

HB

296

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Office of the Governor
 Title: An Act relating to the Prince William Sound Recovery Authority; ... BRU: Commissions and Special Offices
 Sponsor: Resources Committee Components: _____
 Requestor: House Resource Committee

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		5,000.0	5,000.0	5,000.0	5,000.0	500.0
TOTAL OPERATING		5,000.0	5,000.0	5,000.0	5,000.0	500.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		5,000.0	5,000.0	5,000.0	5,000.0	500.0
FEDERAL FUNDS						
OTHER						
TOTAL		5,000.0	5,000.0	5,000.0	5,000.0	500.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached analysis

Prepared by: Michael A. Nizich, Director *M. Nizich* Phone: 465-3616
 Division: Division of Administrative Services Date: 5/1/89

Approved by Commissioner: Garrey M. Peska *G. Peska* Date: 5/1/89
 Agency: Chief of Staff

Distribution (by preparer):

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

HB 296 Fiscal Analysis:

Due to the complexity of this proposed legislation, it is not possible to accurately assess the cost of the Prince William Sound Recovery Authority. The legislation specifies that the powers and duties of the authority are to be liberally construed to accomplish its purposes.

The Board of Directors consists of the commissioners, or their designees, of Environmental Conservation, Fish and Game, Community and Regional Affairs, Natural Resources, and three public members. In addition to travel and per diem set out in AS 39.20.180, the public members are to receive an honorarium of \$200 per day for each day spent at a meeting of the board, a meeting of a subcommittee, or as a board representative at a public meeting. The authority may establish advisory committees with respect to any facet of its work, to involve the people of the region in policy decisions. The number of days, locations of meetings, and honorarium costs for board member involvement is impossible to predict.

In addition to an Executive Director appointed by the Governor, the authority may employ staff including hearing officers and professional staff. The broad scope of the authority's charge would necessitate a sizable professional staff with expertise in specific fields, varying levels of administrative support staff to prepare the statewide agencies' budgets with respect to the oil spill response, monitor grants awarded by the authority, and provide overall administrative and secretarial support to the professional staff. It is impossible to assess the number of positions that would be required and the appropriate pay ranges.

The authority may contract for evaluation studies of the oil spill consequences and future prevention studies; establish a volunteer system; enter into cooperative agreements with state, federal, and local governments for administration of its power or for approved projects; and enter into contracts to carry out its purposes. In addition, the authority may make grants to further the recovery of the region from direct/indirect results of the oil spill; make compensation awards for direct and indirect damage claims; and provide funds to the Limited Entry Commission for buy-back or rental of permits deemed in excess of the desirable number due to the effects of the oil spill. There is no scientific method to determine an estimated cost for these grants, compensation awards, nor the number/costs of permits

HB 296 Fiscal Analysis (continued):

subject to buy-back or rental. We have concluded that substantial cost will be involved particularly as "indirect damages" could be as far reaching as fishermen/outfitters in Washington and Oregon.

Because of the above mentioned items we are unable to specify what amounts would be allocated to personal services, travel, contractual services, supplies, equipment, etc. All funds are shown within the miscellaneous line.

The legislation provides for a sunset date of June 30, 1993. FY 94 reflects an estimated cost for the authority's wind-down year in personal services and contractual obligations.



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 485-3715

April 25, 1989

Governor Steve Cowper
P.O. Box A
Juneau, Alaska 99811

Re: State Coordination of Data Collection

Dear Governor:

We are extremely concerned about the lack of coordination between the State Departments of Law, Environmental Conservation, Fish & Game, the University of Alaska and other private organizations currently involved in the collection of biological and environmental data related to the Prince William Sound oil spill.

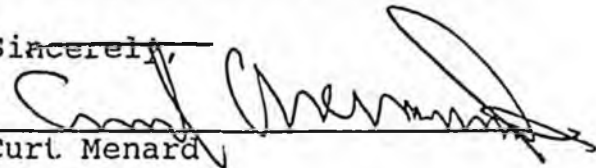
We feel that it is of the utmost importance that the State take immediate coordinated action to define the objectives of data collection efforts from a scientific and legal perspective, identify what information must be collected to meet these objectives, decide who is going to do what and finally facilitate the collection, compilation and dissemination of the data in a single state agency or organization.

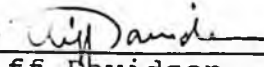
We want to work with you to understand how the direction you are taking on these issues relates to legislative funding, federal funding and receipt of funds from Exxon and other responsible parties.

Lastly, given that we have approximately two weeks left in this legislative session, it is essential that you identify any specific statutory authority which you will need to proceed with recovery and data collection efforts during the interim.

We are in the process of scheduling an executive session of the House Resources Committee to discuss the issue of data coordination with you or a representative from your office, the Commissioners of DEC, DNR and F & G and the Attorney General. We will keep your office informed regarding the scheduling of this session.

Sincerely,


Curt Menard
Co-Chairman


Cliff Davidson
Co-Chairman

cc: Commissioner Dennis Kelso
Commissioner Don Collingsworth
Commissioner Lenny Boston-Gorsuch
Denby Lloyd

6-1190H
Cramer
5/1/89

Original sponsor: Resources Committee

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 296 (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 the Prince William Sound Recovery
7 Authority; imposing a fee on crude oil delivered for
8 marine transportation in Prince William Sound; au-
9 thorizing a rental program for reduction of the
10 number of limited entry permits outstanding in a
11 fishery affected by the oil spill disaster; relating
12 to establishing and maintaining oil spill cleanup
13 services and supplies; and providing for an effective
14 date."

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

16 * Section 1. AS 30 is amended by adding a new chapter to read:

17 CHAPTER 35. PRINCE WILLIAM SOUND RECOVERY AUTHORITY.

18 ARTICLE 1. CREATION AND ORGANIZATION.

19 Sec. 30.35.010. PRINCE WILLIAM SOUND RECOVERY AUTHORITY CREATED.

20 There is created within the Office of the Governor the Prince William
21 Sound Recovery Authority.

22 Sec. 30.35.020. STRUCTURE OF THE AUTHORITY. (a) The authority
23 shall be governed by a board of directors consisting of the commis-
24 sioners, or the delegates of the commissioners, of environmental
25 conservation, fish and game, community and regional affairs, and
26 natural resources, and three public members. The public members shall
27 be appointed by the governor and confirmed by the legislature for
28 staggered terms of two years. A public member, upon expiration of the
29 term, continues to hold office until a successor is appointed. A

1 vacancy shall be filled for the balance of the unexpired term. A
2 public member may not have a direct economic interest in the petroleum
3 industry or in the redevelopment of Prince William Sound. However,
4 one public member may have a limited economic interest in the redevel-
5 opment of the sound.

6 (b) Public members of the board receive an honorarium of \$200
7 for each day spent at a meeting of the board or at a meeting of a
8 subcommittee of the board or at a public meeting as a representative
9 of the board. Members of the board are entitled to per diem and
10 travel allowances as provided by law for members of state boards and
11 commissions.

12 (c) The governor shall appoint the executive director of the
13 authority. The authority may employ additional staff. The executive
14 director, hearing officers, and other professional staff of the au-
15 thority are in the partially exempt service under AS 39.25.120.

16 (d) The governor may remove members of the board for cause.

17 (e) Four members of the board constitute a quorum of the board.
18 Action may be taken by the board at a meeting by the affirmative vote
19 of a majority of the directors.

20 (f) The board shall elect a chair annually and may elect other
21 officers it considers necessary. The board shall meet at the call of
22 the chair or at the request of a majority of members.

23 Sec. 30.35.030. ATTORNEY GENERAL. The attorney general shall
24 act as legal counsel for the authority.

25 Sec. 30.35.040. ADMINISTRATIVE PROCEDURE ACT. The authority may
26 adopt regulations under the Administrative Procedure Act (AS 44.62) to
27 carry out the purposes of this chapter. Hearings held by the author-
28 ity are not subject to AS 44.62.

29 ARTICLE 2. PURPOSE, POWERS, AND DUTIES.

1 Sec. 30.35.100. PURPOSE. The purpose of the authority is to
2 provide an integrated, holistic response to the short-term and long-
3 term consequences, both direct and indirect, of the oil spill in
4 Prince William Sound, on March 24, 1989, to the people, vegetation,
5 fish, shellfish, animals, land, air, and water of the region.

6 Sec. 30.35.110. CONSTRUCTION OF POWERS AND DUTIES. The powers
7 and duties of the authority shall be liberally construed to further
8 the accomplish' ant of its purposes.

9 Sec. 30.35.120. IDENTIFICATION OF REGION. The authority shall,
10 by regulation, identify the region included within its jurisdiction.
11 The authority shall include within the boundaries the land and water
12 directly affected by the oil spill and may, to accomplish its pur-
13 poses, include land and water indirectly affected by the spill.

14 Sec. 30.35.130. DUTIES FOR RECOVERY OF THE REGION. (a) The
15 authority shall gather information relating to the environmental
16 safety of the region, the causes of the oil spill on March 24, 1989,
17 and of other risks to environmental quality. The authority shall make
18 recommendations to appropriate public and private bodies regarding
19 emergency planning and preventive measures.

20 (b) The authority shall prepare, adopt, and revise a long-term
21 optimum remedial plan for the recovery of the region from the effects
22 of the oil spill. The plan shall include methods to bring about the
23 recovery or replacement of the plant and animal life in the land, air,
24 and waters of the region affected by the oil spill and to assist the
25 people of the region to bring about an economic recovery and, if
26 needed, to maintain and recover physical and mental health. In
27 preparing and revising the plan, the authority shall assess the full
28 range of the consequences of the spill and may contract with others to
29 prepare studies. The authority shall report to the legislature on the

1 plan and revisions to the plan not later than the 10th day of each
2 legislative session.

3 (c) The authority shall implement the plan through an optimum
4 remedial program.

5 Sec. 30.35.140. POWERS. The authority may

6 (1) accept gifts, grants, or loans from, and enter into
7 contracts of other transactions regarding them, with any person;

8 (2) enter into contracts with the United States, another
9 state, or a person, and subject to the laws of the United States and
10 subject to the concurrence of the legislature, with a foreign country
11 or its agencies, to carry out its purposes;

12 (3) hold hearings and resolve claims for losses caused
13 directly or indirectly by the oil spill disaster;

14 (4) make grants to further the recovery of the region from
15 the direct and indirect results of the oil spill disaster;

16 (5) perform studies or contract with others to perform
17 studies monitoring and assessing the consequences of the oil spill
18 disaster, and concerning the causes, appropriate remedies for, methods
19 for assessing damages from, and future prevention of oil spill disas-
20 ters;

21 (6) make recommendations to federal, state, and local
22 governments concerning matters related to its purposes;

23 (7) sue and be sued.

24 Sec. 30.35.150. PUBLIC PARTICIPATION. The authority shall
25 involve the people of the region in the policy decisions respecting
26 its purposes. The authority shall establish a seven member advisory
27 committee composed of representatives of the subregions that were most
28 severely affected by the oil spill disaster. The authority may estab-
29 lish other advisory committees with respect to any facet of its work.

1 Membership on advisory committees may be drawn from individuals,
2 businesses or other groups, and representatives of local, state, and
3 federal agencies.

4 Sec. 30.35.160. STATE AND FEDERAL COORDINATION. (a) The au-
5 thority is the state agency responsible for all state activities
6 related to the oil spill disaster. Notwithstanding powers and duties
7 assigned to other state agencies, the authority shall direct the
8 state's response to the disaster and shall prepare the budget request
9 for the money needed by all departments involved in the recovery
10 effort.

11 (b) The authority may make recommendations to the legislature,
12 federal agencies, and to the Congress with respect to all matters
13 relative to its purposes.

14 (c) The authority may enter into a cooperative agreement with an
15 agency of the state, federal, or local government for the administra-
16 tion of its powers or for a project authorized by the authority.

17 Sec. 30.35.170. TRAINING AND EDUCATION PROGRAMS. The authority
18 may offer, coordinate, or sponsor educational and training programs,
19 counseling services, and technical assistance to people affected,
20 directly or indirectly, by the oil spill disaster to assist in allevi-
21 ating the effects of the oil spill disaster, to encourage recovery
22 from the disaster, and to ensure that the chance of ill effects from
23 future oil spills is reduced or eliminated.

24 Sec. 30.35.180. FISHERIES. If the authority finds that the
25 welfare of a fishery in the state is adversely affected by the oil
26 spill disaster, the authority may recommend to the Alaska Commercial
27 Fisheries Entry Commission that the number of permits issued for a
28 fishery be reduced. If the authority finds that the number of limited
29 entry permits in a fishery is greater than the desirable number of

1 permits because of the effects of the oil spill disaster on that
2 fishery, the authority may make funds available to the commission for
3 the buy-back program for the fishery under AS 16.43.320 or for the
4 rental program for the fishery under AS 16.43.325.

5 Sec. 30.35.190. VOLUNTEERS. The authority may establish a
6 system for the use of volunteers in its assessment, rehabilitation,
7 and cleanup efforts. A civil action for the negligent, reckless, or
8 intentional acts of a volunteer may not be maintained against the
9 authority or the state.

10 Sec. 30.35.200. CLAIMS FOR COMPENSATION. (a) A person who was
11 damaged directly or indirectly by the oil spill disaster may file a
12 written claim for compensation with the authority. The staff of the
13 authority shall investigate the claim and grant or deny compensation
14 for the damages. The claims staff may make a partial award of compen-
15 sation pending final determination of injury. The claimant may appeal
16 the staff decision to the board of directors. The board may delegate
17 its responsibility for appeals to a hearing officer.

18 (b) An appeal shall be conducted on the record under procedures
19 adopted by the board. Hearings are not subject to the Administrative
20 Procedure Act (AS 44.62). A decision of the board may be appealed to
21 the superior court.

22 (c) The authority shall award compensation for damages that were
23 caused directly or indirectly by the oil spill disaster. The state
24 shall be subrogated to a claim of a person awarded compensation under
25 this section to the extent the person is entitled to receive compensa-
26 tion for the same damages. The authority shall seek reimbursement
27 from the third party. A third party is entitled to receive credit, in
28 an amount equal to the amount the third party has paid to the Depart-
29 ment of Revenue for the transit fee under AS 43.59.010, against the

1 amount the third party owes the authority under this section.

2 Sec. 30.35.210. ENHANCEMENT OR RECOVERY PROJECTS. The authority
3 may award a grant to an applicant for an enhancement or recovery
4 project. The authority shall seek reimbursement for the cost of the
5 project from the persons responsible for the oil spill disaster.

6 ARTICLE 3. FINANCIAL MATTERS.

7 Sec. 30.35.300. PRINCE WILLIAM SOUND RECOVERY ACCOUNT. (a)
8 There is created in the general fund the Prince William Sound recovery
9 account.

10 (b) Notwithstanding any other provision of law, that part of the
11 state's recovery in damages, fines, and civil penalties from the oil
12 spill disaster that is not direct compensation to another state agency
13 for expenses incurred in responding to the oil spill disaster shall be
14 deposited in the account. The legislature may appropriate additional
15 money to the account, including an amount equal to the annual proceeds
16 of the transit fee under AS 43.59.010.

17 (c) The account shall be used to carry out the purposes of this
18 chapter. Money from an appropriation made to the fund remaining in
19 the fund at the end of a fiscal year remains available for expenditure
20 in successive fiscal years.

21 (d) Money recovered as a criminal penalty may not be used to
22 fund compensation or a project for which a person, including the
23 state, may recover actual damages.

24 ARTICLE 4. GENERAL PROVISIONS.

25 Sec. 30.35.990. DEFINITIONS. In this chapter,

26 (1) "authority" means the Prince William Sound Recovery
27 Authority;

28 (2) "board" means the board of directors of the authority;

29 (3) "oil spill disaster" means the disaster following the

1 discharge of oil from the oil tanker Exxon-Valdez in Prince William
2 Sound beginning on March 24, 1989;

3 (4) "region" means the region identified under AS 30.35.-
4 120.

5 * Sec. 2. AS 16.43 is amended by adding a new section to read:

6 Sec. 16.43.325. PERMIT RENTAL PROGRAM. (a) At the request of
7 the Prince William Sound Recovery Authority and if the commission
8 determines that the optimum number of entry permits is less than the
9 number of entry permits outstanding in a fishery because of the af-
10 fects of the oil spill disaster, the commission shall establish and
11 administer an entry permit rental program to reduce the entry permits
12 operating within the fishery. The commission may rent a permit from a
13 permit holder at a rate and for a length of time determined by the
14 commission.

15 (b) For each rental program, the commission shall adopt regula-
16 tions providing for the rental of the entry permits at fair market
17 value. The regulations must establish procedures for the commission
18 to use in determining the length of the rental period. The rental
19 program shall terminate when the number of entry permits is reduced to
20 the optimum.

21 (c) The rental program shall be financed by money made available
22 by the Prince William Sound Recovery Authority.

23 (d) In the section, "oil spill disaster" has the meaning given
24 in AS 30.35.990.

25 * Sec. 3. AS 39.25.120(c) is amended by adding a new paragraph to read:

26 (21) the executive director, hearing officers, and other
27 professional staff of the Prince William Sound Recovery Authority.

28 * Sec. 4. AS 39.50.200(b) is amended by adding a new paragraph to read:

29 (50) Prince William Sound Recovery Authority

1 (AS 30.35.010);

2 * Sec. 5. AS 43 is amended by adding a new chapter to read:

3 CHAPTER 59. FEE ON CRUDE OIL DELIVERED IN PRINCE
4 WILLIAM SOUND FOR MARINE TRANSPORTATION.

5 Sec. 43.59.010. FEE LEVIED. Every person who delivers crude oil
6 to a port for transportation by a vessel that transits the marine
7 waters of Prince William Sound shall pay a fee of \$.40 per barrel of
8 the crude oil delivered, less royalty oil the ownership or right to
9 which is exempt from taxation under this title.

10 Sec. 43.59.020. ADMINISTRATION OF THE FEE. (a) The fee on
11 crude oil shall be paid quarterly. The fee is due on the 20th day of
12 the month following the close of the calendar quarter on crude oil
13 delivered to the port during the preceding calendar quarter. If the
14 fee is not paid before the end of the month in which it becomes due,
15 the fee becomes delinquent.

16 (b) The fee shall be paid by the person delivering the crude oil
17 to the port for transportation.

18 (c) In making settlement with the royalty owner the person
19 paying the fee may deduct the amount of the fee paid on royalty oil,
20 or may at the time the fee becomes due deduct royalty oil equivalent
21 in value to the amount of the fee paid.

22 (d) The fee shall be paid to the department, and the person
23 required to pay the fee shall file with the department at the time the
24 fee is required to be paid a report, under oath, on forms prescribed
25 by or acceptable to the department, giving with other information
26 required, the following:

- 27 (1) the name of the person paying the fee;
- 28 (2) the total volume of the crude oil delivered for trans-
29 portation; and

1 (3) the name of the first purchaser and the price received
2 for the crude oil if sold in the state.

3 (e) Reports by or on behalf of the person required to report
4 under (d) of this section are delinquent the first day following the
5 day the fee is due. Each person required to report under (d) of this
6 section is subject to a penalty of \$1,000 a day for each day during
7 which the report is not filed. The penalty for failure to file a
8 report is in addition to the penalty for delinquent fees under (h) of
9 this section, and is a lien against the assets of the person required
10 to report under (d) of this section.

11 (f) The department may

12 (1) require a person who is obligated to pay the fee due
13 under this chapter, the agent or employee of the person, or the owner
14 or former owner of a royalty interest in crude oil, to furnish addi-
15 tional information that is considered by the department as necessary
16 to compute the amount of the fee;

17 (2) examine the books, records, and files of a person
18 identified in (1) of this subsection;

19 (3) conduct hearings and compel the attendance of witnesses
20 and the production of books, records, and papers of any person identi-
21 fied in (1) of this subsection; and

22 (4) make an investigation or hold an inquiry that is con-
23 sidered necessary to a disclosure of the facts as to the volume of
24 crude oil transported.

25 (g) The department may determine whether or not a report re-
26 quired under this chapter is correct. If a person makes an untrue or
27 incorrect report, or fails or refuses to make a report, the department
28 shall, under regulations prescribed by it, determine the correct
29 amount of crude oil on which the fee is payable and compute the fee.

1 (h) When the fee provided for in this chapter becomes delin-
2 quent, it bears interest at the rate prescribed in AS 43.05.225. If a
3 person fails to make a report required by this chapter within the time
4 prescribed by law for the report, the department shall examine the
5 books, records, and files of the person to determine the amount and
6 value of the crude oil delivered to compute the fee, and the depart-
7 ment shall add to the fee the cost of the examination, together with
8 any penalties accrued.

9 (i) In case of overpayment, duplicate payment, or payment made
10 in error, the department may issue a certificate stating the facts and
11 the amount of the refund to which the person required to pay the fee
12 is entitled. Upon presentation of the certificate to the Department
13 of Administration, the Department of Administration shall issue a
14 warrant for the refund.

15 Sec. 43.59.030. DISPOSITION OF PROCEEDS OF FEE. (a) The com-
16 missioner shall deposit the proceeds of the fee into the general fund.

17 (b) The commissioner of administration shall separately account
18 for all proceeds of the fee deposited into the general fund.

19 Sec. 43.59.040. USE OF REVENUE DERIVED FROM FEE. The legisla-
20 ture may appropriate the annual estimated balance of the account
21 established under AS 43.59.030 to the Prince William Sound recovery
22 account established by AS 30.35.300.

23 Sec. 43.59.050. SUSPENSION AND REIMPOSITION OF THE FEE. (a)
24 Not later than 30 days after the end of each calendar quarter, the
25 commissioner of administration shall determine the cumulative total of
26 money

27 (1) that has been deposited through that calendar quarter
28 into the general fund under AS 43.59.030;

29 (2) expended through that calendar quarter from the Prince

1 William Sound recovery account established in AS 30.35.300.

2 (b) Within 15 days after making the determinations required by
3 (a) of this section, the commissioner of administration shall report
4 to the commissioner the difference between the amount determined under
5 (a)(1) of this section and amount determined under (a)(2) of this
6 section.

7 (c) If the commissioner of administration reports that the
8 difference determined under (b) of this section equals or exceeds
9 \$100,000,000, the commissioner of revenue shall suspend imposition and
10 collection of the fee levied and collected under AS 43.59.010. Sus-
11 pension of the imposition and collection of the fee begins on the
12 first day of the calendar quarter next following the commissioner's
13 receipt of the commissioner of administration's report under (b) of
14 this section. Before the first day of a suspension authorized by this
15 subsection, the commissioner shall make a reasonable effort to notify
16 all persons who are known to the department to be paying the fee under
17 this chapter that the fee will be suspended.

18 (d) Except as provided in AS 43.59.060, if the commissioner of
19 administration reports that the difference determined under (b) of
20 this section is less than \$100,000,000, the commissioner of revenue
21 shall require imposition and collection of the fee authorized under
22 AS 43.59.010. Reimposition of the fee begins on the first day of the
23 calendar quarter next following the commissioner's receipt of the
24 commissioner of administration's report under (b) of this section.
25 Before the first day of reimposition of the fee authorized by this
26 subsection, the commissioner shall make a reasonable effort to notify
27 all persons who are known to the department to be required to pay the
28 fee under this chapter that the fee will be reimposed.

29 Sec. 43.59.060. FEE NOT IMPOSED. The fee authorized by this

1 chapter is not levied during any fiscal year for which the estimated
2 revenue from the fee would be sufficient to restore the balance of the
3 oil spill emergency containment fund on the first day of the fiscal
4 year to at least \$100,000,000, and the legislature does not, during
5 the regular legislative session preceding the first day of the fiscal
6 year, appropriate money from the general fund to the Prince William
7 Sound recovery account sufficient to restore the balance of the oil
8 spill emergency containment fund on the first day of the fiscal year
9 to at least \$100,000,000.

10 Sec. 43.59.100. DEFINITIONS. In this chapter

11 (1) "barrel of oil" has the meaning given in AS 43.55.140;

12 (2) "fee" means the fee levied by AS 43.59.010;

13 (3) "marine waters of Prince William Sound" includes con-
14 tiguous waters of the bays, sounds, estuaries, marshes, inlets,
15 straits, passages, canals of Prince William Sound, the Pacific Ocean
16 and the Gulf of Alaska to the north of a line from Icy Cape to Gore
17 Point and within the territorial limits of the state;

18 (4) "oil" has the meaning given in AS 43.55.140;

19 (5) "ownership or right to which is exempt from taxation"
20 has the meaning given in AS 43.55.140;

21 (6) "vessel" has the meaning given in AS 46.04.120.

22 * Sec. 6. AS 44.66.010(a) is amended by adding a new paragraph to read:

23 (17) Prince William Sound Recovery Authority (AS 30.35.010)

24 -- June 30, 1993.

25 * Sec. 7. AS 46.03.770 is amended to read:

26 Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY
27 FOR DAMAGES. A vessel that is used in or in aid of a violation of
28 AS 46.03.740 - 46.03.750 may be detained after a valid search by the
29 department, an agent of the department, a peace officer of the state,

1 or an authorized protection officer of the Department of Fish and
2 Game. Upon judgment of the court having jurisdiction that the vessel
3 was used in, or was the cause of, a violation of AS 46.03.740 - 46.-
4 03.750 with knowledge of its owner or under circumstances indicating
5 that the owner should reasonably have had this knowledge, the vessel
6 may be held as security for payment to the state of the amount of
7 damages assessed by the court under AS 46.03.758, 46.03.760, and
8 46.03.822. If the damages assessed are not paid within 30 days after
9 judgment or final determination of an appeal, the vessel shall be sold
10 at public auction, or as otherwise directed by the court, and the
11 damages paid from the proceeds. The balance, if any, shall be paid by
12 the court to the owner of the vessel. The court shall permit the
13 release of the vessel upon posting of a bond set by the court in an
14 amount not to exceed the maximum amount of damages available under
15 AS 46.03.758, 46.03.760, and 46.03.822. Except as provided in AS 30.-
16 35.300, the [THE] damages received under this section shall be trans-
17 mitted to the proper state officer for deposit in the general fund. A
18 vessel seized under this section shall be returned or the bond exon-
19 erated if no damages are assessed under AS 46.03.758, 46.03.760, or
20 46.03.822.

21 * Sec. 8. AS 46.04.010 is amended to read:

22 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. Except as
23 provided in AS 30.35, the [THE] department shall promptly seek reim-
24 bursement under AS 46.03.760(e), AS 46.08.070, or from an applicable
25 federal fund, for the expenses it incurs in cleaning up or containing
26 a discharge of oil. If the department obtains reimbursement for a
27 portion of its expenses from a federal fund, the remainder of the
28 expenses incurred may be recovered under AS 46.03.760(e) or AS 46.08.-
29 070. Except as provided in AS 30.35.300, money [MONEY] received by

1 the department under this section shall be deposited in the general
2 fund and credited to a special account called the "oil and hazardous
3 substance release mitigation account".

4 * Sec. 9. AS 46.04.090(a) is amended to read:

5 (a) The department, when feasible, shall enter into contracts
6 with persons or private organizations to provide the personnel, equip-
7 ment, or other services or supplies that [WHICH] may be required to
8 carry out this chapter. Contracts under this section are governed by
9 AS 36.30 (State Procurement Code). When private contracting is not
10 feasible, the department shall [MAY] establish and maintain at ports,
11 harbors, or other locations in the state from which crude oil is
12 regularly transported by vessel and may establish at other locations
13 [,] the cleanup personnel, equipment, and supplies that [WHICH], in
14 its judgment, are necessary to carry out this chapter.

15 * Sec. 10. AS 46.04.090 is amended by adding a new subsection to read:

16 (c) For the marine waters of Prince William Sound, as defined in
17 AS 43.59.100, the department shall contract with the Prince William
18 Sound Recovery Authority for the personnel, equipment, and other
19 services and supplies under this section. The contract is not subject
20 to AS 36.30 (State Procurement Code). The authority may use funds
21 appropriated to the Prince William Sound recovery account under
22 AS 30.35.300 and allocated for this purpose in addition to money made
23 available under this chapter for the recovery of Prince William Sound.

24 * Sec. 11. AS 46.08.020(b) is amended to read:

25 (b) Except as provided in AS 30.35.300, money [MONEY] received
26 by the state under (a)(2) and (a)(3) of this section shall be deposit-
27 ed in the general fund and credited to the special account called the
28 "oil and hazardous substance release mitigation account." The legis-
29 lature may annually appropriate to the fund from this account a sum

1 equal to the amount received under (a)(2) and (a)(3) of this section,
2 other than the amount deposited in the Prince William Sound recovery
3 account, during the calendar year preceding the legislative session in
4 which the appropriations are to be made.

5 * Sec. 12. Notwithstanding AS 30.35.020(a), enacted by sec. 1 of this
6 Act, one of the initial public members of the Prince William Sound Recovery
7 Authority shall be appointed for a term of one year.

8 * Sec. 13. This Act takes effect July 1, 1989.
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IT'S TIME TO GET ORGANIZED

by John Havelock

The time is already long overdue for Alaskans to take charge of the recovery effort in Prince William Sound. The existing departments of state government are not suited to this task. Each was designed to manage some aspect of the ordinary business of government; this is an extraordinary business. The Department of Environmental Conservation, for example, is primarily a regulatory agency, not an operations agency.

Departments are set up to cover a single aspect of government. The disaster calls for an holistic, multidisciplinary effort, encompassing expertise found in many departments and outside government. The Prince William sound disaster is of a magnitude surpassing the reach of government as usual. A new instrumentality of the state, a Prince William Sound Recovery Authority, is required to manage the recovery in all its aspects over the long term.

The restoration of Prince William Sound and related areas of Southcentral Alaska is a long term responsibility and resources and personnel committed exclusively to the disaster as a program are necessary. These costs should not be borne by the regular budget of the state or departments and should have a scope determined only by the scope of the disaster. Already there are signs that other areas of the state are exposed to risk and loss of service because of the draw of this disaster.

We cannot continue to have Exxon and its contractors substituted for the state in taking responsibility for the recovery. A person run over by a drunken driver does not hand over to that driver the primary responsibility for determining the type of medical treatment, the hiring of the doctor and the determination of therapy.

Exxon is there to pay the bills as presented by the state, not to decide on the recovery program. The corporation's conflict of interest is monumental. Exxon's primary concern, as it always was, is to husband the shareholder's resources. This is not to discourage or disparage any effort Exxon may make in mitigation, but it is for the state to decide on the overall assessment of damage and the course of the recovery program. This is our state, not Exxon's, it is our fish, our waters, our plant life, our marine mammals and our people that have been hurt. It is our job to prescribe and carry out the cure.

By the same token this is not a federal task. We are retreating to the old colonial attitude in saying, "let the federal government, or the Coast Guard, or the army, or the Interior Department do it". Further, without sounding too cynical, who do you think has more influence with the federal government, Exxon or the citizens of Alaska?

Least of all should we be worrying about spending a little or a lot of money. The existing state statutes require that Exxon must pay all state costs including environmental restoration, the replenishment of degraded resources, loss of income for individuals and institutions, loss of means of producing income, the loss of economic benefit including the cost of replacement foods for subsistence persons and the state government's administrative costs, without limitation. The hundred million dollar lid is only on the civil fine.

We do what needs to be done and if Exxon balks at paying the bill without litigation, we the people are a state and these are necessary expenditures. We can tax the oil moving through the Sound to pay all our bills until the money is recovered from Exxon.

The State Authority should gear up, using contractual methods wherever feasible to avoid oversizing, to perform three main tasks. First we must take charge of the biosphere recovery effort. Secondly, we need to deal with people needs and the economy. Thirdly, we need to set up our own oil spill security force.

The biosphere recovery effort should be implemented through two functional divisions. We should acquire a staff of biological and oil spill experts, the best from around the world and from our own people for developing damage assessment programs and restoration and recovery programs. Field administration is the second function, implemented by identifying a person with state authority responsible for action on each sector of the battlefield. As the cleanup activity stabilizes, plans should be drawn up for the restoration or replacement of resources and economic rehabilitation. In this function the biologists must be joined by economists and professionals in business administration.

The State Authority should include an administrative system for the quick disposition of preliminary claims. The function of this claim disposition should be not so much to hand out money for loss, though something like first class unemployment insurance should be available to anyone put out of a job by the disaster who is not employed in the recovery. But the larger role should be to recapitalize the persons effected, in much the same way that the SBA did after the Alaska Earthquake. In this case, grants for capitalization make more sense than loans because the spill was not an act of God. Exxon is legally obliged to provide the funds for capital replacement.

Though Exxon's interest is different, it is in the best interest of the state to channel the money into recovery and redevelopment projects rather than liquidated damages which often escape the region. The Authority will be in a position to provide grant and claim disposition or mitigation moneys which may be part of a package with federal loan monies, etc. to provide an enhancement of

environmental or economic benefit in implementation of a long term recovery program.

A collective response is necessary to many injuries, at least for part of the claim, rather than individualized treatment. Interposition is also necessary. Claimants should not be differentially treated because of their superior access to legal or other resources, their interrelationships with the oil industry, etc.. The State should move to head off a lawyer feeding frenzy.

Lastly it is the state that should set up its own spill security force to prevent this from ever happening again. Don't contract out the fire department. Exxon and Alyeska have shown that giving them the sole responsibility is asking the foxes to guard the hen house. Our own regulatory oversight has shown itself as too exposed to industry avoidance or subversion and underfunding. The Coast Guard's efforts show the same weaknesses in spades. Notwithstanding warnings, Administration mandated budget cuts set the Coast Guard's service up for failure. It can happen again.

It is important to get this underway immediately to test the bona fides of Exxon and Alyeska, while they are still in the public limelight. A standby oil tax structure should be put in place.

It is amazing what individual Alaskans have accomplished through their own efforts and out of their own pockets, but they are like workers from the fields rising to the defense of their country with pitchforks and hoes. We are already late to recognize that this is like a war, requiring the mobilization of professionalized forces on a broad scale and for the long pull. A Recovery Authority should be put in place and a funding mechanism set up before the legislature adjourns. It is not too late to show that we Alaskans are in charge of our own destiny.

(The author was Attorney General of Alaska at the time the pipeline project, limited entry and the Native Claims Act were put together.)