HB
239

SPONSOR STATEMENT

CSSB-239 (O & G)

BY: SENATOR BERT SHARP

THE OIL AND GAS CS FOR SB239 RECOGNIZES THAT EXISTING STATUTES MANDATES LEVELS OF PROOF OF FINANCIAL RESPONSIBILITY LIABILITY THAT ARE SO UNREALISTIC THAT COVERAGE IS NOT AVAILABLE AND NEVER HAS BEEN.

THIS IS TRUE AS MUCH FOR AS 46.04.040(b) ONSHORE OIL AND GAS EXPLORATION ACTIVITY AS IT IS FOR MOVING REFINED PRODUCTS ALONG THE WATERWAYS OF ALASKA.

SECTION 1 ONLY REDUCES THE MANDATORY LIABILITY LIMITS TO MORE REASONABLY AVAILABLE LEVELS. THE REDUCED LEVELS ARE STILL APPROXIMATELY 10 TIMES HIGHER THAN OTHER OIL PRODUCING STATES.

THE 20 MILLION DOLLAR REQUIREMENT FOR ONSHORE PRODUCTION FACILITIES REMAINS INTACT FOR FACILITIES PRODUCING OVER 10,000 BARRELS OF OIL PER DAY. REQUIREMENTS ARE STAIR STEPPED DOWN FROM OVER 10,000 B/P/D/, TO 5,000 - 10,000, 2,500 - 5,000 AND 2,500 AND UNDER. IT SEEMS TO MAKE SENSE THAT PRODUCERS HANDLING LESS DAILY VOLUMNS WOULD CREATE LESS OF A SPILL POTENTIAL.

THIS BILL PROVIDES FOR REDUCTIONS FOR ONSHORE OIL AND GAS EXPLORATION ACTIVITIES THAT IN NINE OUT OF 10 CASES, NEVER INVOLVE AN EXPOSURE TO ON SITE CRUDE OIL. IF THE ACTIVITY IS SUCCESSFUL, THE SAFETY DEVICES AND THEIR OPERATIONS REQUIRED ARE HIGHLY DEVELOPED AND EFFECTIVE.
THERE HAS NEVER BEEN AN ONSHORE CRUDE SPILL IN ALASKA CAUSED BY AN EXPLORATION RIG.

THIS BILL IS AN ATTEMPT TO OPEN THE DOOR OF OPPORTUNITY A LITTLE BIT. THIS WOULD CREATE A MORE REALISTIC ENVIRONMENT FOR SMALL INDEPENDENT EXPLORATION FIRMS TO OPERATE IN ALASKA.

LET ME POINT OUT THAT AS.46.04.040(b) IS NOT THE ONLY PROOF OF FINANCIAL LIABILITY REQUIRED OF ONSHORE EXPLORATION. IT'S ONLY ONE OF MANY.

THE DIVISION OF OIL AND GAS REQUIRES THE POSTING OF A BOND IN PARAGRAPH 23 OF THEIR LEASE CONTRACT AS WELL AS SATISFY REQUIREMENTS IN 11 AAC 83.160.

THE DIVISION OF OIL AND GAS CAN ALSO REQUIRE SUPPLEMENTAL BONDING IF IT BELIEVES THE NATURE OF THE SURFACE AND ITS USES OR THE DEGREE OF RISK JUSTIFIES AN INCREASED BOND.

THE ALASKA OIL AND GAS CONSERVATION COMMISSION ALSO REQUIRES A LESSEE TO POST A SEPARATE BOND OF AT LEAST $100,000 DOLLARS PRIOR TO ANY DRILLING ACTIVITY.

WITH MANY OF THE MAJOR OIL COMPANIES NOW REDIRECTING THEIR EXPLORATION EFFORTS OVERSEAS, IT WOULD ONLY SEEM PRUDENT TO REMOVE IMPOSSIBLE LIABILITY REQUIREMENTS PRESENTLY REQUIRED WHICH VIRTUALLY SHUTS OUT INDEPENDENT EXPLORATION AND PRODUCERS IN OUR STATE.

I BELIEVE THIS LEGISLATION IS A REASONABLE MOVE TO CORRECT THIS SITUATION.

THIS BILL, ALONG WITH A BALANCED "EXPLORATION LICENSING" BILL, MAY WELL STIMULATE RENEWED EXPLORATION ACTIVITY IN OUR STATE, THEREBY CREATING NOT ONLY NEW JOBS FOR ALASKANS, BUT NEW REVENUE SOURCES TO THE STATE TREASURY.

I ASK FOR YOUR SUPPORT OF THIS BILL.

Prepared by: Senate Oil and Gas Committee Staff
February 22, 1994

SECTIONAL ANALYSIS FOR:
CS SB 239(O&G)

"An Act relating to evidence of financial responsibility provided by persons who conduct oil operations; and providing for an effective date."

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Section 1.

Subsection (b)(1) The OFFSHORE exploration or production financial responsibility requirement of $50 million is UNAFFECTED by this amendment.

Subsection (b)(2) The amended language clarifies that financial responsibility should be greater for an onshore facility producing more than 10,000 barrels per day of oil, than for an onshore facility producing 2,500 barrels or less per day.

Subsection (b)(3) Limits the financial responsibility for an onshore exploration facility to $1,000,000.

Section 2.

Chapter 102, SLA 1992 gives the Department of Environmental Conservation the authority to waive its requirement that financial responsibility instruments provide for a direct action and appointment of an agent for service of process. The direct action provision is NOT AVAILABLE in marine pollution insurance, and has not been available since about 1989.

Section 6 of Ch. 102, SLA 1992 repealed this temporary law effective June 1, 1994. Rather than grant another two-year exemption, the Committee Substitute repeals the repealer and allows DEC to grant waivers until direct action again becomes available

Section 3.

Makes certain there is no gap between the effective date and the date of the repeal of the former temporary waiver.

Section 4.
Immediate effective date.

SECTIONAL ANALYSIS

CSSB-239 (OIL & GAS)

"An Act relating to evidence of financial responsibility provided by persons who conduct oil operations; and providing for an effective date."

Section 1. (b)(2)(A) Keeps the financial responsibility amount of $20 million if a facility produces over 10,000 barrels of oil per day.

(b)(2)(B) Financial responsibility is $10 million per incident if facility produces over 5,000 barrels of oil per day, but not more than 10,000 barrels per day.

(b)(2)(C) Financial responsibility is $5 million per incident if a facility produces over 2,500 barrels of oil per day, but not more than 5,000 barrels per day.

(b)(2)(D) Financial responsibility is $1 million per incedent if a facility produces 2,500 barrels of oil per day or less.

(b)(3) Reduces the financial responsibility requirement for an onshore exploration facility from $5 million per incident to $1 million per incident.

Section 2. Makes permanent temporary total waiver for non crude transport and storage companies to meet the statutory financial responsibility liability which ranges from $1 million up to $35 million as long as there is no third party insurance available.

Section 3. Makes certain there is no gap in the law for Section 2..

Section 4. Makes this Act effective immediately under AS 01.10.070(c).

(b) A person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for a pipeline or an offshore exploration or production facility is $50,000,000 per incident. Proof of financial responsibility required for an onshore production facility is $20,000,000 per incident. Proof of financial responsibility required for an onshore exploration facility is $5,000,000 per incident.

(c) Except as provided in (m) of this section, a person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or an oil barge, unless the person operating the tank vessel or oil barge has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required under this subsection is

(1) $300, per incident, for each barrel of storage capacity or $100,000,000, whichever is greater, for a tank vessel or barge carrying crude oil;

(2) $100, per incident, for each barrel of storage capacity or $1,000,000, whichever is greater, subject to a maximum of $35,000,000, for a tank vessel or barge carrying noncrude oil.

(d) Except as provided in (k) of this section, it is not a defense to an action brought for violation of (a) — (c) of this section that the person charged believed in good faith that proof of financial ability to respond in damages had been furnished to, and approved by, the department.

(e) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3) surety, (4) guarantee, (5) letter of credit approved by the department, or (6) other proof of financial responsibility approved by the department, including proof of financial responsibility provided by a group of insureds who have agreed to cover pollution risks of members of the group under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) may be brought in a state court directly against the insurer, the group, or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent for service of process in the state. For purposes of this subsection, an insurer, other than a group of insureds whose agreement has been approved by the department, must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state.

(f) Acceptance of proof of financial responsibility expires

SB 239 (O&G)
By: Senator Bert Sharp

State Comparrisons of Financial Responsibility for Onshore Exploration:

CALIFORNIA

$1 million dollars requirement only within 30 miles of coastline. No requirement beyond 30 miles of coastline.

COLORADO

$75 dollars permit fee per well. $5,000 dollars per well for P & A (Plugging & Abandonment).

WASHINGTON

The state does not currently require onshore financial responsibility.

TEXAS

There is no financial responsibility required in Texas.

LOUISIANA

Louisiana is currently withholding oil spill regulations.

FLORIDA

No state drilling is allowed on state onshore lands in Florida.

WYOMING

There are no requirements beyond P & A (Plugging and Abandonment).

MONTANA

Montana has P & A (Plugging & Abandonment) requirements only.

# MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES

# State of Alaska
DIVISION OF OIL AND GAS

TO: Jerry Gallagher
Legislative Liaison

DATE: February 7, 1994

THRU: James E. Eason
Director

FILE NO: Legislation

TELEPHONE: 762-2580

FROM: Kristina M. O'Connor, CPL
DNR Coordinator for Oil Spill
Plans & Regulations

SUBJECT: Bonding Information

In response to your request for information regarding oil and gas bonding requirements, I have excerpted the following from the Final Best Interest Determination for Oil and Gas Lease Sale 78 (Cook Inlet). I have also attached copies of the lease provision and pertinent regulations. In summary, the primary purpose of the DO&G bond is not oil spill cleanup but rehabilitation of abandoned sites, and the bond amounts do not cover the entire cost of rehabilitation.

Paragraph 23 of the lease contract and 11 AAC 83.160 require the oil and gas lessee to post a performance bond with the Division of Oil and Gas (DO&G) before operations can commence on an oil and gas lease. The minimum bond required is $10,000. However, a bond of $100,000 or greater is typically required by DO&G, depending on the type of activity. A statewide bond of $500,000 is also acceptable. Under the lease terms, DO&G can also require a supplemental bond if it believes that the nature of the surface and its uses or the degree of risk justifies the increase. Alaska Oil and Gas Conservation Commission (AOGCC) also requires a lessee to post a separate bond of at least $100,000 prior to any drilling activity. ADEC, in its Oil Discharge Contingency Plan permitting process, requires proof of financial assurance of $50 million for a pipeline or offshore exploration or production facility, $20 million for an onshore production facility, and $5 million for an onshore exploration facility.

The bonds required by DO&G and AOGCC are not intended to provide full coverage for cleanup and rehabilitation expenses resulting from a catastrophic accident or very large-volume oil spill. That cost cannot be determined in advance of a specific event at a specific location. Regardless of the required bond amount, and the bond amounts required by other state agencies, the lessee is still fully liable for the cleanup and rehabilitation of all disturbed areas. The bond required by DO&G is used as a demonstration that the lessee is solvent and in good corporate standing. The bond monies could be used to provide for cleanup or rehabilitation of the lease area but probably would not be adequate for the most catastrophic situations which could be encountered. The lessee remains fully liable for its actions and those of its subcontractors.

Attachments
cc: Steve Schmitz, DO&G Permitting

# CHAPTER 102

AN ACT RELATING TO EVIDENCE OF FINANCIAL RESPONSIBILITY PROVIDED BY PERSONS WHO CONDUCT OIL OPERATIONS: AND PROVIDING FOR AN EFFECTIVE DATE.

(CSSB 405(O&G))

*Be it enacted by the Legislature of the State of Alaska:*

Sec. 1. Permanent law. See Table of Disposition of Acts.

Sec. 2. TEMPORARY LAW APPLICABLE TO NONCRUDE OIL OPERATIONS. Notwithstanding AS 46.04.040, the Department of Environmental Conservation may, with respect to noncrude oil operations, approve proof of financial responsibility by a person, other than the applicant, who does not agree to be subject to a direct action in the state or to appoint an agent for service of process if the applicant

(1) provides proof of financial responsibility in the form and amounts otherwise required under AS 46.04.040;

(2) provides a sworn statement that

(A) is acceptable to the department;

(B) attests that the applicant has diligently attempted to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process;

(C) describes the steps the applicant has taken to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process;

(D) states that a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process is unavailable to the applicant;

(3) continues diligent efforts to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process and provides a sworn statement every six months that is acceptable to the department, containing the information required in (2) of this section.

Sec. 3. RATIFICATION OF PREVIOUS EXEMPTIONS GIVEN BY DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO NONCRUDE OIL OPERATIONS. Notwithstanding AS 46.04.040, the Department of Environmental Conservation may, with respect to noncrude oil operations, approve proof of financial responsibility by a person, other than the applicant, who does not agree to be subject to a direct action in the state or to appoint an agent for service of process if the applicant, before June 1, 1992,

(1) provides proof of financial responsibility in the form and amounts otherwise required under AS 46.04.040;

(2) attests in a statement to the department that the applicant has diligently attempted to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process and that this form of proof is unavailable to the applicant; and

(3) agrees to continue diligent efforts to obtain a form of proof of financial responsibility that would provide for a direct action and appointment of an agent for service of process.

Sec. 4. Section 3 of this Act is retroactive to June 1, 1991.

Sec. 5. If this Act takes effect after June 1, 1992, sec. 2 of this Act is retroactive to June 1, 1992.

Sec. 6. Section 2 of this Act is repealed June 1, 1994.

Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

Approved: June 20, 1992
Effective June 21, 1992;
section 2 is retroactive to
June 1, 1992, section 3 is
retroactive to June 1, 1991

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## CHAPTER 111

AN ACT MAKING APPROPRIATIONS TO THE DEPARTMENT OF LAW FOR PAYMENT TO MUNICIPALITIES FOR LOSSES OF FISHERIES TAX REVENUE SUFFERED AS A RESULT OF THE EXXON VALDEZ OIL SPILL; AND PROVIDING FOR AN EFFECTIVE DATE.

(HCS CSSB 240(FIN) am H)

*Be it enacted by the Legislature of the State of Alaska:*

Section 1. PURPOSE. To provide relief to municipalities whose tax receipts were affected by reduction of payments of the fisheries business tax, it is the purpose of this Act to provide additional refunds payable to municipalities so that the municipalities are compensated for the decrease in the proceeds of the fisheries business tax during fiscal year 1990 caused by the Exxon Valdez oil discharge disaster.

FAX TO 463-5522

Letter of intent to SB 405:

The Department of Environmental Conservation and the Legislative Research Agency, shall research the possibility of group pooling for the purposes of meeting the state's financial responsibility requirements for oil spill pollution coverage for non-crude operators, and shall report back to the Legislature with their findings and recommendations by February 1, 1993.

IGNORE HANDWRITTEN NOTES.
AK

MARY KL LC
prem + left msg.
3/19/93

SIGNED INTO LAW
6/20/92
EFFECTIVE
6/21/92

CS FOR SENATE BILL NO. 405 (O&G)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE SPECIAL COMMITTEE ON OIL AND GAS

Offered: 4/15/92
Referred: Judiciary

Sponsor(s): SENATOR HOFFMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to evidence of financial responsibility provided by persons who conduct
2 oil operations; and providing for an effective date."

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

4 * Section 1. AS 46.04.040(e) is amended to read:

5 (e) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3)
6 surety, (4) guarantee, (5) letter of credit approved by the department, or (6) other proof of
7 financial responsibility approved by the department, including proof of financial responsibility
8 provided by a group of insureds who have agreed to cover pollution risks of members of the
9 group under terms the department may prescribe. An action brought under AS 46.03.758
10 46.03.759, 46.03.760(a) or (e), 46.03.822, or as 46.04.030(g) may be brought in a state cour
11 directly against the insurer, the group, or another person providing evidence of financia
12 responsibility; however, the liability under this section of a third-party insurer is limited t
13 the type of risk assumed and the amount of coverage specified in the proof of financia
14 responsibility furnished to and approved by the department. The applicant, and an insure

1 surety, guarantor, person furnishing an approved letter of credit, or other group or person
2 providing proof of financial responsibility approved by the department shall appoint an agent for
3 service of process in the state. For purposes of this subsection, an insurer, other than a group
4 of insureds whose agreement has been approved by the department, must either be authorized by
5 the Department of Commerce and Economic Development to sell insurance in the state or be an
6 unauthorized insurer listed by the Department of Commerce and Economic Development as not
7 disapproved for use in the state. **In this subsection, "third-party insurer" means a third-party**
8 **insurer, surety, guarantor, person furnishing a letter of credit, or other group or person**
9 **providing proof of financial responsibility on behalf of an applicant under this section;**
10 **"third-party insurer" does not include the applicant.**
11 * Sec. 2. TEMPORARY LAW APPLICABLE TO NONCRUDE OIL OPERATIONS.
12 Notwithstanding AS 46.04.040, the Department of Environmental Conservation may, with respect to
13 noncrude oil operations, approve proof of financial responsibility by a person, other than the applicant,
14 who does not agree to be subject to a direct action in the state or to appoint an agent for service of
15 process if the applicant
16 (1) provides proof of financial responsibility in the form and amounts otherwise required
17 under AS 46.04.040;
18 (2) provides a sworn statement that
19 (A) is acceptable to the department;
20 (B) attests that the applicant has diligently attempted to obtain a form of proof
21 of financial responsibility that would provide for a direct action and appointment of an agent for
22 service of process;
23 (C) describes the steps the applicant has taken to obtain a form of proof of
24 financial responsibility that would provide for a direct action and appointment of an agent for
25 service of process;
26 (D) states that a form of proof of financial responsibility that would provide for
27 a direct action and appointment of an agent for service of process is unavailable to the applicant;
28 (3) continues diligent efforts to obtain a form of proof of financial responsibility that
29 would provide for a direct action and appointment of an agent for service of process and provides a
30 sworn statement every six months that is acceptable to the department, containing the information
31 required in (2) of this section.

1 * Sec. 3. RATIFICATION OF PREVIOUS EXEMPTIONS GIVEN BY DEPARTMENT OF
2 ENVIRONMENTAL CONSERVATION TO NONCRUDE OIL OPERATIONS. Notwithstanding
3 AS 46.04.040, the Department of Environmental Conservation may, with respect to noncrude oil
4 operations, approve proof of financial responsibility by a person, other than the applicant, who does not
5 agree to be subject to a direct action in the state or to appoint an agent for service of process if the
6 applicant, before June 1, 1992,
7 (1) provides proof of financial responsibility in the form and amounts otherwise required
8 under AS 46.04.040;
9 (2) attests in a statement to the department that the applicant has diligently attempted to
10 obtain a form of proof of financial responsibility that would provide for a direct action and appointment
11 of an agent for service of process and that this form of proof is unavailable to the applicant; and
12 (3) agrees to continue diligent efforts to obtain a form of proof of financial responsibility
13 that would provide for a direct action and appointment of an agent for service of process.
14 * Sec. 4. Section 3 of this Act is retroactive to June 1, 1991.
15 * Sec. 5. If this Act takes effect after June 1, 1992, sec. 2 of this Act is retroactive to June 1, 1992.
16 * Sec. 6. Section 2 of this Act is repealed June 1, 1994.
17 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).