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Original sponsors: Davis, Koponen,  
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1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 470 (Resources)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the release of oil and hazardous  
7 substances; and providing for an effective date."

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

9 \* Section 1. AS 46 is amended by adding a new chapter to read:

10 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

11 Sec. 46.08.005. PURPOSE. The legislature finds and declares  
12 that the release of oil or hazardous substances into the environment  
13 presents a real and substantial threat to the public health and wel-  
14 fare, to the environment, and to the economy of the state. The legis-  
15 lature therefore concludes that it is in the best interest of the  
16 state and its citizens to provide a readily available fund for the  
17 payment of the expenses incurred by the Department of Environmental  
18 Conservation in the protection of the environment of the state from  
19 the release of oil or hazardous substances.

20 Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in  
21 the state general fund the oil and hazardous substance release re-  
22 sponse fund. The fund shall be administered by the commissioner of  
23 environmental conservation, but the commissioner of revenue shall be  
24 the custodian of the fund.

25 (b) Money from an appropriation made to the fund remaining in  
26 the fund at the end of a fiscal year remains available for expenditure  
27 in successive fiscal years.

28 (c) The fund shall be used for actual expenses incurred under  
29 AS 46.08.040. The fund may not be used for capital improvements.

1           Sec. 46.08.020. FINANCING OF THE FUND.     The legislature may  
2 appropriate from the following sources to the fund:

3           (1) money received from federal, state, or other sources or  
4 from a private donor;

5           (2) money recovered or otherwise received from parties  
6 responsible for the containment and cleanup of oil or a hazardous  
7 substance at a specific site, but excluding funds from performance  
8 bonds and other forms of financial responsibility held in escrow  
9 pending satisfactory performance of a privately financed response  
10 action;

11           (3) fines, penalties, or damages recovered under this  
12 chapter or other law for costs incurred by the state as a result of  
13 the release or threatened release of oil or a hazardous substance.

14           Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS  
15 SUBSTANCE RELEASES.     It is the intent of the legislature and declared  
16 to be the public policy of the state that funds for the abatement of a  
17 release of oil or a hazardous substance will always be available.

18           Sec. 46.08.040. PURPOSES OF THE FUND.     Subject to the approval  
19 of the governor, the commissioner may use money from the fund to

20           (1) contain and clean up releases or threatened releases of  
21 oil or a hazardous substance;

22           (2) undertake plans, inspections, sampling, tests, inves-  
23 tigations, public notification, damage assessment, surveys, analyses,  
24 engineering, construction, operations, and maintenance necessary or  
25 appropriate to contain and clean up releases or threatened releases of  
26 oil or hazardous substances;

27           (3) help the Department of Labor to assist emergency  
28 response employers in developing safety education programs under AS  
29 18.60 for employees who may be called upon to respond to a release of

1 oil or a hazardous substance;

2 (4) provide matching funds for participation in federal oil  
3 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-  
4 hensive Environmental Response, Compensation and Liability Act of  
5 1980); and

6 (5) recover the cost to the state or to a municipality of a  
7 containment and cleanup resulting from the release or the threatened  
8 release of oil or a hazardous substance.

9 Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall  
10 maintain accounting records showing the income and expenses of the  
11 fund.

12 (b) By July 1 of each year, the department shall determine the  
13 projected cost for the following fiscal year of monitoring, operating,  
14 and maintaining sites where response has been completed or is expected  
15 to be continued during the fiscal year.

16 (c) The commissioner shall consult with the commissioner of  
17 revenue and the governor before adopting regulations governing fund  
18 accounting. The department shall develop procedures and adopt rules  
19 governing the expenditure of, and accounting for, money expended from  
20 the fund, and may not delay implementation of this chapter pending the  
21 effective date of the procedures and rules.

22 (d) The proper state officer shall pay disbursements from the  
23 fund on presentation of vouchers signed by the governor or the gover-  
24 nor's authorized representative.

25 Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner  
26 shall submit a report to the governor and to the legislature not later  
27 than the 10th day following the convening of each regular session of  
28 the legislature. The report may include information considered sig-  
29 nificant by the commissioner but must include:

1           (1) the amount of money expended under AS 46.08.040 during  
2 the preceding fiscal year; and

3           (2) the amount and source of money received and money  
4 recovered during the preceding fiscal year as specified in AS 46.08.-  
5 020.

6           Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)  
7 The commissioner shall seek reimbursement promptly under this section,  
8 AS 46.03.760(e), or federal law for the cost incurred in the cleanup  
9 or containment of oil or a hazardous substance that has been released.

10          (b) The attorney general, at the request of the commissioner,  
11 may seek to recover money expended by the department under this chap-  
12 ter or other law to contain and clean up oil or a hazardous substance  
13 that has been released or to control the threatened release of oil or  
14 a hazardous substance.

15          Sec. 46.08.080. REGULATIONS. The commissioner shall adopt  
16 regulations necessary to implement the provisions of this chapter.

17          Sec. 46.08.900. DEFINITIONS. In this chapter

18           (1) "capital improvement" includes construction,  
19 renovation, repair of, and improvement to, a building, but does not  
20 include other improvements to real property, such as construction of a  
21 dike or retaining wall;

22           (2) "commissioner" means the commissioner of environmental  
23 conservation;

24           (3) "containment and cleanup" includes the direct and  
25 indirect efforts associated with the prevention, abatement, contain-  
26 ment, or removal of a hazardous substance, the restoration of the  
27 environment to its former state, and incidental administrative costs;

28           (4) "department" means the Department of Environmental  
29 Conservation;

1 (5) "employee" means a person who works for an employer in  
2 a place that is not used primarily as a personal residence;

3 (6) "employer" means a person, including the state and a  
4 political subdivision of the state, who has one or more employees  
5 working in a place that is not used primarily as a personal residence;

6 (7) "fund" means the oil and hazardous substance release  
7 response fund;

8 (8) "hazardous substance" means

9 (A) an element or compound that, when it enters into  
10 or on the surface or subsurface land or water of the state,  
11 presents an imminent and substantial danger to the public health  
12 or welfare, or to fish, animals, vegetation, or any part of the  
13 natural habitat in which fish, animals, or wildlife may be found;  
14 or

15 (B) a substance defined as a hazardous substance under  
16 state or federal law or by regulations adopted under state or  
17 federal law;

18 (9) "oil" means petroleum products of any kind and in any  
19 form, whether crude, refined, or a petroleum by-product, including  
20 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily  
21 refuse, oil mixed with other wastes, liquified natural gas, propane,  
22 butane, and other liquid hydrocarbons regardless of specific gravity;

23 (10) "release" means an intentional or unintentional release  
24 into the environment of the state.

25 \* Sec. 2. AS 46 is amended by adding a new chapter to read:

26 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

27 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)  
28 Except as provided in (b) of this section, a person in charge of a  
29 vehicle, vessel or container from which, or a place at which, a

1 hazardous substance is released shall report the release to the  
2 department and appropriate public safety agencies promptly after  
3 learning of the release.

4 (b) The commissioner may enter into an agreement with a person  
5 for the periodic reporting of a controlled release of a hazardous  
6 substance if the release is not into water.

7 Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS  
8 SUBSTANCE. (a) A person who causes a release of a hazardous sub-  
9 stance shall make reasonable efforts to contain and clean up the  
10 hazardous substance promptly after learning of the release, unless the  
11 commissioner determines

12 (1) after consulting the Environmental Protection Agency or  
13 appropriate public safety agencies, that containment or cleanup is  
14 technically infeasible;

15 (2) that containment or cleanup would cause greater en-  
16 vironmental damage than the release would cause if unabated; or

17 (3) that containment or cleanup would pose a greater threat  
18 to human life or health than the release itself.

19 (b) The commissioner shall develop guidelines prescribing  
20 general procedures and methods to be used in the containment and  
21 cleanup of a hazardous substance.

22 (c) If the commissioner determines that the containment or  
23 cleanup of a hazardous substance undertaken is inadequate, the commis-  
24 sioner may direct the person undertaking the containment or cleanup to  
25 cease and may undertake the containment or cleanup directly or by  
26 contract.

27 (d) If it appears to the commissioner that the cause or respon-  
28 sibility for the release of a hazardous substance is unclear or unex-  
29 plained, the commissioner may immediately undertake the containment

1 and cleanup of the release unless the commissioner determines

2 (1) after consulting the Environmental Protection Agency or  
3 appropriate public safety agencies, that containment or cleanup is  
4 technically infeasible;

5 (2) that containment or cleanup would cause greater en-  
6 vironmental damage than the release would cause if unabated; or

7 (3) that containment or cleanup would pose a greater threat  
8 to human life or health than the release itself.

9 (e) The commissioner shall enter into agreement with the En-  
10 vironmental Protection Agency, and may enter into agreements with  
11 other persons and municipalities, in order to

12 (1) facilitate a coordinated and effective hazardous sub-  
13 stance release response in the state;

14 (2) provide for cooperative hazardous substance release  
15 notification procedures; or

16 (3) provide for cooperative review of hazardous substance  
17 release response contingency plans submitted to the department.

18 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may  
19 request the governor to determine that an actual or imminent release  
20 of a hazardous substance constitutes a disaster emergency under  
21 AS 26.23. If the governor declares a disaster emergency under AS 26.-  
22 23, the commissioner may assist the adjutant general in the relief of  
23 the emergency.

24 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.  
25 The commissioner may contract with a person or a municipality for  
26 personnel, equipment, or services that may be useful to carry out the  
27 requirements of this chapter. If the commissioner determines that it  
28 is infeasible to contract with a person or a municipality, the commis-  
29 sioner may establish and maintain containment and cleanup personnel,

1 equipment, and supplies necessary to carry out the requirements of  
2 this chapter.

3 Sec. 46.09.050. PEACE OFFICERS. Employees of the department  
4 designated by the commissioner as enforcement officers in the imple-  
5 mentation of this chapter are peace officers of the state.

6 Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter  
7 into supplementary agreements, reciprocal arrangements, and compacts  
8 with another state or country for the implementation of this chapter  
9 subject to the approval of the Congress of the United States, if  
10 required, under the Constitution of the United States.

11 Sec. 46.09.070. MUNICIPALITIES. (a) If a provision of this  
12 chapter or of a regulation adopted by the commissioner under this  
13 chapter conflicts with the charter, ordinance, or regulation of a  
14 municipality, the provision of this chapter or of the regulation  
15 adopted by the commissioner under this chapter prevails.

16 (b) Authority to contain, clean up, or prevent a release or  
17 threatened release of oil or of a hazardous substance, and to exercise  
18 other powers necessary to implement AS 46.08 - AS 46.09, are granted  
19 to municipalities that do not otherwise have that authority. Except  
20 as provided in (a) of this section, a municipality may exercise its  
21 police power within the area of the municipality.

22 Sec. 46.09.080. REGULATIONS. The commissioner shall adopt  
23 regulations necessary to implement the provisions of this chapter.

24 Sec. 46.09.900. DEFINITIONS. In this chapter

25 (1) "commissioner" means the commissioner of environmental  
26 conservation;

27 (2) "containment and cleanup" includes the direct and  
28 indirect efforts associated with the prevention, abatement, contain-  
29 ment, or removal of a hazardous substance, the restoration of the

1 environment to its former state, and incidental administrative costs;

2 (3) "department" means the Department of Environmental  
3 Conservation;

4 (4) "hazardous substance" means

5 (A) an element or compound that, when it enters into  
6 or on the surface or subsurface land or water of the state,  
7 presents an imminent and substantial danger to the public health  
8 or welfare, or to fish, animals, vegetation, or any part of the  
9 natural habitat in which fish, animals, or wildlife may be found;  
10 or

11 (B) a substance defined as a hazardous substance under  
12 state or federal law or by regulations adopted under state or  
13 federal law;

14 (5) "release" means an intentional or unintentional release  
15 into the environment of the state.

16 \* Sec. 3. AS 26.23.050(b) is amended to read:

17 (b) Whenever, and to the extent that, money is needed to cope  
18 with a disaster, the first recourse shall be to funds regularly appro-  
19 priated to state and local agencies. The second recourse shall be to  
20 funds available in the disaster relief fund or the oil and hazardous  
21 substance release response fund, as appropriate. If money available  
22 from these sources is insufficient, and if the governor finds that  
23 other sources of money to cope with the disaster are not available or  
24 are insufficient, the governor may, notwithstanding any limitation  
25 imposed by AS 37.07.080(e), transfer and spend money appropriated for  
26 other purposes or, in situations involving natural disasters, borrow  
27 from the United States government or other public or private sources  
28 for a term not to exceed two years.

29 \* Sec. 4. AS 26.23.230(1) is amended to read:

1           (1) "disaster" means the occurrence or imminent threat of  
2 widespread or severe damage, injury, or loss of life or property  
3 resulting from any natural or nonmilitary man-made cause including,  
4 but not limited to, fire, flood, earthquake, landslide, mudslide,  
5 avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL  
6 OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT  
7 DANGER OR DAMAGE], volcanic activity, epidemic, air contamination,  
8 blight, infestation, explosion, riot, equipment failure, or shortage  
9 of food, water, fuel, or clothing, or the release of oil or a hazard-  
10 ous substance requiring prompt action to avert environmental danger or  
11 damage;

12 \* Sec. 5. AS 37.05.159 is amended by adding a new subsection to read:

13           (g) Notwithstanding the provisions of (b) of this section and  
14 AS 37.07.080(e), the governor may transfer \$1,000,000 during a fiscal  
15 year from the reserve for emergency operating expenses account to the  
16 oil and hazardous substance release response fund (AS 46.08).

17 \* Sec. 6. AS 44.19.050 is amended to read:

18           Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,  
19 "disaster" means the occurrence or imminent threat of widespread or  
20 severe damage, injury, or loss of life or property resulting from any  
21 natural or man-made cause including, but not limited to, fire, flood,  
22 earthquake, landslide, avalanche, wind-driven water, weather condi-  
23 tion, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING  
24 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air  
25 contamination, blight, infestation, explosion, [OR] riot, or the  
26 release of oil or a hazardous substance requiring prompt action to  
27 avert environmental danger or damage.

28 \* Sec. 7. AS 46.03.290(a) is amended to read:

29           (a) When the department finds that an actual or imminent

1 discharge of oil, a hazardous substance, or low level radioactive  
2 materials to the air, water, land or subsurface land of the state  
3 poses an immediate threat to the public health or welfare, or the  
4 environment of the state, it may issue an order declaring an emergency  
5 and directing a person or persons to take action the department  
6 believes necessary to meet the emergency, and protect the public  
7 health, welfare, or environment.

8 \* Sec. 8. AS 46.03.760(a) is amended to read:

9 (a) A person who violates or causes or permits to be violated a  
10 provision of this chapter other than AS 46.03.250 - 46.03.314, or a  
11 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of  
12 the department, or a permit, approval, or acceptance, or term or  
13 condition of a permit, approval, or acceptance issued under this  
14 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the  
15 state for a sum to be assessed by the court of not less than \$500 nor  
16 more than \$100,000 for the initial violation, nor more than \$5,000 for  
17 each day after that on which the violation continues, and that shall  
18 reflect, when applicable,

19 (1) reasonable compensation in the nature of liquidated  
20 damages for any adverse environmental effects caused by the violation,  
21 that shall be determined by the court according to the toxicity,  
22 degradability and dispersal characteristics of the substance dis-  
23 charged, the sensitivity of the receiving environment, and the degree  
24 to which the discharge degrades existing environmental quality;

25 (2) reasonable costs incurred by the state in detection,  
26 investigation, and attempted correction of the violation;

27 (3) the economic savings realized by the person in not  
28 complying with the requirement for which a violation is charged.

29 \* Sec. 9. AS 46.03.765 is amended to read:

1           Sec. 46.03.765.   INJUNCTIONS.   The superior court has jurisdic-  
2           tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09  
3           or of a regulation, a lawful order of the department, or permit,  
4           approval, or acceptance, or term or condition of a permit, approval,  
5           or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.  
6           In actions brought under this section, temporary or preliminary relief  
7           may be obtained upon a showing of an imminent threat of continued  
8           violation, and probable success on the merits, without the necessity  
9           of demonstrating physical irreparable harm. The balance of equities  
10          in actions under this section may affect the timing of compliance, but  
11          not the necessity of compliance within a reasonable period of time.

12       \* Sec. 10. AS 46.03.780(a) is amended to read:

13           (a) A person who violates a provision of this chapter, [OR]  
14           AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this  
15           chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an  
16           order, permit, or other determination of the department made under the  
17           provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively,  
18           and thereby causes the death of fish, animals, or vegetation or other-  
19           wise injures or degrades the environment of the state is liable to the  
20           state for damages.

21       \* Sec. 11. AS 46.03.790(a) is amended to read:

22           (a) Except as provided in (d) - (f) of this section, a person  
23           who negligently violates a provision of this chapter, [OR] AS 46.04,  
24           or AS 46.09, or of a regulation, lawful order of the department, or  
25           permit, approval, or acceptance, or term or condition of a permit,  
26           approval, or acceptance issued under this chapter, [OR] AS 46.04, or  
27           AS 46.09 is guilty of a class B misdemeanor.

28       \* Sec. 12. AS 46.03.790(b) is amended to read:

29           (b) Except as provided in (d) - (f) of this section, a person

1 who knowingly violates a provision of this chapter, [OR] AS 46.04, or  
2 AS 46.09, or of a regulation, lawful order of the department, or  
3 permit, approval, or acceptance, or term or condition of a permit,  
4 approval, or acceptance issued under this chapter, [OR] AS 46.04, or  
5 AS 46.09 is guilty of a class A misdemeanor.

6 \* Sec. 13. AS 46.03.790(d) is amended to read:

7 (d) Notwithstanding (a) and (b) of this section, a person who  
8 fails to provide or falsely states information required under AS 46.-  
9 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,  
10 upon conviction, is punishable by a fine of not more than \$25,000, or  
11 by imprisonment for not more than one year, or by both. Each unlawful  
12 act constitutes a separate offense.

13 \* Sec. 14. AS 46.04.010 is amended to read:

14 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-  
15 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-  
16 760(e), AS 46.08.070, or from an applicable federal fund, for the  
17 expenses it incurs in cleaning up or containing a discharge of oil.  
18 If the department obtains reimbursement for a portion of its expenses  
19 from a federal fund, the remainder of the expenses incurred may be  
20 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by  
21 the department under this section shall be deposited in the general  
22 fund and may be appropriated by the legislature to the oil and hazar-  
23 dous substance release response fund (AS 46.08).

24 \* Sec. 15. Not later than January 1, 1987, the commissioner of  
25 environmental conservation shall develop guidelines under AS 46.09.020,  
26 added by sec. 2 of this Act.

27 \* Sec. 16. Not later than October 1, 1987, the commissioner of  
28 environmental conservation shall adopt regulations under AS 46.09.080,  
29 added by sec. 2 of this Act.

1     \* Sec. 17. This Act takes effect immediately in accordance with AS 01.-  
2 10.070(c).