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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) am  
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 only  
7 those regulations which are expressly required to implement the  
8 specific purposes of this chapter.

9 Sec. 46.08.900. DEFINITIONS. In this chapter

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

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

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

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

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

24 (6) "hazardous substance" means

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

1 or

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

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

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

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

13 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

14 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)  
15 Except as provided in (b) of this section, a person in charge of a  
16 vehicle, vessel or container from which, or a place at which, a haz-  
17 ardous substance is released shall report the release to the depart-  
18 ment and appropriate public safety agencies promptly after learning of  
19 the release.

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

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

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

1 technically infeasible;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29           (b) Authority to contain, clean up, or prevent a release or

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

6 Sec. 46.09.070. REGULATIONS. The commissioner shall adopt only  
7 those regulations which are expressly required to implement the  
8 specific purposes of this chapter.

9 Sec. 46.09.900. DEFINITIONS. In this chapter

10 (1) "commissioner" means the commissioner of environmental  
11 conservation;

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

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

18 (4) "hazardous substance" means

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

25 (B) a substance defined as a hazardous substance under  
26 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,  
27 Compensation, and Liability Act of 1980);

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

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

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

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

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

26 \* Sec. 5. AS 44.19.050 is amended to read:

27 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,  
28 "disaster" means the occurrence or imminent threat of widespread or  
29 severe damage, injury, or loss of life or property resulting from any

1 natural or man-made cause including, but not limited to, fire, flood,  
2 earthquake, landslide, avalanche, wind-driven water, weather condi-  
3 tion, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING  
4 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air  
5 contamination, blight, infestation, explosion, [OR] riot, or the  
6 release of oil or a hazardous substance requiring prompt action to  
7 avert environmental danger or damage.

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

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

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

25 (a) When the department finds that an actual or imminent dis-  
26 charge of oil, a hazardous substance, or low level radioactive mate-  
27 rials to the air, water, land or subsurface land of the state poses an  
28 immediate threat to the public health or welfare, or the environment  
29 of the state, it may issue an order declaring an emergency and

1 directing a person or persons to take action the department believes  
2 necessary to meet the emergency, and protect the public health,  
3 welfare, or environment.

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

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

10 \* Sec. 9. AS 46.03.760(a) is amended to read:

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

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

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

29 (3) the economic savings realized by the person in not

1 complying with the requirement for which a violation is charged.

2 \* Sec. 10. AS 46.03.765 is amended to read:

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

14 \* Sec. 11. AS 46.03.780(a) is amended to read:

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

23 \* Sec. 12. AS 46.03.790(a) is amended to read:

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

1 \* Sec. 13. AS 46.03.790(b) is amended to read:

2 (b) Except as provided in (d) - (f) of this section, a person  
3 who knowingly violates a provision of this chapter, [OR] AS 46.04, or  
4 AS 46.09, or of a regulation, lawful order of the department, or  
5 permit, approval, or acceptance, or term or condition of a permit,  
6 approval, or acceptance issued under this chapter, [OR] AS 46.04, or  
7 AS 46.09 is guilty of a class A misdemeanor.

8 \* Sec. 14. AS 46.03.790(d) is amended to read:

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

15 \* Sec. 15. AS 46.04.010 is amended to read:

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

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

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

1       \* Sec. 17. Not later than January 1, 1987, the commissioner of environ-  
2 mental conservation shall develop guidelines under AS 46.09.020, added by  
3 sec. 2 of this Act.

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

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

14       \* Sec. 20. AS 46.03.758(k) is repealed.

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

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