

HB

100

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

TO: Senate Resource Committee Members February 5, 1986

FROM: Senate Resource Committee Staff *M/E*

RE: ^{HB 100} "An Act relating to detention of vessels as security for oil-pollution damages; and clarifying a definition relating to discharge of hazardous substances; and providing for an effective date."

The material in this packet explains this bill. The bill passed the House unanimously and was passed out of Senate Transportation with five "Do Pass" recommendations. The enclosed Resources CS make no policy changes but only corrects a drafting error which referenced a repealed statute.

HOUSE BILL 100

DETENTION OF VESSELS FOR OIL SPILL VIOLATIONS

BEFORE THE ALASKA SENATE

February 27, 1986

11:00 a.m.

PURPOSE

HB 100 makes AS 46.03.770 consistent with itself, and with AS 46.03.760, to assure that the State will have enough "money in hand" to cover any damage done in the event of an oil spill.

BACKGROUND

When enacted, AS 46.03.760 provided for penalties not to exceed \$100,000. In 1976, that statute was amended to remove any ceiling on assessed damages, but AS 46.03.770 retains an outdated reference to AS 46.03.760 and limits to \$100,000 any bond posted in lieu of vessel detention.

This renders § 770 inconsistent with itself, and the reference to 770(b) no longer makes sense.

Under the current law, the State could hold a vessel to secure \$30 million in oil spill damages, but that vessel could leave Alaska after posting a \$100,000 bond. Such a scenario does not provide the type of cost recovery guarantee that adequately protects state interests.

IMPETUS FOR HB 100

This serious discrepancy was discovered when the Greek vessel M/V CEPHEUS went aground near Anchorage, spilling in excess of 300,000 gallons of oil into Alaska waters.

The judge in that matter ruled that a \$20 million bond was necessary (based on the \$20 million financial responsibility requirement elsewhere in the law) because the vessel planned to continue offloading in Alaska waters. Had the vessel planned to simply leave Alaska, he would probably have allowed it to do so after posting the \$100,000 bond.

AS 46.03.770 should have been contemporaneously repealed and reenacted with § 760(b) to provide for a bond not to exceed the maximum amount of damages available under newly enacted 46.03.760 and 46.03.822.

*Sec. 2, amending AS 46.03.826(5), merely restores the original, common sense meaning of the term "owner."



HB106

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the detention of vessels as security for oil-pollution damages and clarification of a definition relating to discharge of hazardous substances. This bill is intended to correct two statutory oversights brought to light as a result of the January 21, 1984 oil spill from the M/V Cepheus.

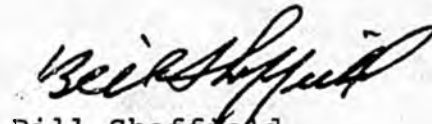
AS 46.03.760, providing for civil actions for pollution, and AS 46.03.770, providing for detention of vessels as security for oil-pollution damages, were both enacted by ch. 120, SLA 1971. As enacted, AS 46.03.760(b) set a maximum of \$100,000 for liquidated damages to be assessed by the court in an oil-pollution case. And, as enacted, AS 46.03.770 provided for the court to release a detained vessel upon posting of a bond set by the court in an amount not to exceed \$100,000. AS 46.03.770 referred to AS 46.03.760(b), and the two \$100,000 provisions were compatible with each other.

However, in 1976, along with other amendments, AS 46.03.760(b) was amended to remove the \$100,000 liquidated damages maximum, but AS 46.03.770 was not correspondingly amended. It has never been amended. This bill seeks to correct that oversight. It removes the reference to \$100,000 and inserts a reference (in two places) to the relevant civil penalty and damages statutes that were enacted and amended after AS 46.03.770 was enacted.

Second, AS 46.03.822 provides for strict liability for the discharge of hazardous substances, including oil, for a person owning or having control over the hazardous substance prior to its discharge. "Owning or having

control over a hazardous substance" is presently defined in AS 46.03.826(5) in a manner which arguably negates the common sense definition of an owner. Section 2 of this bill corrects that problem by eliminating the word "owner" from the statutory definition section, thereby restoring the original meaning of that word.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

~~The bill was originally drafted referring to AS 46.03.760(a)~~

~~(highlighted in pink)~~ The S.R.C. Com. Sub. corrects a technical drafting error ~~and~~ (marked in yellow) to make the statutory references

Introduced: 1/23/85
Referred: Transportation and Resources

The bill is internally consistent with the other references in the bill (marked in pink and the same in both versions.

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE
2 versions.

HOUSE BILL NO. 100

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to detention of vessels as security
7 for oil-pollution damages; clarifying a definition
8 relating to discharge of hazardous substances; and
9 providing for an effective date."

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

11 * Section 1. AS 46.03.770 is amended to read:

12 Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY
13 FOR DAMAGES. A vessel which is used in or in aid of a violation of
14 AS 46.03.740 -- 46.03.750 may be detained after a valid search by the
15 department, an agent of the department, a peace officer of the state,
16 or an authorized protection officer of the Department of Fish and
17 Game. Upon judgment of the court having jurisdiction that the vessel
18 was used in or the cause of a violation of AS 46.03.740 -- 46.03.750
19 with knowledge of its owner or under circumstances indicating that the
20 owner should reasonably have had this knowledge, the vessel may be
21 held as security for payment to the state of the amount of damages
22 assessed by the court under AS 46.03.760(b), and if the damages so
23 assessed are not paid within 30 days after judgment or final deter-
24 mination of an appeal, the vessel shall be sold at public auction, or
25 as otherwise directed by the court, and the damages paid from the
26 proceeds. The balance, if any, shall be paid by the court to the
27 owner of the vessel. The court shall permit the release of the vessel
28 upon posting of a bond set by the court in an amount not to exceed the
29 maximum amount of damages available under ~~AS 46.03.758, 46.03.760, and~~

1 [REDACTED] AS 46.03.822 [\$100,000]. The damages received under this section shall
2 be transmitted to the proper state officer for deposit in the general
3 fund. A vessel seized under this section shall be returned or the
4 bond exonerated if no damages are assessed under AS [REDACTED] 46.03.
5 [REDACTED] or 46.03.822 [46.03.760(b)].

6 * Sec. 2. AS 46.03.826(5) is amended to read:

7 (5) "[OWNING OR] having control over a hazardous substance"
8 means producing, handling, storing, transporting or refining a hazard-
9 ous substance for commercial purposes immediately before entry of the
10 hazardous substance in or upon the waters, surface or subsurface lands
11 of the state, and specifically includes bailees and carriers of a
12 hazardous substance;

13 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
14 10.070(c).

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA, 99811
(907) 485-4907

Senate Committee on Resources

TO: Senate Resource Committee Members February 5, 1986

FROM: Senate Resource Committee Staff *M&E*

RE: "An Act relating to detention of vessels as security for oil-pollution damages; and clarifying a definition relating to discharge of hazardous substances; and providing for an effective date."

The material in this packet explains this bill. The bill passed the House unanimously and was passed out of Senate Transportation with five "Do Pass" recommendations. The enclosed Resources CS make no policy changes but only corrects a drafting error which referenced a repealed statute.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 2/27/86

REQUEST

Bill/Resolution No. : SCS HB 100 (Res)
 Title : Detention of vessels as security
for oil pollution damages
 Sponsor : House Rules for Governor
 Requestor : Senate Resources
 Date of Request : 2/27/86

FISCAL DETAIL

Agency Affected : ADEC
 BRU : Environmental Quality
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS : NONE

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Billie Trent
 Division : Office of the Commissioner

Phone : 465-2600
 Date : 2/27/86

Approved by Commissioner : Bill Ross
 Agency : Department of Environmental Conservation

Date : 2/27/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 12/10/84

REQUEST

Bill/Resolution No.: HB 100

Title: Detention of vessels as security for oil pollution damages

Sponsor: House Rules/Governor

Requestor: Governor

Date of Request: 12/6/84

FISCAL DETAIL

Agency Affected: ADEC

Program Category Affected:

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Billie Trent
Division: Office of the Commissioner

Phone: 465-2600

Date: 12/10/84

Approved by Commissioner: Richard A. Neve
Agency: Environmental Conservation

Date: 12/10/84

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Offered: 2/24/86
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 SENATE CS FOR HOUSE BILL NO. 100 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to detention of vessels as security
7 for oil-pollution damages; clarifying a definition
8 relating to discharge of hazardous substances; and
9 providing for an effective date."

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

11 * Section 1. AS 46.03.770 is amended to read:

12 Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY
13 FOR DAMAGES. A vessel that [WHICH] is used in or in aid of a
14 violation of AS 46.03.740 - 46.03.750 may be detained after a valid
15 search by the department, an agent of the department, a peace officer
16 of the state, or an authorized protection officer of the Department of
17 Fish and Game. Upon judgment of the court having jurisdiction that
18 the vessel was used in, or was the cause of, a violation of AS 46.03.-
19 740 - 46.03.750 with knowledge of its owner or under circumstances
20 indicating that the owner should reasonably have had this knowledge,
21 the vessel may be held as security for payment to the state of the
22 amount of damages assessed by the court under AS 46.03.758, 46.03.760,
23 and 46.03.822. If [AS 46.03.760(b), AND IF] the damages [SO] assessed
24 are not paid within 30 days after judgment or final determination of
25 an appeal, the vessel shall be sold at public auction, or as otherwise
26 directed by the court, and the damages paid from the proceeds. The
27 balance, if any, shall be paid by the court to the own - of the
28 vessel. The court shall permit the release of the vessel upon posting
29 of a bond set by the court in an amount not to exceed the maximum

*11
10
10*

1 amount of damages available under AS 46.03.758, 46.03.760, and
2 46.03.822, [\$100,000]. The damages received under this section shall
3 be transmitted to the proper state officer for deposit in the general
4 fund. A vessel seized under this section shall be returned or the
5 bond exonerated if no damages are assessed under AS 46.03.760
6 or 46.03.822 [AS 46.03.760(b)].

7 * Sec. 2. AS 46.03.826(5) is amended to read:

8 (5) "[OWNING OR] having control over a hazardous substance"
9 means producing, handling, storing, transporting, or refining a
10 hazardous substance for commercial purposes immediately before entry
11 of the hazardous substance in or upon the waters, surface, or
12 subsurface lands of the state, and specifically includes bailees and
13 carriers of a hazardous substance;

14 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
15 10.070(c).

*Senate CS
Had drafting error
repealed statute
U. - House*

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 SENATE CS FOR HOUSE BILL NO. 100 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to detention of vessels as security
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15 search by the department, an agent of the department, a peace officer
16 of the state, or an authorized protection officer of the Department of
17 Fish and Game. Upon judgment of the court having jurisdiction that
18 the vessel was used in, or was the cause of, a violation of AS 46.03.-
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20 indicating that the owner should reasonably have had this knowledge,
21 the vessel may be held as security for payment to the state of the
22 amount of damages assessed by the court under AS 46.03.758, 46.03.760,
23 and 46.03.822. If [AS 46.03.760(b), AND IF] the damages [SO] assessed
24 are not paid within 30 days after judgment or final determination of
25 an appeal, the vessel shall be sold at public auction, or as otherwise
26 directed by the court, and the damages paid from the proceeds. The
27 balance, if any, shall be paid by the court to the owner of the
28 vessel. The court shall permit the release of the vessel upon posting
29 of a bond set by the court in an amount not to exceed the maximum

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3 be transmitted to the proper state officer for deposit in the general
4 fund. A vessel seized under this section shall be returned or the
5 bond exonerated if no damages are assessed under AS 46.03.758, 46.03.-
6 760, or 46.03.822 [AS 46.03.760(b)].

7 * Sec. 2. AS 46.03.826(5) is amended to read:

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12 subsurface lands of the state, and specifically includes bailees and
13 carriers of a hazardous substance;

14 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
15 10.070(c).

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
POUCH O - JUNEAU, ALASKA 99811

Telephone: (907)
Address:
(907) 465-2600

January 27, 1986

JAN 28 1986

The Honorable Arliss Sturgulewski
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

I would like to take this opportunity to thank you and your committee for your consideration and approval of SB 194 on January 17. Your prompt action on our behalf is very much appreciated.

This letter is in reference to HB 100 (detention of vessels for oil spill violations) which is now before your committee for consideration. A copy of that bill is enclosed.

This legislation corrects an oversight which occurred when AS 46.03.760(b) was amended in 1976 to remove any ceiling for assessed oil spill damages. A simultaneous amendment should have been made to AS 46.03.770, removing the ceiling on bond limitations pending damage judgments, but that did not happen.

The effect of that oversight is that, while we could detain a vessel to secure adequate payment for oil spill damages, that vessel could be released after posting the \$100,000 maximum bond now required under § 770.

This serious discrepancy was discovered in January 1984 when the Greek vessel M/V CEPHEUS went aground near Anchorage, spilling in excess of 300,000 gallons of oil into Alaska waters. The State then sought a temporary restraining order and a \$20 million bond under AS 46.04.040. Judge Shortell awarded the requested bond only because the vessel was planning to offload in Alaska waters. Had the vessel planned to simply leave Alaska, he would probably have allowed it to do so after posting the \$100,000 bond.

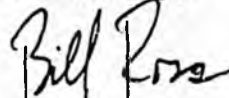
After that decision, the Attorney General's office suggested immediate amendment to § 770. It was stated that:

Section 770 should have been contemporaneously repealed and reenacted [with § 760(b)] to provide for a bond not to exceed the maximum amount of damages available under newly enacted 46.03.760 and 46.03.822. Unfortunately, section 770 was left untouched, but not unaffected, by the 1976 legislative changes.

I trust this summary conveys the importance of this legislation, but please let me know whether you require anything further.

I would greatly appreciate your using your good offices to see that this bill receives a hearing in your committee early enough in the session to help assure that it becomes law this year.

Sincerely,



Bill Ross
Commissioner

Enclosure

cc: Douglas K. Mertz, Esq.
Assistant Attorney General

Mr. James R. Ayers
Director, Legislative Relations
Office of the Governor



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the detention of vessels as security for oil-pollution damages and clarification of a definition relating to discharge of hazardous substances. This bill is intended to correct two statutory oversights brought to light as a result of the January 21, 1984 oil spill from the M/V Cepheus.

AS 46.03.760, providing for civil actions for pollution, and AS 46.03.770, providing for detention of vessels as security for oil-pollution damages, were both enacted by ch. 120, SLA 1971. As enacted, AS 46.03.760(b) set a maximum of \$100,000 for liquidated damages to be assessed by the court in an oil-pollution case. And, as enacted, AS 46.03.770 provided for the court to release a detained vessel upon posting of a bond set by the court in an amount not to exceed \$100,000. AS 46.03.770 referred to AS 46.03.760(b), and the two \$100,000 provisions were compatible with each other.

However, in 1976, along with other amendments, AS 46.03.760(b) was amended to remove the \$100,000 liquidated damages maximum, but AS 46.03.770 was not correspondingly amended. It has never been amended. This bill seeks to correct that oversight. It removes the reference to \$100,000 and inserts a reference (in two places) to the relevant civil penalty and damages statutes that were enacted and amended after AS 46.03.770 was enacted.

Second, AS 46.03.822 provides for strict liability for the discharge of hazardous substances, including oil, for a person owning or having control over the hazardous substance prior to its discharge. "Owning or having

control over a hazardous substance" is presently defined in AS 46.03.826(5) in a manner which arguably negates the common sense definition of an owner. Section 2 of this bill corrects that problem by eliminating the word "owner" from the statutory definition section, thereby restoring the original meaning of that word.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Sheffield", written in a cursive style.

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 12/10/84

REQUEST

Bill/Resolution No.: HB 100
 Title: Detention of vessels as security for oil pollution damages
 Sponsor: House Rules/Governor
 Requestor: Governor
 Date of Request: 12/9/84

FISCAL DETAIL

Agency Affected: ADEC
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Billie Trent Phone: 465-2600
 Division: Office of the Commissioner Date: 12/10/84
 Approved by Commissioner: Richard A. Neve Date: 12/10/84
 Agency: Environmental Conservation

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84