

Introduced: 4/7/89
Referred: Oil and Gas, Resources
and Finance

6-1180E

1 IN THE SENATE

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2

SENATE BILL NO. 266

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act establishing an oil spill emergency contain-
7 ment fund to mitigate the effects of damages attrib-
8 utable to oil discharges and to support an oil spill
9 containment strike force and, as a source of revenue
10 for deposit into that fund, imposing an oil spill fee
11 on crude oil; and providing for an effective date."

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

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

14

CHAPTER 59. FEE ON CRUDE OIL DELIVERED

15

FOR MARINE TRANSPORTATION.

16

17 Sec. 43.59.010. FEE LEVIED. Every person who delivers crude oil
18 to a port for transportation by a vessel that transits the marine
19 waters of the state shall pay a fee of \$.02 per barrel of the crude
20 oil delivered, less royalty oil the ownership or right to which is
exempt from taxation under this title.

21

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

27

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

29

(c) In making settlement with the royalty owner the person

1 paying the fee may deduct the amount of the fee paid on royalty oil,
2 or may at the time the fee becomes due deduct royalty oil equivalent
3 in value to the amount of the fee paid.

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

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

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

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

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

22 (f) The department may

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

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

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

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

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

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

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

26 (j) The department may adopt regulations for the purpose of
27 making and filing reports required by this chapter and otherwise
28 necessary to the enforcement of this chapter. The department may
29 require a sufficient bond from every person charged with the making

1 and filing of reports and the payment of the fee. The bond shall run
2 to the state and shall be conditioned upon the making and filing of
3 reports as required by law, upon compliance with the regulations of
4 the department, and for the prompt payment, by the principal on the
5 bond, of all fees due the state by virtue of this chapter.

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

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

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

15 Sec. 43.59.040. USE OF REVENUE DERIVED FROM FEE. The legisla-
16 ture may appropriate the annual estimated balance of the account
17 established under AS 43.59.030 to the oil spill emergency containment
18 fund established by AS 46.04.200.

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

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

25 (2) expended through that calendar quarter from the oil
26 spill emergency containment fund established in AS 46.04.200.

27 (b) Within 15 days after making the determinations required by
28 (a) of this section, the commissioner of administration shall report
29 to the commissioner the difference between the amount determined under

1 (a)(1) of this section and amount determined under (a)(2) of this
2 section.

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

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

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

1 regular legislative session preceding the first day of the fiscal
2 year, appropriate money from the general fund to the oil spill emer-
3 gency containment fund sufficient to restore the balance of the oil
4 spill emergency containment fund on the first day of the fiscal year
5 to at least \$20,000,000.

6 Sec. 43.59.100. DEFINITIONS. In this chapter

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

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

9 (3) "lease or property" has the meaning given in AS 43.55.-
10 140;

11 (4) "marine waters of the state" includes bays, sounds,
12 estuaries, marshes, inlets, straits, passages, canals, the Pacific
13 Ocean, Gulf of Alaska, Bering Sea, and Arctic Ocean in the territorial
14 limits of the state, and all other bodies of surface salt water sub-
15 ject to tidal action that are wholly or partially in or bordering the
16 state or under the jurisdiction of the state;

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

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

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

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

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

1 [.] the cleanup personnel, equipment, and supplies that [WHICH], in
2 its judgment, are necessary to carry out this chapter.

3 * Sec. 3. AS 46.04 is amended by adding new sections to read:

4 ARTICLE 2. OIL SPILL CONTAINMENT.

5 Sec. 46.04.200. OIL SPILL EMERGENCY CONTAINMENT FUND. (a) The
6 oil spill emergency containment fund is established. The fund is a
7 nonlapsing, revolving fund in the department.

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

11 Sec. 46.04.210. DUTIES OF COMMISSIONER. The commissioner shall

12 (1) administer the fund;

13 (2) pay from the fund, without regard to fault, all direct
14 costs of emergency oil evaluation, containment, and cleanup efforts
15 incurred by the state that relate to natural resources of the state
16 caused by an oil discharge into the marine waters of the state; and

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

19 (A) describes the quality and quantity of oil dis-
20 charges into the marine waters of the state;

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

22 (C) relates the environmental effect on the resources
23 of the state as a result of the oil discharge;

24 (D) describes the operational status of the oil spill
25 containment strike force established in AS 46.04.230, the condi-
26 tion of its equipment, and whether additional personnel, equip-
27 ment, supplies, or other materials are required for the strike
28 force to function effectively; and

29 (E) recommends whether there are changes necessary in

1 the legislation relating to the strike force or the fund.

2 Sec. 46.04.220. USE OF FUND. (a) The commissioner may expend
3 money from the fund under AS 46.04.210(2) only if

4 (1) the oil discharge is a catastrophic oil discharge that
5 constitutes an emergency under AS 46.04.080(a); or

6 (2) the governor declares the oil discharge an emergency
7 under AS 26.23.

8 (b) The commissioner may not use money in the fund

9 (1) to make grants; or

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

12 Sec. 46.04.230. OIL SPILL CONTAINMENT STRIKE FORCE. (a) The
13 commissioner shall establish and maintain, in the state, an oil spill
14 containment strike force. The strike force consists of specialists in
15 the evaluation, containment, and cleanup of oil discharges, and shall
16 be prepared to respond promptly to an oil discharge into the marine
17 waters of the state.

18 (b) The commissioner may establish and maintain the oil spill
19 containment strike force by

20 (1) direct employment;

21 (2) contract with municipalities, transporters, and other
22 private persons; or

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

24 (c) Subject to legislative appropriation, the commissioner may
25 use money in the fund for costs of personal services or contracts
26 entered into under (b) of this section, and for purchases of necessary
27 equipment, supplies, and transportation for the strike force.

28 ARTICLE 3. GENERAL PROVISIONS.

29 Sec. 46.04.900. DEFINITIONS. In this chapter, unless the

- 1 context requires otherwise,
- 2 (1) "barrel" is a measure of capacity equal to the space
3 occupied by 42 U.S. gallons at 60 degrees Fahrenheit;
- 4 (2) "catastrophic oil discharge" means an oil discharge in
5 excess of 100,000 barrels, or any other discharge which the governor
6 determines presents a grave and substantial threat to the economy or
7 environment of the state;
- 8 (3) "Clean Water Act" means the Federal Water Pollution
9 Control Act of 1972 (P.L. 92-500), as amended by the Clean Water Act
10 of 1977 (P.L. 95-217), as amended (33 U.S.C. 1251 - 1376);
- 11 (4) "commissioner" means the commissioner of environmental
12 conservation;
- 13 (5) "containment and cleanup" includes all direct and
14 indirect efforts associated with the prevention, abatement, contain-
15 ment or removal of a pollutant, the restoration of the environment to
16 its former state, and all incidental administrative costs;
- 17 (6) "department" means the Department of Environmental
18 Conservation;
- 19 (7) "discharge" means spilling, leaking, pumping, pouring,
20 emitting, emptying, or dumping;
- 21 (8) "fund" means the oil spill emergency containment fund
22 established in AS 46.04.200;
- 23 (9) "hazardous substances" has the meaning given in AS 46.-
24 08.900;
- 25 (10) "marine waters of the state" has the meaning given in
26 AS 43.59.100;
- 27 (11) "offshore exploration or production facility" means a
28 platform, vessel, or other facility used to explore for or produce
29 hydrocarbons in the waters of the state; the term does not include

1 vessels used for stratigraphic drilling or other operations which are
2 not authorized or intended to drill to a producing formation;

3 (12) "oil" means oil of any kind and in any form, whether
4 crude, refined, or a petroleum by-product, including but not limited
5 to petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil
6 refuse, oil mixed with other wastes, crude oils, liquefied natural
7 gas, propane, butane, or other liquid hydrocarbons regardless of
8 specific gravity;

9 (13) "oil barge" means a vessel which is not self-propelled
10 and which is constructed or converted to carry oil as cargo in bulk;

11 (14) "oil discharge" means an oil discharge of more than 100
12 barrels of crude oil into the marine waters of the state;

13 (15) "oil terminal facility" means an onshore or offshore
14 facility of any kind, and related appurtenances, including but not
15 limited to a deepwater port, bulk storage facility or marina, located
16 in, on, or under the surface of the land or waters of the state,
17 including tide and submerged land, which is used for the purpose of
18 transferring, processing, refining, or storing oil; a vessel is con-
19 sidered an oil terminal facility only when it is used to make a ship-
20 to-ship transfer of oil, and when it is traveling between the place of
21 the ship-to-ship transfer of oil and an oil terminal facility;

22 (16) "operator" means the person who, through contract,
23 lease, sublease, or otherwise, exerts general supervision and control
24 of activities at the facility or vessel; the term includes a prime or
25 general contractor, the master of a vessel and the master's employer,
26 or any other person who, personally or through an agent or contractor,
27 undertakes the general functioning of the facility;

28 (17) "person" means an individual, public or private corpo-
29 ration, political subdivision, government agency, municipality,

1 industry, partnership, association, firm, trust, estate, or any other
2 entity;

3 (18) "self-propelled" means propelled either by machinery
4 aboard the vessel, or by a tug or other vessel secured into the cargo-
5 carrying vessel through special hull design;

6 (19) "tank vessel" means a self-propelled vessel that is
7 constructed or converted to carry liquid bulk cargo in tanks and
8 includes tankers, tankships, and combination carriers when carrying
9 oil; the term does not include vessels carrying oil in drums, barrels,
10 or other packages, or vessels carrying oil as fuel or stores for that
11 vessel;

12 (20) "vessel" includes tank vessels and oil barges;

13 (21) "waters of the state" includes lakes, bays, sounds,
14 ponds, impounding reservoirs, springs, wells, rivers, streams, creeks,
15 estuaries, marshes, inlets, straits, passages, canals, the Pacific
16 Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, in the territorial
17 limits of the state, and all other bodies of surface or underground
18 water, natural or artificial, public or private, inland or coastal,
19 fresh or salt, which are wholly or partially in or bordering the state
20 or under the jurisdiction of the state.

21 * Sec. 4. AS 46.04.120 is repealed.

22 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).