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ALASKA

STATE LEGISLATURE

MEMORANDUM

JOHN MANLEY
HOUSE RESOURCES COMMITTEE

4/20/82

RE: SJR 21

PER YOUR REQUEST ATTACHED IS BACKGROUND INFORMATION ON THE
FEDERAL PREEMPTION OF STATE OIL POLLUTION LEGISLATION.



RESA KING
SENATE RESOURCES COMMITTEE

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



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Senate

Committee on Resources

March 4, 1981
1:30 p.m.

Beltz Room
21 - Capitol

MEMBERS PRESENT

Senator Fahrenkamp
Senator Fischer
Senator Mulcahy
Senator Sturgulewski
Senator Eliason
Senator Gilman

Hearing: SJR 21 Relating to federal preemption of state oil pollution legislation.

Ernie Mueller, Commissioner, Department of Environmental Conservation stated that Congressman Biaggi has introduced H.R. 85. This bill is modeled after the Superfund legislation proposed in the previous session of Congress. This legislation would preempt states from establishing oil pollution laws relating to liability and financial responsibility. The bill would also prevent any action from being taken in the state courts for any damages that would be incurred by Alaskans as a result of an oil spill. State and local government officials are best able to address local environmental problems and should be allowed to conduct oil pollution cleanup and restoration. State courts and liability systems have been established in recognition of these special local concerns. He said the Department recommends that everything possible should be done to insure continuation of the State's authority to maintain a spill prevention and clean-up program.

Senator Sturgulewski put forth the motion to move SJR 12 as amended with individual recommendations.

SENATE

COMMITTEE REPORT

3/3/81

FURTHER: None

Date: _____

Mr. President:

The Committee on RESOURCES has had SJR 21

preemption of state oil pollution legislation

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Testimony of the ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
to the SENATE RESOURCES COMMITTEE,
ALASKA LEGISLATURE

on

H.R. 85 (97th Congress, 1st Session)
a bill to provide a comprehensive system of liability
and compensation for oil spill damage and removal costs

March 4, 1981

Superfund legislation, in the form of H.R. 85 has been recently introduced into the 97th Congress by Congressman Biaggi. This bill is modeled after Superfund legislation proposed by Mr. Biaggi in the previous session of Congress. This legislation would preempt states from establishing pollution laws relating to liability financial responsibility, and cleanup funds. In addition, H.R. 85 also prevents any action from being taken in the state courts for any damages described in the bill that would be incurred by Alaskans as a result of an oil spill.

The Department cannot support the blanket preemption provisions contained in H.R. 85. State and local government officials are best able to address local environmental problems, and should be allowed to conduct oil pollution cleanup and restoration to the level they determine is appropriate, not be bound by a distant federal bureaucracy. State courts and liability systems have been established in recognition of these special local concerns, concerns based upon the value of natural resources and the benefits they provide to the State's residents.

The national pollution cleanup fund administered by the U.S. Coast Guard and the Environmental Protection Agency does not always have sufficient funds to cope with each and every spill that occurs in the fifty states;

The U.S. Coast Guard's priorities with regard to spill cleanup are not the same as the state's. Previous experience with the Coast Guard has shown that they may be required to discontinue cleanup operations at an earlier stage than would be chosen by the state or local residents.

This occurred in the recent oil spill from the Japanese ore carrier LEE WANG ZIN. Citing dwindling fund reserves the U.S. Coast Guard stopped cleanup operations and pulled out, leaving a substantial amount of oil still in the water and on the beach. The present cleanup fund that was created as a result of last year's legislation relating to the prevention and control of oil pollution (HB 205) could have immediately been used to provide adequate cleanup of the remaining oil from the LEE WANG ZIN.

The Department recommends that we do all we can to assure continuation of our ability to maintain a spill prevention and clean-up program.

1 FEDERAL OIL SPILL LEGISLATION (July 1979)

2 The federal government has for five years, attempted to establish a
3 federal scheme for the cleanup and compensation for damages of oil spills. During
4 this time many states have set up their own programs, funds, compensation and
5 liability schemes. Many of these programs have proven to be very effective in
6 responding to the problems of oil spills.

7 NCSL believes that if Congress does enact federal law for these same
8 purposes, the Act(s) should be based upon the following principles:

9 1) States should not be preempted from levying their own fees and
10 creating their own liability funds to cover the cost of cleanup and damages
11 from oil spills, nor should states or local governments be preempted from
12 filing suit against any oil spiller to recover for damages to publicly owned
13 resources or for loss of tax revenue due to injury to real or personal property.

14 2) Any oil spiller should be absolutely liable for all costs incurred
15 by federal, state or local government or any private party for the removal
16 of spilled oil discharges in harmful quantities or for any reasonable measures
17 to prevent or reduce damages to public health and welfare.

18 3) If it can be shown that the spill was the result of gross negligence
19 or willful misconduct, or violation of any applicable safety, construction or
20 operating standards, the oil spiller should be liable for the full amount of
21 damages.

22 4) Any federal fund covering damage and cleanup costs should extend to
23 all land-borne as well as water-borne oil discharges in quantities determined
24 to be harmful under the federal Clean Water Act (or determined to be harmful
25 under the federal Clean Water Act) or determined to cause damage to real or

FEDERAL OIL SPILL LEGISLATION

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26 personal property on land.

27 5) Any person claiming to have been damaged by an oil spiller is entitled
28 to file his claim directly to any federal domestic oil spill liability fund.

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30 Senator Fahrenkamp:

31 This is the policy language that NCSL currently has on the
32 books. As I mentioned to you, they will testify on March 11
33 opposition to the preemption portion of H.R. 85. Donna Wise
34 has also scheduled a briefing by the House majority and
35 minority staffs of the Merchant Marine & Fisheries Committee
36 and Coast Guard Subcommittee for legislative reps on March 3rd.
37 I will attend that and keep you up to date.

38 As soon as language is drafted, please have Juneau LIO tele-
39 copy it down.

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41 Cynthia

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