

HB

238

Version

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Drafted & proposed
 by Rep. Green
 (had no hearing or
 specific testimony in committee)

8-LS0676S
 Chenoweth
 2/3/94

CS FOR HOUSE BILL NO. 238()

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
 Referred:

Sponsor(s): HOUSE SPECIAL COMMITTEE ON OIL AND GAS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to and redesignating the oil and hazardous substance release
 2 response fund and to its use in the event of a disaster emergency; amending
 3 requirements relating to the revision of state and regional master prevention and
 4 contingency plans; altering requirements applicable to liens for recovery of state
 5 expenditures related to oil or hazardous substances; amending the authority to
 6 contract to provide personnel to respond to a release or threatened release of oil
 7 or a hazardous substance and to contract to conduct spill related research;
 8 modifying definitions of terms relating to the preceding provisions; terminating the
 9 nickel-per-barrel oil conservation surcharge; levying and collecting two new oil
 10 surcharges; providing for the suspension and reimposition of one of the new
 11 surcharges; and amending the definition of 'catastrophic oil discharge' and
 12 'catastrophic oil release' from a threshold of 100,000 barrels to a threshold of

1 10,000 barrels; and providing for an effective date."

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

3 * Section 1. AS 26.23.050(b) is amended to read:

4 (b) Whenever, and to the extent that, money is needed to cope with a disaster,

5 (1) in the event of an oil or hazardous substance release or
6 discharge, the governor shall have first recourse to the appropriate account within
7 the oil and hazardous substance release prevention and response fund, and
8 thereafter the governor may have second recourse to money regularly
9 appropriated to state and local agencies and third recourse to money available in
10 the disaster relief fund:

11 (2) if the disaster does not involve an oil or hazardous substance
12 release or discharge.

13 (A) the governor shall have first recourse [SHALL BE] to
14 money regularly appropriated to state and local agencies; and

15 (B) the governor shall have further [. THE SECOND]
16 recourse [SHALL BE] to money available in the disaster relief fund [OR, FOR
17 OIL OR HAZARDOUS SUBSTANCES DISCHARGES, THE OIL AND
18 HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND, AS THE
19 GOVERNOR DETERMINES APPROPRIATE. IF MONEY AVAILABLE
20 FROM THESE SOURCES IS INSUFFICIENT, AND IF THE GOVERNOR
21 FINDS THAT OTHER SOURCES OF MONEY TO COPE WITH THE
22 DISASTER ARE NOT AVAILABLE OR ARE INSUFFICIENT, THE
23 GOVERNOR MAY, NOTWITHSTANDING THE LIMITATIONS IMPOSED
24 BY AS 37.07.080(e),

25 (1) TRANSFER AND SPEND MONEY APPROPRIATED FOR
26 OTHER PURPOSES; OR

27 (2) BORROW MONEY FOR A TERM NOT TO EXCEED TWO
28 YEARS].

29 * Sec. 2. AS 26.23.050 is amended by adding a new subsection to read:

30 (d) If money available from a source identified in (b) of this section is
31 insufficient, and if the governor finds that other sources of money to cope with the

1 disaster are not available or are insufficient, the governor may, notwithstanding the
2 limitations imposed by AS 37.07.080(e),

3 (1) transfer and spend money appropriated for other purposes; or

4 (2) borrow money for a term not to exceed two years.

5 * Sec. 3. AS 29.60.510(b) is amended to read:

6 (b) For each disaster emergency declared by the governor under AS 26.23.020
7 that involves a catastrophic oil release or threatened catastrophic oil release, and
8 subject to agreement with the commissioner of environmental conservation as to the
9 amount of money in the fund that may be used by the department to make grants, the
10 commissioner may expend not more than \$10,000,000 [OF THE BALANCE OF THE
11 FUND THAT IS APPROPRIATED TO THE SPILL RESERVE OR] of the
12 unrestricted balance of the catastrophic oil release response account in the fund for
13 grants authorized under this section. For each disaster emergency declared by the
14 governor under AS 26.23.020 that involves a release or threatened release of a
15 hazardous substance, and for an oil release that is not declared a disaster
16 emergency, and subject to appropriation of money in the fund that may be used
17 by the department to make grants, the commissioner may expend not more than
18 the amount appropriated from the oil and hazardous substances release
19 contingency and abatement account in the fund for grants authorized under this
20 section. If the commissioner and the commissioner of environmental conservation do
21 not agree on the amount of money in the catastrophic oil release response account
22 in the fund that may be used by the department to make grants under AS 29.60.500
23 - 29.60.599 for a catastrophic oil release or threatened catastrophic oil release, the
24 governor shall make the determination. In this section, "catastrophic oil release"
25 has the meaning given to "catastrophic oil discharge" by AS 46.04.900.

26 * Sec. 4. AS 37.14.410 is amended to read:

27 Sec. 37.14.410. REIMBURSED EXPENDITURES. (a) Amounts received by
28 the state as reimbursement for expenses related to the Exxon Valdez oil spill incurred
29 by the state on or before December 31, 1992, shall be deposited in the general fund
30 and, except as required under (b) of this section, may not be credited to the oil and
31 hazardous substance release mitigation account under AS 46.04.010 or to an account

1 established in AS 46.08.020 or 46.08.025.

2 (b) A percentage of each payment deposited in the general fund under (a) of
3 this section shall be credited to the oil and hazardous substances release contingency
4 and abatement mitigation account established in [OIL AND HAZARDOUS
5 SUBSTANCE RELEASE MITIGATION ACCOUNT UNDER AS 46.04.010 OR]
6 AS 46.08.020. That percentage is determined by dividing

7 (1) the amount of the expenses for which the state may be reimbursed
8 under (a) of this section that were paid from the [OIL AND HAZARDOUS
9 SUBSTANCE RELEASE RESPONSE] fund established under AS 46.08.010, by

10 (2) the total amount of expenses for which the state may be reimbursed
11 under (a) of this section.

12 * Sec. 5. AS 43.55 is amended by adding a new section to read:

13 Sec. 43.55.201. SURCHARGE LEVIED. (a) Every producer of oil shall pay
14 a surcharge of \$.03 per barrel of oil produced from each lease or property in the state,
15 less any oil the ownership or right to which is exempt from taxation.

16 (b) The surcharge imposed by (a) of this section is in addition to and shall be
17 paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150; and is in
18 addition to the surcharge imposed by AS 43.55.300 - 43.55.310.

19 (c) A producer of oil shall make reports of production in the same manner and
20 under the same penalties as required under AS 43.55.011 - 43.55.150.

21 * Sec. 6. AS 43.55 is amended by adding a new section to read:

22 Sec. 43.55.211. USE OF REVENUE DERIVED FROM SURCHARGE. The
23 legislature may appropriate the annual estimated balance of the account maintained
24 under AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge
25 levied under AS 43.55.201 to the catastrophic oil release response account in the oil
26 and hazardous substance release prevention and response fund established by
27 AS 46.08.010.

28 * Sec. 7. AS 43.55 is amended by adding a new section to read:

29 Sec. 43.55.221. SUSPENSION AND REIMPOSITION OF THE
30 SURCHARGE. (a) Not later than 30 days after the end of each calendar quarter, the
31 commissioner of administration shall determine, as of the end of that quarter,

1 (1) the unreserved and unobligated balance in the catastrophic oil
2 release response account of the oil and hazardous substance release prevention and
3 response fund established in AS 46.08.010; for purposes of this paragraph, the
4 "unreserved and unobligated balance in the catastrophic oil release response account"
5 means the cash balance of the account less the sum of

- 6 (A) reserves for outstanding appropriations from the account;
7 (B) encumbrances of money in the account; and
8 (C) other liabilities of the account;

9 (2) the balance of the account maintained under AS 37.05.142 that is
10 available for appropriation to the catastrophic oil release response account of the oil
11 and hazardous substance release prevention and response fund established in
12 AS 46.08.010;

13 (3) the balance of the catastrophic oil release response mitigation
14 account established by AS 46.08.025(b) that originated from the sources described in
15 AS 46.08.025(a)(2) and that is available for appropriation to the catastrophic oil release
16 response account of the fund established in AS 46.08.010;

17 (4) the total appropriations from the catastrophic oil release response
18 account of the oil and hazardous substance release prevention and response fund
19 established in AS 46.08.010; in calculating total appropriations under this paragraph,
20 the commissioner of administration may not consider money appropriated from the
21 catastrophic oil release response account for a purpose described in
22 AS 46.08.040(a)(1).

23 (b) Within 15 days after making the determinations required by (a) of this
24 section, the commissioner of administration shall

- 25 (1) add the amounts determined under (a)(1) - (3) of this section;
26 (2) determine the difference between the amount determined under (1)
27 of this subsection and the amount determined under (a)(4) of this section; and
28 (3) report the amount determined under (2) of this subsection to the
29 commissioner.

30 (c) In making the determination required by (a) of this section, the
31 commissioner of administration may not consider money described in (a) of this

1 section that is subject to a dedication imposed by law that restricts the use of the
2 money to a specific purpose for which the catastrophic oil release response account of
3 the oil and hazardous substance release prevention and response fund established in
4 AS 46.08.010 may not be lawfully expended.

5 (d) If the commissioner of administration reports that the difference determined
6 under (b)(2) of this section equals or exceeds \$50,000,000, the commissioner of
7 revenue shall suspend imposition and collection of the surcharge levied and collected
8 under AS 43.55.201. Suspension of the imposition and collection of the surcharge
9 begins on the first day of the calendar quarter next following the commissioner's
10 receipt of the commissioner of administration's report under (b) of this section. Before
11 the first day of a suspension authorized by this subsection, the commissioner shall
12 make a reasonable effort to notify all persons who are known to the department to be
13 paying the surcharge under AS 43.55.201 that the surcharge will be suspended.

14 (e) Except as provided in AS 43.55.231, if the commissioner of administration
15 reports that the difference determined under (b) of this section is less than
16 \$50,000,000, the commissioner of revenue shall require imposition and collection of
17 the surcharge authorized under AS 43.55.201. Reimposition of the surcharge begins
18 on the first day of the calendar quarter next following the commissioner's receipt of
19 the commissioner of administration's report under (b) of this section. Before the first
20 day of reimposition of the surcharge authorized by this subsection, the commissioner
21 shall make a reasonable effort to notify all persons who are known to the department
22 to be required to pay the surcharge under AS 43.55.201 that the surcharge will be
23 reimposed.

24 (f) Notwithstanding the requirement of (a) of this section that the cumulative
25 determination of receipts and expenditures be made quarterly, when the amount
26 determined under (b) of this section is \$45,000,000 or more, the commissioner of
27 administration shall make the determinations required by this section not later than 30
28 days before each calendar quarter and every 30 days thereafter.

29 * Sec. 8. AS 43.55 is amended by adding a new section to read:

30 Sec. 43.55.231. SURCHARGE NOT IMPOSED. (a) The surcharge authorized
31 by AS 43.55.201 is not levied during any fiscal year for which

1 (1) the legislature does not, during the regular or a special legislative
2 session preceding the first day of the fiscal year, appropriate at least an amount equal
3 to the amount determined under (b) of this section from the general fund to the
4 catastrophic oil release response account in the oil and hazardous substance release
5 prevention and response fund; or

6 (2) the legislature, during the regular or a special legislative session
7 preceding the first day of the fiscal year, appropriates at least the amount of money
8 equal to the amount determined under (b) of this section from the general fund to the
9 catastrophic oil release response account in the oil and hazardous substance release
10 prevention and response fund and that appropriation is vetoed or reduced by the
11 governor.

12 (b) The amount of money required to be appropriated from the general fund
13 to the catastrophic oil release response account in the oil and hazardous substance
14 release prevention and response fund by (a) of this section is the amount, determined
15 for the last day of the preceding fiscal year, that is the sum of the actual or estimated
16 balance of

17 (1) the account maintained under AS 37.05.142 to account for all
18 proceeds of the surcharge that are deposited into the general fund; and

19 (2) the portion of the balance of the catastrophic oil release response
20 account paid into that account under AS 46.08.025(a)(2) and credited to the
21 catastrophic oil release response mitigation account that represents amounts recovered
22 from parties for which expenditures were originally made from

23 (A) the catastrophic oil release response account; or

24 (B) the former oil and hazardous substance release response
25 account if the expenditure was made for a release or threatened release of oil
26 or a hazardous substance before the effective date of this Act.

27 * Sec. 9. AS 43.55 is amended by adding new sections to read:

28 ARTICLE 2A. ADDITIONAL CONSERVATION SURCHARGE ON OIL.

29 Sec. 43.55.300. SURCHARGE LEVIED. (a) Every producer of oil shall pay
30 a surcharge of \$.02 per barrel of oil produced from each lease or property in the state,
31 less any oil the ownership or right to which is exempt from taxation.

1 (b) The surcharge imposed by (a) of this section is in addition to and shall be
2 paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150; and is in
3 addition to the surcharge imposed by AS 43.55.201 - 43.55.241.

4 (c) A producer of oil shall make reports of production in the same manner and
5 under the same penalties as required under AS 43.55.011 - 43.55.150.

6 Sec. 43.55.310. USE OF REVENUE DERIVED FROM SURCHARGE. The
7 legislature may appropriate the annual estimated balance of the account maintained
8 under AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge
9 levied under AS 43.55.300 to the oil and hazardous substances release contingency and
10 abatement account in the oil and hazardous substance release prevention and response
11 fund established by AS 46.08.010.

12 * Sec. 10. AS 43.55.900(3) is amended to read:

13 (3) "catastrophic oil discharge" means

14 (A) an oil discharge in excess of 10,000 barrels; or

15 (B) any other discharge that the governor determines
16 presents a grave and substantial threat to the economy or environment

17 [HAS THE MEANING GIVEN IN AS 46.04.900];

18 * Sec. 11. AS 43.55.900(15) is amended to read:

19 (15) "surcharge" means

20 (A) when used in AS 43.55.201 - 43.55.241, the surcharge
21 levied by AS 43.55.201;

22 (B) when used in AS 43.55.300 - 43.55.310, the surcharge
23 levied by AS 43.55.300 [AS 43.55.200];

24 * Sec. 12. AS 46.04.030(e) is amended to read:

25 (e) The department may attach reasonable terms and conditions to its approval
26 or modification of a contingency plan that the department determines are necessary to
27 ensure that the applicant for a contingency plan has access to sufficient resources to
28 protect environmentally sensitive areas, [AND] to take containment and cleanup and
29 other necessary action to [CONTAIN, CLEAN UP, AND] mitigate potential oil
30 discharges from the facility or vessel as provided in (k) of this section, and to ensure
31 that the applicant complies with the contingency plan. If a contingency plan submitted

1 to the department for approval relies on the services of an oil spill primary response
 2 action contractor, the department may not approve the contingency plan unless the
 3 primary response action contractor is registered and approved under AS 46.04.035.
 4 The contingency plan must provide for the use by the applicant of the best technology
 5 that was available at the time the contingency plan was submitted or renewed. The
 6 department may require an applicant or holder of an approved contingency plan to take
 7 steps necessary to demonstrate its ability to carry out the contingency plan, including
 8 (1) periodic training;
 9 (2) response team exercises; and
 10 (3) verifying access to inventories of equipment, supplies, and
 11 personnel identified as available in the approved contingency plan.

12 * Sec. 13. AS 46.04.200(a) is amended to read:

13 (a) The department shall

14 (1) prepare [AND ANNUALLY REVIEW AND REVISE] a statewide
 15 master oil and hazardous substance discharge prevention and contingency plan;

16 (2) annually review the statewide master oil and hazardous
 17 substance discharge prevention and contingency plan; and

18 (3) revise the statewide master oil and hazardous substance
 19 discharge prevention and contingency plan; the department shall revise the
 20 statewide master plan whenever, in the judgment of the commissioner, revision
 21 is necessary.

22 * Sec. 14. AS 46.04.200(c) is amended to read:

23 (c) In

24 (1) preparing [AND ANNUALLY REVIEWING] the initial state
 25 master plan, the commissioner shall

26 (A) [(1)] consult with municipal and community officials, and
 27 with representatives of affected regional organizations;

28 (B) [(2)] submit the draft plan to the public for review and
 29 comment;

30 (C) [(3)] submit the plan to the legislature for review, not later
 31 than the 10th day following the convening of a [EACH] regular session [, THE

1 PLAN AND ANY ANNUAL REVISION OF THE PLAN];

2 (D) [(4)] require or schedule unannounced oil spill drills to test
3 the sufficiency of an oil discharge prevention and contingency plan approved
4 under AS 46.04.030 or of the cleanup plans of a party identified under (b)(2)
5 of this section; and

6 (E) [(5)] submit the plan [AND ANY ANNUAL REVISION]
7 to the Alaska State Emergency Response Commission for its review and
8 approval under AS 46.13.045; and

9 (2) annually reviewing the state master plan, the commissioner shall

10 (A) consult with municipal and community officials, and
11 with representatives of affected regional organizations; and

12 (B) require or schedule unannounced oil spill drills to test
13 the sufficiency of an oil discharge prevention and contingency plan
14 approved under AS 46.04.030 or of the cleanup plans of a party identified
15 under (b)(2) of this section.

16 * Sec. 15. AS 46.04.200 is amended by adding a new subsection to read:

17 (d) In preparing a revision of the statewide master plan, the commissioner shall
18 submit

19 (1) the draft plan to the

20 (A) public for review and comment; and

21 (B) Alaska State Emergency Response Commission for its
22 review and approval under AS 46.13.045; and

23 (2) the proposed revision of the plan to the legislature for review not
24 later than the 10th day following the convening of each regular session.

25 * Sec. 16. AS 46.04.210(a) is amended to read:

26 (a) For any region of the state, the boundaries of which are determined by the
27 commissioner by regulation, in which the department is required to review and approve
28 an oil discharge prevention and contingency plan submitted by a person under
29 AS 46.04.030, the department shall

30 (1) prepare [AND ANNUALLY REVIEW AND REVISE] a regional
31 master oil and hazardous substance discharge prevention and contingency plan;

1 (2) annually review the regional master oil and hazardous substance
2 discharge prevention and contingency plan; and

3 (3) revise the regional master oil and hazardous substance
4 discharge prevention and contingency plan; the commissioner shall revise a
5 regional master plan whenever, in the judgment of the commissioner, revision is
6 necessary.

7 * Sec. 17. AS 46.04.210(b) is amended to read:

8 (c) The provisions of AS 46.04.200(b) - (d) [AS 46.04.200(b) AND (c)] apply
9 to preparation and review of a regional master plan under this section.

10 * Sec. 18. AS 46.04.900(2) is amended to read:

11 (2) "catastrophic oil discharge" means

12 (A) an oil release or discharge in excess of 10,000 [100,000]
13 barrels; [,] or

14 (B) any other release or discharge that [WHICH] the governor
15 determines presents a grave and substantial threat to the economy or
16 environment and for which the governor has issued a proclamation
17 declaring a condition of disaster emergency under AS 26.23.020(c) [OF
18 THE STATE];

19 * Sec. 19. AS 46.08.005 is amended to read:

20 Sec. 46.08.005. PURPOSE. The legislature finds and declares that the
21 catastrophic release of oil or hazardous substances into the environment presents a
22 real and substantial threat to the public health and welfare, to the environment, and to
23 the economy of the state. The legislature therefore concludes that it is in the best
24 interest of the state and its citizens to provide a [READILY AVAILABLE] fund
25 containing two accounts. Within the fund,

26 (1) one account consists of money readily available to the
27 commissioner for the payment of the expenses incurred by the Department of
28 Environmental Conservation during an emergency first response to a catastrophic
29 release or threatened [AND THE DEPARTMENT OF TRANSPORTATION AND
30 PUBLIC FACILITIES IN THE PROTECTION OF THE ENVIRONMENT OF THE
31 STATE FROM THE] release of oil and for related purposes intended to address

1 catastrophic oil releases;

2 (2) the other account consists of money that the state may use
3 during a response to a release or threatened release of oil or a hazardous
4 substance, other than a catastrophic oil discharge, to pay the expenses of making
5 preparations for the possibility of a release or threatened release of oil or
6 hazardous substances, to reduce the amount, degree, or intensity of a release or
7 threatened release, and for other related purposes identified in law [OR
8 HAZARDOUS SUBSTANCES].

9 * Sec. 20. AS 46.08.010(a) is amended to read:

10 (a) There is established in the state general fund the oil and hazardous
11 substance release prevention and response fund. The fund shall be administered by
12 the commissioner. The fund is composed of two accounts,

13 (1) the oil and hazardous substances release contingency and
14 abatement account;

15 (2) the catastrophic oil release response account.

16 * Sec. 21. AS 46.08.010(b) is amended to read:

17 (b) Money from an appropriation made to an account in the fund remaining
18 in that account [THE FUND] at the end of a fiscal year does not lapse and remains
19 available for expenditure in successive fiscal years.

20 * Sec. 22. AS 46.08.010(c) is amended to read:

21 (c) The fund shall be used for actual expenses incurred under AS 46.08.040.
22 Except as provided in AS 46.08.040(a)(1)(B) for the equipment that is required for
23 and placed in the oil and hazardous substance response depots and as provided
24 in AS 46.08.040(d)(2), the fund may not be used for capital improvements.

25 * Sec. 23. AS 46.08.020 is amended to read:

26 Sec. 46.08.020. FINANCING OF THE OIL AND HAZARDOUS
27 SUBSTANCES RELEASE CONTINGENCY AND ABATEMENT ACCOUNT
28 [FUND]. (a) The legislature may appropriate from the following sources to the oil
29 and hazardous substances release contingency and abatement account in the fund:

30 (1) money received from federal, state, or other sources or from a
31 private donor;

1 (2) money recovered or otherwise received from parties responsible for
2 the containment and cleanup of oil or a hazardous substance at a specific site, but
3 excluding

4 (A) money recovered or otherwise received due to a
5 catastrophic oil discharge, to the extent that the money recovered or
6 otherwise received had not been paid out of the oil and hazardous
7 substances contingency and abatement account; and

8 (B) money [FUNDS] from performance bonds and other forms
9 of financial responsibility held in escrow pending satisfactory performance of
10 a privately financed response action;

11 (3) fines, penalties, or damages recovered under AS 46.08.005 -
12 46.08.080 or other law for costs incurred by the state as a result of the release or
13 threatened release of oil or a hazardous substance, but excluding fines, penalties, or
14 damages recovered or otherwise received due to a catastrophic oil discharge; and

15 (4) the interest earned on the balance of the account maintained
16 under AS 37.05.142 for deposits into the general fund of the proceeds of the
17 surcharge levied under AS 43.55.201.

18 (b) Money received by the state under (a)(2) and (a)(3) of this section shall
19 be deposited in the general fund and credited to a special account called the "oil and
20 hazardous substances [SUBSTANCE] release contingency and abatement mitigation
21 account." The legislature may annually appropriate to the oil and hazardous
22 substances release contingency and abatement account in the fund from the oil and
23 hazardous substances release contingency and abatement mitigation [THIS]
24 account a sum equal to the amount received under (a)(2) and (a)(3) of this section
25 during the calendar year preceding the legislative session in which the appropriations
26 are to be made.

27 * Sec. 24. AS 46.08 is amended by adding a new section to read:

28 Sec. 46.08.025. FINANCING OF THE CATASTROPHIC OIL RELEASE
29 RESPONSE ACCOUNT. (a) The legislature may appropriate from the following
30 sources to the catastrophic oil release response account in the fund:

31 (1) money received from federal, state, or other sources or from a

1 private donor;

2 (2) money recovered or otherwise received from parties responsible for
3 the containment and cleanup of a catastrophic oil discharge, but excluding money from
4 performance bonds and other forms of financial responsibility held in escrow pending
5 satisfactory performance of a privately financed response action;

6 (3) fines, penalties, or damages recovered under AS 46.08.005 -
7 46.08.080 or other law for costs incurred by the state as a result of a catastrophic oil
8 discharge.

9 (b) Money received by the state under (a)(2) and (a)(3) of this section shall
10 be deposited in the general fund and credited to a special account called the
11 "catastrophic oil release response mitigation account." The legislature may annually
12 appropriate to the catastrophic oil release response account in the fund from the
13 catastrophic oil release response mitigation account a sum equal to the amount received
14 under (a)(2) and (a)(3) of this section during the calendar year preceding the legislative
15 session in which the appropriations are to be made.

16 * Sec. 25. AS 46.08.040(a) is amended to read:

17 (a) In addition to money in the fund that is transferred to the commissioner of
18 community and regional affairs to make grants under AS 29.60.510 and to pay for
19 impact assessments under AS 29.60.560, the commissioner of environmental
20 conservation may use money

21 (1) from the catastrophic oil release response account in the fund to

22 (A) [(1)] investigate and evaluate a catastrophic oil [THE]
23 release or threatened catastrophic oil release [OF OIL OR A HAZARDOUS
24 SUBSTANCE], and [CONTAIN, CLEAN UP, AND] take containment and
25 cleanup and other necessary action, such as monitoring and assessing, to
26 address a catastrophic oil release or threatened catastrophic oil release [OF
27 OIL OR A HAZARDOUS SUBSTANCE] that poses an imminent and
28 substantial threat to the public health or welfare, or to the environment;

29 (B) [(2)] PAY ALL COSTS INCURRED TO

30 (A) ESTABLISH AND MAINTAIN THE OIL AND
31 HAZARDOUS SUBSTANCE RESPONSE OFFICE;

1 (B) REVIEW OIL DISCHARGE PREVENTION AND
2 CONTINGENCY PLANS SUBMITTED UNDER AS 46.04.030;

3 (C) CONDUCT TRAINING, RESPONSE EXERCISES,
4 INSPECTIONS, AND TESTS, IN ORDER TO VERIFY EQUIPMENT
5 INVENTORIES AND ABILITY TO PREVENT AND RESPOND TO OIL
6 AND HAZARDOUS SUBSTANCE RELEASE EMERGENCIES, AND TO
7 UNDERTAKE OTHER ACTIVITIES INTENDED TO VERIFY OR
8 ESTABLISH THE PREPAREDNESS OF THE STATE, A MUNICIPALITY,
9 OR A PARTY REQUIRED BY AS 46.04.030 TO HAVE AN APPROVED
10 CONTINGENCY PLAN TO ACT IN ACCORDANCE WITH THAT PLAN;
11 AND

12 (D) VERIFY OR ESTABLISH PROOF OF FINANCIAL
13 RESPONSIBILITY REQUIRED BY AS 46.04.040;

14 (3)] pay the expenses incurred by the department to obtain
15 equipment required for and placed in [ALASKA DIVISION OF EMERGENCY
16 SERVICES FOR THE OIL AND HAZARDOUS SUBSTANCE RESPONSE CORPS
17 AND] the oil and hazardous substance response depots;

18 (C) [WHEN PRESENTED WITH APPROPRIATE
19 DOCUMENTATION BY THE DIVISION;

20 (4)] provide matching funds in the event of a catastrophic oil release
21 for participation

22 (i) in federal oil discharge cleanup activities; and

23 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive
24 Environmental Response, Compensation, and Liability Act of 1980);

25 and

26 (D) [(5)] recover the costs to the state, a municipality, or a
27 village of a containment and cleanup resulting from the catastrophic oil release
28 or the threatened catastrophic oil release [OF OIL OR A HAZARDOUS
29 SUBSTANCE];

30 (2) from the oil and hazardous substances release contingency and
31 abatement account in the fund to

1 (A) investigate and evaluate the release or threatened release
2 of oil or a hazardous substance, except a catastrophic oil release, and
3 contain, clean up, and take other necessary action, such as monitoring and
4 assessing, to address a release or threatened release of oil or a hazardous
5 substance, except a catastrophic oil release, that poses an imminent and
6 substantial threat to the public health or welfare;

7 (B) recover the costs to the state, a municipality, or a village
8 of a containment and cleanup resulting from the release or the threatened
9 release of oil or a hazardous substance, except a catastrophic oil release;

10 (C) pay all costs incurred to

11 (i) establish and maintain the oil and hazardous
12 substance response office;

13 (ii) review oil discharge prevention and contingency
14 plans submitted under AS 46.04.030;

15 (iii) conduct training, response exercises, inspections,
16 and tests, in order to verify equipment inventories and ability to
17 prevent and respond to oil and hazardous substance release
18 emergencies, and to undertake other activities intended to verify or
19 establish the preparedness of the state, a municipality, or a party
20 required by AS 46.04.030 to have an approved contingency plan to
21 act in accordance with that plan; and

22 (iv) verify or establish proof of financial
23 responsibility required by AS 46.04.040;

24 (D) pay the expenses incurred by the department for

25 (i) the oil and hazardous substance response corps;
26 and

27 (ii) the oil and hazardous substance response ~~deposits~~,
28 except the expenses incurred by the department to obtain
29 equipment that is required for and placed in the response depots;

30 (E) provide matching funds in the event of the release of oil
31 or a hazardous substance, except a catastrophic oil release, for

1 participation

2 (i) in federal oil discharge cleanup activities; and
 3 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive
 4 Environmental Response, Compensation, and Liability Act of 1980);

5 and

6 (F) [(6)] prepare, review, and revise

7 (i) [(A)] the state's master oil and hazardous substance
 8 discharge prevention and contingency plan required by AS 46.04.200;
 9 and

10 (ii) [(B)] a regional master oil and hazardous substance
 11 discharge prevention and contingency plan required by AS 46.04.210
 12 [; AND

13 (7) RESTORE THE ENVIRONMENT BY ADDRESSING THE
 14 EFFECTS OF AN OIL OR HAZARDOUS SUBSTANCE RELEASE].

15 * Sec. 26. AS 46.08.040(b) is amended to read:

16 (b) When the governor declares a disaster related to an oil or hazardous
 17 substance discharge emergency under AS 26.23.020(c), the governor may, during the
 18 effective period of the disaster emergency, use money from the catastrophic oil
 19 release response account in the fund to respond to the disaster emergency.

20 * Sec. 27. AS 46.08.040(c) is amended to read:

21 (c) Notwithstanding other provisions of this section, money from the fund may
 22 not be used for a purpose specified in (a)(1)(B) - (D) or (a)(2) [(a)(2) - (7)] and (d)(2)
 23 of this section unless money is available from an appropriation made specifically for
 24 that purpose.

25 * Sec. 28. AS 46.08.060(a) is amended to read:

26 (a) The commissioner shall submit a report to the legislature not later than the
 27 10th day following the convening of each regular session of the legislature. The report
 28 may include information considered significant by the commissioner but must include:

29 (1) the amount of money expended by the department under
 30 AS 46.08.040(a) during the preceding fiscal year,

31 (2) the amount and source of money received and money recovered by

1 or on behalf of the department during the preceding fiscal year as specified in
2 AS 46.08.020 and 46.08.025;

3 (3) a summary of municipal participation in the department's responses
4 that were paid for [FUNDED] by the fund;

5 (4) a detailed summary of department activities in responses paid for
6 [FUNDED] by the fund during the preceding fiscal year, including response
7 descriptions and statements outlining the nature of the threat; [IN THIS PARAGRAPH,
8 "DETAILED" INCLUDES INFORMATION DESCRIBING EACH PERSONAL
9 SERVICES POSITION AND TOTAL COMPENSATION FOR THAT POSITION,
10 EACH CONTRACT IN EXCESS OF \$20,000, AND EACH PURCHASE IN EXCESS
11 OF \$10,000;] and

12 (5) the projected cost to the department for the next fiscal year of
13 monitoring, operating, and maintaining sites where response has been completed or is
14 expected to be continued during the fiscal year.

15 * Sec. 29. AS 46.08.075(a) is amended to read:

16 (a) The state has a lien for expenditures by the state from the oil and
17 hazardous substance release prevention and response fund, or from any other state
18 fund, for the costs of response, containment, removal, or remedial action resulting from
19 an oil or hazardous substance release [SPILL], or, with respect to response costs, for
20 the costs of response to a threatened [THE SUBSTANTIAL THREAT OF A] release
21 of oil or a hazardous substance, against all property owned by a person who is
22 determined by the commissioner to be liable for the expenditures under this chapter,
23 AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes
24 interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the
25 expenditures. The state may file an action in a court of competent jurisdiction in order
26 to foreclose on the lien.

27 * Sec. 30. AS 46.08.075(e) is amended to read:

28 (e) A person with an ownership interest in property against which a lien is
29 recorded may bring an action in a court of competent jurisdiction to require that the
30 lien be released. The lien may be released to the extent of that person's ownership
31 interest if the court finds that the person is not liable for the expenses incurred by the

1 state in connection with the costs of response, containment, removal, or remedial
 2 action resulting from the [OIL OR HAZARDOUS SUBSTANCE] release or from the
 3 threatened [THREAT OF] release, of oil or a hazardous substance.

4 * Sec. 31. AS 46.08.150 is amended to read:

5 Sec. 46.08.150. CONTRACTS. The office [OR THE DIVISION,
 6 AS APPLICABLE,] may

7 (1) enter into agreements with agencies of the state and federal
 8 government, political subdivisions, the University of Alaska, or private persons or
 9 entities to

10 (A) [(1)] provide the personnel, equipment, or other services or
 11 supplies necessary to establish and maintain regional oil and hazardous
 12 substances depots and as necessary for response readiness; and

13 (B) [(2)] train members of response corps; and

14 (2) contract with persons to provide personnel, including members
 15 of the emergency response corps, to assist them with a nongovernmental response
 16 to a release or threatened release of oil or a hazardous substance [(3) CONDUCT
 17 RESEARCH INTO OIL AND HAZARDOUS SUBSTANCES SPILL TECHNOLOGY;
 18 THE OFFICE SHALL INCLUDE IN THE RESEARCH TOPICS FOR WHICH IT
 19 CONDUCTS OR CONTRACTS FOR RESEARCH, THE RESEARCH TOPICS
 20 RECOMMENDED TO IT BY THE HAZARDOUS SUBSTANCE SPILL
 21 TECHNOLOGY REVIEW COUNCIL UNDER AS 46.13.120].

22 * Sec. 32. AS 46.08.900(11) is amended to read:

23 (11) "threatened release" means [AN IMMINENT DANGER] that a
 24 release is imminent; a release is imminent if

25 (A) it is impending, or on the point of happening; or

26 (B) though not impending, in the judgment of the
 27 commissioner

28 (i) the incident or occurrence may reasonably be
 29 expected to culminate in an actual release; and

30 (ii) that actual release may reasonably be expected to
 31 cause personal injury, other injury to life, or loss of or damage to

1 property, including the environment [WILL OCCUR];

2 * Sec. 33. AS 46.08.900 is amended by adding a new paragraph to read:

3 (13) "catastrophic oil discharge" and "catastrophic oil release" have the
4 meaning given the term "catastrophic oil discharge" in AS 46.04.900.

5 * Sec. 34. AS 46.09.900(8) is amended to read:

6 (8) "threatened release" means [AN IMMINENT DANGER] that a
7 release is imminent; a release is imminent if

8 (A) it is impending, or on the point of happening; or

9 (B) though not impending, in the judgment of the

10 commissioner

11 (i) the incident or occurrence may reasonably be
12 expected to culminate in an actual release; and

13 (ii) that actual release may reasonably be expected to
14 cause personal injury, other injury to life, or loss of or damage to
15 property, including the environment [WILL OCCUR].

16 * Sec. 35. AS 26.23.195(b); AS 43.55.200, 43.55.210, 43.55.220, 43.55.230, 43.55.240; and
17 sec. 3, ch. 112, SLA 1989 are repealed.

18 * Sec. 36. REVISOR OF STATUTES TO REVISE REFERENCES. In each of the
19 following, the revisor of statutes shall delete references to "oil and hazardous substance release
20 response fund" and insert in place of each deletion a reference to "oil and hazardous substance
21 release prevention and response fund": AS 26.23.020(g)(11); AS 29.60.510(a),
22 29.60.560(e)(1), 29.60.599(4); AS 46.08.900(5).

23 * Sec. 37. TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR
24 PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by
25 this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b), the
26 reference to which is repealed by sec. 3 of this Act, is not an expenditure.

27 * Sec. 38. APPLICABILITY. The addition of the definition of "catastrophic oil discharge"
28 in AS 46.08.900 by sec. 33 of this Act, and amendment of the definition of "catastrophic oil
29 discharge" in AS 43.55.900(3) in sec. 10 of this Act and in AS 46.04.900 in sec. 18 of this
30 Act apply to discharges occurring after the effective date of this section.

31 * Sec. 39. TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION

1 SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1994, AND
2 BEFORE THE EFFECTIVE DATE OF THIS ACT. After June 30, 1994, and before the
3 effective date of this Act, a producer of oil who is required by AS 43.55.200 - 43.55.240,
4 repealed by this Act, to pay the oil conservation surcharge of \$.05 per barrel of oil shall pay
5 that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply to the
6 amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts received
7 after June 30, 1994, and before the effective date of this Act, if so appropriated by the
8 legislature and notwithstanding any other provision of law relating to the deposit of and
9 accounting for those receipts,

10 (1) on the effective date of this Act, the commissioner of revenue shall allocate

11 (A) 60 percent of the amount received to the catastrophic oil release
12 response account established by AS 46.08.010(a)(2), added by sec. 20 of this Act; and

13 (B) 40 percent of the amount received to the oil and hazardous
14 substances release contingency and abatement account established by
15 AS 46.08.010(a)(1), added by sec. 20 of this Act; and

16 (2) the allocations made under (1) of this section are credited to the respective
17 accounts for purposes of determination of the suspension and reimposition of the surcharge
18 under AS 43.55.231 and 43.55.241, added by secs. 8 and 9 of this Act.

19 * Sec. 40. APPLICATION OF AS 43.55.231. (a) AS 43.55.231, added by sec. 8 of this
20 Act, does not apply to prevent the levy and collection of the surcharge imposed by
21 AS 43.55.201 until the first day of the fiscal year next following the day on which the balance
22 of the oil and hazardous substance release response fund first exceeds \$50,000,000.

23 (b) The commissioner of administration shall certify to the commissioner of
24 environmental conservation, the commissioner of revenue, the revisor of statutes, and the
25 division of legislative finance the date on which the balance of the oil and hazardous
26 substance release response fund first exceeds \$50,000,000.



Cordova District Fishermen United

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March 16, 1994

Representative Bill Williams
Chair, House Resources Committee
State Capitol
Juneau, AK 99801-1182

Dear Representative Williams:

On behalf of Cordova District Fishermen United (CDFU) I wish to express our opposition to the "S" version of HB 238. There is no compelling reason for this bill other than to provide a tax reduction to the oil industry.

There is a great deal of misinformation being spread about the 470 Fund. Most of the examples being used to show how the fund is being misused actually involve small amounts of money and were all approved by the legislature through the appropriations process. If changes need to be made they should be made when the DEC budget is reviewed by the finance committees.

The most important lesson we learned from the Exxon Valdez oil spill is that prevention is the best tool we have to protect public health and the environment from oil spills. By splitting the nickel, the legislature is in effect, reducing funding for critical prevention programs.

The "catastrophic oil release response account" which would receive 3 cents of the per barrel surcharge would only be available for the most extreme spill events, and only for "emergency first response." Since the likelihood of an oil spill of 100,000 barrels or more is quite small, we can anticipate this fund will remain dormant and collect dust while the state is left without the ability to deal with the serious acute and chronic affects of smaller spills. Any spill can be catastrophic. The size of a spill matters far less than where the spill occurs (i.e., a municipal drinking water system or an anadromous fish stream) or what the spilled substance consists of.

The remaining 2 cents would go into a the "oil and hazardous substances release contingency and abatement account" that would be woefully inadequate to fund the ongoing spill prevention and response programs presently being funded from the 470 Fund. There are several other problems with the "S" version of HB 238. Among other things, it would:

- cause detrimental reductions in spill prevention and response programs now and especially in the future, threatening public health and the environment;
- give a \$74 million reduction in the nickel-per-barrel tax that was intended to be ongoing;
- reduce DEC's ability to respond to hazardous substance spills and spills smaller than 100,000 barrels; and
- allow fines and penalties levied for illegal actions to be credited toward the suspension of the tax.

Apathy caused the Exxon Valdez Oil Spill. The state had virtually no spill prevention or response programs in place when it occurred. Nearly 5 years later, the legislature is threatening to return back to the same vulnerable position. What HB 238 "S" version removes much of the oversight that has been put in place since the 11 million gallon oil spill in Prince William Sound.

CDFU urges the House Resources Committee to oppose the "S" version of HB 238. If the Committee deems that a bill is necessary, we urge that the Committee pass the "Y" version of HB 238 that does not split the nickel. However, we oppose allowing fines and penalties to be used toward the \$50 million cap. These monies should be available to provide a buffer in future years when oil production declines and the nickel is not adequate to fund the spill prevention and response programs.

Sincerely,
CORDOVA DISTRICT FISHERMEN UNITED


John Bocci, Legislative Committee Chair

cc:

Governor Hickel
Senator Lincoln
Rep. Olberg
Rep. Barnes
Rep. Phillips
Rep. Finkelstein
Rep. Davies
Rep. Green
Rep. James
Rep. Hudson
Rep. Bunde
Rep. Mulder
Rep. Carney
Rep. Vezey
Rep. Larson
Rep. MacLean