

SENATE BILL NO. 215

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR MILLER

Introduced: 5/8/93
Referred: RES, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to and redesignating the oil and hazardous substance release
2 response fund and to its use in the event of a disaster emergency; repealing the
3 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; amending
9 the authority to contract to provide personnel to respond to a release or
10 threatened release of oil or a hazardous substance and to contract to conduct
11 spill related research; reassigning responsibility for the oil and hazardous substance
12 response corps and for the emergency response depots to the Department of

1 Environmental Conservation, and for the operation of the state emergency response
2 commission and its attendant responsibilities for the local emergency planning
3 commissions to the Department of Military and Veterans' Affairs; and modifying
4 definitions of terms relating to the preceding provisions; terminating the nickel-per-
5 barrel oil conservation surcharge; levying and collecting two new oil surcharges;
6 and providing for the suspension and reimposition of one of the new surcharges;
7 and providing for an effective date."

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

9 * Section 1. AS 26.23.020(g) is amended to read:

10 (g) In addition to any other powers conferred upon the governor by law, the
11 governor may, under AS 26.23.010 - 26.23.220,

12 (1) suspend the provisions of any regulatory statute prescribing
13 procedures for the conduct of state business, or the orders or regulations of any state
14 agency, if compliance with the provisions of the statute, order, or regulation would
15 prevent, or substantially impede or delay, action necessary to cope with the disaster
16 emergency;

17 (2) use all available resources of the state government and of each
18 political subdivision of the state as reasonably necessary to cope with the disaster
19 emergency;

20 (3) transfer personnel or alter the functions of state departments and
21 agencies or units of them for the purpose of performing or facilitating the performance
22 of disaster emergency services;

23 (4) subject to any applicable requirements for compensation under
24 AS 26.23.160, commandeer or utilize any private property, except for all news media
25 other than as specifically provided for in AS 26.23.010 - 26.23.220, if the governor
26 considers this necessary to cope with the disaster emergency;

27 (5) direct and compel the relocation of all or part of the population
28 from any stricken or threatened area in the state, if the governor considers relocation
29 necessary for the preservation of life or for other disaster mitigation purpose;

1 (6) prescribe routes, modes of transportation, and destinations in
2 connection with necessary relocation;

3 (7) control ingress to and egress from a disaster area, the movement of
4 persons within the area, and the occupancy of premises in it;

5 (8) suspend or limit the sale, dispensing, or transportation of alcoholic
6 beverages, firearms, explosives, and combustibles;

7 (9) make provisions for the availability and use of temporary
8 emergency housing;

9 (10) allocate or redistribute food, water, fuel, or clothing; and

10 (11) use money from the oil and hazardous substance release
11 prevention and response fund, established by AS 46.08.010, to respond to a declared
12 disaster emergency related to an oil or hazardous substance discharge.

13 * Sec. 2. AS 26.23.050(b) is amended to read:

14 (b) Whenever, and to the extent that, money is needed to cope with a disaster,

15 (1) in the event of an oil or hazardous substance release or
16 discharge, the governor shall have first recourse to the appropriate account within
17 the oil and hazardous substance release prevention and response fund, and
18 thereafter the governor may have second recourse to money regularly
19 appropriated to state and local agencies and third recourse to money available in
20 the disaster relief fund;

21 (2) if the disaster does not involve an oil or hazardous substance
22 release or discharge,

23 (A) the governor shall have first recourse [SHALL BE] to
24 money regularly appropriated to state and local agencies; and

25 (B) the governor shall have further [. THE SECOND]
26 recourse [SHALL BE] to money available in the disaster relief fund [OR, FOR
27 OIL OR HAZARDOUS SUBSTANCES DISCHARGES, THE OIL AND
28 HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND, AS THE
29 GOVERNOR DETERMINES APPROPRIATE. IF MONEY AVAILABLE
30 FROM THESE SOURCES IS INSUFFICIENT, AND IF THE GOVERNOR
31 FINDS THAT OTHER SOURCES OF MONEY TO COPE WITH THE

1 DISASTER ARE NOT AVAILABLE OR ARE INSUFFICIENT, THE
2 GOVERNOR MAY, NOTWITHSTANDING THE LIMITATIONS IMPOSED
3 BY AS 37.07.080(e),

4 (1) TRANSFER AND SPEND MONEY APPROPRIATED FOR
5 OTHER PURPOSES; OR

6 (2) BORROW MONEY FOR A TERM NOT TO EXCEED TWO
7 YEARS].

8 * Sec. 3. AS 26.23.050 is amended by adding a new subsection to read:

9 (d) If money available from a source identified in (b) of this section is
10 insufficient, and if the governor finds that other sources of money to cope with the
11 disaster are not available or are insufficient, the governor may, notwithstanding the
12 limitations imposed by AS 37.07.080(e),

13 (1) transfer and spend money appropriated for other purposes; or

14 (2) borrow money for a term not to exceed two years.

15 * Sec. 4. AS 29.60.510(a) is amended to read:

16 (a) The commissioner may use money from the oil and hazardous substance
17 release prevention and response fund to make grants to a municipality or village that
18 is affected by the release or by the response to the release and that demonstrates that
19 the release or response to the release involves extraordinary expenditures that are
20 beyond the reasonable capability of the municipality or village to meet from the
21 current revenue sources of the municipality or village if

22 (1) the governor determines that a release of oil or a hazardous
23 substance exceeds 2,500 barrels of oil, or exceeds an amount of a hazardous substance
24 that, when released into the environment, presents a threat to the economy and public
25 welfare of the municipalities and villages affected by it at least equivalent in effect to
26 the effect of a release of oil in an amount defined by this paragraph;

27 (2) the release has been proclaimed a disaster emergency by the
28 governor under AS 26.23.020; and

29 (3) the governor finds that

30 (A) the release of the oil or hazardous substance into the
31 environment presents a real and substantial threat to the economy and public

1 welfare of the municipalities and villages that are affected by the release and
2 by the resultant activities to contain and clean up the release; and

3 (B) it is in the best interest of the state to pay the expenses
4 incurred by municipalities and villages to mitigate the social and economic
5 effects that arise out of the release of the oil or the hazardous substance and
6 the resultant cleanup activities.

7 * Sec. 5. AS 29.60.510(b) is amended to read:

8 (b) For each disaster emergency declared by the governor under AS 26.23.020
9 that involves a catastrophic oil release or threatened catastrophic oil release, and
10 subject to agreement with the commissioner of environmental conservation as to the
11 amount of money in the fund that may be used by the department to make grants, the
12 commissioner may expend not more than \$10,000,000 [OF THE BALANCE OF THE
13 FUND THAT IS APPROPRIATED TO THE SPILL RESERVE OR] of the
14 unrestricted balance of the catastrophic oil release response account in the fund for
15 grants authorized under this section. For each disaster emergency declared by the
16 governor under AS 26.23.020 that involves a release or threatened release of oil
17 or a hazardous substance, except a catastrophic oil release, and subject to
18 appropriation of money in the fund that may be used by the department to make
19 grants, the commissioner may expend not more than the amount appropriated
20 from the oil and hazardous substances release contingency and abatement account
21 in the fund for grants authorized under this section. If the commissioner and the
22 commissioner of environmental conservation do not agree on the amount of money in
23 the catastrophic oil release response account in the fund that may be used by the
24 department to make grants under AS 29.60.500 - 29.60.599 for a catastrophic oil
25 release or threatened catastrophic oil release, the governor shall make the
26 determination.

27 * Sec. 6. AS 29.60.560(e) is amended to read:

28 (e) Expenditures made under this section may be made only from the amount
29 transferred to the commissioner under AS 29.60.510(c), unless

30 (1) the commissioner and the commissioner of environmental
31 conservation mutually agree that payment may be made from money in the oil and

1 hazardous substance release prevention and response fund not transferred under
2 AS 29.60.510(c); or

3 (2) the commissioner pays them from another source.

4 * Sec. 7. AS 29.60.599(4) is amended to read:

5 (4) "fund" means the oil and hazardous substance release prevention
6 and response fund established by AS 46.08.010;

7 * Sec. 8. AS 37.14.410 is amended to read:

8 Sec. 37.14.410. REIMBURSED EXPENDITURES. (a) Amounts received by
9 the state as reimbursement for expenses related to the Exxon Valdez oil spill incurred
10 by the state on or before December 31, 1992, shall be deposited in the general fund
11 and, except as required under (b) of this section, may not be credited to the oil and
12 hazardous substance release mitigation account under AS 46.04.010 or to an account
13 established in AS 46.08.020 or 46.08.025.

14 (b) A percentage of each payment deposited in the general fund under (a) of
15 this section shall be credited to the oil and hazardous substances release contingency
16 and abatement account established in [OIL AND HAZARDOUS SUBSTANCE
17 RELEASE MITIGATION ACCOUNT UNDER AS 46.04.010 OR] AS 46.08.020.
18 That percentage is determined by dividing

19 (1) the amount of the expenses for which the state may be reimbursed
20 under (a) of this section that were paid from the [OIL AND HAZARDOUS
21 SUBSTANCE RELEASE RESPONSE] fund established under AS 46.08.010, by

22 (2) the total amount of expenses for which the state may be reimbursed
23 under (a) of this section.

24 * Sec. 9. AS 43.55 is amended by adding a new section to read:

25 Sec. 43.55.201. SURCHARGE LEVIED. (a) Every producer of oil shall pay
26 a surcharge of \$.03 per barrel of oil produced from each lease or property in the state,
27 less any oil the ownership or right to which is exempt from taxation.

28 (b) The surcharge imposed by (a) of this section is in addition to

29 (1) and shall be paid in the same manner as the tax imposed by
30 AS 43.55.011 - 43.55.150; and

31 (2) the surcharge imposed by AS 43.55.300 - 43.55.320.

1 (c) A producer of oil shall make reports of production in the same manner and
2 under the same penalties as required under AS 43.55.011 - 43.55.150.

3 * Sec. 10. AS 43.55 is amended by adding a new section to read:

4 Sec. 43.55.211. DISPOSITION OF PROCEEDS OF SURCHARGE. (a) The
5 commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.201 into
6 the general fund.

7 (b) The commissioner of administration shall separately account for all
8 proceeds of the surcharge that are deposited into the general fund.

9 * Sec. 11. AS 43.55 is amended by adding a new section to read:

10 Sec. 43.55.221. USE OF REVENUE DERIVED FROM SURCHARGE. The
11 legislature may appropriate the annual estimated balance of the account established
12 under AS 43.55.211 to the catastrophic oil release response account in the oil and
13 hazardous substance release prevention and response fund established by AS 46.08.010.

14 * Sec. 12. AS 43.55 is amended by adding a new section to read:

15 Sec. 43.55.231. SUSPENSION AND REIMPOSITION OF THE
16 SURCHARGE. (a) Except when a different time for making a determination is
17 required under (f) of this section, not later than 30 days after the end of each calendar
18 quarter, the commissioner of administration shall determine the cumulative total of
19 money that has been

20 (1) deposited through that calendar quarter, or was received through
21 that calendar quarter and is subject to deposit, into the catastrophic oil release response
22 account of the oil and hazardous substance release prevention and response fund
23 established by AS 46.08.010;

24 (2) deposited through the calendar quarter, or was received through the
25 calendar quarter and is subject to deposit, into the catastrophic oil release response
26 mitigation account under AS 46.08.025(b);

27 (3) expended through that calendar quarter from the catastrophic oil
28 release response account of the oil and hazardous substance release prevention and
29 response fund.

30 (b) Within 15 days after making the determinations required by (a) of this
31 section, the commissioner of administration shall

- 1 (1) add the amounts determined under (a)(1) and (2) of this section;
2 (2) determine the difference between the amount determined under (1)
3 of this subsection and the amount determined under (a)(3) of this section; and
4 (3) report the amount determined under (2) of this subsection to the
5 commissioner.

6 (c) In making the determination required by (b) of this section, the
7 commissioner of administration may not consider within the calculation money
8 described in (a) of this section that was received subject to a dedication imposed by
9 the federal government that restricts the use of the money to a specific purpose.

10 (d) If the commissioner of administration reports that the difference determined
11 under (b) of this section equals or exceeds \$50,000,000, the commissioner of revenue
12 shall suspend imposition and collection of the surcharge levied and collected under
13 AS 43.55.201. Suspension of the imposition and collection of the surcharge begins on
14 the first day of the calendar quarter next following the commissioner's receipt of the
15 commissioner of administration's report under (b) of this section. Before the first day
16 of a suspension authorized by this subsection, the commissioner shall make a
17 reasonable effort to notify all persons who are known to the department to be paying
18 the surcharge under AS 43.55.201 that the surcharge will be suspended.

19 (e) Except as provided in AS 43.55.241, if the commissioner of administration
20 reports that the difference determined under (b) of this section is less than
21 \$50,000,000, the commissioner of revenue shall require imposition and collection of
22 the surcharge authorized under AS 43.55.201. Reimposition of the surcharge begins
23 on the first day of the calendar quarter next following the commissioner's receipt of
24 the commissioner of administration's report under (b) of this section. Before the first
25 day of reimposition of the surcharge authorized by this subsection, the commissioner
26 shall make a reasonable effort to notify all persons who are known to the department
27 to be required to pay the surcharge under AS 43.55.201 that the surcharge will be
28 reimposed.

29 (f) Notwithstanding the requirement of (a) of this section that the cumulative
30 determination of receipts and expenditures be made quarterly, when the amount
31 determined under (b) of this section is \$45,000,000 or more, the commissioner of

1 administration shall make the determinations required by this section not later than 30
2 days before each calendar quarter and every 30 days thereafter.

3 * **Sec. 13.** AS 43.55 is amended by adding a new section to read:

4 Sec. 43.55.241. SURCHARGE NOT IMPOSED. The surcharge authorized by
5 AS 43.55.201 is not levied during any fiscal year for which the estimated revenue from
6 the surcharge would be sufficient to restore the balance of the oil and hazardous
7 substance release prevention and response fund on the first day of the fiscal year to
8 at least \$50,000,000, and

9 (1) the legislature does not, during the regular legislative session
10 preceding the first day of the fiscal year, appropriate money from the general fund to
11 the catastrophic oil release response account in the oil and hazardous substance release
12 prevention and response fund sufficient to restore the balance of that account on the
13 first day of the fiscal year to at least \$50,000,000; or

14 (2) the legislature, during the regular legislative session preceding the
15 first day of the fiscal year, appropriates money from the general fund to the
16 catastrophic oil release response account in the oil and hazardous substance release
17 prevention and response fund sufficient to restore the balance of that account on the
18 first day of the fiscal year to at least \$50,000,000 and, because of gubernatorial veto
19 or reduction in the amount of the appropriation, restoration of the balance of the fund
20 to at least \$50,000,000 does not become law.

21 * **Sec. 14.** AS 43.55 is amended by adding new sections to read:

22 **ARTICLE 2A. ADDITIONAL CONSERVATION SURCHARGE ON OIL.**

23 Sec. 43.55.300. SURCHARGE LEVIED. (a) Every producer of oil shall pay
24 a surcharge of \$.02 per barrel of oil produced from each lease or property in the state,
25 less any oil the ownership or right to which is exempt from taxation.

26 (b) The surcharge imposed by (a) of this section is in addition to

27 (1) and shall be paid in the same manner as the tax imposed by
28 AS 43.55.011 - 43.55.150; and

29 (2) the surcharge imposed by AS 43.55.201 - 43.55.241.

30 (c) A producer of oil shall make reports of production in the same manner and
31 under the same penalties as required under AS 43.55.011 - 43.55.150.

1 Sec. 43.55.310. DISPOSITION OF PROCEEDS OF SURCHARGE. (a) The
2 commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.300 into
3 the general fund.

4 (b) The commissioner of administration shall separately account for all
5 proceeds of the surcharge levied by AS 43.55.300 that are deposited into the general
6 fund.

7 Sec. 43.55.320. USE OF REVENUE DERIVED FROM SURCHARGE. The
8 legislature may appropriate the annual estimated balance of the account established
9 under AS 43.55.310 to the oil and hazardous substances release contingency and
10 abatement account in the oil and hazardous substance release prevention and response
11 fund established by AS 46.08.010.

12 * Sec. 15. AS 43.55.900(3) is amended to read:

13 (3) "catastrophic oil discharge" means

14 (A) an oil release or discharge in excess of 100,000 barrels;

15 or

16 (B) any other oil release or discharge that the governor
17 determines presents a grave and substantial threat to the economy or
18 environment and for which the governor has issued a proclamation
19 declaring a condition of disaster emergency under AS 26.23.020(c) [HAS
20 THE MEANING GIVEN IN AS 46.04.900];

21 * Sec. 16. AS 43.55.900(15) is amended to read:

22 (15) "surcharge" means

23 (A) when used in AS 43.55.201 - 43.55.241, the surcharge
24 levied by AS 43.55.201 [AS 43.55.200];

25 (B) when used in AS 43.55.300 - 43.55.320, the surcharge
26 levied by AS 43.55.300;

27 * Sec. 17. AS 46.04.030(e) is amended to read:

28 (e) The department may attach reasonable terms and conditions to its approval
29 or modification of a contingency plan that the department determines are necessary to
30 ensure that the applicant for a contingency plan has access to sufficient resources to
31 protect environmentally sensitive areas, [AND] to take containment and cleanup and

1 other necessary action to [CONTAIN, CLEAN UP, AND] mitigate potential oil
2 discharges from the facility or vessel as provided in (k) of this section, and to ensure
3 that the applicant complies with the contingency plan. The contingency plan must
4 provide for the use by the applicant of the best technology that was available at the
5 time the contingency plan was submitted or renewed. The department may require an
6 applicant or holder of an approved contingency plan to take steps necessary to
7 demonstrate its ability to carry out the contingency plan, including

- 8 (1) periodic training;
9 (2) response team exercises; and
10 (3) verifying access to inventories of equipment, supplies, and
11 personnel identified as available in the approved contingency plan.

12 * Sec. 18. AS 46.04.030(e) as amended by sec. 11, ch. 83, SLA 1992, is amended to read:

13 (e) The department may attach reasonable terms and conditions to its approval
14 or modification of a contingency plan that the department determines are necessary to
15 ensure that the applicant for a contingency plan has access to sufficient resources to
16 protect environmentally sensitive areas, [AND] to take containment and cleanup and
17 other necessary action to [CONTAIN, CLEAN UP, AND] mitigate potential oil
18 discharges from the facility or vessel as provided in (k) of this section, and to ensure
19 that the applicant complies with the contingency plan. If a contingency plan submitted
20 to the department for approval relies on the services of an oil spill primary response
21 action contractor, the department may not approve the contingency plan unless the
22 primary response action contractor is registered and approved under AS 46.04.035.
23 The contingency plan must provide for the use by the applicant of the best technology
24 that was available at the time the contingency plan was submitted or renewed. The
25 department may require an applicant or holder of an approved contingency plan to take
26 steps necessary to demonstrate its ability to carry out the contingency plan, including

- 27 (1) periodic training;
28 (2) response team exercises; and
29 (3) verifying access to inventories of equipment, supplies, and
30 personnel identified as available in the approved contingency plan.

31 * Sec. 19. AS 46.04.200(a) is amended to read:

1 (a) The department shall
2 (1) prepare [AND ANNUALLY REVIEW AND REVISE] a statewide
3 master oil and hazardous substance discharge prevention and contingency plan;
4 (2) annually review the statewide master oil and hazardous
5 substance discharge prevention and contingency plan; and
6 (3) revise the statewide master oil and hazardous substance
7 discharge prevention and contingency plan; the department shall revise the
8 statewide master plan whenever, in the judgment of the commissioner, revision
9 is necessary.

10 * Sec. 20. AS 46.04.200(c) is amended to read:

11 (c) In preparing and annually reviewing the state master plan, the
12 commissioner shall
13 (1) consult with municipal and community officials, and with
14 representatives of affected regional organizations; and
15 (2) [SUBMIT THE DRAFT PLAN TO THE PUBLIC FOR REVIEW
16 AND COMMENT;
17 (3) SUBMIT TO THE LEGISLATURE FOR REVIEW, NOT LATER
18 THAN THE 10TH DAY FOLLOWING THE CONVENING OF EACH REGULAR
19 SESSION, THE PLAN AND ANY ANNUAL REVISION OF THE PLAN;
20 (4)] require or schedule unannounced oil spill drills to test the
21 sufficiency of an oil discharge prevention and contingency plan approved under
22 AS 46.04.030 or of the cleanup plans of a party identified under (b)(2) of this section
23 [; AND
24 (5) SUBMIT THE PLAN AND ANY ANNUAL REVISION TO THE
25 ALASKA STATE EMERGENCY RESPONSE COMMISSION FOR ITS REVIEW
26 AND APPROVAL UNDER AS 46.13.045].

27 * Sec. 21. AS 46.04.200 is amended by adding a new subsection to read:

28 (d) In preparing a revision of the statewide master plan, the commissioner shall
29 submit
30 (1) the draft plan to the
31 (A) public for review and comment; and

1 (B) Alaska State Emergency Response Commission for its
2 review and approval under AS 46.13.045; and
3 (2) the proposed revision of the plan to the legislature for review not
4 later than the 10th day following the convening of each regular session.

5 * Sec. 22. AS 46.04.210(a) is amended to read:

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

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

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

14 (3) revise the regional master oil and hazardous substance
15 discharge prevention and contingency plan; the commissioner shall revise a
16 regional master plan whenever, in the judgment of the commissioner, revision is
17 necessary.

18 * Sec. 23. AS 46.04.210(b) is amended to read:

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

21 * Sec. 24. AS 46.04.900(2) is amended to read:

22 (2) "catastrophic oil discharge" means

23 (A) an oil release or discharge in excess of 100,000 barrels; [,]

24 or

25 (B) any other oil release or discharge that [WHICH] the
26 governor determines presents a grave and substantial threat to the economy or
27 environment and for which the governor has issued a proclamation
28 declaring a condition of disaster emergency under AS 26.23.020(c) [OF
29 THE STATE];

30 * Sec. 25. AS 46.08.005 is amended to read:

31 Sec. 46.08.005. PURPOSE. The legislature finds and declares that the

1 catastrophic release of oil or hazardous substances into the environment presents a
2 real and substantial threat to the public health and welfare, to the environment, and to
3 the economy of the state. The legislature therefore concludes that it is in the best
4 interest of the state and its citizens to provide a [READILY AVAILABLE] fund
5 containing two accounts. Within the fund,

6 (1) one account consists of money readily available to the
7 commissioner for the payment of the expenses incurred by the Department of
8 Environmental Conservation during an emergency first response to a catastrophic
9 release or threatened [AND THE DEPARTMENT OF TRANSPORTATION AND
10 PUBLIC FACILITIES IN THE PROTECTION OF THE ENVIRONMENT OF THE
11 STATE FROM THE] release of oil and for related purposes intended to address
12 catastrophic oil releases;

13 (2) the other account consists of money that the state may use
14 during a response to a release or threatened release of oil or a hazardous
15 substance, other than a catastrophic oil discharge, to pay the expenses of making
16 preparations for the possibility of a release or threatened release of oil or
17 hazardous substances, to reduce the amount, degree, or intensity of a release or
18 threatened release, and for other related purposes identified in law [OR
19 HAZARDOUS SUBSTANCES].

20 * Sec. 26. AS 46.08.010(a) is amended to read:

21 (a) There is established in the state general fund the oil and hazardous
22 substance release prevention and response fund. The fund shall be administered by
23 the commissioner. The fund is composed of two accounts,

24 (1) the oil and hazardous substances release contingency and
25 abatement account;

26 (2) the catastrophic oil release response account.

27 * Sec. 27. AS 46.08.010(b) is amended to read:

28 (b) Money from an appropriation made to an account in the fund remaining
29 in that account [THE FUND] at the end of a fiscal year remains available for
30 expenditure in successive fiscal years.

31 * Sec. 28. AS 46.08.010(c) is amended to read:

1 (c) The fund shall be used for actual expenses incurred under AS 46.08.040.
2 Except as provided in AS 46.08.040(a)(2)(D)(ii) for the equipment that is required
3 for and placed in the oil and hazardous substance response depots
4 [AS 46.08.040(d)(2)], the fund may not be used for capital improvements.

5 * Sec. 29. AS 46.08.020 is amended to read:

6 Sec. 46.08.020. FINANCING OF THE OIL AND HAZARDOUS
7 SUBSTANCES RELEASE CONTINGENCY AND ABATEMENT ACCOUNT
8 [FUND]. (a) The legislature may appropriate from the following sources to the oil
9 and hazardous substances release contingency and abatement account in the fund:

10 (1) money received from federal, state, or other sources or from a
11 private donor;

12 (2) money recovered or otherwise received from parties responsible for
13 the containment and cleanup of oil or a hazardous substance at a specific site, to the
14 extent that the money recovered or otherwise received had been paid out of the
15 oil and hazardous substances contingency and abatement account, but excluding

16 (A) money recovered or otherwise received due to a
17 catastrophic oil discharge; and

18 (B) money [FUNDS] from performance bonds and other forms
19 of financial responsibility held in escrow pending satisfactory performance of
20 a privately financed response action; and

21 (3) fines, penalties, or damages recovered under AS 46.08.005 -
22 46.08.080 or other law for costs incurred by the state as a result of the release or
23 threatened release of oil or a hazardous substance, but excluding fines, penalties, or
24 damages recovered or otherwise received due to a catastrophic oil discharge.

25 (b) Money received by the state under (a)(2) and (a)(3) of this section shall
26 be deposited in the general fund and credited to a special account called the "oil and
27 hazardous substances [SUBSTANCE] release contingency and abatement mitigation
28 account." The legislature may annually appropriate to the oil and hazardous
29 substances release contingency and abatement account in the fund from the oil and
30 hazardous substances release contingency and abatement mitigation [THIS]
31 account a sum equal to the amount received under (a)(2) and (a)(3) of this section

1 during the calendar year preceding the legislative session in which the appropriations
2 are to be made.

3 * **Sec. 30.** AS 46.08 is amended by adding a new section to read:

4 Sec. 46.08.025. FINANCING OF THE CATASTROPHIC OIL RELEASE
5 RESPONSE ACCOUNT. (a) The legislature may appropriate from the following
6 sources to the catastrophic oil release response account in the fund:

7 (1) money received from federal, state, or other sources or from a
8 private donor;

9 (2) money recovered or otherwise received from parties responsible for
10 the containment and cleanup of a catastrophic oil discharge, but excluding money from
11 performance bonds and other forms of financial responsibility held in escrow pending
12 satisfactory performance of a privately financed response action;

13 (3) fines, penalties, or damages recovered under AS 46.08.005 -
14 46.08.080 or other law for costs incurred by the state as a result of a catastrophic oil
15 discharge.

16 (b) Money received by the state under (a)(2) and (a)(3) of this section shall
17 be deposited in the general fund and credited to a special account called the
18 "catastrophic oil release response mitigation account." The legislature may annually
19 appropriate to the catastrophic oil release response account in the fund from the
20 catastrophic oil release response mitigation account a sum equal to the amount received
21 under (a)(2) and (a)(3) of this section during the calendar year preceding the legislative
22 session in which the appropriations are to be made.

23 * **Sec. 31.** AS 46.08.040(a) is amended to read:

24 (a) In addition to money in the fund that is transferred to the commissioner of
25 community and regional affairs to make grants under AS 29.60.510 and to pay for
26 impact assessments under AS 29.60.560, the commissioner of environmental
27 conservation may use money

28 (1) from the catastrophic oil release response account in the fund to

29 (A) [(1)] investigate and evaluate a catastrophic oil [THE]
30 release or threatened catastrophic oil release [OF OIL OR A HAZARDOUS
31 SUBSTANCE], and [CONTAIN, CLEAN UP, AND] take containment and

1 cleanup and other necessary action, such as monitoring and assessing, to
2 address a catastrophic oil release or threatened catastrophic oil release [OF
3 OIL OR A HAZARDOUS SUBSTANCE] that poses an imminent and
4 substantial threat to the public health or welfare, or to the environment;

5 (B) [(2) PAY ALL COSTS INCURRED TO

6 (A) ESTABLISH AND MAINTAIN THE OIL AND
7 HAZARDOUS SUBSTANCE RESPONSE OFFICE;

8 (B) REVIEW OIL DISCHARGE PREVENTION AND
9 CONTINGENCY PLANS SUBMITTED UNDER AS 46.04.030;

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

19 (D) VERIFY OR ESTABLISH PROOF OF FINANCIAL
20 RESPONSIBILITY REQUIRED BY AS 46.04.040;

21 (3) PAY THE EXPENSES INCURRED BY THE ALASKA DIVISION
22 OF EMERGENCY SERVICES FOR THE OIL AND HAZARDOUS SUBSTANCE
23 RESPONSE CORPS AND THE OIL AND HAZARDOUS SUBSTANCE RESPONSE
24 DEPOTS WHEN PRESENTED WITH APPROPRIATE DOCUMENTATION BY
25 THE DIVISION;

26 (4)] provide matching funds in the event of a catastrophic oil release
27 for participation

28 (i) in federal oil discharge cleanup activities; and

29 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive
30 Environmental Response, Compensation, and Liability Act of 1980);

31 and

1 ~~(C) [(5)]~~ recover the costs to the state, a municipality, or a
2 village of a containment and cleanup resulting from the catastrophic oil release
3 or the threatened catastrophic oil release [OF OIL OR A HAZARDOUS
4 SUBSTANCE];

5 (2) from the oil and hazardous substances release contingency and
6 abatement account in the fund to

7 (A) investigate and evaluate the release or threatened release
8 of oil or a hazardous substance, except a catastrophic oil release, and
9 contain, clean up, and take other necessary action, such as monitoring and
10 assessing, to address a release or threatened release of oil or a hazardous
11 substance, except a catastrophic oil release, that poses an imminent and
12 substantial threat to the public health or welfare;

13 (B) recover the costs to the state, a municipality, or a village
14 of a containment and cleanup resulting from the release or the threatened
15 release of oil or a hazardous substance, except a catastrophic oil release;

16 (C) pay all costs incurred to

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

19 (ii) review oil discharge prevention and contingency
20 plans submitted under AS 46.04.030;

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

28 (iv) verify or establish proof of financial
29 responsibility required by AS 46.04.040;

30 (D) pay the expenses incurred by the department for

31 (i) the oil and hazardous substance response corps;

1 and
2 (ii) the oil and hazardous substance response depots:
3 (E) provide matching funds in the event of the release of oil
4 or a hazardous substance, except a catastrophic oil release, for
5 participation

6 (i) in federal oil discharge cleanup activities; and
7 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive
8 Environmental Response, Compensation, and Liability Act of 1980);
9 and

10 (F) [(6)] prepare, review, and revise
11 (i) [(A)] the state's master oil and hazardous substance
12 discharge prevention and contingency plan required by AS 46.04.200;
13 and

14 (ii) [(B)] a regional master oil and hazardous substance
15 discharge prevention and contingency plan required by AS 46.04.210
16 [; AND

17 (7) RESTORE THE ENVIRONMENT BY ADDRESSING THE
18 EFFECTS OF AN OIL OR HAZARDOUS SUBSTANCE RELEASE].

19 * Sec. 32. AS 46.08.040(b) is amended to read:

20 (b) The [WHEN THE GOVERNOR DECLARES A DISASTER RELATED
21 TO AN OIL OR HAZARDOUS SUBSTANCE DISCHARGE EMERGENCY UNDER
22 AS 26.23.020(c), THE] governor may [, DURING THE EFFECTIVE PERIOD OF
23 THE DISASTER EMERGENCY,] use money from the catastrophic oil release
24 response account in the fund to respond to a [THE] disaster emergency based upon
25 a release or discharge of oil or a hazardous substance

26 (1) in circumstances when the actual or imminent occurrence of a
27 catastrophic oil discharge constitutes a condition of disaster emergency, as
28 authorized by AS 46.04.080(a); or

29 (2) when the governor has declared a condition of disaster
30 emergency under AS 26.23.020(c).

31 * Sec. 33. AS 46.08.040(b) is amended to read:

1 (b) The [WHEN THE GOVERNOR DECLARES A DISASTER RELATED
2 TO AN OIL OR HAZARDOUS SUBSTANCE DISCHARGE EMERGENCY UNDER
3 AS 26.23.020(c), THE] governor may [, DURING THE EFFECTIVE PERIOD OF
4 THE DISASTER EMERGENCY,] use money from the catastrophic oil release
5 account in the fund to respond to a [THE] disaster emergency based upon a release
6 or discharge of oil or a hazardous substance when the governor has declared a
7 condition of disaster emergency under AS 26.23.020(c).

8 * Sec. 34. AS 46.08.040(c) is amended to read:

9 (c) Notwithstanding other provisions of this section, money from the fund may
10 not be used for a purpose specified in (a)(1)(B) - (D) or (a)(2) [(a)(2) - (7) AND
11 (d)(2)] of this section unless money is available from an appropriation made
12 specifically for that purpose.

13 * Sec. 35. AS 46.08.060(a) is amended to read:

14 (a) The commissioner shall submit a report to the legislature not later than the
15 10th day following the convening of each regular session of the legislature. The report
16 may include information considered significant by the commissioner but must include:

17 (1) the amount of money expended by the department under
18 AS 46.08.040(a) during the preceding fiscal year;

19 (2) the amount and source of money received and money recovered by
20 or on behalf of the department during the preceding fiscal year as specified in
21 AS 46.08.020 and 46.08.025;

22 (3) a summary of municipal participation in the department's responses
23 that were paid for [FUNDED] by the fund;

24 (4) a detailed summary of department activities in responses paid for
25 [FUNDED] by the fund during the preceding fiscal year, including response
26 descriptions and statements outlining the nature of the threat; [IN THIS PARAGRAPH,
27 "DETAILED" INCLUDES INFORMATION DESCRIBING EACH PERSONAL
28 SERVICES POSITION AND TOTAL COMPENSATION FOR THAT POSITION,
29 EACH CONTRACT IN EXCESS OF \$20,000, AND EACH PURCHASE IN EXCESS
30 OF \$10,000;] and

31 (5) the projected cost to the department for the next fiscal year of

1 monitoring, operating, and maintaining sites where response has been completed or is
2 expected to be continued during the fiscal year.

3 * Sec. 36. AS 46.08.075(a) is amended to read:

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

15 * Sec. 37. AS 46.08.075(e) is amended to read:

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

23 * Sec. 38. AS 46.08.110 is amended to read:

24 Sec. 46.08.110. RESPONSE CORPS. (a) The department [DIVISION OF
25 EMERGENCY SERVICES, DEPARTMENT OF MILITARY AND VETERANS'
26 AFFAIRS,] shall establish an oil and hazardous substance response corps.

27 (b) The corps consists of volunteers who register with the department
28 [DIVISION] and agree to be trained by the division in techniques for containment and
29 cleanup and to be available on short notice to assist in containment and cleanup
30 consistent with the responsibilities assigned to the corps under an applicable incident
31 command system.

1 (c) Members of the corps are entitled to per diem and expenses as determined
2 by the department [DIVISION] for training and for days spent in service to the state
3 in containment and cleanup actions.

4 * Sec. 39. AS 46.08.120 is amended to read:

5 Sec. 46.08.120. RESPONSE DEPOTS. The department [DIVISION] shall
6 maintain emergency response depots in areas of the state determined in the plans
7 prepared under AS 46.04.200 - 46.04.210 to be potential sites of releases or threatened
8 releases of oil or hazardous substances. The depots shall be equipped and staffed in
9 a manner that ensures prompt response when containment and cleanup actions are
10 necessary.

11 * Sec. 40. AS 46.08.150 is amended to read:

12 Sec. 46.08.150. CONTRACTS. The office [OR THE DIVISION, AS
13 APPLICABLE,] may

14 (1) enter into agreements with agencies of the state and federal
15 government, political subdivisions, the University of Alaska, or private persons or
16 entities to

17 (A) [(1)] provide the personnel, equipment, or other services or
18 supplies necessary to establish and maintain regional oil and hazardous
19 substances depots and as necessary for response readiness; and

20 (B) [(2)] train members of response corps; and

21 (2) contract with persons to provide personnel, including members
22 of the emergency response corps, to assist them with a nongovernmental response
23 to a release or threatened release of oil or a hazardous substance [(3) CONDUCT
24 RESEARCH INTO OIL AND HAZARDOUS SUBSTANCES SPILL TECHNOLOGY;
25 THE OFFICE SHALL INCLUDE IN THE RESEARCH TOPICS FOR WHICH IT
26 CONDUCTS OR CONTRACTS FOR RESEARCH, THE RESEARCH TOPICS
27 RECOMMENDED TO IT BY THE HAZARDOUS SUBSTANCE SPILL
28 TECHNOLOGY REVIEW COUNCIL UNDER AS 46.13.120].

29 * Sec. 41. AS 46.08.900(5) is amended to read:

30 (5) "fund" means the oil and hazardous substance release prevention
31 and response fund;

1 * Sec. 42. AS 46.08.900(9) is amended to read:

2 (9) "release"

3 (A) means any spilling, leaking, pumping, pouring, emitting,
4 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
5 the environment;

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

7 (i) a permitted release; or

8 (ii) an act of nature;

9 * Sec. 43. AS 46.08.900(11) is amended to read:

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

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

13 (B) though not impending, in the judgment of the
14 commissioner

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

17 (ii) that actual release may reasonably be expected to
18 cause personal injury, other injury to life, or loss of or damage to
19 property, including the environment [WILL OCCUR];

20 * Sec. 44. AS 46.08.900 is amended by adding a new paragraph to read:

21 (13) "catastrophic oil discharge" and "catastrophic oil release" have the
22 meaning given the term "catastrophic oil discharge" in AS 46.04.900.

23 * Sec. 45. AS 46.09.900(8) is amended to read:

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

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

27 (B) though not impending, in the judgment of the
28 commissioner

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

31 (ii) that actual release may reasonably be expected to

1 cause personal injury, other injury to life, or loss of or damage to
2 property, including the environment [WILL OCCUR].

3 * **Sec. 46.** AS 46.13.010(a) is amended to read:

4 (a) There is established in the Department of Military and Veterans' Affairs
5 [ENVIRONMENTAL CONSERVATION] the Alaska State Emergency Response
6 Commission.

7 * **Sec. 47.** AS 19.65.025; AS 26.23.195(b); AS 43.55.200, 43.55.210, 43.55.220, 43.55.230,
8 43.55.240; AS 46.08.040(d), and 46.08.190(3) are repealed.

9 * **Sec. 48.** TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR
10 PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by
11 this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b), the
12 reference to which is repealed by sec. 5 of this Act, is not an expenditure.

13 * **Sec. 49.** APPLICABILITY. The definition of "catastrophic oil discharge" in
14 AS 46.08.900, added by sec. 44 of this Act, applies to discharges occurring after the effective
15 date of this section.

16 * **Sec. 50.** TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION
17 SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1993, AND
18 BEFORE THE EFFECTIVE DATE OF THIS ACT. After June 30, 1993, and before the
19 effective date of this section, every producer of oil who is required by AS 43.55.200 -
20 43.55.240, repealed by this Act, to pay the oil conservation surcharge of \$.05 per barrel of oil
21 shall pay that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply
22 to the amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts
23 received after June 30, 1993, and before the effective date of this section, if so appropriated
24 by the legislature and notwithstanding any other provision of law relating to the deposit of and
25 accounting for those receipts,

26 (1) on the effective date of this section, the commissioner of revenue shall
27 allocate

28 (A) 60 percent of the amount received to the catastrophic oil release
29 response account established by AS 46.08.010(a)(2), added by sec. 26 of this Act; and

30 (B) 40 percent of the amount received to the oil and hazardous
31 substances release contingency and abatement account established by

- 1 AS 46.08.010(a)(1), added by sec. 26 of this Act; and
- 2 (2) the allocations made under (1) of this section are credited to the respective
- 3 accounts for purposes of determination of the suspension and reimposition of the surcharge
- 4 under AS 43.55.231 and 43.55.241, added by secs. 12 and 13 of this Act.
- 5 * Sec. 51. TERMS OF MEMBERS OF ALASKA STATE EMERGENCY RESPONSE
- 6 COMMISSION NOT AFFECTED. The transfer of the Alaska State Emergency Response
- 7 Commission from the Department of Environmental Conservation to the Department of
- 8 Military and Veterans' Affairs made by sec. 46 of this Act does not affect the term of office
- 9 of a person serving as a member of the commission on the effective date of this section.
- 10 * Sec. 52. Section 33 of this Act takes effect only if Senate Bill 90 am H becomes law.
- 11 * Sec. 53. If sec. 33 of this Act takes effect, sec. 32 of this Act does not take effect.
- 12 * Sec. 54. Section 18 of this Act takes effect January 1, 1994.