

HB

384

(9)

Date Referred: January 26, 1994

FURTHER REFERRALS:

Date of Committee Action: 1/31/94

The RESOURCES Committee considered:

HB 384

HOUSE BILL NO. 384

FINANCIAL REQMTS: NONCRUDE OIL OPERATIONS

"An Act eliminating the temporary character of alternative procedures available to persons who must show evidence of financial responsibility before conducting noncrude oil operations; and providing for an effective date."

RECOMMENDATIONS: the same title
be replaced with _____ a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) DEC / 1-26-94

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
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<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				

[Signature]
CHAIRMAN'S SIGNATURE

Alaska House of Representatives

Richard Foster
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907-443-5036
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During Session
State Capitol
Juneau, Alaska 99801-1182
907-465-3789
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MEMORANDUM

To: Rep. Bill Williams, Chair
House Resources Committee

From: Rep. Richard Foster *R.F.*

RE: Scheduling HB 384

Date: January 25, 1994

I would appreciate HB 384 being heard by the House Resources Committee some time in the near future. This piece of legislation is supported by the Department of Environmental Conservation and is needed by the end of this legislative year.

Please contact my office if you have questions or need additional information.

Thank you for your consideration.

Alaska House of Representatives

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HB 384 FINANCIAL RESPONSIBILITY OF NON CRUDE OPERATORS

Background Paper

History: On March 24, 1989 the *Exxon Valdez* ran aground on Bligh Reef in Prince William Sound, causing the largest crude oil spill in the United States history. As a result, the Alaska Legislature and the United States Congress significantly strengthened oil spill prevention and cleanup standards. One bill, HB 567, passed in 1990, made three major changes in state oil spill protection. It 1) established new response planning standards; 2) imposed new financial responsibility requirements for contingency plan holders; and 3) allowed the Department of Environmental Conservation to give credits for incorporating prevention measures into contingency plans. These major changes were to have gone into effect on and after June 1, 1991.

Although HB 567 was passed as a result of the *Exxon Valdez* oil spill and was aimed at the crude oil industry, non crude carriers and facilities were also subject to the changes. Regulations implementing these changes have been drafted by the Department of Environmental Conservation, and are still being viewed by the Department of Law.

Problem: Smaller fuel distributors, barge lines that transport refined petroleum products, and rural electric utilities that must maintain fuel stores have found it all but impossible to meet the new financial responsibility requirements imposed by HB 567. Although these non crude operators *are* able to purchase the required amounts of pollution insurance, underwriters in both the domestic and overseas markets steadfastly refuse to include the "direct action" clause in these policies that Alaska law requires.

Alaska's direct action requirements have been in effect since 1981. The provision allows an action to be brought in state court directly against the insurer, rather than going first to the responsible party. Ambiguities about whether insurers are limited to the face amount of the policy, plus the greatly increased amounts of coverage required since the *Exxon Valdez* spill, have combined to produce the current unavailability of direct action coverage.

When it became clear by early 1991 that insurers would not provide direct action coverage, Senator Lyman Hoffman introduced legislation to delay the effective date of HB 567's financial responsibility requirements for non crude operations. The hope was that over the year's time, either the insurance markets would overcome their objections to provide direct action, or that perhaps a risk pool could be developed to provide such coverage. The Legislature unanimously approved Senator Hoffman's bill.

To date, there has been no change in the insurance markets position on direct action coverage, and development of an insurance pool so far has proved unfeasible. With the June 1, 1994 date of the financial responsibility requirements approaching, and the unavailability of direct action coverage just as complete as it was in 1991, non crude operators once again face the prospect of either operating out of compliance with Alaska law or ceasing operations. The large crude oil operators do not face this problem, because they have sufficient assets and working capital to either self-insure or comply with the law through other means, such as surety bonds or letters of credit.

Solution: This act repeals Section 6 which is the Sunset clause repealing Section 2 TEMPORARY LAW APPLICABLE TO NON CRUDE OIL OPERATIONS.

Chapter 101

Chapter 102

- 1 (16) AS 21.69.600, 21.69.620 and 21.69.630
- 2 (17) AS 21.78
- 3 (18) AS 21.89.010
- 4 (19) AS 21.89.060
- 5 (20) AS 21.90

- 6 * Sec. 4. AS 21.42.385 is repealed.
- 7 * Sec. 5. Sections 3 and 4 of this Act take effect July 1, 1998
- 8 * Sec. 6. Except as provided in sec. 5 of this Act, this Act takes effect July 1, 1993.

4 take
/1/98;
of ..
/1/93

AN ACT

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

3
4 * Section 1. AS 46.04.040(e) is amended to read:

5 (c) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3)
6 surety, (4) guaranty, (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 46.03.738,
10 46.03.739, 46.03.740(a) or (c), 46.03.822, or AS 46.04.030(g) may be brought in a state court
11 directly against the insurer, the group, or another person providing evidence of financial
12 responsibility; however, the liability under this section of a third-party insurer is limited to
13 the type of risk assumed and the amount of coverage specified in the proof of financial
14 responsibility furnished to and approved by the department. The applicant, and an insurer,

46.04.040(e)

Chapter 102

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 insurers 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 46.04.010, 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 (E) 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.

Chapter 102

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).

Eff. 6/21/92
 § 2 is retro-
 active to 6/
 § 3 is retro-
 active to 6/

AN ACT

1 Relating to oil discharge prevention and contingency plans and financial responsibility
2 requirements for oil operations; and providing for an effective date.

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4
5
6 * Section 1. FINDINGS. The legislature finds that

7 (1) whereas crude oil companies have indicated their intention and ability to be in
8 compliance with the June 1, 1991, applicability date of ch. 191, SLA 1990, including the new oil spill
9 response planning standards and new financial responsibility requirements, the entities involved in the
10 transportation and storage of noncrude oil are finding it difficult, if not impossible, to meet those
11 requirements by June 1, 1991, due to unforeseen developments;

12 (2) these developments include the fact that the London insurance markets, historically
13 the source of pollution liability insurance underwriting, are steadfastly refusing to offer policies that meet
14 the new financial responsibility requirements imposed by ch. 191, SLA 1990; most notably, they have
15 refused to issue certificates of financial responsibility or make themselves available for direct legal action
16 in Alaska courts;

17 (3) while larger companies involved in the transportation and storage of crude oil have
18 the financial ability to meet the new financial responsibility requirements through self-insurance, surety
19 bonding, or letters of credit, most noncrude transporters and facility operators do not have the financial
20 resources to make use of these avenues to satisfy the requirements;

21 (4) additionally, a study mandated by ch. 191, SLA 1990, designed to identify appropriate

1 spill response times, specify personnel levels and equipment requirements, and identify specific locations
2 for oil discharge response equipment depots for noncrude oil tankers and barges will not be completed
3 until at least one month after June 1, 1991; this study's findings could have a significant effect on
4 emergency spill response planning by both transporters and the state;

5 (5) taken together, the uncertainties posed by these developments create a strong
6 possibility that many noncrude transporters and facility operators will find it necessary to either operate
7 illegally or cease operations in the state after June 1, 1991, which would in turn pose serious problems
8 for the residents of communities dependent on delivery and storage of noncrude oil products for fuel and
9 electrical generation;

10 (6) a one-year delay to June 1, 1992, in the applicability date for compliance with the
11 requirements of ch. 191, SLA 1990, for noncrude transporters and facility operators will allow thorough
12 consideration of the study described in (4) of this section and implementation of its findings into
13 emergency response planning; will permit noncrude transporters and operators to explore other options
14 to meet the statute's financial responsibility requirements, including the possibility of developing an
15 insurance pool to replace the coverage no longer being offered by the traditional insurance markets; and
16 will provide adequate time for the Department of Environmental Conservation to develop its
17 implementing regulations for contingency planning.

18 * Sec. 2. Section 32, ch. 191, SLA 1990, is amended to read:

19 Sec. 32. TRANSITIONAL PROVISIONS. (a) AS 46.04.030(k) - (m), enacted by sec.
20 10 of this Act, do not apply to oil discharge prevention and contingency plans for crude oil
21 operations until June 1, 1991. On and after June 1, 1991, a contingency plan for a crude oil
22 operation must comply with AS 46.04.030(k) - (m), enacted by sec. 10 of this Act, regardless
23 of whether the contingency plan is due for renewal under AS 46.04.030(d), as amended by sec.
24 9 of this Act.

25 (b) The amendments to AS 46.04.040, made by secs. 11 - 18 of this Act, do not apply
26 to persons required to show proof of financial responsibility for crude oil operations until
27 June 1, 1991. On and after June 1, 1991, proof of financial responsibility for a crude oil
28 operation must comply with AS 46.04.040, as amended by secs. 11 - 18 of this Act, regardless
29 of whether acceptance of proof of financial responsibility has expired under AS 46.04.040(f), as
30 amended by sec. 16 of this Act.

1 * Sec. 3. Section 32, ch. 191, SLA 1990, is amended by adding new subsections to read:

2 (c) AS 46.04.030(k) - (m), enacted by sec. 10 of this Act, do not apply to oil discharge
3 prevention and contingency plans for noncrude oil operations until June 1, 1992. On and after June 1,
4 1992, a contingency plan for a noncrude oil operation must comply with AS 46.04.030(k) - (m), enacted
5 by sec. 10 of this Act, regardless of whether the contingency plan is due for renewal under
6 AS 46.04.030(d), as amended by sec. 9 of this Act.

7 (d) The amendments to AS 46.04.040 made by secs. 11 - 13 of this Act do not apply to persons
8 required to show proof of financial responsibility for noncrude oil operations until June 1, 1992. On and
9 after June 1, 1992, proof of financial responsibility for a noncrude oil operation must comply with
10 AS 46.04.040, as amended by secs. 11 - 18 of this Act, regardless of whether acceptance of proof of
11 financial responsibility has expired under AS 46.04.040(f), as amended by sec. 16 of this Act.

12 * Sec. 4. INTERIM OPERATION. (n) A person with a crude oil discharge prevention and
13 contingency plan that is approved under AS 46.04.030 who submits plan amendments to the department
14 to show compliance with the requirements of ch. 191, SLA 1990, may continue to operate if the
15 department determines and notifies the person in writing that the contingency plan, as amended,
16 substantially complies with the requirements of ch. 191, SLA 1990. The department's notification of
17 substantial compliance for the interim contingency plan will allow the operator to continue operation
18 regardless of whether the department has completed any notice process otherwise required by the Alaska
19 Coastal Management Program for the interim operation.

20 (b) The authority to operate under this section is valid only until the earliest of the following
21 dates:

22 (1) the date the department takes action on the amended plan under AS 46.04.030 by
23 approving it, disapproving it, or approving it with terms or conditions attached; notwithstanding
24 AS 46.04.030(p), the department's action on the amended plan need not occur within 65 days of
25 submission of the amendments.

26 (2) the date the department revokes the plan under AS 46.04.030;

27 (3) the date the plan's previous approval lapses or expires for failure to be renewed; or

28 (4) February 1, 1992.

29 (c) In this section, "department" means the Department of Environmental Conservation.

30 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. House Bill No. 384

Revision Date: _____ Dept. Affected: Environmental Conservation
 Title: Financial Requirements: Noncrude Oil Operations BRU: Spill Prevention and Response
 Component: Industry Preparedness and Response
 Sponsor: Representative Foster
 Requestor: House Oil & Gas COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTA						
Other: 1052 Oil/Haz "470" Fund	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ not applicable

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
 No fiscal impact anticipated.

Prepared by: Robert Poo, Director
 Division: Information and Administrative Services
 Approved by: John Sandor, Commissioner
 Agency: Environmental Conservation

Phone: 465-5010
 Date: 1/20/94
 Date: 1/20/94

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HOUSE RESOURCES COMMITTEE

SUBJECT OF MEETING:

HR 384

DATE: 1/31/97

PLACE: Capitol, Room 124

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Larry LaBalle	Rep. Foster	420 Capitol Bldg		37	3789	<input checked="" type="radio"/>	N	HB 348
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
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