

CS FOR SENATE BILL NO. 153(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 2/6/02

Referred: Rules

Sponsor(s): SENATOR LEMAN

A BILL

FOR AN ACT ENTITLED

1 **"An Act replacing the storage tank assistance fund with the underground storage tank**
2 **revolving loan fund and relating to that revolving loan fund; repealing the tank cleanup**
3 **program and the tank upgrading and closure program; and providing for an effective**
4 **date."**

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

6 * **Section 1.** AS 46.03.360(e) is amended to read:

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

9 (1) rank requests for assistance under **AS 46.03.422** [AS 46.03.420
10 AND 46.03.422];

11 (2) determine which costs of risk assessment, containment, corrective
12 action, and cleanup are eligible costs under **AS 46.03.422** [AS 46.03.420 AND
13 46.03.422].

14 * **Sec. 2.** AS 46.03.360(f) is amended to read:

(f) If the department determines that an owner or operator is not eligible for assistance under AS 46.03.410 - 46.03.422 [AS 46.03.410 - 46.03.430] or that a cost is not eligible [UNDER AS 46.03.415 - 46.30.430] and the affected owner or operator disputes that determination, or if an owner or operator disputes the ranking assigned to the [A] request for assistance [UNDER AS 46.03.420 OR 46.03.422], the owner or operator may apply to the board for resolution of the dispute. The board may issue a decision in a dispute brought to it under this subsection. The decision is binding on the owner, operator, and department.

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

(g) The board may adopt regulations to limit the number of sites per calendar year for which an owner or operator may be awarded financial assistance under AS 46.03.410 - 46.03.422 [AS 46.03.420 - 46.03.430]. The department shall implement the regulations.

* **Sec. 4.** AS 46.03.365(c) is amended to read:

(c) When [EXCEPT AS PROVIDED IN AS 46.03.420(c)(2)(A), WHEN] the regulations adopted under this section address areas governed by federal laws or regulations, the state regulations must be consistent with federal laws and regulations and may not be more stringent than the federal laws and regulations.

* **Sec. 5.** AS 46.03.385(e) is amended to read:

(e) The department shall deposit fees collected under this section into [LEGISLATURE MAY APPROPRIATE THE ANNUAL ESTIMATED BALANCE OF THE ACCOUNT MAINTAINED BY THE COMMISSIONER OF ADMINISTRATION UNDER AS 37.05.142 TO] the underground storage tank revolving loan [ASSISTANCE] fund established under AS 46.03.410.

* **Sec. 6.** AS 46.03.405 is amended to read:

Sec. 46.03.405. Prohibitions. A person, including a governmental entity or institution [,] or a public corporation, may not operate an underground petroleum storage tank or tank system unless

(1) the tank and tank system are [IS] registered with the department as provided in AS 46.03.360 - 46.03.450 or other law; and

(2) [EXCEPT AS PROVIDED IN AS 46.03.420(c)(1)(D),] the person

has provided to the department proof of financial responsibility to the extent required under regulations adopted under AS 46.03.365 or proof of application for arrangements that would satisfy state financial responsibility requirements.

* **Sec. 7.** AS 46.03.410 is amended to read:

Sec. 46.03.410. Underground storage [STORAGE] tank revolving loan [ASSISTANCE] fund. (a) There is established the underground storage tank revolving loan [ASSISTANCE] fund. It consists of money appropriated to it by law, repayments of principal and interest on loans made or fees collected under AS 46.03.385 - 46.03.450, and income earned on money in the fund [. THE DEPARTMENT SHALL DEPOSIT EARNINGS ON MONEY IN THE FUND IN THE GENERAL FUND. THE LEGISLATURE MAY USE THE ESTIMATED BALANCE IN THE ACCOUNT MAINTAINED BY THE COMMISSIONER OF ADMINISTRATION UNDER AS 37.05.142 TO MAKE APPROPRIATIONS TO THE FUND]. The legislature may appropriate unencumbered money from the fund for the cost of risk assessment, containment, corrective action, and cleanup relating to an underground petroleum storage tank system owned or operated by the state, the University of Alaska, a public corporation, a school district, or another political subdivision or instrumentality of the state. The legislature may also appropriate unencumbered money from the fund for state legal and regulatory expenses associated with underground petroleum storage tanks. An application for funds under AS 46.03.420 and [,] 46.03.422 [, AND 46.03.430] is not considered an encumbrance for purposes of this subsection.

(b) The commissioner may use money in the underground storage tank revolving loan fund to pay for

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

(2) costs of administering the fund and the tank cleanup loan program under AS 46.03.422; and

(3) costs of the Board of Storage Tank Assistance (AS 46.03.360) [GRANTS UNDER AS 46.03.430 FOR TANK SYSTEM UPGRADING AND CLOSURE].

(c) The commissioner shall prepare a report on the status of the underground storage tank revolving loan [ASSISTANCE] fund and notify the legislature not later than the 10th day following the convening of each regular session of the legislature that the report is available. The report may include information considered significant by the commissioner but must include

(1) the amount and source of money received by the fund during the preceding fiscal year;

(2) the amount of money expended during the preceding fiscal year for each type of expense authorized under (b) of this section;

(3) a detailed summary of department activities paid for from the fund during the preceding fiscal year, including how many requests for assistance have been made to the department to use the fund for grants or loans for testing, site assessment, risk assessment, upgrading, closure, containment, corrective action, and cleanup costs, and the number of requests funded in each activity area;

(4) the projected cost for the next fiscal year of monitoring, operating, and maintaining sites where department activities have been completed or are expected to start or be continued during the fiscal year;

(5) the priority list of tank system sites for which the department expects to provide financial assistance in the next fiscal year.

* **Sec. 8.** AS 46.03.410 is amended to read:

Sec. 46.03.410. Underground storage tank revolving loan fund. (a) There is established the underground storage tank revolving loan fund. It consists of money appropriated to it by law, repayments of principal and interest on loans made or fees collected under AS 46.03.385 - 46.03.450, and income earned on money in the fund. The legislature may appropriate unencumbered money from the fund for the cost of risk assessment, containment, corrective action, and cleanup relating to an underground petroleum storage tank system owned or operated by the state, the University of Alaska, a public corporation, a school district, or another political subdivision or instrumentality of the state. The legislature may also appropriate unencumbered money from the fund for state legal and regulatory expenses associated with underground petroleum storage tanks. An application for funds under

1 **AS 46.03.422** [AS 46.03.420 AND 46.03.422] is not considered an encumbrance for
2 purposes of this subsection.

3 (b) The commissioner may use money in the underground storage tank
4 revolving loan fund to pay for

5 (1) [GRANTS AND] loans under **AS 46.03.422** [AS 46.03.420 AND
6 46.03.422] for risk assessment, containment, corrective action, and cleanup costs;

7 (2) costs of administering the fund and the tank cleanup loan program
8 under AS 46.03.422; and

9 (3) costs of the Board of Storage Tank Assistance (AS 46.03.360).

10 (c) The commissioner shall prepare a report on the status of the underground
11 storage tank revolving loan fund and notify the legislature not later than the 10th day
12 following the convening of each regular session of the legislature that the report is
13 available. The report may include information considered significant by the
14 commissioner but must include

15 (1) the amount and source of money received by the fund during the
16 preceding fiscal year;

17 (2) the amount of money expended during the preceding fiscal year for
18 each type of expense authorized under (b) of this section;

19 (3) a detailed summary of department activities paid for from the fund
20 during the preceding fiscal year, including how many requests [FOR ASSISTANCE]
21 have been made to the department to use the fund for [GRANTS OR] loans for testing,
22 site assessment, risk assessment, upgrading, closure, containment, corrective action,
23 and cleanup costs, and the number of requests funded in each activity area;

24 (4) the projected cost for the next fiscal year of monitoring, operating,
25 and maintaining sites where department activities have been completed or are
26 expected to start or be continued during the fiscal year;

27 (5) the priority list of tank system sites for which the department
28 expects to provide **loans** [FINANCIAL ASSISTANCE] in the next fiscal year.

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

30 (a) The commissioner may make a grant from the **underground** storage tank
31 **revolving loan** [ASSISTANCE] fund to an owner or operator of an underground

1 petroleum storage tank system, other than the state or federal government, for the costs
 2 of risk assessment, containment, corrective action, and cleanup resulting from a
 3 release of petroleum from or associated with an underground petroleum storage tank
 4 system if the owner or operator meets the requirements of this section. Applications
 5 for assistance under this section must be submitted to the department before July 1,
 6 1994. Under regulations of the board, the department shall rank requests under this
 7 section in order of priority, giving greatest priority to those tank systems that present
 8 the greatest threat or potential threat to human health.

9 * **Sec. 10.** AS 46.03.420(e) is amended to read:

10 (e) A request for a grant under this section, and a grant payment made under
 11 this section, may not exceed \$250,000, less the amount not payable as a grant under
 12 (b) of this section. Furthermore, a grant payment under this section

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

15 (2) when combined with grants and loans to the same owner or
 16 operator under AS 46.03.422 and **former AS 46.03.430** [46.03.430], may not exceed
 17 \$500,000.

18 * **Sec. 11.** AS 46.03.420(i) is amended to read:

19 (i) The **department shall deposit money collected under this section into**
 20 [LEGISLATURE MAY APPROPRIATE THE ANNUAL ESTIMATED BALANCE
 21 OF THE ACCOUNT MAINTAINED BY THE COMMISSIONER OF
 22 ADMINISTRATION UNDER AS 37.05.142 TO] the **underground** storage tank
 23 **revolving loan** [ASSISTANCE] fund established under AS 46.03.410.

24 * **Sec. 12.** AS 46.03.422(a) is amended to read:

25 (a) The commissioner may make a loan from the **underground** storage tank
 26 **revolving loan** [ASSISTANCE] fund to an owner or operator of an underground
 27 petroleum storage tank system for the costs of risk assessment, containment, corrective
 28 action, and cleanup resulting from a release of petroleum from or associated with an
 29 underground petroleum storage tank system if the owner or operator submitted a
 30 timely application for a grant under AS 46.03.420 and agrees

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

1 the same project;

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

4 (3) [EITHER] to

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

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

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

20 * **Sec. 13.** AS 46.03.422(a) is amended to read:

21 (a) The commissioner may make a loan from the underground storage tank
22 revolving loan fund to an owner or operator of an underground petroleum storage tank
23 system for the costs of risk assessment, containment, corrective action, and cleanup
24 resulting from a release of petroleum from or associated with an underground
25 petroleum storage tank system if the owner or operator submitted a timely application
26 for a grant under **former** AS 46.03.420 and agrees

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

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

31 (3) to

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

(B) remove and properly dispose of all liquids and sludges from the underground petroleum storage tanks located at the facility from which the 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

(4) 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, on later changes in the plan, or on a cleanup decision, 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; the recommendation may include a suggested time limit for completing appropriate cleanup activities or reaching a cleanup decision.

* **Sec. 14.** AS 46.03.422(e) is amended to read:

(e) This section does not affect

(1) the liability under state or federal law of a person or entity that receives a loan [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.

* **Sec. 15.** AS 46.03.422(g) is amended to read:

(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 **former AS 46.03.430** [46.03.430], may not exceed \$500,000.

* **Sec. 16.** AS 46.03.422(g) is amended to read:

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

1 * **Sec. 17.** AS 46.03.422(h) is amended to read:

2 (h) The department shall deposit loan repayments and other money
 3 collected under this section into [LEGISLATURE MAY APPROPRIATE TO] the
 4 underground storage tank revolving loan [ASSISTANCE] fund established under
 5 AS 46.03.410 [THE ANNUAL ESTIMATED BALANCE OF THE ACCOUNT
 6 MAINTAINED UNDER AS 37.05.142 BY THE COMMISSIONER OF
 7 ADMINISTRATION TO KEEP TRACK OF LOAN REPAYMENTS, INCLUDING
 8 INTEREST PAYMENTS, UNDER THIS SECTION].

9 * **Sec. 18.** AS 46.03.422 is amended by adding a new subsection to read:

10 (i) To be eligible for a loan under this section, an owner or operator shall
 11 provide the department with a written sworn statement on a form provided by the
 12 department that the owner or operator has not been eligible for self-insurance under 40
 13 CFR 280.95 at any time on or after July 1, 2002. This subsection does not apply to an
 14 owner or operator that is a municipality. For purposes of this subsection, "sworn
 15 statement" has the meaning given in AS 11.56.240.

16 * **Sec. 19.** AS 46.08.040(a) is amended to read:

17 (a) In addition to money in the response account of the fund that is transferred
 18 to the commissioner of community and economic development to make grants under
 19 AS 29.60.510 and to pay for impact assessments under AS 29.60.560, the
 20 commissioner of environmental conservation may use money

21 (1) from the response account in the fund

22 (A) when authorized by AS 46.08.045, to investigate and
 23 evaluate the release or threatened release of oil or a hazardous substance, and
 24 contain, clean up, and take other necessary action, such as monitoring and
 25 assessing, to address a release or threatened release of oil or a hazardous
 26 substance that poses an imminent and substantial threat to the public health or
 27 welfare, or to the environment;

28 (B) to provide matching funds in the event of a release of oil or
 29 a hazardous substance for which use of the response account is authorized by
 30 AS 46.08.045 for participation

31 (i) in federal oil discharge cleanup activities; and

(ii) under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); and

(C) to recover the costs to the state, a municipality, a village, or a school district of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance for which money was expended from the response account;

(2) from the prevention account in the fund to

(A) investigate and evaluate the release or threatened release of oil or a hazardous substance, except a release described in AS 46.08.045(a), and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance, except a release described in AS 46.08.045(a);

(B) pay all costs incurred

(i) to establish and maintain the oil and hazardous substance response office;

(ii) under agreements entered into under AS 46.04.090 or AS 46.09.040;

(iii) to review oil discharge prevention and contingency plans submitted under AS 46.04.030;

(iv) to conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan; and

(v) to verify or establish proof of financial responsibility required by AS 46.04.040;

(C) pay, when presented with appropriate documentation by the Department of Military and Veterans' Affairs, the expenses incurred by the

1 Department of Military and Veterans' Affairs for Alaska State Emergency
 2 Response Commission activities, including staff support, when the activities
 3 and staff support relate to oil or hazardous substances, and for the costs of
 4 being prepared for responding to a request by the department for support in
 5 response and restoration, but not including the costs of maintaining the
 6 response corps and the emergency response depots under AS 26.23.045;

7 (D) pay all costs incurred to acquire, repair, or improve an asset
 8 having an anticipated life of more than one year and that is acquired, repaired,
 9 or improved as a preparedness measure by which the state may respond to,
 10 recover from, reduce, or eliminate the effects of a release or threatened release
 11 of oil or a hazardous substance;

12 (E) pay the costs, if approved by the commissioner, that were
 13 incurred by local emergency planning committees to carry out the duties
 14 assigned them by AS 26.23.073(g);

15 (F) provide matching funds in the event of the release of oil or
 16 a hazardous substance, except a release of oil for the containment and cleanup
 17 of which use of the response account is authorized by AS 46.08.045, for
 18 participation

19 (i) in federal oil discharge cleanup activities; and

20 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive
 21 Environmental Response, Compensation, and Liability Act of 1980);

22 (G) pay or reimburse the underground storage tank revolving
 23 loan [ASSISTANCE] fund established in AS 46.03.410 for expenditures from
 24 that fund authorized by AS 46.03.410(b);

25 (H) transfer to the Department of Community and Economic
 26 Development for payment by the commissioner of community and economic
 27 development of

28 (i) municipal impact grants when authorized under
 29 AS 29.60.510(b)(2);

30 (ii) assessments of the social and economic effects of
 31 the release of oil or hazardous substances as required by AS 29.60.560

when, in the judgment of the commissioner, the release of oil or a hazardous substance is not one that is described in AS 46.08.045; and

(iii) grants to repair, improve, or replace fuel storage facilities under the bulk fuel system emergency repair and upgrade program;

(I) recover the costs to the state, a municipality, a village, or a school district of a containment and cleanup resulting from the release or threatened release of oil or a hazardous substance for which money was expended from the prevention account;

(J) prepare, review, and revise

(i) the state's master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.200; and

(ii) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210; and

(K) restore the environment by addressing the effects of an oil or hazardous substance release.

* **Sec. 20.** AS 46.03.360(e)(3) and 46.03.430 are repealed.

* **Sec. 21.** AS 46.03.420 is repealed.

* **Sec. 22.** The uncoded law of the State of Alaska is amended by adding a new section to read:

TRANSITIONAL PROVISIONS. (a) The underground storage tank revolving loan fund established in AS 46.03.410, as amended in secs. 7 and 8 of this Act, is the successor to the storage tank assistance fund, and the balance in the storage tank assistance fund on the effective date of sec. 7 of this Act shall be retained in the underground storage tank revolving loan fund. Grants entered into by the Department of Environmental Conservation before the effective date of sec. 7 of this Act that would have been paid from the storage tank assistance fund shall be paid from the underground storage tank revolving loan fund.

(b) The Department of Environmental Conservation may not pay grants under AS 46.03.430 after June 30, 2002. The Department of Environmental Conservation may not

1 enter into a grant agreement under other provisions of AS 46.03.410 - 46.03.450 that requires
2 payment by the department after June 30, 2004, of grant money from any source. On or after
3 July 1, 2004, the department may not pay money for a grant from the underground storage
4 tank revolving loan fund.

5 * **Sec. 23.** Sections 2, 3, 5, 7, 9 - 12, 15, and 17 - 20 of this Act take effect July 1, 2002.

6 * **Sec. 24.** Sections 1, 4, 6, 8, 13, 14, 16, and 21 of this Act take effect July 1, 2004.

7 * **Sec. 25.** Section 22 of this Act takes effect immediately under AS 01.10.070(c).