

HOUSE CS FOR CS FOR SENATE BILL NO. 215(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/6/94
Referred: Rules

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 relating to it; repealing the
3 Citizens' Oversight Council on Oil and Other Hazardous Substances and the
4 authority in law by which marine highway vessels may be designed and
5 constructed to aid in oil and hazardous substance spill cleanup in state marine
6 water using money in the oil and hazardous substance release response fund and
7 repealing the authority of the Department of Environmental Conservation to levy
8 and collect fees for review of certain submissions related to oil; altering
9 requirements applicable to liens for recovery of state expenditures related to oil
10 or hazardous substances; terminating the nickel-per-barrel oil conservation
11 surcharge; levying and collecting two new oil surcharges; and providing for the
12 suspension and reimposition of one of the new surcharges."

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

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

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

5 (1) suspend the provisions of any regulatory statute prescribing
6 procedures for the conduct of state business, or the orders or regulations of any state
7 agency, if compliance with the provisions of the statute, order, or regulation would
8 prevent, or substantially impede or delay, action necessary to cope with the disaster
9 emergency;

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

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

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

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

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

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

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

29 (9) make provisions for the availability and use of temporary
30 emergency housing;

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

1 (1) use money from the oil and hazardous substance release
2 response account in the oil and hazardous substance release prevention and response
3 fund, established by AS 46.08.010, to respond to a declared disaster emergency related
4 to an oil or hazardous substance discharge.

5 * Sec. 2. AS 29.60.500 is amended to read:

6 Sec. 29.60.500. PURPOSE AND POLICY. (a) The legislature finds and
7 declares that a major release of oil or hazardous substances into the environment
8 presents a real and substantial threat to the economy and public welfare of the
9 municipalities, [AND] villages, and school districts that are affected by the release
10 and the resultant activities to contain and clean up the release.

11 (b) The legislature concludes that it is in the best interest of the state and its
12 citizens to provide a readily available fund for the payment of the expenses incurred
13 by municipalities, [AND] villages, and school districts to mitigate the social and
14 economic effects that arise out of a major release of oil or hazardous substances and
15 resultant cleanup activities.

16 (c) It is the intent of the legislature and declared to be the public policy of the
17 state that money to defray the cost of social and economic effects on municipalities,
18 [AND] villages, and school districts arising from a major release of oil or a hazardous
19 substance and resultant cleanup activities and to pay for efforts to abate that release
20 will be immediately available upon

21 [(1)] a determination [BY THE GOVERNOR] that the release was
22 sudden and that it exceeds 2,500 barrels of oil, or exceeds an amount of a hazardous
23 substance that when released into the environment presents a real and substantial threat
24 to the economy and public welfare of the municipalities, [OR] villages, or school
25 districts affected by it [;

26 (2) THE DECLARATION BY THE GOVERNOR OF A DISASTER
27 EMERGENCY RELATING TO THE RELEASE; AND

28 (3) A FINDING BY THE GOVERNOR THAT

29 (A) THE RELEASE OF THE OIL OR HAZARDOUS
30 SUBSTANCE INTO THE ENVIRONMENT PRESENTS A REAL AND
31 SUBSTANTIAL THREAT TO THE ECONOMY AND PUBLIC WELFARE

1 OF THE MUNICIPALITIES AND VILLAGES THAT ARE AFFECTED BY
2 THE RELEASE AND BY THE RESULTANT ACTIVITIES TO CONTAIN
3 AND CLEAN UP THE RELEASE; AND

4 (B) IT IS IN THE BEST INTEREST OF THE STATE TO PAY
5 THE EXPENSES INCURRED BY MUNICIPALITIES AND VILLAGES TO
6 MITIGATE THE SOCIAL AND ECONOMIC EFFECTS THAT ARISE OUT
7 OF THE RELEASE OF THE OIL OR THE HAZARDOUS SUBSTANCE
8 AND THE RESULTANT CLEANUP ACTIVITIES].

9 * Sec. 3. AS 29.60.510 is amended to read:

10 Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a)
11 Subject to (b) of this section, the [THE] commissioner may use money from the oil
12 and hazardous substance release prevention and response fund to make grants to a
13 municipality, [OR] village, or school district that is affected by the release or by the
14 response to the release and that demonstrates that the release or response to the release
15 involves extraordinary expenditures that are beyond the reasonable capability of the
16 municipality, [OR] village, or school district to meet from the current revenue sources
17 of the municipality, [OR] village, or school district if

18 [(1) THE GOVERNOR DETERMINES THAT] a release of oil [OR
19 A HAZARDOUS SUBSTANCE] exceeds 2,500 barrels of oil, or if a release of a
20 hazardous substance exceeds an amount of a hazardous substance that, when released
21 into the environment, presents a threat to the economy and public welfare of the
22 municipalities, [AND] villages, and school districts affected by it at least equivalent
23 in effect to the effect of a release of oil in an amount defined by this subsection
24 [PARAGRAPH;

25 (2) THE RELEASE HAS BEEN PROCLAIMED A DISASTER
26 EMERGENCY BY THE GOVERNOR UNDER AS 26.23.020; AND

27 (3) THE GOVERNOR FINDS THAT

28 (A) THE RELEASE OF THE OIL OR HAZARDOUS
29 SUBSTANCE INTO THE ENVIRONMENT PRESENTS A REAL AND
30 SUBSTANTIAL THREAT TO THE ECONOMY AND PUBLIC WELFARE
31 OF THE MUNICIPALITIES AND VILLAGES THAT ARE AFFECTED BY

1 THE RELEASE AND BY THE RESULTANT ACTIVITIES TO CONTAIN
2 AND CLEAN UP THE RELEASE; AND

3 (B) IT IS IN THE BEST INTEREST OF THE STATE TO PAY
4 THE EXPENSES INCURRED BY MUNICIPALITIES AND VILLAGES TO
5 MITIGATE THE SOCIAL AND ECONOMIC EFFECTS THAT ARISE OUT
6 OF THE RELEASE OF THE OIL OR THE HAZARDOUS SUBSTANCE
7 AND THE RESULTANT CLEANUP ACTIVITIES].

8 (b) For each release or threatened release of oil or a hazardous substance

9 (1) for which the commissioner of environmental conservation may,
10 under AS 46.08.045, expend money from the oil and hazardous substance release
11 response account in the fund [DISASTER EMERGENCY DECLARED BY THE
12 GOVERNOR UNDER AS 26.23.020], and subject to agreement with the commissioner
13 of environmental conservation as to the amount of money in the fund that may be used
14 by the department to make grants, the commissioner may expend not more than
15 \$10,000,000 [OF THE BALANCE OF THE FUND THAT IS APPROPRIATED TO
16 THE SPILL RESERVE OR] of the unrestricted balance of the oil and hazardous
17 substance release response account in the fund for grants for purposes described
18 in AS 29.60.520; if [AUTHORIZED UNDER THIS SECTION. IF] the commissioner
19 and the commissioner of environmental conservation do not agree on the amount of
20 money in the response account in the fund that may be used by the department to
21 make grants under AS 29.60.500 - 29.60.599 for release or threatened release of oil
22 or a hazardous substance, the governor shall make the determination;

23 (2) for which money may not be expended from the response
24 account under (1) of this subsection, and subject to appropriation of money in the
25 fund that may be used by the department to make grants, the commissioner may
26 expend not more than the amount appropriated from the oil and hazardous
27 substance release prevention account in the fund for grants for purposes
28 described in AS 29.60.520.

29 (c) Notwithstanding the limitation of AS 37.07.080(e) against the transfer of
30 money between appropriations, when the commissioner and the commissioner of
31 environmental conservation have agreed to the amount of money in the oil and

1 hazardous substance release response account [FUND] that may be used by the
2 department to make grants, or when that determination has been made by the governor,
3 the commissioner of environmental conservation shall promptly transfer that amount
4 to the department for use under AS 29.60.500 - 29.60.599.

5 (d) For money that has been transferred under (c) of this section, if within any
6 one-year period thereafter the commissioner does not use the money to make a grant
7 under AS 29.60.500 - 29.60.599, the commissioner shall [, AT THE DIRECTION OF
8 THE GOVERNOR OR THE REQUEST OF THE COMMISSIONER OF
9 ENVIRONMENTAL CONSERVATION,] return the unexpended amount transferred
10 under (c) of this section to the oil and hazardous substance release response
11 account of the fund.

12 * Sec. 4. AS 29.60.520 is amended to read:

13 Sec. 29.60.520. PURPOSES OF MUNICIPAL IMPACT GRANTS. (a) A
14 grant made under AS 29.60.510 may be made

15 (1) only for

16 (A) provision of subsistence resources on which the residents
17 of the municipality, [OR] village, or school district rely for subsistence needs;

18 (B) the additional costs of a reasonable and appropriate function
19 or service, including administrative expenses for the incremental costs of
20 providing the function or service, limited to:

21 (i) public health and welfare functions and services,
22 including hospital, clinic, and emergency medical services; alcohol,
23 drug abuse, and mental health services; family support services; and the
24 operation of waste disposal systems and water quality improvement
25 systems;

26 (ii) public safety functions and services, including police
27 protection, search and rescue, and fire protection;

28 (iii) public utility functions and services, including the
29 operation of electric generating plants and distribution systems, water
30 supply systems, telephone systems, and fuel distribution systems; and

31 (iv) housing functions and services, limited to leasing or

1 making other arrangements for temporary housing to be occupied by
2 persons associated with containment or cleanup of the release;

3 (C) costs associated with leasing transportation facilities for use
4 in activities associated with the containment or cleanup;

5 (D) costs of repair or replacement of equipment or a capital
6 asset associated with a function or service set out in (B) of this paragraph the
7 useful life of which has been substantially reduced by use associated with the
8 containment or cleanup; and

9 (2) to compensate the municipality, [OR] village, or school district for

10 (A) the reduction of revenue attributable to the release of the
11 oil or hazardous substance; and

12 (B) the actual costs of projects or activities that are delayed or
13 lost because of the efforts of the municipality, [OR] village, or school district
14 responding to the release or associated with the containment or cleanup of oil
15 or the hazardous substance.

16 (b) If money received under this section is used for a capital expenditure, the
17 commissioner may require the municipality, [OR] village, or school district that
18 acquired the item as a capital expenditure to transfer it to the state at the end of the
19 period during which the item is actually used for spill response if the commissioner
20 finds that retention of the item would confer an inappropriate benefit on the
21 municipality, [OR] village, or school district.

22 * Sec. 5. AS 29.60.530 is amended to read:

23 Sec. 29.60.530. CRITERIA TO EVALUATE GRANT APPLICATIONS. (a)

24 In determining whether an expenditure or proposed expenditure by a municipality,
25 [OR] village, or school district is eligible for a grant under AS 29.60.510, the
26 department shall consider

27 (1) the degree to which the effect on the municipality, [OR] village, or
28 school district is directly caused by the oil or hazardous substance release or the
29 response to the release;

30 (2) the availability of money to the recipient from other sources that
31 can meet the costs of providing the functions or services; and

1 (3) the severity of the effect addressed in the grant application.

2 (b) The department may reject an application for a grant under AS 29.60.510
3 or approve an application for a grant in an amount that is less than the amount
4 requested by a municipality, [OR] village, or school district if the department
5 determines that payment of the amount requested is not warranted under (a) of this
6 section.

7 (c) The department shall adopt, by regulation, criteria by which to rank all or
8 a portion of applications for the purpose of establishing the priority order of awarding
9 grants if money requested by eligible municipalities, [AND] villages, and school
10 districts under this section exceeds the amount available. The criteria must be based
11 on the elements set out in (a) of this section. If the total amount of money requested
12 by eligible municipalities, [AND] villages, and school districts under this section
13 exceeds the amount available, the department shall rank applications for the purpose
14 of establishing the priority order of awarding grants in accordance with the regulations.

15 * Sec. 6. AS 29.60.540(b) is amended to read:

16 (b) Money received by a municipality, [OR] village, or school district under
17 AS 29.60.500 - 29.60.599 may not be used for a capital improvement, as that term is
18 defined in AS 46.08.900.

19 * Sec. 7. AS 29.60.560(a) is amended to read:

20 (a) For each disaster emergency declared by the governor under AS 26.23.020
21 based on a release of oil or a hazardous substance or for each other release of oil or
22 a hazardous substance for which money may be expended under AS 46.08.040, the
23 commissioner, after consulting with and securing the written approval of the attorney
24 general and after consulting with other state agencies, shall

25 (1) make an assessment of the social and economic effects of the
26 release of the oil or hazardous substance;

27 (2) develop a plan to

28 (A) recover the cost of release-related expenditures; and

29 (B) mitigate the social and economic effects of the release of
30 the oil or hazardous substance on the municipalities, the villages, the school
31 districts, and the region in which the discharge occurs.

1 * Sec. 8. AS 29.60.560(e) is amended to read:

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

4 (1) the commissioner and the commissioner of environmental
5 conservation mutually agree that payment may be made from money in the oil and
6 hazardous substance release response account in the oil and hazardous substance
7 release prevention and response fund not transferred under AS 29.60.510(c); or

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

9 * Sec. 9. AS 29.60.599(4) is amended to read:

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

12 * Sec. 10. AS 29.60.599(7) is amended to read:

13 (7) "service"

14 (A) means

15 (i) a function performed or service provided by a
16 municipality under a duty or power authorized by this title or by
17 another provision of law authorizing a municipality to perform functions
18 or provide services;

19 (ii) [, OR] a comparable function performed or service
20 provided by a village; or

21 (iii) a function performed or service provided by a
22 school district;

23 (B) includes functions not previously performed and services
24 not previously provided by the municipality or village;

25 * Sec. 11. AS 29.60.599 is amended by adding a new paragraph to read:

26 (9) "school district" has the meaning given in AS 14.30.350.

27 * Sec. 12. AS 37.14.410 is amended to read:

28 Sec. 37.14.410. REIMBURSED EXPENDITURES. (a) Amounts received by
29 the state as reimbursement for expenses related to the Exxon Valdez oil spill incurred
30 by the state on or before December 31, 1992, shall be deposited in the general fund
31 and, except as required under (b) of this section may not be credited to the oil and

1 hazardous substance release mitigation account under AS 46.04.010 or to an account
2 established in AS 46.08.020 or 46.08.025.

3 (b) A percentage of each payment deposited in the general fund under (a) of
4 this section shall be credited to the prevention account established in [OIL AND
5 HAZARDOUS SUBSTANCE RELEASE MITIGATION ACCOUNT UNDER
6 AS 46.04.010 OR] AS 46.08.020. That percentage is determined by dividing

7 (1) the amount of the expenses for which the state may be reimbursed
8 under (a) of this section that were paid from the oil and hazardous substance release
9 response fund established under AS 46.08.010, by

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

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

13 Sec. 43.55.201. SURCHARGE LEVIED. (a) Every producer of oil shall pay
14 a surcharge of \$.02 per barrel of oil produced from each lease or property in the state,
15 less any oil the ownership or right to which is exempt from taxation.

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

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

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

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

27 * Sec. 15. AS 43.55 is amended by adding a new section to read:

28 Sec. 43.55.221. SUSPENSION AND REIMPOSITION OF THE
29 SURCHARGE. (a) Not later than 30 days after the end of each calendar quarter, the
30 commissioner of administration shall determine, as of the end of that quarter, the fiscal
31 year's

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

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

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

7 (C) other liabilities of the account;

8 (2) balance of the account maintained under AS 37.05.142 that accounts
9 for the proceeds of the surcharge that are deposited in the general fund;

10 (3) the balance of the response mitigation account established by
11 AS 46.08.025(b) that originated from the sources described in AS 46.08.025(a)(3) and
12 that is available for appropriation to the response account of the fund established in
13 AS 46.08.010.

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

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

17 (2) report the sum calculated under (1) of this subsection to the
18 commissioner of revenue.

19 (c) In making the determination required by (a) of this section, the
20 commissioner of administration may not consider money described in (a) of this
21 section that is subject to a dedication imposed by law that restricts the use of the
22 money to a specific purpose for which the response account of the oil and hazardous
23 substance release prevention and response fund established in AS 46.08.010 may not
24 be lawfully expended.

25 (d) If the commissioner of administration reports that the sum reported under
26 (b) of this section equals or exceeds \$50,000,000, the commissioner of revenue shall
27 suspend imposition and collection of the surcharge levied and collected under
28 AS 43.55.201. Suspension of the imposition and collection of the surcharge begins on
29 the first day of the calendar quarter next following the commissioner's receipt of the
30 commissioner of administration's report under (b) of this section. Before the first day
31 of a suspension authorized by this subsection, the commissioner shall make a

1 reasonable effort to notify all persons who are known to the department to be paying
2 the surcharge under AS 43.55.201 that the surcharge will be suspended.

3 (e) Except as provided in AS 43.55.231, if the commissioner of administration
4 reports that the sum reported under (b) of this section is less than \$50,000,000, the
5 commissioner of revenue shall require imposition and collection of the surcharge
6 authorized under AS 43.55.201. If the surcharge is not in effect, reimposition of the
7 surcharge begins on the first day of the calendar quarter next following the
8 commissioner's receipt of the commissioner of administration's report under (b) of this
9 section. Before the first day of reimposition of the surcharge authorized by this
10 subsection, the commissioner shall make a reasonable effort to notify all persons who
11 are known to the department to be required to pay the surcharge under AS 43.55.201
12 that the surcharge will be reimposed.

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

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

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

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

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

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

1 (2) the portion of the balance of the response mitigation account
2 established by AS 46.08.025(b) that originated from the recovery of money described
3 in AS 46.08.025(a)(3).

4 * Sec. 17. AS 43.55 is amended by adding new sections to read:

5 Sec. 43.55.299. DEFINITIONS. In AS 43.55.201 - 43.55.299,

6 (1) "response account" means the oil and hazardous substance release
7 response account established in AS 46.08.010(a)(2);

8 (2) "response mitigation account" means the oil and hazardous
9 substance release response mitigation account established in AS 46.08.025(b).

10 ARTICLE 2A. ADDITIONAL CONSERVATION SURCHARGE ON OIL.

11 Sec. 43.55.300. SURCHARGE LEVIED. (a) Every producer of oil shall pay
12 a surcharge of \$.03 per barrel of oil produced from each lease or property in the state,
13 less any oil the ownership or right to which is exempt from taxation.

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

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

19 Sec. 43.55.310. USE OF REVENUE DERIVED FROM SURCHARGE. The
20 legislature may appropriate the annual estimated balance of the account maintained
21 under AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge
22 levied under AS 43.55.300 to the oil and hazardous substance release prevention
23 account in the oil and hazardous substance release prevention and response fund
24 established by AS 46.08.010.

25 * Sec. 18. AS 43.55.900(15) is amended to read:

26 (15) "surcharge" means

27 (A) when used in AS 43.55.201 - 43.55.299, the surcharge
28 levied by AS 43.55.201 [AS 43.55.200];

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

31 * Sec. 19. AS 46.04.010 is amended to read:

1 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The
2 department shall promptly seek reimbursement under AS 46.03.760(e), AS 46.08.070,
3 or from an applicable federal fund, for the expenses it incurs in cleaning up or
4 containing a discharge of oil. If the department obtains reimbursement for a portion
5 of its expenses from a federal fund, the remainder of the expenses incurred may be
6 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by the department
7 under this section shall be deposited in the general fund and credited to

8 (1) the oil and hazardous substance release response mitigation
9 account established under AS 46.08.025(b); the amount required to be deposited
10 under this paragraph shall represent the proportion of the expenses recovered
11 that were originally paid for from the oil and hazardous substance release account
12 established under AS 46.08.010(a)(2); or

13 (2) [A SPECIAL ACCOUNT CALLED] the ["] oil and hazardous
14 substance release prevention mitigation account established under AS 46.08.020(b);
15 the amount required to be deposited under this paragraph is the amount of
16 money recovered that exceeds the amount payable to the response mitigation
17 account under (1) of this section ["].

18 * Sec. 20. AS 46.08.005 is amended to read:

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

25 (1) one account consists of money readily available to the
26 commissioner for the payment of the expenses incurred by the Department of
27 Environmental Conservation during a response to a release or threatened [AND
28 THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES IN THE
29 PROTECTION OF THE ENVIRONMENT OF THE STATE FROM THE] release of
30 oil or hazardous substances when authorized by AS 46.08.045 and for related
31 purposes intended to address those releases;

1 (2) the other account consists of money that the state may use
2 during a response to a release of oil or a hazardous substance, other than one
3 described in (1) of this subsection, and to a threatened release of oil or a
4 hazardous substance, to pay the expenses of making preparations for the
5 possibility of a release or threatened release of oil or hazardous substances, to
6 reduce the amount, degree, or intensity of a release or threatened release, and for
7 other related purposes identified in law [OR HAZARDOUS SUBSTANCES].

8 * Sec. 21. AS 46.08.010(a) is amended to read:

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

12 (1) the oil and hazardous substance release prevention account;

13 (2) the oil and hazardous substance release response account.

14 * Sec. 22. AS 46.08.010(b) is amended to read:

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

18 * Sec. 23. AS 46.08.010(c) is amended to read:

19 (c) The fund shall be used for actual expenses incurred under AS 46.08.040.
20 Except as provided in AS 46.08.040(a)(2)(D) for the acquisition, repair, or
21 improvement of assets as preparedness measures [AS 46.08.040(d)(2)], the fund
22 may not be used for capital improvements.

23 * Sec. 24. AS 46.08.020 is amended to read:

24 Sec. 46.08.020. FINANCING OF THE OIL AND HAZARDOUS
25 SUBSTANCE RELEASE PREVENTION ACCOUNT [FUND]. (a) The legislature
26 may appropriate from the following sources to the prevention account in the fund:

27 (1) the annual estimated balance of the account maintained under
28 AS 37.05.142 for deposits into the general fund of the proceeds of the oil
29 conservation surcharge levied by AS 43.55.300;

30 (2) money received from other state sources, from federal [, STATE,]
31 or other sources, or from a private donor;

1 ~~(3)~~ [(2)] money recovered or otherwise received from parties
2 responsible for the containment and cleanup of oil or a hazardous substance at a
3 specific site, but excluding money

4 (A) [FUNDS] from performance bonds and other forms of
5 financial responsibility held in escrow pending satisfactory performance of a
6 privately financed response action; and

7 (B) described in AS 46.08.025(a)(3);

8 ~~(4)~~ [(3)] fines, penalties, or damages recovered under AS 46.08.005 -
9 46.08.080 or other law for costs incurred by the state as a result of the release or
10 threatened release of oil or a hazardous substance; and

11 (5) the interest earned on the balance of the accounts maintained
12 under AS 37.05.142 for deposits into the general fund from the proceeds of the
13 surcharges levied under AS 43.55.201 and 43.55.300.

14 (b) Money received by the state under (a)(2) - (5) [(a)(2) AND (a)(3)] of this
15 section shall be deposited in the general fund and credited to a special account called
16 the "oil and hazardous substance release prevention mitigation account." The
17 legislature may annually appropriate to the prevention account in the fund from the
18 prevention mitigation [THIS] account a sum equal to the amount received under
19 (a)(2) - (5) [(a)(2) AND (a)(3)] of this section during the calendar year preceding the
20 legislative session in which the appropriations are to be made.

21 * Sec. 25. AS 46.08.020 is amended by adding a new subsection to read:

22 (c) The interest earned on the balances of each of the following accounts shall
23 be deposited into the general fund and credited to the prevention account in the fund:

- 24 (1) the prevention account;
25 (2) the prevention mitigation account;
26 (3) the response account; and
27 (4) the response mitigation account..

28 * Sec. 26. AS 46.08 is amended by adding a new section to read:

29 Sec. 46.08.025. **FINANCING OF THE OIL AND HAZARDOUS**
30 **SUBSTANCE RELEASE RESPONSE ACCOUNT.** (a) The legislature may
31 appropriate from the following sources to the oil and hazardous substance release

1 response account in the fund:

2 (1) the annual estimated balance of the account maintained under
3 AS 37.05.142 for deposit into the general fund of the proceeds of the oil conservation
4 surcharge levied by AS 43.55.201;

5 (2) money received from other state sources, from federal or other
6 sources, or from a private donor; and

7 (3) money recovered or otherwise received from parties responsible for
8 the containment and cleanup of oil or a hazardous substance at a specific site for
9 which the state expended money from the former oil and hazardous substance release
10 response fund before the effective date of this section or for which the state expended
11 money from the response account, but excluding

12 (A) money from performance bonds and other forms of
13 financial responsibility held in escrow pending satisfactory performance of a
14 privately financed response action;

15 (B) fines, penalties, and damages described in
16 AS 46.08.020(a)(4).

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

24 * Sec. 27. AS 46.08.040(a) is amended to read:

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

29 (1) from the response account in the fund

30 (A) when authorized by AS 46.08.045, [(1)] to investigate and
31 evaluate the release or threatened release of oil or a hazardous substance, and

1 contain, clean up, and take other necessary action, such as monitoring and
2 assessing, to address a release or threatened release of oil or a hazardous
3 substance that poses an imminent and substantial threat to the public health or
4 welfare, or to the environment;

5 ~~(B)~~ to (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 release of oil or a
27 hazardous substance for which use of the response account is authorized by
28 AS 46.08.045 for participation

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

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

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and

(C) to [(5)] recover the costs to the state, a municipality, [OR] a village, or a school district of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance for which money was expended from the response account;

(2) from the prevention account in the fund,

(A) to investigate and evaluate

(i) any threatened release of oil or a hazardous substance; and

(ii) the release of oil or a hazardous substance, except a release described in AS 46.08.045, and to contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment, except a release described in AS 46.08.045;

(B) to pay all costs incurred

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

(ii) under agreements entered into under AS 46.04.090 or AS 46.09.040;

(iii) to review oil discharge prevention and contingency plans submitted under AS 46.04.030;

(iv) to 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; and

(v) to verify or establish proof of financial responsibility required by AS 46.04.040;

1 (C) to pay, when presented with appropriate documentation
2 by the Alaska State Emergency Response Commission, expenses incurred
3 by the commission for

4 (i) its activities, including staff support, when the
5 activities and staff support relate to oil or hazardous substances;
6 and

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

11 (D) to pay all costs incurred to acquire, repair, or improve
12 an asset having an anticipated life of more than one year and that is
13 acquired, repaired, or improved as a preparedness measure by which the
14 state may respond to, recover from, reduce, or eliminate the effects of a
15 release or threatened release of oil or a hazardous substance;

16 (E) to pay the costs, if approved by the commissioner, that
17 were incurred by local emergency planning committees to carry out the
18 duties assigned them by AS 46.13.080;

19 (F) to provide matching funds in the event of the release of
20 oil or a hazardous substance, except a release of oil for the containment
21 and cleanup of which use of the response account is authorized by
22 AS 46.08.045, for participation

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

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

26 (G) to pay or reimburse the storage tank assistance fund
27 established in AS 46.03.410 for expenditures from that fund authorized by
28 AS 46.03.410(b);

29 (H) to transfer to the Department of Community and
30 Regional Affairs for payment by the commissioner of community and
31 regional affairs of

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(i) municipal impact grants when authorized under AS 29.60.510(b)(2);

(ii) assessments of the social and economic effects of the release of oil or hazardous substances as required by AS 29.60.560 when, in the judgment of the commissioner, the release of oil or a hazardous substance is not one that is described in AS 46.08.045; and

(iii) grants to repair, improve, or replace fuel storage facilities under the bulk fuel system emergency repair and upgrade program;

(I) to recover the costs to the state, a municipality, a village, or a school district of a containment and cleanup resulting from the release or threatened release of oil or a hazardous substance for which money was expended from the prevention account;

(J) to [; (6)] prepare, review, and revise

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

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

(K) to [(7)] restore the environment by addressing the effects of an oil or hazardous substance release.

* Sec. 28. AS 46.08.040(a)(2)(C) is repealed and reenacted to read:

(C) pay, when presented with appropriate documentation by the Department of Military and Veterans' Affairs, the expenses incurred by the Department of Military and Veterans' Affairs for Alaska State Emergency Response Commission activities, including staff support, when the activities and staff support relate to oil or hazardous substances, and for the costs of being prepared for responding to a request by the department for support in response and restoration, but not including the costs of maintaining the

1 response corps and the emergency response depots under AS 26.23.045;

2 * Sec. 29. AS 46.08.040(c) is amended to read:

3 (c) Notwithstanding other provisions of this section, money from the fund may
4 not be used for a purpose specified in (a)(1)(B) or (C) or (a)(2)(B) - (K) [(a)(2) - (7)
5 AND (d)(2)] of this section unless money is available from an appropriation made
6 specifically for that purpose. The legislature may use not more than three percent
7 of the estimated annual balance of the prevention account to make appropriations
8 for the purposes described in (a)(2)(E) of this section.

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

10 Sec. 46.08.045. USE OF THE RESPONSE ACCOUNT. (a) The
11 commissioner may use money from the response account in the fund to respond to a
12 release or threatened release when the governor declares a disaster related to an oil or
13 hazardous substance discharge emergency under AS 26.23.020(c). During the effective
14 period of the disaster emergency, the commissioner may use money from the response
15 account to respond to the disaster emergency.

16 (b) Notwithstanding (a) of this section, money from the response account may
17 be used for the purpose in AS 46.08.040(a)(1)(A) without a declaration under
18 AS 26.23.020(c). However, when exercising authority under this subsection, the
19 commissioner shall, within 120 hours of using money in the response account when
20 authorized by this subsection, provide a written report to the governor and to the
21 Legislative Budget and Audit Committee summarizing the release, the state's actions,
22 both taken and anticipated, the costs of the state's actions, both taken and anticipated,
23 and other information considered appropriate by the commissioner or the governor.
24 The governor may, at any time during the state's response, approve, disapprove, or
25 amend the action.

26 * Sec. 31. AS 46.08.050(b) is amended to read:

27 (b) A [THE] department that is appropriated or allocated money from the
28 fund, either directly or through a reimbursable service agreement with the
29 Department of Environmental Conservation, shall develop procedures governing the
30 expenditure of, and accounting for, money it expends [EXPENDED] from the fund.
31 The Department of Environmental Conservation may not reimburse or pay money

1 to another state agency for the agency's activities under AS 46.08.040 unless the
2 state agency provides to the department the information necessary to complete the
3 report required by AS 46.08.060 [, AND MAY NOT DELAY IMPLEMENTATION
4 OF THIS CHAPTER PENDING THE EFFECTIVE DATE OF THE PROCEDURES].

5 * Sec. 32. AS 46.08.060(a) is amended to read:

6 (a) The commissioner shall submit a report to the legislature not later than the
7 10th day following the convening of each regular session of the legislature. The report
8 may include information considered significant by the commissioner but must include:

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

11 (2) the amount and source of money received and money recovered by
12 or on behalf of the department during the preceding fiscal year under

13 (A) AS 46.08.020; and

14 (B) AS 46.08.025 [AS SPECIFIED IN AS 46.08.020];

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

17 (4) a detailed summary of department activities in responses paid for
18 [FUNDED] by the fund during the preceding fiscal year, including response
19 descriptions and statements outlining the nature of the threat; in this paragraph,
20 "detailed" includes information describing each personal services position and total
21 compensation for that position, each contract in excess of \$10,000 [\$20,000], and each
22 purchase in excess of \$10,000; and

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

26 * Sec. 33. AS 46.08.060(b) is amended to read:

27 (b) As part of the department's on-going identification efforts associated with
28 oil spill or hazardous substance release or waste sites, the commissioner shall include
29 in the report under this section

30 (1) the number [A SUMMARY] of [THE] sites that are included in
31 the department's contaminated sites data base, whether the site is active or closed;

1 and [IDENTIFIED BY THE DEPARTMENT;]

2 (2) a prioritized listing of those sites, both statewide and by
3 community, based on the immediate and long-term threats to the public health or
4 welfare or to the environment [POSED BY THESE SITES; AND

5 (3) THE APPROPRIATE ACTIONS NEEDED TO ABATE THESE
6 THREATS, AND THEIR ESTIMATED COST].

7 * Sec. 34. AS 46.08.060(c) is amended to read:

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

15 * Sec. 35. AS 46.08.070 is amended by adding a new subsection to read:

16 (d) The department shall adopt regulations to implement the cost recovery
17 requirements of (a) and (b) of this section, but may not delay cost recovery actions
18 pending the effective date of the adoption of the regulations.

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

20 (a) The state has a lien for expenditures by the state from the [OIL AND
21 HAZARDOUS SUBSTANCE RELEASE RESPONSE] fund, or from any other state
22 fund, for the costs of response, containment, removal, or remedial action resulting from
23 an oil or hazardous substance release [SPILL], or, with respect to response costs, for
24 the costs of response to a threatened [THE SUBSTANTIAL THREAT OF A] release
25 of oil or a hazardous substance, against all property owned by a person who is
26 determined by the commissioner to be liable for the expenditures under this chapter,
27 AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes
28 interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the
29 expenditures. The state may file an action in a court of competent jurisdiction in order
30 to foreclose on the lien.

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

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

8 * Sec. 38. AS 46.08.900(5) is amended to read:

9 (5) "fund" means the oil and hazardous substance release prevention
10 and response fund;

11 * Sec. 39. AS 46.08.900(9) is amended to read:

12 (9) "release"

13 (A) means any spilling, leaking, pumping, pouring, emitting,
14 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
15 the environment;

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

17 (i) a permitted release; or

18 (ii) an act of nature;

19 * Sec. 40. AS 46.08.900(11) is amended to read:

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

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

23 (B) though not impending, in the judgment of the
24 commissioner

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

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

30 * Sec. 41. AS 46.08.900 is amended by adding new paragraphs to read:

31 (13) "prevention account" means the oil and hazardous substance

1 release prevention account established in AS 46.08.010(a)(1);

2 (14) "prevention mitigation account" means the oil and hazardous
3 substance release prevention mitigation account established in AS 46.08.020(b);

4 (15) "response account" means the oil and hazardous substance release
5 response account established in AS 46.08.010(a)(2);

6 (16) "response mitigation account" means the oil and hazardous
7 substance release response mitigation account established in AS 46.08.025(b).

8 * Sec. 42. AS 46.09.900(8) is amended to read:

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

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

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

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

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

19 * Sec. 43. AS 19.65.025; AS 24.20.600, 24.20.610, 24.20.620, 24.20.630; AS 43.55.200,
20 43.55.210, 43.55.220, 43.55.230, 43.55.240; AS 44.46.025(a)(4) and (5); AS 46.08.040(b),
21 46.08.040(d); and sec. 3, ch. 112, SLA 1989 are repealed.

22 * Sec. 44. TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR
23 PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by
24 sec. 43 of this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b),
25 the reference to which is deleted by sec. 3 of this Act, is not an expenditure.

26 * Sec. 45. SURCHARGE IMPOSED BY AS 43.55.201 - 43.55.231 SUSPENDED AND
27 REIMPOSED. In addition to the circumstances set out in AS 43.55.231, the surcharge
28 authorized by AS 43.55.201 is not levied on and after the effective date of this section and
29 until June 30, 1995, if

30 (1) the Eighteenth Alaska State Legislature does not, during the Second
31 Regular Session or during any special session held before the effective date of this section,

1 appropriate at least an amount equal to the estimated amount, as of the day before the
2 effective date of this section, of the unexpended and unobligated balance of the former oil and
3 hazardous substance release response fund to the response account in the oil and hazardous
4 substance release prevention and response fund; or

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

7 * Sec. 46. TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION
8 SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1994, AND
9 BEFORE THE EFFECTIVE DATE OF THIS SECTION. After June 30, 1994, and before the
10 effective date of this section, every producer of oil who is required by AS 43.55.200 -
11 43.55.240, repealed by this Act, to pay the oil conservation surcharge of \$.05 per barrel of oil
12 shall pay that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply
13 to the amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts
14 received after June 30, 1994, and before the effective date of this section, if so appropriated
15 by the legislature and notwithstanding any other provision of law relating to the deposit of and
16 accounting for those receipts,

17 (1) on the effective date of this section, the commissioner of revenue shall
18 allocate

19 (A) 40 percent of the amount received to the response account
20 established by AS 46.08.010(a)(2), as amended by sec. 21 of this Act; and

21 (B) 60 percent of the amount received to the prevention account
22 established by AS 46.08.010(a)(1), as amended by sec. 21 of this Act; and

23 (2) the allocations made under (1) of this section are credited to the respective
24 accounts for purposes of determination of the suspension and reimposition of the surcharge
25 under AS 43.55.221 and 43.55.231, added by secs. 15 and 16 of this Act.

26 * Sec. 47. Section 28 of this Act takes effect only if a version of Senate Bill 33
27 transferring the Alaska State Emergency Response Commission from the Department of
28 Environmental Conservation to the Department of Military and Veterans' Affairs is enacted
29 by the Eighteenth Alaska State Legislature and becomes law.