

Alaska State Legislature

House Resources Committee

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Sectional Analysis

Committee Substitute for House Bill 322 (RES)

"An Act relating to penalties for discharges of oil and other pollution violations; relating to oil spill response plans for commercial motor vehicles transporting crude oil; and providing for an effective date."

Section 1—Findings

Acknowledges that a penalty may be punitive. Applies findings to non-judicial penalties.

Section 2—Civil penalties for discharges of oil

Increases penalties (in regulations) for non-crude oil spills over 18,000 gallons into aquatic environments and onto public land.

Section 3—Inflation proofing

Directs the Department of Environmental Conservation (DEC) to increase civil penalties annually for non-crude discharges into aquatic environments and onto public land.

Section 4—Civil penalties for discharges of crude oil

Updates penalties for crude oil spills over 18,000 gallons. Existing penalties adjusted for inflation roughly equal the proposed new penalties.

Section 5—Civil penalties for discharges of crude oil

Calculates penalty amounts by counting produced water mixed with crude oil as crude oil. Directs DEC to increase civil penalties annually for crude oil discharges.

Section 6—Civil action for pollution; damages

Doubles the minimum penalty, established in 1976, for illegal discharges under 18,000 gallons of oil and crude oil, and discharges of any amount of other hazardous substances (such as ballast water, pesticides and paints, and discharges from underground storage tanks, cruise ships and illegal drug sites). Doubles the maximum penalty, established in 1976, for an initial violation. The 1976 minimum and maximum penalties, adjusted for inflation, would equal twice the amount of the proposed new minimum and maximum. In other words, to keep pace with inflation, the minimum and maximum penalties would have to be quadrupled.

Quintuples the maximum penalty for a continuing violation.

Allows a court calculating a penalty to increase that penalty to deter future spills.

Section 7—Civil action for pollution; damages

Allows a civil court to impose punitive penalties. Conforms to the repeal in Section 14.

Section 8—Civil action for pollution; damages

Doubles the minimum penalty for discharges of hazardous wastes. The proposed new \$1,000 minimum roughly equals the existing penalty adjusted for inflation.

Doubles the maximum penalty for an initial violation, which roughly equals the existing penalty adjusted for inflation.

Multiplies the maximum penalty for a continuing violation by a factor of 2.5, which roughly equals the existing penalty adjusted for inflation.

Section 9—Civil action for pollution; damages

Doubles the minimum penalty for discharges under 18,000 gallons from cruise ships. The proposed new \$10,000 minimum exceeds the existing penalty adjusted for inflation, which would be approximately \$6,000.

Doubles the maximum penalty for an initial violation. The proposed new \$200,000 maximum exceeds the existing penalty adjusted for inflation, which would be approximately \$112,000.

Multiplies the maximum penalty for a continuing violation by a factor of 2.5. The proposed new \$25,000 daily maximum exceeds the existing daily maximum adjusted for inflation, which would be approximately \$12,216.

Section 10—Civil action for pollution; damages

Describes the factors a court may consider when determining the economic benefit of non-compliance.

Section 11—Civil action for pollution; damages

Describes the factors a court may consider when determining the need for an enhanced civil penalty to deter future non-compliance.

Directs the Department of Environmental Conservation (DEC) to annually increase the daily civil penalty caps described in Sections 6, 8 and 9 of the bill.

Section 12—Administrative penalties for discharges of oil and crude oil

Authorizes DEC to assess new administrative penalties (in addition to civil penalties a court may levy) for serious or repeated illegal discharges. DEC could penalize the responsible party no less than \$500, no more than \$10,000 for each violation.

Describes the factors DEC must consider when assessing administrative penalties.

Allows DEC to sue a responsible party who doesn't pay an administrative penalty. The court could not adjust the administrative penalty, must award the prevailing party attorney fees and collection costs, and must subtract the administrative penalty from any eventual civil penalty.

Directs DEC to count produced water mixed with oil as oil when determining spill volume. Directs DEC to inflation proof administrative penalties by increasing them annually.

Defines "oil," in this section, to include crude, petroleum and any substance refined from oil.

Section 13—Oil spill response plans for commercial motor vehicles

Requires a trucking company transporting crude oil to submit to DEC any spill response plan they're required to submit to a federal agency. Requires such a company to comply with their plan.

Section 14—Repealers

Repeals legislative disapproval of regulations regarding civil penalties for oil discharges. Repeals prohibition against punitive penalties for illegal discharges of ballast water, pesticides and paints, and discharges from underground storage tanks, cruise ships and illegal drug sites. Conforms to Section 7.

Sections 15-17—Regulations and effective dates

Allows DEC time to adopt regulations before this bill, if enacted, takes effect January 1, 2019.

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