts a privileged audit, or who is in possession of privileged audit report documents, may not be compelled to testify about the audit or produce documents from the audit report.
- Regulatory agencies and their employees cannot obtain audit reports (except as provided in Section 09.25.460).
- All audit report documents must be labeled "COMPLIANCE REPORT: PRIVILEGED DOCUMENT" or similar words.
- The person claiming the audit privilege has the burden of proving its applicability to the case at hand.
- This section does not prevent a regulatory agency from conducting necessary inspections, taking appropriate enforcement actions, etc., except as provided in AS 09.25.475.
- No privilege is extended for uninterrupted or continuous environmental or health and safety audits.

Sec. 09.25.455 Establishes an exception to the privilege through the use of waivers.

- The audit privilege can be waived in writing by the owner or operator who prepared the audit report or caused it to be prepared.
- Disclosure of an audit report does not cause the privilege to be waived if the disclosure is made to an employee, contractor, lawyer, or other person involved in addressing or correcting any matter raised in the audit.
- Disclosure of an audit report does not cause the privilege to be waived if it is made under terms of a confidentiality agreement with a government agency, an insurer or underwriter, a lender, etc.

Sec. 09.25.460 Establishes an exception to the privilege through disclosure required by court or administrative hearing officer.

- A court or administrative hearing officer may conduct an *in camera* review of audit report documents for which privilege is claimed. Disclosure can be required if it is determined that the privilege is fraudulently asserted, or if the audit report reveals evidence of noncompliance which was not corrected promptly.
- The party seeking disclosure has the burden of proving that the exception to the privilege is appropriate in the case at hand.

Sec. 09.25.465 Describes materials not protected by privilege.

- Privilege does not apply to documents or other information required by an agency to be reported or maintained as part of an existing environmental or health and safety law.
- Privilege does not apply to information a regulatory agency obtains from its own observation or monitoring, or information obtained from a party not involved in preparing the audit report.
- Privilege does not apply to documents which existed prior to the commencement of an audit, or which were produced after the completion of the audit; nor does privilege apply to documents or information developed or maintained in the course of a regularly conducted business activity.

Sec. 09.25.475 Establishes limited immunity for voluntarily reported violations.

- An entity voluntarily disclosing violations identified through a self-audit will be immune from civil and administrative penalties, provided that action is promptly taken to correct the noncompliance and prevent its future recurrence.
- Disclosure of noncompliance must be reported in writing by certified mail to the appropriate regulatory agency. Disclosure must occur promptly after discovery of the noncompliance.

Sec. 09.25.475 (continued)

- Immunity is not available for violations independently detected by an agency prior to disclosure.
- Immunity is not available for violations resulting in substantial on-site injury or substantial off-site harm. Immunity can be denied if a court or administrative hearing officer finds that the person requesting immunity has a history of similar violations and a pattern of disregard for environmental or health and safety laws.
- Regulated entities can only qualify for the immunity by providing advance notice of intent to conduct an audit. Notice must specify scope and duration of audit and must be completed within the specified time, unless an extension is requested. Agencies may not initiate an inspection or other investigative activity based solely on the receipt of an audit notice.

Sec. 09.25.485 Relationship to other recognized privileges.

- This section clarifies that the act has no effect in limiting or abrogating any other existing privilege in statute or common law, such as the work product doctrine or attorney-client privilege.

Sec. 09.25.590 Definition of terms.

- "environmental or health and safety audit" means a voluntary, confidential, critical, internal, and retrospective review, evaluation, or analysis of current or past conduct, practices, and occurrences and their resulting consequences, including an assessment that is part of the owner's or operator's compliance management system. The review must be undertaken exclusively for the purpose of determining compliance with environmental or health and safety laws.
- "audit report" includes each document and communication produced from an environmental or health and safety audit, including an implementation plan or tracking system to correct past noncompliance and prevent future noncompliance. The audit report can include exhibits and appendices containing information that is collected or developed *for the primary purpose of and in the course of* an audit, including interviews with employees, field notes, drawings, photographs, maps, graphs, legal analyses, etc.

Section 3: Amends Alaska Statute 12.45.

- Establishes an audit report privilege in Title 12 of Alaska statutes.

Section 4: Applicability.

- Clarifies that the privilege created in Section 2 of the Act applies only to audits conducted on or after the effective date of the act.



Official Business

COMMITTEE:

SENATE LABOR & COMMERCE

DATE: 1/30/97

Subject of meeting:

SB 41 Environmental Health/Safety Audits

SIGN-IN

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

✓ Sue Schrader	PO Box 22151 Juneau 99802	463-3386	AK Environ. Lobby	yes
✓ AL Dwyer	AK Dept of Labor	465 4855		yes
✓ Toby Steinberger	AK Dept of Law, AAG for Labor	269-5136		ye
✓ Janice Adani	DEC	269-7645		YES
✓ Marie Sansone	AGO, Diamond Ct House, 6 th Flr, Juneau	465-6726	AGO	yes
✓ Nancy Weller	Div Med. Assistance	3355	DMH	yes

**ALASKA OIL AND GAS ASSOCIATION
POSITION ON
SB 41, ENVIRONMENTAL AND HEALTH & SAFETY SELF-AUDITS**

The Alaska Oil and Gas Association (AOGA) is a trade association whose 18 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

AOGA supports the intent of SB 41. The majority of our members currently conduct self-audits as a means of ensuring compliance and see value in this legislation. Over the past 25 years health, safety and environmental regulations have become increasingly complex. Not incidentally, interpretation of these regulations has become correspondingly difficult. In response to this, self-auditing identifies areas of inadvertent non-compliance, and leads to subsequent corrective action. We encourage others in all industries to utilize self-auditing, not just to ensure compliance but to generally improve health, safety and environmental performance. This legislation also encourages greater utilization of self-audits by providing immunity and ensuring confidentiality.

Immunity from penalties should be offered as an incentive for companies to identify, disclose, correct and prevent the reoccurrence of non-compliant behavior. Self-auditing, to be effective, should be undertaken without fear of consequences from regulatory agencies and without concern for final outcome. Providing immunity from penalties for deficiencies that are discovered through self-auditing and subsequently disclosed recognizes earnest efforts by companies to comply as opposed to penalizing them for such efforts. Immunity should not, however, extend to those who would knowingly and willfully commit violations and subsequently audit in order to shield themselves from just and appropriate consequences.

Privilege further protects companies from inappropriate and unnecessary repercussions of disclosing audit results to agencies (e. g. third party action). Privilege also ensures that the auditing process is not compromised. The issue is not one of "secrecy" it is a matter of being able to conduct candid interviews with personnel. To remain effective, it is necessary to preserve the integrity of the audit process and maintain the trust and cooperation of employees. Traditional legal privileges limit the flexibility that is important to the self auditing process. For example, attorney-client privilege does not provide for open, internal communication of audit results with employees. However, as with immunity there are reasonable limits to the application of privilege. Privilege should protect the products of an audit, such as the audit report, auditor working papers, and action plans. Privilege should not be a vehicle to hide the underlying facts.

SB 41 moves health, safety and environmental compliance in a positive direction through its encouragement of self-auditing. We are hopeful that legislation based on the intent of SB 41 can be passed and to that end we would be happy to work with the Department of Environmental Conservation, the Department of Law, State OSHA and the bill's sponsor on this legislation.

Looking for deficiencies, identifying them, disclosing them to the appropriate agencies and correcting them is what self-auditing is about. It is an important tool for voluntary compliance. Without privilege and immunity, voluntary self-audits can put a company at a competitive disadvantage relative to companies that do not audit. With privilege and immunity the state is saying self-auditing is in the best interest of the state as well as industry.

A L A S K A



January 21, 1997

Senator Loren Leman
State Capitol
Juneau, AK 99801-1182

Subject: Support for SB 41 - Environmental Self-Audits

Dear Senator Leman,

The Alaska Chapter of the National Federation of Independent Business has 4,500 members, making it the largest small-business advocacy group in the state. Each year the NFIB polls its diverse membership on a variety of issues. The federation uses the poll results to form its legislative agenda.

The 1997 NFIB State ballot included the following question regarding environmental audits:

Should the Alaska legislature adopt a procedure to allow a business to conduct a private self-audit of its compliance with environmental law and take corrective actions to address problems without fines or penalties?

The results were 80 percent in favor, 10 percent opposed, and 10 percent undecided.

Proponents of environmental self audits feel that the procedure would encourage regulated businesses to evaluate their compliance with environmental regulations and to correct problems internally, without fear of facing sanction from the state. The policy would encourage prompt, voluntary compliance and clean-up.

As companies are increasingly subject to new and complicated compliance regulations, the self audit procedure presents a workable solution to identifying problem areas and achieving compliance without fear of penalties for violations. This procedure does not allow a company to continue with non-compliance once a problem is identified. The program would be an encouragement for self-review and compliance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thyes Shaub', written over a horizontal line.

Thyes Shaub

Headquarters:
217 2nd Street, Suite 201
Juneau, Alaska 99801
(907) 586-2323 FAX (907) 463-5515

Regional Office:
P.O. Box 91896
Anchorage, Alaska 99509-1896
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TESTIMONY ON SB 41

Thank you for the opportunity to provide testimony on Senate Bill 41, regarding environmental audits and health and safety self-audits.

My name is Pamela LaBolle, and I am President of the Alaska State Chamber of Commerce. The State Chamber represents approximately 700 member businesses statewide which provide jobs to nearly 70,000 employees. Our network of representation also includes the 6000 business members of the local Chambers of Commerce throughout Alaska. As the Voice of Business, ASCC's mission is to create a climate in our state that is conducive to a strong private sector economy.

I am speaking today in support of SB 41. This legislation provides businesses with an opportunity to conduct self-audits in an effort to assure they are in compliance with environmental, health and safety laws. We believe this creates an incentive for businesses who find they have inadvertently been out of compliance with a law or regulation to voluntarily correct their actions without fear of penalty and strive to operate in the acceptable and prescribed manner. This law would not allow continued non-compliance once a problem has been identified.

The issues of disclosure of privileged information and the presumption of limited immunity are important ones. When voluntarily disclosing evidence of a self-incriminating nature, businesses need some assurance that the evidence they provide does not place them in a position of jeopardy. Although the state may have agreed not to prosecute on compliance issues discovered through self-audit, businesses would be loath to put themselves in a position to be sued by a third party, such as a special interest group. Yet, under this proposed legislation, there is a safeguard for the state in that the privilege can be overcome in certain instances.

We believe that government should be supportive of business activity wherever possible, and SB 41 fosters the attitude of partnership we believe government and business should strive to attain. We urge the committee's support of this legislation.



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 -- SB 41

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

Senate Bill 41 establishes two incentives for businesses and other regulated entities to conduct voluntary self-audits of internal operations, in an effort to secure full compliance with environmental and worker safety regulations.

The first incentive is limited immunity. Entities that conduct voluntary self-audits will be immune from civil and administrative penalties for violations discovered, provided several conditions are met. The instances of noncompliance must be discovered through a self-audit, and reported promptly to the appropriate regulatory agency. The regulated entity must take action to correct the identified problem and prevent its future recurrence. Immunity is not available for violations causing substantial off-site damage or serious on-site injury. In addition, no immunity is available for violations that are knowingly committed or that result from recklessness. Immunity can be denied to regulated entities with a history of similar violations, or a pattern of disregard for environmental or health and safety laws.

The second incentive is qualified privilege. Reports generated from voluntary self-audits will be considered privileged and therefore not admissible as evidence or subject to discovery in civil or administrative proceedings. This provision recognizes that an audit report by its very nature is a self-incriminating document: it discovers problems, identifies what personnel or management deficiencies are responsible, and recommends corrective action. Studies show that many businesses opt not to perform audits out of fear that the resulting reports will be used by agencies or hostile third parties as a "road map to prosecution". As with the immunity benefit, the privilege has limitations. Privilege can be overcome if asserted for a fraudulent purpose, or if the regulated entity has failed to take required actions to correct areas of noncompliance.

As the budgets of regulatory agencies are reduced at both the federal and state level, the importance of encouraging self-policing becomes ever more important. Senate Bill 41 creates incentives for companies and individuals acting in good faith to police themselves and maintain full compliance with highly complex regulations. This in turn allows government regulators to focus increasingly scarce resources toward investigating and prosecuting the small minority of genuinely "bad actors".

Environmental and health and safety auditing has become increasingly popular in the past two decades. More than 1,000 of the world's largest companies have self-audit programs in place. In the U.S., 18 states have enacted self-audit laws similar to SB 41, offering privilege and/or immunity benefits to participating businesses, individuals, and municipalities.

Why should we encourage self-auditing?

Lessons from the Price Waterhouse Survey

In February 1995, Price Waterhouse surveyed 369 companies nationwide, representing 14 different manufacturing and service sectors of the economy, for the purpose of gathering information on the practice of environmental audits.

(Survey was sponsored by the Compliance Management and Policy Group, which includes members such as AT&T, General Electric, American Petroleum Institute, Browning-Ferris Industries, etc.)

Significant findings:

- 75 percent of companies say they currently conduct self-audits.
- Two-thirds of the companies now conducting environmental self-audits say they "would expand such programs if penalties were eliminated for problems that the companies themselves identified, reported, and corrected."
- Among companies *not* performing audits, 20 percent "fear that audit information could somehow be used against the company."
- Among companies now conducting audits, 25 percent report that outside parties have attempted to obtain audit data, and these third parties succeeded in obtaining this information from 15 percent of the companies.
- Among companies currently performing audits, 12 percent said audit results had been used for enforcement purposes against them.
- 70 percent of companies conducting audits stated that "audits have significantly improved the company's regulatory compliance" and 50 percent stated that auditing "improved employee awareness, diligence, and compliance with company policies and procedures."



Honorable J. E. "Buster" Brown
Texas Senate
Chairman

Honorable Samuel B. Nunez, Jr.
Louisiana Senate President
Vice Chairman

Lori Cameron
Executive Director

122 West Carpenter Freeway
Suite 525
Irving, Texas 75039
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Fax: 214-717-6107

Policy Statement of the Energy Council
on Environmental Audits
Proposed By
Texas Representative Warren Chisum

Background

Fourteen states have passed legislation creating an environmental, health and safety self-evaluation privilege and at least eleven other states have introduced similar measures. The primary purpose of such legislation is to encourage companies and governmental entities to conduct voluntary self-audits ensuring compliance with environmental, health and safety laws and that violations of the law are brought quickly into compliance.

The audit privilege promotes internal review of operations without fear of prosecution or penalties for corrected problems. It also encourages the development of preventive strategies to avoid future compliance problems. Safeguards built into the legislation prevent companies from misusing the audit privilege or immunity gained from voluntary disclosure.

Federal regulatory agencies have been reluctant to support state audit privileges, creating a conflict of law for companies and government entities wishing to avail themselves of the provisions of state law.

Recommendation

The Energy Council recommends that state legislatures consider adopting legislation to provide an environmental, health and safety self-audit privilege relating to voluntary internal audits, as well as administrative, civil and criminal immunities from the enforcement of laws and regulations which have been discovered to have been violated (where such violations have been voluntarily disclosed to appropriate agencies and corrective measures taken). The Energy Council further recommends that the United States Congress enact legislation to provide similar federal protection or, at a minimum, to require federal enforcement authorities to recognize and abide by the terms of state self-audit privileges and immunities.

Disposition

This policy statement, adopted unanimously by the Energy Council on September 24, 1995, shall be distributed to the President of the United States, the Majority Leader of the U.S. Senate, the Speaker of the U.S. House of Representatives, as well as the congressional delegations, the governors, and legislative leadership of the Energy Council's member states.

SB

49

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 1/15/97

FURTHER: Judiciary

Date of 5-Day Notice: 2-6-97
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 2-11-97

Labor and Commerce Committee considered SENATE BILL NO. 49

Repealing certain filing statements and bonds for enforcement and collection of certain taxes and license fees; relating to service of process on nonresident taxpayers; efd.

and recommends:

- be replaced with _____ CS _____ ()
- 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>Tim Kelly</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>					
<i>[Signature]</i>					
<i>[Signature]</i>					
CHAIR: <i>Loren J. Leman</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
Commerce/Banking, Securities	1/15/97	✓	—
Revenue/Tax and Excise Audit	1/15/97	✓	—

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
→			
→			

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

**ALASKA DEPARTMENT OF REVENUE
INCOME AND EXCISE AUDIT DIVISION**

NONRESIDENT AFFIDAVIT (NRA) TAX BOND PROGRAM SHOULD BE DISCONTINUED

OVERVIEW

NRA Bond program (AS 43.10.160 - 200) began in 1955 because: (1) the majority of nonresident businesses and workers had no security or property physically located in the state which could be attached to enforce the payment of state taxes and license fees; (2) these nonresidents leave the state for varying periods, making the recovery of state taxes and license fees difficult. Every corporation not registered with Alaska as their headquarters must file a sworn affidavit and obtain a bond or provide real estate, subject to tax liens, to secure potential tax liabilities. Current technologies have made it easier for the Department to locate businesses and enforce the collection of taxes without the need for the bond program.

- Alaska is the only state that still imposes a tax bonding requirement on nonresident corporations. All 49 states were contacted; a few did have such a requirement, but abolished it because of discrimination issues.
- Approximately 2,011 affidavits were filed during FY96. The department spends approximately 800 hours administering the program. This time should be refocused to other tax programs, compliance work (i.e., corporate, fish, motor fuel) to increase revenue recovery.
- If challenged, the bonding program may be deemed discriminatory under the Equal Protection or Commerce Clause of the U.S. Constitution. Many taxpayers have told us this over the phone; Supreme Court decisions are replete with cases challenging taxes that draw lines between in-state and out-of-state corporations.
- The program is unproductive for business and staff because it has no real benefit. Taxpayers go through the efforts of obtaining a bond, completing the forms and filing, and also make estimated tax payments. Staff must maintain a file of documents and provide telephone assistance, even though bonds are never used as a tax collection tool.
- Staff of Income and Excise Audit do not remember a case where a bond was used to pay a delinquent tax lien.
- The requirement projects Alaska business environment as unfriendly to nonresident corporations. Many taxpayers have complained over the phone that the effort to meet our requirements is excessive considering the amount of business they do in the state. Eliminating this program helps achieve the Governor's goal of showing that the State of Alaska is "open for business". The corporations subject to this program are providing jobs to Alaskans.
- In 1996, \$2,119,584 was prepaid by 239 corporations. Interest earned was approximately \$58,000. The state does get revenue from this program, but the cost and work imposed on nonresident corporations is not justified. Also revenues recovered from the increased compliance effort would offset any revenue loss.

RECOMMENDATION

Discontinue the requirement for nonresident taxpayers to post a tax bond. Corporations tend to maintain permanent offices in Alaska and honor their tax liabilities due to SEC regulations, licensing requirements and audit procedures. The Department of Labor has its own bonding requirements, and fish processors, the most volatile taxpayers, are required to provide a specific surety bond under AS 44.25.040. In addition to repealing the statute six pages of regulations, 15 AAC 10.10 - 70 would be rescinded.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110400
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2300
FACSIMILE: (907) 465-2389

January 22, 1997

The Honorable Loren Leman
Alaska State Legislature
Senate Labor & Commerce Committee
State Capitol, Room 113
Juneau, AK 99801-1182

RE: Senate Bill 49, Service of Process on Nonresident Taxpayers

Dear Senator Leman:

SB 49, would repeal state statutes and regulations requiring unnecessary paperwork to be filed by nonresident corporations doing business in Alaska. This bill has its first referral in your committee and I respectfully request you schedule the legislation for a hearing.

Under AS 43.10.160 - 200, Nonresident Affidavit (NRA) Tax Bond Program, nonresident corporations (businesses who's official corporate registration is in another state) must file a sworn affidavit and obtain a bond to secure potential tax liabilities. This requirement results in businesses annually completing and filing forms with the state. Department staff must process and file documents as well as provide telephone assistance. This requirement was initiated in 1955 and has out lived its usefulness. Our staff do not remember a case where an NRA bond was ever used to pay delinquent taxes. Modern technology has provided many other ways to locate businesses and secure tax payments.

This issue was discussed in numerous Senate and House committees last year and received unanimous support. Omnibus Senate Bill 215, which included repeal of the NRA statutes, passed the Senate but failed to pass the House during the adjournment process. Thus a stand alone bill has been introduced to complete the work done by everyone last year.

Our conversations with the Anchorage Chamber of Commerce has gained their support. Enclosed is an overview providing more details on repeal of the program. In addition to repeal of statute 5 pages of regulations would be repealed.

SB 49 simplifies the process for doing business in Alaska. I look forward to working with you and request that your committee hear this bill.

Sincerely



Wilson L. Condon
Commissioner

Enclosure

SB49LTR.WPD

TONY KNOWLES
GOVERNOR



P.O. Box 110001
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(907) 465-3500
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

SB 49

January 15, 1997

The Honorable Mike Miller
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Miller:

Much of my effort in advertising Alaska as "open and ready for business" includes removing unnecessary barriers to doing business in our state. This bill does just that. It discontinues our requirement that nonresident businesses file a bond or other security with the Department of Revenue -- a requirement, I must note, that makes Alaska unique among all 50 states. In this area, I'd rather join the norm than be different.

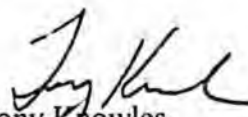
The bonding requirement, with a minimum \$1,000 bond, was enacted in 1955 to ensure the collection of state taxes and license fees from nonresident businesses which have little security or property in the state. It may have made sense back then when it was hard to find people if they abruptly closed up shop and left the state with a tax debt. But modern technology has fixed that problem.

Many taxpayers now complain the bonding and related filing requirements are excessive considering the amount of business they do in the state. Moreover, no one in the Department of Revenue can recall a case where a bond was actually used to pay a delinquent tax lien; the department has other means of ensuring that tax payments are made.

In fiscal year 1995, more than 2,000 corporations had to fill out lengthy paperwork and file these bonds. If the program is eliminated, the time the state spends on processing all these forms can be redirected toward expanded tax compliance work which would result in increased revenue to the state.

I submitted this same proposal last year to the legislature where it received much support. It passed the Senate as well as every committee of referral in the House of Representatives. The non-resident tax bond program serves only to discourage business in Alaska. It's time to take it off the books.

Sincerely,


Tony Knowles
Governor

FISCAL NOTE

2
 Bill Version: SB 49
 (S) Publish Date: 1/15/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____ Department: Commerce and Economic Development
 Title: Elimination of nonresident affidavit tax bond BPU: Banking, Securities & Corporations
program Component: Banking, Securities & Corporations
 Sponsor: Rules by Request
 Requestor: Governor COMPONENT SERIAL NO. 1233

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Willis F. Kirkpatrick, Director Phone: 465-2521
 Division: Banking, Securities and Corporations Date: 10/30/96
 Approved by Commissioner: William L. Hensley Date: 10/30/96
 Agency: Commerce and Economic Development

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Revision Date: _____ Dept. Affected: Revenue
 Title: Tax Bond Repeal BRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: Rules Committee
 Requestor: Governor COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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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 (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill would repeal requirements for nonresident taxpayers to file an annual affidavit with Department of Revenue. The affidavit requires taxpayers to estimate and post security for their tax liability for the upcoming year; however, AS 43.10.160 authorizes a waiver of security for good cause. Repeal of this requirement would reduce unnecessary work for both business and state workers. The program costs \$30,000 to administer and interest income earned on the bonds was approximately \$100,000. Staff time freed up is needed to increase our compliance work in corporate, motor fuel and fisheries taxes. New revenues from increased compliance is expected to more than offset loss of interest income. Income and Excise Audit Division has never had to file a claim against security posted under this program.

Prepared by: Paul E. Dick Phone: 465-3691
 Division: Income and Excise Audit Date: October 23, 1996
 Approved by Commissioner: Wilson L. Condon Date: 10/23/96
 Agency: Revenue

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FISCAL NOTE

Bill Number: SB55

(S) Publish Date: 1/16/97

STATE OF ALASKA 1997 LEGISLATIVE SESSION

Revision Date _____ Dept. Affected Various Departments
 Title An Act relating to the definition of certain state BRU _____
receipts; and providing for an effective date. Component _____
 Sponsor Rules Committee at the request of the Governor
 Requester _____ Component Serial No. _____

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES []						

FUND SOURCE		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1005 GF/Program Receipts						
1077 Gifts, Grants & Bequests	(2,512.5)	(2,512.5)	(2,512.5)	(2,512.5)	(2,512.5)	(2,512.5)
1091 Designated Program Receipts	(82.0)	(82.0)	(82.0)	(82.0)	(82.0)	(82.0)
Test Fisheries Receipts	2,594.5	2,594.5	2,594.5	2,594.5	2,594.5	2,594.5
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: 0.0

POSITIONS						
Full-time						
Part-time						
Temporary						

This bill addresses six fund sources under AS 37.05.146.

1. Establishes a new fund source titled Designated Program Receipts. These receipts are defined as: money that is received from a source other than the state and that is (A) restricted to a specific use under the terms of a gift, grant, bequest, contract or federal law; or (B) subject to appropriation for another purpose, but, is designated by state law as available for a specific use. NOTE: The Governor's FY98 budget includes \$50,900.1 in Designated Program Receipts.
2. Establishes a new fund source titled Test Fisheries Receipts. These receipts are derived from Department authorized test fish operations under AS 16.05.050 (15). NOTE: The Governor's FY98 budget includes these receipts in the Designated Program Receipts category. Upon passage of this legislation they will be moved to the appropriate fund source.
3. Deletes the separate fund source "Gifts, Grants & Bequests." These funds will be included in the Designated Program Receipts category.
4. Establishes, for the first time, a definition for Corporate Receipts. This is a "house-keeping" provision which codifies current budgetary practices.
5. Amends the language relating to the Public School Trust Fund to comport with statutory language.
6. Establishes a separate fund source reference for the Alaska Children's Trust.

Prepared by Royce Weller Phone 465-4694
 Division OMB Date 1/15/97
 Approved by Annalee McConnell Date 1-15-97
 Agency Director, Office of Management & Budget

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 1/16/97

FURTHER: Resources
Judiciary
Finance

Date of 5-Day Notice: 1-23-97
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2-5-97

Labor and Commerce Committee considered SENATE BILL NO. 55

"An Act relating to the definition of certain state receipts; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- 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 DQ PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tim Kelly</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>					
CHAIR:		<i>[Signature]</i>			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
Gov - OMB	1/15/97	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

DESIGNATED PROGRAM RECEIPTS
FY96 -FY98 Comparison

Spreadsheet KEY: A= assessments; C= contracts; F= restricted fees; L= legal; T= third party billings; TF= Test Fisheries				FY96	FY97	FY98
Dept	BRU/Component	Description	Type	Actuals	Auth	Request
Commerce	Alaska Seafood Marketing Institute (ASMI)	Marketing Assesments & Marketing Tax used to market Alaska Seafood	A	10,001.0	7,894.2	7,887.40
H&SS	State Health Services	Food vendor contributions provided under agreement to Maternal Child & Family Health for the purpose of advertising the "Five a Day" Program.	A	0.0	0.0	0.00
Assessment Subtotal				10,001.0	7,894.2	7,887.40
Administration	Information Services	Various contractual services; including repairs to Kenal TV system	C	20.0	55.0	55.00
Administration	Public Communications Ser.	Repair & maintenance agreements with user communities	C	9.9	15.0	763.70
Commerce	Alaska Tourism Marketing Council (ATMC)	Industry portion of contract for co-operative marketing.	C	1,426.9	1,428.8	1,496.50
Education	AK Voc. Tech. Center	Training classes, under contract, for Cominco employees	C	41.3	237.7	239.20
DEC	Spill Prevent. & Response	Industry funds to mitigate/cleanup pollution at APC & KPC facilities.	C	191.9	25.0	455.00
DEC	Air & Water	Reimbursable services agreement for major industrial permit fees	C	240.6	645.1	465.30
Fish & Game	Com. Fish Management & Dev.	Lake fertilization studies funded by private hatcheries (Limnology)	C	0.0	99.7	0.00
Fish & Game	Com. Fish Management & Dev.	Special Projects: funded, under contract, by private entities	C	0.0	1,070.8	1,183.40
Fish & Game	Habitat & Restoration	Projects/studies funded, under contract, with private firms (i.e. ARCO, BP, NSB)	C	273.5	264.7	267.30
Fish & Game	Sport Fish	Fish raising project funded by Southern SE Aquaculture Association (Earl West Cove Project)	C	0.0	200.0	200.00
Fish & Game	Subsistence	Special studies & Shismaref subsistence practices project	C	68.0	121.2	193.20
Fish & Game	Wildlife Conservation	Contracts with non-state entities for wildlife management projects	C	299.0	300.3	304.60
H&SS	Family & Youth Services	Anchorage Muni. funds, provided under contract, for "Making a difference" project	C	92.0	125.0	125.00
Labor	Adminstrative Services	Contractual agreements with private & non-state agencies for specialized reports and on-site assistance	C	1.0	2.0	2.00
Labor	Employment Security	Data/Record services provided under contract with private/municipal entities	C	33.5	53.9	54.30
DNR	Resource Development	Receipts received under contract to implement Municipal land entitlements and various small contracts	C	22.6	15.0	15.00
DNR	Resource Development	User pay agreements for work on Badami Project, TAPS monitoring, and TAGS gas project	C	2,022.7	989.4	1,630.80
DOT	Central Region Design & Const.	Utility Rights-of-Way services under lease or sale provisions, e.g. cable companies, Tourism oriented direction signs (TODS)	C	83.6	128.7	87.70
DOT	North. Region Design & Const.	Utility Rights-of-Way services under lease or sale provisions	C	30.0	21.8	44.60

DESIGNATED PROGRAM RECEIPTS
FY96 -FY98 Comparison

Spreadsheet KEY: A= assessments; C= contracts; F= restricted fees; L= legal; T= third party billings; TF= Test Fisheries						
<u>Dept</u>	<u>BRU/Component</u>	<u>Description</u>	<u>Type</u>	<u>FY96 Actuals</u>	<u>FY97 Auth</u>	<u>FY98 Request</u>
DOT	SE Region Highway/Aviation	Road maintenance service contracts with various non-state entities, including: FAA, CBJ, USFS	C	71.7	75.0	76.00
		Contract Subtotal		4,928.2	5,874.1	7,658.60
Administration	Ak. Professional Development Institute	Receipts collected from non-state entities (local govts) for state sponsored training sessions.	F	113.7	147.7	147.70
Commerce	Tourism Development	Private party joint participation commitments for advertising; workshops; trade shows; marketing.	F	126.3	160.0	559.80
Education	Teaching & learn. Support	Teacher Certificate fees used by DPS for criminal background checks	F	110.0	110.0	110.00
DEC	Spill Prevent. & Response	Risk assessment fees to fund private toxicology assessments	F	0.0	25.0	25.00
Labor	Labor Standards & Safety	Safety Advisory Council conference activities restricted to participant fees	F	92.9	106.8	107.20
Public Safety	DPS Statewide Support	Fees collected to access criminal records by non-state entities which are restricted to maintenance of the criminal records system.	F	305.6	361.7	361.70
Public Safety	Fire Prevention	Fire Service training activities tied to fees collected from non-state entities	F	51.9	171.5	100.00
DOT	Central Region Design & Const.	Inspection services (utility permits) dependent upon payment of fees	F	195.4	196.8	196.80
DOT	North Region Design & Const.	Inspection services dependent upon payment of fees	F	33.5	42.7	66.40
DOT	S.E. Region Design & Const.	Inspection services dependent upon payment of fees	F	67.3	80.6	81.80
Labor	Employment Security	Conference for "People with Disabilities" directly related to participant fees	F	0.0	4.9	4.90
		Restricted Fee Subtotal		1,096.6	1,407.7	1,761.30
Commerce	APUC	Receipts are restricted by state law; rates required to cover full cost of program	L	3,382.1	3,964.9	4,117.50
Commerce	Insurance	Receipts are restricted by state law; rates required to cover full cost of program	L	3,842.2	4,759.9	4,163.00
Commerce	Occupational Lic. (boards)	Receipts are restricted by state law; rates required to cover full cost of program	L	175.6	240.8	153.30
Commerce	Occupational Lic. (operations)	Receipts are restricted by state law; rates required to cover full cost of program	L	3,901.2	5,273.3	4,371.90

DESIGNATED PROGRAM RECEIPTS
FY96 -FY98 Comparison

Spreadsheet KEY: A= assessments; C= contracts; F= restricted fees; L= legal; T= third party billings; TF= Test Fisheries						
Dept	BRU/Component	Description	Type	FY96 Actuals	FY97 Auth	FY98 Request
Education	Voc. Rehabilitation	Vending machine receipts; restricted for use by Business Enterprise Program	L	165.0	165.0	165.00
DEC	Air & Water	Federal law requires annual fees to cover permitting program	L	0.0	350.0	0.00
H&SS	Family & Youth Services	Federal law restricts SSI (Foster Care) and Old Age Survivor Insurance to named "beneficiary" - funds used to offset cost of care for those in state custody	L	1,150.4	1,140.0	991.50
H&SS	State Health Services	Federal law restricts manufacturer's formula rebates to the WIC program	L	2,029.5	1,950.0	2,700.00
HSS	Alaska Temporary Assistance Program (ATAP). Formerly the AFDC program.	ATAP operations funded by statutorily required deposits of Child Support collections related to ATAP cases - includes fiscal note to SB98	L	5,987.7	9,022.6	10,269.40
DOT	All Regions	Leasing receipts collected at state maintained "rural" airports	L	2,275.4	2,728.1	3,285.20
Labor	Labor Standards & Safety	Hazardous Painting Certificate Program receipts are restricted by state law to carrying out the program	L	43.7	29.0	26.00
Public Safety	Police Standards Council	Fees deposited into the Police Standards Training Fund are restricted by state law as to their use.	L	103.6	613.6	620.00
Legal (State or Federal Law) Subtotal				23,056.4	30,237.2	30,866.20
Commerce	Banking, Sec., & Corp.	Third party billings for travel expenditures	T	16.4	15.0	14.50
Commerce	Measurement Standards	Third party billings for travel expenditures	T	14.4	18.0	24.40
Commerce	Trade & Development	Third party billings for travel expenditures	T	1.8	15.0	14.50
Commerce	Insurance	Third party billings for travel expenditures	T	48.5	52.0	52.00
Commerce	Tourism Development	Third party billings for travel expenditures	T	2.6	5.0	5.00
Commerce	Occupational Lic. (boards)	Third party billings for travel expenditures	T		21.7	21.70
Third party billings Subtotal				83.7	126.7	132.10
DESIGNATED PROGRAM RECEIPT TOTALS				39,165.9	45,539.9	48,305.60
Various Dept.s	Various	Gifts, Grants & Bequests		794.7	2,926.9	2,512.50
DESIGNATED & GIFTS, GRANTS & BEQUESTS TOTALS				39,960.6	48,466.8	50,818.10
Fish & Game	Com. Fish Management & Dev.	Funds restricted for test fisheries projects	TF	2,031.4	2,223.3	2,594.50
DESIGNATED / GIFTS, GRANTS & BEQUESTS/ TEST FISH. TOTALS				41,992.0	50,690.1	53,412.60

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

January 16, 1997

The Honorable Mike Miller
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Miller:

As my Administration and the legislature work to cut the budget, we are faced with an accounting Catch-22: some increases in state spending have absolutely no effect on the fiscal gap. They are actually good for the state economy. Denying increases for economic development permitting, test fisheries or other services that users are willing to entirely pay for might help the "bottom line" for the state budget but they make no sense for the state economy. To avoid an increase in the bottom line, totally unrelated programs are often cut to meet budget caps. This makes no sense from the customer side of the counter.

In other cases, such as professional licensing or the regulation of insurance companies and utilities, the legislature has passed laws requiring the state's responsibilities be fully fee-supported by the users. The fee is to be no more and no less than the cost of protecting the public interest. If an increase in the number of engineers or teachers needing licenses requires an increase in the cost of providing that service, should some other public service be penalized an equivalent amount? Of course not.

Last year I proposed a way to eliminate this Catch-22 without limiting public disclosure of all state expenditures or the legislature's authority to appropriate. A version of my proposal was merged with SB265, a bill which cured the Catch-22 for test fisheries. Reintroduced in the Special Session as SB1009, it passed the House and was expected to pass the Senate when the clock ran out.

I am reintroducing a designated program receipts bill with two updates. As before, it establishes a category of program receipts generated by state government activities and

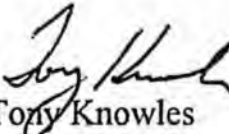
The Honorable Mike Miller
January 16, 1997
Page 2

treats them the same way we currently handle fund sources such as university tuition, gifts and grants. In reviewing the bill for this year, we realized that two technical additions to the statute would be in order. One adds the term "corporate receipts" to the statutory list of program receipts, codifying the longstanding treatment of receipts generated by our public corporations (such as AHFC and AIDEA). The other adds earnings of the Children's Trust which, I am very pleased to say, now has earnings for you to appropriate.

Designated program receipts would still be appropriated by the legislature, but they would not be included in the tally of unrestricted general funds. For information purposes, both my FY97 and FY98 budgets have shown general fund spending with and without designated program receipts to make it very clear that increases in services paid for entirely with designated program receipts do not widen the budget gap. We would continue that practice.

This bill makes common sense changes to our budget process without sacrificing fiscal information or legislative prerogative. I urge your favorable consideration.

Sincerely,


Tony Knowles
Governor

SB

65

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 1/28/97

FURTHER: Judiciary

Date of 5-Day Notice: 2-6-97
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 3-7-97

Labor and Commerce Committee considered

SENATE BILL NO. 65

"An Act relating to domestic animals, to food, and to the Alaska Food, Drug and Cosmetic Act; and providing for an effective date."

and recommends:

- be replaced with CS SB65 (LTC)
- 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>Tim Kelly</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>					
<i>[Signature]</i>					
CHAIR: <i>Brew A. Swan</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>DEC - Env. Health</i>	<i>2/11/97</i>	✓	

2 CS, also

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 7, 1997

SUBJECT: CSSB 65(L&C) (Work Order No. 0-GS0010\E)

TO: Senator Loren Leman
Chair, Senate Labor & Commerce Committee
Attn: Annette Kreitzer

FROM: *JB*
Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

Please note that the title does not appear to accurately reflect the contents of the bill. This is not caused by the amendments made by the committee. The bill repeals AS 03.05.070, which relates to rabies control. That section applies to animals in general, not just to domestic animals. The title refers to "domestic" animals, and the repealer does not fit under another part of the title. Because describing the bill's contents is a constitutional requirement (art. II, sec. 13, Constitution of the State of Alaska), I would suggest deleting "domestic" from the title.

Since the bill has passed out of your committee, you may want to pass this memo along to the next committee of referral.

If I may be of further assistance, please advise.

TLB:jdr
97-152.jdr

Enclosure




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

MEMO

TO: Terry Bannister
 Legal Services
 via fax: 2029 2 pages

FROM: Annette Kreitzer, Aide to 
 Senate Labor & Commerce Committee

DATE: February 19, 1997
 Resent: February 24, 1997

RE: Amendments to SB 65 (revised)

Please prepare the following amendments for the Labor & Commerce Committee to be offered by Senator Leman:

Amendment #1:

OK New language: Amend AS 03.05.11(a)(2) as follows:
 (2) establishment of quarantines for eradication of pests and diseases in livestock

Amendment #2:

NO Delete AS 03.25 "Veterinarians" in its entirety. *(causes a significant problem)*

Amendment #3:

OK Repeal AS 03.15.20 Agriculture Pest and Disease Control Fund, Purpose of appropriations.

Amendment #4:

Page 7, Line 2:
 (9) transportation, use [OR] disposal, recalls of, or warnings concerning, quarantined or embargoed items;

Amendment #5:

Page 10, Lines 20-24:

Delete all material and replace with:

*Sec. 19. AS 17.20 is amended by adding a new section to read:

Sec. 17.20.305. Penalty for violation. A person who with criminal negligence violates a provision of this chapter or a regulation, order, quarantine, embargo or recall made under authority of this chapter, or violates a provision of a permit issued under this chapter is guilty of a class A misdemeanor for each offense.

Amendments to SB 65

New - amend AS 03.05.011(a)(2) as follows:

(2) establishment of quarantines for eradication of pests and diseases in livestock;

New - Delete AS03.15 Agriculture Pest and Disease Control Fund. This fund was repealed in 1968 but the Purpose section was not.

New - Delete AS 03.25 "Veterinarians." We have to have a vet on staff anyway to do certain aspects of the meat inspection program, and the amendment to .011, above, ensures s/he can control diseases in livestock.

In the bill, page 7, line 2, amend to read as follows:

(9) transportation, use, [OR] disposal, recalls of, or warnings concerning, quarantined or embargoed items

Section 19, Page 10, line 21 amend as follows:

A person who with criminal negligence violates a provision of this chapter or a regulation, order, quarantine, [OR] embargo or recall made under authority of this chapter, or violates a provision of a permit issued under this chapter is guilty of a class A misdemeanor for each offense.

Disregard following amendments; needs considerable work:

03.45.010. Delete (seems to conflict with other parts of the chapter.)

03.45.020. Except as provided in 03.45.030, a person may not import into the state, or own, possess, sell, transport or convey inside the state any animal diseased or infected with any infectious, contagious or communicable diseases unless approved by the department.

New - Revise AS 03.45.030 as follows:

Conditions of Importation of certain animals. A person may not bring into the state any horse, cattle, sheep, goats, Cervidae, or swine for work, feeding, breeding, dairying, or for any other purpose unless the animal has been found free from any infectious, contagious or communicable disease.

Transportation of Animals and Livestock. A public or private transportation company or other common carrier may not bring any animal into the state without first ensuring it has been examined or treated by a licensed veterinarian, and found free from diseases. The department may require that the animal be accompanied by a permit issued by the department and a health certificate issued by a licensed veterinarian. When bringing a dog

Only ones to include

or cat into the state aboard an Alaska Marine Highway Vessel, the Alaska Marine Highway System may require the dog or cat be accompanied by a health certificate.

For purposes of this section, a "health certificate" means a legible certificate executed on an official form of the state or province of origin by a licensed veterinarian certifying that the animal is free from evidence of infectious or contagious diseases, including but not limited to rabies, and recording any required tests, vaccinations, or immunizations. A health certificate is valid for a period of 30 days from the date of issuance.

AS 03.53.010 delete

To: Annette Kreitzer
Fax #: 907-465-3810
Re: SB 65
Date: February 24, 1997
Pages: ~~Three~~ Two, including this cover sheet.

FACSIMILE

Annette, I have changed what I sent you but did revise so you can see the amendments we want. Essentially, all the amendments to AS 03.45 and AS 03.53 should be delayed until we can do all the work that needs doing for animal transportation and disease control. There are federal laws that apply that we need to be sure we are in sync with as well as International rules since so many of our animals come through Canada. As I said, we would be very happy to work with you on this (we will continue no matter what since it's clear it needs to be done) for next session.

Thanks for your help.

Janice

From the desk of...

Janice Adair
Director
Division of Environmental Health
655 Cordova Street
Anchorage, AK 99501

907-269-7644
Fax: 907-209-7643