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1 IN THE SENATE

BY THE SENATE SPECIAL  
COMMITTEE ON OIL AND GAS

2

CS FOR SENATE BILL NO. 261 (Oil & Gas)

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 oil and hazardous substance  
7 discharges, and imposing a fee on certain crude oil;  
8 and providing for an effective date."

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

10 \* Section 1. AS 43 is amended by adding a new chapter to read:

11

CHAPTER 59. FEE ON CRUDE OIL DELIVERED

12

FOR VESSEL TRANSPORTATION.

13

Sec. 43.59.010. FEE LEVIED. Every person who delivers crude oil  
14 to a port for transportation by a vessel that transits the navigable  
15 waters of the state shall pay a fee of \$.05 per barrel of the crude  
16 oil delivered, less royalty oil the ownership or right to which is  
17 exempt from taxation under this title.

18

Sec. 43.59.020. ADMINISTRATION OF THE FEE. (a) The fee on  
19 crude oil shall be paid quarterly. The fee is due on the 20th day of  
20 the month following the close of the calendar quarter on crude oil  
21 delivered to the port during the preceding calendar quarter. If the  
22 fee is not paid before the end of the month in which it becomes due,  
23 the fee becomes delinquent.

24

(b) The fee shall be paid by the person delivering the crude oil  
25 to the port for transportation.

26

(c) In making settlement with the royalty owner the person  
27 paying the fee may deduct the amount of the fee paid on royalty oil,  
28 or may at the time the fee becomes due deduct royalty oil equivalent  
29 in value to the amount of the fee paid.

1 (d) The fee shall be paid to the department, and the person  
2 paying the fee shall file with the department at the time the fee is  
3 required to be paid a report, under oath, on forms prescribed by or  
4 acceptable to the department, giving with other information required,  
5 the following:

6 (1) the name of the person paying the fee;

7 (2) the total volume of the crude oil delivered for trans-  
8 portation; and

9 (3) the name of the first purchaser and the price received  
10 for the crude oil if sold in the state.

11 (e) Reports by or on behalf of the person required to report  
12 under (d) of this section are delinquent the first day following the  
13 day the fee is due. Each person required to report under (d) of this  
14 section is subject to a penalty of \$1,000 a day for each day during  
15 which the report is not filed. The penalty for failure to file a  
16 report is in addition to the penalty for delinquent fees under (h) of  
17 this section, and is a lien against the assets of the person required  
18 to report under (d) of this section.

19 (f) The department may

20 (1) require a person who is obligated to pay the fee due  
21 under this chapter, the agent or employee of the person, or the owner  
22 or former owner of a royalty interest in crude oil, to furnish addi-  
23 tional information that is considered by the department as necessary  
24 to compute the amount of the fee;

25 (2) examine the books, records, and files of a person  
26 identified in (1) of this subsection;

27 (3) conduct hearings and compel the attendance of witnesses  
28 and the production of books, records, and papers of any person identi-  
29 fied in (1) of this subsection; and

1           (4) make an investigation or hold an inquiry that is con-  
2 sidered necessary to a disclosure of the facts as to the volume of  
3 crude oil transported.

4           (g) The department may determine whether or not a report re-  
5 quired under this chapter is correct. If a person makes an untrue or  
6 incorrect report, or fails or refuses to make a report, the department  
7 shall, under regulations prescribed by it, determine the correct  
8 amount of crude oil on which the fee is payable and compute the fee.

9           (h) When the fee provided for in this chapter becomes delin-  
10 quent, it bears interest at the rate prescribed in AS 43.05.225. If a  
11 person fails to make a report required by this chapter within the time  
12 prescribed by law for the report, the department shall examine the  
13 books, records, and files of the person to determine the amount and  
14 value of the crude oil delivered to compute the fee, and the depart-  
15 ment shall add to the fee the cost of the examination, together with  
16 any penalties accrued.

17           (i) In case of overpayment, duplicate payment, or payment made  
18 in error, the department may issue a certificate stating the facts and  
19 the amount of the refund to which the person required to pay the fee  
20 is entitled. Upon presentation of the certificate to the Department  
21 of Administration, the Department of Administration shall issue a  
22 warrant for the refund.

23           (j) The department may adopt regulations for the purpose of  
24 making and filing reports required by this chapter and otherwise  
25 necessary to the enforcement of this chapter. The department may  
26 require a sufficient bond from every person charged with the making  
27 and filing of reports and the payment of the fee. The bond shall run  
28 to the state and shall be conditioned upon the making and filing of  
29 reports as required by law, upon compliance with the regulations of

1 the department, and for the prompt payment, by the principal on the  
2 bond, of all fees due the state by virtue of this chapter.

3 (k) If reports required have not been filed or are insufficient  
4 to furnish the information required by the department, the Department  
5 of Law shall institute, in the name of the state upon relation of the  
6 department, the necessary action or proceedings to enjoin the person  
7 from continuing operations until the reports are filed.

8 Sec. 43.59.030. DISPOSITION OF PROCEEDS OF FEE. (a) The com-  
9 missioner shall deposit the proceeds of the fee into the general fund.

10 (b) The commissioner of administration shall separately account  
11 for all proceeds of the fee deposited into the general fund.

12 Sec. 43.59.040. USE OF REVENUE DERIVED FROM FEE. The legisla-  
13 ture may appropriate the annual estimated balance of the account  
14 established under AS 43.59.030 to the oil and hazardous substance  
15 emergency containment fund under AS 46.04.300.

16 Sec. 43.59.050. SUSPENSION AND REIMPOSITION OF THE FEE. (a)  
17 Not later than 30 days after the end of each calendar quarter, the  
18 commissioner of administration shall determine the cumulative total of  
19 money

20 (1) that has been deposited through that calendar quarter  
21 into the general fund under AS 43.59.030;

22 (2) expended through that calendar quarter from the oil and  
23 hazardous substance emergency containment fund under AS 46.04.300.

24 (b) Within 15 days after making the determinations required by  
25 (a) of this section, the commissioner of administration shall report  
26 to the commissioner the difference between the amount determined under  
27 (a)(1) of this section and amount determined under (a)(2) of this  
28 section.

29 (c) If the commissioner of administration reports that the

1 difference determined under (b) of this section equals or exceeds  
2 \$20,000,000, the commissioner of revenue shall suspend imposition and  
3 collection of the fee levied and collected under AS 43.59.010. Sus-  
4 pension of the imposition and collection of the fee begins on the  
5 first day of the calendar quarter next following the commissioner's  
6 receipt of the commissioner of administration's report under (b) of  
7 this section. Before the first day of a suspension authorized by this  
8 subsection, the commissioner shall make a reasonable effort to notify  
9 all persons who are known to the department to be paying the fee under  
10 this chapter that the fee will be suspended.

11 (d) Except as provided in AS 43.59.060, if the commissioner of  
12 administration reports that the difference determined under (b) of  
13 this section is less than \$20,000,000, the commissioner of revenue  
14 shall require imposition and collection of the fee authorized under  
15 AS 43.59.010. Reimposition of the fee begins on the first day of the  
16 calendar quarter next following the commissioner's receipt of the  
17 commissioner of administration's report under (b) of this section.  
18 Before the first day of reimposition of the fee authorized by this  
19 subsection, the commissioner shall make a reasonable effort to notify  
20 all persons who are known to the department to be required to pay the  
21 fee under this chapter that the fee will be reimposed.

22 Sec. 43.59.060. FEE NOT IMPOSED. The fee authorized by this  
23 chapter is not levied during any fiscal year for which the estimated  
24 revenue from the fee would be sufficient to restore the balance of the  
25 oil and hazardous substance emergency containment fund on the first  
26 day of the fiscal year to at least \$20,000,000, and the legislature  
27 does not, during the regular legislative session preceding the first  
28 day of the fiscal year, appropriate money from the general fund to the  
29 oil and hazardous substance emergency containment fund sufficient to

1 restore the balance of the oil and hazardous substance emergency  
2 containment fund on the first day of the fiscal year to at least  
3 \$20,000,000.

4 Sec. 43.59.100. DEFINITIONS. In this chapter

5 (1) "barrel of oil" has the meaning given in AS 43.55.140;

6 (2) "fee" means the fee levied by AS 43.59.010;

7 (3) "lease or property" has the meaning given in AS 43.55.-  
8 140;

9 (4) "navigable water" has the meaning given in AS 38.05.-  
10 965;

11 (5) "oil" has the meaning given in AS 43.55.140;

12 (6) "ownership or right to which is exempt from taxation"  
13 has the meaning given in AS 43.55.140;

14 (7) "vessel" has the meaning given in AS 46.04.900.

15 \* Sec. 2. AS 46.04.090(a) is amended to read:

16 (a) The department, when feasible, shall enter into contracts  
17 with persons or private organizations to provide the personnel, equip-  
18 ment, or other services or supplies that [WHICH] may be required to  
19 carry out this chapter. Contracts under this section are governed by  
20 AS 36.30 (State Procurement Code). When private contracting is not  
21 feasible, the department shall [MAY] establish and maintain at ports,  
22 harbors, or other locations in the state from which crude oil is  
23 regularly transported by vessel and may establish at other locations  
24 [,] the cleanup personnel, equipment, and supplies that [WHICH], in  
25 its judgment, are necessary to carry out this chapter.

26 \* Sec. 3. AS 46.04.120 is amended by adding a new paragraph to read:

27 (18) "navigable water" has the meaning given in AS 38.05.-  
28 965.

29 \* Sec. 4. AS 46.04 is amended by adding new sections to read:

1                   ARTICLE 2. OIL AND HAZARDOUS SUBSTANCE DISCHARGE AND  
2                                   PREVENTION CONTINGENCY PLANS.

3                   Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall  
4 prepare and annually review and revise a statewide master oil and  
5 hazardous substance discharge and prevention contingency plan.

6                   (b) The state master plan prepared under this section must

7                                   (1) take into consideration the elements of an oil dis-  
8 charge contingency plan approved or submitted for approval under  
9 AS 46.04.030;

10                                  (2) clarify and specify the respective responsibilities of  
11 each of the following in the assessment, containment, and cleanup of a  
12 catastrophic oil discharge or of a significant discharge of a hazard-  
13 ous substance into the environment of the state:

14   (A) agencies of the state;

15   (B) municipalities of the state;

16   (C) appropriate federal agencies;

17   (D) operators of facilities;

18   (E) private parties whose land and other property may  
19 be affected by the oil or hazardous substance discharge; and

20   (F) other parties identified by the commissioner as  
21 having an interest in or the resources to assist in the contain-  
22 ment and cleanup of an oil or hazardous substance discharge;

23                                   (3) specify the respective responsibilities of parties  
24 identified in (2) of this subsection in an emergency response; and

25                                   (4) identify actions necessary to reduce the likelihood of  
26 catastrophic releases.

27                   (c) In preparing and annually reviewing the state master plan,  
28 the commissioner

29                                   (1) shall consult with municipal and community officials,

1 and with representatives of affected regional organizations;

2 (2) may submit the draft plan to the public for review and  
3 comment; and

4 (3) may require or schedule unannounced oil spill drills to  
5 test the sufficiency of an oil discharge contingency plan approved  
6 under AS 46.04.030 or of the cleanup plans of a party identified under  
7 (b)(2) of this section.

8 Sec. 46.04.210. REGIONAL MASTER PLAN. (a) For any region of  
9 the state, the boundaries of which are determined by the commissioner  
10 by regulation, in which the department is required to review and  
11 approve an oil discharge contingency plan submitted by a person under  
12 AS 46.04.030, the department shall prepare and annually review and  
13 revise a regional master oil and hazardous substance discharge and  
14 prevention contingency plan.

15 (b) The provisions of AS 46.04.200(b) and (c) apply to prepara-  
16 tion and review of a regional master plan under this section.

17 ARTICLE 3. OIL AND HAZARDOUS SUBSTANCE SPILL CONTAINMENT FUND.

18 Sec. 46.04.300. OIL AND HAZARDOUS SUBSTANCE EMERGENCY CONTAIN-  
19 MENT FUND. (a) The oil and hazardous substance emergency containment  
20 fund is established. The fund is a nonlapsing, revolving fund in the  
21 department.

22 (b) The legislature may appropriate to the fund established in  
23 (a) of this section the revenue annually derived from the fee levied  
24 and collected under AS 43.59.

25 Sec. 46.04.310. DUTIES OF COMMISSIONER. The commissioner shall

26 (1) administer the fund;

27 (2) pay from the fund, without regard to fault, all direct  
28 costs of emergency evaluation, containment, and cleanup efforts in-  
29 curred by the state that relate to natural resources of the state

1 caused by discharge of oil or a hazardous substance into the navigable  
2 waters of the state; and

3 (3) make an annual report to the legislature and governor  
4 that

5 (A) describes the quality and quantity of discharges  
6 of oil and hazardous substances into the navigable waters of the  
7 state;

8 (B) relates the costs paid for from the fund;

9 (C) relates the environmental effect on the resources  
10 of the state as a result of the discharges;

11 (D) describes the operational status of the oil and  
12 hazardous substance response office and corps established under  
13 AS 46.08.100 - 46.08.120, the condition of its equipment, and  
14 whether additional personnel, equipment, supplies, or other  
15 materials are required for the oil and hazardous substance  
16 response office and corps to function effectively; and

17 (E) recommends whether there are changes necessary in  
18 the legislation relating to the office, the corps, or the fund.

19 Sec. 46.04.320. USE OF FUND. (a) The commissioner may expend  
20 money from the fund under AS 46.04.310(2) only if

21 (1) the discharge is a catastrophic oil discharge that  
22 constitutes an emergency under AS 46.04.080(a);

23 (2) the discharge of oil or a hazardous substance is de-  
24 clared to be an emergency under AS 46.03.865;

25 (3) the governor declares the discharge an emergency under  
26 AS 26.23; or

27 (4) the commissioner reasonably believes that there has  
28 been a discharge of oil or a hazardous substance, or that there is a  
29 potential discharge of oil or a hazardous substance, and the discharge

1 may qualify under (1) - (3) of this subsection.

2 (b) Subject to legislative appropriation, the commissioner may  
3 use money in the fund to pay

4 (1) costs of personal services or contracts incurred to  
5 establish and maintain the oil and hazardous substance response of-  
6 fice;

7 (2) expenses incurred by that office for purchases of  
8 necessary equipment, supplies, and transportation;

9 (3) the expenses of the oil and hazardous substance re-  
10 sponse corps established under AS 46.08.110 by that office; and

11 (4) the preparation and annual revision of the state master  
12 plan under AS 46.04.200 and regional master plans under AS 46.04.210.

13 (c) The commissioner may not use money in the fund to

14 (1) make grants; or

15 (2) reimburse parties for expenditures incurred by a person  
16 that did not have the prior approval of the commissioner.

17 \* Sec. 5. AS 46.08 is amended by adding new sections to read:

18 ARTICLE 2. OIL AND HAZARDOUS SUBSTANCE RESPONSE OFFICE.

19 Sec. 46.08.100. OFFICE ESTABLISHED. (a) There is established in  
20 the department the oil and hazardous substance response office. The  
21 office consists of a director and specialists who are trained in  
22 programs and technologies related to the containment and cleanup of  
23 releases or threatened releases of oil and hazardous substances.

24 (b) The commissioner may establish and maintain the office by

25 (1) direct employment;

26 (2) contract with political subdivisions, the University of  
27 Alaska, transporters, and other private persons; or

28 (3) any combination of (1) and (2) of this subsection.

29 Sec. 46.08.110. RESPONSE CORPS. (a) The office shall establish

1 an oil and hazardous substance response corps.

2 (b) The corps consists of volunteers who register with the  
3 office and agree to be trained by the office in techniques for con-  
4 tainment and cleanup and to be available on short notice to assist the  
5 office in containment and cleanup.

6 (c) Members of the corps are entitled to wages, per diem, and  
7 expenses as determined by the commissioner for training and for days  
8 spent in service to the state in containment and cleanup actions.

9 Sec. 46.08.120. DUTIES OF THE OFFICE. (a) The office shall be  
10 prepared to respond promptly to a discharge of oil or a hazardous  
11 substance into the navigable waters of the state.

12 (b) The office may respond under (a) of this section to an oil  
13 or hazardous substance discharge only if:

14 (1) the oil discharge is a catastrophic oil discharge that  
15 constitutes an emergency under AS 46.04.080(a);

16 (2) the discharge of oil or a hazardous substance is de-  
17 clared to be an emergency under AS 46.03.865;

18 (3) the governor declares the discharge an emergency under  
19 AS 26.23; or

20 (4) the commissioner reasonably believes that there has  
21 been a discharge of oil or a hazardous substance, or that there is a  
22 potential discharge of oil or a hazardous substance, and the discharge  
23 may qualify under (1) - (3) of this subsection.

24 Sec. 46.08.130. EMERGENCY POWERS. (a) When the office has  
25 reasonable grounds to believe that a release of oil or a hazardous  
26 substance has occurred or is threatened to occur which, in the judg-  
27 ment of its director, presents an imminent or present danger to the  
28 health or welfare of the people of the state or would result in or is  
29 likely to result in irreversible or irreparable damage to the natural

1 resources or environment, and it appears to be prejudicial to the  
2 interest of the people of the state to delay action until an oppor-  
3 tunity for a hearing can be provided, state employees or members of  
4 the corps may, with permission of the director and without prior  
5 hearing, enter private property for the purpose of containment or  
6 cleanup.

7 (b) The property owner affected by a response action taken under  
8 (a) of this section has the right to be heard as soon as practicable  
9 and to present proof to the office that the containment or cleanup  
10 action is unnecessary or that it is not necessary to enter the per-  
11 son's property for the containment or cleanup action.

12 Sec. 46.08.190. DEFINITIONS. In AS 46.08.100 - 46.08.190

13 (1) "corps" means the oil and hazardous substance response  
14 corps;

15 (2) "office" means the oil and hazardous substance response  
16 office.

17 \* Sec. 6. PREPARATION OF INITIAL PLANS. The commissioner of environ-  
18 mental conservation shall present the initial statewide master plan pre-  
19 pared under AS 46.04.200, enacted by sec. 4 of this Act, and any initial  
20 regional master plans required by AS 46.04.210, enacted by sec. 4 of this  
21 Act, to the governor by July 1, 1990.

22 \* Sec. 7. This Act takes effect immediately under AS 01.10.070(c).