

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SJUD 12585



ICICLE.

March 26, 2008

Chairman Hollis French
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99801

RE: HB 149: Authority of DEC/Pollutant Discharge Permits

Dear Chairman French and Committee Members,

I wish to express our support for HB 149. This legislation is a needed component to enable the State of Alaska to administer a pollutant discharge permitting and compliance program under the Clean Water Act.

We believe it is desirable for the state to have primacy from the Environmental Protection Agency (EPA) in the permitting of pollutant discharges in our state. We would much prefer to deal with one agency that is very familiar with the entities and activities that require such permits in Alaska rather than with two agencies under two different branches of government. These permits are unavoidably complex by nature and everyone would benefit from the less complicated approach afforded by a single agency administering the program.

Under federal law, the EPA is not allowed to approve a state program unless it is as stringent as the federal program. For many years the state has demonstrated its capability in this regard as administrator of the Clean Air Act in Alaska. Given the appropriate tools, there is good reason to believe the State would have the same success with primacy regarding the NPDES wastewater discharge permitting and compliance program.

We urge your adoption of HB 149. Thank you for your consideration.

Sincerely,

Kris Norosz

Government Affairs

PETERSBURG FISHERIES

A DIVISION OF ICICLE SEAFOODS, INC.

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ALASKA MINERS ASSOCIATION, INC.

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January 24, 2008

Honorable Hollis French
Chairman
Senate Judiciary Committee
Capitol Building
Juneau, AK 99801

RE: House Bill 149, Changes to Conform Alaska Statute for Assumption of NPDES

Dear Senator French,

The Alaska Miners Association supports CSHouse Bill 149(RES). This bill modifies the existing State Statute that was passed previously to enable the State to take primacy over the EPA National Pollution Discharge Elimination System (NPDES) program. This bill contains a few additional changes that are needed for the State to assume the program. For a state to obtain primacy over the NPDES program, its authorities must be at least as strong as those of FTA and this bill makes a few changes that are needed to ensure Alaska statutes meet that test.

Alaska is one of only five states that do not have primacy over NPDES. DEC has worked diligently for many years during several past administrations to obtain primacy and these changes are some of the final items to ensure that effort can be completed. The DEC staff has done an excellent job with this extremely detailed and complex issue. The fact that this HB-149 contains so few changes is a testimony to the thoroughness of DEC's efforts.

We urge that CSHB-149(RES) be passed and become law at the earliest possible date.

Sincerely,

Steven C. Borell, P.E.
Executive Director

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907)272-1481 Fax: (907)279-8114
Email: crockett@aoga.org
Marilyn Crockett, Executive Director

January 25, 2001

TO: Senate Judiciary Committee
Re: CSHB149 (RES) – ADEC Permitting Authority

On behalf of the Alaska Oil and Gas Association's member companies I appreciate the Committee's consideration of HB149 and encourage the Committee to promptly pass this important legislation.

HB149 is the final step in a multi-year effort by the State of Alaska to assume responsibility from the federal government to manage wastewater discharges in Alaska. The components of this bill are required by the U. S. Environmental Protection Agency to ensure that a state's authorizing legislation meets the federal requirements for a State to assume primacy of the federal National Pollutant Discharge Elimination System (NPDES) program.

State assumption of this permitting program provides Alaska with the ability to regulate discharges in the State of Alaska consistent with the state's water quality standards, ensuring protection of the environment. Alaska's administration of this important program puts the State in a decision-making role, implemented by agency officials most familiar with Alaska's unique conditions.

We urge the Committee to pass this legislation so that the final steps toward assumption of this program may be completed. Thank you for your consideration.

Council of Alaska Producers

Mailing: PO Box 70506 • Fairbanks, AK 99707-0506
Physical: 100 Cushman Street, Suite 512, Fairbanks, AK 99701
Phone: 907-452-1289 Fax: 907-452-1290

March 26, 2008

The Honorable Hollis French, Chair
Senate Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99811

Senator French:

The Council of Alaska Producers (CAP) supports CSHB 149(RES) to make technical changes to Alaska law to allow the state to assume primacy for the Federal Environmental Protection Agency's National Pollution Discharge Elimination System (NPDES) program.

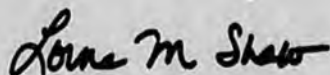
The Federal Clean Water Act (CWA) mandates that all wastewater discharges to surface waters be permitted under the National Pollutant Discharge Elimination System (NPDES) program. The CWA intends for states to have primacy for this program, with the EPA serving in an oversight role. Currently 45 states nationwide have assumed primacy. In Alaska, NPDES permits are still issued by the EPA.

In 2005, DEC was directed to take all actions necessary to assume authority for the NPDES permitting program. The EPA has subsequently identified areas in state statute that require modification in order to provide DEC with the required authority to fully assume primacy of the program. CSHB 149(RES) addresses only specific concerns raised by the EPA to allow Alaska to assume primacy of the NPDES permitting program.

Formed in 1992, the Council of Alaska Producers works closely with the Alaska Miners Association to ensure that the economic and employment potential of mining industry is fully realized in a manner that respects the interests of all stakeholders, complies with all state and federal laws and helps preserve and sustain Alaska's natural heritage and environment. CAP member companies include Barrick Gold Corporation, Coeur Alaska, Greens Creek Mining Co., Kinross/Fairbanks Gold Mining, NovaGold Resources, Pebble Partnership, Teck Cominco Alaska, and Teck-Pogo, Inc.

The CAP supports state primacy of the NPDES permitting program and supports the statutory changes contained in CSHB 149(RES). We urge you to pass CSHB 149(RES) into law promptly without further amendment.

Sincerely,



Lorna Shaw
Executive Director

Cindy Smith

From: Wilson Justin [wjustin@mstc.org]
Sent: Friday, April 27, 2007 8:37 AM
To: Cindy Smith
Cc: Evelyn Beeter; Elaine Sinyon; Shawn Sanford; Teri Nutter; Anne Thomas; Ruth McHenry; Joan Herrmann; Pete Peschang
Subject: Re: HB 149

Cindy:

Thank You for the update.

I have read the bill. I remain troubled by certain key features. I understand the intent of the bill is to both streamline and allow DEC to meet standards under other features of law, however it seems much of the weight of accomodating these proposed regs, still fall on individual owners of private citizens. In short the actual potential and ongoing activities that troubles us so is spoken too. Public Management Practices left in the hands of Administrators in my estimation has to have a higher degree of accountability and a serious sense of community norms, in order to be effective and positive. I sense this is not a part of the proposed regulation. Monitoring, Sampling and reporting are very cost prohibitive measures to some degrees, even when necessary. But in the background there is no way to conclude a issue or case once launched. In the hands of regulators, this is a good tool to bankrupt individuals and small community contractors. Public health should be the basic platform for new regulations.

I will leave thoughts on wastewater and discharges on the table for the time being since these issues should be directly reflective of the ability of elected community and Tribal organizations to access and remark on.

My comments are predicated of course upon the fact that much of the state regulations are developed by attorneys, agencies and administrators, and within that system, we have seem good law become very adverse to community development, small enterprises, and non home owners.

Thank You again for the ongoing opportunity to make our thoughts known in the context of HB 149.

On 4/26/07 5:09 PM, "Cindy Smith" <Cindy_Smith@legis.state.ak.us> wrote:

> Hi Wilson!

>
> Just wanted to let you know we did not schedule this bill for the
> coming week (April 30-May 6th).

>
> Cindy

>
> -----Original Message-----
> From: Allison Biastock
> Sent: Wednesday, April 25, 2007 10:25 AM
> To: Wilson Justin
> Cc: Cindy Smith
> Subject: RE: HB 149

>
> Hi Wilson, here is a link to the bill itself...just click on "full text"
> and you can print off a version of the bill.
> http://www.legis.state.ak.us/basis/get_bill.asp?session=25&bill=hb+149

>
> I will make certain that the Senator sees your comments. We just
> received the bill, it has not yet been scheduled. Cindy Smith, who I
> have cc'd, is the Judiciary committee aide. She'll let you know about
> next week's schedule as soon as it has been set.

>
> Allison Biastock
> Office of Senator Hollis French

> Anchorage 907-269-0234
> Juneau 907-465-3892
> allison_biastock@legis.state.ak.us
> www.aksenate.org

> -----Original Message-----

> From: Wilson Justin [mailto:wjustin@mstc.org]
> Sent: Wednesday, April 25, 2007 9:51 AM
> To: Allison Biastock
> Cc: Elaine Sinyon; Shawn Sanford; Evelyn Beeter; Anne Thomas; Nancy
> Barnes; Teri Nutter; Ruth McHenry; Gil Gutierrez; Kevin M.
> Illingworth; Pete Peschang; Joan Herrmann
> Subject: HB 149

> Good Morning Allison:

> I work for Mt Sanford Tribal Consortium, located in Chistochina. We
> are at Mile 35 on the Tok Cut-Off, 42 miles past Glenallen. MSTC
> provides Health Services and Programs under a Compact with the Indian
> Health Service and DHHS. Our Communities are small and rural but
> accessible via the highway system.

> I understand that HB 149 passed the House last week and seemed to
> have generated strong feelings in some quarters in this neighborhood.
> I have not seen or read HB 149, but I understand the Bill is DEC
> Regulatory in nature and that normally means Permitting.

> Historically we have had concerns with the permitting process as it
> is.

> We believe that the current process is much too liberal and biased
> towards development in general. For instance we have noted for years
> that spring run-offs put a lot chemicals into roadside streams and
> small ponds. These are the result of over use of sand during the
> winter months on the roadways.
> We also note that much of the patching of the highways use Tar and
> will result again in seepage into the water systems along the highway.
> Culverts also will disrupt habitat and change or stop grayling
> migrations in the spring.

> Although HB 149 is DEC regulations our fear is that in the rush to
> have legislative passages some of these worthwhile efforts may prove
> damaging to the general public, and in particular to Tribal Councils
> on the road system.
> in the future. We would oppose any DEC regulatory activities that has
> the ability to by-pass community councils, Tribal Councils or
> interested consumers who should have a say as far as consent,
> consultation or public input when it comes to the issue of issuing
> permits within DEC for public purposes.

> We hope that you understand we are not anti-development. We simply
> think that enough lessons have been learned that we can have rational
> and supportive development rather than those that ends up being
> confrontational and non-public. I apologize for not being able to
> provide specific comments on HB 149, but I intend to as soon as I
> receive a copy to review. Thank You.

> Wilson Justin
> Acting President
> Mt. Sanford Tribal Consortium
> PO Box 357
> Gakona, Alaska 99586

> Office Ph 907 822-5399
> Fax 907 822-5810
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LAW OFFICES OF
SIMPSON, TILLINGHAST & SORENSEN, P.C.

ONE SEALASKA PLAZA, SUITE 300
TELEPHONE: 907-586-1400

JUNEAU, ALASKA 99801
FAX: 907-586-3065

**Testimony of Sealaska Corporation in Support of
CSHB 149(Res)**

My name is Jon Tillinghast, and I am an attorney for Sealaska Corporation. Sealaska is Southeast Alaska's largest private landowner and our state's largest private timber producer. We own and operate a number of log transfer facilities, each of which is currently permitted by EPA under Section 402 of the Clean Water Act.

Sealaska supports HB 149. Our company has been a consistent and passionate advocate of Alaska joining its sister states in assuming primacy for the Section 402 permit program. We believe that Alaska-based regulators are far better attuned to Alaska realities than Seattle bureaucrats; and we believe that legal disputes involving clean water issues should be resolved by our state courts, and not by the Ninth Circuit Court of Appeals.

For these reasons, Alaska's timber industry, led by Sealaska, volunteered to serve as a pilot project for an Alaska primacy program several years ago. Thankfully, we have gone far beyond the pilot project stage, and are poised to bring this significant regulatory program home to Alaska. HB 149 would remove a number of relatively technical impediments to accomplishing that goal, and we respectfully urge its enactment.

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For these reasons, Alaska's timber industry, led by Sealaska, volunteered to serve as a pilot project for an Alaska primacy program several years ago. Thankfully, we have gone far beyond the pilot project stage, and are poised to bring this significant regulatory program home to Alaska. HB 149 would remove a number of relatively technical impediments to accomplishing that goal, and we respectfully urge its enactment.



May 1, 2007

The Honorable Hollis French
Chair, Senate Judiciary Committee
Capitol Building, Room 417
Juneau, Alaska 99801-1132

Re: Sealaska Support for HB 149

Dear Chairman French:

Sealaska Corporation supports HB 149, which would make a number of technical changes in Alaska's water pollution laws in order to facilitate Alaska's assumption of the federal Clean Water Act's National Pollutant Discharge Elimination System ("NPDES") permit program in Alaska.

Sealaska is directly and substantially affected by the NPDES permit program. For example, all of the company's log transfer facilities (or "LTFs") require an NPDES permit. Sealaska has been a long-time supporter of Alaska's assumption of primacy, for reasons that include the following:

- Forty-five other states have assumed primacy of this important regulatory program. It is, frankly, difficult to explain why Alaska, which has otherwise been very assertive with respect to states' rights, has lagged so far behind in this important expression of federalism;
- Assumption of primacy would mean that water pollution permit decisions in Alaska will be better informed, because they will be made by Alaskans who are far more familiar with the unique qualities of the state's environment and economy;
- Alaska water pollution permits would become a priority. Currently, Alaska permit applications are dumped in a Seattle-based EPA in-basket, where they can and have languished for years. This has been true, for example, of EPA's general permit for Alaska LTFs, which expired two years ago and for which Alaska's beleaguered logging industry is still awaiting renewal; and
- Primacy would "de-federalize" water pollution control issues in Alaska in many important respects, not the least of which is that water pollution permit appeals would be heard by our state judiciary, rather than the federal Court of Appeals for the Ninth Circuit—a court that has not been historically sensitive to Alaskan imperatives.

As virtually all of our sister states have recognized, primacy is the right thing to do. Congress clearly intended that states assume primary responsibility for water pollution control issues, and enacted the Clean Water Act largely to create minimum standards for state water pollution programs. HB 149 would help Alaska meet those standards, and resultantly take its rightful place in our nation's water pollution hierarchy.

Thank you for the attention that I know you will give to our concerns.

Sincerely,

SEALASKA CORPORATION



Richard Harris
Executive Vice President

cc: Members, Senate Judiciary Committee
Southeast Alaska Legislators
Ms. Linda Hay, ADEC
Mr. Jerry Mackie

Alaska Forest Association, Inc.



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March 12, 2007

Representative Craig Johnson
Co-Chair House Resources Committee
State Capitol, Room 126
Juneau, AK 99801

Via fax 907-465-2381

RE: House Bill 149

Dear Representative Johnson:

I am a member of the State's Primacy Working Group. The group met by teleconference on March 1, 2007 to discuss some proposed technical changes in the draft Primacy regulations that are needed to satisfy certain EPA requirements. My understanding is these minor changes include:

1. Changes in exemptions for minor sewer discharges, minor drilling and trenching activities and minor munitions discharges (e.g. rifle ranges, etc.);
2. Changes in the sampling and reporting requirements;
3. Changes in the DEC's authority to pursue criminal enforcement for negligent violations; and
4. Changes in the definition of pollutants.

These changes will simply bring the State regulations into conformance with the existing EPA regulations and thus speed the approval process for Primacy.

We support these changes because we are eager to get State Primacy for the NPDES program:

1. We want people who are more familiar with our State to process and manage NPDES permits; and

2. We believe the State will put a higher priority on our permitting needs than the EPA. For instance, the EPA general permit for log transfer and storage expired years ago and the EPA has refused to process individual new projects, thus our timber industry is caught in a regulatory Catch-22.
Thank you for the opportunity to comment.

Sincerely,



Owen J. Graham
Executive Director

TESTIMONY OF RONALD WOLFE ON CSHB 149(Res)
Before the Senate Judiciary Committee
March 28, 2008

MY NAME IS RONALD WOLFE, AND I AM THE NATURAL RESOURCE MANAGER FOR SEALASKA CORPORATION. SEALASKA OWNS AND OPERATES, OR HAS A SIGNIFICANT INTEREST IN 22 LOG TRANSFER FACILITIES—OR “LTFs”—IN SOUTHEAST ALASKA, ALL OF WHICH ARE COVERED BY A GENERAL NPDES PERMIT.

SEALASKA HAS BEEN A STRONG SUPPORTER OF STATE ASSUMPTION OF THE NPDES PROGRAM FOR YEARS. IN A STATE THAT PROFESSES A STRONG BELIEF IN STATE’S RIGHTS, WE’VE FOUND IT HARD TO UNDERSTAND ALASKA’S RELUCTANCE TO JOIN 45 OF OUR SISTER STATES IN ASSUMING OUR PROPER AND PRIMARY ROLE IN WATER POLLUTION CONTROL.

IN MY TESTIMONY TODAY, I WOULD LIKE TO ADDRESS THREE ISSUES THAT HAVE BEEN RAISED REGARDING NPDES PRIMACY, DRAWING UPON OUR EXPERIENCE IN SOUTHEAST ALASKA. THE ISSUES ARE: (1) WHETHER ADEC MAY BE A LESS TRUSTWORTHY STEWARD OF ALASKA’S WATERS THAN EPA; (2) WHETHER ADEC PERSONNEL HAVE THE QUALIFICATIONS TO ADMINISTER THE

PROGRAM; AND (3) WHAT IS OUR COMFORT LEVEL, AS A FEDERALLY-RECOGNIZED INDIAN TRIBE, IN THE DEGREE OF CONSULTATION WE WILL RECEIVE IF ADEC ASSUMES PRIMARY RESPONSIBILITY FOR THE NPDES PROGRAM.

I CAN ILLUSTRATE ADEC'S RELATIVE COMMITMENT TO PROTECTING WATER QUALITY BY COMPARING THOSE PROVISIONS OF OUR LTF PERMITS THAT WERE INSERTED BY EPA, AND THOSE THAT WERE IMPOSED BY ADEC. THE INTENT OF THESE PERMITS IS TO LIMIT THE AMOUNT OF TREE BARK THAT LTFs DEPOSIT IN THE OCEAN, AS LOGS ARE BEING TRANSFERRED FOR SHIPMENT BY SEA.

EPA'S PERMIT CONDITIONS, WHILE CERTAINLY STRINGENT, WERE THE KIND OF TYPICAL OPERATIONAL RESTRICTIONS THAT ONE EXPECTS TO SEE IN ANY NPDES PERMIT. IN CONTRAST, ADEC, ON ITS OWN INITIATIVE, WENT MUCH FURTHER, AND CREATED A UNIQUE REMEDIATION PLAN PROCESS THAT FORCES OPERATORS TO BEGIN REMEDIATING BARK ACCUMULATIONS ON THE OCEAN BOTTOM AT A VERY LOW THRESHOLD—EVEN IF: (1) THE OPERATOR HAS COMPLIED WITH ALL OF EPA'S OPERATIONAL RESTRICTIONS; AND (2) THERE WAS NO EVIDENCE THAT ANY ACTUAL ENVIRONMENTAL HARM WAS BEING CAUSED TO THE WATERBODY.

IN THIS PARTICULAR CASE, DEC WAS THE ACTIVIST. AND PART OF THE REASON FOR DEC'S PROACTIVE STANCE WAS ITS CONFIDENCE IN THE SUBJECT MATTER—A FACT THAT RAISES THE SECOND ISSUE I'D LIKE TO DISCUSS: AGENCY COMPETENCE.

IN OUR EXPERIENCE, ADEC PERSONNEL ARE UNIQUELY QUALIFIED TO REGULATE LTF OPERATIONS, BECAUSE THEY HAVE A SUPERIOR ON-THE-GROUND UNDERSTANDING OF HOW THOSE FACILITIES OPERATE. ADEC REGULATORS HAVE MADE A CONCERTED EFFORT TO VISIT OUR LTFs; EXAMINE THEIR OPERATIONS; AND CAREFULLY REVIEW THE DIVE REPORTS THAT ARE SUBMITTED FOR THE WATERS AROUND THESE FACILITIES.

GAINING FIELD EXPERIENCE WITH ALASKA LTFs HAS, BY CONTRAST, NEVER BEEN AN EPA PRIORITY, AND UNDERSTANDABLY SO, GIVEN THE FAR MORE SIGNIFICANT WATER QUALITY ISSUES ARISING WITHIN REGION X. WHEN OUR LTF PERMITS WERE RENEWED, EPA CONTRACTED WITH ADEC TO DRAFT THOSE PERMITS, AND ONE REASON FOR THAT DECISION, WE SUSPECT, WAS EPA'S ACKNOWLEDGEMENT THAT THOSE MORE INTIMATELY FAMILIAR WITH THE FACILITIES AT ISSUE WERE MOST LIKELY TO PRODUCE A FUNCTIONAL AND EFFECTIVE PERMIT.

FINALLY, SEALASKA, WHICH HAS AGGRESSIVELY PURSUED ITS TRIBAL CONSULTATION RIGHTS AT THE FEDERAL LEVEL, IS CONFIDENT THAT ADEC WILL KEEP ITS TRIBAL CONSULTATION COMMITMENTS. BOTH EPA AND ADEC HAVE MADE PAPER COMMITMENTS TO TRIBAL CONSULTATION—EPA BY VIRTUE OF AN EXECUTIVE ORDER, AND ADEC THROUGH ITS PUBLIC PARTICIPATION REQUIREMENTS.

THE ISSUE IS HOW THOSE PAPER PROMISES WILL BE IMPLEMENTED IN PRACTICE. ON THE FEDERAL SIDE, AND WHILE WE HAVE ALWAYS HAD THE OPPORTUNITY TO COMMENT ON EPA PROPOSALS AS A MEMBER OF THE PUBLIC, I DO NOT RECALL ANY INSTANCE WHERE WE WERE SOUGHT OUT BY EPA FOR TRIBAL CONSULTATION.

IN CONTRAST, ADEC HAS ALWAYS SOUGHT OUT OUR VIEWS ON MAJOR POLICY INITIATIVES AFFECTING SOUTHEAST ALASKA AT THE VERY EARLIEST STAGES OF THOSE PROPOSALS. AS OFTEN AS NOT, OUR VIEWS HAVE NOT PREVAILED; HOWEVER, WE HAVE ALWAYS FELT THAT ADEC WAS VERY MINDFUL OF THE NEED TO BRING AFFECTED TRIBES INTO THE POLICY DEVELOPMENT PROCESS, RATHER THAN RELEGATING THEM TO THE ROLE OF MERELY

**REACTING TO POLICY DECISIONS THROUGH GENERAL PUBLIC
COMMENTS.**

**I WANT TO THANK THE COMMITTEE FOR THE CONSIDERATION
THAT I KNOW IT WILL GIVE TO OUR COMMENTS, AND I WOULD BE
DELIGHTED TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.**



ALASKA INTER-TRIBAL COUNCIL
Advocating for Tribal Governments Across Alaska

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ALASKA INTER-TRIBAL COUNCIL

Resolution 2007-12-02

TITLE: A resolution to oppose NPDES primacy until the State demonstrates tribal consultation.

WHEREAS, the Alaska Inter-Tribal Council is a statewide consortium of federally recognized tribes in Alaska, which share a common bond with unique cultures, languages, spirituality, and traditional values; and

WHEREAS, the Alaska Inter-Tribal Council (AI-TC) was established in 1992 and is charged to advocate for, protect, defend, and enhance the inherent rights of tribes in Alaska; and

WHEREAS, the State of Alaska has applied for primacy of the National Pollution Discharge Elimination System (NPDES) under the Federal Water Pollution Control Act (Clean Water Act); and

WHEREAS, the Environmental Protection Agency does not allow the tribes in Alaska similar treatment in a manner such as a state to administer the National Pollution Discharge Elimination System, thereby presenting the Tribes self-protection of their traditional subsistence resources; and

WHEREAS, protection of the subsistence water and resources of the indigenous people is a statutory and trust obligation that is non-delegable under the following:

- 1. Federal Indian Policy contained in Presidential Executive Orders: 13175 Government to Government Relations, 12898 on Environmental Justice, 12875 Enhancing the Inter-governmental Partnership, 12866 Regulatory Planning and Reviewing.**
 - 2. State of Alaska Deficiencies in Primacy Eligibility Requirements: The state is required under 40 CFR 123 and 135 to implement the Clean Water Act under the same trust obligations and tribal consultation as the Federal Government.**
 - 3. Federal Trust Obligations cannot be terminated by delegation to the State of Alaska that does not recognize the tribal trust: Indian Tribal Justice Act, Chapter of the United Nations, International Covenant of Civil and Political Rights (protecting tribal subsistence).**
-

NOW, THEREFORE, BE IT RESOLVED that AI-TC does hereby call the attention of the Federal Government that transfer of NPDES primacy to the State of Alaska is an act of cultural destruction in violation of federal statutory, and trust obligation, until the State of Alaska has demonstrated a record of Tribal Government to Government Relations.

BE IT FURTHER RESOLVED, that this resolution shall be the policy of AI-TC.

CERTIFICATION

The foregoing resolution was adopted at the 2007 Annual Convention of the Alaska Inter-Tribal Council, held at the Millennium Alaskan Hotel, in Anchorage, Alaska on December 4, 2007 with a quorum present.



Mike Williams, Chair

ATTEST: Michael J. Stickman

Michael Stickman, Secretary

Submitted by: Huslia Tribe



teckcominco

March 28, 2008

Senator Hollis French
State Capitol, Room 417
Juneau, AK 99801-1182

Re: Support for Advancement of SB 91/CSHB 149

Dear Senator French:

The NANA Regional Corporation, Inc. and Teck Cominco Alaska Incorporated, owners and operators of the Red Dog Mine, are completely and wholeheartedly in support of advancing Senate Bill 91 to the floor of the legislature in this session. Senate Bill 91 follows up on law passed by the previous legislature authorizing the State of Alaska to assume primacy of the National Pollutant Discharge Elimination System program from the U.S. EPA where it currently resides. This action is beneficial for Alaska: both for Alaska's present and future economic development and for the concurrent protection of our water resources upon which so much of our subsistence and environmental heritage depends.

NANA and Teck Cominco have full confidence in the ability of the State of Alaska and the Alaska Department of Environmental Conservation to administer this program as they already effectively do with the air quality program. The new State program would, by law, be as stringent, or more so, than the Federal program. Also, EPA will retain general oversight. The fact that SB 91 is before your committee demonstrates the synergy between the State and EPA in developing the program. ADEC has already accomplished the majority of work involved in taking primacy, including developing State of Alaska water quality standards that are as protective, and in some cases more protective, than the Federal standards.

We believe that advancement and passage of SB 91 affords an Alaskan solution for the mutual goals of resource development and environmental protection. EPA Region X has many NPDES permits and actions pending for the four States in their region. Pending permits for Alaska have no more priority than any other State. Red Dog has experienced numerous delays, stays, and permit withdrawals in attempting to comply fully with the NPDES process and the "speed" of the Federal bureaucracy. We believe that administration of this program by ADEC will result in a much more responsive process along with a higher degree of water quality protection. By no

Senator Hollis French
March 28, 2008
Page 2

means do we expect a "rubber stamp" on permits by ADEC that affect development projects. We do fully expect a rigorous, scientific, and regulatory review of every permit that comes before the State, and we believe that is what we will get from ADEC. We have been "blindsided" enough by the Federal process. Having a transparent State process with clear regulatory standards is highly desirable.

In conclusion, we again express our support for SB 91. Alaska has another opportunity before us for self-determination in this matter. We should not continue as a "regulatory outpost" for EPA, but take the responsibility of regulating our State of Alaska in the most clear, protective, and efficient manner possible.

Please contact Paul Glavinovich (NANA) at 907-265-4183 or Jim Kulas (Teck Cominco) at 907-426-9129 for additional information.

Sincerely,



Marie Groene
President, NANA Regional Corporation, Inc.



James Kulas
Environmental Superintendent, Teck Cominco Alaska Incorporated

Cc: Senator Donald Olson
Representative Reggie Joule
Senator Charlie Huggins
Senator Lesil McGuire
Senator William Wielechowski
Senator Gene Therriault
Senator Lyda Green

HB

151

Cindy Smith

From: Jody Simpson
Sent: Thursday, January 24, 2008 4:26 PM
To: Cindy Smith
Cc: Russ Krafft; jaschenbrenner@matsugov.us; John Duffy (jduffy@matsugov.us)
Subject: Mat-Su Borough requests to call in to testify on HB 151

Cindy,

The Matanuska-Susitna Borough would like to call in and testify on HB 151 during tomorrow's SJUD Cmte meeting.

Please add these names to your witness list and clear them for teleconferencing in:

John Aschenbrenner, Deputy Borough Attorney
Russ Krafft, M-SB Purchasing Officer

I provided them with the off-net number (1-888-295-4546) and let them know the meeting begins at 1:30p.

Thank you.

Jody Simpson

Staff to Senator Charlie Huggins
Alaska State Capitol, Room 119
Juneau, Alaska 99801-1182
Phone: (907)465-2661 / Fax: (907)465-3265
Jody_Simpson@legis.state.ak.us

1/25/2008

25-LS0479W
Bannister
1/23/08

SENATE CS FOR CS FOR HOUSE BILL NO. 151()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JOHNSON BY REQUEST, Lynn, Foster

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring an indemnification, defense, and hold harmless provision in
2 construction-related professional services contracts of state agencies, quasi-public
3 agencies, municipalities, and political subdivisions."

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

5 * Section 1. AS 36.90 is amended by adding a new section to read:

6 Article 4. Required Contract Provision.

7 Sec. 36.90.300. Indemnification, defense, and hold harmless provision in
8 certain construction-related contracts. (a) A public agency shall include in a
9 construction-related professional services contract entered into by the public agency a
10 provision under which the consultant agrees to indemnify, defend, and hold harmless
11 the public agency from claims or liability for the negligent acts, errors, or omissions of
12 the consultant. The provision must include an apportionment of the indemnification,
13 defense, and hold harmless obligation on a comparative fault basis.

14 (b) A provision that reads substantially as follows satisfies the requirement of

1 (a) of this section:

2 The consultant shall indemnify, defend, and hold harmless the
3 contracting agency from and against any claim of, or liability for,
4 negligent acts, errors, and omissions of the consultant under this
5 agreement. The consultant is not required to indemnify, defend, or hold
6 harmless the contracting agency for a claim of, or liability for, the
7 independent negligent acts, errors, and omissions of the contracting
8 agency. If there is a claim of, or liability for, a joint negligent act, error,
9 or omission of the consultant and the contracting agency, the
10 indemnification, defense, and hold harmless obligation of this provision
11 shall be apportioned on a comparative fault basis. In this provision,
12 "consultant" and "contracting agency" include the employees, agents,
13 and contractors who are directly responsible, respectively, to each. In
14 this provision, "independent negligent acts, errors, and omissions"
15 means negligence other than in the contracting agency's selection,
16 administration, monitoring, or controlling of the consultant, or in
17 approving or accepting the consultant's work.

18 (c) In this section,

19 (1) "construction" means the process of building, altering, repairing,
20 maintaining, improving, demolishing, planning, and designing a public highway, a
21 structure, a building, a utility, infrastructure, or another public improvement to real
22 property, but does not mean the routine operation of a public improvement;

23 (2) "consultant" means a person who contracts with a public agency to
24 provide professional services;

25 (3) "professional services" has the meaning given in AS 36.30.990;

26 (4) "public agency" means a department, institution, board,
27 commission, division, authority, public corporation, committee, school district,
28 political subdivision, or other administrative unit of a municipality, of a political
29 subdivision, or of the executive or legislative branch of state government, including
30 the University of Alaska, the Alaska Aerospace Development Corporation, the Alaska
31 Housing Finance Corporation, the Alaska Industrial Development and Export

1

Authority, the Alaska Energy Authority, the Alaska Railroad Corporation, and a

2

regional educational attendance area.

ALASKA STATE LEGISLATURE

Interim:

716 West 4th Avenue, Suite 640
Anchorage, Alaska 99501
Phone (907) 269-0200
Fax (907) 269-0204
Rep_Craig_Johnson@legis.state.ak.us



Session:

State Capitol Building, Room 126
Juneau, Alaska 99801-1182
Phone (907) 465-4993
Fax (907) 465-3872
Toll-free (866) 465-4993

REPRESENTATIVE CRAIG JOHNSON
HOUSE DISTRICT 28

MEMORANDUM

To: Senator Hollis French, Chair
Senate Judiciary Committee

From: Representative Craig Johnson *CJ*

Date: May 14, 2007

Subject: Request for Hearing

I respectfully request that House Bill 151, relating to an indemnification provision in construction-related public agency contracts, be scheduled for a hearing in the Senate Judiciary Committee.

Attached is the most current version of the resolution, the sponsor statement, the fiscal note, and additional information.

If you have any questions or need additional information, feel free to contact me or my aide, Trevor Fulton, at 465-4993.

Thank you for your consideration.

ALASKA STATE LEGISLATURE

Interim:
716 West 4th Avenue, Suite 640
Anchorage, Alaska 99501
(907) 269-0200
FAX (907) 269-0204
Rep_Craig_Johnson@legis.state.ak.us



Session:
State Capitol, Room 126
Juneau, Alaska
99801-1182
(907) 465-4893
FAX (907) 465-3872

REPRESENTATIVE CRAIG JOHNSON
HOUSE DISTRICT 28

Sponsor Statement

House Bill 151

“An Act requiring an indemnification, defense, and hold harmless provision in construction-related professional services contracts of state agencies, quasi-public agencies, municipalities, and political subdivisions.”

HB 151 will require uniform indemnification provisions in professional services contracts for all public agencies within the state of Alaska.

Over the last several years, there has been a significant increase in litigation related to public projects. One reaction to this trend has been for a handful of public agencies to include indemnification language in new construction projects contracts. This language insulates these public agencies from liability for their own negligence by unfairly transferring it to design consultant companies.

These indemnification clauses are typically either uninsurable or insurable only at a very high cost. When a contract cannot be insured, design professionals must either accept an unduly high degree of liability or walk away from the contract. The results of this increased liability include:

- Increased costs to the design professionals (which translates into increased overall costs for public projects)
- Decreased participation from design professional companies on competitive bids for public projects (which again increases the costs of these projects)
- The potential elimination of smaller local design firms due to their lack of the financial wherewithal to defend themselves from civil lawsuits, or worse, from losing a civil lawsuit that stemmed from negligence on behalf of a public agency

HB 151 prescribes uniform contract indemnification language for all state agencies and makes each party in a professional services contract financially responsible for their own liabilities and distributes joint liability on a comparative fault basis.

The question of indemnification has been addressed by the Alaska Department of Transportation, whose language has served as a model for the vast majority of Alaskan public agencies for decades. HB 151 aims to standardize their approach, and in doing so, provide a fair and equitable business climate within the State of Alaska.

HB 151 was referred to and passed through House State Affairs and House Judiciary, where changes were made that (1) brought it more in line with current DOT language and (2) narrowed its scope to only construction-related contracts.



Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99510-0515

LEGISLATIVE LIAISON COMMITTEE 2007 POSITION STATEMENT

MEMBER SOCIETIES

Alaska Society of Professional
Engineers

Alaska Society of Professional
Land Surveyors

American Congress on
Surveying & Mapping Alaska
Section

American Institute of
Professional Architects Alaska Chapter

American Consulting
Engineers Council of Alaska

American Society of Civil
Engineers Alaska Section

American Society of
Landscape Architects Alaska
Chapter

Architecture/Engineering
Marketing Association of
Alaska

Professional Engineers in
Private Practice Alaska
Chapter

The Alaska Professional Design Council (APDC) is a consortium of professional societies representing architects, engineers, land surveyors, landscape architects and other design professionals. Our ten member organizations have a combined membership of over 1,500 and represent approximately 5,000 licensed professionals. APDC addresses issues of concern to the various design professions through workshops, seminars, ad-hoc committees, standing committees, and governmental task forces. APDC also receives sustaining member support from 30 Architectural and Engineering firms throughout Alaska.

One component of APDC activity is the Legislative Liaison Committee (LLC). The LLC is a standing committee that has been actively involved in legislation affecting the design community since the 1970's (actually predating APDC).

APDC works very closely with the Architects, Engineers, and Land Surveyors (AELS) Board to further the interests of the regulated design professions. APDC generally supports the efforts of the AELS Board.

The following is a discussion of the primary issues of concern to APDC and our membership this legislative session:

Contract Indemnification language – Professional Services Contracts establish the basic framework between a project owner and a design company for design services associated with a particular project. In recent years, owners of some projects, generally government and quasi-government agencies, have required designers to assume additional liability beyond the consultant's own negligence. The purpose of this action is to reduce agency risk by insulating the agency from its own negligence. This increases the liability insurance costs to the designers, and creates a contract, which is not fully insurable. APDC supports legislation that would prescribe indemnification language that is uniform for all state government agencies and that requires each party to be financially responsible for their own liabilities and to fairly apportion joint liabilities on a comparative fault basis.



Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99510-0515

**Sample Indemnification clauses
used in A/E Contracts
by various Alaska Public Agencies**

Alaska Department of Transportation

Also used by

**Alaska Department of Administration
Alaska Department of Revenue (D1.1 only) (2002)
Alaska Railroad Corporation (D1.1 only)
Anchorage School District (D1.1 only)
City of Gambel (D1.1 only)**

INDEMNIFICATION

D1.1 The CONTRACTOR shall indemnify, hold harmless, and defend the CONTRACTING AGENCY from and against any claim of, or liability for negligent acts, errors or omissions of the CONTRACTOR under this Agreement. The CONTRACTOR shall not be required to indemnify the CONTRACTING AGENCY for a claim of, or liability for, the independent negligence of the CONTRACTING AGENCY. If there is a claim of, or liability for, the joint negligent error or omission of the CONTRACTOR and the independent negligence of the CONTRACTING AGENCY, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "CONTRACTOR" and "CONTRACTING AGENCY", as used within this article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "Independent Negligence" is negligence other than in the CONTRACTING AGENCY's selection, administration, monitoring, or controlling of the CONTRACTOR and in approving or accepting the CONTRACTOR's Work.

D1.2 The CONTRACTOR shall exercise that degree of skill, care and judgment commensurate with the professional standards for the services of a similar nature. When such standards are in dispute, they shall be established by a panel of three qualified, impartial professionals objectively selected and appointed by the Appeals Officer.

D1.3 The CONTRACTOR shall correct, through re-performance at its expense, any services which are deficient or defective because of the CONTRACTOR's failure to perform said services in accordance with professional standards, provided the CONTRACTING AGENCY has notified the CONTRACTOR in writing within a reasonable time, not to exceed 60 days, of the discovery of any such deficiency during the performance of the services and within 12 months of the date of final payment under this Agreement.



Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99510-0515

Alaska Department of Revenue alternate (November 3, 2006)

RFP 2007-0600-6640 for Professional Services

B.1 Indemnification Obligations The Contractor shall indemnify the State Contracting Agency, and each of its current, future and former officials, employees, representatives and agents (the "State Indemnified Parties"), and defend and save each of them harmless, from and against any and all losses, damages, liabilities, costs and expenses (including attorneys' fees and expenses) (collectively, "Losses") in connection with any and all suits, proceedings, investigations, claims or demands (collectively, "Claims") arising from or occurring as a result of: (a) the breach by the Contractor of any term or provisions of this Agreement, including the inaccuracy, untruthfulness or breach of any representation or warranty made by the Contractor in this Agreement, (b) the negligence or willful misconduct on the part of the Contractor or the Contractor Agents in performing any obligations under this Agreement; (c) bodily injury or death to persons or physical damage to personal or real property attributable to the acts or omissions of the Contractor or the Contractor Agents in performing any obligations under this Agreement; and (d) the use by the State in accordance with the terms of this Agreement of any Deliverable or Service developed and/or provided by the Contractor to the State pursuant to this Agreement, including any Claim that the use of such Deliverable or Service infringes, violates or misappropriates a third party's patents, copyrights, trade secrets, trademarks or other intellectual property rights; provided, however, that in each case (items (a) through (d) above) the Contractor shall not be obligated to indemnify the State Indemnified Parties for any Losses to the extent that such Losses arise as a result of gross negligence or willful misconduct on the part of the State Contracting Agency.

**Alaska Department of Health and Social Services
(Provider Agreement for Individualized Behavioral Health Services)**

INDEMNIFICATION AND HOLD HARMLESS OBLIGATION (Rev6/05)

The Provider shall indemnify, hold harmless, and defend DHSS from and against any claim of or liability for error, omission, or negligent or intentional act of the Provider under this Agreement. The Provider shall not be required to indemnify DHSS for a claim of, or liability for, the independent negligence of DHSS. If there is a claim of, or liability for, the joint negligent error or omission of the Provider and the independent negligence of DHSS, fault shall be apportioned on a comparative fault basis.

"Provider" and "DHSS," as used within this section, include the employees, agents, or Providers who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in DHSS's selection, administration, monitoring, or controlling of the Provider and in approving or accepting the Provider's work.



Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99510-0515

Alaska Native Tribal Health Consortium
(Similar to Alaska DOT)

Liability and Indemnification

Contractor shall indemnify, defend, and hold the Owner harmless from and against all liabilities, claims, penalties, forfeitures, demands, suits, judgments, expenses, attorneys' fees and losses ("claims"), including without limitation any and all claims in connection with bodily injury, including death, to persons or damage to tangible property, arising out of or related to Contractor's or subcontractor's negligent acts or omissions or breach of any term or condition of this Contract.

All actions or claims including costs and expenses resulting from injuries or damages sustained by any person or property arising from the contractor's performance of this contract which are caused by the joint negligence of the Owner and the contractor shall be apportioned on a comparative fault basis. Any such joint negligence on the part of the Owner must be a direct result of active involvement by the Owner or failure to act by the Owner.

Standard of Care

Contractor shall maintain and exercise such professional expertise as is consistent with that level of care and skill ordinarily exercised by members of the profession under similar conditions, circumstances, and limitations, either in Alaska or nation-wide, whichever standard of care is higher.

Anchorage (Municipality)
(Similar to Alaska DOT)

Section 9. Liability.

A. The Contractor shall indemnify, defend, save, and hold Anchorage harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this Contract.

B. The Contractor shall not indemnify, defend, save and hold Anchorage harmless from claims, lawsuits, liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Anchorage occurring during the course of or as a result of the performance of this Contract.

C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Anchorage and the Contractor, the Contractor shall indemnify, defend, save, and hold Anchorage harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Contractor's or any subcontractor's wrongful or negligent acts occurring as a result of the Contractor's performance pursuant to this Contract.



Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99510-0515

Juneau (City Borough)

(A/E liability expansive: liable for any claim arising out of performance)

22. INDEMNIFICATION AGREEMENT. Consultant agrees to defend, indemnify, and hold harmless City, its employees, volunteers, Consultants, and insurers, with respect to any action, claim, or lawsuit arising out of the Consultant's performance of this Contract, without limitation as to the amount of fees, and without limitation as to any damages resulting from settlement, judgment, or verdict, and includes the award of any attorneys fees even if in excess of Alaska Civil Rule 82. This indemnification agreement applies to the fullest extent permitted by law and is in full force and effect whenever and wherever any action, claim, or lawsuit is initiated, filed, or otherwise brought against City relating to this Contract. The obligations of Consultant arise immediately upon actual or constructive notice of any action, claim, or lawsuit. City shall notify Consultant in a timely manner of the need for indemnification, but such notice is not a condition precedent to consultant's obligations and may be waived where the Consultant has actual notice.

Kenai Peninsula Borough

(A/E liable for "negligent actions, errors, or omissions"; comparative fault if not covered by insurance)

ARTICLE 13 INDEMNIFICATION Revised 9/30/02

To the maximum extent allowed by law, the Consultant and all Consultant's subcontractors shall indemnify, defend, and hold harmless Kenai Peninsula Borough (KPB), and Kenai Peninsula Borough School District (KPBSD) where the contract involves KPBSD, and their assemblies, boards, officers, and employees (hereinafter Owner) for all damages of any kind or nature, all costs of any kind and all attorneys' fees arising from all claims, suits, or actions of any nature that result, in total or in part, from the negligent actions, errors, or the omissions of the Consultant and/or Consultant's subcontractors and/or their officers, agents and employees in connection with this contract. Without modifying consultant's duty to defend Owner, in the event it is found that the Owner is in part responsible for any of the above-referenced damage or loss, Consultant shall only be required to indemnify Owner for the portion of fault attributed to Owner where Consultant's insurance provides coverage. Consultant and Consultant's subcontractors shall not be required to defend or indemnify Owner for damage or loss that has been found to be attributed to a contractor directly responsible to the Owner under separate written contract. Consultant shall not be required to defend and indemnify Owner where the Owner's action(s) is/are the sole cause for the damage or loss or where the damage or loss was caused by the Owner's willful misconduct.



Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99510-0515

Ketchikan (City of)

(A/E liable for "negligent acts or omissions"; comparative fault)

(2006)

18. Hold Harmless and Indemnity. The **OWNER**, its officers, employees and agents shall not be held liable for any claims, liabilities, penalties, fines or for damage to any goods, properties or effects of any person whatsoever, nor for any personal injury or death, caused by or resulting from any negligent act or omission of **CONSULTANT**, or by any of **CONSULTANT'S** officers, employees, agents, representatives, Consultants, or subconsultants in the performance or nonperformance of this agreement, and **CONSULTANT** further agrees to appear and defend, and to indemnify and save free and harmless the **OWNER** and its officers, employees and agents from and against any of the foregoing claims, liabilities, penalties, fines or damages, and for any cost and expense, including reasonable attorney's fees, incurred by the **OWNER**, its officers, employees or agents on account of any claim therefore, including claims by reasons of any defects in any plans, drawings, specifications, computer programs, technical reports, or other work product of **CONSULTANT** prepared for or submitted to the **OWNER** pursuant to this agreement provided said claim is not based upon a use of said plans, drawings, specifications or other work product for other than the purposes for which such data was prepared and submitted to the **OWNER**. Notwithstanding any other provision herein contained the parties hereto agree that liability (including costs of defense and attorney's fees) for claims arising from the concurrent negligence of both parties to this agreement shall be apportioned according to the respective percentage of fault attributable to each party as determined by agreement or by the tier of fact.

Matanuska Susitna Borough

(A/E assumes virtually all liability)

SECTION 25 Defense and Indemnification

The consultant shall indemnify, defend, and hold and save the borough its elected and appointed officers, agents, and employees harmless from any and all claims, demands, suits, or liability of any nature, kind, or character, including costs, expenses, and attorney's fees. The consultant shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death economic loss, damages, violation of statutes, ordinances, constitutions, or other laws, rules, or regulations, contractual claims, or any other kind of loss, tangible or intangible, sustained by any person, or property arising from consultant's or consultant's officers, agents, employees, partners, attorneys, suppliers, and subcontractors' performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omission by the borough or its agents which are said to have contributed to the losses, failure, violations, or damage. However, the consultant shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the borough, its agents, or employees.



Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99510-0515

University of Alaska
(A/E assumes virtually all liability)

Indemnification: (Rev 2/5/04)

To the fullest extent permitted by law, the Contractor shall pay costs of defense, indemnify, and hold harmless the University, its Board of Regents, officers, and employees from and against any and all loss, expense, damage, claim, demand, judgment, fine, charge, lien, liability, action, cause of action, or proceedings of any kind whatsoever (whether arising on account of damage to or loss of property, or personal injury, emotional distress, or death) arising directly or indirectly in connection with the performance or activities of the Contractor hereunder, whether the same arises before or after completion of the Contractor's operations or expiration of this Agreement, except for damage, loss, or injury resulting from the Owner's gross negligence or willful misconduct. The provisions of this paragraph do not apply to claims that fall within coverage of the Contractor's professional liability insurance policy.

Wasilla (City of)
(A/E liable for "negligent or willful acts or omissions")

INDEMNIFICATION.

To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the City's right to participate, the City from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

Murray & Associates, P. C. Consulting Engineers

PO Box 21081, Juneau, Alaska 99802-1081 (907) 780-6151 Fax: (907) 780-6182

March 14, 2007

The Honorable Beth Kertulla
State Capitol, Room 404
Juneau, AK 99801-1182

The Honorable Craig Johnson
State Capitol, Room 126
Juneau, AK 99801-1182

Subject: House Bill HB No. 151

Dear Representatives:

As a private professional engineer and owner of a local engineering firm I would like to inform you that I strongly support HB 151. The University and the City and Borough of Juneau has required indemnification language in our past contracts which is very arbitrary, unfair, and likely not even enforceable.

Some professional will not even compete for thee projects solely because of the indemnification requirements. Time and effort are wasted reviewing these unfair requirements.

Please vote in support of this bill. If you have any questions, please contact me.

Cordially,



Douglas Murray, P.E.
President, Murray & Associate , P. C.
(907) 780-6151

March 14, 2007



The Honorable Craig Johnson
State Capitol, Room 126
Juneau, AK 99801-1182

RE: Support of HB151

Dear Representative Johnson:

We are writing to express our support of the indemnification provisions addressed in HB151.


Livingston Slone, Inc. is an architectural firm providing professional services for facility designs and I have been negotiating contracts with State, Federal and Local government agencies on my firm's behalf for more than 30 years. Indemnification provisions in contracts as a whole create one of the greatest difficulties in reaching agreement during contract negotiations. They can result in added costs, schedule increases and hard feelings at a time when owners and professional firms need to be cooperating for the good of a project.

Many public-agency contracts, such as that of the University of Alaska, require professional firms (A/Es) to indemnify the owner even if the A/E is not at fault. Livingston Slone and our colleagues in the design professions can, and do, carry insurance for professional liability, business liability, etc. We can accept liability our acts and performance, but not the acts or performance of others. State law requires the Architect or Engineer of Record to be liable and not their employer. So, indemnifying an owner even when the A/E is not at fault puts tremendous risk on individuals; risk that cannot be insured under normal policies. The indemnification provisions are almost always the contract points that require both the owner and the A/E to consult attorneys, driving up the costs of doing business for both. We invest literally tens thousands of dollars in getting proposing on and negotiating contracts. This puts us at a commercial disadvantage and we are often forced by circumstance to sign contracts that have indemnification provisions that we can't insure.

The language you have crafted in HB151 is much better than that which currently exists. Contractors take responsibility for problems when they are at fault, Owners do so when they are at fault and if the fault is shared, each party takes responsibility at the level or percentage they are at fault. It is a win-win proposition. Having specific indemnification language codified into law will make negotiations easier and more cost effective for both the public agency and businesses. These cost savings can result in more efficient use of public and business resources.

Thank you. HB151 is certainly a step in the right direction.

Sincerely,
LIVINGSTON SLONE, INC.


Donald E. Slone, P.E.
Civil Engineer


Thomas W. Livingston, FAIA
Architect

TOM LIVINGSTON, FAIA
DONALD E. SLONE, PE

LIVINGSTON SLONE, INC.
3900 ARCTIC BOULEVARD, SUITE 301
ANCHORAGE, ALASKA 99503-5782
907 562 2058 FAX 907 561 4528

Kinney Engineering, LLC

750 West Diamond Boulevard
Suite 203
Anchorage, Alaska 99515
(907) 348-2373
Fax: (907) 348-7496

March 12, 2007

The Honorable Craig Johnson,
State Capital, Room 126
Juneau, Alaska 99801-1182

Subject: HB No. 151

Dear Representative Johnson:

I am writing this letter to endorse and strongly support HB No. 151 for the following reasons.

- 1) Errors and Omissions insurance covers negligence, errors, and omissions of the professional. These policies do not cover liabilities arising due to the negligence, errors, or omissions of the Owner. As such, unfair indemnification clauses may not provide the Owner with the liability coverage that they expect.
- 2) Some professionals will not compete for projects containing unfair indemnification requirements. As a result, the most qualified professional may not be selected for some projects and this is detrimental to the public interests.
- 3) Substantial time and expense is incurred by professionals and insurance companies as they review and assess the unique indemnification language contained in each professional service agreement. This raises the cost for public projects.
- 4) When a public agency shifts the liability for their actions to consultants, the public agency is likely to be less diligent and increase the likelihood of negligence, errors, and omissions. This is not beneficial to the public since there is still a negative impact to the public, regardless of who is held responsible.
- 5) In many cases when a problem arises, both the public agency and the design professional have contributed to the problem. Arbitrarily assigning liability to the design professional is unfair and may prevent the public agency from taking the appropriate counter-measures to prevent similar problems in the future.

Reputable engineers, architects, surveyors, and scientists are agreeable to bear responsibility for our mistakes. We maintain comprehensive and expensive errors and omissions insurance policy to protect our clients should we were to be negligent in our professional services. However, it is unfair and not in the public interest for us to accept this risk for the performance of other parties whose actions are well beyond our control.

Please contact me at (907) 344-7575, or by e-mail at randykinney.kinneveno@alaska.net if you require additional information.

Sincerely,
Kinney Engineering, LLC



James R. (Randy) Kinney, P.E, PTOE
Member

March 10, 2007



Representative Craig Johnson
State Capitol, Room 126
Juneau, Alaska 99801-1182

Re: House Bill 151

Design Alaska strongly supports House Bill (HB) 151 requiring fairly apportioned indemnification and hold harmless provisions in the professional services contracts of public and quasi-public agencies.

Use of indemnification and hold harmless provisions that require design professionals to assume liability beyond their own negligence serve the purpose of reducing agency risk by insulating the agency from its own negligence. This unfairly and inappropriately creates a liability risk for professional service firms that is not uninsurable. Design Alaska's professional liability insurance covers only our own negligent acts, errors or omissions; our professional liability insurance cannot be extended to cover the negligence of others.

Design Alaska strongly supports the HB 151 legislation prescribing indemnification language that is uniform for all governmental agencies in Alaska; that requires each party to be financially responsible for their own negligent acts, errors, or omissions; and that apportions liabilities on a comparative fault basis. We believe HB 151 as currently written will clarify the contractual liabilities of the parties and allocate risk in a fair and balanced manner. Thank you for sponsoring HB 151.

Sincerely,

Design Alaska, Inc.

A handwritten signature in black ink, appearing to read "Jack B. Wilbur Jr.", written over a horizontal line.

Jack B. Wilbur Jr.
President

cc: JBW, CHM

c:\new project documents\1005\hb 151\hb151 letter.doc

Design Alaska Inc. Architects • Engineers • Surveyors
801 College Road Fairbanks Alaska 99701 907 452 1241
Fax 907 456 6883 E-Mail mail@designalaska.com

DOWL **ENGINEERS®** A Division of DOWL LLC

March 9, 2007
W.O. D00001

The Honorable Craig Johnson
Representative of the State of Alaska
State Capitol, Room 126
Juneau, Alaska 99801-1182

**Subject: State of Alaska Department of Transportation and Public Facilities
Indemnification clause**

The Honorable Craig Johnson:

DOWL Engineers (DOWL) has been in business in Alaska for 45 years, providing professional engineering services for clients throughout the state of Alaska in both the public and private sector. We employ more than 200 people and have thriving branch offices in Kodiak, Palmer, Seattle and Tucson. DOWL firmly supports HB 151.

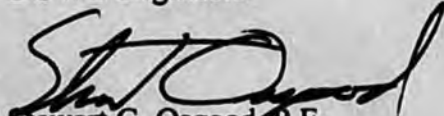
Currently, the State of Alaska Department of Transportation and Public Facilities (DOT&PF) contract language includes a "comparative fault" provision in its indemnification clause. This provision is consistent with industry standards and with what is widely considered "insurable" by Architect and Engineering (A/E) firms and their insurance companies.

While DOT&PF conforms to the latest standards, some state entities include contract language that puts the entire liability on the A/E firm regardless of the level of fault that is apportioned by the courts. This language takes all of the accountability off of the contracting agency and places it on the contractor—in effect, putting them in the role of an insurance company. Furthermore, the contract language is often non-negotiable and jeopardizes the award of the contract if the A/E firm refuses to accept the asymmetrical condition.

I have attached language extracted from the latest Engineers Joint Contract Documents Committee Standard Form of Agreement which discusses insurance guidelines and indemnification. Section 6.11.2 discusses the need to indemnify the Owner (State of Alaska) when there are costs, losses, or damages due to an engineering firm's negligent acts. Similarly, Section 6.11.3 indemnifies the engineering firm when the Owner's negligent acts cause costs, loss, or damage. It is clear HB 151 conforms to the latest national standards for contract indemnification.

Thank you for sponsoring HB 151. I think it will go a long way toward promoting accountability for those working on Alaska's important public projects. If I may be of additional assistance as this legislation goes through the committee process, please do not hesitate to call.

Sincerely,
DOWL Engineers



Stewart G. Osgood, P.E.
President

Attachment: As stated

D00001.Johnson.HB51.SGO.030907.mas

"arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on 30 days notice.

6.11 Allocation of Risks

A. Indemnification

1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.

2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and OWNER's consultants with respect to this Agreement or the Project.

3. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals.

4. In addition to the indemnity provided under paragraph 6.11.A.2 of this Agreement, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its

officers, directors, partners, employees, and ENGINEER's Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 6.11.A.4. shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

5. The indemnification provision of paragraph 6.11.A.1 is subject to and limited by the provisions agreed to by OWNER and ENGINEER in Exhibit I, "Allocation of Risks," if any.

6.12 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.13 Survival

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.14 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.15 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.16 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

Architects Alaska[®]

*An Alaskan Corporation
Architecture
Facility Planning
Interior Architecture*

March 9, 2007

Representative Craig Johnson
State Capitol, Room 126
Juneau, AK 99801-1182

Subject: HB-151

Dear: Representative Johnson

I am writing to express my support for HB-151. Architects Alaska has been providing Architectural Design Services throughout Alaska since 1950. I personally have been practicing in Alaska for more than 26 years. We employ approximately 30 professional in 2 offices located in Anchorage and Wasilla, Alaska.

Recently, within the past 5 to 7 years, we have been experiencing more and more difficulty in negotiating fair contract language with clients, especially governmental agencies. These clients have been attempting to shift their risk unduly to the design community. Contract language requires the design team to hold the client harmless for all of the client's acts. This includes the client employees and agents. We take exception to this and consistently find ourselves in the position of negotiating this type of language out of contact(s), which is time consuming, expensive and needless to say frustrating.

First of all the design team has no control over the client's action and should not be held accountable for such acts. Secondly, this is uninsurable language. Most clients do not understand this. As requested by most government contacts, we provided professional liability insurance, which helps reduce the client's risk. However this risk is not reduced if the contact language is uninsurable.

We support HB-151. The bill language provides a more equitable share of risk to each party with regards to who has control over the firm(s), agency(s), employee(s), agent(s) or individual(s) actions.

Thank you for addressing this matter.

Sincerely;



Mark A. Kneedler, AIA
President

900 W. 5th Avenue, Suite 403
Anchorage, Alaska 99501-2029
(907) 272-3567
FAX (907) 277-1732

191 E. Swanson Avenue
Wasilla, Alaska 99654-7025
(907) 373-7503
FAX (907) 376-3166



Alaska Society of Professional Engineers
Professional Engineers in Private Practice

750 W. Dimond Boulevard, Suite 203 Anchorage, AK 99515

March 9, 2007

The Honorable Craig Johnson,
State Capital, Room 126
Juneau, Alaska 99801-1182

Subject: HB No. 151

Dear Mr. Johnson:

The Professional Engineers in Private Practice is a professional society for individuals providing consulting services to private and public clients. Our members have observed a steady increase in the number of public agency professional service agreements that require design professionals to assume liability which is uninsurable. We believe that this type of professional service contract language is unfair and is not in the best interest of the public. We endorse and strongly support HB No. 151 for the following reasons.

- 1) Errors and Omissions insurance covers negligence, errors, and omissions of the professional. These policies do not cover liabilities arising due to the negligence, errors, or omissions of the Owner. As such, unfair indemnification clauses may not provide the Owner with the liability coverage that they expect.
- 2) Some professionals will not compete for projects containing unfair indemnification requirements. As a result, the most qualified professional may not be selected for some projects and this is not beneficial to the public.
- 3) Substantial time and expense is incurred by professionals and insurance companies as they review and assess the unique indemnification language contained in each professional service agreement. This raises the cost for public projects.
- 4) When a public agency shifts the liability for their actions to consultants, the public agency is likely to be less diligent and increase the likelihood of negligence, errors, and omissions. This is not beneficial to the public since there is still a negative impact to the public, regardless of who is held responsible.
- 5) In many cases when a problem arises, both the public agency and the design professional have contributed to the problem. Arbitrarily assigning liability to the design professional is unfair and may prevent the public agency from taking the appropriate counter-measures to prevent similar problems in the future.

The Professional Engineers in Private Practice believe that it is in the best interest of the public that each party in a professional service agreement be financially responsible for their own liabilities and to apportion joint liabilities on a comparative fault basis. As such, we strongly support House Bill 151.

Sincerely,

Arnold N. Harder, P.E.
Chairperson, Alaska Chapter

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Alaska

March 8, 2007

Representative Craig Johnson
State Capitol, Room 126
Juneau, Alaska 99801-1182

Regarding: House Bill 151

Dear Representative Johnson:

The American Consulting Engineering Companies (ACEC) of Alaska strongly supports House Bill (HB) 151 requiring fairly apportioned indemnification and hold harmless provisions in the professional services contracts of public and quasi-public agencies. Gross imbalances in indemnification and hold harmless contract clauses create what is unquestionably the most contentious issue in contract negotiations between professional service providers and governmental and quasi-governmental agencies in the State of Alaska.

In recent years, several Alaskan government and quasi-government agencies have required design professionals to assume additional liability beyond the consultant's own negligence. The purpose of this action is to reduce agency risk by insulating the agency from its own negligence. This inappropriately increases liability risk to professional service firms and creates a contract that is not fully insurable, and in many cases uninsurable. Professional Liability Insurance is limited to negligent acts, errors or omissions. Consultants that agree to overly broad indemnification and hold harmless contract clauses do so without the possibility of insurance and place their livelihood and the fate of the agencies' project at great risk.

ACEC of Alaska strongly supports the HB 151 legislation prescribing indemnification language that is uniform for all governmental agencies in Alaska; that requires each party to be financially responsible for their own negligent acts, errors, or omissions; and that apportions liabilities on a comparative fault basis. We believe HB 151 as currently written will clarify the contractual liabilities of the parties and allocate risk in a fair and balanced manner. Thank you for sponsoring HB 151.

Yours truly,
American Council of Engineering Companies of Alaska



Paul C. Ramert, P.E.
President

Shawn Florio, P.E.
2020 Shore Drive
Anchorage, Alaska 99515

March 8, 2007

Representative Craig Johnson
State Capitol, Room 126
Juneau, AK 99801-1182

RE: HB151 – Contractual Indemnification

Representative Johnson:

Thank you for sponsoring HB151. Although I am writing on my own behalf as a licensed engineer in the State of Alaska, I am familiar with the subject as the immediate past president of the Alaska Professional Design Council (APDC). For your reference, APDC is a consortium of professional societies that represents approximately 5,000 licensed architects, engineers, land surveyors, landscape architects and other design professionals.

Over the past few years, my involvement with APDC has exposed me to requests by owners of some projects – many times government agencies – to contractually indemnify uninsurable risks to design professionals. Many times these risks are uninsurable by the designer or his/her firm since the risk is beyond their own limit of negligence. This places the design professional in the precarious position of having to confront their client during contract negotiations with the issue, or alternatively assuming the uninsurable liability.

I support HB151 in its current form. HB151 provides uniform language for all state agencies and requires each party to be financially responsible for their own liabilities and fairly apportions joint liabilities on a comparative fault basis.

Thank you for your efforts.

Respectfully,



Shawn A. Florio, P.E.



R&M CONSULTANTS, INC.
9101 Vanguard Drive, Anchorage, Alaska 99507

(907) 522-1707, FAX (907) 522-3403, www.rmconsult.com

March 8, 2007

Representative Craig Johnson
State Capitol, Room 126
Juneau, Alaska 99801-1182

RE: HB 151, Indemnification and Hold Harmless Provisions in Professional Services Contracts

Dear Representative Johnson:

R&M Consultants, Inc. strongly supports HB 151 which will provide standard indemnification and hold harmless provisions for professional services contracts with state agencies, quasi-public agencies, municipalities, and political subdivisions. HB 151, as written, utilizes standard language found in State of Alaska Department of Transportation & Public Facilities (DOT&PF) contracts that have been used for many years.

The DOT&PF indemnification and hold harmless language provides liability and obligation on a comparative fault basis, and does not require obligation to the professional services firm for independent negligence by the owner, or a third party. The DOT&PF language does protect the owner from negligence by the professional services firm.

Many agencies have utilized the DOT&PF indemnification and hold harmless language as it is fair, has stood the test of time, and is supported by the State of Alaska.


Recently, a significant number of public agencies have been utilizing indemnification and hold harmless language that assigns liability and obligation to professional services firms for independent actions, or negligence by the owner or third parties. These clauses are uninsurable and require the professional services firm to either accept the contract with undue risk, expend time and effort to renegotiate the indemnification and hold harmless language, or walk away from the work.

As in all contracting, standard language that has stood the test of time results in less risk for all parties, and provides for a more competitive marketplace.

Thank you for sponsoring HB 151. This important legislation will be beneficial to all Alaskans.

Very truly yours,

R&M CONSULTANTS, INC.


Frank D. Rast, P.E.
Vice President



McCOOL CARLSON GREEN

ARCHITECTURE • INTERIOR DESIGN • SPACE PLANNING

March 8, 2007

Representative Craig Johnson
State Capitol, Room 126
Juneau, AK 99801-1182

Re: HB 151

Dear Representative Johnson,

I am writing in support of streamlining and standardizing indemnification clauses as proposed in HB 151. I have practiced architecture in Alaska for more than 30 years and am a principal in the firm McCool Carlson Green in Anchorage. Most of work has been for public clients with some of our more prominent buildings being the C Terminal at Ted Stevens International Airport, the Nesbett Courthouse in downtown Anchorage and UAA's Aviation Technology Center at Merrill Field.

Through the years I have spent countless hours discussing insurance and indemnification issues with our clients and up until recently most of the public agencies we work for have been willing to include reasonable indemnification clauses in their professional services contracts. That changed recently when two of our long term clients, the Mat Su Borough and the University of Alaska issued new contract forms that included clauses that were unfair, unreasonable, inconsistent with available insurance coverage and out of step with design industry practices. These indemnification clauses attempt to shift as much risk as possible to the design professionals, making them liable for events that are out of their control and potentially unrelated to the services they provided. Some even attempt to make the design professional responsible for the negligence of the owner. The use of such one sided contract clauses does not foster the spirit of teamwork and cooperation necessary to design public projects and is bad public policy.

HB 151 suggests the state mandate standardization of these clauses in all professional services contracts with public agencies based on language currently used by ADOT/PF. While this language does not include all the provisions the insurance industry might like it strikes a fair balance between reasonable protections for the owner and the current state of design practice and insurance coverage. I encourage you to support HB151 and move it quickly through the committee process.

Sincerely,
McCool Carlson Green Architects

Michael Carlson, AIA/CCS/NCARB
Principal Architect

John E. McCool
Michael E. Carlson
Douglas G. Green

901 Photo Avenue
Anchorage, Alaska 99503
(907) 563-8474
FAX (907) 563-4572
mccg@mcgalaska.com

March 7, 2007

Representative Craig Johnson
State Capitol, Room 126
Juneau, AK 99801-1182

Subject: HB 151 – Contractual Indemnification

Dear Mr. Johnson:

The purpose of this correspondence is to share my support with respect to proposed HB 151 with respect to Contractual Indemnification Language.

As a practicing Engineer and business owner, I feel that it is important for contracts between the State and Professional Service providers to be fair to both parties. In addition, contract provisions need to be reasonably insurable by our insurance providers without excessive costs that will eventually trickle down and be paid for by the public.

Thank you for your work on the proposed bill.

Sincerely,

A handwritten signature in black ink, appearing to be 'C. Hay', written in a cursive style.

Calvin C. Hay, P.E.
5520 E. 112th Avenue
Anchorage, AK 99516

cc: Senator Con Bunde
cc: Representative Bob Lynn
cc: Representative Ralph Samuels



engineering and constructing a better tomorrow

March 6, 2007

Representative Craig Johnson
Alaska Legislature
State Capitol, Room 126
Juneau, Alaska 99801-1182

RE: Support for House Bill 151, Indemnification Standardization for Alaskan Public Agencies

Dear Representative Johnson:

MACTEC Engineering and Consulting, Inc., is pleased to register its support in favor of House Bill 151 requiring standardized indemnification and hold harmless provisions in professional services contracts for public agencies in Alaska. Passing of this bill will benefit not only the architect-engineer (A-E) industry, but also the State, the public agencies, and the people of Alaska.

Apportionment of joint liability on a comparative fault basis provides for indemnification to the extent that the professional A-E service provider is negligent. Any non-comparative fault apportionment is simply not fair and will ultimately result in higher project costs.

Responsible professional A-E service providers carry professional liability insurance for negligent acts, errors, or omissions, so it behooves public agencies to require indemnification for those items to take advantage of the provider's insurance coverage in the event that indemnification by the provider becomes necessary. Currently several public agencies' standard contracts include indemnification terms that are not covered by professional liability insurance, and the inclusion of those terms in a signed contract can negate all professional liability coverage. Standardizing indemnification terms protects the agency and the A-E service provider.

Sincerely,

MACTEC Engineering and Consulting

A handwritten signature in black ink, appearing to read "JD", enclosed within a large, hand-drawn oval.

Jason Ditsworth, P.E.
Alaska Office Manager

wc
QC/TE/cc/A0253G



PDC INC. ENGINEERS

March 6, 2007

The Honorable Craig Johnson
State Capitol, Room 126
Juneau, AK 99801-1182

Dear Mr. Johnson:

I would like to express to you my strong support for House Bill No. 151. This important legislation addresses a critical issue associated with professional services agreements between public agencies and professional design firms in Alaska, specifically, indemnification and hold harmless agreements.

There currently exists a wide disparity between the professional services agreements used by various public agencies to contract for professional design services in Alaska. Many of the agreements contain indemnification and hold harmless clauses that attempt to shift risk from the public agency to the design professional unfairly. Such clauses are typically either uninsurable or insurable only at very high cost.

Use of unfair indemnification clauses has resulted in a number of undesirable effects:

- 1) Inappropriate shift of risk to the design professional
- 2) Unfair shift of fault from the responsible party to the design professional
- 3) False sense of risk management (frequently the indemnification clauses are uninsurable, hence, no real risk protection is made available to the public agency)
- 4) Increased costs experienced by the design professional community, which ultimately translates into increased costs for the delivery of projects for the public agencies.
- 5) Fewer qualified design professionals available to provide competent services to public agencies. Responsible design professional firms cannot reasonably accept the risk and costs associated with unfair indemnification clauses.

As a design professional, I am quite willing to accept reasonable risk in the performance of our professional services, to provide protection to our clients for services rendered through responsible risk management and insurance, and to accept the responsibility for our negligent acts, errors, and omissions, should they occur. However, it is extremely difficult for us to accept the risk and liability of negligent acts, errors, and omissions that are the responsibility of other parties.

The proposed legislation would correct the current deficiencies, fairly allocate risk and responsibility in professional services agreement, and improve the delivery of professional services for public agencies in the State of Alaska.

2700 Gambell Street, Suite 500

Anchorage, AK 99503

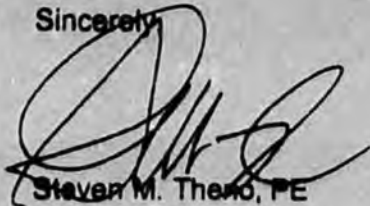
T: 907.743.3200

F: 907.743.3295

HB 151
March 6, 2007
Page 2

Ultimately, our mandate as design professionals is to protect the health, safety, and welfare of the public. We do so in part through the services we deliver to public agencies. This legislation helps provide an appropriate and fair framework under which we deliver those services.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Thero', written over the word 'Sincerely,'.

Steven M. Thero, PE
President
PDC, Inc. Engineers