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request of the Governor

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1 IN THE HOUSE

BY THE RULES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 137 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil penalties for discharges of
7 oil."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 46.03 is amended by adding a new section to read:

10 Sec. 46.03.758. CIVIL PENALTIES FOR DISCHARGES OF OIL. (a) The
11 legislature finds that

12 (1) recent information discloses that the discharge of oil
13 may cause significant short and long-term damage to the state's environ-
14 ment. Even minute quantities of oil released to the environment may
15 cause high mortalities among larval and juvenile forms of important
16 commercial species, may affect salmon migration patterns, and may other-
17 wise degrade and diminish the renewable resources of the state;

18 (2) the exact nature and extent of oil pollution can be
19 neither documented with certainty nor precisely quantified on a spill-
20 by-spill basis; however, in light of the magnitude of harm which may be
21 caused by oil discharges, and the vital importance of commercial, sport
22 and subsistence fishing, tourism, and Alaska's natural abundance and
23 beauty to the economic future of the state, and its quality of life, it
24 is the judgment of the legislature that substantial civil penalties
25 should be imposed for the discharge of oil, in order to provide a mean-
26 ingful incentive for the safe handling of oil and to insure that the
27 public does not bear substantial losses from oil pollution for which,
28 because of its subtle, long-term or unquantifiable nature, compensation
29 would not otherwise be received; and

1 (3) the handling of oil in large quantities is a hazardous
2 undertaking which poses a significant threat to the economy and environ-
3 ment of the state, which can be substantially reduced only by the taking
4 of rigorous safety precautions involving considerable expense; conversely,
5 persons handling oil in smaller amounts pose a correspondingly lower
6 risk to the economy and environment of the state, and are capable of safe
7 oil handling practices at correspondingly lower costs; in order to pro-
8 vide an incentive which is effective, but not punitive, it is necessary
9 that the civil penalties imposed reflect a balance between the gravity
10 of the discharge, the magnitude of risk, and the level of incentive
11 necessary to induce safe operations.

12 (b) No later than the 10th day after the convening of the Second
13 Session of the Tenth Alaska Legislature, the department shall submit to
14 the legislature regulations establishing a schedule of fixed penalties
15 for discharges of oil.

16 (1) Subject to (3) of this subsection, the penalties for the
17 following categories of receiving environments may not exceed

18 (A) \$10 per gallon of oil which enters an anadromous
19 stream or other freshwater environment with significant aquatic
20 resources;

21 (B) \$2.50 per gallon of oil which enters an estuarine,
22 intertidal or confined saltwater environment; and

23 (C) \$1 per gallon of oil which enters an unconfined
24 saltwater environment, public land or freshwater environment
25 without significant aquatic resources.

26 (2) For discharges of oil of less than 100,000 gallons which
27 are caused by the gross negligence or intentional act of the discharger,
28 or when the court finds that the discharger did not take reasonable
29 measures to contain and clean up the discharged oil, the penalty shall

1 be determined by multiplying the penalty established under (1) of this
2 subsection by a factor of five.

3 (c) Regulations adopted under (b) of this section shall become
4 effective 60 days after submission to the legislature, unless disap-
5 proved by a special concurrent resolution introduced in either house,
6 and concurred in by a majority of the members in joint session within 60
7 days of the submission of the regulations. The department may periodi-
8 cally revise regulations adopted under (b) of this section. Revised
9 regulations shall be submitted to the legislature no later than 10 days
10 after the convening of the appropriate regular session of the legisla-
11 ture, and are subject to disapproval as specified in this subsection.

12 (d) The schedule shall vary according to the toxicity, degrad-
13 ability and dispersal characteristics of the oil. The schedule shall
14 also vary according to the sensitivity and productivity of the receiving
15 environment. Variations under this subsection may be by subcategories
16 of receiving environments, specific receiving environments, or both. The
17 maximum penalties established in (b) of this section shall apply to dis-
18 charges in the most sensitive and productive of receiving environments
19 within each category of receiving environment, and the penalty shall
20 decrease for less productive or sensitive receiving environments.

21 (e) Upon the effective date of regulations adopted under (b) of
22 this section, if a discharge of oil not permitted under applicable state
23 and federal law occurs within the territorial jurisdiction of the state,
24 or into or upon the adjacent outer continental shelf of the state, the
25 following persons, in addition to the person causing or permitting the
26 discharge, are jointly and severally liable to the state, in a civil
27 action, for the full amount of penalties established in the regulations,
28 or \$100,000,000, whichever is less:

29 (1) if the discharge occurs from any commercial or industrial

1 facility other than a vessel or offshore platform, the owner, lessee (or
2 permittee), and operator of the facility;

3 (2) if the discharge occurs from a vessel,

4 (A) the owner and operator of the vessel; and

5 (B) the owner of the oil carried as cargo on the vessel
6 at the time the vessel was loaded, if the loading occurred within
7 the territorial jurisdiction of the state, or at a deepwater port
8 or other offshore storage facility adjacent to the state; however,
9 if the owner of the oil temporarily transfers ownership of the oil
10 to another person, and the transfer has the purpose or effect of
11 evading the vicarious liability imposed by this section, the trans-
12 feror will be considered the owner of the oil for the purposes of
13 this subsection; and

14 (3) if the discharge occurs from an offshore platform, the
15 lessee (or permittee) of the tract or acreage upon which the platform is
16 situated, and the operator of the platform.

17 (f) The court shall deduct from the penalties for which the person
18 charged is liable under (e) of this section that amount of oil which was
19 removed from the environment as a result of a cleanup operation under-
20 taken in conformity with applicable state and federal law, unless the
21 oil was removed by an agency of state, local or federal government. The
22 dispersal of oil through the use of chemical agents or other means is
23 not considered removal for the purposes of this subsection. The court
24 may estimate the amount of oil removed.

25 (g) Except as provided in (f) and (j) of this section, there
26 shall be a rebuttable presumption that the entire penalty shall be im-
27 posed. However, if a person demonstrates by evidence that the environ-
28 mental damage which was caused by the discharge is less than that spe-
29 cified in the schedule of penalties described in (b) of this section,

1 the court may reduce or totally eliminate the penalty.

2 (h) A person otherwise liable for penalties under (e) of this
3 section is not liable if he demonstrates, by a preponderance of the
4 evidence, that the discharge occurred solely as a result of

5 (1) an act of God;

6 (2) an act of a third person with intent to cause a discharge,
7 unless the third person is a person with whom the person charged is made
8 jointly and severally liable under (e)(1) - (3) of this section;

9 (3) a negligent or intentional act of the State of Alaska
10 or the United States; or

11 (4) an act of war.

12 (i) Notwithstanding sec. 875 of this chapter, a person liable
13 under this section is not also liable for the discharge of oil under
14 sec. 760(a) of this chapter.

15 (j) The court may reduce the penalty imposed under this section
16 if the person charged demonstrates, by a preponderance of the evidence,
17 that the discharge was caused solely by a negligent act of a third
18 person, unless the third person is a person with whom the person charged
19 is made jointly and severally liable under (e)(1) - (3) of this section.

20 (k) Notwithstanding AS 30.25.220(b), penalties received by the
21 state under this section shall be deposited in the general fund and
22 credited to a special account called the "oil spill mitigation account".
23 The legislature may annually appropriate from the oil spill mitigation
24 account a sum equivalent to the amount of penalties received under this
25 section for the calendar year preceding the legislative session in which
26 the appropriation is made, the appropriations to be made for the purpose
27 of restoring and enhancing environments affected by oil pollution,
28 including but not limited to the funding of aquaculture projects.

29 (1) As used in this section,

1 (1) "adjacent outer continental shelf" means that portion of
2 the outer continental shelf which would be within the territorial juris-
3 diction of the state if its boundaries were extended seaward to the outer
4 margin of the outer continental shelf;

5 (2) "confined saltwater environment" means a bay, sound or
6 other partially enclosed saltwater body in which flushing through tidal
7 or current action is significantly restricted;

8 (3) "discharge of oil" means the entry of oil into or upon
9 the water or public land of the state (except oil discharges into an
10 enclosed and impervious oil spill containment area), regardless of
11 causation;

12 (4) "intertidal" means the ocean area between highest high
13 water and lowest low water of tidal action;

14 (5) "offshore platform" means an offshore structure, whether
15 floating or temporarily or permanently secured to the floor of the ocean
16 or other water body, which is used primarily for the exploration for or
17 production of oil or natural gas;

18 (6) "oil" means petroleum, crude oil, and any substance
19 refined from petroleum or crude oil;

20 (7) "operator" means the person who, through contract, lease,
21 sublease or otherwise, exerts general supervision and control of acti-
22 vities at the facility; the term includes, by way of example and not
23 limitation, prime or general contractors, the master of a vessel (and
24 his employer), or any other person who, through himself, his agents, or
25 contractors, undertakes the general functioning of the facility;

26 (8) "vessel" means any form or manner of watercraft, whether
27 or not capable of self-propulsion, except offshore platforms.

28 * Sec. 2. AS 46.03.900 is amended by adding a new paragraph to read:

29 (23) "facility" means any offshore or onshore structure,

1 improvement, vessel, vehicle, land, enterprise, or endeavor.

2 * Sec. 3. If the application of AS 46.03.758 to discharges of oil solely
3 into and upon the adjacent outer continental shelf of the state is held in-
4 valid, the application of that section to discharges of oil into and upon the
5 water or public land within the territorial jurisdiction of the state is not
6 affected by that holding. This severability provision is intended to clarify,
7 and not limit the severability provision of AS 01.10.030.

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