

H B

293

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: DEC
 Title: An Act increasing civil penalties and removing a cap on total penalties... BRU: _____
 Sponsor: Representative Brown Components: _____
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

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

Approved by Commissioner: *A.D.K.* Date: 4/28/89
 Agency: Department of Environmental Conservation

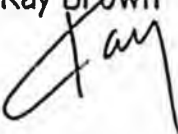
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 Impacted Agency(ies)

Kay Brown

Alaska State Legislature House of Representatives

TO: Representative Cliff Davidson, Co-Chair
Representative Curt Menard, Co-Chair

FROM: Representative Kay Brown

DATE: April 28, 1989 

SUBJ: HB 293/Civil Penalties for Oil Spills

Thank you for scheduling HB 293, legislation that would amend the civil penalty provisions in existing state law to increase civil penalties for oil spills.

The legislation before the Resources Committee today has two fundamental purposes:

- 1) to compensate for the actual but unquantifiable damages attributable to a spill; and
- 2) to provide appropriate incentive through financial penalties for potentially responsible parties to ensure the safe handling of oil and make appropriate response efforts.

As reflected by the statement of legislative findings found in present state statutes regarding civil penalties for the discharge of oil, even minute quantities of oil released into the environment may cause a wide range of serious short- and long-term damages (AS 46.03.758). Some of the more obvious concerns include such things as increased mortalities among larval and juvenile life stages of important commercial fish species; contamination of food chains; or impacts on salmon migration patterns. The Department of Fish and Game and the other state and federal agencies are only now beginning the kinds of investigations that will give insight into the extent of damage that has been done to Prince William Sound.

P. O. Box 20-2661
Anchorage, AK 99520-2661
(907) 272-0207

During Session:
P. O. Box V
Juneau, AK 99811
(907) 465-4998

Unfortunately, the exact nature and extent of oil pollution impacts can not, in many cases, be documented with great certainty or precisely quantified. Moreover, there are a great number of values such as lost recreational opportunities and the impact to Alaska's efforts to attract tourists that also defy quantification. The state's civil penalty provisions are intended to provide compensation for these real but largely unquantifiable impacts, while also providing appropriate incentive for the safe handling of oil.

The current penalties scheme clearly fails to meet either of its fundamental objectives. The Prince William Sound oil spill (and other incidents such as the Cook Inlet oil spill) make it painfully clear that the state's existing oil spill civil penalties are grossly inadequate. Preliminary estimates of the civil penalties that will result from the disaster are on the order of \$14 million, a figure that confirms the inadequacy of existing law to compensate adequately for the disastrous natural resource damages to Prince William Sound. Nor, as is evident from the failure of Exxon and Alyeska to mount a reasonable response effort, does the present penalty scheme provide the kind of incentive needed to ensure safe handling or appropriate response.

HB 293 would increase the civil penalty schedule found in present law to a level that would more appropriately provide both reasonable compensation and the necessary incentive for the safe handling of oil products.

Proposed Committee Substitute

In addition to the statutory changes included in HB 293 as introduced, additional provisions are offered in a proposed Committee Substitute. The proposed CS would include the following provisions:

- Increased base penalty amounts
- elimination of the \$100,000,000 cap on liability in present law
- inclusion of a provision that a five-fold penalty increase would apply where the "discharger did not respond according to an approved contingency plan"
- language to clarify that the credit for removal of oil does not apply to dispersal by way of chemical agent or other means including use of

"biological additives, burning or sinking agents" (Note: dispersal agents do not remove oil at all but rather breaks down, dilutes, or pushes the oil under the surface or into the water column where it continues to create harm.)

- deletion of language in existing law that allows for the reduction or elimination of penalties in the event of "mitigating circumstances"

- additional language to clarify that the state's litigation costs are recoverable

It is important to realize that the current civil penalty provisions in state are a product of a 1977 legislative effort by the Hammond Administration to put in place a meaningful civil penalty provision prior to the start up of Prudhoe Bay. A review of the legislative history of this bill reveals that the legislation originally introduced was the subject of intensive oil industry lobbying that succeeded in severely compromising the bill before it finally achieved passage. The Prince William Sound oil spill makes it abundantly clear that the state's existing civil penalty provisions are completely unacceptable. The proposed CS would address these deficiencies.

* * * * *

Again, I appreciate your scheduling of HB 293. I look forward to the Resource Committee's consideration of this measure.

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FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

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

Approved by Commissioner: A.D.Kyle Date: 4/28/89
 Agency: Department of Environmental Conservation

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

Original sponsors: Brown, M.Davis,
Ellis, et al.

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 293 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil penalties that can be
7 assessed for certain oil discharges; allowing the
8 state to recover full reasonable attorney fees and
9 costs in certain actions; and amending Rule 82,
10 Alaska Rules of Civil Procedure."

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

12 * Section 1. AS 46.03.758(b) is amended to read:

13 (b) No later than the 10th day after the convening of the Second
14 Session of the Sixteenth [TENTH] Alaska State Legislature, the depart-
15 ment shall submit to the legislature regulations establishing the
16 following schedule of fixed penalties for discharges of oil:

17 (1) Subject to (2) of this subsection, the penalties for
18 the following categories of receiving environments may not exceed

19 (A) \$50 [\$10] per gallon of oil which enters an anad-
20 romous stream or other freshwater environment with significant
21 aquatic resources;

22 (B) \$25 [\$2.50] per gallon of oil which enters an
23 estuarine, intertidal, or confined saltwater environment; and

24 (C) \$10 [\$1] per gallon of oil which enters an uncon-
25 fined saltwater environment, public land, or freshwater environ-
26 ment without significant aquatic resources.

27 (2) For discharges of oil which are caused by the gross
28 negligence or intentional act of the discharger, or when the court
29 finds that the discharger did not take reasonable measures to contain

1 and clean up the discharged oil, or where the discharger did not re-
2 spond according to an approved contingency plan, the penalty shall be
3 determined by multiplying the penalty established under (1) of this
4 subsection by a factor of five.

5 * Sec. 2. AS 46.03.758(e) is amended to read:

6 (e) If [AFTER APRIL 19, 1978, IF] a discharge of oil in excess
7 of 18,000 gallons not permitted under applicable state and federal law
8 occurs within the territorial jurisdiction of the state, or into or
9 upon the adjacent outer continental shelf of the state, the following
10 persons, in addition to the person causing or permitting the dis-
11 charge, are jointly and severally liable to the state, in a civil
12 action, for the full amount of penalties established in the regu-
13 lations adopted under this section: [, OR \$100,000,000, WHICHEVER IS
14 LESS,]

15 (1) if the discharge occurs from any commercial or indus-
16 trial facility other than a vessel or offshore platform, the owner,
17 lessee or permittee, and operator of the facility;

18 (2) if the discharge occurs from a vessel,

19 (A) the owner and operator of the vessel; and

20 (B) the owner of the oil carried as cargo on the
21 vessel at the time the vessel was loaded, if the loading occurred
22 within the territorial jurisdiction of the state, or at a deep-
23 water port or other offshore storage facility adjacent to the
24 state; however, if the owner of the oil temporarily transfers
25 ownership of the oil to another person, and the transfer has the
26 purpose or effect of evading the vicarious liability imposed by
27 this section, the transferor will be considered the owner of the
28 oil for the purposes of this subsection; and

29 (3) if the discharge occurs from an offshore platform, the

1 lessee or permittee of the tract or acreage upon which the platform is
2 situated, and the operator of the platform.

3 * Sec. 3. AS 46.03.758(f) is amended to read:

4 (f) The court shall deduct from the penalties for which the
5 person charged is liable under (e) of this section that amount of oil
6 which was removed from the environment as a result of a cleanup opera-
7 tion undertaken in conformity with applicable state and federal law,
8 unless the oil was removed by an agency of state, local or federal
9 government. The dispersal of oil through the use of chemical agents,
10 biological additives, burning or sinking agents, or other means is not
11 considered removal for the purposes of this subsection. The court may
12 estimate the amount of oil removed.

13 * Sec. 4. AS 46.03.758(g) is amended to read:

14 (g) Except as provided in (f) and (j) of this section, the
15 entire penalty specified in the regulations shall be imposed [, EXCEPT
16 THAT A PERSON WHO DISCHARGES OIL INTO A RECEIVING ENVIRONMENT MAY
17 DEMONSTRATE, BY A PREPONDERANCE OF EVIDENCE, THAT MITIGATING CIRCUM-
18 STANCES RELATING TO THE EFFECTS OF THE DISCHARGE WOULD MAKE IMPOSITION
19 OF THE FULL PENALTY INAPPPROPRIATE. IN DETERMINING WHETHER MITIGATING
20 CIRCUMSTANCES EXIST, THE COURT SHALL RECOGNIZE THAT SCIENTIFIC KNOWL-
21 EDGE PERTAINING TO OIL SPILLS IS VERY LIMITED AND IF THERE IS INSUFFI-
22 CIENT KNOWLEDGE EITHER TO PREDICT A BASE CASE OR TO SHOW MITIGATING
23 CIRCUMSTANCES VARYING FROM THAT BASE CASE, THE ADMINISTRATIVELY ESTAB-
24 LISHED SCHEDULE OF PENALTIES SHALL APPLY. IF MITIGATING CIRCUMSTANCES
25 ARE PROVEN BY A PREPONDERANCE OF THE EVIDENCE, THE COURT MAY REDUCE OR
26 TOTALLY ELIMINATE THE PENALTY, IN ACCORDANCE WITH THE PURPOSES OF THIS
27 SECTION].

28 * Sec. 5. AS 46.03.780(a) is amended to read:

29 (a) A person who violates a provision of this chapter, AS 46.04,

1 or AS 46.09, or who fails to perform a duty imposed by this chapter,
2 AS 46.04, or AS 46.09, or violates or disregards an order, permit, or
3 other determination of the department made under the provisions of
4 this chapter, AS 46.04, or AS 46.09, respectively, and thereby causes
5 the death of fish, animals, or vegetation or otherwise injures or
6 degrades the environment of the state is liable to the state for
7 damages, all reasonable attorney fees and costs incurred by the state
8 in collecting the damages, and all reasonable attorney fees and costs
9 incurred by the state in collecting penalties for violations described
10 in this subsection.

11 * Sec. 6. AS 46.03.780(a), as amended by sec. 5 of this Act, has the
12 effect of amending Rule 82, Alaska Rules of Civil Procedure, by allowing
13 the state to recover all reasonable attorney fees and costs in certain
14 actions.

15 * Sec. 7. APPLICABILITY. (a) AS 46.03.758(b), as amended by sec. 1 of
16 this Act, applies to a discharge of oil that occurs on or after the effec-
17 tive date of the regulations required to be submitted to the legislature
18 under AS 46.03.758(b), as amended by sec. 1 of this Act. Regulations
19 adopted under AS 46.03.758 remain in effect until superseded by regulations
20 adopted under AS 46.03.758, as amended by sec. 1 of this Act.

21 (b) AS 46.03.758(e) - (g), as amended by secs. 2 - 4 of this Act,
22 apply to a discharge of oil that occurs on or after the effective date of
23 this Act.