

S B

271

HOUSE COMMITTEE REPORT

(9)

Date Referred: May 1, 1989 ⁴ FURTHER REFERRALS:

Date of Committee Action: 5-3-89

The RESOURCES Committee considered:

CS SB 271 (RES) am

CS FOR SENATE BILL NO. 271 (Resources) am

[CIVIL PENALTIES; DISCHARGE OF CRUDE OIL]

"An Act relating to civil penalties for the unpermitted discharge of oil and for the failure to implement an oil discharge contingency plan in response to an unpermitted discharge of crude oil; and removing a maximum limit on civil penalties for discharges of oil."

RECOMMENDATIONS:

[X] be replaced with H CS CS SB 271 (Res) [X] the same title
[] a new title

[] have attached amendment(s)

[X] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

[] fiscal impact _____

[] fiscal note(s) _____

[] zero fiscal note _____

[X] zero fiscal note(s) DEC 4-27-89

[] zero with analysis _____

[] zero fn/analysis _____

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

SIGNING:
(Check approx. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		<input checked="" type="checkbox"/>	
<u>[Signature]</u>		<input checked="" type="checkbox"/>	

[Signature]
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Environmental Conservation
 Title: An Act relating to civil penalties for discharge of unpermitted contaminated oil discharge contingency plan BRU: Environmental Quality
 Sponsor: Senate Special Committee on Oil and Gas Components: Environmental Quality

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-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME		-0-	-0-	-0-	-0-	-0-
TEMPORARY		-0-	-0-	-0-	-0-	-0-

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Dan Easton Phone: 465-2640
 Division: Environmental Quality Date: April 11, 1989

Approved by Commissioner: A D Kuhl Date: 4/13/89
 Agency: Alaska Department of Environmental Conservation

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

*Changes in The Resources CS
 have no fiscal effect. This
 fiscal note is appropriate.*
 page 1 of 1
 4/27/89
 D. Conner

A M E N D M E N T

OFFERED IN THE HOUSE RESOURCES COMMITTEE

BY FURNACE

TO: CSSB 271 (Resources) am

Page 1, line 21:

Delete ": [, OR \$100,000,000, WHICHEVER IS LESS,]"

Insert ", or \$500,000,000, [\$100,000,000] whichever is less: [,]"

5/4/89
Rep. Brown

COMPROMISE CS FOR SB 271

The proposed Resources CS for SB 271 combines certain aspects of HB 293 while maintaining the essential structure of SB 271. Significant features of the compromise CS include the following:

- the compromise CS increases the proposed penalties for crude oil spills to a level closer to those proposed in HB 293
- the compromise CS would increase the penalties proposed in SB 271 and establish a penalty scheme which breaks out crude oil as follows:

\$8.00/gallon for spills of less than 420,000
gallons (10,000 barrels)

\$12.50/gallon for spills greater than 420,000 gallons
(10,000 barrels)

note: SB 271 originally proposed a penalty of \$5.83/gal for smaller spills and \$10/gal for larger spills while the effective rate proposed in HB 293 was about \$14.50/gallon (ie, \$25/gallon X .58)

- the compromise CS eliminates the term "uncontaminated" as a modifier of the term crude oil in order to avoid any possible confusion in interpretation
- the compromise CS adds language to clarify that the credit for "removal" of oil specifically does not apply to dispersal by way of use of "biological additives, burning or sinking agents"
- the compromise CS includes a provision that a five-fold penalty increase would apply where the "defendant (ie, discharger) did not respond according to an approved contingency plan"
- the compromise CS adds language to allow for the recovery of full reasonable attorneys fees

Using the Exxon Valdez experience, under present law, the state has calculated a base penalty of approximately \$14 million. A higher penalty on the order of \$70 million eventually may be assessed if a five-fold increase

for gross negligence (which may or may not be proven) is imposed. Actual penalties collected will be less when amounts of oil recovered are deducted and after consideration of arguments that will be made regarding "mitigating circumstances" (eg, the oil evaporated or blew out to sea).

Under the compromise language of SB 271, a future disaster such as the Exxon Valdez (for our example approximately 10 million gallons lost) penalties would be as follows:

$$(10,000,000 \text{ gallons}) \times (\$12.50/\text{gallon}) = \$125,000,000 \text{ base penalty}$$

If gross negligence were found or the "defendant (ie, discharger) did not respond according to an approved contingency plan" the penalty could be increased five-fold to \$625,000,000.

Either figure would be reduced by the amount of oil physically recovered within the first 36 hours.

Further, the state could recover full reasonable attorney fees incurred in the pursuit of the civil penalties.

In the worst case scenario, if a tanker the size of the Exxon Valdez were lost in its entirety, carrying a cargo of 1.2 million barrels (about 50.4 million gallons) penalties would be \$630,000,000 -- possibly as high as \$3.15 billion if the five-fold factor was applied, less the amount of oil physically recovered within the first 36 hours.

Conclusion

Although not quite as stiff as the original proposal in HB 293, the compromise version of SB 271 should achieve the two basic objectives of civil penalties:

- 1) providing for a reasonable level of compensation for actual but unquantifiable damages; and
- 2) providing sufficient incentive for the safe handling of crude oil.

The compromise does not address the appropriate level of penalties for other kinds of oil spills (ie, refined products) and this issue should be addressed next session, perhaps using HB 293 as the vehicle.

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99801
907 465 4800

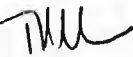
LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

May 4, 1989

SUBJECT: Bill titles and court rules
HCS CSSB 271(Resources)

TO: Representative Kay Brown

FROM: Terri Lauterbach 
Legislative Counsel

Enclosed is a draft of HCS CSSB 271(Resources).

You have asked whether the title of a bill may be amended in the second house to reflect the fact that a section amending a court rule has been added to the bill. You are concerned about violating Uniform Rule 24(c) which provides in part

A committee of the second house may not report a committee substitute for a bill or an amendment to a bill that requires a change in the title of the bill, other than a clerical or technical change, as the title was enacted in the house of origin.

It is my opinion that a change in the title of a bill regarding the court rule is a technical change permitted under Rule 24(c). The vote on passage of a bill occurs separately from the vote on the court rule section. Failure to adopt a section amending a court rule does not defeat the bill itself or serve to rescind action in passing the bill. This is because under Article II, Sec. 14 of the state constitution a bill may become law upon a majority vote of the membership of each house. Under Article IV, Sec. 15 it is only the court rule change that requires a two-thirds vote.

Uniform Rule 39(e) provides

(e) If a bill or portion of a bill contains matter changing a supreme court rule governing practice and procedure in civil or criminal cases, the bill must contain a section expressly citing the rule and noting what change is being proposed. The section containing the change in a court rule must be approved by an af-

Representative Kay Brown
Page 2
May 4, 1989

firmative vote of two-thirds of the full membership of each house. If the section effecting a change in the court rule fails to receive the required two-thirds vote, the section is void and without effect and is deleted from the bill. The fact that a bill contains a section which changes a court rule shall also be noted in the title of the bill.

It is clear from this rule that changing the title to reflect whether a court rule is changed is required as a technical matter.

Please let me know if I can be of further assistance.

TL:gc:kb
WKG10/053

A M E N D M E N T

OFFERED IN THE HOUSE

BY MENARD

TO: HCS CSSB 271()

Page 3, after line 26:

Insert a new subsection to read:

"(f) The dollar amounts in (a)(1) and (2) of this section change once every three years on July 1 according to and to the extent of the cumulative change during the previous three calendar years in the average consumer price index for all consumers compiled by the Bureau of Labor Statistics, United States Department of Labor. The index for January 1989 is the reference base index. If the index is revised, the change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this subsection is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for all consumers. The department shall calculate the changes required by this subsection and report them to the legislature by the 10th day of the regular session that convenes after the changes are calculated. The department shall also provide notification of a change in the dollar amounts to the clerks of court in each judicial district of the state. Changes in dollar amounts

required under this subsection are applicable to discharges of crude oil that occur on or after the effective date of the changes."

Reletter the following subsection accordingly.

Page 6, after line 3:

Insert a new bill section to read:

"* Sec. 9. The first date on which AS 46.03.759(f), enacted by sec. 3 of this Act, shall be applied to change the dollar amounts of civil penalties imposed under AS 46.03.759, enacted by sec. 3 of this Act, is July 1, 1992."

Renumber the following bill section accordingly.

6-1197R✓
Lauterbach
5/4/89

Original sponsor: Senate Special
Committee on Oil and Gas

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 271 (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 for the unpermit-
7 ted discharge of oil and for the failure to implement
8 an oil discharge contingency plan in response to an
9 unpermitted discharge of crude oil; removing a maxi-
10 mum limit on civil penalties for discharges of oil;
11 and amending Rule 82, Alaska Rules of Civil Proce-
12 dure."

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

14 * Section 1. AS 46.03.758(e) is amended to read:

15 (e) If [AFTER APRIL 19, 1978, IF] a discharge of oil in excess
16 of 18,000 gallons not permitted under applicable state and federal law
17 occurs within the territorial jurisdiction of the state, or into or
18 upon the adjacent outer continental shelf of the state, the following
19 persons, in addition to the person causing or permitting the dis-
20 charge, are jointly and severally liable to the state, in a civil
21 action, for the full amount of penalties established in the regula-
22 tions adopted under this section: [, OR \$100,000,000, WHICHEVER IS
23 LESS,]

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

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

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

29 (B) the owner of the oil carried as cargo on the

1 vessel at the time the vessel was loaded, if the loading occurred
2 within the territorial jurisdiction of the state, or at a deep-
3 water port or other offshore storage facility adjacent to the
4 state; however, if the owner of the oil temporarily transfers
5 ownership of the oil to another person, and the transfer has the
6 purpose or effect of evading the vicarious liability imposed by
7 this section, the transferor will be considered the owner of the
8 oil for the purposes of this subsection; and

9 (3) if the discharge occurs from an offshore platform, the
10 lessee or permittee of the tract or acreage upon which the platform is
11 situated, and the operator of the platform.

12 * Sec. 2. AS 46.03.758(1)(6) is amended to read:

13 (6) "oil" means petroleum [, CRUDE OIL,] and any substance
14 refined from petroleum, except [OR] crude oil;

15 * Sec. 3. AS 46.03 is amended by adding a new section to read:

16 Sec. 46.03.759. CIVIL PENALTIES FOR DISCHARGES OF CRUDE OIL.

17 (a) A person who is found to be liable under any other state law for
18 an unpermitted discharge of crude oil in excess of 18,000 gallons is,
19 in addition to liability for any other penalties or for damages or the
20 cost of containment and cleanup, liable to the state in a civil action
21 for a civil penalty in the amount of

22 (1) \$8 per gallon of crude oil discharged for the first
23 420,000 gallons discharged; and

24 (2) \$12.50 per gallon of crude oil discharged for amounts
25 discharged in excess of 420,000 gallons.

26 (b) In determining how many gallons of crude oil have been dis-
27 charged for purposes of assessing a penalty under (a) of this section,
28 the court shall deduct the number of discharged gallons of crude oil
29 that the defendant proves were removed by the defendant from the

1 environment within the first 36 hours after the discharge as a result
2 of a cleanup operation undertaken in conformity with applicable state
3 and federal law. The dispersal of oil through burning, the use of
4 chemical agents, biological additives, or sinking agents, or other
5 means is not considered removal for the purposes of this subsection.

6 (c) The court shall assess five times the penalty set out in (a)
7 of this section if the court finds

8 (1) the discharge was caused by the gross negligence or
9 intentional act of the defendant;

10 (2) the defendant did not take reasonable measures to
11 contain and clean up the discharged oil; or

12 (3) the defendant did not respond in accordance with an
13 approved oil discharge contingency plan.

14 (d) Notwithstanding AS 46.03.875, a person liable for civil
15 penalties under this section is not also liable for the discharge of
16 the crude oil under AS 46.03.760(a). A person causing or permitting a
17 discharge of crude oil of 18,000 gallons or less not permitted under
18 applicable state or federal law is liable for that discharge under the
19 penalty provisions of AS 46.03.760(a); however, the court may impose a
20 penalty of less than \$500 for the discharge.

21 (e) The court may reduce the penalty imposed under this section
22 if the defendant demonstrates, by a preponderance of the evidence,
23 that the discharge was caused solely by a negligent act of a third
24 person unless the third person is a person with whom the defendant was
25 found jointly and severally liable for the discharge under other state
26 law.

27 (f) In this section, "discharge" means entry of crude oil into
28 or upon the water or public land of the state, regardless of causa-
29 tion, except discharges into an enclosed and impervious oil spill

1 containment area.

2 * Sec. 4. AS 46.03 is amended by adding a new section to read:

3 Sec. 46.03.763. ATTORNEY FEES AND COSTS. In an action to impose
4 civil penalties under AS 46.03.758, 46.03.759, or 46.03.760 for a
5 discharge of oil, the state may recover full reasonable attorney fees
6 and costs incurred by the state in maintaining the action.

7 * Sec. 5. AS 46.03.770 is amended to read:

8 Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY
9 FOR DAMAGES. A vessel that is used in or in aid of a violation of
10 AS 46.03.740 - 46.03.750 may be detained after a valid search by the
11 department, an agent of the department, a peace officer of the state,
12 or an authorized protection officer of the Department of Fish and
13 Game. Upon judgment of the court having jurisdiction that the vessel
14 was used in, or was the cause of, a violation of AS 46.03.740 - 46.-
15 03.750 with knowledge of its owner or under circumstances indicating
16 that the owner should reasonably have had this knowledge, the vessel
17 may be held as security for payment to the state of the amount of
18 damages assessed by the court under AS 46.03.758, 46.03.759, 46.03.-
19 760, [AND] 46.03.822, and AS 46.04.030(g). If the damages assessed
20 are not paid within 30 days after judgment or final determination of
21 an appeal, the vessel shall be sold at public auction, or as otherwise
22 directed by the court, and the damages paid from the proceeds. The
23 balance, if any, shall be paid by the court to the owner of the ves-
24 sel. The court shall permit the release of the vessel upon posting of
25 a bond set by the court in an amount not to exceed the maximum amount
26 of damages available under AS 46.03.758, 46.03.759, 46.03.760, [AND]
27 46.03.822, and AS 46.04.030(g). The damages received under this
28 section shall be transmitted to the proper state officer for deposit
29 in the general fund. A vessel seized under this section shall be

1 returned or the bond exonerated if no damages are assessed under
2 AS 46.03.758, 46.03.759, 46.03.760, [OR] 46.03.822, or AS 46.04.-
3 030(g).

4 * Sec. 6. AS 46.04.030(g) is amended to read:

5 (g) Failure of a holder of an approved oil discharge contingency
6 plan to have access to the quality or quantity of resources identified
7 in the plan and, in the event of a spill, to respond with those re-
8 sources within the shortest feasible time is a violation of this
9 chapter for purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any
10 other applicable law. If the holder of an approved oil discharge
11 contingency plan fails to respond to an unpermitted discharge of crude
12 oil with the quality and quantity of resources identified in the plan
13 and in a manner required under the plan, the holder is strictly
14 liable, jointly and severally, for the civil penalty assessed under
15 AS 46.03.759 or 46.03.760 against any other person for that discharge.

16 * Sec. 7. AS 46.04.040(e) is amended to read:

17 (e) Financial responsibility may be demonstrated by self-insur-
18 ance, insurance, surety, or guarantee, under terms the department may
19 prescribe. An action brought under AS 46.03.758, 46.03.760(a) or (e),
20 [OR] 46.03.822, or AS 46.04.030(g) or to collect penalties imposed
21 under AS 46.03.759 may be brought in a state court directly against
22 the insurer or another person providing evidence of financial respon-
23 sibility. The applicant, and an insurer, surety, or guarantor shall
24 appoint an agent for service of process in the state. An insurer must
25 either be authorized by the Department of Commerce and Economic Devel-
26 opment to sell insurance in the state or be an unauthorized insurer
27 listed by the Department of Commerce and Economic Development as not
28 disapproved for use in the state.

29 * Sec. 8. AS 46.04.040(i) is amended to read:

1 (i) Financial responsibility under this section extends to a
2 loss compensable under AS 46.03.760(e) or 46.03.822 and an assessment
3 under AS 46.03.758, 46.03.759, [OR] 46.03.760(a), or AS 46.04.030(g).

4 * Sec. 9. AS 46.03.763, as enacted by sec. 4 of this Act, has the
5 effect of amending Rule 82, Alaska Rules of Civil Procedure, by allowing
6 the recovery of full reasonable attorney fees and costs in certain actions.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29