

CS FOR SENATE BILL NO. 215(RES)**IN THE LEGISLATURE OF THE STATE OF ALASKA****EIGHTEENTH LEGISLATURE - SECOND SESSION****BY THE SENATE RESOURCES COMMITTEE****Offered: 2/28/94****Referred: Finance****Sponsor(s): SENATORS MILLER, Kelly****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to oil and hazardous substances; redesignating the oil and
2 hazardous substance release response fund and its uses; repealing the authority
3 in law by which marine highway vessels may be designed and constructed to aid
4 in oil and hazardous substance spill cleanup in state marine water using money
5 in the oil and hazardous substance release response fund and the authority of
6 the Department of Environmental Conservation to levy and collect fees for review
7 of certain submissions related to oil; altering requirements applicable to liens for
8 recovery of state expenditures related to oil or hazardous substances; terminating
9 the nickel-per-barrel oil conservation surcharge; levying and collecting two new oil
10 surcharges; and providing for the suspension and reimposition of one of the new
11 surcharges; and providing for an effective date."

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

1 * Section 1. AS 29.60.510(b) is amended to read:

2 (b) For each release or threatened release of oil or a hazardous substance
3 for which the commissioner of environmental conservation may, under
4 AS 46.08.045(a), expend money from the response account in the fund [DISASTER
5 EMERGENCY DECLARED BY THE GOVERNOR UNDER AS 26.23.020], and
6 subject to agreement with the commissioner of environmental conservation as to the
7 amount of money in the fund that may be used by the department to make grants, the
8 commissioner may expend not more than \$10,000,000 [OF THE BALANCE OF THE
9 FUND THAT IS APPROPRIATED TO THE SPILL RESERVE OR] of the
10 unrestricted balance of the response account in the fund for grants authorized under
11 this section. For each release or threatened release of oil or a hazardous substance
12 for which money may not be expended from the response account, and subject to
13 appropriation of money in the fund that may be used by the department to make
14 grants, the commissioner may expend not more than the amount appropriated
15 from the oil and hazardous substances release contingency and abatement account
16 in the fund for grants authorized under this section. If the commissioner and the
17 commissioner of environmental conservation do not agree on the amount of money in
18 the response account in the fund that may be used by the department to make grants
19 under AS 29.60.500 - 29.60.599 for release or threatened release of oil or a
20 hazardous substance, the governor shall make the determination.

21 * Sec. 2. AS 37.14.410 is amended to read:

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

28 (b) A percentage of each payment deposited in the general fund under (a) of
29 this section shall be credited to the oil and hazardous substances release contingency
30 and abatement mitigation account established in [OIL AND HAZARDOUS
31 SUBSTANCE RELEASE MITIGATION ACCOUNT UNDER AS 46.04.010 OR]

1 AS 46.08.020. That percentage is determined by dividing

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

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

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

8 Sec. 43.55.201. SURCHARGE LEVIED. (a) Every producer of oil shall pay
9 a surcharge of \$.025 per barrel of oil produced from each lease or property in the state,
10 less any oil the ownership or right to which is exempt from taxation.

11 (b) The surcharge imposed by (a) of this section is in addition to and shall be
12 paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150; and is in
13 addition to the surcharge imposed by AS 43.55.300 - 43.55.310.

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

16 * Sec. 4. AS 43.55 is amended by adding a new section to read:

17 Sec. 43.55.211. USE OF REVENUE DERIVED FROM SURCHARGE. The
18 legislature may appropriate the annual estimated balance of the account maintained
19 under AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge
20 levied under AS 43.55.201 to the response account in the oil and hazardous substance
21 release prevention and response fund established by AS 46.08.010.

22 * Sec. 5. AS 43.55 is amended by adding a new section to read:

23 Sec. 43.55.221. SUSPENSION AND REIMPOSITION OF THE
24 SURCHARGE. (a) Not later than 30 days after the end of each calendar quarter, the
25 commissioner of administration shall determine, as of the end of that quarter,

26 (1) the unreserved and unobligated balance in the response account of
27 the oil and hazardous substance release prevention and response fund established in
28 AS 46.08.010; for purposes of this paragraph, the "unreserved and unobligated balance
29 in the response account" means the cash balance of the account less the sum of

30 (A) reserves for outstanding appropriations from the account;

31 (B) encumbrances of money in the account; and

1 (C) other liabilities of the account;

2 (2) the balance of the account maintained under AS 37.05.142 that is

3 available for appropriation to the response account of the oil and hazardous substance

4 release prevention and response fund established in AS 46.08.010;

5 (3) the balance of the response mitigation account established by

6 AS 46.08.025(b) that originated from the sources described in AS 46.08.025(a)(2) and

7 that is available for appropriation to the response account of the fund established in

8 AS 46.08.010.

9 (b) Within 15 days after making the determinations required by (a) of this

10 section, the commissioner of administration shall

11 (1) add the amounts determined under (a)(1) - (3) of this section; and

12 (2) report the sum calculated under (1) of this subsection to the

13 commissioner.

14 (c) In making the determination required by (a) of this section, the

15 commissioner of administration may not consider money described in (a) of this

16 section that is subject to a dedication imposed by law that restricts the use of the

17 money to a specific purpose for which the response account of the oil and hazardous

18 substance release prevention and response fund established in AS 46.08.010 may not

19 be lawfully expended.

20 (d) If the commissioner of administration reports that the sum reported under

21 (b) of this section equals or exceeds the amount of the unreserved and unobligated

22 balance in the response account, as determined under (e) of this section, the

23 commissioner of revenue shall suspend imposition and collection of the surcharge

24 levied and collected under AS 43.55.201. Suspension of the imposition and collection

25 of the surcharge begins on the first day of the calendar quarter next following the

26 commissioner's receipt of the commissioner of administration's report under (b) of this

27 section. Before the first day of a suspension authorized by this subsection, the

28 commissioner shall make a reasonable effort to notify all persons who are known to

29 the department to be paying the surcharge under AS 43.55.201 that the surcharge will

30 be suspended.

31 (e) The amount of the unreserved and unobligated balance in the catastrophic

1 oil release response account is
2 (1) on the effective date of this Act or on July 1, 1994, whichever is
3 later, \$50,000,000; and
4 (2) on the first day of each state fiscal year beginning after July 1,
5 1994, \$50,000,000 multiplied by a rate
6 (A) determined by
7 (i) computing the average of the monthly United States
8 Consumer Price Index for all urban consumers for each of the two
9 previous calendar years; and
10 (ii) computing the percentage change between the first
11 and second calendar year average; and
12 (B) applying the rate determined under (A) of this paragraph to
13 the balance of the account on the last day of the fiscal year just ended.
14 (f) Except as provided in AS 43.55.231, if the commissioner of administration
15 reports that the sum reported under (b) of this section is less than the amount
16 determined under (c) of this section, the commissioner of revenue shall require
17 imposition and collection of the surcharge authorized under AS 43.55.201.
18 Reimposition of the surcharge begins on the first day of the calendar quarter next
19 following the commissioner's receipt of the commissioner of administration's report
20 under (b) of this section. Before the first day of reimposition of the surcharge
21 authorized by this subsection, the commissioner shall make a reasonable effort to
22 notify all persons who are known to the department to be required to pay the surcharge
23 under AS 43.55.201 that the surcharge will be reimposed.

24 * Sec. 6. AS 43.55 is amended by adding a new section to read:

25 Sec. 43.55.231. SURCHARGE NOT IMPOSED. (a) The surcharge authorized
26 by AS 43.55.201 is not levied during any fiscal year for which

27 (1) the legislature does not, during the regular or a special legislative
28 session preceding the first day of the fiscal year, appropriate at least an amount equal
29 to the amount determined under (b) of this section from the general fund to the
30 response account in the oil and hazardous substance release prevention and response
31 fund; or

1 (2) the legislature, during the regular or a special legislative session
2 preceding the first day of the fiscal year, appropriates at least the amount of money
3 equal to the amount determined under (b) of this section from the general fund to the
4 response account in the oil and hazardous substance release prevention and response
5 fund and that appropriation is vetoed or reduced by the governor.

6 (b) The amount of money required to be appropriated from the general fund
7 to the response account in the oil and hazardous substance release prevention and
8 response fund by (a) of this section is the amount, determined for the last day of the
9 preceding fiscal year, that is the sum of the actual or estimated balance of

10 (1) the account maintained under AS 37.05.142 to account for all
11 proceeds of the surcharge that are deposited into the general fund; and

12 (2) the portion of the balance of the response account paid into that
13 account under AS 46.08.025(a)(2) and credited to the response mitigation account that
14 represents amounts recovered from parties for which expenditures were originally made
15 from

16 (A) the response account; or

17 (B) the former oil and hazardous substance release response
18 fund if the expenditure was made for a release or threatened release of oil or
19 a hazardous substance before the effective date of this Act.

20 * Sec. 7. AS 43.55 is amended by adding new sections to read:

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

22 **Sec. 43.55.300. SURCHARGE LEVIED.** (a) Every producer of oil shall pay
23 a surcharge of \$.025 per barrel of oil produced from each lease or property in the state,
24 less any oil the ownership or right to which is exempt from taxation.

25 (b) The surcharge imposed by (a) of this section is in addition to and shall be
26 paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150; and is in
27 addition to the surcharge imposed by AS 43.55.201 - 43.55.231.

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

30 **Sec. 43.55.310. USE OF REVENUE DERIVED FROM SURCHARGE.** The
31 legislature may appropriate the annual estimated balance of the account maintained

1 under AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge
2 levied under AS 43.55.300 to the oil and hazardous substances release contingency and
3 abatement account in the oil and hazardous substance release prevention and response
4 fund established by AS 46.08.010.

5 * Sec. 8. AS 43.55.900(15) is amended to read:

6 (15) "surcharge" means

7 (A) when used in AS 43.55.201 - 43.55.231, the surcharge
8 levied by AS 43.55.201 [AS 43.55.200];

9 (B) when used in AS 43.55.300 - 43.55.310, the surcharge
10 levied by AS 43.55.300;

11 * Sec. 9. AS 46.08.005 is amended to read:

12 Sec. 46.08.005. PURPOSE. The legislature finds and declares that the release
13 of oil or hazardous substances into the environment presents a real and substantial
14 threat to the public health and welfare, to the environment, and to the economy of the
15 state. The legislature therefore concludes that it is in the best interest of the state and
16 its citizens to provide a [READILY AVAILABLE] fund containing two accounts.
17 Within the fund,

18 (1) one account consists of money readily available to the
19 commissioner for the payment of the expenses incurred by the Department of
20 Environmental Conservation during an emergency first response to a release or
21 threatened [AND THE DEPARTMENT OF TRANSPORTATION AND PUBLIC
22 FACILITIES IN THE PROTECTION OF THE ENVIRONMENT OF THE STATE
23 FROM THE] release of oil or hazardous substances and for related purposes
24 intended to address those releases;

25 (2) the other account consists of money that the state may use
26 during a response to a release or threatened release of oil or a hazardous
27 substance, other than a discharge described in (1) of this subsection, to pay the
28 expenses of making preparations for the possibility of a release or threatened
29 release of oil or hazardous substances, to reduce the amount, degree, or intensity
30 of a release or threatened release, and for other related purposes identified in law
31 [OR HAZARDOUS SUBSTANCES].

1 * Sec. 10. AS 46.08.010(a) is amended to read:

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

5 (1) the oil and hazardous substances release contingency and
6 abatement account;

7 (2) the response account.

8 * Sec. 11. AS 46.08.010(b) is amended to read:

9 (b) Money from an appropriation made to an account in the fund remaining
10 in that account [THE FUND] at the end of a fiscal year does not lapse and remains
11 available for expenditure in successive fiscal years.

12 * Sec. 12. AS 46.08.010(c) is amended to read:

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

17 * Sec. 13. AS 46.08.020 is amended to read:

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

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

24 (2) money recovered or otherwise received from parties responsible for
25 the containment and cleanup of oil or a hazardous substance at a specific site for the
26 costs of the containment and cleanup incurred by the state, a municipality, or a
27 village, to the extent that the money recovered or otherwise received had been
28 paid out of the oil and hazardous substances release contingency and abatement
29 account, but excluding

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

1 (B) money [FUNDS] from performance bonds and other forms
2 of financial responsibility held in escrow pending satisfactory performance of
3 a privately financed response action; and
4 (3) finances, penalties, or damages recovered [UNDER AS 46.08.005 -
5 46.08.080 OR OTHER LAW] for costs incurred by the state as a result of the release

6 or threatened release of oil or a hazardous substance, but excluding
7 (A) fines, penalties, or damages recovered or otherwise
8 received due to a discharge the costs of containment and cleanup of which
9 were paid from the account established in AS 46.08.025; and
10 (B) money described in (2) of this subsection;
11 (4) interest accrued on
12 (A) the balance of the fund;
13 (B) the account maintained under AS 37.05.142 for deposits
14 into the general fund from the proceeds of the surcharge levied under
15 AS 43.55.201; and
16 (C) the oil and hazardous substances release contingency
17 and abatement mitigation account described in (b) of this section;
18 (5) fees for services collected under AS 44.46.025(a)(8), to the extent
19 those fees involve certification of laboratories conducting environmental analyses
20 of oil or hazardous substances or other related analyses required by the
21 department; and
22 (6) fees collected by the department for the registration of oil spill
23 response action contractors under AS 46.04.035.
24 (b) Money received by the state under (a)(2) - (6) [(a)(2) AND (a)(3)] of this
25 section shall be deposited in the general fund and credited to a special account called
26 the "oil and hazardous substances [SUBSTANCE] release contingency and
27 abatement mitigation account." The legislature may annually appropriate to the oil
28 and hazardous substances release contingency and abatement account in the fund
29 from the oil and hazardous substances release contingency and abatement
30 mitigation [THIS] account a sum equal to the amount received under (a)(2) - (6)
31 [(a)(2) AND (a)(3)] of this section during the calendar year preceding the legislative

1 session in which the appropriations are to be made.

2 * Sec. 14. AS 46.08 is amended by adding a new section to read:

3 Sec. 46.08.025. FINANCING OF THE RESPONSE ACCOUNT. (a) The
4 legislature may appropriate from the following sources to the response account in the
5 fund:

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

8 (2) money recovered or otherwise received from parties responsible for
9 the containment and cleanup of a catastrophic oil discharge or a discharge for the
10 containment and cleanup of which the governor issued an administrative order under
11 AS 46.08.045(a)(2), for the costs of the containment and cleanup incurred by the state,
12 a municipality, or a village, but excluding money from performance bonds and other
13 forms of financial responsibility held in escrow pending satisfactory performance of
14 a privately financed response action;

15 (3) fines, penalties, or damages recovered for costs incurred by the state
16 as a result of a catastrophic oil discharge or a discharge for the containment and
17 cleanup of which the governor issued an administrative order under
18 AS 46.08.045(a)(2).

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

25 * Sec. 15. AS 46.08.040(a) is amended to read:

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

30 (1) from the response account in the fund, when authorized by
31 AS 46.08.045, to

1 (A) [(1)] investigate and evaluate the release or threatened
2 release of oil or a hazardous substance, and [CONTAIN, CLEAN UP, AND]
3 take containment and cleanup and other necessary action, such as monitoring
4 and assessing, to address a release or threatened release of oil or a hazardous
5 substance that poses an imminent and substantial threat to the public health or
6 welfare, or to the environment;

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

8 (A) ESTABLISH AND MAINTAIN THE OIL AND
9 HAZARDOUS SUBSTANCE RESPONSE OFFICE;

10 (B) REVIEW OIL DISCHARGE PREVENTION AND
11 CONTINGENCY PLANS SUBMITTED UNDER AS 46.04.030;

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

21 (D) VERIFY OR ESTABLISH PROOF OF FINANCIAL
22 RESPONSIBILITY REQUIRED BY AS 46.04.040;

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

28 (4) provide matching funds in the event of an oil release for
29 participation

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

31 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive

1 Environmental Response, Compensation, and Liability Act of 1980);

2 **and**

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

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

8 **(A) investigate and evaluate the release or threatened release**
9 **of oil or a hazardous substance, except a release described in**
10 **AS 46.08.045(a), and contain, clean up, and take other necessary action,**
11 **such as monitoring and assessing, to address a release or threatened**
12 **release of oil or a hazardous substance, except a release described in**
13 **AS 46.08.045(a);**

14 **(B) recover the costs to the state, a municipality, or a village**
15 **of a containment and cleanup resulting from the release or the threatened**
16 **release of oil or a hazardous substance, except a release described in**
17 **AS 46.08.045(a);**

18 **(C) pay all costs incurred to**

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

21 **(ii) review oil discharge prevention and contingency**
22 **plans submitted under AS 46.04.030;**

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

30 **(iv) verify or establish proof of financial**
31 **responsibility required by AS 46.04.040;**

1 (D) pay the expenses incurred by the division of emergency
2 services for

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

4 and

5 (ii) the oil and hazardous substance response depots;

6 (E) pay, when presented with appropriate documentation by
7 the Alaska State Emergency Response Commission, expenses incurred by
8 the commission for

9 (i) its activities, including staff support, when the
10 activities and staff support relate to oil or hazardous substances;

11 and

12 (ii) the costs of being prepared for and responding to
13 a request by the department for support in activities that relate to
14 response to and restoration of the effects of an oil or hazardous
15 substance release;

16 (F) provide matching funds in the event of the release of oil
17 or a hazardous substance, except a catastrophic oil release or a release for
18 the containment and cleanup of which the governor issued an
19 administrative order under AS 46.08.045(a)(2), for participation

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

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

23 (G) [(6)] prepare, review, and revise

24 (i) [(A)] the state's master oil and hazardous substance
25 discharge prevention and contingency plan required by AS 46.04.200;
26 and

27 (ii) [(B)] a regional master oil and hazardous substance
28 discharge prevention and contingency plan required by AS 46.04.210;
29 and

30 (H) [(7)] restore the environment by addressing the effects of
31 an oil or hazardous substance release.

1 * Sec. 16. AS 46.08.040(a)(2)(E) is repealed and reenacted to read:

2 (E) pay, when presented with appropriate documentation by the
3 Department of Military and Veterans' Affairs, expenses incurred by the
4 Department of Military and Veterans' Affairs for

5 (i) Alaska State Emergency Response Commission
6 activities, including staff support, when the activities and staff support
7 relate to oil or hazardous substances; and

8 (ii) the costs to the Department of Military and
9 Veterans' Affairs of being prepared for and responding to a request by
10 the department for support in activities that relate to response to and
11 restoration of the effects of an oil or hazardous substance release;

12 * Sec. 17. AS 46.08.040(c) is amended to read:

13 (c) Notwithstanding other provisions of this section, money from the fund may
14 not be used for a purpose specified in (a)(1)(B) and (C) or (a)(2) [(a)(2) - (7) AND
15 (d)(2)] of this section unless money is available from an appropriation made
16 specifically for that purpose.

17 * Sec. 18. AS 46.08.040(d) is amended to read:

18 (d) Upon a request from

19 [(1)] the Alaska Legislative Council, the commissioner shall use money
20 from the fund to reimburse the Alaska Legislative Council for expenditures that it
21 makes for the operation of the Citizens' Oversight Council on Oil and Other
22 Hazardous Substances, established under AS 24.20.600 [; AND

23 (2) THE COMMISSIONER OF TRANSPORTATION AND PUBLIC
24 FACILITIES, THE COMMISSIONER SHALL TRANSFER MONEY FROM THE
25 FUND TO THE DEPARTMENT OF TRANSPORTATION AND PUBLIC
26 FACILITIES TO PAY FOR THE CONSTRUCTION OR REFURBISHMENT OF
27 ONE OR MORE VESSELS OF THE ALASKA MARINE HIGHWAY SYSTEM
28 THAT HAVE THE CAPABILITY TO ASSIST IN RESPONDING TO SPILLS OF
29 OIL AND HAZARDOUS SUBSTANCES; IN EXPENDING MONEY IN THE FUND
30 WHOSE USE FOR VESSELS OF THE MARINE HIGHWAY SYSTEM IS
31 AUTHORIZED BY AS 19.65.025 AND THIS PARAGRAPH, THE COMMISSIONER

1 SHALL GIVE PRIORITY TO CONSTRUCTION OF ONE OR MORE NEW
2 VESSELS THAT HAVE THE CHARACTERISTICS REQUIRED BY THIS
3 PARAGRAPH].

4 * **Sec. 19.** AS 46.08 is amended by adding a new section to read:

5 Sec. 46.08.045. USE OF THE BALANCE OF THE RESPONSE ACCOUNT.

6 (a) The commissioner may use money from the response account in the fund to
7 respond to a release or threatened release when

8 (1) the release or threatened release is a catastrophic oil release or
9 catastrophic oil discharge; or

10 (2) the release or threatened release of oil or a hazardous substance
11 presents a threat to the economy, the environment, or public health if

12 (A) within 120 hours of being advised of a release or threatened
13 release, the commissioner prepares and provides to the governor a written
14 report relating to the release or threatened release;

15 (B) not later than 120 hours after the commissioner is advised
16 of the release or threatened release, the governor issues an administrative order
17 approving the commissioner's use of the money in the account; in issuing the
18 administrative order, the governor shall approve or modify and approve the
19 state's response to the release or threatened release as set out in the
20 commissioner's report and may, at any time during the period of the state's
21 response to the release or threatened release, approve, disapprove, or modify
22 action taken or expected to be taken by the department in its use of money in
23 the response account to respond to the release or threatened release.

24 (b) The report of the commissioner required by (a)(2)(A) of this section

25 (1) must summarize

26 (A) the nature and extent of the release;

27 (B) the response action by the state, whether actually taken or
28 expected; and

29 (C) the costs to the state of the action actually taken or expected
30 to be taken; and

31 (2) may provide other information about the discharge that the

1 commissioner believes may be relevant.

2 * Sec. 20. AS 46.08.060(a) is amended to read:

3 (a) The commissioner shall submit a report to the legislature not later than the
4 10th day following the convening of each regular session of the legislature. The report
5 may include information considered significant by the commissioner but must include:

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

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

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

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

20 (5) the projected cost to the department for the next fiscal year of
21 monitoring, operating, and maintaining sites where response has been completed or is
22 expected to be continued during the fiscal year.

23 * Sec. 21. AS 46.08.060(c) is amended to read:

24 (c) In addition to the department's report required under (a) of this section, the
25 governor shall submit a report about use of the fund during the previous fiscal year to
26 the legislature not later than the 10th day following the convening of each regular
27 session of the legislature. In the report, the governor shall describe in detail the
28 governor's use of money from the fund, with separate explanations, by agency, of the
29 activities that were paid for [FUNDED] under the authority of AS 46.08.045
30 [AS 46.08.040(b)].

31 * Sec. 22. AS 46.08.075(a) is amended to read:

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

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

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

20 * Sec. 24. AS 46.08.900(9) is amended to read:

21 (9) "release"

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

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

26 (i) a permitted release; or

27 (ii) an act of nature;

28 * Sec. 25. AS 46.08.900(11) is amended to read:

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

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

1 reference to which is deleted by sec. 1 of this Act, is not an expenditure.

2 * Sec. 31. SURCHARGE IMPOSED BY AS 43.55.201 - 43.55.231 NOT LEVIED. In
3 addition to the circumstances set out in AS 43.55.231, the surcharge authorized by
4 AS 43.55.201 is not levied on or after the effective date of this section if

5 (1) the Eighteenth Alaska State Legislature does not, during the Second
6 Regular Session or during any special session held before the effective date of this section,
7 appropriate at least an amount equal to the balance, on the day before the effective date of this
8 section, of the former spill reserve referred to in AS 29.60.510(b), to the response account in
9 the oil and hazardous substance release prevention and response fund; or

10 (2) the governor vetoes or reduces the amount appropriated under (1) of this
11 section.

12 * Sec. 32. TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION
13 SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1994, AND
14 BEFORE THE EFFECTIVE DATE OF THIS SECTION. After June 30, 1994, and before the
15 effective date of this section, every producer of oil who is required by AS 43.55.200 -
16 43.55.240, repealed by this Act, to pay the oil conservation surcharge of \$.05 per barrel of oil
17 shall pay that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply
18 to the amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts
19 received after June 30, 1994, and before the effective date of this section, if so appropriated
20 by the legislature and notwithstanding any other provision of law relating to the deposit of and
21 accounting for those receipts,

22 (1) on the effective date of this section, the commissioner of revenue shall
23 allocate

24 (A) 50 percent of the amount received to the response account
25 established by AS 46.08.010(a)(2), as amended by sec. 10 of this Act; and

26 (B) 50 percent of the amount received to the oil and hazardous
27 substances release contingency and abatement account established by
28 AS 46.08.010(a)(1), as amended by sec. 10 of this Act; and

29 (2) the allocations made under (1) of this section are credited to the respective
30 accounts for purposes of determination of the suspension and reimposition of the surcharge
31 under AS 43.55.221 and 43.55.231, added by secs. 5 and 6 of this Act.

1 * **Sec. 33.** Section 16 of this Act takes effect on the effective date of a version of Senate
2 Bill 33 enacted by the Eighteenth Alaska State Legislature transferring the Alaska State
3 Emergency Response Commission from the Department of Environmental Conservation to the
4 Department of Military and Veterans' Affairs.

5 * **Sec. 34.** Except as provided in sec. 33 of this Act, this Act takes effect July 1, 1994.