

HB

309



HB 389

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 22, 1988

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
P.O. Box 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 recovery of state costs incurred in containing or cleaning up oil and hazardous substance spills.

This bill is needed because of cases where parties responsible for oil and hazardous substance spills have declared bankruptcy or left the state. The state is left to remove the hazard with little hope of recovering the costs. Clean-up of such discharges can be enormously expensive, running into the millions of dollars on large spills.

Once a state has undertaken that expense, it can seek to recover its costs against the liable party, but if that party has declared bankruptcy or fled, the state might not be able to obtain repayment from the liable party's remaining assets. The U.S. Supreme Court has ruled that in this situation the responsible party's liability to the state is a debt that can be discharged through bankruptcy like any other debt. Ohio v. Kovacs, 469 U.S. 274 (1985).

But the court also noted that a state could protect itself from the effects of a liable party's bankruptcy by enacting a law giving the state a priority lien on the liable party's assets for the state's costs in remedying a hazardous substance problem. This bill is intended to implement the supreme court's suggestion. Many states already have statutes such as this (e.g., Massachusetts [M.G.L.A. c. 21E, sec. 13]; Connecticut [Conn. Genl. Stats. 22a-452a]; Tennessee [T.C.A. 68-46-209]; Louisiana [LSA-RS 30:1149.6]).

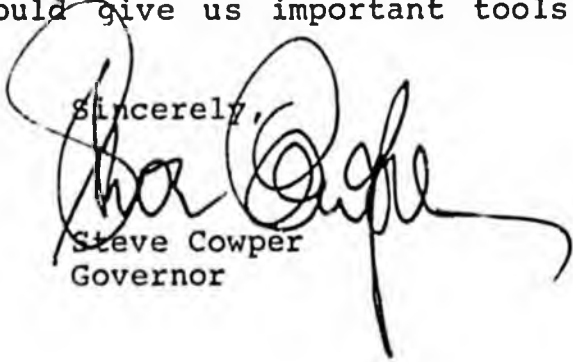
The bill adds a new section to AS 46.08, the chapter on oil and hazardous substance releases. Subsection (a) creates a lien in favor of the state whenever money from the oil and hazardous substance release response fund or any other state fund is used to contain, clean up, or mitigate an oil or hazardous substance spill. The lien would be effective against all property of the persons liable for the spill.

Subsection (b) states the mechanics of enforcing the lien against real property, including a requirement of recording the certificate of lien and giving notice to the liable party and to anyone else with an interest in the property. Subsection (c) contains the important provision that a lien established under the new section takes priority over other liens (except those existing before this bill takes effect), and states the exception for residential real property. As to residential real property, subsec. (d) states that this lien does not have an automatic priority, but only takes precedence over liens filed later. That provision is intended to avoid difficulties with the residential mortgage market, in which lenders might be reluctant to lend for home mortgages if such a mortgage could become secondary to a state lien because of an intervening hazardous substance incident.

Subsection (e) requires the commissioner of the Department of Environmental Conservation to certify that a lien has been reduced or satisfied if payments are made on the liable party's obligation. Subsection (f) permits the owner of property against which such a lien has been asserted to seek a court order removing it. The lien will be released if that person can show that he or she is not liable for the state's costs in a hazardous substance cleanup.

In an era when hazardous substances are an increasing part of our environment, and when the state must safeguard the money available to it for protecting the public health, I believe that this bill would give us important tools. I urge your support of it.

Sincerely,



Steve Cowper  
Governor

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STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: HB 389  
PUBLISH DATE: HOUSE 1/22/88

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Cost Recovery for Hazardous Sub-  
stance Cleanup Expenses  
Sponsor: Rules Committee  
Requestor: Governor

Agency Affected: DEC  
BRU: Environmental Quality  
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The proposal will have no fisca' impact.

Prepared by: Amy Kyle *Wale*  
Division: Commissioner's Office

Phone: 465-2600  
Date: 8 Dec. 87

Approved by Commissioner: *[Signature]*  
Agency: DEC

Date: 9 Dec. 87

Distribution (by preparer):

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

**STATE OF ALASKA  
1988 LEGISLATIVE SESSION**

BILL VERSION: HB 389  
PUBLISH DATE: HOUSE 2/1/88

**FISCAL NOTE**

**REQUEST:**

Revision Date: 29 January 1988  
Title: An Act Relating to Oil and  
Hazardous Substance Cleanup Costs  
Sponsor: Governor  
Requestor: House Resources

Agency Affected: DEC, Dept. of Law  
BRU: DEC/Environmental Quality  
Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS: None**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS : (Attach a separate page if necessary)**

The bill will not increase state expenditures. Over the long run, it will likely decrease state expenditures for spill cleanup.

Prepared by: Amy D. Kyle Phone: 465-2600  
Division: Commissioner's Office Date: 29 January 1988

Approved by Commissioner: Amy D. Kyle / for Date: \_\_\_\_\_  
Agency: Department of Environmental Conservation

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impact Agency (ies)