

HOUSE BILL NO. 238

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Introduced: 3/19/93

Referred: Resources, State Affairs

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the oil and hazardous substance release response fund,  
2 repealing the oil and hazardous substance municipal impact assistance program  
3 and the authority in law by which marine highway vessels may be designed and  
4 constructed to aid in oil and hazardous substance spill cleanup in state marine  
5 water using money in the oil and hazardous substance release response fund,  
6 amending requirements relating to the revision of state and regional master  
7 prevention and contingency plans, altering requirements applicable to liens for  
8 recovery of state expenditures related to oil or hazardous substances, relating to  
9 a restoration standard in certain state environmental laws, modifying definitions  
10 of related terms, amending the manner of computing the amounts required for  
11 the suspension and reimposition of the oil conservation surcharge, relating to fees  
12 to be charged and collected by the Department of Environmental Conservation,

1 and annulling a regulation related to costs for certain site restorations."

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

3 \* Section 1. AS 43.55.230(a) is amended to read:

4 (a) Not later than 30 days after the end of each calendar quarter, the  
5 commissioner of administration shall determine the cumulative total of money

6 (1) that is the sum of

7 (A) the amounts that have [HAS] been deposited through that  
8 calendar quarter into the general fund under AS 43.55.210; and

9 (B) the amounts expended from the oil and hazardous  
10 substance release response fund established in AS 46.08.010 that, through  
11 that calendar quarter, have been recovered or otherwise received under  
12 AS 46.08.020(a)(2) and deposited in the general fund to the credit of the  
13 oil and hazardous substance release mitigation account;

14 (2) expended through that calendar quarter from the oil and hazardous  
15 substance release response fund established in AS 46.08.010.

16 \* Sec. 2. AS 44.46.025 is amended by adding a new subsection to read:

17 (c) The Department of Environmental Conservation shall adopt regulations that  
18 prescribe reasonable fees, and establish procedures for the collection of the fees, to  
19 cover direct costs of

20 (1) oil discharge financial responsibility approvals under AS 46.04.040;

21 (2) oil discharge contingency plan review and approval under  
22 AS 46.04.030.

23 \* Sec. 3. AS 46.03.760(e) is amended to read:

24 (e) In addition to liability under (a) - (d) of this section, a person who violates  
25 or causes or permits to be violated a provision of AS 46.03.740 - 46.03.750 is liable  
26 to the state, in a civil action brought under AS 46.03.822, for the full amount of actual  
27 damages caused to the state by the violation, including

28 (1) direct and indirect costs associated with the abatement, containment,  
29 or removal of the pollutant;

30 (2) restoration of the environment to a condition as near to the  
31 original condition as feasible [ITS FORMER STATE];

1 (3) amounts paid [AS GRANTS UNDER AS 29.60.510 - 29.60.599  
2 AND] as emergency first response advances and reimbursements under  
3 AS 46.08.070(c); and

4 (4) all incidental administrative costs.

5 \* Sec. 4. AS 46.04.200(a) is amended to read:

6 (a) The department shall

7 (1) prepare [AND ANNUALLY REVIEW AND REVISE] a statewide  
8 master oil and hazardous substance discharge prevention and contingency plan;

9 (2) annually review the statewide master oil and hazardous  
10 substance discharge prevention and contingency plan; and

11 (3) revise the statewide master oil and hazardous substance  
12 discharge prevention and contingency plan; the commissioner shall revise the  
13 statewide master plan whenever, in the judgment of the commissioner, revision  
14 is necessary, but a revision under this paragraph may not occur more often than  
15 once during each fiscal year.

16 \* Sec. 5. AS 46.04.200(c) is amended to read:

17 (c) In preparing and annually reviewing the state master plan, the  
18 commissioner shall

19 (1) consult with municipal and community officials, and with  
20 representatives of affected regional organizations; and

21 (2) [SUBMIT THE DRAFT PLAN TO THE PUBLIC FOR REVIEW  
22 AND COMMENT;

23 (3) SUBMIT TO THE LEGISLATURE FOR REVIEW, NOT LATER  
24 THAN THE 10TH DAY FOLLOWING THE CONVENING OF EACH REGULAR  
25 SESSION, THE PLAN AND ANY ANNUAL REVISION OF THE PLAN;

26 (4)] require or schedule unannounced oil spill drills to test the  
27 sufficiency of an oil discharge prevention and contingency plan approved under  
28 AS 46.04.030 or of the cleanup plans of a party identified under (b)(2) of this section  
29 [; AND

30 (5) SUBMIT THE PLAN AND ANY ANNUAL REVISION TO THE  
31 ALASKA STATE EMERGENCY RESPONSE COMMISSION FOR ITS REVIEW

1 AND APPROVAL UNDER AS 46.13.045].

2 \* Sec. 6. AS 46.04.200 is amended by adding a new subsection to read:

3 (d) In preparing a revision of the statewide master plan, the commissioner shall  
4 submit

5 (1) the draft plan to the

6 (A) public for review and comment; and

7 (B) Alaska State Emergency Response Commission for its  
8 review and approval under AS 46.13.045; and

9 (2) the proposed revision of the plan to the legislature for review not  
10 later than the 10th day following the convening of each regular session.

11 \* Sec. 7. AS 46.04.210(a) is amended to read:

12 (a) For any region of the state, the boundaries of which are determined by the  
13 commissioner by regulation, in which the department is required to review and approve  
14 an oil discharge prevention and contingency plan submitted by a person under  
15 AS 46.04.030, the department shall

16 (1) prepare [AND ANNUALLY REVIEW AND REVISE] a regional  
17 master oil and hazardous substance discharge prevention and contingency plan;

18 (2) annually review the regional master oil and hazardous substance  
19 discharge prevention and contingency plan; and

20 (3) revise the regional master oil and hazardous substance  
21 discharge prevention and contingency plan; the commissioner shall revise a  
22 regional master plan whenever, in the judgment of the commissioner, revision is  
23 necessary, but a revision under this paragraph may not occur more often than  
24 once during each fiscal year.

25 \* Sec. 8. AS 46.04.210(b) is amended to read:

26 (b) The provisions of AS 46.04.200(b) - (d) [AS 46.04.200(b) AND (c)] apply  
27 to preparation and review of a regional master plan under this section.

28 \* Sec. 9. AS 46.04.900(5) is amended to read:

29 (5) "containment and cleanup" includes all direct and indirect efforts  
30 associated with the prevention, abatement, containment, or removal of a pollutant [,  
31 AND THE RESTORATION OF THE ENVIRONMENT TO ITS FORMER STATE];

1 when applied to expenses, the term includes the additional costs of providing a  
2 reasonable and appropriate function or service incurred in response to the discharge of  
3 a pollutant, including administrative expenses for the incremental costs of providing  
4 the function or service;

5 \* Sec. 10. AS 46.08.005 is amended to read:

6 Sec. 46.08.005. PURPOSE. The legislature finds and declares that the release  
7 of oil or hazardous substances into the environment presents a real and substantial  
8 threat to the public health and welfare and [,] to the environment [, AND TO THE  
9 ECONOMY] of the state. The legislature therefore concludes that it is in the best  
10 interest of the state and its citizens to provide a readily available fund for the payment  
11 of the expenses incurred by the Department of Environmental Conservation as an  
12 emergency first response to a release or threatened [AND THE DEPARTMENT OF  
13 TRANSPORTATION AND PUBLIC FACILITIES IN THE PROTECTION OF THE  
14 ENVIRONMENT OF THE STATE FROM THE] release of oil or hazardous  
15 substances.

16 \* Sec. 11. AS 46.08.010(c) is amended to read:

17 (c) The fund shall be used for actual expenses incurred under AS 46.08.040.  
18 The [EXCEPT AS PROVIDED IN AS 46.08.040(d)(2), THE] fund may not be used  
19 for capital improvements.

20 \* Sec. 12. AS 46.08.040(a) is amended to read:

21 (a) The [IN ADDITION TO MONEY IN THE FUND THAT IS  
22 TRANSFERRED TO THE COMMISSIONER OF COMMUNITY AND REGIONAL  
23 AFFAIRS TO MAKE GRANTS UNDER AS 29.60.510 AND TO PAY FOR IMPACT  
24 ASSESSMENTS UNDER AS 29.60.560, THE] commissioner of environmental  
25 conservation may use money from the fund to

26 (1) investigate and evaluate the release or threatened release of oil or  
27 a hazardous substance, and contain, clean up, and take other necessary action, such as  
28 monitoring and assessing, to address a release or threatened release of oil or a  
29 hazardous substance that poses an imminent and substantial threat to the public health  
30 or welfare, or to the environment; and

31 (2) [PAY ALL COSTS INCURRED TO

1 (A) ESTABLISH AND MAINTAIN THE OIL AND  
2 HAZARDOUS SUBSTANCE RESPONSE OFFICE;

3 (B) REVIEW OIL DISCHARGE PREVENTION AND  
4 CONTINGENCY PLANS SUBMITTED UNDER AS 46.04.030;

5 (C) CONDUCT TRAINING, RESPONSE EXERCISES,  
6 INSPECTIONS, AND TESTS, IN ORDER TO VERIFY EQUIPMENT  
7 INVENTORIES AND ABILITY TO PREVENT AND RESPOND TO OIL  
8 AND HAZARDOUS SUBSTANCE RELEASE EMERGENCIES, AND TO  
9 UNDERTAKE OTHER ACTIVITIES INTENDED TO VERIFY OR  
10 ESTABLISH THE PREPAREDNESS OF THE STATE, A MUNICIPALITY,  
11 OR A PARTY REQUIRED BY AS 46.04.030 TO HAVE AN APPROVED  
12 CONTINGENCY PLAN TO ACT IN ACCORDANCE WITH THAT PLAN;  
13 AND

14 (D) VERIFY OR ESTABLISH PROOF OF FINANCIAL  
15 RESPONSIBILITY REQUIRED BY AS 46.04.040;

16 (3) PAY THE EXPENSES INCURRED BY THE ALASKA DIVISION  
17 OF EMERGENCY SERVICES FOR THE OIL AND HAZARDOUS SUBSTANCE  
18 RESPONSE CORPS AND THE OIL AND HAZARDOUS SUBSTANCE RESPONSE  
19 DEPOTS WHEN PRESENTED WITH APPROPRIATE DOCUMENTATION BY  
20 THE DIVISION;

21 (4)] provide matching funds for participation

22 (A) in federal oil discharge cleanup activities; and

23 (B) under 42 U.S.C. 9601 - 9657 (Comprehensive  
24 Environmental Response, Compensation, and Liability Act of 1980) [;

25 (5) RECOVER THE COSTS TO THE STATE, A MUNICIPALITY,  
26 OR A VILLAGE OF A CONTAINMENT AND CLEANUP RESULTING FROM  
27 THE RELEASE OR THE THREATENED RELEASE OF OIL OR A HAZARDOUS  
28 SUBSTANCE;

29 (6) PREPARE, REVIEW, AND REVISE

30 (A) THE STATE'S MASTER OIL AND HAZARDOUS  
31 SUBSTANCE DISCHARGE PREVENTION AND CONTINGENCY PLAN

1           **REQUIRED BY AS 46.04.200; AND**

2                           **(B) A REGIONAL MASTER OIL AND HAZARDOUS**  
3                           **SUBSTANCE DISCHARGE PREVENTION AND CONTINGENCY PLAN**  
4                           **REQUIRED BY AS 46.04.210; AND**

5                           **(7) RESTORE THE ENVIRONMENT BY ADDRESSING THE**  
6                           **EFFECTS OF AN OIL OR HAZARDOUS SUBSTANCE RELEASE].**

7   \* **Sec. 13.** AS 46.08.040(c) is amended to read:

8                           (c) Notwithstanding other provisions of this section, money from the fund may  
9                           not be used for a purpose specified in (a)(2) [(a)(2) - (7) AND (d)(2)] of this section  
10                           unless money is available from an appropriation made specifically for that purpose.

11   \* **Sec. 14.** AS 46.08.075(a) is amended to read:

12                           (a) The state has a lien for expenditures by the state from the oil and  
13                           hazardous substance release response fund, or from any other state fund, for the costs  
14                           of response, containment, removal, or remedial action resulting from an oil or  
15                           hazardous substance release or spill, or, with respect to response costs, for the costs  
16                           of response to a threatened [THE SUBSTANTIAL THREAT OF A] release of oil  
17                           or a hazardous substance, against all property owned by a person who is determined  
18                           by the commissioner to be liable for the expenditures under this chapter, AS 46.03,  
19                           AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes interest, at  
20                           the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures.  
21                           The state may file an action in a court of competent jurisdiction in order to foreclose  
22                           on the lien.

23   \* **Sec. 15.** AS 46.08.075(e) is amended to read:

24                           (e) A person with an ownership interest in property against which a lien is  
25                           recorded may bring an action in a court of competent jurisdiction to require that the  
26                           lien be released. The lien may be released to the extent of that person's ownership  
27                           interest if the court finds that the person is not liable for the expenses incurred by the  
28                           state in connection with the costs of response, containment, removal, or remedial  
29                           action resulting from the [OIL OR HAZARDOUS SUBSTANCE] release or spill, or  
30                           from the threatened [THREAT OF] release, of oil or a hazardous substance.

31   \* **Sec. 16.** AS 46.08.150 is amended to read:

1           **Sec. 46.08.150. CONTRACTS.** The office or the division, as applicable, may  
2 enter into agreements with agencies of the state and federal government, political  
3 subdivisions, the University of Alaska, or private persons or entities to

4           (1) provide the personnel, equipment, or other services or supplies  
5 necessary to establish and maintain regional oil and hazardous substances depots and  
6 as necessary for response readiness; **and**

7           (2) train members of response corps [; AND

8           (3) CONDUCT RESEARCH INTO OIL AND HAZARDOUS  
9 SUBSTANCES SPILL TECHNOLOGY; THE OFFICE SHALL INCLUDE IN THE  
10 RESEARCH TOPICS FOR WHICH IT CONDUCTS OR CONTRACTS FOR  
11 RESEARCH, THE RESEARCH TOPICS RECOMMENDED TO IT BY THE  
12 HAZARDOUS SUBSTANCE SPILL TECHNOLOGY REVIEW COUNCIL UNDER  
13 AS 46.13.120].

14 \* **Sec. 17.** AS 46.08.900(3) is amended to read:

15           (3) "containment and cleanup" includes the direct and indirect efforts  
16 associated with the prevention, abatement, containment, or removal of oil or a  
17 hazardous substance [, AND THE RESTORATION OF THE ENVIRONMENT]; when  
18 applied to expenses, the term includes the additional costs of providing a reasonable  
19 and appropriate function or service incurred in response to the release of the oil or  
20 hazardous substance, including administrative expenses for the incremental costs of  
21 providing the function or service;

22 \* **Sec. 18.** AS 46.08.900(9) is amended to read:

23           (9) "release"

24           (A) means any spilling, leaking, pumping, pouring, emitting,  
25 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into  
26 the environment;

27           (B) [, EXCEPT THAT "RELEASE"] does not include

28           (i) a permitted release; or

29           (ii) an act of nature;

30 \* **Sec. 19.** AS 46.08.900(11) is amended to read:

31           (11) "threatened release" means [AN IMMINENT DANGER] that a

1 release is imminent; a release is imminent if

2 (A) it is impending, or on the point of happening; or

3 (B) though not impending, in the judgment of the  
4 commissioner

5 (i) the incident or occurrence may reasonably be  
6 expected to culminate in an actual release; and

7 (ii) that actual release may reasonably be expected to  
8 cause personal injury, other injury to life, or loss of or damage to  
9 property [WILL OCCUR];

10 \* Sec. 20. AS 46.08.900(12) is amended to read:

11 (12) "village" means a place within the unorganized borough [OR  
12 WITHIN A BOROUGH IF THE POWER, FUNCTION, OR SERVICE FOR WHICH  
13 A GRANT APPLICATION UNDER AS 29.60.510 IS SUBMITTED IS NOT  
14 EXERCISED OR PROVIDED BY THE BOROUGH ON AN AREAWIDE OR  
15 NONAREAWIDE BASIS AT THE TIME THE GRANT APPLICATION IS  
16 SUBMITTED] that

17 (A) has irrevocably waived, in a form approved by the  
18 Department of Law, any claim of sovereign immunity [THAT MIGHT ARISE  
19 IN CONNECTION WITH THE USE OF GRANT MONEY UNDER THIS  
20 CHAPTER]; and

21 (B) has

22 (i) a council organized under 25 U.S.C. 476 (sec. 16 of  
23 the Indian Reorganization Act);

24 (ii) a traditional village council recognized by the United  
25 States as eligible for federal aid to Indians; or

26 (iii) a council recognized by the commissioner of  
27 community and regional affairs under regulations adopted by the  
28 Department of Community and Regional Affairs to determine and give  
29 official recognition of village entities under AS 44.47.150(b).

30 \* Sec. 21. AS 46.09.900(2) is amended to read:

31 (2) "containment and cleanup" includes the direct and indirect efforts

1 associated with the prevention, abatement, containment, or removal of a hazardous  
2 substance [, AND THE RESTORATION OF THE ENVIRONMENT]; when applied  
3 to expenses, the term includes the additional costs of providing a reasonable and  
4 appropriate function or service incurred in response to the release of the hazardous  
5 substance, including administrative expenses for the incremental costs of providing the  
6 function or service;

7 \* Sec. 22. AS 46.09.900(8) is amended to read:

8 (8) "threatened release" means [AN IMMINENT DANGER] that a  
9 release is imminent; a release is imminent if

10 (A) it is impending, or on the point of happening; or

11 (B) though not impending, in the judgment of the  
12 commissioner

13 (i) the incident or occurrence may reasonably be  
14 expected to culminate in an actual release; and

15 (ii) that actual release may reasonably be expected to  
16 cause personal injury, other injury to life, or loss of or damage to  
17 property [WILL OCCUR].

18 \* Sec. 23. 18 AAC 78.530(a)(4), as it relates to costs to restore a site that are eligible for  
19 payment of financial assistance, is annulled.

20 \* Sec. 24. AS 19.65.025; AS 29.60.500, 29.60.510, 29.60.520, 29.60.530, 29.60.540,  
21 29.60.550, 29.60.560, 29.60.590, 29.60.599; AS 44.46.025(a)(5), 44.46.025(a)(6); and  
22 AS 46.08.040(d) are repealed.

23 \* Sec. 25. USE OF MONEY IN THE OIL AND HAZARDOUS SUBSTANCE RELEASE  
24 RESPONSE FUND. (a) Money from the oil and hazardous substance release response fund  
25 established under AS 46.08.010 may not be used for a purpose specified in this section unless  
26 the money is available from an appropriation made specifically for the purpose.

27 (b) Notwithstanding AS 46.08.040(a),

28 (1) after the effective date of this Act and before July 1, 1994, the  
29 commissioner of environmental conservation may use money from the oil and hazardous  
30 substance release response fund to pay not more than two-thirds of the estimated annual  
31 expenses incurred

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(A) to

(i) establish and maintain the oil and hazardous substance response office;

(ii) conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved contingency plan to act in accordance with that plan;

(B) by the Alaska division of emergency services for the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division;

(C) to recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance; and

(D) to prepare and review and, when warranted, revise

(i) the state's master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.200; and

(ii) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210;

(2) after June 30, 1994, and before July 1, 1995, the commissioner of environmental conservation may use money from the oil and hazardous substance release response fund to pay not more than one-third of the estimated annual expenses incurred

(A) to

(i) establish and maintain the oil and hazardous substance response office;

(ii) conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness of the state, a municipality, or a party required by AS 46.04.030 to have an approved

1           contingency plan to act in accordance with that plan;

2           **(B)** by the Alaska division of emergency services for the oil and  
3 hazardous substance response corps and the oil and hazardous substance response  
4 depots when presented with appropriate documentation by the division;

5           **(C)** to recover the costs to the state, a municipality, or a village of a  
6 containment and cleanup resulting from the release or the threatened release of oil or  
7 a hazardous substance; and

8           **(D)** to prepare and review and, when warranted, revise

9           (i) the state's master oil and hazardous substance discharge  
10 prevention and contingency plan required by AS 46.04.200; and

11           (ii) a regional master oil and hazardous substance discharge  
12 prevention and contingency plan required by AS 46.04.210.

13   \* **Sec. 26. TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR**  
14 **PURPOSES OF AS 43.55.230.** For the purpose of AS 43.55.230(a)(2), an appropriation to  
15 the former spill reserve referred to in former AS 29.60.510(b), repealed by sec. 24 of this Act,  
16 is not an expenditure.