

HOUSE BILL NO. 269

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

BY REPRESENTATIVES RAMRAS, Gara

Introduced: 4/14/05

Referred: Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to contribution actions relating to the release of a hazardous**
2 **substance; and providing for an effective date."**

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that

7 (1) AS 46.03.822 was amended in 1989 to pattern the state's hazardous
8 substance liability law on 42 U.S.C. 9601 - 9675 (Comprehensive Environmental Response,
9 Compensation, and Liability Act);

10 (2) AS 46.03.822 imposes strict, joint and several liability for cleanup costs
11 and damages on several classes of persons responsible for the release or threatened release of
12 hazardous substances, known as responsible parties;

13 (3) AS 46.03.822(j) allows a responsible party who incurs cleanup costs to
14 bring a contribution action either before, during, or after a civil action under AS 46.03.822(a)

1 to recover costs and damages from other persons liable under the statute;

2 (4) the right to contribution under AS 46.03.822(j) creates an important
3 incentive for voluntary cleanups by allowing responsible parties to undertake cost-effective
4 cleanups themselves and then share those costs with other parties who are responsible for the
5 contamination, but who may be unwilling to voluntarily undertake cleanup on their own;

6 (5) voluntary cleanups form the vast majority of the cleanups conducted in the
7 state and allow the state to focus its limited resources on monitoring responsible party cleanup
8 actions instead of undertaking costly administrative or judicial enforcement actions to force
9 cleanups or undertaking cleanups at public expense;

10 (6) the United States Supreme Court, in *Cooper Industries v. Aviall Services*,
11 found that a responsible party could not bring contribution action under 42 U.S.C. 9613(f)(1)
12 unless it had been sued by a state or the federal government or had entered into a formal
13 administrative settlement of its liability under 42 U.S.C. 9601 - 9675;

14 (7) the Aviall decision has created confusion as to the contribution rights of
15 responsible parties who have conducted voluntary cleanups and has placed in jeopardy the
16 process of voluntary cleanups under AS 46.03.822, the state's statute modeled on 42 U.S.C.
17 9601 - 9675;

18 (8) the Aviall decision is in conflict with the reasoning of an earlier Alaska
19 Supreme Court decision, *Federal Deposit Insurance Corporation v. Laidlaw Transit*, and, in
20 the absence of legislative action, responsible parties in Alaska may be fearful to rely on
21 Laidlaw for assurance regarding the proper interpretation of AS 46.03.822.

22 (b) It is the purpose of this Act to respond to the Aviall and Laidlaw decisions by
23 clarifying the language of AS 46.03.822(j) so that those responsible parties who conducted
24 voluntary cleanups in the past, or may do so in the future, may bring a contribution action
25 against other responsible parties.

26 * **Sec. 2.** AS 46.03.822(j) is amended to read:

27 (j) A person may seek contribution from any other person who is liable under
28 (a) of this section during or after a civil action under (a) of this section **or after the**
29 **issuance of a potential liability determination by the department.** Actions under
30 this subsection shall be brought under the Alaska Rules of Civil Procedure and are
31 governed by state law. In resolving claims for contribution under this section, the court

1 may allocate damages and costs among liable parties using equitable factors
 2 determined to be appropriate by the court. This subsection does not diminish the right
 3 of a person to bring an action for contribution in the absence of a civil action under (a)
 4 of this section.

5 * **Sec. 3.** AS 46.03.822(m) is amended by adding a new paragraph to read:

6 (2) "potential liability determination" means an administrative
 7 determination issued by the department notifying a person of the person's potential
 8 liability under (a) of this section as the result of the release or threatened release of
 9 hazardous substances and includes a

10 (A) letter notifying the person that the person is a potentially
 11 responsible party;

12 (B) notice to a person of state interest in a release or threatened
 13 release of a hazardous substance;

14 (C) request to the person for site characterization or cleanup;

15 (D) notice of violation; and

16 (E) similar notification by the department of a person's
 17 potential liability under this section.

18 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
 19 read:

20 **APPLICABILITY.** The changes made by secs. 2 and 3 of this Act apply to liability
 21 for the release or threatened release of a hazardous substance that occurred

22 (1) before the effective date of this Act and for which a final judgment
 23 regarding liability was not entered before the effective date of this Act; or

24 (2) on or after the effective date of this Act.

25 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).