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Referred: Rules

Original sponsors: Davis, Koponen,
Hurley, et al

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 CS FOR HOUSE BILL NO. 470 (Finance)
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; repealing the oil spill mitigation ac-
8 count; and providing for an effective date."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 46 is amended by adding a new chapter to read:
11 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.
12 Sec. 46.08.005. PURPOSE. The legislature finds and declares
13 that the release of oil or hazardous substances into the environment
14 presents a real and substantial threat to the public health and wel-
15 fare, to the environment, and to the economy of the state. The legis-
16 lature therefore concludes that it is in the best interest of the
17 state and its citizens to provide a readily available fund for the
18 payment of the expenses incurred by the Department of Environmental
19 Conservation in the protection of the environment of the state from
20 the release of oil or hazardous substances.
21 Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in
22 the state general fund the oil and hazardous substance release re-
23 sponse fund. The fund shall be administered by the commissioner of
24 environmental conservation.
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. (a) 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 (b) Money received by the state under (a)(2) and (a)(3) of this
15 section shall be deposited in the general fund and credited to a
16 special account called the "oil and hazardous substance release miti-
17 gation account." The legislature may annually appropriate to the fund
18 from this account a sum equal to the amount received under (a)(2) and
19 (a)(3) of this section during the calendar year preceding the legisla-
20 tive session in which the appropriations are to be made.

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

25 Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use
26 money from the fund to

27 (1) contain, clean up, and take other necessary action,
28 such as monitoring, assessing, investigating, and evaluating the
29 release or threatened release of oil or a hazardous substance that

1 poses an imminent and substantial threat to the public health or
2 welfare, or to the environment;

3 (2) provide matching funds for participation in federal oil
4 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
5 hensive Environmental Response, Compensation, and Liability Act of
6 1980); and

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

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

13 (b) The department shall develop procedures governing the expen-
14 diture of, and accounting for, money expended from the fund, and may
15 not delay implementation of this chapter pending the effective date of
16 the procedures.

17 Sec. 46.08.060. REPORT TO THE LEGISLATURE. (a) The commis-
18 sioner shall submit a report to the legislature not later than the
19 10th day following the convening of each regular session of the legis-
20 lature. The report may include information considered significant by
21 the commissioner but must include:

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

24 (2) the amount and source of money received and money
25 recovered during the preceding fiscal year as specified in AS 46.08.-
26 020;

27 (3) a summary of municipal participation in responses
28 funded by the fund;

29 (4) a detailed summary of department activities in

1 responses funded by the fund during the preceding fiscal year, includ-
2 ing response descriptions and statements outlining the nature of the
3 threat; and

4 (5) the projected cost for the next fiscal year of monitor-
5 ing, operating, and maintaining sites where response has been com-
6 pleted or is expected to be continued during the fiscal year.

7 (b) As part of the department's on-going identification efforts
8 associated with oil spill or hazardous waste sites, the commissioner
9 shall include in the report under this section

10 (1) a summary of the sites identified by the department;

11 (2) the immediate and long-term threats to the public
12 health or welfare or to the environment posed by these sites; and

13 (3) the appropriate actions needed to abate these threats,
14 and their estimated cost.

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

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

24 (c) The department may reimburse a municipality for actual
25 expenses, other than normal operating expenses, incurred in the abate-
26 ment of a release or threatened release of oil or a hazardous sub-
27 stance if

28 (1) the municipality has entered into an agreement with the
29 commissioner under AS 46.09.020(e) before incurring the expenses for

1 which reimbursement is sought; and

2 (2) the commissioner determines that the expenses were for
3 a necessary emergency first response to a release or threatened re-
4 lease that posed an imminent and substantial threat to the public
5 health or welfare, or to the environment.

6 Sec. 46.08.080. REGULATIONS. The commissioner may adopt regu-
7 lations necessary to implement the provisions of this chapter.

8 Sec. 46.08.900. DEFINITIONS. In this chapter

9 (1) "capital improvement" includes construction, renova-
10 tion, repair of, and improvement to, a building, but does not include
11 other improvements to real property, such as construction of a dike or
12 retaining wall;

13 (2) "commissioner" means the commissioner of environmental
14 conservation;

15 (3) "containment and cleanup" includes the direct and
16 indirect efforts associated with the prevention, abatement, contain-
17 ment, or removal of oil or a hazardous substance, the restoration of
18 the environment, and incidental administrative costs;

19 (4) "department" means the Department of Environmental
20 Conservation;

21 (5) "fund" means the oil and hazardous substance release
22 response fund;

23 (6) "hazardous substance" means

24 (A) an element or compound that, when it enters into
25 or on the surface or subsurface land or water of the state,
26 presents an imminent and substantial danger to the public health
27 or welfare, or to fish, animals, vegetation, or any part of the
28 natural habitat in which fish, animals, or wildlife may be found;
29 or

1 (B) a substance defined as a hazardous substance under
2 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,
3 Compensation, and Liability Act of 1980);

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

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

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

12 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

13 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)

14 Except as provided in (b) of this section, a person in charge of a
15 vehicle, vessel or container from which, or a place at which, a haz-
16 arduous substance is released shall report the release to the depart-
17 ment and appropriate public safety agencies promptly after learning of
18 the release.

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

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

27 (1) after consulting the Environmental Protection Agency or
28 appropriate public safety agencies, that containment or cleanup is
29 technically infeasible;

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

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

5 (b) The commissioner shall develop guidelines prescribing gen-
6 eral procedures and methods to be used in the containment and cleanup
7 of a hazardous substance.

8 (c) If the commissioner determines that the containment or
9 cleanup of a hazardous substance undertaken is inadequate, the commis-
10 sioner may direct the person undertaking the containment or cleanup to
11 cease and may undertake the containment or cleanup directly or by
12 contract.

13 (d) If it appears to the commissioner that the cause or respon-
14 sibility for the release of a hazardous substance is unclear or unex-
15 plained, the commissioner may immediately undertake the containment
16 and cleanup of the release unless the commissioner determines

17 (1) after consulting the Environmental Protection Agency or
18 appropriate public safety agencies, that containment or cleanup is
19 technically infeasible;

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

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

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

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

29 (2) provide for cooperative hazardous substance release

1 notification procedures; or

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

4 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
5 request the governor to determine that an actual or imminent release
6 of a hazardous substance constitutes a disaster emergency under
7 AS 26.23. If the governor declares a disaster emergency under AS 26.-
8 23, the commissioner may assist the adjutant general in the relief of
9 the emergency.

10 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.
11 The commissioner may contract with a person or a municipality for
12 personnel, equipment, or services that may be useful to carry out the
13 requirements of this chapter. If the commissioner determines that it
14 is infeasible to contract with a person or a municipality, the commis-
15 sioner may establish and maintain containment and cleanup personnel,
16 equipment, and supplies necessary to carry out the requirements of
17 this chapter.

18 Sec. 46.09.050. COMPACTS AUTHORIZED. The governor may enter
19 into supplementary agreements, reciprocal arrangements, and compacts
20 with another state or country for the implementation of this chapter
21 subject to the approval of the Congress of the United States, if
22 required, under the Constitution of the United States.

23 Sec. 46.09.060. MUNICIPALITIES. (a) If a provision of this
24 chapter or of a regulation adopted by the commissioner under this
25 chapter conflicts with the charter, ordinance, or regulation of a
26 municipality, the provision of this chapter or of the regulation
27 adopted by the commissioner under this chapter prevails.

28 (b) Authority to contain, clean up, or prevent a release or
29 threatened release of oil or of a hazardous substance, and to exercise

1 other powers necessary to implement this chapter and AS 46.08, are
2 granted to municipalities that do not otherwise have that authority.
3 Except as provided in (a) of this section, a municipality may exercise
4 its police power within the area of the municipality.

5 Sec. 46.09.070. REGULATIONS. The commissioner shall adopt
6 regulations necessary to implement the provisions of this chapter.

7 Sec. 46.09.900. DEFINITIONS. In this chapter

8 (1) "commissioner" means the commissioner of environmental
9 conservation;

10 (2) "containment and cleanup" includes the direct and
11 indirect efforts associated with the prevention, abatement, contain-
12 ment, or removal of a hazardous substance, the restoration of the
13 environment, and incidental administrative costs;

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

16 (4) "hazardous substance" means

17 (A) an element or compound that, when it enters into
18 or on the surface or subsurface land or water of the state,
19 presents an imminent and substantial danger to the public health
20 or welfare, or to fish, animals, vegetation, or any part of the
21 natural habitat in which fish, animals, or wildlife may be found;
22 or

23 (B) a substance defined as a hazardous substance under
24 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,
25 Compensation, and Liability Act of 1980);

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

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

29 (b) Whenever, and to the extent that, money is needed to cope

1 with a disaster, the first recourse shall be to funds regularly appro-
2 priated to state and local agencies. The second recourse shall be to
3 funds available in the disaster relief fund or the oil and hazardous
4 substance release response fund, as appropriate. If money available
5 from these sources is insufficient, and if the governor finds that
6 other sources of money to cope with the disaster are not available or
7 are insufficient, the governor may, notwithstanding any limitation
8 imposed by AS 37.07.080(e), transfer and spend money appropriated for
9 other purposes or, in situations involving natural disasters, borrow
10 from the United States government or other public or private sources
11 for a term not to exceed two years.

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

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

24 * Sec. 5. AS 44.19.050 is amended to read:

25 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,
26 "disaster" means the occurrence or imminent threat of widespread or
27 severe damage, injury, or loss of life or property resulting from any
28 natural or man-made cause including, but not limited to, fire, flood,
29 earthquake, landslide, avalanche, wind-driven water, weather

1 condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING
2 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air
3 contamination, blight, infestation, explosion, [OR] riot, or the
4 release of oil or a hazardous substance requiring prompt action to
5 avert environmental danger or damage.

6 * Sec. 6. AS 45.45.900 is amended to read:

7 Sec. 45.45.900. INDEMNIFICATION AGREEMENTS CONTRA TO PUBLIC
8 POLICY. A provision, clause, covenant, or agreement contained in,
9 collateral to, or affecting a [ANY] construction contract that [WHICH]
10 purports to indemnify the promisee against liability for damages for
11 (1) death or bodily injury to persons, (2) injury to property, (3)
12 design defects or (4) [ANY] other loss, damage or expense arising
13 under (1), (2), or (3) of this section from the sole negligence or
14 wilful misconduct of the promisee or the promisee's agents, servants
15 or independent contractors who are directly responsible to the prom-
16 isee, is against public policy and is void and unenforceable; however,
17 this provision does not affect the validity of an [ANY] insurance
18 contract, workers' compensation, or agreement issued by an insurer
19 subject to the provisions of AS 21, or a provision, clause, covenant,
20 or agreement of indemnification respecting the handling, containment
21 or cleanup of oil or hazardous substances as defined in AS 46.

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

23 (a) When the department finds that an actual or imminent dis-
24 charge of oil, a hazardous substance, or low level radioactive mate-
25 rials to the air, water, land or subsurface land of the state poses an
26 immediate threat to the public health or welfare, or the environment
27 of the state, it may issue an order declaring an emergency and direct-
28 ing a person or persons to take action the department believes neces-
29 sary to meet the emergency, and protect the public health, welfare, or

1 environment.

2 * Sec. 8. AS 46.03 is amended by adding a new section to read:

3 Sec. 46.03.745. HAZARDOUS SUBSTANCE RELEASE. Except for a
4 controlled release, the reporting of which is the subject of an agree-
5 ment with the commissioner under AS 46.09.010(b), a person may not
6 cause or permit the release of a hazardous substance as defined in
7 AS 46.09.900.

8 * Sec. 9. 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. 10. 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. 11. 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. 12. 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. 13. 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. 14. 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. 15. 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 credited to a special account called the "oil and hazardous
23 substance release mitigation account".

24 * Sec. 16. AS 46.04.090(b) is amended to read:

25 (b) Inspection and enforcement employees of the department
26 designated by the commissioner are peace officers in the performance
27 of their duties under this chapter, AS 46.09, and AS 46.03.

28 * Sec. 17. Not later than January 1, 1987, the commissioner of environ-
29 mental conservation shall develop guidelines under AS 46.09.020, added by

1 sec. 2 of this Act.

2 * Sec. 18. Not later than October 1, 1987, the commissioner of environ-
3 mental conservation shall adopt regulations under AS 46.09.070, added by
4 sec. 2 of this Act.

5 * Sec. 19. Notwithstanding the provisions of AS 37.05.159(b) and
6 AS 37.07.080(e), the governor may, during the 1987 fiscal year, transfer
7 from the reserve for emergency operating expenses account to the oil and
8 hazardous substance release response fund (AS 46.08) amounts that, when
9 added to the amounts appropriated, reappropriated, or transferred to the
10 response fund in laws enacted by the legislature during the 1986 regular
11 legislative session, do not exceed \$1,000,000.

12 * Sec. 20. AS 46.03.758(k) is repealed.

13 * Sec. 21. Sections 1 - 18 and 20 of this Act take effect immediately
14 in accordance with AS 01.10.070(c).

15 * Sec. 22. Section 19 of this Act takes effect July 1, 1986.