

SPONSOR SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 9

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY SENATOR GARDNER

Introduced: 2/2/15

Referred: Resources, Judiciary

A RESOLUTION

1 **Urging the Alaska Department of Law and the United States Department of Justice to**
2 **file a motion in United States District Court to compel the ExxonMobil Corporation to**
3 **honor the commitment to pay additional damages for the Exxon Valdez oil spill under**
4 **the "Reopener for Unknown Injury" provision of the 1991 Agreement and Consent**
5 **Decree and to collect the full demand for payment the state and federal government**
6 **submitted to the ExxonMobil Corporation on August 31, 2006; and urging the Exxon**
7 **Valdez Oil Spill Trustee Council immediately to initiate subsurface lingering oil**
8 **restoration work.**

9 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

10 **WHEREAS** the historic legal settlement between Exxon Corporation, the State of
11 Alaska, and the United States of America resolving damage claims related to the 1989 Exxon
12 Valdez oil spill (Agreement and Consent Decree, Civil Actions No. 3:91-0082 and 3:91-0083,
13 United States District Court for the District of Alaska) entered October 9, 1991, began one of
14 the most extensive attempts in history to restore environmental damage from an industrial

1 disaster; and

2 **WHEREAS**, in addition to the civil recovery of \$900,000,000, the criminal restitution
3 of \$100,000,000, and a fine of \$25,000,000, a clause of the Agreement and Consent Decree,
4 provided for a "Reopener for Unknown Injury" that committed the ExxonMobil Corporation
5 to pay up to an additional \$100,000,000, as needed, to restore oil-damaged populations,
6 habitats, or species in the spill zone if the injury "could not reasonably have been known...nor
7 anticipated" at the time of settlement; and

8 **WHEREAS**, in 2006, the Twenty-Fourth Alaska State Legislature, in HJR 9,
9 Legislative Resolve No. 52, urged "the United States Department of Justice and the Alaska
10 Department of Law to identify all natural resource damages from the Exxon Valdez oil spill
11 that were unanticipated at the time of the settlement, to develop plans to remedy the damages,
12 and to present the ExxonMobil Corporation with a request for the full \$100,000,000 available
13 under the reopener clause to enact these plans"; and

14 **WHEREAS**, in 2006, the Alaska Attorney General found that "after extensive review
15 it is clear that populations and habitat within the oil spill area have suffered substantial and
16 unanticipated injuries that are attributable to the Exxon Valdez oil spill"; and

17 **WHEREAS** the "Injured Resources and Services Update" published by the Exxon
18 Valdez Oil Spill Trustee Council in November 2014 states that only 19 of the 32 monitored
19 resources and resource services injured by the spill are "recovered" or "very likely recovered,"
20 and some, such as Pacific herring, pigeon guillemots, marbled murrelets, and the AT1
21 transient orcas, are "not recovering"; and

22 **WHEREAS** state and federal studies confirm that a substantial amount of Exxon
23 Valdez oil remains on beaches in substrates; that the oil is "nearly as toxic as it was the first
24 few weeks after the spill"; that "the remaining oil will take decades and possibly centuries to
25 disappear entirely"; and that enzyme markers in birds, fish, and mammals in the spill region
26 "indicate a continuing exposure to oil"; and

27 **WHEREAS**, on June 1, 2006, under the "Reopener for Unknown Injury" provision,
28 the state and United States government jointly presented the ExxonMobil Corporation with a
29 "Comprehensive Plan for Habitat Restoration Projects Pursuant to the Reopener for Unknown
30 Injury" to remediate lingering oil in intertidal sediments along the shoreline of the injured
31 ecosystem, including a specific timeline for remedies the state and federal governments have

1 committed to take as a result of the unanticipated and ongoing injury from the oil spill; and

2 **WHEREAS**, on August 31, 2006, under the "Reopener for Unknown Injury"
3 provision, the state and the United States government jointly presented ExxonMobil
4 Corporation with a demand for payment of an additional \$92,240,982; and

5 **WHEREAS**, although it had agreed to the "Reopener for Unknown Injury" provision
6 in the 1991 settlement, the ExxonMobil Corporation has refused to pay the government
7 demand, and the state and federal governments have not filed a motion in court seeking to
8 collect payment; and

9 **WHEREAS**, in the "Comprehensive Plan for Habitat Restoration Projects Pursuant to
10 the Reopener for Unknown Injury" and "Subsurface Lingering Oil Restoration Timeline," the
11 state and federal governments stated that they would complete a "Draft Restoration Plan" and
12 an "Environmental Assessment" in 2008 and begin implementing the full lingering oil
13 remediation program in early 2009; and

14 **WHEREAS**, in the "Subsurface Lingering Oil Restoration Timeline," the state and
15 federal governments asserted that the full program would be well underway, if not mostly
16 complete, by now; and

17 **WHEREAS** the state and federal governments are more than six years behind
18 schedule in implementing the "Subsurface Lingering Oil Restoration Timeline" project, citing
19 "unexpected contracting issues" and "short field seasons and difficult working conditions in
20 Alaska" as well as lack of payment of the "Reopener for Unknown Injury" demand presented
21 to the ExxonMobil Corporation in 2006; and

22 **WHEREAS** former Governor Frank Murkowski, whose administration submitted the
23 demand for payment claim related to the "Reopener for Unknown Injury" to the ExxonMobil
24 Corporation in 2006, expressed frustration at the slow pace of resolving the claim in a
25 February 28, 2011, letter to the United States District Court, stating "it is in the public interest
26 that the governments move from continuing study to resolution as soon as practical. Alaska
27 deserves closure on this issue after 22 years"; and

28 **WHEREAS** the Untitled States District Court's March 7, 2011, order stated "the court
29 urges the governments and their trustees to proceed with all possible speed to complete
30 studies that are underway and any necessary evaluation which they may require"; and

31 **WHEREAS** the United States District Court's February 15, 2012, order stated "the

1 court urges the parties to quickly resolve this matter themselves, if they are able to do so"; and

2 **WHEREAS** the United States District Court's July 1, 2013, order expressed the
3 court's frustration with the slow pace of government progress under the "Reopener for
4 Unknown Injury" restoration plan, stating "the court is dismayed that so few of the projects
5 that the Governments had expected to be completed by now have been completed"; and

6 **WHEREAS** the governments have demonstrated effective techniques to remediate
7 subsurface oil by injecting nutrients and oxygen compounds into the subsurface; and

8 **WHEREAS** the ongoing delay in implementing the "Reopener for Unknown Injury"
9 restoration plan continues to damage the Alaska coastal ecosystem; and

10 **WHEREAS** the unresolved "Reopener for Unknown Injury" claim makes the Exxon
11 Valdez litigation the longest-lasting environmental litigation in history; and

12 **WHEREAS** the tolling agreement between the governments and the ExxonMobil
13 Corporation was terminated by the ExxonMobil Corporation on June 25, 2010, triggering a
14 period of limitation on collecting the "Reopener for Unknown Injury" claim that the
15 ExxonMobil Corporation may argue expires in six years, potentially terminating the
16 possibility of collecting the claim on June 24, 2016; and

17 **WHEREAS** the United States District Court has ruled that any "Reopener for
18 Unknown Injury" claim may be brought only by the state and federal governments; until the
19 governments' "Reopener for Unknown Injury" claim is formally placed before the court, the
20 court cannot intervene to resolve the ongoing dispute on the matter between the governments
21 and the ExxonMobil Corporation;

22 **BE IT RESOLVED** that the Alaska State Legislature expresses its profound
23 disappointment in the continuing refusal of the ExxonMobil Corporation to honor the
24 commitment it made in the 1991 settlement to pay a "Reopener for Unknown Injury" claim
25 made by the governments; and be it

26 **FURTHER RESOLVED** that the Alaska State Legislature urges the Alaska
27 Department of Law and the United States Department of Justice to immediately file a motion
28 in United States District Court to collect the full amount of the demand for payment of
29 \$92,240,982 presented to the ExxonMobil Corporation on August 31, 2006, plus five percent
30 interest--approximately \$35,000,000--on the delinquent payment; and be it

31 **FURTHER RESOLVED** that the Alaska State Legislature urges that, until the full

1 "Reopener for Unknown Injury" demand for payment, plus interest, is collected from the
2 ExxonMobil Corporation and the "Reopener for Unknown Injury" payment is finally made,
3 the Exxon Valdez Oil Spill Trustee Council use existing funds to immediately initiate the
4 subsurface lingering oil restoration work.

5 **COPIES** of this resolution shall be sent to the Honorable Barack Obama, President of
6 the United States; the Honorable Joseph R. Biden, Jr., Vice-President of the United States and
7 President of the U.S. Senate; the Honorable John Boehner, Speaker of the U.S. House of
8 Representatives; the Honorable Nancy Pelosi, Minority Leader of the U.S. House of
9 Representatives; the Honorable Mitch McConnell, Majority Leader of the U.S. Senate; the
10 Honorable Harry Reid, Minority Leader of the U.S. Senate; the Honorable Eric H. Holder, Jr.,
11 Attorney General of the United States; the Honorable Craig W. Richards, Alaska Attorney
12 General; the Exxon Valdez Oil Spill Trustee Council; and the Honorable Lisa Murkowski and
13 the Honorable Dan Sullivan, U.S. Senators, and the Honorable Don Young, U.S.
14 Representative, members of the Alaska delegation in Congress.