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Referred: Rules

Original sponsors: Menard, M.Davis,  
Brown, et al.

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 220 (Finance) am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to motor fuels, petroleum and chemi-  
7 cal storage tanks, and investigation, containment,  
8 and cleanup of oil and hazardous substances; and  
9 providing for an effective date."

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

11 \* Section 1. PURPOSE. The purpose of this Act is to authorize the  
12 Department of Environmental Conservation to abate and prevent leaks associ-  
13 ated with underground petroleum and chemical storage tanks in order to  
14 protect the public from contamination of drinking water and the environment  
15 and to establish mechanisms that will assist the owners of underground  
16 petroleum storage tanks to comply with federal and state requirements  
17 governing their tanks. The legislature recognizes that these owners may be  
18 faced with expenses that they cannot immediately afford for liability  
19 insurance, the costs of upgrading or replacing their tanks, and the costs  
20 of cleaning up past contamination related to their tanks. The legislature  
21 intends to help these owners through a combination of educational assis-  
22 tance, grants, and other financial assistance, but only if these owners  
23 promptly comply with the new requirements of this Act.

24 \* Sec. 2. AS 43.40 is amended by adding a new section to read:

25 Sec. 43.40.015. ADDITIONAL SURCHARGE ON MOTOR FUEL. (a) In  
26 addition to the tax levied by AS 43.40.010, there is levied a sur-  
27 charge of one cent a gallon on all motor fuel subject to tax under  
28 AS 43.40.010.

29 (b) The surcharge imposed by (a) of this section shall be

1 collected and remitted in the same manner as the tax levied and col-  
2 lected under AS 43.40.010 except that the proceeds of the surcharge  
3 may not be returned to municipalities under AS 43.40.010(e) or depos-  
4 ited in any special account authorized under AS 43.40.010, but shall  
5 be remitted to the commissioner of revenue for deposit into the gener-  
6 al fund.

7 (c) The commissioner of administration shall separately account  
8 for the proceeds of the surcharge collected under this section and  
9 deposited into the general fund. The legislature may use the annual  
10 estimated balance in the account to make appropriations to the Depart-  
11 ment of Environmental Conservation for the petroleum and chemical  
12 storage tank account established under AS 46.08.015.

13 \* Sec. 3. AS 43.40.035(a) is amended to read:

14 (a) A person who resells fuel on which the tax under AS 43.40.-  
15 010(a) or (b) and the surcharge levied under AS 43.40.015 were [WAS]  
16 previously paid is entitled to a credit or refund of the tax or sur-  
17 charge, or both, if (1) the resold fuel is not motor fuel and the  
18 requirements of AS 43.40.010(1) have been fulfilled; or (2) the amount  
19 of tax and surcharge previously paid exceeds the tax and surcharge due  
20 on the resale. The amount of the credit or refund under this section  
21 is equal to the amount of tax and surcharge previously paid on the  
22 resold fuel less the amount of tax prescribed by AS 43.40.010(a) or  
23 (b) and the surcharge prescribed by AS 43.40.015.

24 \* Sec. 4. AS 46.03 is amended by adding new sections to read:

25 ARTICLE 6A. PETROLEUM AND CHEMICAL STORAGE TANKS.

26 Sec. 46.03.360. REGULATION OF UNDERGROUND PETROLEUM AND CHEMICAL  
27 STORAGE TANKS. (a) The department shall assist owners and develop a  
28 program to prevent and abate pollution from underground petroleum and  
29 chemical storage tanks through the adoption of regulations.

1 Consistent with other provisions in AS 46.03.360 - 46.03.450, the  
2 regulations may govern

3 (1) notification;

4 (2) licensing, certification, inspection, and record keep-  
5 ing;

6 (3) contingency plans and financial responsibility;

7 (4) construction, installation, and performance;

8 (5) maintenance, operation, and repair;

9 (6) spill and overfill control, corrosion prevention, and  
10 release detection and reporting;

11 (7) enforcement, corrective action, and damages and cost  
12 recovery;

13 (8) closure and abandonment; and

14 (9) prevention of spills, releases, or pollution, to pro-  
15 tect the public health and environment.

16 (b) The department may distinguish among the sizes, types,  
17 classes, and ages of underground petroleum and chemical storage tanks  
18 in the regulations adopted under (a) of this section.

19 (c) The commissioner shall appoint an advisory panel to assist  
20 the department in developing regulations under this section. The  
21 panel must include public members and persons who will be governed by  
22 the regulations, such as underground petroleum and chemical storage  
23 tank owners and persons who install, repair, or test underground  
24 petroleum and chemical storage tanks. Before a notice of proposed  
25 action may be published under AS 44.62.190 for regulations required  
26 under this section, the commissioner shall submit the proposed regu-  
27 lations to the panel for review and comment. Before the commissioner  
28 adopts regulations under this section, the commissioner shall consider  
29 the comments of the panel.

1           Sec. 46.03.370. INSPECTIONS. (a) An underground petroleum or  
2 chemical storage tank regulated under AS 46.03.360 - 46.03.450 is  
3 subject to inspection by the department or by professionally qualified  
4 inspectors certified by the department to ensure compliance with  
5 AS 46.03.360 - 46.03.450 and the regulations adopted under those  
6 sections and to verify information on the registration form required  
7 under AS 46.03.400.

8           (b) An aboveground petroleum or chemical storage tank is subject  
9 to inspection by the department or by professionally qualified inspec-  
10 tors certified by the department to verify information on the regis-  
11 tration form required under AS 46.03.400.

12           (c) The department may contract with persons who are not state  
13 employees to perform inspections under this section. The department  
14 shall adopt regulations to implement a certification program for  
15 persons who wish to be eligible for inspection contracts under this  
16 section.

17           Sec. 46.03.380. EDUCATIONAL ASSISTANCE. The department shall  
18 provide to persons who own or operate underground petroleum storage  
19 tanks educational assistance to help them comply with federal and  
20 state laws and regulations applicable to the tanks. The department  
21 shall also provide the public with information to help the public  
22 understand the effects associated with the release of petroleum prod-  
23 ucts into the environment.

24           Sec. 46.03.390. GRANTS. (a) The department may issue a grant,  
25 not to exceed \$100,000 per facility, to the owner of an underground  
26 petroleum storage tank for the purpose of

27           (1) removing and properly disposing of all liquids and  
28 sludges from the tank and either filling the tank with inert material  
29 or properly dismantling, removing, and disposing of the tank; or

1 (2) retrofitting, repairing, or replacing an underground  
2 petroleum storage tank to meet federal or state requirements.

3 (b) A grant under (a)(1) of this section may be for up to 75  
4 percent of the costs approved by the department. A grant under (a)(2)  
5 of this section may be for up to 60 percent of the costs approved by  
6 the department.

7 (c) Before implementing this section, the department shall adopt  
8 regulations to implement this section.

9 Sec. 46.03.400. NOTIFICATION AND REGISTRATION REQUIREMENTS. (a)  
10 A person who intends to install or have a storage tank installed shall  
11 notify the department in writing at least 30 days before installing or  
12 having the tank installed. The department may waive the requirement  
13 of this subsection upon a showing of good cause.

14 (b) The owner of a storage tank shall, within 30 days after  
15 installing a storage tank, register the tank with the department on a  
16 form provided by the department. The owner shall biennially renew the  
17 registration.

18 (c) The owner shall specify on the registration form required  
19 under (b) of this section the location, size, type of construction,  
20 and age of the tank; the type of petroleum or chemical stored in the  
21 tank; and the total volume of petroleum or chemical stored in the tank  
22 during the previous 12 months.

23 (d) If a storage tank is taken out of operation, the owner of  
24 the tank, or an agent on the owner's behalf, shall

25 (1) specify on the biennial registration form the date the  
26 tank was taken out of operation; and

27 (2) provide evidence satisfactory to the department that

28 (A) all petroleum and chemical products and sludges  
29 have been removed from the tank and properly disposed of;

1 (B) the tank has either been filled with inert materi-  
2 al or been properly dismantled, removed, and disposed of; and

3 (C) the owner has otherwise complied with federal laws  
4 relating to taking a tank out of operation.

5 Sec. 46.03.410. REGISTRATION FEE. (a) At the time of registra-  
6 tion and renewal of registration under AS 46.03.400, if the tank is  
7 being used for storage of petroleum or chemicals, the owner shall pay  
8 to the department a registration fee of \$.02 per gallon based on the  
9 capacity of the tank being registered or a fee of \$2,000, whichever is  
10 lower, subject to a maximum biennial fee of \$40,000 per facility. The  
11 department shall deposit fees collected under this section in the  
12 general fund. The commissioner of administration shall separately  
13 account for fees deposited under this section. The legislature may  
14 appropriate the annual estimated balance of the account to the petro-  
15 leum and chemical storage tank account established under AS 46.08.015.

16 (b) The registration fee imposed under (a) of this section does  
17 not apply to a storage tank owned by the state. The department may by  
18 regulation provide for other exemptions from the registration fee  
19 imposed under (a) of this section.

20 (c) An owner of a storage tank who demonstrates to the satisfac-  
21 tion of the department that the owner has undertaken containment  
22 measures that eliminate the major threat to the aquifer or the  
23 environment from the tank is eligible for a 50 percent reduction in  
24 the registration fee imposed under (a) of this section while the  
25 containment measures remain effective.

26 Sec. 46.03.420. EXEMPTIONS. (a) AS 46.03.360 - 46.03.450 do not  
27 apply to a storage tank with a capacity of 1,100 gallons or less at a farm,  
28 or at a residence that is a single-family dwelling or duplex, if the stor-  
29 age tank is used for storing motor fuel that is not intended for resale.

1 (b) AS 46.03.360 - 46.03.450 do not apply to a storage tank with  
2 a capacity of 1,100 gallons or less if the storage tank is used for  
3 storing heating oil for consumptive use on the premises where it is  
4 stored.

5 (c) AS 46.03.360 - 46.03.450 do not apply to a storage tank used  
6 for storing heating oil at a farm, or at a residence that is a single-  
7 family dwelling or duplex, if the oil is held for consumptive use on  
8 the premises where it is stored.

9 (d) AS 46.03.360 - 46.03.450 do not apply to the storage of  
10 hazardous waste that is being managed under 42 U.S.C. 6901 - 6991i  
11 (the Solid Waste Disposal Act).

12 (e) The department may by regulation provide for other exemp-  
13 tions as necessary.

14 Sec. 46.03.450. DEFINITIONS. In AS 46.03.360 - 46.03.450

15 (1) "chemical" means any substance defined in 42 U.S.C.  
16 9601(14) (sec. 101(14) of the Comprehensive Environmental Response,  
17 Compensation, and Liability Act of 1980), as amended, and any sub-  
18 stance having the characteristics identified or listed under 42 U.S.C.  
19 6921 (sec. 3001 of the Solid Waste Disposal Act), regardless of wheth-  
20 er the substance is a solid waste;

21 (2) "facility" means contiguous land and structures on or  
22 in the land containing petroleum and chemical storage tanks owned by  
23 the same person;

24 (3) "farm" means a tract of land devoted to the production  
25 of crops or raising animals, including fish, and associated residences  
26 and improvements; "farm" includes fish hatcheries, rangelands, and  
27 nurseries with growing operations;

28 (4) "petroleum" means crude oil or any fraction of crude  
29 oil that is liquid at 60 degrees Fahrenheit and pressure of 14.7

1 pounds per square inch absolute; "petroleum" includes petroleum-based  
2 substances comprised of a complex blend of hydrocarbons derived from  
3 crude oil through processes of separation, conversion, upgrading, and  
4 finishing, such as motor fuels, jet fuels, distillate fuel oils,  
5 residual fuel oils, lubricants, petroleum solvents, and used oils;

6 (5) "storage tank" means one or a combination of stationary  
7 devices that are designed to contain an accumulation of petroleum or  
8 chemicals; are constructed of nonearthen materials such as concrete,  
9 steel, or plastic; and provide structural support; "storage tank" in-  
10 cludes pipes or piping connected to the storage tank;

11 (6) "underground petroleum storage tank" means a storage  
12 tank designed to contain an accumulation of petroleum, the volume of  
13 which, including the volume of underground pipes connected to it, is  
14 10 percent or more beneath the surface of the ground.

15 \* Sec. 5. AS 46.08.010(c) is amended to read:

16 (c) Except as provided in AS 46.08.015, the [THE] fund shall be  
17 used for actual expenses incurred under AS 46.08.040. Except as  
18 provided in AS 46.08.015, the [THE] fund may not be used for capital  
19 improvements. The administrative costs of the petroleum and chemical  
20 storage tank fund shall not exceed 10 percent.

21 \* Sec. 6. AS 46.08 is amended by adding a new section to read:

22 Sec. 46.08.015. PETROLEUM AND CHEMICAL STORAGE TANK ACCOUNT.

23 (a) There is established in the fund a petroleum and chemical storage  
24 tank account. The account consists of money appropriated to it.

25 (b) The commissioner may only use money from the petroleum and  
26 chemical storage tank account to pay for

27 (1) the costs of investigation, containment, and cleanup of  
28 a release or threatened release of petroleum or chemicals from a  
29 storage tank or from uses related to a storage tank; payments under

1 this paragraph may not exceed \$1,000,000 per investigation, contain-  
2 ment, and cleanup action;

3 (2) the costs of investigation, containment, and cleanup of  
4 a release or threatened release of a hazardous substance that poses an  
5 imminent and substantial threat to public health;

6 (3) grants under AS 46.03.390; and

7 (4) the department's costs for administering AS 46.03.380 -  
8 46.03.410.

9 (c) Each year, the commissioner shall use at least 10 percent of  
10 the balance of the petroleum and chemical storage tank account exist-  
11 ing on July 1 for grants under AS 46.03.390 during the ensuing fiscal  
12 year.

13 (d) In this section, "chemical," "petroleum," and "storage tank"  
14 have the meanings given in AS 46.03.450.

15 \* Sec. 7. AS 46.08.060(a) is amended to read:

16 (a) The commissioner shall submit a report to the legislature  
17 not later than the 10th day following the convening of each regular  
18 session of the legislature. The report may include information con-  
19 sidered significant by the commissioner but must include:

20 (1) the amount of money expended under AS 46.08.015 and  
21 46.08.040 during the preceding fiscal year;

22 (2) the amount and source of money received and money re-  
23 covered during the preceding fiscal year as specified in AS 46.08.020;

24 (3) a summary of municipal participation in responses  
25 funded by the fund;

26 (4) a detailed summary of department activities in re-  
27 sponses funded by the fund and the petroleum and chemical storage tank  
28 account during the preceding fiscal year, including response and  
29 descriptions and statements outlining the nature of the threat; the

1 report must separately describe how many requests for assistance have  
2 been made to the department to use the petroleum and chemical storage  
3 tank account to respond to a release or threatened release from a  
4 storage tank, the estimated cost of containment and cleanup related to  
5 those requests, and a separate description of associated administra-  
6 tive costs;

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

10 \* Sec. 8. Notwithstanding AS 46.03.400, enacted by sec. 4 of this Act,  
11 the registration required under AS 46.03.400, enacted by sec. 4 of this  
12 Act, is due December 1, 1989, for a tank installed before July 1, 1989.  
13 This registration requirement also applies to storage tanks governed by  
14 AS 46.03.360 - 46.03.450, as enacted by sec. 4 of this Act, that were taken  
15 out of operation before July 1, 1989.

16 \* Sec. 9. AS 43.40.015 is repealed July 1, 1998.

17 \* Sec. 10. AS 46.03.390 is repealed July 1, 1994.

18 \* Sec. 11. (a) Subject to (b) - (h) of this section, the owner of an  
19 underground petroleum storage tank may request the department to use funds  
20 from the account established under AS 46.08.015, enacted in sec. 6 of this  
21 Act, to pay the costs of investigation, containment, and cleanup resulting  
22 from a release of petroleum from, or associated with, an underground petro-  
23 leum storage tank.

24 (b) Payments made by the department under this section shall exclude  
25 a portion of the investigation, containment, and cleanup costs. The por-  
26 tion of costs not payable by the department under this section shall be  
27 based upon the total number of whole gallons of petroleum stored by the  
28 owner in all underground petroleum storage tanks during the 12-month period  
29 preceding the date the owner reported the release to the department, as

1 follows:

2	Total number of gallons	Amount of investigation,
3	of petroleum stored by	containment, and cleanup
4	the owner in the 12 months	costs not payable by the
5	before the report date:	department under this section:
6	0 - 1,000,000 .....	\$ 5,000
7	1,000,001 - 5,000,000.....	10,000
8	5,000,001 - 10,000,000.....	15,000
9	10,000,001 - 15,000,000.....	20,000
10	15,000,001 - 30,000,000.....	40,000
11	Over 30,000,000.....	No costs payable

12 (c) An owner of an underground petroleum storage tank is not eligible  
13 to request payment under this section unless the owner establishes the  
14 following to the department's reasonable satisfaction:

15 (1) the owner reported the release to the department before

16 (A) July 1, 1990, for a release that the owner establishes  
17 first occurred before July 1, 1989;

18 (B) July 1, 1994, for a release that the owner establishes  
19 first occurred on or after July 1, 1989, and before December 22, 1993;

20 (2) the tank from which the release occurred was installed  
21 before December 22, 1988;

22 (3) the tank from which the release occurred was registered with  
23 the department as provided in sec. 8 of this Act by December 1, 1989;

24 (4) the owner has, after July 1, 1989, been in compliance with  
25 all state and federal laws applicable to underground petroleum storage  
26 tanks;

27 (5) the owner lacks sufficient assets to adequately self-insure  
28 for the costs of investigation, containment, and cleanup resulting from  
29 releases of petroleum from underground storage tanks as defined under

1 applicable federal regulations;

2 (6) the owner, upon demand by the department, pays the full  
3 amount of costs not payable under this section as set out in (b) of this  
4 section;

5 (7) the petroleum release was not a result of the owner's negli-  
6 gence, gross negligence, recklessness, or intentional conduct; and

7 (8) the owner agrees to

8 (A) upgrade all underground storage tank systems located at  
9 the facility from which the release occurred to the standards set by  
10 federal regulations; or

11 (B) remove and properly dispose of all liquids and sludges  
12 from the underground storage tank systems located at the facility from  
13 which the release occurred and either fill the tanks with inert mate-  
14 rial or properly dismantle, remove, and dispose of the tanks.

15 (d) The department shall reject a request for payment made under this  
16 section if the department determines that one or more of the following  
17 conditions exists:

18 (1) the account established under AS 46.08.015, enacted by sec.  
19 6 of this Act, lacks sufficient funds;

20 (2) other investigation, containment, and cleanup activities for  
21 which account funds may be used constitute a higher priority for account  
22 fund expenditures;

23 (3) the owner fails to meet the requirements set out in (c) of  
24 this section; or

25 (4) other good cause exists to reject the request for payment.

26 (e) A request for funding under this section, and a payment made  
27 under this section, may not exceed \$1,000,000 per facility.

28 (f) The department shall determine which costs of investigation,  
29 containment, and cleanup are eligible for payment under this section. The

1 department shall give higher priority to investigation, containment, and  
2 cleanup under this section than to grants under AS 46.03.390, enacted by  
3 sec. 4 of this Act.

4 (g) The department may adopt regulations reasonably necessary to  
5 implement this section. The department shall by regulation adopt criteria  
6 that will be used by the department for determining priorities for respond-  
7 ing to a release or threatened release reported under this section.

8 (h) This section does not affect the liability under state or federal  
9 law of any person for the costs of investigation, containment, and cleanup  
10 resulting from a release of petroleum or chemical. However, the department  
11 may not seek reimbursement of a payment made under this section unless the  
12 department determines that the payment was requested under false pretenses  
13 or that other circumstances render the payment inconsistent with this  
14 section or with department regulations. This section does not affect the  
15 authority of the department to seek recovery of costs other than payments  
16 actually made to an owner under this section.

17 (i) The owner of an underground petroleum storage tank for whom the  
18 department makes payments under this section may not operate the under-  
19 ground petroleum storage tank system for which payments were received under  
20 this section for the costs of investigation, containment, and cleanup until  
21 the system meets the requirements of federal regulations that are applica-  
22 ble to underground storage tank systems installed after the date investiga-  
23 tion, containment, and cleanup are completed.

24 (j) In this section,

25 (1) "department" means the Department of Environmental Conserva-  
26 tion;

27 (2) "underground petroleum storage tank" has the meaning given  
28 in AS 46.03.450, as enacted by sec. 4 of this Act, but does not include  
29 storage tanks that are exempt under AS 46.03.420, enacted by sec. 4 of this

1 Act, or regulations adopted under that section;

2 (3) "underground storage tank system" has the meaning given to  
3 the term "UST system" in 40 C.F.R. sec. 280.11, as amended.

4 \* Sec. 12. By the 10th day of the Second Regular Session of the Six-  
5 teenth Alaska State Legislature, the Department of Environmental Conser-  
6 vation shall, after consultation with representatives of the owners of  
7 aboveground storage tanks and other affected parties, submit a report to  
8 the legislature containing its recommendations on

9 (1) whether there is a need to develop a state program for the  
10 prevention and abatement of pollution from aboveground petroleum or chemi-  
11 cal storage tanks; and

12 (2) the manner in which aboveground petroleum or chemical stor-  
13 age tanks should be regulated, including recommended legislation, if the  
14 department identifies a need under (1) of this section.

15 \* Sec. 13. This Act takes effect July 1, 1989.