

CS FOR SENATE BILL NO. 153(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/24/01
Referred: Finance

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 (3) DETERMINE WHICH COSTS OF UPGRADING AND

1 CLOSURE ARE ELIGIBLE COSTS UNDER AS 46.03.430].

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

3 (f) If the department determines that an owner or operator is not eligible for **a**
 4 **loan under AS 46.03.422** [ASSISTANCE UNDER AS 46.03.410 - 46.03.430] or that
 5 a cost is not eligible under **AS 46.03.422** [AS 46.03.415 - 46.30.430] and the affected
 6 owner or operator disputes that determination, or if an owner or operator disputes the
 7 ranking assigned to a request for assistance under **AS 46.03.422** [AS 46.03.420 OR
 8 46.03.422], the owner or operator may apply to the board for resolution of the dispute.
 9 The board may issue a decision in a dispute brought to it under this subsection. The
 10 decision is binding on the owner, operator, and department.

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

12 (g) The board may adopt regulations to limit the number of sites per calendar
 13 year for which an owner or operator may be awarded **a loan under AS 46.03.422**
 14 [FINANCIAL ASSISTANCE UNDER AS 46.03.420 - 46.03.430]. The department
 15 shall implement the regulations.

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

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

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

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

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

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

31 (1) the tank and tank system **are** [IS] registered with the department as

1 provided in AS 46.03.360 - 46.03.450 or other law; and

2 (2) [EXCEPT AS PROVIDED IN AS 46.03.420(c)(1)(D),] the person
3 has provided to the department proof of financial responsibility to the extent required
4 under regulations adopted under AS 46.03.365 or proof of application for
5 arrangements that would satisfy state financial responsibility requirements.

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

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

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

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

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

31 (3) grants under AS 46.03.430 for tank system upgrading and closure.

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

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

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

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

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

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

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

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

1 AS 46.03.422 [AS 46.03.420, 46.03.422, AND 46.03.430] is not considered an
2 encumbrance for 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; **and**

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

9 (3) GRANTS UNDER AS 46.03.430 FOR TANK SYSTEM
10 UPGRADING AND CLOSURE].

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

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

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

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

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

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

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

31 (a) The commissioner may make a grant from the **underground** storage tank

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

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

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

16 * **Sec. 11.** AS 46.03.422(a) is amended to read:

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

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

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

27 (3) [EITHER] to

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

31 (B) remove and properly dispose of all liquids and sludges

1 from the underground petroleum storage tanks located at the facility from
 2 which the release occurred, conduct a site assessment, and either fill the tanks
 3 with inert solid material or properly dismantle, remove, and dispose of the
 4 tanks in accordance with applicable state and federal regulations; and

5 (4) to submit a plan for risk assessment, containment, corrective
 6 action, and cleanup to the department for its review and approval; if the department
 7 and the owner or operator cannot reach agreement on a plan, on later changes in the
 8 plan, or on a cleanup decision, the owner or operator may apply to the board to review
 9 the dispute; the board may issue a recommendation to the department in a dispute
 10 brought to it under this paragraph; the recommendation may include a suggested time
 11 limit for completing appropriate cleanup activities or reaching a cleanup decision.

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

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

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

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

23 (3) to

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

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

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

8 * **Sec. 13.** AS 46.03.422(e) is amended to read:

9 (e) This section does not affect

10 (1) the liability under state or federal law of a person or entity that
 11 receives **a loan** [ASSISTANCE] under this section for the costs of risk management,
 12 containment, corrective action, and cleanup resulting from a release of petroleum; or

13 (2) the authority of the department to seek recovery from the owner or
 14 operator of costs other than [GRANTS OR] loans actually made to an owner or
 15 operator under this section.

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

17 (g) A loan payment under this section, when combined with loans and grants
 18 to the same owner or operator under **former** AS 46.03.420 and **former AS 46.03.430**
 19 [46.03.430], may not exceed \$500,000.

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

21 (h) The **department shall deposit loan repayments and other money**
 22 **collected under this section into** [LEGISLATURE MAY APPROPRIATE TO] the
 23 **underground** storage tank **revolving loan** [ASSISTANCE] fund established under
 24 AS 46.03.410 [THE ANNUAL ESTIMATED BALANCE OF THE ACCOUNT
 25 MAINTAINED UNDER AS 37.05.142 BY THE COMMISSIONER OF
 26 ADMINISTRATION TO KEEP TRACK OF LOAN REPAYMENTS, INCLUDING
 27 INTEREST PAYMENTS, UNDER THIS SECTION].

28 * **Sec. 16.** AS 46.03.422 is amended by adding a new subsection to read:

29 (i) To be eligible for a loan under this section, an owner or operator shall
 30 provide the department with a written sworn statement on a form required by
 31 regulation of the department that the owner or operator has not been eligible for self-

1 insurance under 40 CFR 280.95 at any time on or after July 1, 2001. This subsection
 2 does not apply to an owner or operator that is a municipality. For purposes of this
 3 subsection, "sworn statement" has the meaning given in AS 11.56.240.

4 * **Sec. 17.** AS 46.08.040(a) is amended to read:

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

9 (1) from the response account in the fund

10 (A) when authorized by AS 46.08.045, to investigate and
 11 evaluate the release or threatened release of oil or a hazardous substance, and
 12 contain, clean up, and take other necessary action, such as monitoring and
 13 assessing, to address a release or threatened release of oil or a hazardous
 14 substance that poses an imminent and substantial threat to the public health or
 15 welfare, or to the environment;

16 (B) to provide matching funds in the event of a release of oil or
 17 a hazardous substance for which use of the response account is authorized by
 18 AS 46.08.045 for 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 and

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

27 (2) from the prevention account in the fund to

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

1 substance, except a release described in AS 46.08.045(a);

2 (B) pay all costs incurred

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

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

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

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

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

18 (C) pay, when presented with appropriate documentation by the
19 Department of Military and Veterans' Affairs, the expenses incurred by the
20 Department of Military and Veterans' Affairs for Alaska State Emergency
21 Response Commission activities, including staff support, when the activities
22 and staff support relate to oil or hazardous substances, and for the costs of
23 being prepared for responding to a request by the department for support in
24 response and restoration, but not including the costs of maintaining the
25 response corps and the emergency response depots under AS 26.23.045;

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

31 (E) pay the costs, if approved by the commissioner, that were

1 incurred by local emergency planning committees to carry out the duties
2 assigned them by AS 26.23.073(g);

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

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

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

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

13 (H) transfer to the Department of Community and Economic
14 Development for payment by the commissioner of community and economic
15 development of

16 (i) municipal impact grants when authorized under
17 AS 29.60.510(b)(2);

18 (ii) assessments of the social and economic effects of
19 the release of oil or hazardous substances as required by AS 29.60.560
20 when, in the judgment of the commissioner, the release of oil or a
21 hazardous substance is not one that is described in AS 46.08.045; and

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

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

29 (J) prepare, review, and revise

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

1 and

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

4 and

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

7 * **Sec. 18.** AS 46.03.420 and 46.03.430 are repealed.

8 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TRANSITIONAL PROVISIONS. (a) The underground storage tank revolving loan
11 fund established in AS 46.03.410, as amended in secs. 7 and 8 of this Act, is the successor to
12 the storage tank assistance fund, and the balance in the storage tank assistance fund on the
13 effective date of sec. 7 of this Act shall be retained in the underground storage tank revolving
14 loan fund.

15 (b) The Department of Environmental Conservation may not enter into a grant
16 agreement under AS 46.03.410 - 46.03.450 that requires payment by the department after
17 June 30, 2004, of grant money from any source. The department may only pay money for a
18 grant from the underground storage tank revolving loan fund before June 30, 2004.

19 * **Sec. 20.** Sections 5, 7, 9 - 11, 15 - 17, and 19 of this Act take effect July 1, 2001.

20 * **Sec. 21.** Sections 1 - 4, 6, 8, 12 - 14, and 18 of this Act take effect June 30, 2004.