

LEG. FINANCE - BILLS 1985 - 1986 2406

SSHB 466 cont. - HB 470 2406

1 the area.

2 (c) In this section, a person is considered a member of a minor-
3 ity if the person is a member of a racial or ethnic minority group
4 recognized by the federal Bureau of the Census.

5 Sec. 36.10.180. PROJECTS SUBJECT TO PREFERENCE. (a) The pref-
6 erences established in AS 36.10.150 - 36.10.170 apply to

7 (1) the performance of contracts let by a municipality for
8 construction, repair, preliminary surveys, engineering studies, con-
9 sulting, maintenance work, or any other retention of services neces-
10 sary to complete a given project;

11 (2) a construction project that is partly or wholly funded
12 by state money and to which the state or an agency of the state, a
13 department, office, agency, state board, commission, regional school
14 board with respect to an educational facility under AS 14.11.020,
15 public corporation, or other organizational unit of or created under
16 the executive, legislative or judicial branch of state government,
17 including the University of Alaska and the Alaska Railroad Corpo-
18 ration, is a signatory to the construction contract;

19 (3) work performed on a public works project under a grant
20 to a municipality under AS 37.05.315;

21 (4) work performed on a public works project under a grant
22 to a named recipient under AS 37.05.316; and

23 (5) work performed on a public works project under a grant
24 to an unincorporated community under AS 37.05.317.

25 (b) If the governor has declared an area to be an area impacted
26 by an economic disaster under AS 44.33.285, then the preference for
27 residents of the area established under AS 44.33.285 - 44.33.310
28 supercedes the preference under AS 36.10.150 and 36.10.160 for con-
29 tracts awarded by the state.

1 (c) The commissioner shall define the boundaries of an economic
2 region or an area within which a preference applies.

3 Sec. 36.10.900. EFFECT OF JUDICIAL DECISIONS. If a provision of
4 this chapter, or the application of a provision to a person or circum-
5 stance, is held invalid, the remainder of this chapter and the appli-
6 cation to other persons or circumstances shall not be affected by the
7 holding. The remainder shall be enforced to the greatest extent
8 constitutionally permissible under the constitutions of the United
9 States and the State of Alaska.

10 Sec. 36.10.990. DEFINITION. In this chapter "qualified" means
11 possesses the requisite education, training, skills, or experience to
12 perform the work.

13 * Sec. 6. AS 36.95.010 is amended by adding a new paragraph to read:

14 (9) "craft" means a recognized construction trade;

15 * Sec. 7. AS 37.05.315 is amended by adding a new subsection to read:

16 (e) The Department of Labor may require a municipality awarded a
17 grant under (a) of this section to comply with the hiring preferences
18 under AS 36.10.150 - 36.10.170 for employment generated by the grant.

19 * Sec. 8. AS 37.05.316 is amended by adding a new subsection to read:

20 (b) The Department of Labor may require a grant recipient under
21 (a) of this section to comply with the hiring preferences under
22 AS 36.10.150 - 36.10.170 in employment generated by the grant.

23 * Sec. 9. AS 37.05.317 is amended by adding a new subsection to read:

24 (b) The Department of Labor may require the qualified incor-
25 porated entity awarded a grant or agents or contractors with whom the
26 Department of Community and Regional Affairs contracts under (a) of
27 this section to comply with the requirements of AS 36.10.150 - 36.10.-
28 170 for employment generated by the grant.

29 * Sec. 10. The provisions of this Act do not apply to a contract

1 entered into be. ve the effective date of this Act.

2 * Sec. 11. AS 36.95.010(4) is repealed.

3 * Sec. 12. AS 36.10.010 is repealed.

4 * Sec. 13. Section 12 of this Act takes effect February 16, 1986, or
5 immediately, in accordance with AS 01.10.070(c), whichever is later, if the
6 final decision of the Alaska Supreme Court in Robison v. Francis, File No.
7 S-493, Opinion No. 3011, January 17, 1986, is not submitted for review to
8 the Unites States Supreme Court. If the decision is submitted for review
9 but the United State Supreme Court declines to accept review, then sec. 12
10 of this Act takes effect on the date of the order of the United States
11 Supreme Court declining to accept review. If the United States Supreme
12 Court accepts review, then sec. 12 of this Act takes effect on the date of
13 a final decision of the United States Supreme Court affirming the decision
14 of the Alaska Supreme Court.

15 * Sec. 14. Sections 1 - 11 of this Act take effect immediately in
16 accordance with AS 01.10.070(c).

**HOUSE
COMMITTEE REPORT**

(11)

Date referred: 3/10/86

FURTHER REFERRALS:

DATE: 3-17-86

The FINANCE Committee has considered SSHB 467

"An Act relating to herding of fish."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS SS HB 467 (Jun) same title
- new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Albert R. Adams
John D. ...
John ...
Donald J. ...
Rich ...
Ed ...
Al ...
W ...
Walter ...
Ed ...

Albert R. Adams
Chairman

HOUSE FINANCE COMMITTEE
LETTER OF INTENT
FOR
CS SS HB 467 (JUDICIARY)

Committee Substitute for Sponsor Substitute for House Bill 467 (Judiciary) is intended to prohibit the herding of fish by aircraft. It is not the intent of the legislature to otherwise restrict the legal uses of aircraft for spotting schools of fish in conjunction with commercial fishing operations.

A handwritten signature in cursive script, appearing to read "Al Adams", is written above a horizontal dashed line.

Al Adams, Chair
House Finance Committee

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SS HB 467 (Jud)
 Title : Herding Fish

 Sponsor : Representative Goll
 Requestor : House Finance Committee
 Date of Request : 3/15/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : _____

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
IMPROVEMENTS, STRUCTURES						
GRANTS, CLAIMS						
OTHER						
ILLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-		

CAPITAL		-0-	-0-	-0-		
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REVENUE		-0-	-0-	-0-		
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FUNDING : (Thousands of Dollars)

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

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Earlier versions have had no fiscal impact. The changes made in the Judiciary Committee Substitute do not affect the fiscal impact.

Prepared by: Representative Al Adams - Chairman Phone : 465-3706
 Division : House Finance Committee Date : 3/15/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note):

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

Offered: 3/10/86
Referred: Finance

Original sponsor: Goll

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 467 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to the herding of fish."

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

8 * Section 1. AS 16.10 is amended by adding a new section to read:

9 Sec. 16.10.135. HERDING FISH BY AIRCRAFT. (a) A person may not
10 intentionally drive or herd fish by aircraft.

11 (b) A person who violates this section is guilty of a class B
12 misdemeanor.

13 (c) Aircraft and equipment used in or in aid of a violation of
14 this section may be seized and disposed of under AS 16.05.190.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSSHB 467 (Judiciary)
 Title : An Act relating to herding fish

Sponsor : Goll
 Requestor : House Finance
 Date of Request : 3/17/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Fish & Wildlife Protection

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

K. N. Nis

Prepared by : Captain J. R. Nutgrass
 Division : Fish & Wildlife Protection

Phone : 269-5509
 Date : 3/14/86

Approved by Commissioner : [Signature]
 Agency : Public Safety

Date : 3-17-86

Distribution (by Agency preparing fiscal note) :

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



Official Business

Alaska State Legislature

House of Representatives

Special Committee on Fisheries

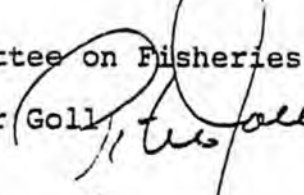
Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

MEMORANDUM

January 18, 1986

TO: Members
House Special Committee on Fisheries

FROM: Representative Peter Goll 
Chairman

SUBJECT: SSHB 467

The first meeting this session of the House Special Committee on Fisheries will take place at 8:30 a.m. Tuesday, January, 21, 1986, in Room 17 of the Capitol Building. Up for consideration will be SSHB 467, An Act relating to the herding of fish.

This legislation is designed to prevent the use of aircraft in the herding of fish into commercial fishing gear. I drafted the legislation at the request of commercial fishermen who wished to halt what they considered to be a dangerous and unfair use of aircraft in fishing operations.

This concern was raised when a helicopter was successfully used to drive herring from shallow waters into a waiting seine during the Sitka herring fishery last spring. The estimated value of helicopter-aided haul of herring was \$400,000.

The fishermen who approached me contend the practice not only represented an unfair use of aircraft but endangered other vessels crowded into an extremely small fishing area. The Department of Fish and Game and Division of Fish and Wildlife Protection have voiced concern about the practice becoming more widespread.

As the attached correspondence from the Departments of Law and Fish and Game reveal, present law does not provide the state with the necessary legal tools to halt the herding of fish by aircraft. After discussing the matter with the Department of Law, I introduced the sponsor substitute to shift the focus of enforcement from the fisherman to the pilot.

House Bill 467
January 18, 1986
Page Two

The sponsor substitute is patterned after a regulation prohibiting the use of aircraft to herd or drive wildlife. This regulation has been successfully used several times, the most recent conviction coming in a case where a big game guide used an airplane to drive brown bear toward his clients.

Some attorneys in the Department of Law believe the actions of an aircraft in driving fish toward a fishing net will be easier to prove than the mental state of a fisherman.



Official Business

Alaska State Legislature

House of Representatives

Special Committee on Fisheries

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

M E M O R A N D U M

January 30, 1986

TO: Representative Mike Miller
Chairman, House Judiciary Committee

Representative Adelheid Herrmann
Co-Chairman, House Resources Committee

FROM: Representative Peter Goll *P. Goll*
Chairman, House Special Committee on Fisheries

SUBJECT: SSHB 467 (An Act relating to the herding of fish)

During hearings by the Special Committee on Fisheries on SSHB 467, two points were raised regarding the penalties proposed in this legislation. It was decided that these matters would be the most appropriately addressed by the Judiciary Committee.

Specifically, Representative Mike Navarre suggested that the \$1,000 fine allowed under the legislation may not provide a significant enough deterrent when such fishing operations might allow a fishermen to catch \$400,000 worth of fish in a single set of a seine. Representative Navarre said he would like to have the deterrent effect of higher fines examined more closely.

A second issue the Fisheries Committee decided to ask the Judiciary Committee to examine is whether specific language should be added to the legislation regarding confiscation of aircraft used in such violations.

I appreciate your consideration of these two issues.

*made it
a B
moderately
done*

- 110. Unclassified game
- 115. Waterfowl, snipe, and cranes
- 120. (Repealed)
- 125. Control of predation by wolves
- 126. Wolf predation control programs

5 AAC 81.070. BIG GAME. Repealed 4/5/81.

5 AAC 81.072. GENERAL GAME PROVISIONS. The following methods and means of taking game are prohibited:

(1) by shooting from, on, or across a highway;

(2) with the use of poisons except with the written consent of the Board of Game;

(3) with the use of helicopter or rotorcraft in any manner, including transportation either to or from the field of any unprocessed game or parts of game, hunters or hunting gear, or any equipment used in the pursuit or retrieval of game; this paragraph does not apply to transportation of hunters, hunting gear, or game during emergency rescue operations in a life-threatening situation;

(4) unless otherwise provided in this chapter, from any mechanical vehicle or from a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased; however, a motor-driven boat underway may be used in taking wolves and coyotes in all units, and in taking caribou in Unit 23;

(5) with use of an aircraft, snowmachine, motor-driven boat, or other motorized vehicle for the purpose of driving, herding, or molesting game;

(6) with the use or aid of a machine gun, set gun, or a shotgun larger than 10 gauge;

5 AAC 81.071, Reg. 78; am 7/17/82, Reg. 83; 6/30/83, Reg. 86; am 6/30/84, Reg. 90)

Authority: AS 16.05.2

Editor's Note: The text of 5 AAC 81.072 is based on 5 AAC 81.120 which was in effect before 1980.

5 AAC 81.075. BIG GAME. (a) The following methods and means of taking big game are prohibited, in addition to the prohibitions listed 5 AAC 81.072:

(1) with the aid or use of a dog, except the dogs may be used to hunt black bear under the terms of a permit issued by the commission; under 5 AAC 81.040;

(2) with the use of traps, snares, or barbed arrows;

(3) while big game animals are swimming except that swimming caribou may be taken in Unit 23;

(4) a person who has been airborne may not take or assist in taking big game until after 3.00 a.m. following the day in which the flying occurred; however, this subsection does not apply to the following:

(A) taking or assisting in taking Sitka black-tailed deer in Units 1 - 6 and 8;

(B) repealed 6/23/85;

(5) from any boat in Units 1 - 5, except that wolves may be taken in Units 1 - 5 from a boat;

(6) repealed 6/28/85.

(b) The following methods and means of taking big game are authorized:

(1) with a shotgun, muzzle-loading rifle, or rifle or pistol using center-firing cartridges;

commodity bidding business." In other words, a crab stick is a crab stick is a crab stick.

While some experts claim "the end of the boom is nowher: in sight" and suggest that the market could hit a billion pounds by 1990, Berelson offers a more sobering vision. "Once the novelty wears off," he said, "the consumer will be disenchanting if quality slips. People have too many options today, and low quality gets lost in the backwater."

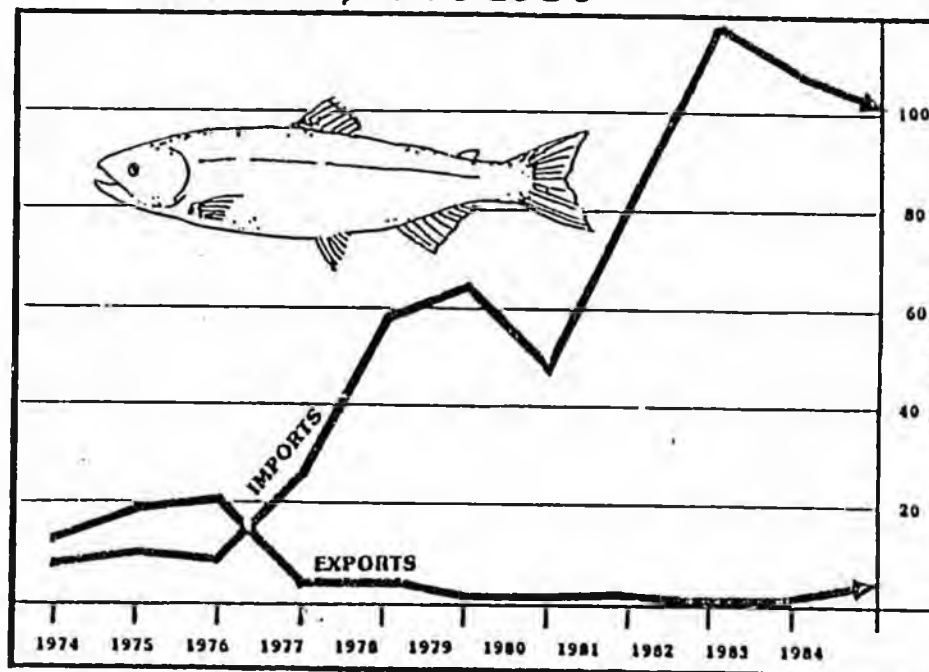
Hopefully, Berelson's boom and doom scenario is premature, but it'll be up to the industry to see that quality and value stay high. Seafood analogs don't have to go the way of the fish stick.

Fish sticks don't even have to go the way of the fish stick, judging from the new products in John Oaksmith's freezer case at Fisherman's Terminal. How about minced pollock nuggets or reformed pollock fillets from the 'Arctic Trawler?' Solves the problem of portioning small fillets and you'd be surprised how they hang together. Breaded or not, here they come. Good, too!

★ If you've got a helicopter, here's a tip for next year: Sitka herring. One enterprising skipper reportedly nailed 400 tons by stretching his net across the mouth of a bay filled with herring and seiners trying to catch them. When the herring saw the helicopter hovering overhead like a giant eagle, they split for deep water, right into the waiting purse seine. Now who would ever have thought of that?

Speaking of herring, you already know the Southeast prices, \$1000 a ton for seine and \$1350 for gillnet. Beats the pants off of last year, and bodes well for the next herring stops. No doubt you'll know the halibut price by the time the issue hits the streets. At press time all we know is that last year's cold storage fish have been

JAPAN SALMON IMPORTS AND EXPORTS, 1974-1984 (PRODUCT WEIGHT)



Prior to passage of the Magnuson Act, Japan caught 65% of its salmon on the high seas and exported more than it imported. Since then imports have grown steadily along with demand, and by 1983 the high seas catch represented only 15% of the total supply.

the fresh again. Prices should start high for them and drop like a rock when the rest hits the wharf.

U.S. Customs law requires that some species, including rockfish, taken by a Canadian vessel must be caught within their territorial waters (12-miles) if direct delivery is made to U.S. ports. Under the provisions of the IPHC, however, a Canadian fisherman is allowed to deliver halibut directly to ports in the United States. "As for

Offered: 1/22/86
Referred: Resources,
Judiciary and Finance

Original sponsor: Goll

1 IN THE HOUSE BY THE HOUSE SPECIAL
COMMITTEE ON FISHERIES

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 467 (Fisheries)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the herding of fish."

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

8 * Section 1. AS 16.10 is amended by adding a new section to read:

9 Sec. 16.10.135. HERDING FISH BY AIRCRAFT. (a) A person may not
10 drive or herd fish by aircraft.

11 (b) A person who violates this section is guilty of a class B
12 misdemeanor, and upon conviction is punishable by imprisonment for not
13 more than 90 days, or by a fine of not more than \$1,000, or by both.

Introduced: 1/17/86
Referred: House Special Committee on
Fisheries, Resources, Judiciary and
Finance

1 IN THE HOUSE

BY GOLL

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 467

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the herding of fish."

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

8 * Section 1. AS 16.10 is amended by adding a new section to read:

9 Sec. 16.10.135. HERDING FISH BY AIRCRAFT. (a) A person may not
10 disturb, drive, or herd fish by aircraft.

11 (b) A person who violates this section is guilty of a class B
12 misdemeanor, and upon conviction is punishable by imprisonment for not
13 more than 90 days, or by a fine of not more than \$1,000, or by both.
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**HOUSE
COMMITTEE REPORT**

(11)

Date referred: 2/10/86

FURTHER REFERRALS:

DATE: 3/12/86

The FINANCE Committee has considered HB 470

"An Act relating to the release of oil and hazardous substances; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 470 (FIN) same title
- do pass new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

Robert Adams
Mike Szymborski
Jim Duncan
Pat Faubus
Steve King
Don
Sam Est

SIGNING OTHER RECOMMENDATIONS:

John Dingell - NO REC.
Ronald J. Jones - No Rec
Joe P. Boy - No REC

Robert Adams
Chairman

HOUSE FINANCE COMMITTEE
LETTER OF INTENT
FOR
CS HB 470 (FINANCE)

To encourage responsible, experienced Alaskan companies to enter the oil and hazardous substance cleanup business and to facilitate the goals of cleaning up these substances, it is the intent of the Legislature to clarify the definition of "construction contracts" in AS 45.45.900. The provision in CS HB 470 (Finance) addresses an ambiguity in the current statute which prohibits indemnification agreements in construction contracts by specifically exempting hazardous waste cleanup contracts from this definition.

The provision does not require any entity, public or private, to enter into an indemnification agreement. It is not intended to hold any party harmless or exempt parties from liability for mishandling of oil or hazardous substances. The intent is to provide a mechanism for the allocation of liability among parties by allowing them to enter into contracts which provide protections and clear lines of responsibility.



Al Adams, Chair
House Finance Committee

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 470 (Fin)
 Title: An Act Relating to the Release
 of Oil and Hazardous Substances

Sponsor: Rep. Mike Davis
 Requestor: House Finance Committee
 Date of Request: 3/12/86

FISCAL DETAIL

Agency Affected: Environmental Conservation
 BRU: Environmental Quality

Components: Director's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	0	100.8	132.2	132.2	132.2	132.2
TRAVEL	0	13.0	15.0	15.0	15.0	15.0
CONTRACTUAL	0	21.0	21.0	21.0	21.0	21.0
SUPPLIES	0	8.5	10.0	10.0	10.0	10.0
EQUIPMENT	0	6.0	2.0	2.0	2.0	2.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	149.3	180.2	180.2	180.2	180.2

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND	0	149.3	180.2	180.2	180.2	180.2
FEDERAL FUNDS						
OTHER						
TOTAL	0					

POSITIONS : *3.0 PFT

FULL-TIME	0	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Al Adams, Chair Phone: 465-3706
 Division: House Finance Committee Date: 3/12/86

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by Agency preparing fiscal note):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

In order to manage a program which responds to both immediate and long-term releases of oil and hazardous substances and to make effective use of the fund created by this proposed legislation, several new positions would be required.

TOTAL
REQUEST

Funding for nine months of personal services is requested for FY 87,

100.8

A. Response Capability

1. Two environmental field officer positions to investigate reports of spilled materials, monitor cleanup activities, work with community government and safety agencies on plans for responding to local emergencies involving chemical spills/fires. The field officers would be assigned in Anchorage for the South-central Region but would be available to respond to emergencies throughout the state. The new position form total reflects funding for one position and should be doubled to reflect the two positions.

2. One administrative assistant position to assist program staff by preparing contract documents for municipalities, by tracking and recording expenditures of the fund and by preparing the fiscal reports required by the Legislature.

B. Support Costs

1. Travel funds of 3.0 for the administrative position and 5.0 per field officer position will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs.

13.0

2. Contractual funds of about 7.0 per position are required to pay office costs including telephones, xeroxing, word processing, utilities, janitorial costs, printing and advertising costs and registration fees for training courses.

21.0

3. Funds for office supplies amounting to about 1.5 are requested; 2.0 is requested to replace expendable field sampling and safety supplies; and 5.0 is requested to repair laboratory testing equipment and replace supplies.

8.5

4. Equipment funds of 2.0 are requested for desks, chairs, partitions, bookshelves and similar items necessary to equip the office of each position.

6.0

149.3

Position Title Administrative Assistant II			No. of Positions One	Range/Step 14 A	Barg. Unit GGU	Gov.	Approv.	Disapp.	
Time Status Full Time	Staff Months 12	RP Number	Location Juneau		Election District	Leg.			
Type of Expenditure			Justification						
1	2	3	<p>This new position will assist the program staff by preparing documents necessary to contract for services to contain and clean up hazardous substances, by recording and tracking expenditures from the response fund and preparing the fiscal reports required to report program activities to the Legislature. This person will also maintain records describing incidents and spills from across the State and other data necessary to obtain cost-recovery from responsible parties.</p> <p>We expect to fill this position on October 1, 1986.</p> <p>Funding for nine months has been requested for FY 87.</p>						
Salary	21.2								
Benefits	6.8								
Premium Pay									
Other									
Total Personal Services		28.0							
Travel		3.0							
Contractual		11.0							
Commodities		1.5							
Equipment		2.0							
Other									
Total Cost		45.5							
Receipt Code	Funding Source								
	Federal Receipts	1002							
	G. P. Match	1001							
	General Funds	1004							45.5
	I-A Receipts	1005							
	Program Receipts	1028							
	CIP Receipts	1061							
	Other								
For B&M Use Only Key Number _____									

**Request For
New Position**

Agency Environmental Conservation
 DRU Environmental Quality
 Component Water Quality Management

FY 87

Page _____ of _____
 Revised Date _____

Position Title Environmental Field Officer III			No. of Positions Two	Range/Step 1B A	Bus. Unit GGU	Off. 143	Agency	Disapp.
Class Number Pull Time	Staff Months 12	RP Number	Location Anchorage		Section District			
Type of Exception			Justification					
	2	3	<p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p> <p>We expect to fill this position on October 1, 1986. Funding for nine months has been requested for FY 87.</p>					
Salary	28.1							
Health	8.3							
Presiden Pay								
Other								
Total Personnel Services		36.4						
Travel		5.0						
Contractual		5.0						
Commodities		3.5						
Equipment		2.0						
Other								
Total Cost		51.9						
Receipt Code	Vendor Source							
	Federal Receipts	1002						
	U. S. Match	1003						
	General Funds	1021	51.9					
	I-A Receipts	1025						
	Program Receipts	1028						
	CIP Receipts	1059						
	Other							
For B&B Use Only Key Number								

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southcentral Region

FY 87

Page 6 of 8
 Revised Date

LETTER OF INTENT
CSHB 470 (Fin)

To encourage responsible, experienced Alaskan companies to enter the oil and hazardous substance cleanup business and to facilitate the goals of cleaning up these substances, it is the intent of the Legislature to clarify the definition of "construction contracts" in AS 45.45.900. The provision in CSHB 470 (Fin) addresses an ambiguity in the current statute which prohibits indemnification agreements in construction contracts by specifically exempting hazardous waste cleanup contracts from this definition.

The provision does not require any entity, public or private to enter into an indemnification agreement. It is not intended to hold any party harmless or exempt parties from liability for mishandling of oil or hazardous substances. The intent is to provide a mechanism for the allocation of liability among parties by allowing them to enter into contracts which provide protections and clear lines of responsibility.

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: 2/14/86

REQUEST

Bill/Resolution No. HB 470 (Res)
 Title: An Act Relating to the Release of Oil and Hazardous Substances
 Sponsor: Rep. Mike Davis
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Environmental Conservation
 BRU: Environmental Quality
 Components: Director's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		182.7	227.3	227.3		
TRAVEL		25.0	28.0	28.0		
CONTRACTUAL		48.5	53.5	53.5		
SUPPLIES		22.0	23.5	23.5		
EQUIPMENT		12.0	2.0	2.0		
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		290.2	334.3	334.3		

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		290.2	334.3	334.3		
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

*5.0 FTE

FULL-TIME		4	4	4		
PART-TIME		2	2	2		
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: S.W. Hungerford
 Division: Environmental Quality

Phone: 465-2666
 Date: 2/14/86

Approved by Commissioner: Bill [Signature]
 Agency: Department of Environmental Conservation

Date: 2/14/86

Distribution (by Agency preparing fiscal note):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 470

In order to manage a program which responds to both immediate and long-term releases of oil and hazardous substances and make effective use of the fund created by this proposed legislation, several new positions would be required.

TOTAL
REQUIEST

Funding for nine months is requested for FY 87

182.7

A. Program Management

1. A program person to develop regulations, negotiate contracts, initiate appropriate cost-recovery actions, coordinate training and report to the legislature.

2. A clerk/typist to provide clerical support and enter data into computer files.

Response Capability

1. Three environmental field officer positions to investigate reports of spilled materials, monitor cleanup activities, work with community government and safety agencies on plans for responding to local emergencies involving chemical spills/fires. The field officers would be assigned as follows: 1) one and one-half positions in Anchorage for the Southcentral Region; 2) one position in Fairbanks for the Northern Region; and 3) a half-time position in Juneau for the Southeast Region.

B. Support Costs

1. Travel funds of 5.0 per technical and field officer position management will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs.

25.0

2. Contractual funds of about 5.0 per position are required to pay office costs including telephones, Xeroxing, word processing, utilities, janitorial costs, printing and advertising costs and registration fees for training courses. An additional 20.0 is requested for use in contracting with approved laboratories for analyses of hazardous materials/wastes which are beyond the technical and safety limitations of the Department's laboratory.

48.5

3. Funds for office supplies amounting to about 1.5 are requested for each position; 2.0 is requested to replace expendable field sampling and safety supplies for each field officer; and 5.0 is requested to repair laboratory testing equipment and replace supplies.

22.0

Equipment funds of about 2.0 are requested for desks, chairs, partitions, bookshelves and similar items necessary to equip the office of each position.

12.0

290.2

Note: In the 1987 Budget, the agency also requested one additional position, funded by Federal Superfund (CERCLA) dollars, to manage contracts to perform investigations of sites where hazardous materials may have been inappropriately managed or disposed. This position would also negotiate for federal dollars to clean up sites which are eligible for the Superfund, to supplement the State monies in this response fund.

Position Title Ecologist II			No. of Positions One	Range/Step 18 A	Borg. Unit GGU	Gov.	Approv.	Disapp.
Time Status Full Time	Staff Months 12	RP Number	Location Juneau		Election District			
Type of Expenditure			Amount		Justification This new position will be responsible for writing regulations related to implementation of this bill, including procedures to be used in containment and cleanup of a hazardous substance, reporting the release of a hazardous substance, use of the response fund, procedures to assess fines, penalties and recovery of costs. This person will also negotiate contracts to contain and clean up incidents requiring immediate response, determine liability for incidents, initiate appropriate actions to recover costs or other penalties, coordinate a training and safety program for field staff and report program activities to appropriate State and federal agencies and the State Legislature. We expect to fill this position on October 1, 1986. Funding for nine months has been requested for FY 87.			
	2	3						
Salary	28.1							
Benefit	8.3							
Premium Pay								
Other								
Total Personal Services		36.4						
Travel		5.0						
Contractual		25.9						
Commodities		6.5						
Equipment		2.0						
Other								
Total Cost		74.9						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004		74.9					
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For B&M Use Only								
Key Number								

**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Water Quality Management

FY 87

Page 3 of 8
Revised Date

Position Title Clerk Typist III			No. of Positions One	Range/Step B A	Borg. Unit GGII	Dist.	Approv.	Disapp.
Time Status Full Time	Siml Months 12	RP Number	Location Juneau		Election District	Leg.		
Type of Expenditure			Justification					
	2	3	<p>This new position will provide clerical support to the new program staff and enter data into computer files established to record program activities. This person will be required to prepare regulations, contract documents and fiscal reports as well as routine correspondence.</p> <p>We expect to fill this position on October 1, 1987.</p> <p>Funding for nine months has been requested for FY 87.</p>					
Salary	14.7							
Benefits	5.3							
Premium Pay								
Other								
Total Personal Services		20.0						
Travel								
Contractual		3.5						
Commodities		1.5						
Equipment		2.0						
Other								
Total Cost		27.0						
Receipt Code	Funding Source							
	Federal Receipts	1002						
	O. F. Match	1003						
	General Funds	1004	27.0					
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1061						
	Other							
For B&M Use Only								
Key Number								

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Water Quality Management

FY 87

Page 4 of 8
 Revised Date

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Borg. Unit GGU	Dev.	Apprec.	Disapp.	
Time Status Perm. Part Time	Staff Months 6	RP Number	Location Juneau	Election District					
Type of Expenditure			Justification						
Amount			<p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p>						
1	2	3							
Salary	18.7								
Benefits	5.6								
Professional Pay									
Other									
Total Personal Services		24.3							
Travel		5.0							
Contractual		5.0							
Commodities		3.5							
Equipment		2.0							
Other									
Total Cost		39.8							
Receipt Code	Funding Source								
	Federal Receipts	1002							
	G. P. Match	1001							
	General Funds	1004							39.8
	I-A Receipts	1005							
	Program Receipts	1028							
	CIP Receipts	1061							
	Other								
For BAM Use Only									
Key Number									

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southeast Region

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 Revised Dec

FY 87

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Brg. Unit GGII	Clas. 128	Appoint.	Disapp.	
Time Status Full Time	Staff Months 12	RP Number	Location Anchorage		Election District				
Type of Expenditure			Justification						
Amount			<p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p> <p>We expect to fill this position on October 1, 1986. Funding for nine months has been requested for FY 87.</p>						
1									
Salary	28.1								
Benefits	8.3								
Premium Pay									
Other									
Total Personnel Services									36.4
Travel		5.0							
Contractual		5.0							
Commodities		3.5							
Equipment		2.0							
Other									
Total Cost			51.9						
Receipt Code		Funding Source							
		Federal Receipts 1002							
		G. F. Match 1003							
		General Funds 1004		51.9					
		I-A Receipts 1005							
		Program Receipts 1028							
		CIP Receipts 1061							
		Other							
<div style="border: 1px solid black; padding: 5px; width: fit-content;"> For B&M Use Only Key Number </div>									

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southcentral Region

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 Revised Date

FY 87

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Bud. Unit GGL	Clas. Leg.	Approv.	Disapp.																																				
Time Status Perm. Part Time	Staff Months 6	RP Number	Location Anchorage		Election District																																							
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>2</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>18.7</td> <td></td> </tr> <tr> <td>Benefit</td> <td>5.6</td> <td></td> </tr> <tr> <td>Premium Pay</td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td></td> <td>24.3</td> </tr> <tr> <td>Travel</td> <td></td> <td>5.0</td> </tr> <tr> <td>Contractual</td> <td></td> <td>5.0</td> </tr> <tr> <td>Commodities</td> <td></td> <td>3.5</td> </tr> <tr> <td>Equipment</td> <td></td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td>Total Cost</td> <td></td> <td>39.8</td> </tr> </tbody> </table>			Type of Expenditure	2	Amount	Salary	18.7		Benefit	5.6		Premium Pay			Other			Total Personal Services		24.3	Travel		5.0	Contractual		5.0	Commodities		3.5	Equipment		2.0	Other			Total Cost		39.8	Justification This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.					
Type of Expenditure	2	Amount																																										
Salary	18.7																																											
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Receipt Code	Funding Source	Amount																																										
	Federal Receipts 1002																																											
	G. F. Match 1001																																											
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	I-A Receipts 1005																																											
	Program Receipts 1028																																											
	CIP Receipts 1061																																											
	Other																																											
For BAM Use Only Key Number _____																																												

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southcentral Region

FY 87

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 Revised Date _____

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Barg. Unit AGU	Gov.	Approv.	Disapp.
Time Status Full Time	Staff Months 12	BP Number	Location Fairbanks	Election District				
Type of Expenditure			Justification					
	2	3	<p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p> <p>We expect to fill this position on October 1, 1987.</p> <p>Funding for nine months has been requested for FY 87.</p>					
Salary	32.1							
Benefits	9.2							
Premium Pay								
Other								
Total Personal Services		41.3						
Total		5.0						
Contractual		5.0						
Commodities		3.5						
Equipment		2.0						
Other								
Total Cost		56.8						
Receipt Code	Funding Source							
	Federal Receipts	1002						
	G. P. Match	1003						
	General Funds	1004	56.8					
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1051						
	Other							
For BSM Use Only								
Key Number _____								

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Northern Region

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 Revised Date _____

FY 87

CSHB 470 (FIN)

INDEX

1. CSHB 470 (Fin)
2. Subcommittee Changes (highlights)
3. CSHB 470 (Fin) Fiscal Note
4. Capitalization of New Fund
5. Letter of Intent
6. Legislative Affairs Agency, Legal Opinion (CIRI amendment)
7. Attorney General's Opinion (CIRI amendment)
8. CSHB 470 (Fin) Sectional Analysis
9. Legislative Finance Letter re: Fiscal Note

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

February 28, 1986

MEMORANDUM

TO: Representative John Ringstad, Chairman
House Finance Subcommittee - DEC Operating Budget

FROM: W. Tom Maher, Fiscal Analyst
Division of Legislative Finance

SUBJECT: Fiscal note - CSHB 470

This morning I attended the CSHB 470 subcommittee meeting. A wide range of topics were discussed, including the level of funding proposed in the department's fiscal note.

Briefly, the department submitted fiscal note requested the equivalent of five (5) full-time employees, two for administration and three field officers for response capability. In addition to new position costs, \$107.5 was requested for travel, contractual, and supplies. The Department of Labor has also submitted a fiscal note for \$10.0 to be used to send two employees to specialized training and includes \$5.0 for the purchase of books and films recommended by EPA.

Representative Pourchot's current recommendation would be to allow only two of the Environmental Field Officer positions at \$51.9 each (\$36.4 for nine months salary and benefits, \$5.0 travel, \$5.0 contractual, \$3.5 commodities, \$2.0 equipment) for a total fiscal note of \$103.8. The management responsibility of the fund would be spread over existing personnel. In regards to the Department of Labor fiscal note, there was discussion as to if Labor should be responsible of training. I am uncertain at this time what Rep. Pourchot's recommendation for this fiscal note will be. There could be funding already available in the Labor budget for these items.

Given the current funding restraints facing all operating budgets, Rep. Pourchot's assessment of minimum funding needed to implement the provisions of CSHB 470 is reasonable. The department already has a Program Manager for Oil Pollution Control and a Reserve Account Administrator. In fiscal year 1985, the cleanup fund was utilized to respond to only 32 incidents totalling \$28.0 in cleanup costs. The expansion of this activity to hazardous wastes will create additional volume that is difficult to estimate. As far as negotiating contracts and agreements with local governments, there has been very little evidence provided to prove that these activities would be a major workload item. The department maintains that a minimum of a one-half time position would be necessary for drafting regulations. I am not convinced that all these activities could not be accomplished utilizing existing staffing as suggested by Rep. Pourchot.

It is more difficult to determine the department's need for additional field officers. The department prepared a listing of all currently authorized positions responsible for hazardous waste and pollution control. It is reasonable to believe that existing field staff is fully utilized. The funding of two Environmental Field Officers, plus associated costs as suggested by Rep. Pourchot is a reasonable compromise. These positions would help assure that field response is adequate in terms of specialized investigation, cleanup monitoring, and liaison with local governments. This increase in baseline funding would lessen the fiscal impact in FY 88 when the State takes over total responsibility for the hazardous waste program. In absence of any further justification from the department, I view this reduced fiscal note of \$103.9 to be appropriate.

Analysis of this fiscal note has brought into view the difficulty one can encounter when trying to work with the DEC operating budget. The mix of State and Federal programs with differing goals and numerous funding sources does lend itself well to the basic component budget structure being used. It is annoying and improper that legislative readers must constantly rely on the department's verbal interpretation of program detail which could already be documented in a detail budget. I highly recommend that both subcommittee chairs insert intent language in the FY 87 budget requiring that the FY 88 operating budget be presented in program budget format. I will draft the specific language for your consideration later this session.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF ENVIRONMENTAL QUALITY
POUCH O, JUNEAU, ALASKA 99811

Telephone: (907)

Address:

465-2666

February 7, 1986

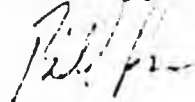
The Honorable Richard Schultz
Chairman, House Resources Committee
House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Schultz:

Enclosed is a revised fiscal note for CSHB 470. I have deleted the administrative assistant from the fiscal note due to the reduced administrative burden resulting from the amendments. This fiscal note will be adequate since the scope of the fund has been focused on site investigations and response to small or moderate incidents. Under this approach, major incidents would be addressed through capital appropriations or through funds available for emergencies declared by the Governor.

Thank you again for the opportunity to work with you in refining the proposed legislation.

Sincerely,



Bill Ross
Commissioner

Enclosure

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 2/4/86

REQUEST

Bill/Resolution No.: HB 470
 Title: An Act Relating to the Release of Oil and Hazardous
Substance
 Sponsor: Representative Mike Davis
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Environmental Conservation
 BRU: Environmental Quality

 Components: Director's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		182.7	227.3	227.3		
TRAVEL		25.0	28.0	28.0		
CONTRACTUAL		48.5	53.5	53.5		
SUPPLIES		22.0	23.5	23.5		
EQUIPMENT		12.0	2.0	2.0		
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		290.2	334.3	334.3		

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

RESPONSE FUND (non-lapsing) 1,000.0 (replenishment to 1,000.0)

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		1290.2	334.3	334.3		
FEDERAL FUNDS						
OTHER						
TOTAL						

*5.0 FTE

POSITIONS :

FULL-TIME		4	4	4		
PART-TIME		2	2	2		
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Stan Hungerford Phone: 465-2666
 Division: Environmental Quality Date: 2/4/86

Approved by Commissioner: Bill Kim Date: 2/4/86
 Agency: Department of Environmental Conservation

Distribution (by Agency preparing fiscal note):

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

Oil Pollution Control Programs in Alaska
Legislative and Fiscal History

1976. SB 406, "An Act relating to oil terminal facilities and the marine transportation of crude oil, refined petroleum products or their by-products", was passed by the legislature (ch 266, SLA 1976). SB 406 created a revolving loan fund within the Dept. of Environmental Conservation to implement statutory provisions regarding oil spill containment and cleanup.

All penalties recovered under AS 30.25.140 - .150 were paid to the department to be deposited in the Coastal Protection Fund. The fund also received assessments from oil tankers based on the degree of risk of an oil spill that each tanker presented.

1977. The Oil Spill Mitigation Account was established under AS 46.03.758(k) (ch 129, SLA 1977). This paragraph, located in the section entitled "Civil penalties for discharges of oil", provides that "Penalties received by the state under this section shall be deposited in the general fund and credited to a special account called the "oil spill mitigation account". The legislature may annually appropriate from the oil spill mitigation account a sum equivalent to the amount of penalties received under this section for the calendar year preceding the legislative session in which the appropriation is made, the appropriations to be made for the purpose of restoring and enhancing environments affected by oil pollution, including but not limited to the funding of aquaculture projects."

1978. The U.S. Supreme Court ruled in Ray v. Atlantic Richfield Co. that states could not regulate the design or construction of oil tankers. On the basis of that ruling, the U.S. District Court for the District of Alaska, in Chevron v. Hammond, ruled that the state's assessment program under AS 30.25 was unconstitutional. The Coastal Protection Fund was also found to be invalid because of a violation of dedicated fund provisions, in which risk charges collected by the state were dedicated to the fund.

1979. Governor Hammond introduced HB 205, "An Act relating to the prevention and control of oil pollution". Attached to the bill was a fiscal note providing for \$350.0 in program receipts for state oil spill cleanup expenses. Program receipts were based upon the levying of an assessment on oil terminal facilities. This assessment provision was later deleted from the committee substitute for HB 205.



1979 (Continued). The legislature appropriated \$991.0 (based on program receipts) for administration of the Oil Pollution Control program and the Coastal Protection Fund (\$6000.0). Only a small amount of program receipts were collected, however, because of the Chevron v. Hammond decision. The decision did not, however, appreciably reduce the department's responsibilities for oil pollution control established under SB 406. The department's FY80 budget request for \$450.0 was reduced to \$250.0.

1980. CSHB 205 was passed by the legislature (ch 116, SLA 1980). Attached to the bill was a fiscal note for \$1542.6, of which \$1000.0 was for an oil spill reserve and \$542.6 was for personal services, travel, contractual, commodities and equipment expenses associated with the establishment of AS 46.04 (Oil Pollution Control).

The fiscal note stated that "It is recommended that the cleanup reserve be maintained by capital appropriation at the \$1 million level. The balance of the reserve should carry over from year to year. Subsequent budget requests may be less than \$1 million. Costs recovered from the spiller or from federal funds will be deposited in the general fund so that the net cost to the state should be less than the one million dollars."

The oil spill reserve exists only as the intent language stated in the fiscal note.

1981. The legislature appropriated \$250.0 to the oil spill reserve.

1983. The state recovered \$350.0 in a settlement with Alyeska Pipeline Co. for two spills that occurred in 1979.

1984. The legislature appropriated \$250.0 to the oil spill reserve. The state received a \$597.9 reimbursement from the federal government for expenses incurred by the state in cleaning up the Nome oil spill.

1985. The department requested \$550.0 for FY86 to bring the oil spill reserve back to the \$1000.0 level. No money was appropriated.

1986. The department requested \$300.0 to be appropriated to the oil spill reserve in the FY87 budget.

HB 470 and SB 375, both entitled "An Act relating to the release of oil and hazardous substances", are introduced. The bills would establish two new chapters within AS 46. AS 46.08 would establish the Oil and Hazardous Substance Release Response Fund, and AS 46.09 would establish a Hazardous Substance Release Control chapter.

Reserve for Emergency Operating Expenses Account
Legislative History

1980. The Reserve for Emergency Operating Expenses Account (Rainy Day Fund) was established in AS 37.05.159. Paragraph (e) specifies that the governor may transfer up to \$5 million during a fiscal year from the Rainy Day Fund to the Fire Suppression Fund to pay the costs of fire suppression. Paragraph (f) specifies that the governor may transfer up to \$5 million during a fiscal year from the Rainy Day Fund to the Disaster Relief Fund.

1982. Paragraph (e) was amended (ch 30, SLA 1982) to allow the governor to transfer up to \$9 million during a fiscal year from the Rainy Day Fund to the Fire Suppression Fund. Language was added, stating that "The fund may not be used for capital expenditures."

1982. In Opinion #13, the Attorney General determined that AS 37.05.159 "Does not represent an unconstitutional dedication of public funds under sec. 7, art. IX, of the state constitution, since money once it is appropriated loses its character as revenue for purposes of the dedicated funds prohibition."

1985. OMB Associate Director Jay Hogan wrote a memorandum to DNR Commissioner Esther Wunnicke stating that "As of March 1985, the Fire Suppression Fund account in the Department of Natural Resources (DNR) will be converted from a noncontinuing to a continuing operating account. Balances at the end of each fiscal year will carry forward to the next fiscal year.

On July 1 of each fiscal year, the State Accountant will review the balance carried forward from the prior fiscal year and then make a transfer from the Rainy Day Fund to the Fire Suppression Fund in the amount necessary to bring the balance to the \$9,000,000 level."

These fund procedures are not mandated by statute, however, and neither the Fire Suppression Fund nor the Disaster Relief Fund requires that any money necessarily be transferred by the governor from the Rainy Day Fund to these funds.

1986. HB 470 and SB 375, both of which would establish an Oil and Hazardous Substance Release Response Fund, are introduced. Both bills would amend AS 37.05.159 by adding a new paragraph (g) that would allow the governor to transfer money from the Rainy Day Fund to the response fund. CSHB 470 would allow the governor to transfer \$1,000,000 during a fiscal year from the Rainy Day Fund to the response fund, and SB 375 would allow the governor to transfer a maximum of \$10,000,000.



UNITED FISHERMEN OF ALASKA

Jack Cadigan
Executive Director
907-586-2820
1-800-478-FISH

February 14, 1986

Representative Mike Davis
Pouch V
Juneau, Alaska 99811

Dear Representative Davis,

Thank you for asking the United Fishermen of Alaska to comment on CSHB 470 and SB 375, both of which would establish an Oil and Hazardous Substance Release Response Fund. The UFA recognizes the need for a readily available funding source to respond to releases of oil and hazardous substances, and commends your leadership role in addressing this issue.

The UFA and member organizations are fully aware of the importance of maintaining unpolluted waters in Alaska in order for the fishing industry to prosper. Releases of oil or hazardous substances into rivers and open waters may directly impact the state's fisheries and, as a consequence, may adversely affect the livelihood of Alaska's fishermen.

Passage of these bills would provide much greater assurance to the commercial fishing industry that Alaska's fisheries will continue to be a major statewide industry.

Sincerely,

Jack Cadigan
Bob Blake

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 470

NOTE: In the 1987 Budget, the agency also requested one additional position, funded by Federal Superfund (CERCLA) dollars, to manage contracts to perform investigations of sites where hazardous materials may have been inappropriately managed or disposed. This position would also negotiate for federal dollars to clean up sites which are eligible for the Superfund, to supplement the State monies in this response fund.

Position Title Ecologist II			No. of Positions One	Range/Step 18 A	Barg. Unit GGU	Gov.	Approv.	Disapp.
Time Status Full Time	Staff Months 12	RP Number	Location Juneau		Election District	Leg.		
Type of Expenditure			Justification					
		Amount	<p>This new position will be responsible for writing regulations related to implementation of this bill, including procedures to be used in containment and cleanup of a hazardous substance, reporting the release of a hazardous substance, use of the response fund, procedures to assess fines, penalties and recovery of costs. This person will also negotiate contracts to contain and clean up incidents requiring immediate response, determine liability for incidents, initiate appropriate actions to recover costs or other penalties, coordinate a training and safety program for field staff and report program activities to appropriate State and federal agencies and the State Legislature.</p> <p>We expect to fill this position on October 1, 1986.</p> <p>Funding for nine months has been requested for FY 87.</p>					
1	2	3						
Salary	28.1							
Benefits	8.3							
Premium Pay								
Other								
Total Personal Services		36.4						
Travel		5.0						
Contractual		25.0						
Commodities		6.5						
Equipment		2.0						
Other								
Total Cost		74.9						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004							
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
Other								
For B&M Use Only Key Number _____								

**Request For
New Position**

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CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

back up for position requests

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 470

In order to manage a program which responds to both immediate and long-term releases of oil and hazardous substances and make effective use of the fund created by this proposed legislation, several new positions would be required.

TOTAL REQUEST

Funding for nine months is requested for FY 87

210.7

A. Program Management

1. A program person to develop regulations, negotiate contracts, initiate appropriate cost-recovery actions, coordinate training and report to the legislature.

2. An administrative assistant to monitor contracts, track and record expenditures from the fund, maintain records describing incidents across the State and other data necessary to obtain cost recovery and to prepare reports to the legislature.

covered in CS fiscal note

3. A clerk/typist to provide clerical support and enter data into computer files.

Response Capability

1. Three environmental field officer positions to investigate reports of spilled materials, monitor cleanup activities, work with community government and safety agencies on plans for responding to local emergencies involving chemical spills/fires. The field officers would be assigned as follows: 1) one and one-half positions in Anchorage for the Southcentral Region; 2) one position in Fairbanks for the Northern Region; and 3) a half-time position in Juneau for the Southeast Region.

B. Support Costs

1. Travel funds of 5.0 per technical and field officer position and 3.0 for the administrative position will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs.

28.0

2. Contractual funds of about 5.0 per position are required to pay office costs including telephones, Xeroxing, word processing, utilities, janitorial costs, printing and advertising costs and registration fees for training courses. An additional 20.0 is requested for use in contracting with approved laboratories for analyses of hazardous materials/wastes which are beyond the technical and safety limitations of the Department's laboratory.

53.5

3. Funds for office supplies amounting to about 1.5 are requested for each position; 2.0 is requested to replace expendable field sampling and safety supplies for each field officer; and 5.0 is requested to repair laboratory testing equipment and replace supplies.

23.5

Equipment funds of about 2.0 are requested for desks, chairs, partitions, bookshelves and similar items necessary to equip the office of each position.

14.0

329.7

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 470

NOTE: In the 1987 Budget, the agency also requested one additional position, funded by Federal Superfund (CERCLA) dollars, to manage contracts to perform investigations of sites where hazardous materials may have been inappropriately managed or disposed. This position would also negotiate for federal dollars to clean up sites which are eligible for the Superfund, to supplement the State monies in this response fund.

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Time Status Full Time	Staff Months 12	RP Number	Location Juneau		Election District	Leg.			
Type of Expenditure			Justification						
		Amount	<p>This new position will be responsible for writing regulations related to implementation of this bill, including procedures to be used in containment and cleanup of a hazardous substance, reporting the release of a hazardous substance, use of the response fund, procedures to assess fines, penalties and recovery of costs. This person will also negotiate contracts to contain and clean up incidents requiring immediate response, determine liability for incidents, initiate appropriate actions to recover costs or other penalties, coordinate a training and safety program for field staff and report program activities to appropriate State and federal agencies and the State Legislature.</p> <p>We expect to fill this position on October 1, 1986.</p> <p>Funding for nine months has been requested for FY 87.</p>						
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Travel		5.0							
Contractual		25.0							
Commodities		6.5							
Equipment		2.0							
Other									
Total Cost		74.9							
Receipt Code	Funding Source								
	Federal Receipts	1002							
	G. F. Match	1003							
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	Other								
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Position Title Administrative Assistant II			No. of Positions One	Range/Step 14 A	Barg. Unit GGU	Gov.	Approv.	Disapp.
Time Status Full Time	Staff Months 12	RP Number	Location Juneau		Election District	LAG		
Type of Expenditure			Justification					
Amount			<p>This new position will assist the program staff by preparing documents necessary to contract for services to contain and clean up hazardous substances, by recording and tracking expenditures from the response fund and preparing the fiscal reports required to report program activities to the Legislature. This person will also maintain records describing incidents and spills from across the State and other data necessary to obtain cost-recovery from responsible parties.</p> <p>We expect to fill this position on October 1, 1986.</p> <p>Funding for nine months has been requested for FY 87.</p>					
1	2	3						
Salary	21.2							
Benefits	6.8							
Premium Pay								
Other								
Total Personal Services		28.0						
Travel		3.0						
Contractual		5.0						
Commodities		1.5						
Equipment		2.0						
Other								
Total Cost		39.5						
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004 39.5					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
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Key Number								

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Position Title <u>Environmental Field Officer III</u>			No. of Positions <u>One</u>	Range/Step <u>18 A</u>	Barg. Unit <u>GGU</u>	Gov.	Approv.	Disapp.																																																											
Time Status <u>Perm. Part Time</u>	Staff Months <u>6</u>	RP Number	Location <u>Juneau</u>		Election District	Leg.																																																													
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Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Barg. Unit GGU	Gov. Leg.	Approv.	Disapp.																																							
Time Status Full Time	Staff Months 12	RP Number	Location Anchorage	Election District																																											
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**Request For
New Position**

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Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Barg. Unit GGU	Gov.	Approv.	Disapp.
Time Status Perm. Part Time	Staff Months 6	RP Number	Location Anchorage		Election District	Leg.		
Type of Expenditure			Justification					
Amount			<p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p>					
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Time Status Full Time	Staff Months 12	RP Number	Location Fairbanks		Election District	Leg.																																																	
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Alaska State Legislature

Representative Mike Davis

Pouch V
Juneau, Alaska 99811
(907) 465-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708

February 9, 1986

Mr. Scott Burgess, Executive Director
Alaska Municipal League
105 Municipal Way, Suite 301
Juneau, Alaska 99801

Dear Mr. Burgess,

I am writing to you at the request of the House Resources Committee regarding HB 470, an act relating to the release of oil and hazardous substances.

The bill has several provisions regarding municipalities, a brief description of which follows below:

Section 46.09.020(e) provides that the commissioner of the Dept. of Environmental Conservation may enter into agreements with municipalities in order to

- (1) facilitate a coordinated and effective hazardous substance release response in the state;
- (2) provide for cooperative hazardous substance release notification procedures; or
- (3) provide for cooperative review of hazardous substance release response contingency plans submitted to the department.

Section 46.09.040 provides that the commissioner of the Dept. of Environmental Conservation may contract with a municipality for personnel, equipment, or services that may be useful to carry out the requirements of this chapter.

In order to allow municipalities to enter into these agreements and contractual agreements should they choose to do so, language was placed in Sec. 46.09.070 stating that

" Authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement AS 46.08 - AS 46.09. are granted to municipalities that do not otherwise have that authority."

The question raised by the House Resources Committee is whether or not municipalities, as a result of being granted this authority, would in any way be obligated or compelled to implement this authority. Specifically, this question is directed toward second-class boroughs and home-rule municipalities.

I would appreciate receiving your response to this question as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Mike".

Rep. Mike Davis

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill Resolution No. (S) HB 470 (RSD)
 Title: An Act Relating to the Release of Oil and Hazardous Substances
 Sponsor: Davis, Koponen, etc.
 Requestor: House Resources
 Date of Request: 1/14/86

FISCAL DETAIL

Agency Affected: Labor
 BRU: Occupational Safety and Health
 Components: Occupational Safety and Health

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL		5.0				
CONTRACTUAL						
SUPPLIES		5.0				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	10.0	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

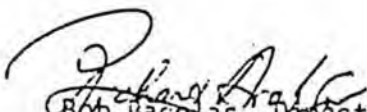
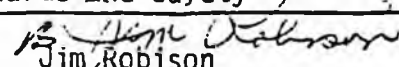
FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		10.0				
TOTAL	-0-	10.0	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS : Attach a separate page if necessary

Prepared by: 
Bob Macotas, Director
 Division: Labor Standards and Safety
 Approved by Commissioner: 
Jim Robison
 Agency: Labor

Phone: 465-4870
 Date: 1/21/86
 Date: 1/21/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agencies

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. 470

The Department of Environmental Conservation, as the administrator of the "Oil and Hazardous Substance Release Response Fund" will transfer funding by Reimbursable Services Agreement to the Department of Labor. This will allow the Department of Labor to meet its responsibilities under the proposed Section 45.08.040(3).

The \$5000 travel monies will be used to send two industrial health consultants to the Environmental Protection Agency's (EPA's) Hazardous Materials Incidence Operations training course. It is estimated that it will cost \$2,500 each. The course is held at EPA's New Jersey training facility. This will assure that the Department's Occupational Safety and Health Consultation Section will have persons with knowledge to assist employers set up training programs.

The \$5000 in commodities will be used to purchase books and other written materials and films or video tapes recommended by EPA that can be loaned out to employers who need audio visual materials for their training classes.

This fiscal note assumes, though the bill has an "immediate effective date", the funding for the above will not be available until FY 87.

February 27, 1986

SUBJECT: CSHB 470 (Resources)

TO: Rep. Pat Pourchot

FROM: Ed Hein, LAA

You have asked six questions relating to CSHB 470 (Res) and an amendment to it proposed by CIRI. The amendment would allow CIRI and others engaging in oil/hazardous substance cleanups to contract for indemnification against liability without violating AS 45.45.900. It would not release CIRI or others from liability for damage caused by cleanup operations, but would allow them by contract to shift the cost of the damage to other responsible parties who indemnify them under the contract. The amendment would strengthen the bill to the extent that it results in responsible, competent companies being able to afford to be in the business of oil/hazardous substance cleanup/containment or to the extent that it results in lower costs for such services. The state's liability would be affected by the amendment only if the state chooses to indemnify such a company by contract. A conceivable negative result of indemnification is that it allows a company to contract away its ultimate financial responsibility, which might in some circumstances possibly result in less caution by those indemnified when conducting cleanups. This is purely speculative on my part, however.

-Page one of two -

Rep. Pat Pourchot
February 27, 1986

The definition of "hazardous substance" in the bill is very broad. It includes any definition of "hazardous substance" under state or federal law, regardless of the purpose for which the definition was adopted. I have enclosed a list of federal statutes and regulations that use or define the term "hazardous substance." Under state law, the term appears in AS 18.60, AS 31.05, and AS 46.03. The list of substances included in all these state and federal provisions is too numerous to state here. If you are interested in a particular substance, I will be happy to help you determine whether it would be considered a hazardous substance under this bill as it is now drafted.

A substance that is excluded under federal or state law would not necessarily be excluded under this bill's definition of hazardous substance. Under the principle of federal preemption, a substance that was specifically excluded from a definition of hazardous substance by the Congress may be required to be excluded under this bill also if including it would frustrate or conflict with the federal law under which it was excluded.

The definition of "containment and cleanup" in proposes AS 46.03.900(3) includes "restoration of the environment to its former state." I do not know what that means. Clearly, in many instances it would be impossible to literally eliminate all traces of a substance release or cleanup efforts. It may mean "reclamate" or "make useable." Whatever it means, it is a requirement as an essential part of containment and cleanup. C. I.

- Page two of two -

CSHB 470 (FIN)
Highlights of Subcommittee Charge

The charge to the subcommittee:

- 1) Look at the proposed funding mechanism for the fund;
- 2) Look at the fiscal note;
- 3) Look at the possible federal funds available for hazardous waste cleanup.

The response:

The Finance Committee Substitute

- 1) Eliminates the automatic yearly transfer from the Rainy Day Fund;
- 2) Limits the use of the fund to emergency responses and investigations of sites which pose an imminent and substantial threat to human health or welfare or to the environment;
- 3) Provides for a detailed report to the Legislature on the use of the fund;
- 4) Calls for a yearly list of sites which require further action and their associated costs;
- 5) Provides direction and criteria for Department on reimbursements made from the fund to municipalities; and
- 6) Tightens the definition of "hazardous substance" to mean those substances contained in the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, while maintaining the commissioner's flexibility in responding to elements which pose an imminent and substantial threat.

The fiscal note. The new fiscal note reflects the minimum level of staffing required to implement the new program. It reduces the original request by almost \$150,000 and reduces the required positions from five to three.

Fund capitalization. Under the Finance CS transfers from the Rainy Day Account to the Response Fund for initial capitalization would be minimized. Instead of the \$1 million initial transfer originally proposed, the CS proposes to utilize existing oil spill fund and mitigation account balances and capital appropriations for most of the initial capitalization. A maximum of \$200,000 is estimated to be needed as a one-time transfer from the Rainy Day Account.

Federal monies. The Department of Defense has been spending approximately \$25 million yearly in hazardous waste cleanup activities throughout the state. The positions authorized in the fiscal note will coordinate with DOD to assure the optimum use of the federal funds. Additionally, should the federal "Superfund" (C.E.R.C.L.A.) be reauthorized and funded, the fund could be used to match federal receipts.

The following represents the subcommittee's changes to the Resources' CSHB 470:

pg. 1, line 7 - title change to include repeal of oil spill mitigation account

pg. 1, line 24 - removes reference to Commissioner of Revenue as custodian of the fund.

This is consistent with subcommittee action regarding the funding mechanism.

pg. 2, lines 14-20 - establishes a new oil spill and hazardous substance release mitigation account within the general fund and authorizes the deposit of monies recovered from responsible parties in oil spills or hazardous substance releases, fines, penalties or damages to be deposited in the general fund but credited to the new mitigation account.

This language mirrors the existing oil spill mitigation account which this bill repeals.

pg. 2, line 25 - removes language requiring approval of the governor.

pg. 2, line 27 - pg. 3, line 2 - under Purposes of the Fund, authorizes commissioner to take necessary actions to protect the public health, welfare or the environment from imminent or substantial threats from the release or threatened release of oil or hazardous substances.

Removes safety education programs for emergency response employers by Department of Labor as a use of the fund.

pg. 3, lines 13-16 - removes requirement that commissioner of DEC adopt regulations governing accounting of fund. Instead, requires that the department develop guidelines.

Removes reference to state disbursement officer. This section was no longer required because the Rainy Day Fund is no longer used as an annual funding source for the new fund.

pg. 3, line 18 - removes requirement that the commissioner report to the governor.

pg. 3, line 27 - pg. 4, line 14 - under Report to the Legislature, adds to the report requirements:

- summary of municipal participation in responses funded by the fund;

- summary and description of the responses funded from the fund;
- summary of hazardous waste sites identified by the department which require action but which pose no imminent or substantial threat and a breakdown of the proposed departmental action and the estimated cost.

pg. 4, line 24 - pg. 5, line 5 - under Reimbursement for Containment and Cleanup, establishes parameters under which municipalities may be reimbursed for actual expenses, above and beyond normal operating expenses for abatement activities.

Requires an agreement between DEC and municipalities and the commissioner must determine that the expenses were necessary due to the emergency nature of the municipality's response.

pg. 5, line 6 - changes shall to may, adopt regulations as necessary.

pg. 5, line 17 - adds oil to definition of "containment and cleanup" (technical).

pg. 6, lines 1-3 - under Definitions, removes section which would have defined hazardous substance as any substance so defined in any federal or state act or regulation and more narrowly defines it to conform to the federal definition contained in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

pg. 8 - removes section designating DEC enforcement officers as "peace officers."

pg. 9, lines 23-25 - under Definitions, conforms language to definition of hazardous substance.

pg. 14, lines 22 and 23 - changes language to make deposit language consistent with language elsewhere in bill.

Requires that when the department is reimbursed for cleanup expenses, the monies are deposited to the general fund and credited to the newly created oil and hazardous substance release mitigation account.

pg. 14, lines 25-27 - amends current statute which provides that DEC inspection and enforcement employees are peace officers to include Chapter 9 hazardous substance release control enforcement employees.

pg. 15, lines 5-11 - provides the mechanism whereby the governor is authorized to transfer amounts that when added to amount appropriated, reappropriated or transferred to the response fund from the Rainy Day Fund do not exceed \$1 million for FY 87 only.

pg. 15, line 12 - repeals current oil spill mitigation account.

pg. 15, lines 13 and 14 - makes all sections effective immediately except the provision for the Rainy Day Fund transfer.

pg. 15, line 15 - makes the Rainy Day Fund transfer section effective July 1, 1986.

CAPITALIZATION OF OIL SPILL AND HAZARDOUS SUBSTANCE RELEASE
RESPONSE FUND, HB 470

AS INTRODUCED:

- \$1 million original capitalization from Rainy Day Fund
- Automatic annual transfers from Rainy Day Fund to maintain \$1 million balance

PROPOSED CS TO HB 470 (FIN) FUND CAPITALIZATION:

- \$1 million capitalization (outlined below)
- No automatic transfers from Rainy Day Fund
- Balances in future years maintained through annual capital budget appropriations

Existing Oil Spill Fund balance	\$ 300,000 ¹
Obligated monies FY 86	<u>- 100,000²</u>
	SUBTOTAL 200,000
Proposed FY 87 Capital Budget Approp.	300,000 ³
Oil Spill Mitigation Account Balance (receipts from responsible party reimbursements)	19,000 ⁴
Additional Mitigation Account Deposits by 6/86	<u>300,000⁵</u>
	TOTAL 819,000
One-time Transfer from Rainy Day Fund	<u>181,000⁶</u>
	FUND GRAND TOTAL \$1,000,000

¹ This requires that language be placed in HB 574, an Act making operating appropriations and transfers of operating appropriations, or other appropriate legislation to transfer the balance of the fund to the newly established fund.

² These monies are currently obligated and expected to be paid out in FY 86 by the Department to pursue responsible parties in oil spills.

³ The Governor has proposed a \$300,000 appropriation to the oil spill fund in HB 500 (budget bill). This appropriation would also be transferred to the newly established fund.

- 4 The Oil Spill Mitigation Account is an account within the general fund to which reimbursements, fines, penalties and damages are credited. Currently, these funds remain available for reappropriation by the Legislature for oil spill related projects through the end of each calendar year.
- 5 The Department of Environmental Conservation is currently pursuing several actions against responsible parties. The Commissioner's office has indicated that by June 30, it is expected that at least \$300,000 will accrue to the Account as a result of their enforcement actions.
- 6 Section 19 provides for a one-time transfer from the Rainy Day Fund. While the exact figure is unknown, the Governor may only transfer an amount not to exceed \$1 million when added to the total of the above referenced transfers and appropriations.

MEMORANDUM

State of Alaska

TO: Commissioner Bill Ross
Department of Environmental
Conservation

DATE: February 27, 1986

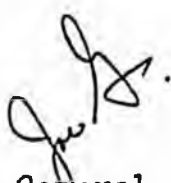
FILE NO: 366-354-86

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General

SUBJECT: Proposed amendment
to CSHB 470 (Res)
and state and
municipal liability

By: Joseph W. Geldhof
Assistant Attorney General
Dept. of Law



By memorandum dated February 25, 1986 you requested our review and counsel pertaining to House Bill 470, an act related to the release of oil and hazardous substances. Specifically, you wanted to know if passage of the act would alter municipal or state liability compared to current law. You also sought our review of a proposed amendment to the act which would change law found at AS 45.45.900. This proposed amendment addresses indemnification arrangements related to the cleanup of hazardous substances.

I.

ALTERATION OF LIABILITY

The proposal in CSHB 470 (Res) to create an oil and hazardous substance release response fund in and of itself does not change or shift liability for the use, transportation or improper disposal of oil or hazardous substances. The provisions related to the fund are embodied section 1 of the bill and, if established, would be embodied in a new chapter of Title 46.

Section 2 of the proposed legislation would create another new chapter in Title 46 pertaining to hazardous substance release control. Certain provisions within this section provide additional reporting requirements for persons using or transporting hazardous substances when a hazardous substance is released. Specifically, the proposed AS 46.09.010 would require in part that:

...a person in charge of a vehicle, vessel or container from which, or a place at which, a hazardous substance is released shall report the release to the department and appropriate public safety agencies promptly after learning of the release.

The act would also require at proposed AS 46.09.020 that:

A person who causes a release of a hazardous substance shall make reasonable efforts to contain and cleanup the hazardous substance promptly after learning of the release...

Commissioner Bill Ross
Department of Environmental
Conservation
AG File No. 366-354-86

February 27, 1985
Page 2

Neither of these two proposed provisions dramatically shifts liability compared to current state or federal law. Current state law at AS 46.03.90 et seq. and AS 46.03.296 in particular give the Department of Environmental Conservation reasonably stringent control over the disposal and transportation of hazardous waste. The proposed act makes explicit the extent and degree to which the regulated community will be required to comply with state law related to hazardous wastes. In practical terms, the enforcement standards for certain conduct are more clearly articulated through the proposed legislation. The application of sanctions as outlined in AS 46.03.760 - 790 to certain conduct is also more obvious.

In terms of liability, passage of CSHB 470 (Res) would establish statutory reporting and cleanup requirements which persons, and organizations (including, as appropriate, municipalities) would be required to follow in addition to the more general requirements now found in AS 46.03 and 04.

Another aspect of the proposed legislation which may modestly alter liability is the definition for hazardous substance found at line 4 on page 9 of the bill. Hazardous substance is arguably defined more broadly than the current definition of "hazardous waste" found in AS 46.03.900. Either of these definitions would require technical analysis by DEC during application. Still, our sense is that the proposed definition for "hazardous substance" is or has a potential to be more inclusive. Thus, we believe that the proposed definition for "hazardous substance" may potentially expand liability for persons or organizations using, transporting or disposing of hazardous substances.

The remaining portions of the proposed act deal with administration of the fund and technical amendments to existing law which apply the current sanctions found in AS 46.03 to regulated activities under the proposed act.

II.

PROPOSED AMENDMENT REGARDING CONTRACTOR INDEMNIFICATION

A proposed amendment to CSHB 470(Res) is being circulated which would alter current law found at AS 45.45.900. The current statute states:

Indemnification Agreements Contra to Public Policy. A provision, clause, covenant, or agreement contained in, collateral to, or affecting any construction contract which purports to indemnify the

Commissioner Bill Ross
Department of Environmental
Conservation
AG File No. 366-354-86

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promisee against liability for damages for (1) death or bodily injury to persons, (2) injury to property, (3) design defects or (4) any other loss, damage or expense arising under (1), (2), or (3) of this section from the sole negligence or wilful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to the promisee, is against public policy and is void and unenforceable; however, this provision does not affect the validity of any insurance contract, workers' compensation or agreement issued by an insurer subject to the provisions of AS 21.

The proposed amendment would add the following language to the existing statute: ", or a provision, clause, covenant, or agreement of indemnification respecting the handling, containment or cleanup of hazardous substances as defined in A.S. 46."

This proposed language has been offered by an organization which is interested in cleaning up oil and hazardous substances in Alaska to avoid a literal application of the prohibition found in AS 45.45.900. While application of AS 45.45.900 to the cleanup or containment of oil or hazardous substances is by no means certain, the fear exists that any and all indemnification agreements pertaining to containment and cleanup of oil or hazardous substance may not be binding.

This might create a problem because responsible persons and organizations interested in providing services to control or cleanup hazardous substances may be reluctant to engage in such activity because of the apparent prohibition on indemnification agreements found in AS 45.45.900. If the control and cleanup activity is characterized as a construction agreement, a literal reading of the current statute implies that the cleanup contractor cannot be indemnified by the entity seeking containment and cleanup of the release. The question of indemnification is particularly important because procurement of liability insurance by a cleanup contractor is virtually impossible to obtain in the context of hazardous release cleanup operations and very expensive in the context of oil spills.

What the amendment proposes is language which would create an opportunity for a firm, person, or organization which created the oil or hazardous substance problem or for the entity seeking cleanup of the release to contractually indemnify a cleanup contractor. This does not absolve the cleanup contractor from liability. It merely creates a situation where the person responsible for the release or spill (or the organization

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Department of Environmental
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attempting to cleanup the mess, i.e. state or municipality) and the cleanup contractor can allocate the liability between themselves without fear that the current AS 45.45.900 will be interposed as a defense.

For example, a corporation (SPILLEZE) is responsible for the release of 1000 gallons of toxic substance. SPILLEZE retains a contractor (KLEENEZE) for containment and cleanup of the toxic substance. KLEENEZE will typically seek an indemnification agreement from SPILLEZE for any liability arising out of the containment and cleanup activity not associated with the KLEENEZE's willful misconduct.

In certain circumstances a firm or person responsible for releasing oil or hazardous substances will sign such an indemnification agreement with a responsible containment and cleanup contractor. Enactment of the proposed amendment would afford an opportunity to execute indemnification agreements in these circumstances.

This analysis may be slightly different the situation where the state seeks a contractor to contain and cleanup an oil or hazardous substance release. Recently the Alaska Supreme Court stated in Rogers and Babler, a Division of MAPCO Alaska, Inc. v. State of Alaska, ___ P.2d ___ No. 3018, Jan. 31, (Alaska 1986):

We are not inclined to accept a reading of the statute that would invalidate the indemnity provisions in every contract entered into between the state and construction contractors. We think AS 45.45.900 should come into effect only when it is determined, as between the state and the contractors, that the state is solely negligent.

Thus, the supreme court of Alaska, at least with respect to the state, is suggesting that the apparent prohibition on indemnification agreements in construction contracts found at AS 45.45.900 will only apply when the promisee is completely negligent and seeks to hold an innocent promissor accountable.

Under these circumstances, enactment of this amendment may not be necessary but it would probably reduce the legal uncertainty for responsible containment and cleanup contractors and encourage their participation in this difficult business. Passage of this amendment would create an opportunity for arms length bargaining regarding the question of liability. If the department wants to encourage this type of contractual discussion, enactment of this amendment seems appropriate.

Commissioner Bill Ross
Department of Environmental
Conservation
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If the state ever engages the services of a containment and cleanup contractor we trust DEC will work closely and cooperatively with the Department of Law regarding the terms of any proposed indemnification agreement.

III.

CONCLUSION

Two provisions in section 2 of CSHB 470 (Res) would create specific statutory presumptions for persons using or transporting oil or hazardous substances. As such, liability for these particular activities is spelled out with greater specificity, although not necessarily increased. The proposed amendment pertaining to indemnification would merely afford an opportunity for a considered debate on the allocation of liability by removing the apparent statutory bar to indemnification agreements in construction contracts related to cleanup and containment of oil spills and release of hazardous substances.

JWG:rn

cc: G. Thomas Koester
Art Peterson
Doug Mertz
Rep. Mike Davis

CSHB 470 (Finance)
Sectional Analysis

* Section 1.

Chapter 8. Oil and Hazardous Substance Releases.

Sec. 46.08.005. Statement of purpose declaring the release of oil or hazardous substances into the environment to be a threat to the public health and welfare, environment, and economy of the state. Concludes that it is in the best interest of the state to have funds readily available for ADEC to respond to releases of these materials.

Sec. 46.08.010. Establishes the Oil and Hazardous Substance Release Response Fund. The fund is administered by ADEC, and may be used only for those purposes outlined in AS 46.08.040. The fund may not be used for capital improvements except for improvements to real property such as dikes and retaining walls.

Sec. 46.08.020. (a) Lists sources from which the legislature may appropriate money to the fund. Sources include the state and federal governments, money recovered from parties responsible for a release of oil or hazardous substances for containment and cleanup expenses, and fines, penalties, or damages received from a party responsible for such a release.

(b) Establishes the Oil and Hazardous Substance Release Mitigation Account. Money received by the state from persons responsible for the containment and cleanup of oil or a hazardous substance, including money received from fines, penalties, and damages, shall be deposited in the general fund and credited to the mitigation account. The legislature may annually appropriate to the fund from this account a sum equal to the amount of money recovered during the calendar year preceding the legislative session in which the appropriations are to be made.

Sec. 46.08.030. Statement of legislative intent that funds for the abatement of a release of oil or a hazardous substance will always be available.

Sec. 46.08.040. Lists acceptable expenditures from the fund. Expenditures may be made to contain, cleanup, and take other necessary action to abate releases or threatened releases of oil or hazardous substances that pose an imminent and substantial threat to the public health or welfare or to the environment, provide matching funds to participate in federal oil discharge and 'Superfund' (CERCLA) programs, and recover costs to the state or a municipality resulting from the release or threatened release of oil or hazardous substances.

Sec. 46.08.050. Outlines accounting procedures of the fund. ADEC must maintain accounting records and develop procedures governing the expenditure of, and accounting for, money expended from the fund.

Sec. 46.08.060. (a) No later than the 10th day of each regular legislative session, the commissioner must submit a fiscal report to the legislature. The report must include the amount of money expended from the fund and the amount and source of money recovered or received by the fund, during the previous fiscal year. The report must also include a summary of the department's fund-related activities during the preceding fiscal year, and the projected costs for the next fiscal year of monitoring, operating, and maintaining sites where response has been initiated.

(b) As part of the department's on-going site investigation program, the report must also include a summary of oil spill or hazardous waste sites identified by the department, the immediate and long-term threats posed by these sites, and the appropriate actions and estimated cost of abating these threats.

Sec. 46.08.070. (a) The commissioner is directed to seek reimbursement for costs incurred in the containment or cleanup of releases.

(b) At the request of the commissioner, the attorney general may attempt to recover money expended by the department in responding to releases or threatened releases of oil or hazardous substances.

(c) The department may reimburse a municipality for actual expenses incurred in response to a release or threatened release of oil or a hazardous substance if the municipality had previously entered into an agreement with the commissioner under AS 46.09.020(e), and if the commissioner determines that the expenses were for a necessary emergency first response to a release or threatened release that posed an imminent and substantial threat to the public health or welfare or to the environment.

Sec. 46.08.080. The commissioner may adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.08.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

* Section 2.

Chapter 9. Hazardous Substance Release Control.

Note: AS 46.09 is modeled after AS 46.04 (Oil Pollution Control).

Sec. 46.09.010. (a) A person in charge of a unit from which a hazardous substance is released must promptly notify ADEC of the release.

(b) Notwithstanding (a) of this section, persons may enter into agreements with the commissioner for the periodic reporting of a controlled release of hazardous substances if the release is not into water.

Sec. 46.09.020. (a) A person responsible for a release must make reasonable efforts to contain and cleanup the release unless the commissioner determines that containment and cleanup is either technically infeasible, or that such action would create greater environmental harm or a greater threat to human life or health than the release itself.

(b) The commissioner shall develop guidelines prescribing general procedures and methods for containing and cleaning up releases of hazardous substances.

(c) The commissioner, upon determining that containment and cleanup activities by a responsible party are inadequate, may order the person to cease the activity and ADEC may then take over the containment and cleanup operation either directly or by contract.

(d) The commissioner may immediately undertake the containment and cleanup of a release if the cause of the release is unclear or unexplained. The same restrictions delineated in (a) of this section apply in this situation.

(e) The commissioner shall enter into agreement with the EPA, and may enter into agreements with municipalities or other persons, including a public or private corporation or an entity within an unincorporated community, in order to facilitate a coordinated and effective hazardous substance response in the state, provide for cooperative hazardous substance release notification procedures, or provide for cooperative review of hazardous substance contingency plans submitted to the department.

Sec. 46.09.030. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency, the commissioner may assist the adjutant general (Division of Emergency Services) in the relief of the emergency.

Sec. 46.09.040. The commissioner may contract with municipality or a person, including a public or private corporation or an entity within an unincorporated community, for personnel, equipment, or services in order to carry out the purposes of this chapter. If such a contract is infeasible, the commissioner may establish and maintain personnel, equipment, and supplies for containment and cleanup purposes.

Sec. 46.09.050. For the purposes of this chapter, the governor may enter into agreements, arrangements, or compacts with other states or countries.

Sec. 46.09.060. In the event of a regulatory conflict between the state and a municipality regarding the containment and cleanup of releases, the provisions of this chapter or regulations adopted by the commissioner prevail. Municipalities are granted the authority to exercise those powers necessary to implement the provisions of this chapter and AS 46.08.

Sec. 46.09.070. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.09.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

* Section 3.

Sec. 26.23.050. (b) In the event that money is needed to cope with a disaster, the first recourse shall be to funds regularly appropriated to state and local agencies. The second recourse shall be to funds available in the disaster relief fund or the oil and hazardous substance release response fund, as appropriate.

* Section 4.

Sec. 26.23.230. (1) The definition of "disaster" is expanded to include the release of a hazardous substance.

* Section 5.

Sec. 44.19.050. The definition of "disaster" is expanded to include the release of a hazardous substance.

* Section 6.

Sec. 45.45.900. Clarifies that an oil or hazardous substance cleanup contract is not a construction contract, and is therefore not subject to the restrictions upon indemnification agreements found in this section. This provision allows an indemnification agreement to be negotiated between the parties responsible for a release of oil or a hazardous substance and the parties contracting to cleanup the release. However, this provision does not mandate that such an agreement be entered into between the parties. Nor does this provision provide in any way for an exemption from liability for negligence or gross misconduct resulting from cleanup activities conducted under authority of the contract.

* Section 7.

Sec. 46.03.290. (a) Departmental findings regarding the declaring of an emergency are expanded to include oil and hazardous substances.

* Section 8.

Sec. 46.03.745. Except for a controlled release approved by the commissioner under AS 46.09.010(b), a person may not cause or permit the release of a hazardous substance.

* Section 9.

Sec. 46.03.760. (a) Provides for civil liabilities for persons violating provisions of AS 46.09.

* Section 10.

Sec. 46.03.765. The superior court has jurisdiction to enjoin a violation of AS 46.09.

* Section 11.

Sec. 46.03.780. (a) Provides for liability to the state for damages for injury or degradation to the environment in violation of AS 46.09.

* Section 12.

Sec. 46.03.790. (a) A person who negligently violates a provision of AS 46.09 is guilty of a class B misdemeanor.

* Section 13.

Sec. 46.03.790. (b) A person who knowingly violates a provision of AS 46.09 is guilty of a class A misdemeanor.

* Section 14.

Sec. 46.03.790. (d) A person who fails to provide or falsely states information required under AS 46.09 is guilty of a misdemeanor and, upon conviction, may be punished by a fine of not more than \$25,000 or by imprisonment for not more than one year, or both.

* Section 15.

Sec. 46.04.010. ADEC is directed to promptly seek reimbursement for expenses incurred in the containment or cleanup of oil discharges, and the commissioner may request the attorney general to assist in the recovery of funds from responsible parties. Money received by ADEC under this section shall be deposited in the general and credited to the Oil and Hazardous Substance Release Mitigation Account.

* Section 16.

Sec. 46.04.090. (b) Inspection and enforcement employees of the department designated by the commissioner are peace officers in the performance of their duties under this chapter.

* Section 17.

Not later than January 1, 1987, the commissioner of environmental conservation shall develop guidelines under AS 46.09.020.

* Section 18.

Not later than October 1, 1987, the commissioner of environmental conservation shall adopt regulations under AS 46.09.070.

* Section 19.

During FY 87, the governor may transfer from the reserve for emergency operating expenses account to the oil and hazardous substance release response fund amounts that, when added to the amounts appropriated, reappropriated or transferred to the response fund in laws enacted by the legislature during the 1986 regular legislative session, do not exceed \$1 million.

* Section 20.

The oil spill mitigation account (AS 46.03.758(k)) is repealed.

* Section 21.

Sec. 01.10.070. (c) Sections 1 - 18 and 20 of this Act take effect immediately.

* Section 22

Section 19 of this Act takes effect July 1, 1986.

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CSHB 470
Question and Answer Overview

Why is there a need for the Oil and Hazardous Substance Release Response Fund?

Releases of oil and hazardous substances pose a direct threat to the public health, environment, and economy of the state. CSHB 470 would provide ADEC with the statutory authority and readily available funding necessary to contain and cleanup releases of these materials. The response fund would allow ADEC to respond to future releases of oil and hazardous substances, as well as to cleanup existing sites.

What is the relationship between the response fund and the federal 'Superfund' program?

The 'Superfund' is directed toward the nationwide cleanup of existing sites. The Environmental Protection Agency evaluates these sites on a national priority basis to determine which sites will receive federal funding. Because this ranking system is biased in favor of densely populated areas, Alaska is expected to receive only slight assistance from the 'Superfund'. CSHB 470 does make provision, however, for the federal requirement that states provide matching funds of between 10 percent and 50 percent of site cleanup costs in order to receive 'Superfund' money.

Who decides which sites will be cleaned up?

The commissioner of ADEC is given the authority to determine which sites will be cleaned up. The commissioner may also, by regulation, develop criteria for prioritizing the cleanup of existing sites. It is the intent of this legislation, however, that money in the response fund always remain available for the containment and cleanup of future releases of oil and hazardous substances.

When would the response fund be used?

Persons responsible for the release of oil or hazardous substances must notify ADEC of the release and then begin containment and cleanup efforts. ADEC may use money from the response fund for these purposes, however, if the responsible party's containment and cleanup efforts are inadequate or if the cause of the release is unclear or unexplained.