

HOUSE CS FOR CS FOR SENATE BILL NO. 128(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/17/99

Referred: First Supplemental Calendar

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act moving the termination date of the Board of Storage Tank Assistance
2 to June 30, 1999; relating to the storage tank assistance fund, to financial
3 assistance for owners and operators of underground petroleum storage tank
4 systems, and to discharges from underground petroleum storage tank systems; and
5 providing for an effective date."

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

7 * **Section 1.** AS 44.66.010(a)(18) is amended to read:

8 (18) Board of Storage Tank Assistance (AS 46.03.360) - June 30, **1999**
9 [2000];

10 * **Sec. 2.** AS 46.03.360(e) is amended to read:

11 (e) Under AS 44.62 (Administrative Procedure Act), the board shall adopt
12 regulations under which the department shall

13 (1) [DETERMINE WHICH COSTS OF TIGHTNESS TESTING AND

1 SITE ASSESSMENT ARE ELIGIBLE COSTS UNDER AS 46.03.415;

2 (2)] rank requests for assistance under AS 46.03.420 **and 46.03.422**;

3 **(2)** [(3)] determine which costs of risk assessment, containment,
4 corrective action, and cleanup are eligible costs under AS 46.03.420 **and 46.03.422**;

5 **(3)** [(4)] determine which costs of upgrading and closure are eligible
6 costs under AS 46.03.430.

7 * **Sec. 3.** AS 46.03.360(f) is amended to read:

8 (f) If the department determines that an owner or operator is not eligible for
9 assistance under AS 46.03.410 - 46.03.430 or that a cost is not eligible under
10 AS 46.03.415 - 46.30.430 and the affected owner or operator disputes that
11 determination, or if an owner or operator disputes the ranking assigned to a request for
12 assistance under AS 46.03.420 **or 46.03.422**, the owner or operator may apply to the
13 board for resolution of the dispute. The board may issue a decision in a dispute
14 brought to it under this subsection. The decision is binding on the owner, operator,
15 and department.

16 * **Sec. 4.** AS 46.03.410(a) is amended to read:

17 (a) There is established the storage tank assistance fund. It consists of money
18 appropriated to it by law. The department shall deposit earnings on money in the fund
19 in the general fund. The legislature may use the estimated balance in the account
20 maintained by the commissioner of administration under AS 37.05.142 to make
21 appropriations to the fund. **The legislature may appropriate unencumbered money**
22 **from the fund for the cost of risk assessment, containment, corrective action, and**
23 **cleanup relating to an underground petroleum storage tank system owned or**
24 **operated by the state, the University of Alaska, a public corporation, a school**
25 **district, or another political subdivision or instrumentality of the state. The**
26 **legislature may also appropriate unencumbered money from the fund for state**
27 **legal and regulatory expenses associated with underground petroleum storage**
28 **tanks. An application for funds under AS 46.03.420, 46.03.422, and 46.03.430 is**
29 **not considered an encumbrance for purposes of this subsection.**

30 * **Sec. 5.** AS 46.03.410(b) is amended to read:

31 (b) The commissioner may use money in the fund to pay for

(1) [TANK TIGHTNESS TESTS OR SITE ASSESSMENTS UNDER AS 46.03.415;

(2)] grants and loans under AS 46.03.420 **and 46.03.422** for risk assessment, containment, corrective action, and cleanup costs; and

(2) [(3)] grants under AS 46.03.430 for tank system upgrading and closure.

* **Sec. 6.** AS 46.03.420(a) is amended to read:

(a) **The commissioner may make a grant from the storage tank assistance fund to an** [SUBJECT TO (b) - (i) OF THIS SECTION, APPLICATION MAY BE MADE TO THE DEPARTMENT BY THE] owner or operator of an underground petroleum storage tank system, other than the state or federal government, [FOR GRANTS AND LOANS FROM THE STORAGE TANK ASSISTANCE FUND TO PAY] for the costs of risk assessment, containment, corrective action, and cleanup resulting from a release of petroleum from or associated with an underground petroleum storage tank system **if the owner or operator meets the requirements of this section.** Applications for assistance under this section must be submitted to the department before July 1, 1994. Under regulations of the board, the department shall rank requests under this section in order of priority, giving greatest priority to those tank systems that present the greatest threat or potential threat to human health.

* **Sec. 7.** AS 46.03.420(b) is amended to read:

(b) **A grant** [GRANTS] made by the department under this section **must** [SHALL] exclude a portion of the risk assessment, containment, corrective action, and cleanup costs. The portion of these costs not payable as a grant by the department under this section is 10 percent of total costs, up to a maximum of \$25,000 not payable by the department; this portion of the costs shall be loaned at no interest by the department to the owner or operator on request with repayment to be made according to a schedule agreed to by the parties. The department may require security or collateral for a loan made under this subsection and may charge a fee for a late loan repayment equal to five percent of the amount of the late payment. At the department's discretion, a loan or grant under this section may be disbursed in partial payments according to a schedule related to costs anticipated to be incurred during

1 specified time periods.

2 * **Sec. 8.** AS 46.03.420(c) is amended to read:

3 (c) An owner or operator of an underground petroleum storage tank system is
4 not eligible for a grant or loan under this section for activities related to a release
5 unless the release occurs before December 22, 1993, and the owner or operator

6 (1) establishes the following to the department's reasonable satisfaction:

7 (A) the owner or operator reported the release to the department
8 in compliance with state and federal law before July 1, 1994, for a release that
9 the owner or operator establishes first occurred on or after September 5, 1990,
10 and before December 22, 1993;

11 (B) the owner or operator promptly reported the release to the
12 department in compliance with applicable regulations;

13 (C) the tank or tank system from which the release occurred
14 was installed before December 22, 1988;

15 (D) the owner and operator have, within six months after
16 September 5, 1990, been in compliance with all state and federal laws
17 applicable to underground petroleum storage tank systems and releases from
18 them, including notification and registration laws, but excluding financial
19 responsibility requirements;

20 (E) the release was not a result of the owner's or operator's
21 gross negligence, recklessness, or intentional conduct;

22 (2) agrees to

23 (A) upgrade all underground petroleum storage tanks located at
24 the facility from which the release occurred to the standards set by state and
25 federal regulations according to a time line established by the department;
26 notwithstanding (g) of this section and AS 46.03.365(c), the department may
27 require upgrading under this subparagraph that is required earlier than that
28 required under federal law; or

29 (B) remove and properly dispose of all liquids and sludges from
30 the underground petroleum storage tanks located at the facility from which the
31 release occurred, conduct a site assessment, and either fill the tanks with inert

solid material or properly dismantle, remove, and dispose of the tanks in accordance with applicable state and federal regulations; [AND]

(3) agrees to submit a plan for risk assessment, containment, corrective action, and cleanup to the department for its review and approval; if the department and the owner or operator cannot reach agreement on a plan or on later changes in the plan, the owner or operator may apply to the board to review the dispute; the board may issue a recommendation to the department in a dispute brought to it under this paragraph; and

(4) certifies under oath and subject to penalty for perjury, on a form required by the department, that the tangible net worth of the operator is \$1,000,000 or less as of the effective date of this section and, unless the tank is owned by the state or a municipality, that the net worth of the owner is \$1,000,000 or less as of the effective date of this bill section.

* **Sec. 9.** AS 46.03.420(e) is amended to read:

(e) A request for a grant under this section, and a grant payment made under this section, may not exceed \$250,000 [\$1,000,000 PER OCCURRENCE], less the amount not payable as a grant under (b) of this section. Furthermore, a grant payment under this section

(1) when combined with a grant payment under AS 46.03.430 to the same owner or operator, may not exceed \$250,000; and

(2) when combined with grants and loans to the same owner or operator under AS 46.03.422 and 46.03.430, may not exceed \$500,000.

* **Sec. 10.** AS 46.03 is amended by adding a new section to read:

Sec. 46.03.422. Tank cleanup loan program. (a) The commissioner may make a loan from the storage tank assistance fund to an owner or operator of an underground petroleum storage tank system for the costs of risk assessment, containment, corrective action, and cleanup resulting from a release of petroleum from or associated with an underground petroleum storage tank system if the owner or operator submitted a timely application for a grant under AS 46.03.420 and agrees

(1) to accept a loan in the same or lesser amount instead of a grant for the same project;

1 (2) to provide additional security or collateral for the loan if requested
2 by the department

3 (3) either to

4 (A) upgrade all underground petroleum storage tanks located at
5 the facility from which the release occurred to the standards set by state and
6 federal regulations according to a time line established by the department; or

7 (B) remove and properly dispose of all liquids and sludges from
8 the underground petroleum storage tanks located at the facility from which the
9 release occurred, conduct a site assessment, and either fill the tanks with inert
10 solid material or properly dismantle, remove, and dispose of the tanks in
11 accordance with applicable state and federal regulations; and

12 (4) to submit a plan for risk assessment, containment, corrective action,
13 and cleanup to the department for its review and approval; if the department and the
14 owner or operator cannot reach agreement on a plan or on later changes in the plan,
15 the owner or operator may apply to the board to review the dispute; the board may
16 issue a recommendation to the department in a dispute brought to it under this
17 paragraph.

18 (b) The department may require more security or collateral for a loan made
19 under this section than was required under a previously approved grant application for
20 the same project.

21 (c) Under regulations of the board, the department shall rank requests under
22 this section in order of priority, giving greatest priority to those tank systems that
23 present the greatest threat or potential threat to human health.

24 (d) The department may deny a request for a loan under this section if

25 (1) other risk assessment, containment, corrective action, tank upgrading
26 or closure, and cleanup activities for which money may be used under AS 46.03.410
27 constitute a higher priority for fund expenditures;

28 (2) the work that would have been covered by the loan has already
29 been completed; or

30 (3) the loan is for reimbursement of expenses previously incurred.

31 (e) This section does not affect

(1) the liability under state or federal law of a person or entity that receives assistance under this section for the costs of risk management, containment, corrective action, and cleanup resulting from a release of petroleum; or

(2) the authority of the department to seek recovery from the owner or operator of costs other than grants or loans actually made to an owner or operator under this section.

(f) The rate of interest on a loan under this section is equal to the 12th Federal Reserve District discount rate in effect on January 1 of the year in which the loan is approved plus one-half percentage point. The department shall disburse a loan in partial payments according to a schedule that allows reasonable oversight and assessment during implementation of the plan approved under (a) of this section. The interest rate applicable to a loan remains the same throughout the project for which the loan was approved but begins accruing on each partial payment only after disbursement of that payment.

(g) A loan payment under this section, when combined with loans and grants to the same owner or operator under AS 46.03.420 and 46.03.430, may not exceed \$500,000.

(h) The legislature may appropriate to the storage tank assistance fund established under AS 46.03.410 the annual estimated balance of the account maintained under AS 37.05.142 by the commissioner of administration to keep track of loan repayments, including interest payments, under this section.

* **Sec. 11.** AS 46.03.430(c) is amended to read:

(c) A grant may not be awarded under this section

(1) for upgrading or closure activities that do not meet the requirements of state and federal law;

(2) unless the owner or operator certifies under oath and subject to penalty for perjury, on a form required by the department, that the tangible net worth of the operator is \$250,000 or less as of the effective date of this section and, unless the tank is owned by the state or a municipality, that the net worth of the owner is \$250,000 or less as of the effective date of this bill section;

(3) if the grant, when combined with a grant to the same owner or

operator under AS 46.03.420, exceeds \$250,000; or

(4) if the grant, when combined with grants and loans to the same owner or operator under AS 46.03.420 and 46.03.422, exceeds \$500,000.

*** Sec. 12.** AS 46.03.450 is amended by adding a new paragraph to read:

(14) "tangible net worth" means the total value of tangible assets, including existing assets and probable future economic benefits that will be obtained or controlled by the entity as a result of past transactions, minus liabilities associated with bringing underground petroleum storage tank systems into compliance with state and federal laws and liabilities associated with releases of petroleum from underground petroleum storage tank systems; notwithstanding other provisions of this paragraph, "tangible net worth" does not include the value of goodwill.

*** Sec. 13.** Section 4(a), ch. 96, SLA 1990, is amended to read:

(a) Notwithstanding AS 46.03.420(h), **46.03.422(e)**, 46.03.758, 46.03.760, 46.03.780, 46.03.790, and 46.03.822, a person, including a municipal school district, regional educational attendance area, or municipality, is not civilly or criminally liable to the state under those sections for a discharge covered by those sections if the person demonstrates by a preponderance of the evidence that the person

(1) is the owner or operator of an underground petroleum storage tank or tank system, as defined in AS 46.03.450 [ENACTED BY SEC. 2 OF THIS ACT,] that was installed before December 22, 1988, and the discharge occurred from that tank or tank system before December 22, 1992;

(2) acted in good faith to report, assess, and mitigate damage from the discharge and to undertake corrective action in accordance with applicable state and federal law and was in compliance with all applicable state and federal law before the discharge occurred;

(3) is receiving or has been approved for state funds under AS 46.03.420 - 46.03.430 [ENACTED BY SEC. 2 OF THIS ACT]; and

(4) did not intentionally cause the discharge.

*** Sec. 14.** AS 46.03.380(b)(2), 46.03.380(b)(3)(B)(ii), 46.03.415; and sec. 7, ch. 96, SLA 1990, are repealed.

*** Sec. 15.** APPLICABILITY. AS 46.03.420(e), as amended by sec. 9 of this Act;

1 AS 46.03.422(g), enacted by sec. 10 of this Act; and AS 46.03.430(c)(3) and (4), enacted by
2 sec. 11 of this Act, apply to financial assistance received on or after July 1, 1999.

3 * **Sec. 16.** TRANSITIONAL REGULATIONS. (a) The Department of Environmental
4 Conservation and the Board of Storage Tank Assistance may adopt regulations as authorized
5 by this Act and other statutory authority to implement changes made by this Act. Regulations
6 adopted under this section may not take effect until the corresponding enabling statute takes
7 effect under sec. 18 of this Act.

8 (b) Notwithstanding any provision of this Act, regulations in effect on June 30, 1999,
9 relating to the storage tank assistance fund that are not inconsistent with the provisions of this
10 Act remain in effect until amended or repealed by the Department of Environmental
11 Conservation or the Board of Storage Tank Assistance.

12 (c) AS 44.62 (Administrative Procedure Act) does not apply to the development of
13 the form for certification of net worth required under AS 46.03.420(c)(4), enacted by sec. 8
14 of this Act, and AS 46.03.430(c)(2), enacted by sec. 11 of this Act.

15 * **Sec. 17.** Sections 1 and 16 of this Act take effect immediately under AS 01.10.070(c).

16 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect July 1, 1999.