

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES,

1993-1994

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(2) the response account.

* Sec. 14. AS 46.08.010(b) is amended to read:

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

* Sec. 15. AS 46.08.010(c) is amended to read:

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. Except as provided in AS 46.08.040(a)(2)(C)(v) for the acquisition, repair, or improvement of assets or disaster emergency preparedness measures and in AS 46.08.040(a)(2)(D)(ii) for the equipment that is required for and placed in the oil and hazardous substance response depots [AS 46.08.040(d)(2)], the fund may not be used for capital improvements.

* Sec. 16. AS 46.08.020 is amended to read:

Sec. 46.08.020. FINANCING OF THE CONTINGENCY AND ABATEMENT ACCOUNT [FUND]. (a) The legislature may appropriate from the following sources to the contingency and abatement account in the fund:

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

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site for the costs of the containment and cleanup incurred by the state, a municipality, or a village, to the extent that the money recovered or otherwise received had been paid out of the contingency and abatement account, but excluding

(A) money recovered or otherwise received due to a catastrophic oil discharge; and

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

(3) fines, penalties, or damages recovered [UNDER AS 46.08.005 - 46.08.080 OR OTHER LAW] for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance, but excluding

1 (A) fines, penalties, or damages recovered or otherwise
 2 received due to a discharge the costs of containment and cleanup of which
 3 were paid from the account established in AS 46.08.025; and

4 (B) money described in (2) of this subsection;

5 (4) interest accrued on

6 (A) the balances of

7 (i) the contingency and abatement mitigation
 8 account; and

9 (ii) the response account, but only to the extent the
 10 interest accrued on the response account exceeds the amount
 11 determined under AS 46.08.025(a)(4);

12 (B) the account maintained under AS 37.05.142 for deposits
 13 into the general fund from the proceeds of the surcharge levied under
 14 AS 43.55.201; and

15 (C) the contingency and abatement mitigation account
 16 described in (b) of this section;

17 (5) fees for services collected under AS 44.46.025(a)(8), to the extent
 18 those fees involve certification of laboratories conducting environmental analyses
 19 of oil or hazardous substances or other related analyses required by the
 20 department; and

21 (6) fees collected by the department for the registration of oil spill
 22 response action contractors under AS 46.04.035.

23 (b) Money received by the state under (a)(2) - (6) [(a)(2) AND (a)(3)] of this
 24 section shall be deposited in the general fund and credited to a special account called
 25 the "contingency and abatement [OIL AND HAZARDOUS SUBSTANCE
 26 RELEASE] mitigation account." The legislature may annually appropriate to the
 27 contingency and abatement account in the fund from the contingency and
 28 abatement mitigation [THIS] account a sum equal to the amount received under
 29 (a)(2) - (6) [(a)(2) AND (a)(3)] of this section during the calendar year preceding the
 30 legislative session in which the appropriations are to be made.

31 * Sec. 17. AS 46.08 is amended by adding a new section to read:

abatement

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Sec. 46.08.025. FINANCING OF THE RESPONSE ACCOUNT. (2) The legislature may appropriate from the following sources to the response account in the fund:

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

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of a catastrophic oil discharge or a discharge for the containment and cleanup of which the governor issued an administrative order under AS 46.08.045(a)(2), for the costs of the containment and cleanup incurred by the state, a municipality, or a village, but excluding money from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action;

(3) fines, penalties, or damages recovered for costs incurred by the state as a result of a catastrophic oil discharge or a discharge for the containment and cleanup of which the governor issued an administrative order under AS 46.08.045(a)(2); and

(4) interest accrued on the balance of the response account, not to exceed the amount determined by applying to the balance of the response account on the first day of the state fiscal year the rate determined under AS 37.13.145(c)(1) and (2) for the previous state fiscal year.

(b) Money received by the state under (a)(2) - (4) of this section shall be deposited in the general fund and credited to a special account called the "response mitigation account." The legislature may annually appropriate to the response account in the fund from the response mitigation account a sum equal to the amount received under (a)(2) - (4) of this section during the calendar year preceding the legislative session in which the appropriations are to be made.

* Sec. 18. AS 46.08.040(a) is amended to read:

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

inflation proofing

1 (1) from the response account in the fund, when authorized by
2 AS 46.08.045, to

3 (A) [(1)] investigate and evaluate the release or threatened
4 release of oil or a hazardous substance, and [CONTAIN, CLEAN UP, AND]
5 take containment and cleanup and other necessary action, such as monitoring
6 and assessing, to address a release or threatened release of oil or a hazardous
7 substance that poses an imminent and substantial threat to the public health or
8 welfare, or to the environment;

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

10 (A) ESTABLISH AND MAINTAIN THE OIL AND
11 HAZARDOUS SUBSTANCE RESPONSE OFFICE;

12 (B) REVIEW OIL DISCHARGE PREVENTION AND
13 CONTINGENCY PLANS SUBMITTED UNDER AS 46.04.030;

14 (C) CONDUCT TRAINING, RESPONSE EXERCISES,
15 INSPECTIONS, AND TESTS, IN ORDER TO VERIFY EQUIPMENT
16 INVENTORIES AND ABILITY TO PREVENT AND RESPOND TO OIL
17 AND HAZARDOUS SUBSTANCE RELEASE EMERGENCIES, AND TO
18 UNDERTAKE OTHER ACTIVITIES INTENDED TO VERIFY OR
19 ESTABLISH THE PREPAREDNESS OF THE STATE, A MUNICIPALITY,
20 OR A PARTY REQUIRED BY AS 46.04.030 TO HAVE AN APPROVED
21 CONTINGENCY PLAN TO ACT IN ACCORDANCE WITH THAT PLAN;
22 AND

23 (D) VERIFY OR ESTABLISH PROOF OF FINANCIAL
24 RESPONSIBILITY REQUIRED BY AS 46.04.040;

25 (3) PAY THE EXPENSES INCURRED BY THE ALASKA DIVISION
26 OF EMERGENCY SERVICES FOR THE OIL AND HAZARDOUS SUBSTANCE
27 RESPONSE CORPS AND THE OIL AND HAZARDOUS SUBSTANCE RESPONSE
28 DEPOTS WHEN PRESENTED WITH APPROPRIATE DOCUMENTATION BY
29 THE DIVISION;

30 (4)] provide matching funds in the event of an oil release for
31 participation

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

(C) [(5)] recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance;

(2) from the contingency and abatement account in the fund to

(A) investigate and evaluate the release or threatened release of oil or a hazardous substance, except a release described in AS 46.08.045(a), and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance, except a release described in AS 46.08.045(a);

(B) recover the costs to the state, a municipality, or a village of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance, except a release described in AS 46.08.045(a);

(C) pay all costs incurred to

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

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

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

(iv) verify or establish proof of financial

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responsibility required by AS 46.04.040: and

(v) acquire, repair, or improve an asset having an anticipated life of more than one year and that is acquired, repaired, or improved as a preparedness measure by which the state may respond to, recover from, reduce, or eliminate the effects of a disaster emergency, as that term is defined by AS 26.23.900;

(D) pay the expenses incurred by the division of emergency services for

(i) the oil and hazardous substance response corps;

and

(ii) the oil and hazardous substance response depots;

(E) pay, when presented with appropriate documentation by the Alaska State Emergency Response Commission, expenses incurred by the commission for

(i) its activities, including staff support, when the activities and staff support relate to oil or hazardous substances;

and

(ii) the costs of being prepared for and responding to a request by the department for support in activities that relate to response to and restoration of the effects of an oil or hazardous substance release;

(F) provide matching funds in the event of the release of oil or a hazardous substance, except a catastrophic oil release or a release for the containment and cleanup of which the governor issued an administrative order under AS 46.08.045(a)(2), for participation

(i) in federal oil discharge cleanup activities; and

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

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

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

1 and

2 (ii) [(B)] a regional master oil and hazardous substance
3 discharge prevention and contingency plan required by AS 46.04.210;
4 and

5 (H) [(7)] restore the environment by addressing the effects of
6 an oil or hazardous substance release.

7 * Sec. 19. AS 46.08.040(a)(2)(E) is repealed and reenacted to read:

8 (E) pay, when presented with appropriate documentation by the
9 Department of Military and Veterans' Affairs, expenses incurred by the
10 Department of Military and Veterans' Affairs for

11 (i) Alaska State Emergency Response Commission
12 activities, including staff support, when the activities and staff support
13 relate to oil or hazardous substances; and

14 (ii) the costs to the Department of Military and
15 Veterans' Affairs of being prepared for and responding to a request by
16 the department for support in activities that relate to response to and
17 restoration of the effects of an oil or hazardous substance release;

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

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

23 * Sec. 21. AS 46.08.040(d) is amended to read:

24 (d) Upon a request from

25 [(1)] the Alaska Legislative Council, the commissioner shall use money
26 from the fund to reimburse the Alaska Legislative Council for expenditures that it
27 makes for the operation of the Citizens' Oversight Council on Oil and Other
28 Hazardous Substances, established under AS 24.20.600 [; AND

29 (2) THE COMMISSIONER OF TRANSPORTATION AND PUBLIC
30 FACILITIES, THE COMMISSIONER SHALL TRANSFER MONEY FROM THE
31 FUND TO THE DEPARTMENT OF TRANSPORTATION AND PUBLIC

1 FACILITIES TO PAY FOR THE CONSTRUCTION OR REFURBISHMENT OF
2 ONE OR MORE VESSELS OF THE ALASKA MARINE HIGHWAY SYSTEM
3 THAT HAVE THE CAPABILITY TO ASSIST IN RESPONDING TO SPILLS OF
4 OIL AND HAZARDOUS SUBSTANCES; IN EXPENDING MONEY IN THE FUND
5 WHOSE USE FOR VESSELS OF THE MARINE HIGHWAY SYSTEM IS
6 AUTHORIZED BY AS 19.65.025 AND THIS PARAGRAPH, THE COMMISSIONER
7 SHALL GIVE PRIORITY TO CONSTRUCTION OF ONE OR MORE NEW
8 VESSELS THAT HAVE THE CHARACTERISTICS REQUIRED BY THIS
9 PARAGRAPH].

10 * Sec. 22. AS 46.08 is amended by adding a new section to read:

11 Sec. 46.08.045. USE OF THE BALANCE OF THE RESPONSE ACCOUNT.

12 (a) The commissioner may use money from the response account in the fund to
13 respond to a release or threatened release when

14 (1) the release or threatened release is a catastrophic oil release or
15 catastrophic oil discharge; or

16 (2) the release or threatened release of oil or a hazardous substance
17 presents a threat to the economy, the environment, or public health if,

~~18~~ (A) within 120 hours of being advised of a release or threatened
19 release, the commissioner prepares and provides to the governor a written
20 report relating to the release or threatened release and the response under way
~~21~~ by the department; and

22 (B) not later than 120 hours after the commissioner is advised
23 of the release or threatened release, the governor issues an administrative order
24 approving the commissioner's use of the money in the account; in issuing the
25 administrative order, the governor shall approve or modify and approve the
26 state's response to the release or threatened release as set out in the
27 commissioner's report and may, at any time during the period of the state's
28 response to the release or threatened release, approve, disapprove, or modify
29 action taken or expected to be taken by the department in its use of money in
30 the response account to respond to the release or threatened release.

31 (b) The report of the commissioner required by (a)(2)(A) of this section

- 1 (1) must summarize
- 2 (A) the nature and extent of the release;
- 3 (B) the response action by the state, whether actually taken or
- 4 expected; and
- 5 (C) the costs to the state of the action actually taken or expected
- 6 to be taken; and
- 7 (2) may provide other information about the discharge that the
- 8 commissioner believes may be relevant.

9 * **Sec. 23.** AS 46.08.060(a) is amended to read:

10 (a) The commissioner shall submit a report to the legislature not later than the

11 10th day following the convening of each regular session of the legislature. The report

12 may include information considered significant by the commissioner but must include:

13 (1) the amount of money expended by the department under

14 AS 46.08.040(a) during the preceding fiscal year;

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

16 or on behalf of the department during the preceding fiscal year as specified in

17 AS 46.08.020 and 46.08.025;

18 (3) a summary of municipal participation in the department's responses

19 that were paid for [FUNDED] by the fund;

20 (4) a detailed summary of department activities in responses paid for

21 [FUNDED] by the fund during the preceding fiscal year, including response

22 descriptions and statements outlining the nature of the threat; [IN THIS PARAGRAPH,

23 "DETAILED" INCLUDES INFORMATION DESCRIBING EACH PERSONAL

24 SERVICES POSITION AND TOTAL COMPENSATION FOR THAT POSITION,

25 EACH CONTRACT IN EXCESS OF \$20,000, AND EACH PURCHASE IN EXCESS

26 OF \$10,000;] and

27 (5) the projected cost to the department for the next fiscal year of

28 monitoring, operating, and maintaining sites where response has been completed or is

29 expected to be continued during the fiscal year.

30 * **Sec. 24.** AS 46.08.060(c) is amended to read:

31 (c) In addition to the department's report required under (a) of this section, the

1 governor shall submit a report about use of the fund during the previous fiscal year to
2 the legislature not later than the 10th day following the convening of each regular
3 session of the legislature. In the report, the governor shall describe in detail the
4 governor's use of money from the fund, with separate explanations, by agency, of the
5 activities that were paid for [FUNDED] under the authority of AS 46.08.045
6 [AS 46.08.040(b)].

7 * Sec. 25. AS 46.08.075(a) is amended to read:

8 (a) The state has a lien for expenditures by the state from the oil and
9 hazardous substance release prevention and response fund₂, or from any other state
10 fund, for the costs of response, containment, removal, or remedial action resulting from
11 an oil or hazardous substance release [SPILL], or, with respect to response costs, for
12 the costs of response to a threatened [THE SUBSTANTIAL THREAT OF A] release
13 of oil or a hazardous substance₂, against all property owned by a person who is
14 determined by the commissioner to be liable for the expenditures under this chapter,
15 AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes
16 interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the
17 expenditures. The state may file an action in a court of competent jurisdiction in order
18 to foreclose on the lien.

19 * Sec. 26. AS 46.08.075(e) is amended to read:

20 (e) A person with an ownership interest in property against which a lien is
21 recorded may bring an action in a court of competent jurisdiction to require that the
22 lien be released. The lien may be released to the extent of that person's ownership
23 interest if the court finds that the person is not liable for the expenses incurred by the
24 state in connection with the costs of response, containment, removal, or remedial
25 action resulting from the [OIL OR HAZARDOUS SUBSTANCE] release₂, or from the
26 threatened [THREAT OF] release₂, of oil or a hazardous substance.

27 * Sec. 27. AS 46.08.900(9) is amended to read:

28 (9) "release"

29 (A) means any spilling, leaking, pumping, pouring, emitting,
30 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
31 the environment;

1 (B) [, EXCEPT THAT "RELEASE"] does not include

2 (i) a permitted release; or

3 (ii) an act of nature;

4 * Sec. 28. AS 46.08.900(11) is amended to read:

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

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

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

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

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

15 * Sec. 29. AS 46.08.900 is amended by adding a new paragraph to read:

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

18 * Sec. 30. AS 46.09.900(8) is amended to read:

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

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

22 (B) though not impending, in the judgment of the
23 commissioner

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

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

29 * Sec. 31. AS 19.65.025; AS 43.55.200, 43.55.210, 43.55.220, 43.55.230, 43.55.240;
30 AS 44.46.025(a)(4) and (5); AS 46.08.040(b), and sec. 3, ch. 112, SLA 1989 are repealed.

31 * Sec. 32. REVISOR OF STATUTES TO REVISE REFERENCES. In each of the

1 following, the revisor of statutes shall delete references to "oil and hazardous substance release
2 response fund" and insert in place of each deletion a reference to "oil and hazardous substance
3 release prevention and response fund": AS 26.23.020(g)(11), 26.23.050(b);
4 AS 29.60.560(e)(1), 29.60.599(4); AS 46.08.900(5).

5 * Sec. 33. TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR
6 PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by
7 this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b), the
8 reference to which is deleted by sec. 3 of this Act, is not an expenditure.

9 * Sec. 34. SURCHARGE IMPOSED BY AS 43.55.201 - 43.55.231 NOT LEVIED. In
10 addition to the circumstances set out in AS 43.55.231, the surcharge authorized by
11 AS 43.55.201 is not levied on or after the effective date of this section if

12 (1) the Eighteenth Alaska State Legislature does not, during the Second
13 Regular Session or during any special session held before the effective date of this section,
14 appropriate at least an amount equal to the balance, on the day before the effective date of this
15 section, of the former spill reserve referred to in AS 29.60.510(b), to the response account in
16 the oil and hazardous substance release prevention and response fund; or

17 (2) the governor vetoes or reduces the amount appropriated under (1) of this
18 section.

19 * Sec. 35. TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION
20 SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1994, AND
21 BEFORE THE EFFECTIVE DATE OF THIS SECTION. After June 30, 1994, and before the
22 effective date of this section, every producer of oil who is required by AS 43.55.200 -
23 43.55.240, repealed by this Act, to pay the oil conservation surcharge of \$.05 per barrel of oil
24 shall pay that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply
25 to the amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts
26 received after June 30, 1994, and before the effective date of this section, if so appropriated
27 by the legislature and notwithstanding any other provision of law relating to the deposit of and
28 accounting for those receipts,

29 (1) on the effective date of this section, the commissioner of revenue shall
30 allocate

31 (A) 50 percent of the amount received to the response account

1 established by AS 46.08.010(a)(2), as amended by sec. 13 of this Act; and
2 (B) 50 percent of the amount received to the contingency and
3 abatement account established by AS 46.08.010(a)(1), as amended by sec. 13 of this
4 Act; and

5 (2) the allocations made under (1) of this section are credited to the respective
6 accounts for purposes of determination of the suspension and reimposition of the surcharge
7 under AS 43.55.221 and 43.55.231, added by secs. 8 and 9 of this Act.

8 * Sec. 36. Section 19 of this Act takes effect on the effective date of a version of Senate
9 Bill 33 enacted by the Eighteenth Alaska State Legislature transferring the Alaska State
10 Emergency Response Commission from the Department of Environmental Conservation to the
11 Department of Military and Veterans' Affairs.

12 * Sec. 37. Except as provided in sec. 36 of this Act, this Act takes effect July 1, 1994.

Rec'd after bill
TR/O

4120194
(H) RES. STA.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 215(FIN) am(EFD FLD)

Revision Date: _____ Dept. Affected: Revenue
 Title: An Act relating to and redesignating the oil and hazardous BRU: Revenue Operations
substance release response fund... Component: Oil & Gas Audit Division
 Sponsor: Miller
 Requestor: Hs. Resources Committee COMPONENT SERIAL NO. 115

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:	-5,300.0	-10,000.0	-9,900.0	-9,500.0	-4,500.0	
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.)
 Revenue reduction estimates are based on production and tax revenues included in the *Revenue Sources Book, Fall 1993*, and expenditure analysis provided by the Department of Environmental Conservation. The fiscal note represents a simple mathematical calculation based on those estimates.
 As requested by the House Resources Committee, analysis for the next five fiscal years is provided.

Prepared by: Rod R. Mourant *Rod R. Mourant* Phone: 465-2302
 Division: Commissioner's Office
 Approved by Commissioner: Darrel J. Rexwinkel *Darrel J. Rexwinkel* Date: April 15, 1994
 Agency: Revenue Date: April 15, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 215 (FIN)

*Rec'd offer
bill re/lo 4-22-94*

Revision Date: April 13, 1994
Title: "...redesignating the oil and hazardous
release response and..."
Sponsor: Senator Miller
Requestor: Senate Finance

Department Affected: Department of Law
BRU: EXXON VALDEZ Litigation
Component: EXXON VALDEZ Litigation
COMPONENT SERIAL NO. 1175

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

The CS for SB 215 makes sufficient changes that there will not be a fiscal impact for the Department of Law.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division

Phone: 465-3672
Date: April 13, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Date: April 13, 1994

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FISCAL NOTE

Handwritten notes: 4/22/94, 37, 5/1

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 215 (FIN)am (efd fid)

Revision Date: April 22, 1994
 Title: "...redesignating the oil and hazardous release response fund..."
 Sponsor: Senator Miller
 Requestor: Senate Resources

Department Affected: Department of Law
 BRU: EXXON VALDEZ Litigation
 Component: EXXON VALDEZ Litigation
 COMPONENT SERIAL NO. 1175

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

The Finance Committee amendment to CSSB 215(FIN) makes a minor change in syntax and as provided in the department's April 13 fiscal note, there will not be a fiscal impact for Law.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division

Phone: 465-3672
 Date: April 22, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Date: April 22, 1994

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FISCAL NOTE

No. 2

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL

Bill Version: CSSB 215 (REG)

(S) Publish Date: 2-28-94

Revision Date: _____
Title: Oil and Hazardous Substance Release
Response Fund
Sponsor: Senator Miller
Requestor: Senate Resources Committee

Department Affected: Environmental
Conservation
BRU: SPAR/Administrative Services
Component: All SPAR Components
Response Fund Administration

COMPONENT SERIAL NO. _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	\$550.0	\$1,449.0	\$2,860.0	\$4,283.0	\$5,469.0	\$6,918.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	\$550.0	\$1,449.0	\$2,860.0	\$4,283.0	\$5,469.0	\$6,918.0
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	\$550.0	\$1,449.0	\$2,860.0	\$4,283.0	\$5,469.0	\$6,918.0

Estimate of any current year (FY94) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared by: Bob Poe, Director
Division: Information & Administrative Services

Phone: 465-5010
Date: 2/24/94

Approved by Commissioner: _____
Agency: Department of Environmental Conservation

Date: 2/24/94

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FISCAL NOTE

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00	5-Year Total
Revenue from .025 surcharge	\$12,750.0	\$12,250.0	\$11,250.0	\$10,250.0	\$9,500.0	\$8,500.0	\$64,500.0
State Spill Prevention Program*	\$13,300.0	\$13,699.0	\$14,110.0	\$14,533.0	\$14,969.0	\$15,418.0	\$86,029.0
Difference	(\$550.0)	(\$1,449.0)	(\$2,860.0)	(\$4,283.0)	(\$5,469.0)	(\$6,918.0)	(\$21,529.0)
Total GF Cost	\$550.0	\$1,449.0	\$2,860.0	\$4,283.0	\$5,469.0	\$6,918.0	\$21,529.0

* This number reflects current funding of the state's spill response and prevention program, increased by 3% each year for inflation.

This legislation proposes to fund the states's entire spill prevention and response program from a 2.5 cent per barrel surcharge on crude oil produced in Alaska. Since SB215 Version "U" now allows the catastrophic account, established in SB215, to be used for both hazardous substance and oil spills, and there is no spill-size-threshold in order 'o access the catastrophic account, no non-catastrophic spill reserve need be established.

The figure for the 2.5 cent surcharge revenue is extrapolated from forecasts contained in the Department of Revenue

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FISCAL NOTE

No. 1

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL

Bill Version: SB 215

(S) Publish Date: 2-28-94

Revision Date: 19-Jan-94
 Title: Oil and Hazardous Substance Release
Response Fund
 Sponsor: Senator Miller
 Requestor: Senate Resources Committee

Department Affected: Environmental
Conservation
 BRU: SPAR/Administrative Services
 Component: All SPAR components
Response Fund Administration

COMPONENT SERIAL NO.

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	5,100.0	5,899.0	7,110.0	8,333.0	9,369.0	10,618.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	5,100.0	5,899.0	7,110.0	8,333.0	9,369.0	10,618.0
1005 GF/Program Receipt						
1006 GF/MITTA						
Other						
TOTAL						

Estimate of any current year (FY94) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared by: Bob Poe, Director *[Signature]*
 Division: Information and Administrative Services

Phone: 465-5010
 Date: 1/19/94

Approved by Commissioner: John Sandor *[Signature]* **FOR JAS**
 Agency: Department of Environmental Conservation

Date: 1/19/94

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FISCAL NOTE

continued

BILL NO.

SB 215

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
Revenue from .02 surcharge	10,200.0	9,800.0	9,000.0	8,200.0	7,600.0	6,800.0
State Spill Prevention Program*	13,300.0	13,699.0	14,110.0	14,533.0	14,969.0	15,418.0
Difference	-3,100.0	-3,899.0	-5,110.0	-6,333.0	-7,369.0	-8,618.0
Non-catastrophic Spill Reserve	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0	2,000.0
Total GF cost	5,100.0	5,899.0	7,110.0	8,333.0	9,369.0	10,618.0

*This number reflects current funding of the state's spill response and prevention program, increased by 3% each year for inflation.

This legislation proposes to fund the state's spill prevention and response program entirely from a .02 cent per barrel surcharge on crude oil produced in Alaska. Emergency response to releases less than a catastrophic nature (under 4,200,000 gallons) must also be financed under this program. The .02 surcharge does not produce enough revenue to provide for emergency responses of this nature, therefore, an additional \$2,000,000 "non-catastrophic" spill reserve is the minimum necessary for adequate response measures, based on recent history. Actual risk of a combination of "orphan" spills requiring a state response of over \$2 million is great, and more funds would be necessary.

The figure for the .02 cent surcharge revenue is extrapolated from forecasts contained in the Department of Revenue "Revenue Sources Book".

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 215(RES)

Revision Date: _____
Title: "An Act relating to oil and hazardous substances;..."
Sponsor: Senator Miller
Requestor: Senate Finance

Department Affected: Administration
BRU: Finance
Component: Finance
COMPONENT SERIAL NO. 59

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
--------------------	-----	-----	-----	-----	-----	-----

FUNDING SOURCE:

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 94) cost: \$ 0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Don Wanie
Division: Finance

Phone: 465-2240
Date: _____

Approved by Commissioner: Nancy Bear Usura
Agency: Department of Administration

Date: 3/8/94

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 21, 1994

SUBJECT: Use of the "470 fund" for acquisition of capital assets for emergency preparedness (Work Order No. 8LS-1107\O.13)

TO: Senator Drue Pearce
ATTN: Bill Miles

FROM: Jack Chenoweth
Legislative Counsel 

The version of Senate Bill 215 to which this amendment attaches proposes to split the nickel. The fund would be divided into two accounts. I propose to attach the amendment to the account--the "abatement account"--from which other capital appropriations are authorized. If that is an incorrect response on my part, please advise.

I don't know what "preparedness" involves, so I stumbled my way to the description set out in the last part of the attached amendment. I also tie the proposed change to something that responds to a "disaster emergency," ^{1/} which is not necessarily the

^{1/} The statute cited defines disaster as:

... the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, including

(A) fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, or shortage of food, water, fuel, or clothing;

(B) the release of oil or a hazardous substance, if the release requires prompt action to avert environmental danger or damage; and

(C) equipment failure, if the failure is not a predictably frequent or recurring event or preventable by adequate equipment maintenance or operation;

Senator Drue Pearce
February 21, 1994
Page 2

same as a "disaster" ^{2/} as those terms are defined in AS 26.23.900. Please take a look at the statute and see if my reference to "disaster emergency" covers what you intended.

If this effort is wide of the mark, let me know and I'll redraft to your specifications.

JBC:gc
94-147.5
Enclosure

^{2/} "Disaster emergency" is defined by the same statute to mean

... the condition declared by proclamation of the governor or declared by the principal executive officer of a political subdivision to designate the imminence or occurrence of a disaster;

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 215(RES) "O" Version

Page 9, line 10, after "in":

Insert "AS 46.08.040(a)(2)(C)(v) for the acquisition, repair, or improvement of assets as disaster emergency preparedness measures and in"

Page 13, line 22, after "i:"

Delete "and"

Page 13, line 24, after "AS 46.04.040:"

Insert "and"

(v) acquire, repair, or improve an asset having an anticipated life of more than one year and that is acquired, repaired, or improved as a preparedness measure by which the state may respond to, recover from, reduce, or eliminate the effects of a disaster emergency, as that term is defined by AS 26.23.900;

MEMORANDUM

State of Alaska

Department of Law

TO: Shelby Stastny, Director
Office of Management
and Budget

DATE: November 15, 1993

FILE NO.: 663-94-0248

Jeff Hoover
Budget Analyst

TEL NO.: 465-3600

SUBJECT: Use of Appropriation from
470 Fund for DMVA Emergency
Operations Center

FROM: Robert K. Reges
Assistant Attorney General
Department of Law

INTRODUCTION

Some time ago you alerted this office to an appropriation made by the legislature to the Department of Military and Veteran Affairs (DMVA), Division of Emergency Services (DES). The appropriation -- Section 17(c) and 19 of chapter 79, SLA 1993 -- made monies available to DMVA for "emergency operation center enhancements." Because this appropriation was made from the Oil and Hazardous Substance Release Response Fund (fund), AS 46.08.010, you asked this office if the purpose of the appropriation was within the allowable purposes of the fund, and if the appropriation could be expended without violating a statutory restriction that says the fund cannot be used for capital improvements. AS 46.08.010(b).

We find that construction of the pertinent statutes turns on the facts to which they are applied. Generalizations can not be reliably drawn. Given the facts of this case as presented to us by the DMVA, we find that the proposed expenditures are within the allowable purposes of the fund and are not capital improvements.

However, this is such a close call that we can make reasoned arguments the other way.¹ Accordingly, we suggest a retroactive legislative change to AS 46.08.010(c) to expressly allow the fund to be used for enhancement of the state emergency operation center.

¹ Indeed, legislative counsel has reached an opposing conclusion. Memorandum, FY 94 Appropriation from the Oil and Hazardous Substance Release Response Fund to the Department of Military and Veteran's Affairs, Division of Emergency Services (SB 183), G. Utermohle (Oct. 13, 1993).

Shelby Staastny, Director
 Jeff Hoover, Budget Analyst
 Office of Management & Budget

December 1, 1993
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 AGO File #663-94-0248

PURPOSES OF THE FUND

The fund was created by statute. AS 46.08.010. Allowable uses of the fund are statutorily delineated. AS 46.08.040. No expenditure may be made from the fund unless the purpose of the expenditure is one of the statutorily acknowledged purposes.²

In this case, the money will be used to enhance the emergency operations center maintained by the DMVA. Dollars will be used to relocate certain Alaska State Trooper operations to the center; to furnish and equip the center with various electronic investigation, tracking, and communication devices; to purchase and hook up an emergency power generator; and generally to convert an empty suite of rooms into a command post.

Among other things, the fund may be used to "undertake activities intended to establish the preparedness of the state to act in accordance with [contingency] plan[s]." AS 46.08.040(a)(2)(C). Alaska must have both a state and regional contingency plan. AS 46.04.200; AS 46.04.210. One of the primary jobs of DES is to implement those plans in the event of a catastrophic release of oil. AS 46.04.080; see also AS 26.23.030, 26.23.040. To do so, DES needs a center from which to implement its incident command system. Id. See also 46.08.100 - 46.08.190. Thus, equipping the command center so that DMVA can adequately respond to oil catastrophes is an activity intended to establish the preparedness of the state to act in accordance with its contingency plans.³ Accordingly, the proposed purpose is a statutorily recognized purpose.⁴

² The introductory clause of AS 46.08.040 only mentions "the commissioner of environmental conservation." However, the application of 46.08.040 to others is made clear by AS 46.08.010(c). Accordingly, we started with the threshold conclusion that no expenditure may be made from the fund by anyone unless for a purpose iterated in AS 46.08.040.

³ Persons responding to an oil catastrophe must also implement the National Contingency Plan. 40 C.F.R. Part 300 (1993).

⁴ Our interpretation of AS 46.08.040(a)(2)(C) is based, in part, on the historical interpretations given this language by the Department of Environmental Conservation (DEC). As the agency tasked with implementing this statute, DEC's interpretation is entitled to some weight. Peninsula Marketing Ass'n v. State, 817

(continued...)

Shelby Stastny, Director
Jeff Hoover, Budget Analyst
Office of Management & Budget

December 1, 1993
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CAPITAL IMPROVEMENTS
A. STATUTORY DEFINITIONS

Activities otherwise allowable under AS 46.08.040 are expressly disallowed if they constitute "capital improvements." AS 46.08.010(c). One cannot spend monies from the fund -- even for purposes identified in AS 46.08.040 -- if the expenditure is for a capital improvement. Thus, this question arises: Are the proposed activities and expenditures at the operations center "capital improvements" within the meaning of the law?

To answer this question we first conducted an analysis of pertinent statutes and cases. Because the appropriation had been made part of the 1994 capital budget, ch. 79, SLA 1993, we had to ascertain whether an item could be a capital item for budget purposes but not for purposes of the fund. We find that it can be. The pertinent definition for budget purposes is AS 37.07.120(4):

"capital projects" and "capital improvements" mean an allocation or appropriation item for an asset with an anticipated life exceeding one year and a cost exceeding \$25,000 and include land acquisition, construction, structural improvement, engineering and design for the project, and equipment and repair costs.

⁴(...continued)

P.2d 917, 922 (Alaska 1991). DEC has, in the past, relied upon this language to expend, or to permit DMVA to expend, money from the fund on an emergency broadcasting satellite uplink, an electronic map, general communications equipment, and emergency response personnel. The expenses under consideration in this memorandum are not substantially different in form.

Furthermore, these previous expenditures have been brought to the attention of the legislature. AS 46.08.060; e.g., 1992 ADEC, Oil and Hazardous Substance Release Response Fund Annual Report, 25, 27-28. At no time has the legislature negatively responded to these reported expenses. Personal communication with Barbara Frank, DEC, November 29, 1993. On the contrary, AS 46.08.040(a)(2)(C) is an expansion of sections previously dealing with preparedness. Cf. section 28.ch 191, SLA 1990 with section 3, ch. 90, SLA 1989. This particular subsection was not revised when recent amendments were made to other subsections. See section 15, ch. 83, SLA 1991. This acquiescence constitutes a form of ratification. Haffling v. Inlandboatmen's Union of Pacific, 585 P.2d 870, 876 (Alaska 1978) (The "operational history" of a statute is a factor in its construction).

Shelby Stastny, Director
Jeff Hoover, Budget Analyst
Office of Management & Budget

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On the other hand, the pertinent definition for purposes of the fund is AS 46.08.900(1):

"capital improvement" includes construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property, such as construction of a dike or retaining wall.

Obviously the former definition is more inclusive than the latter. While the telecommunications, investigation, and tracking "equipment" that make up the bulk of this appropriation would clearly be "capital improvements" for purposes of Title 37, they may not affect the "building" and, therefore, may not be "capital improvements" for purposes of Title 46. The "to a building" phrase of AS 46.08.900(1) makes that provision quite narrow, and clearly distinct from AS 37.07.120(4).⁵ We conclude that an item can be "capital" for budget purposes but not "capital" for purposes of the fund.

B. DEVELOPING A TEST

To determine whether the expenditures proposed by DMVA were, in fact, "improvements to a building," we turned our

⁵ Legislative counsel noted that AS 46.08.900(1) begins with the word "includes" rather than "means." From this, legislative counsel argued that AS 46.08.900(1) is really quite broad; that improvements "to a building" are just one example of the types of improvements excluded by AS 46.08.010(c). We believe the more natural reading is one in which "to a building" is operative; one in which "to a building" is expressly stated as a form of limitation. Any illustrative list established by the word "includes" is a listing of those activities to which a building might be subjected: construction, renovation, repair, and other improvements.

We find that the commas in the definition support this interpretation. Also, the second use of the word "includes" tends to show that the word is used to differentiate rather than illustrate. It differentiates those types of improvements normally thought of as capital--improvements to buildings and improvements to realty--into two legal categories. The first, improvements to a building, are capital, while the second, improvements to land, are not capital for purpose of this law. Furthermore, we deem it unlikely that the legislature would make equipment and other assets a part of the definition simply by using the word "includes" when the legislators had an explicit model available in AS 37.07.120(4).

DEC 02 '93 09:59AM MILITARY AFFAIRS JMU

P.5/12

Shelby Stastny, Director
Jeff Hoover, Budget Analyst
Office of Management & Budget

December 1, 1993
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attention to the laws of fixtures, real property tax laws, and other cases involving buildings. From these cases we were able to establish a legal test, which we applied to determine whether the proposed actions were "capital improvements" within the meaning of AS 46.08.900(1).

From *Hikita v. Nichiro Gyogyo Kaisha Ltd.*, 713 P.2d 1197, 1198 (Alaska 1986), we learned that in ordinary custom and usage "improvements" and "equipment" are differentiated.⁶ From *Hydaburg Co-op v. Hydaburg Fisheries*, 826 P.2d 751, 752 (Alaska 1992), we learned that two trademarks of a "capital improvement" to a building are that the improvement makes the building functional and that it contributes substantial value to the building. See also *id.* at 757, n.11. From *Wright v. City of Palmer*, 468 P.2d 326 (Alaska 1970), we learned that a capital improvement must be a tangible asset; that capital improvements are associated with value represented by real or personal property in some form and with relative permanency.

City of Juneau v. Hixson, 373 P.3d 743 (Alaska 1962) construes the term "capital improvement" as used in article 9, section 9, of the Alaska Constitution. From that case we learned that a capital improvement is characterized by permanency. *Hixson* alerts us to the fact that the term "capital improvement" cannot be applied in any generic sense. Each activity, transaction, or undertaking must be examined on its own facts in light of the unique statutory or constitutional definition of "capital improvement" that is being employed.

In *Hixson* our supreme court cited a New Hampshire case for the proposition that a capital improvement is something that betters the building or premises and is distinguishable from ordinary repair or current maintenance. Because our supreme court felt comfortable looking to other jurisdictions, we did too. We learned that if it is physically and commercially unfeasible to separate an improvement from a building, the improvement is more likely than not a capital improvement to that building. *Honeye Storage Corp. v. Bd. of Assessors*, 433 N.Y.S.2d 943 (N.Y.A.D. 1980).

In general, our review of case law showed us that courts apply a two part test to determine whether an improvement that involves a building is a capital improvement. First, the questioner must ask: Is the questioned activity designed and implemented for the purpose of making the building fundamentally

⁶ See also *Crown CoCo, Inc. v. Comm' of Revenue*, 336 N.W.2d 272 (Minn. 1983).

Shelby Stastny, Director
 Jeff Hoover, Budget Analyst
 Office of Management & Budget

December 1, 1993
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functional? If the answer is "yes," the activity is more likely than not a capital improvement and the questioner need look no further. If, however, the answer is "no," the questioner analyzes five factors: the nature of the activity, the extent of the activity, the cost of the activity relative to the cost of the building, the benefit to the building occasioned by the activity, and the degree of permanence of the results of the activity. Such scrutiny reveals characteristics that tend to define the project. *Georgian Gardens Tenants Ass'n. v. Georgian Gardens*, 592 A.2d 641 (N.J. 1991).⁷

By nature, the courts seem to be asking for a common-sense analysis of the activity. Is the item in question structural? Is it an integral component of the building? Is it an undertaking without which the building would be noticeably lacking? Will the building be harmed by removal of the item resulting from the activity? If so, the item is of the nature of a capital improvement. If not, the item is less likely to be a capital improvement.

By extent of the activity, courts are asking what the extent is relative to the whole building. Does it involve all the square footage of the building, or just a part? Does it go on for an extended duration or is the activity resulting in the asset reasonably short in duration?

By cost, the courts are most often speaking of cost of the questioned activity relative to the cost of the building. Looked at another way, this question is whether the activity adds

⁷ See also, *Cafritz Co. v. Dist. of Columbia Rental Housing Comm'n*, 615 A.2d 222 (D.C. App. 1992);

Norene v. Municipality of Anchorage, 704 P.2d 199 (Alaska 1985);

In re Marriage of Aird, 530 N.E.2d 556 (Ill. App. 1988);

Finn v. McNeil, 502 N.E.2d 557 (Mass. App. 1987);

Glenville Cablesystem Corp. v. State Tax Comm'n, 531 N.Y.S.2d 137 (N.Y.A.D. 1988);

Honeoye Storage Corp. v. Bd of Assessors of Town of Bristol, 433 N.Y.S.2d 943 (N.Y.A.D. 1988).

Shelby Stastny, Director
Jaff Hoover, Budget Analyst
Office of Management & Budget

December 1, 1993
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substantial value to the building.

The benefit to the building factor involves functionality. Can the building function without this item or is the benefit of the undertaking needed to make the building functional? Does the activity result in something that the building must have or something that would merely be helpful? Also, this factor addresses the question of whether the building will be substantially more valuable after the activity than before.

The degree of permanence is probably the quintessential factor. Will the item last as long as the building or must it be replaced regularly? Long lasting items tend to be capital improvements while items with a relatively short life are not. Permanence is viewed in light of permanence relative to the life of the building.

C. APPLYING THE TEST TO THESE SPECIFIC UNDERTAKINGS

After extracting this test from the case law, we conferred with you and DMVA. Together, we applied this test to the undertakings at issue. DMVA produced explicit information outlining the nature, extent, cost, etc. of several items. We have concluded that the activities occurring at DMVA's operations center are not "capital improvements" to the building within the meaning of AS 46.08.900(1). NOTE

In this memorandum, we will not again review every item involved in the questioned appropriation.⁸ Some costs are clearly not questionable, such as the purchase and installation of computers.⁹ Other costs might be questionable if standing alone, but are not so when considered incidental ancillaries to an allowable undertaking. Running a wire from the existing electrical service to a stove falls into this category. Wiring would normally be considered "capital," but when it is ancillary to installation of a stove, the wiring is considered part of that stove and not capital. *Allen v. Allen*, 554 P.2d 303 (Alaska 1976).

We chose two examples of the items scrutinized for the purpose of showing how we applied the test and reached our

⁸ Extensive review of each item did occur during discussions and development of this memorandum.

⁹ Minutes, H.Res.Committee, at 7 (May 3, 1989), confirms that the legislature contemplated use of 470 Funds to purchase equipment. Additionally, the word "equipment" is conspicuously present in AS 37.07.120(4) and absent from AS 46.08.900(1).

Shelby Stastny, Director
Jeff Hoover, Budget Analyst
Office of Management & Budget

December 1, 1993
8
AGO File #663-94-0248

conclusion:

1. Emergency Generator

In materials presented to the legislature, DMVA sought \$165,000 for an "auxiliary power generator." Because large pieces of equipment such as furnaces and generators are often affixed in such a way as to become a permanent part of the building, we initially presumed that this item would be disallowed as a capital improvement. However, DMVA explained that the building was already wired for the generator and that "installation" of the generator consisted of pulling a transportable generator up to the building and connecting it to the existing wiring. The generator will not even be housed directly within the operations center.

Obviously, the building functions at this time despite the absence of a generator. The building draws power from the grid. Equally obvious is the fact that a transportable generator has no permanence in the building. It can readily be transferred to some other location. By its nature, a generator stored in a portable, stand-alone building appears to be equipment, not an improvement.

The extent of the generator, relative to the building, is nothing. The cost of the generator is minimal relative to the cost and value of the building. In the balance, the generator is not a capital improvement.

2. Upgrade of Air Handling System

The documentation submitted by DMVA to the legislature includes a reference to "upgrade of air conditioning system/air handling." This appeared to be capital. However, upon further inquiry, responses from DMVA revealed that the agency already possesses three "stand-alone" air conditioning units. The "upgrade" consists of moving a unit from the second floor of the Armory and relocating it in the basement of the operations center. Such an activity clearly does not result in a capital improvement.

Moving a unit from one place to another adds no value to the building, and the cost is infinitesimal. The fact that the unit is being moved from one location to another shows that it has no permanence in any particular location. Further, the building already has a functioning air handling system. This unit is not needed to make the building functional; it makes the computer equipment functional by keeping it cool enough to operate. Connecting water lines and power lines to a piece of equipment is simply ancillary to that equipment and does not convert that equipment into an improvement. Thus, after applying the test, we

Shelby copy

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-2867 or 465-2450
FAX (907) 465-2020
Mail Stop 3101

130 Second Street, Suite 400
Anchorage, Alaska 99501-2109

MEMORANDUM

October 13, 1993

SUBJECT: FY 94 Appropriation from the Oil and Hazardous Substances Release Response Fund to the Department of Military and Veterans' Affairs, Division of Emergency Services (SB 183)

TO: Mike Greany
Legislative Fiscal Analyst

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to your query regarding use of the oil and hazardous substance release response fund. You have asked:

Is the oil and hazardous substance release response fund a proper fund source for the appropriations made to the Department of Military and Veterans' Affairs in sections 17(c) and 19 of Chapter 79 SLA 1993 for Emergency Operation Center Enhancements?

The oil and hazardous substance release response fund consists of money received by the state and appropriated to the fund by the legislature. AS 46.08.020. The basic purpose of the fund is to provide a readily available source of money for the payment of expenses incurred by the Department of Environmental Conservation and the Department of Transportation and Public Facilities to protect the environment from the release of oil or hazardous substances. AS 46.08.005. The fund may not be used for capital improvements, except that the fund may be used to pay for the construction or refurbishment of state ferry vessels for responding to spills of oil and hazardous substances. AS 46.08.010(c) and 46.08.040(d)(2). For purposes of controlling uses of the fund, "capital improvement" includes construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property, such as construction of a dike or retaining wall. AS 46.08.900(1).

Section 17(c), ch. 79, SLA 1993 and sec. 19, ch. 79, SLA 1993, page 16, lines 22-23 make appropriations from the oil and hazardous substances release response fund for enhancements to the emergency operation center maintained by the Department of

Mike Greany
 October 13, 1993
 Page 2

Military and Veterans' Affairs. According to the material submitted by the Department of Military and Veterans Affairs in support of its request for the appropriations, the appropriations are for capital expenditures, in the form of facility improvements and equipment purchases, for the Camp Denali armory in order to relocate certain Alaska State Trooper operations to the armory, furnish and equip the state emergency operation center, purchase an emergency power generator, and upgrade the phone and communications systems at the center.

The projects funded by sec. 17(c), ch. 79, SLA 1993 and sec. 19, ch. 79, SLA 1993, page 16, lines 22-23 involve significant capital improvements to the state emergency operation center which was a suite of empty rooms at the Camp Denali armory on Fort Richardson. None of the projects funded by the two appropriations involve allowable capital improvements to real property, other than buildings, or to state ferry vessels capable of assisting in oil spill clean up. The projects funded by the two appropriations are obviously capital improvements to renovate or improve (furnish) a building. Under AS 46.08.010(e), the oil and hazardous substance release response fund may not be used for such capital improvements.

Because the appropriations for the state emergency operation center enhancements are inconsistent with the prohibitions imposed by AS 46.08.010(e), there is a risk that the Alaska Supreme Court would construe the appropriations as an attempt to amend or suspend the provisions of AS 46.08.010(e) in violation of the confinement requirement of the Alaska Constitution. The Alaska Constitution expressly prohibits the legislature from enacting or amending substantive law in an appropriation bill by

Section 17(c), ch. 79, SLA 1993 states:

The sum of \$430,000 is appropriated from the oil and hazardous substance release response fund (AS 46.08.010) to the Department of Military and Veterans' Affairs for emergency operation center enhancements.

Section 19, ch. 79, SLA 1993, page 16, lines 22-23 state:

	APPROPRIATION ITEMS	GENERAL FUND	OTHER FUNDS
Emergency Operation Center Enhancements (ED 99)	648,000		548,000

The original proposal submitted by the department requested an appropriation of \$1,500,000 to complete these projects. The legislature only appropriated a total of \$1,078,000 for the projects but did not specify whether the department was to undertake all or only some of the proposed projects with new annual. According to documents submitted to the Office of Management and Budget, the department is attempting to complete most of the projects originally intended, but is giving emphasis to moving the Troopers to the state emergency operation center.

Mike Greany
October 13, 1993
Page 3

requiring that appropriation bills be confined to appropriations. Article IX, sec. 13. On its face, the confinement requirement would apparently preclude an appropriation from amending or suspending the terms of a substantive provision of law. The Alaska Supreme Court has not had an occasion to construe this provision of the constitution, so we have no guidance as to how rigorously this provision would be applied.

The Department of Law has had occasion to consider the confinement requirement of the Alaska Constitution. The department concluded that the confinement requirement did not defeat the plenary power of the legislature to appropriate unobligated money in the state treasury. 1986 Inf. Alaska Att'y Gen. Op., April 23 (663-86-0460). In the department's view the legislature was not bound by laws which restricted the uses for which a particular fund may be used. On the other hand, the department concluded that the confinement requirement did prevent the legislature from amending a prior appropriation so that it could be used to pay one type of statutorily created income tax credit but not another. 1984 Inf. Alaska Att'y Gen. Op., August 1 (366-031-85). The amendment was construed by the department to be an implied repeal of the latter income tax credit and thus constituted the invalid inclusion of substantive law in an appropriation bill. It is not clear from the informal opinions of the department as to what factors determine when, in its opinion, the legislature would be bound by statute and when it would not.

Other states that have a similar confinement requirement in their constitution and that have addressed this issue, have concluded that money in a statutorily created fund or account may be appropriated only for purposes consistent with the statute. Childree v. Hubbert, 524 So.2d 336 (Ala. 1988); City of North Miami v. Florida Defenders of the Environment, 481 So.2d 1196 (Fla. 1985). Once the legislature has specified that a particular fund or account is to be used for certain purposes, the legislature cannot appropriate money from the fund or account for other purposes without amending the law by substantive legislation. Benedict v. Polan, 413 S.E.2d 107 (W.Va. 1991).

In conclusion, the appropriation of money from the oil and hazardous substance release response fund for purposes set out in sec. 17(c), ch. 79, SLA 1993 and sec. 19, ch. 79, SLA 1993, page 16, lines 22-23 is not consistent with AS 46.08.010(c). The

Article IX, sec. 13 of the Alaska Constitution states:

Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

Emphasis added.

Mike Greasy
October 13, 1993
Page 4

validity of the appropriations is potentially subject to a nontrivial challenge that the appropriations violate the confinement requirement of the Alaska Constitution. The outcome of such a challenge in the state courts is not certain. The power of the legislature to appropriate unobligated funds in the state treasury is extensive, but precedent from other states suggests that the appropriations at issue here may be violative of the confinement requirement.

To avoid the potentially adverse consequences of a challenge to the appropriations made by sec. 17(c), ch. 79, SLA 1993 and sec. 19, ch. 79, SLA 1993, page 16, lines 22-23, the legislature could retroactively amend AS 46.08.010(c), by substantive temporary or permanent law, to allow the fund to be used for projects such as the rehabilitation of the state emergency operation center.

NOTE

If I may be of further assistance, please advise.

GU:gc
93-500.glc

- 1 administrative services E-mail 40,000
- 2 Department of Labor for workers' compensation
- 3 records imaging 383,800
- 4 Department of Commerce and Economic Development
- 5 for data processing system enhancement 400,000
- 6 Department of Public Safety for a statewide law
- 7 enforcement data processing system 900,000
- 8 Alaska Court System for an imaging system 207,500

9 (b) The sum of \$50,000 is appropriated from the receipts of the Alaska Commission
 10 on Postsecondary Education to the Department of Education, Alaska Commission on
 11 Postsecondary Education for borrower records data imaging analysis.

→ 12 (c) The sum of \$430,000 is appropriated from the oil and hazardous substance release
 13 response fund (AS 46.08.010) to the Department of Military and Veterans' Affairs for
 14 emergency operation center enhancements.

→ 15 (d) An appropriation made by (a) - (c) of this section may not be expended until the
 16 office of management and budget certifies that the project is consistent with the
 17 recommendations from the Telecommunications Information Council after completion of the
 18 council's studies begun in the fiscal year ending June 30, 1992. A department that receives
 19 an appropriation made by (a) - (c) of this section shall report to the Legislative Budget and
 20 Audit Committee on the status of the project for which the appropriation was received no later
 21 than December 1, 1993.

22 * Sec. 18. Federal or other program receipts as defined under AS 37.05.146 that exceed
 23 the amount appropriated in secs. 19 and 20 of this Act are appropriated conditioned upon
 24 compliance with the program review provisions of AS 37.07.080(h).

25 (SECTION 19 OF THIS ACT BEGINS ON PAGE 7)

FAX MEMO

PAGES 2 DATE FAX#

TO Jim Gutierrez

FROM Jeff Morrison

CC

PH# FAX#

JUN 18 '83 09:49AM MILITARY AFFAIRS JNU

1 Department of Commerce and Economic Development (cont.)		Appropriation	Appropriation Fund Sources	
	Allocations	Items	General Fund	Other Funds
	Alternative and Applied Energy	500,000	500,000	
5	Technology Development (ED 99)			
6	Reimbursable Authority (ED 99)	100,000	100,000	
7	Electrical Service Extension Grant	500,000	500,000	
8	Program (ED 99)			
9	Grants to Named Recipients:			
10	(AG 37.02.316)			
11	Arctic Winter Games (ED 25)	250,000	250,000	
12	Team Alaska Support Funding (ED 99)	134,000	134,000	
13			
14 Department of Military and Veterans Affairs			
15			
16	Statewide Environmental Compliance	3,000,000		3,000,000
17	Restoration Projects (ED 99)			
18	Army Guard Facilities: Deferred	4,220,200	2,055,000	3,165,200
19	Maintenance (ED 99)			
20	Fairbanks Armory/Organizational	100,000	100,000	
21	Maintenance Shop Design (ED 29-34)			
22	Emergency Operation Center	648,000		648,000
23	Enhancements (ED 99)			
24			
25 Department of Natural Resources			
26			
27	Contaminated Site Cleanup/	654,000		654,000
28	Assessment			
29	Childs Pad, Deadhorse	290,000		
30	Contaminated Site Cleanup/			
31	Assessment (ED 37)			
32	Forward Alaska Pad, Deadhorse	200,000		
33	Contaminated Site Cleanup/			
34	Assessment (ED 37)			
35	Soldotna, Peninsula Greenhouse	41,000		
36	Contaminated Site Cleanup/			
37	Assessment (ED 8)			

Sen. Miller

8-LS1107D.2

Chenoweth

3/1/94

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 215(RES)

Page 1, line 10, following ";":

Delete "and"

Page 1, line 11, following "surcharges;":

Insert "and authorizing appropriation to the underground storage tank assistance fund of a portion of reimbursements for expenditures related to the Exxon Valdez oil spill"

Page 1, following line 12:

Insert a new bill section to read:

**** Section 1. FINDING AND DETERMINATION FOR SECTION 4.** The legislature

(1) finds and declares that the release of petroleum from or associated with underground petroleum storage tanks presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state; and

(2) determines that it is in the best interest of the state and its citizens to finance a portion of the storage tank assistance fund out of reimbursed expenditures received by the state for expenses related to the Exxon Valdez oil spill."

Page 2, line 1:

Delete "** Section 1"

Insert "** Sec. 2"

Renumber the following bill sections accordingly.

Page 2, line 25, after "section":

SENATE FINANCE
COMMITTEE

Amendment Number: 1

Bill Number: SB 215

Sponsor: _____ Date: 3/2/94

Logged In By: (Signature)

Insert "and allowed under (c) of this section"

Page 3, following line 6:

Insert a new bill section to read:

"* Sec. 4. AS 37.14.410 is amended by adding a new subsection to read:

(c) Notwithstanding the requirement of (b) of this section, the legislature may appropriate to the storage tank assistance fund established in AS 46.03.410 a portion of the reimbursement for expenditures that are received by the state under (a) of this section and that are credited or subject to credit to the oil and hazardous substance release contingency and abatement mitigation account."

Renumber the following bill sections accordingly.

Page 19, line 1:

Delete "sec. 1"

Insert "sec. 2"

Page 19, line 25:

Delete "sec. 10"

Insert "sec. 12"

Page 19, line 28:

Delete "sec. 10"

Insert "sec. 12"

Page 19, line 31:

Delete "secs. 5 and 6"

Insert "secs. 7 and 8"

Page 20, line 1:

Delete "Section 16"

Insert "Section 18"

Page 20, line 5:

Delete "sec. 33"

Insert "sec. 35"

SB 215



SENATOR LOREN LEMAN

Northwest Anchorage

3111 "C" Street Anchorage, AK 99503 561-7614 During Session: State Capitol Juneau, AK 99801 465-2095

MEMO

TO: Bill Miles, Aide
 Senator Drue Pearce, Co-Chair Finance

FROM: Annette Kreitzer, Aide *AK*
 Senator Loren Lemman

DATE: March 2, 1994

RE: Correcting Amendment to SB 215

Senators Pearce and Lemman discussed Amendment #8 which was proposed by Lemman and adopted in the Senate Resources Committee. Amendment #8 did not accomplish what Senator Lemman intended as an inflation proofing mechanism for the response account.

Attached is an amendment which removes the language of Amendment #8 and inserts language which will NOT trigger on and off the .025 cent tax. The new amendment (LS1107X.1 by Chenoweth) allows part of the interest earned on the response account (\$50 million account) to be appropriated back into the account to maintain \$50 million in "real dollars" in the future. The balance of the interest earned may be appropriated to DEC for its oil and hazardous substance operations.

SENATE FINANCE
 COMMITTEE

Amendment Number: REVISED #2

Bill Number: SB 215

Sponsor: _____ Date: 3/3/94

Logged In By: *(Signature)*

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSB 215(RES)

BY SENATOR LEMAN

Page 5, lines 17 - 19:

Delete "the target amount of the unreserved and unobligated balance in the response account, as determined under (e) of this section"

Insert "\$50,000,000"

Page 5, line 27, through page 6, line 2:

Delete all material.

Reletter the following subsection accordingly.

Page 6, lines 4 and 5:

Delete "the amount determined under (e) of this section"

Insert "\$50,000,000"

Page 10, line 1:

Delete "the balance of the fund"

Insert "the balances of

(i) the oil and hazardous substances release
contingency and abatement mitigation account; and

(ii) the response account, but only to the extent the
interest accrued on the response account exceeds the amount
determined under AS 46.08.025(a)(4)"

Page 11, line 7, after "AS 46.08.045(a)(2)":

Insert "; and

(4) interest accrued on the balance of the response account, not to exceed the amount determined by applying to the balance of the response account on the first day of the state fiscal year the rate determined under AS 37.13.145(c)(1) and (2) for the previous state fiscal year"

AMENDMENT

OFFERED IN THE SENATE:

TO: CSSB 215(RES) (Version D)

Page 4, lines 21-22:

Delete "the amount of the unreserved and unobligated balance in the response account, as determined under (e) of this section"

Insert "\$50,000,000"

Page 4, line 31, through page 5, line 13:

Delete all material.

Reletter the following subsection accordingly.

Page 5, lines 15 and 16:

Delete "the amount determined under (e) of this section"

Insert "\$50,000,000"

Page 9, line 12:

Delete "the balance of the fund"

Insert "the balances of"

(i) the oil and hazardous substances release contingency and abatement mitigation account; and

(ii) the response account, but only to the extent the interest accrued on the response account exceeds the amount determined under AS 46.08.025(a)(4)"

Page 10, line 18, after "AS 46.08.045(a)(2)":

Insert "; and

(4) interest accrued on the balance of the response account, not to exceed the amount determined by applying to the balance of the response account on the first day of the state fiscal year the rate determined under AS 37.13.145(c)(1) and (2) for the previous state fiscal year"

SENATE FINANCE
COMMITTEE
Amendment Number: 2
Bill Number: SB 215
Sponsor: _____ Date: 3/2/94
Logged In By: BR

**THE FOLLOWING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE**

Alaska State Legislature

SENATOR

MIKE MILLER

P.O. Box 55094

North Pole, Alaska 99705

(907) 488-0862

While on line in

State Capitol

Juneau, Alaska

99801-1162

(907) 465-4076

Senate District 2

Senate

To: Senator Drue Pearce, Co-Chairman
Senate Finance Committee

From: Senator Mike Miller

Re: CS Senate Bill 215(Res)

Date: February 28, 1994

Attached is the packet for Senate Bill 215, scheduled for a hearing in Senate Finance at 9:00 AM, Tuesday, March 1, 1994.

I wish to draw your special attention to the first two items in the packet.

The first two documents in the packet are copies of amendments offered by Senator Zharoff which failed adoption but which I agreed to transmit to your committee for consideration.

The next document is a memo from Jack Chenoweth of Legal Services which was transmitted to me with a version "X" of SB 215. Mr. Chenoweth makes several recommendations which he thought appropriate to include in the bill after reviewing the amendments adopted by and discharged from the Resources Committee on Tuesday, February 22, 1994. I felt it inappropriate to transmit to the Finance Committee a CS that included more revisions than those which were formally adopted by Senate Resources during the final full-committee hearing on the bill. However, I believe Mr. Chenoweth's suggestions are certainly worthy of consideration and am forwarding a copy of his memorandum of 2/23/94 for your review.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ZHAROFF

TO: CSSB 215(RES) "O" Version

Everywhere that reference is made to "catastrophic oil release response account," revise to remove "catastrophic oil release" so that the reference will say "response account"

Everywhere that reference is made to "catastrophic oil release response mitigation account," revise to remove "catastrophic oil release" so that the reference will say "response mitigation account"

Page 2, lines 3 - 24:

Delete all material and insert:

"* **Section 1.** AS 29.60.510(a) is amended to read:

(a) Subject to (b) of this section. the [THE] commissioner may use money from the oil and hazardous substance release prevention and response fund to make grants to a municipality or village that is affected by the release of oil or a hazardous substance or by the response to the release and that demonstrates that the release or response to the release involves extraordinary expenditures that are beyond the reasonable capability of the municipality or village to meet from the current revenue sources of the municipality or village if

(1) the governor determines that the [A] release of oil or a hazardous substance consists of [EXCEEDS 2,500 BARRELS OF OIL, OR EXCEEDS] an amount [OF A HAZARDOUS SUBSTANCE] that, when released into the environment, presents a threat to the economy and public welfare of the municipalities and villages affected by it [AT LEAST EQUIVALENT IN EFFECT TO THE EFFECT OF A RELEASE OF OIL IN AN AMOUNT DEFINED BY THIS PARAGRAPH;

(2) THE RELEASE HAS BEEN PROCLAIMED A DISASTER

EMERGENCY BY THE GOVERNOR UNDER AS 26.23.020]; and

(2) [(3)] the governor finds that

[(A) THE RELEASE OF THE OIL OR HAZARDOUS SUBSTANCE INTO THE ENVIRONMENT PRESENTS A REAL AND SUBSTANTIAL THREAT TO THE ECONOMY AND PUBLIC WELFARE OF THE MUNICIPALITIES AND VILLAGES THAT ARE AFFECTED BY THE RELEASE AND BY THE RESULTANT ACTIVITIES TO CONTAIN AND CLEAN UP THE RELEASE; AND

(B)] it is in the best interest of the state to pay the expenses incurred by municipalities and villages to mitigate the social and economic effects that arise out of the release of the oil or the hazardous substance and the resultant cleanup activities.

* Sec. 2. AS 29.60.510(b) is repealed and reenacted to read:

(b) When authorized to make grants under this section,

(1) for each release or threatened release of oil or a hazardous substance for which the commissioner of environmental conservation may, under AS 46.08.045(a), expend money from the response account in the fund, and subject to agreement with the commissioner of environmental conservation as to the amount of money in the fund that may be used by the department to make grants, the commissioner may expend not more than \$10,000,000 of the unrestricted balance of the response account in the fund for grants authorized under this section; if the commissioner and the commissioner of environmental conservation do not agree on the amount of money in the response account in the fund that may be used by the department to make grants under AS 29.60.500 - 29.60.599 for a release or threatened release of oil or a hazardous substance, the governor shall make the determination;

(2) for each release or threatened release of oil or a hazardous substance for which money may not be expended from the response account, and subject to appropriation of money in the fund that may be used by the department to make grants, the commissioner may expend not more than the amount appropriated from the oil and hazardous substances release contingency and abatement account in the fund for grants authorized under this section."

Page 8, line 19:

After "of oil":

Insert "or a hazardous substance"

After "address":

Delete "oil"

Insert "those"

Page 8, line 23:

Delete "an oil"

Insert "a"

Page 9, line 27:

Delete "catastrophic oil"

After "discharge":

Insert "the costs of containment and cleanup of which were paid from the account established in AS 46.08.025"

Page 10, line 4:

Delete "catastrophic oil"

After "discharge":

Insert "the costs of containment and cleanup of which were paid from the account established in AS 46.08.025"

Page 11, line 4, after "discharge":

Insert ", or a discharge for the containment and cleanup of which the governor issued an administrative order under AS 46.08.045(a)(2),"

Page 11, line 10, after "discharge":

Insert "or a discharge for the containment and cleanup of which the governor issued an administrative order under AS 46.08.045(a)(2)"

Page 11, line 26:

Delete "[OR A HAZARDOUS SUBSTANCE]"

Insert "or a hazardous substance"

Page 11, lines 28 - 29:

Delete "[OR A HAZARDOUS SUBSTANCE]"

Insert "or a hazardous substance"

Page 12, line 29:

Delete "[OR A HAZARDOUS SUBSTANCE]"

Insert "or a hazardous substance"

Page 13, line 2:

Delete "an oil"

Insert "a"

Page 13, line 5:

Delete "an oil"

Insert "a"

Page 13, line 9:

Delete "an oil"

Insert "a"

Page 13, line 30, after "oil release":

Insert "or a release for the containment and cleanup of which the governor issued an administrative order under AS 46.08.045(a)(2)"

Page 15, line 9:

Delete "of oil"

Page 15, line 12, after "threatened release":

Insert "of oil or a hazardous substance"

Page 15, line 15:

Delete "of oil"

Page 15, line 29:

Delete "oil"

Page 18, line 30:

Delete "AS 29.60.510(a)"

Page 18, line 31:

Delete "29.60.560(e)(1)"

Insert "AS 29.60.560(e)(1)"

Page 19, line 4:

Delete "sec. 1"

Insert "the reenactment of AS 29.60.510(b) made by sec. 2"

Page 19, line 26:

Delete "sec. 12"

Insert "sec. 13"

Page 19, line 30:

Delete "sec. 12"

Insert "sec. 13"

Page 20, line 2:

Delete "secs. 5 and 6"

Insert "secs. 6 and 7"

Page 20, line 3:

Delete "sec. 6"

Insert "sec. 7"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 215(RES) "D" Version

Page 8, line 15, after "depots":

Insert "and for containment or cleanup activities related to restoration of an unsafe public drinking water supply or the provision of a source of clean public drinking water"

Page 16, following line 30:

Insert the following new bill sections to read:

** Sec. 22. AS 46.08.070(a) is amended to read:

(a) Except as provided in (d) of this section, the [THE] commissioner shall seek reimbursement promptly under this section, AS 46.03.760(e), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

* Sec. 23. AS 46.08.070(b) is amended to read:

(b) Except as provided in (d) of this section, the [THE] attorney general, at the request of the commissioner, shall immediately seek to recover money expended by the department under AS 46.08.005 - 46.08.080 or other law to contain and clean up oil or a hazardous substance that has been released or to control the threatened release of oil or a hazardous substance.

* Sec. 24. AS 46.08.070 is amended by adding a new subsection to read:

(d) Notwithstanding (a) and (b) of this section, the state may not seek reimbursement or recovery of containment and cleanup costs incurred to restore an unsafe public drinking water supply or to provide a source of clean public drinking water from a village if the village, as defined in AS 46.07.080, is a party responsible for the release that caused the water supply to become unsafe."

Renumber the following bill sections accordingly.

Page 17, following line 19:

Insert a new bill section to read:

**** Sec. 27.** AS 46.08.900(3) is amended to read:

(3) "containment and cleanup"

(A) means [INCLUDES]

(i) the direct and indirect efforts associated with the prevention, abatement, containment, or removal of oil or a hazardous substance, and the restoration of the environment; and

(ii) the restoration of an unsafe public drinking water supply or the provision of a source of clean public drinking water;

(B) when applied to

(i) expenses [, THE TERM] includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the release of the oil or hazardous substance, including administrative expenses for the incremental costs of providing the function or service; and

(ii) public drinking water includes, by way of example and not of limitation, a well with pumping facilities or the means by which surface water is treated so it is safe and healthful for use, but does not include a system of pipes and other facilities by which the water is distributed to households for use;"

Renumber the following bill sections accordingly.

Page 20, line 5:

Delete "sec. 33"

Insert "sec. 37"

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

M E M O R A N D U M

February 23, 1994

SUBJECT: CSSB 215 (Resources) (Work Order No. 8-LS1107X)

TO: Senator Mike Miller, Chair
Senate Resources Committee
ATTN: Teresa Sager-Stancliff

FROM: Jack Chenoweth
Legislative Council

These comments accompany a draft based on the drafting instructions in your February 22 memo.

In this version, bill section 1 is new. Because of the revision of the circumstances under which the administration may draw money from the response account, the material in existing AS 29.60.510(a) is dated. I have revised in light of the changes directed by the committee in AS 46.08.045(a).

In bill section 2, in light of the change made by the incorporation of the "inflation-proofing" provision, should the reference to "\$10,000,000" be revised to read "one-fifth of the account balance" or something comparable?

In the bill's section 6, apparently my method of performing the inflation proofing calculation was incomplete. See my revision at the end of (e)(2).

In the bill's section 10, in order to not mislead anyone into thinking otherwise, I propose to make sure that the response account is available only for significant spills--see my addition of the cross-reference to AS 46.08.045.

Throughout the bill, now that "catastrophic oil release response account" has been shortened to simply "response account," may we not go through and, in like fashion, shorten "oil and hazardous substances release contingency and abatement account" to just "contingency and abatement account"?

Senator Mike Miller
February 23, 1994
Page 2

I propose to retain the bill's section 27 because it supports a reference to a catastrophic oil discharge that appears in AS 46.08.130(b) and for which a definition is not now provided, and that appears in AS 46.08.045(a)(1), added by this Act.

I propose to retain the bill's section 33 in the event one house or the other fails to give the measure the two-third vote necessary for the effective date clause.

Finally, before letting go of this bill, you may want to ask the Department of Environmental Conservation to walk through AS 46.08.020(a)--section 16 in this version--to make sure that the split of the purposes for which money in the fund's two accounts may be expended (1) does not overlap and (2) leaves no gaps. I don't know enough about how they've operated from the existing single fund to feel confident that the split set out in this subsection (a) of AS 46.08.020 won't cause some practical problems. Note that AS 46.08.020(2)(A) doesn't include releases covered by administrative orders under AS 46.08.045(a)(2), and that AS 46.08.040(a)(1)(B) is limited to oil releases.

JBC:mi
94-039.mai

Enclosure

**DIVISION OF LEGAL SERVICES
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STATE OF ALASKA**

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Juneau, Alaska 99801-2105


MEMORANDUM

February 28, 1994

SUBJECT: CSSB 215 (Resources) -- Sectional analysis (Work Order No. 8LS-1107D)

TO: Senator Mike Miller, Chair
Senate Resources Committee
ATTN: Teresa Sager-Stancliff

FROM: Jack Chenoweth
Legislative Counsel



As it has been reported from the Senate Resources Committee, the bill substantially revises the oil and hazardous substance release response fund ("470 Fund") and the purposes for which that fund may be expended, and replaces the nickel-per-barrel oil conservation surcharge with two new oil surcharges.

I

Amendments generally related to the oil and hazardous substance release response ("470") fund:

The bill establishes a series of funds and accounts:

-- the oil and hazardous substance release response fund [this is the original "470 Fund" renamed in this bill the "oil and hazardous substance release **prevention and response fund**"; the measure does not change the fund's status in that it remains a fund within the general fund; the redesignated fund would have two components:

-- the oil and hazardous substances release contingency and abatement account (AS 46.08.010(a)(1) and 46.08.020(a)), the first component, with its companion oil and hazardous substances release contingency and abatement mitigation account (AS 46.08.020(b)), a holding account from which money is transferred in and out;

-- the response account (AS 46.08.010(a)(2) and 46.08.025(a)), the second component, with its companion response mitigation account (AS 46.08.025(b)), also a holding account from which money is transferred in and out.

With reference to this collection of funds and accounts:

Bill section 9 amends the statement of purpose underpinning the oil and hazardous substance release response fund chapter (AS 46.08) by restating the chapter's purpose in light of the amendments made to the chapter and to related provisions.

Bill section 10 identifies the two accounts that constitute that fund.

Bill section 11 makes a related substitution of a reference to "account" for fund and inserts language to emphasize the point that the fund and each of its two accounts are intended to be non-lapsing, with balances available from one fiscal year to another.

The changes made in **bill section 12** reflect the repeal of AS 46.08.040(d)--use of the fund as a source of money for construction of ferries--elsewhere in the bill and the insertion of authority to use money in the oil and hazardous substances release contingency and abatement account to support acquisition of necessary equipment for placement in response depots.

Bill section 13, revising AS 46.08.020, expands the number of sources from which **the oil and hazardous substances release contingency and abatement account** and its companion mitigation account may be financed.

Bill section 14, adding a parallel section, AS 46.08.025, enumerates the sources from which **the release response account** and its companion mitigation account may be financed.

Bill section 15: The amendments made by this bill section to AS 46.08.040(a) revise the objectives for which money in the current oil and hazardous substance release response fund may be spent and allocate those objectives to the two accounts. Generally, purposes **except** activity directly related to containment and cleanup of a significant release or threatened release of oil or a hazardous substance and for related cleanup activity cost recovery purposes are to be addressed by money in the oil and hazardous substance release contingency and abatement account. Activities directly related to containment and cleanup of a significant release or threatened release of oil or a hazardous substance and those involving related cleanup activity cost recovery purposes are to be met from the fund's response account. In addition to allocating permissible objectives of expenditure between the two accounts, the enumeration of the purposes for which the oil and hazardous substances release response account may be used expands the list of permissible uses from those that are enumerated in current law in order to allow acquisition of equipment for the response depots.

Bill section 16 is a further amendment to proposed AS 46.08.040(a)(2)(E) made contingent upon passage of a version of Senate Bill 33 that would shift responsibility for the activities of the State Emergency Response Commission from the Department of Environmental Conservation to the Department of Military and Veterans' Affairs. Under **bill section 33**, this provision is given an effective date tied to passage of SB 33.

Bill section 17: Under the bill section as amended, a specific appropriation from either account in the oil and hazardous substance release prevention and response fund would still be required before money could be used for any purpose apart from initiation of immediate response action when authorized by AS 46.08.040(a)(1)(A).

Bill section 18 forecloses the use of the money in the fund for construction of marine highway vessels. That change is further buttressed by repeal of references to that authority in AS 19.65 in **bill section 28**.

Bill section 19: This section modifies the authority of the commissioner of environmental conservation to draw from the fund's response account. Under the changes made, in addition to being able to draw from the account under 045(a)(1) to respond to an actual or threatened catastrophic oil release, the commissioner may draw from the account under 045(a)(2) to cover other actual or threatened oil or hazardous substance releases. Procedurally, the commissioner is required to submit a report to the governor within 120 hours relating to use of the money in the account, and the governor should ratify that action by issuing an administrative order. The remaining provisions of the bill section describe the content of the report. A provision that is in conflict with the changes proposed by this bill section, AS 46.08.-040(b) is repealed in **bill section 28**.

Bill section 20, relating to annual reporting requirements relating to the fund, makes additional changes reflecting the division of the fund into two accounts, and removes a requirement relating to the contents of the commissioner of environmental conservation's annual report.

Bill section 21 conforms references in current law to activities undertaken using money drawn from the fund.

With the modification of the uses of the fund and changes in key definitions noted below, **bill sections 22** and **23** make a series of conforming changes in the section addressing cost recovery.

The bill seeks to provide consistency of treatment in its use, in AS 46.08, of the terms "release" and "threatened release." **Bill section 24** provides a technically revised definition of "release" and **bill section 25** substantively amends the definition of "threatened release."

Bill section 26 supplies a definition of "catastrophic oil discharge" for AS 46.08. The term appears in current law and is added in at least one new section by this bill.

The bill renames the "oil and hazardous substance release response fund" as the "oil and hazardous substance release **prevention and** response fund." Rather than set out that change in each other place where it needs to be made, **bill section 29** directs the revisor of statutes to make the change editorially in places where that change is appropriate.

With division of the fund into two accounts and modification of the mechanism by which the response account may be tapped, **bill section 1** incorporates amendment by which there is a differentiation made between the two accounts for the purpose of making disaster response grants to municipalities.

With the division of the existing fund into two accounts, **bill section 3** makes a drafting change related to the handling of the current material in the immediately preceding bill section.

AS 44.46.025(a)(4) and (5) authorize the Department of Environmental Conservation to collect fees for certain activities for which, under proposed AS 46.08.040(a)(2)(C)-(ii) and (iv) the oil and hazardous substances release contingency and abatement account may be tapped. Repeal of AS 44.46.025(a)(4) and (5) by **bill section 28** repeals the fee collecting authority.

II

Amendments related to the levy and collection of the oil conservation surcharge:

In its sections 3 - 8, the bill eliminates the current nickel-per-barrel oil conservation surcharge, replacing it with a pair of new surcharges, each levied at 2 1/2 cents per barrel. Certain of the key provisions are generally modelled after the current provisions relating to levy and collection of the nickel-per-barrel oil conservation surcharge, but are revised to shift the basis for making determinations of the termination and reimposition feature of one of the two surcharges from a cumulative basis to a fiscal year-by-fiscal year basis.

Bill section 3: This section imposes a new conservation surcharge at the rate of \$.025 per barrel.

Bill section 4 directs the deposit of this surcharge to a special account and, from there, by appropriation, to the "response account" in the fund.

Bill section 5 sets out the conditions under which the severance tax surcharge shall be suspended or reimposed, revising the factors that trigger levy and collection of the surcharge as it supports the response account.

Bill section 6 amends the mechanism by which the surcharge on/surcharge off trigger shall be computed.

Bill section 7 imposes a second per barrel surcharge of \$.025 and, through a special account in the general fund, authorizes appropriation of the money received from it into the "oil and hazardous substance release contingency and abatement account."

Bill section 8 provides a revised definition for the term "surcharge."

The existing oil conservation surcharge provisions of AS 43.55 are repealed by **bill section 28**.

A related provision, **bill section 30**, is inserted by way of clarification of how appropriations, if any, made to the spill reserve fund, mentioned within the text of AS 29.60.510(b), are to be treated for purposes of determining whether they are to be treated as expenditures from the oil and hazardous substance release response fund in conjunction with the factors applicable to suspension or reimposition of the severance tax conservation surcharge. (Since, in **bill section 1**, the statutory reference to "spill reserve" would be repealed, the provision is drafted as an uncodified, temporary law section with a limited applicability.)

Bill section 31 is an additional "blackmail" clause intended to require that the full amount of the fiscal year end balance of the current "spill reserve" be shifted, without reduction, into the new "response account" of the fund.

Another related provision, **bill section 32**, sets out a transition mechanism for amounts collected under the nickel-per-barrel surcharge after June 30, 1994, and until the effective date of this Act, in the event the measure fails to obtain the two-thirds vote for the bill's proposed effective date.

*

Excepting only the contingent effective date tied to passage of SB 33 for the transfer of functions of the State Emergency Response Commission, **bill section 34** gives the bill a July 1, 1994, effective date.

JBC:mi
94-042.mai

MEMORANDUM

10-1-93
State of Alaska

Department of Environmental Conservation

TO: Shelby Stastny, Director
Office of Management and Budget

DATE: October 1, 1993

FILE NO:

THRU:

TELEPHONE NO: 465-5010

FROM: *John Sandor*
John Sandor, Commissioner

SUBJECT: FY95 Response Fund
Budget Requests

This memo outlines the process DEC followed to receive and evaluate other agency Oil and Hazardous Release Response Fund (Response Fund) FY95 budget requests and describes the recommendations precipitated from that process.

On August 24, 1993, a memo soliciting Response Fund project requests was sent to each department that had received or requested Response Funds in the past. Responses to this solicitation were compiled and reviewed by the Divisions of Spill Prevention and Response, (SPAR) (Mike Conway), Information and Administrative Services, (IAS) (Bob Poe), and the Commissioner's Office (Mead Treadwell). Comments and priority rankings for each project were compiled and then reviewed as a team. I thoroughly reviewed each request, the "review team's" comments and held a subsequent meeting to discuss our findings.

Attached you will find copies of each departmental request received as well as a summary sheet of comments and project rankings. This document is titled "FY95 Response Fund Requests & Rankings". The criteria used for ranking requests as either a "high", "medium", or "low" priority is based on programs or projects DEC "must do", "should do", or "could do", respectively.

The final recommendations of the Department are listed in the attached spreadsheet titled "FY95 Response Fund Requests", under the heading "FY95 DEC to OMB". You will also find a column that reflects the original request received, as well as the amount approved in the FY94 budget. These recommendations are also listed on the "Response Fund Administration" component C22 Interagency Transfer form, under the BRU, "Information and Administrative Services". Last fiscal year, this component was under the Spill Prevention and Response BRU. We propose that this component be moved to IAS as the resources to manage and administer these funds are located in that Division.

personnel to be trained in hazardous substance risks and supports this request. We have recommended funding at \$50,000 for the manual development and ask that a plan on how training will be accomplished state-wide be presented to DEC before the actual training efforts commence. DEC concurs with the \$12,000 request for SERC participation.

Department of Law (DOL). DOL asked for a continuation level of Response Fund funding for FY95. DEC has recommended their request for \$350,000 for Exxon Valdez litigation be reduced to \$300,000 with the intent that the \$50,000 contractual line be eliminated. In addition, DEC recommends that the \$655,000 request for cost recovery, enforcement and responsible party identification efforts be reduced to \$500,000. We believe the reduced amount is sufficient to cover the Department's legal needs in this area.

Department of Public Safety (DPS). DEC did not receive a request from the DPS. The Department would like their continued participation in the SERC, so we have requested \$8,000 for that purpose. In addition, DEC would also like to see continued DPS involvement in the environmental crimes unit. We are recommending a continuation level funding of \$50,000 for this effort.

University of Alaska (UA). Similarly, DEC did not receive a request from the UA. DEC requests continuation level funding of \$200,000 from the Response Fund for University research and development.

The funding for increases in health care costs has been included in DEC's request as follows: SPAR, Director's Office reflects a \$16,000 increase; Environmental Quality, Director's Office reflects a \$24,200 allocation for these costs; and Administrative Services shows a \$5,900 increase.

You will notice no requests for capital projects were considered. DEC's policy on these state contaminated sites will be as follows: For those sites where the potentially responsible party (PRP) is a state agency, we recommend funding cleanup from the State General Fund. If the PRP is an entity other than a state agency, it should be ranked using the state hazards model and placed on the list of other sites awaiting cleanup. Of course, if the Regional Administrator in the site area deems the situation an imminent or substantial threat, it is appropriate to use the spill reserve.

Thank you for your consideration on these requests and DEC recommendations. We look forward to meeting with you to further discuss our rationale for the funding levels we present here. Again, if the requesting agency would like to appeal these recommendations, DEC envisions OMB involvement in any joint meetings to bring resolution and consensus to such disagreements.

GOVERNOR HICKEL'S ORGANIZATIONAL EFFICIENCY TASK FORCE: SUMMARY REPORT
Department of Environmental Conservation

Revenue enhancement through user fees should be elevated to a higher priority by the assigning a task force of professional staff from throughout the department to explore additional fee opportunities.

10. The department's innovative Cooperative Community Environmental Agreements should be a matrix organization that links all of the DEC "local community-building" and "local community-enhancement" activities and programs in a single community focus. A community-centered matrix organization should also include formal relationships with other departments.

These departments include: Military and Veterans Affairs/Emergency Services, Community and Regional Affairs, Commerce and Economic Development, Education, Public Safety, Transportation and Public Facilities, and Health and Social Services. Service to communities will be enhanced and productivity raised through such team efforts.

11. All DEC managerial spans of control should be carefully reviewed to determine whether

some should be expanded further.

With perhaps two exceptions, the Commissioner and the South Central Regional Manager, there do not appear to be any managerial or supervisory spans of control that are too broad, and many that may be too narrow.

Cost savings through reductions of supervisory personnel should be achieved.

12. The Department should conduct a policy analysis of two related subject areas concerning the Oil and Hazardous Substance Release Response Fund:

A. How much spill reserve is enough?

The original intent of the legislation establishing the five cents per barrel oil production surcharge appears to have been to establish a \$50 million spill reserve to prepare the state for expenditures which may be required to respond to a release the magnitude of the March 1989 Exxon Valdez spill. The fund balance has apparently stabilized at about \$20 million, because most revenues collected to date have been expended on operations related to the aftermath of the Exxon

GOVERNOR HICKEL'S ORGANIZATIONAL EFFICIENCY TASK FORCE: SUMMARY REPORT
Department of Environmental Conservation

Valdez spill, and a variety of other spills.

Assistance should be consolidated.

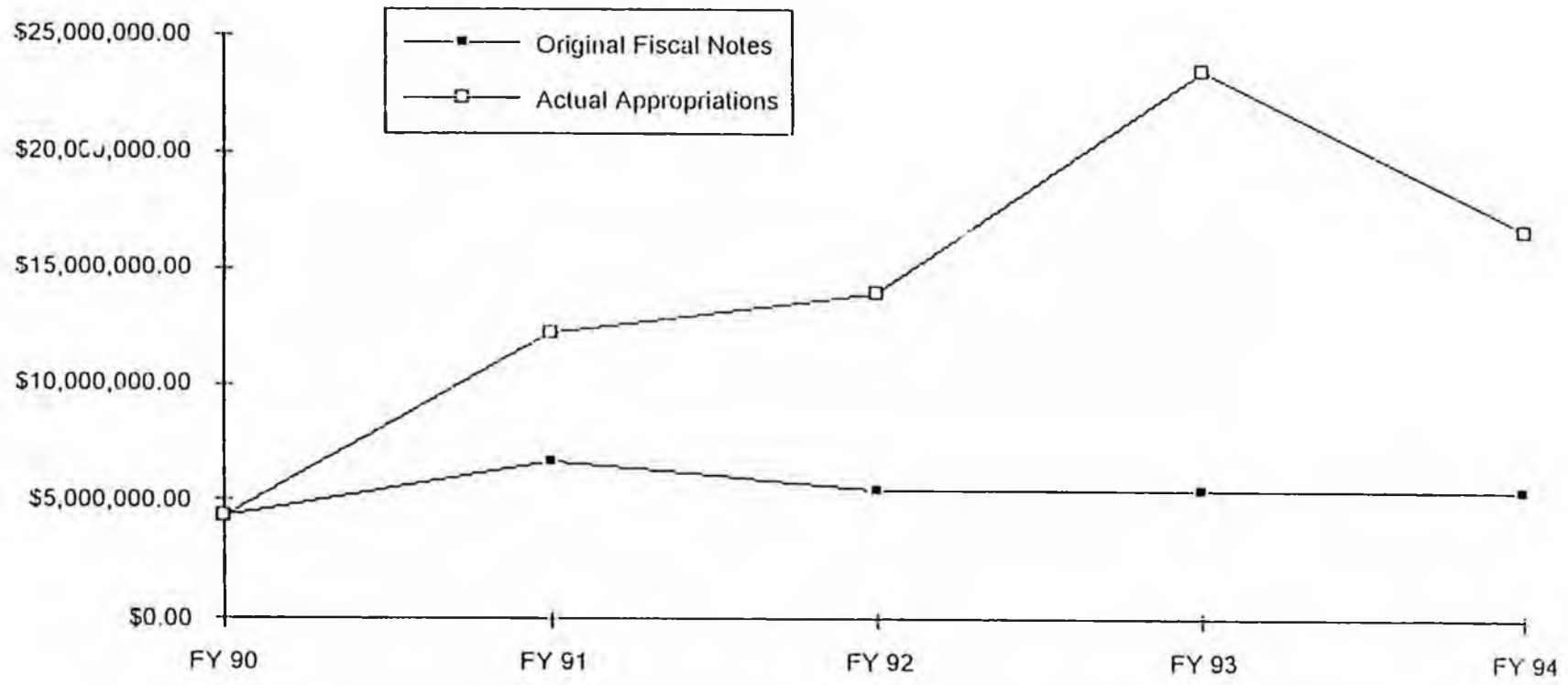
B. What are appropriate expenditures from the fund?

Chapter 112 SLA 1989 indicated two relatively limited and specific purposes for the Fund. Both related to "future discharges of oil or a hazardous substance that present a grave and substantial threat to the economy and the environment of the state."

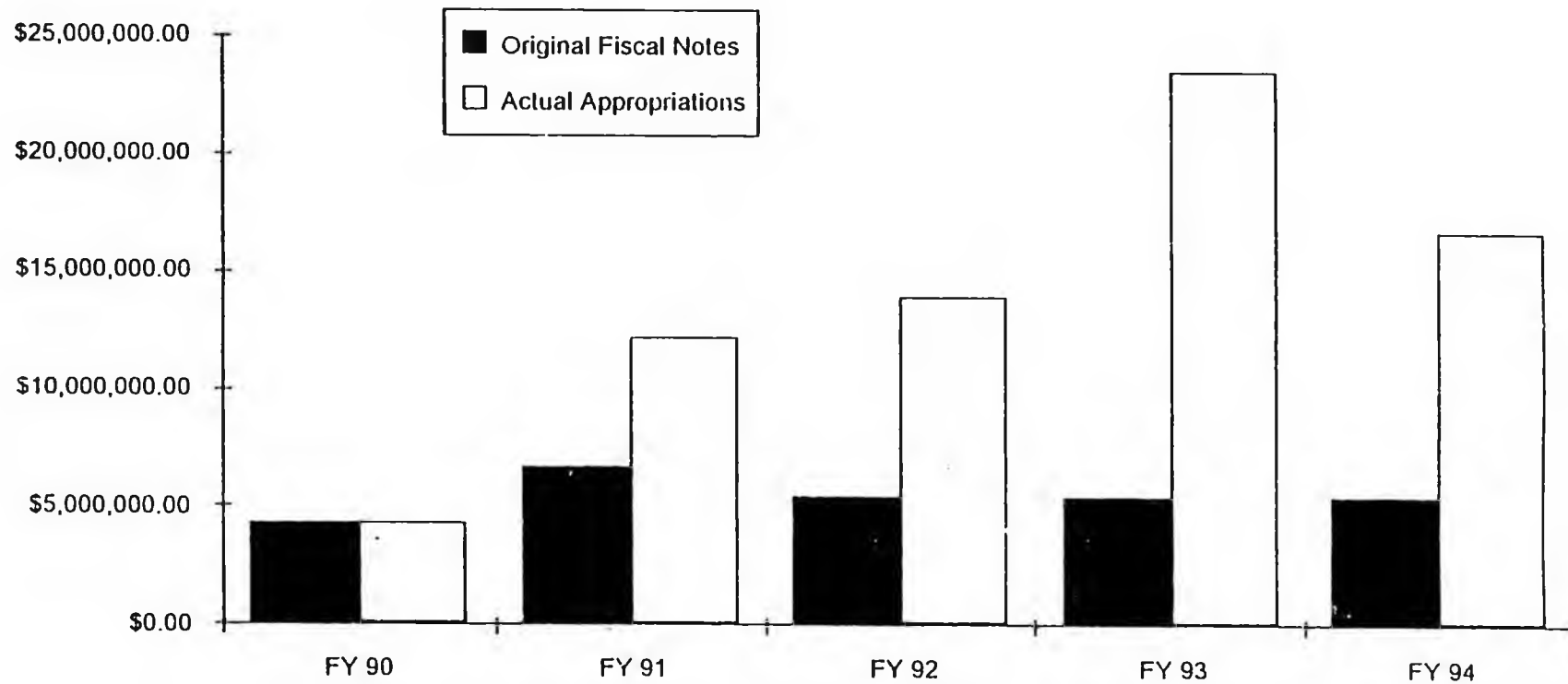
Since then, the number and scope of uses of the surcharge have expanded to include virtually all past, present, and future spills of oil or hazardous substances. It appears timely to review the present policy and intentions for the use of these funds.

The liberal use of the Fund appears to be driving up total state spending, with little concern for efficiency.

13. **The Spill Prevention, Planning and Management section and the Spill Response Office have overlapping functions and should be consolidated.**
14. **The separate staff for the State Underground Storage Tank program and the staff to the Board of Storage Tank**



Source: "Alaska's Oil & Hazardous Substance Release Response Fund", Report By BCSB Marketing for Prince William Sound Regional Citizen's Advisor Council, Oil Spill Prevention And Response Committee, December 1992.



Source: "Alaska's Oil & Hazardous Substance Release Response Fund", Report By BCSB Marketing for Prince William Sound Regional Citizen's Advisor Council, Oil Spill Prevention And Response Committee, December 1992.

2001 BUDGET - PREVENTION RESPONSE PROGRAM

	DEC/ONS FY 95 Budget Request
DEC - Spill Prevention and Response, Director	980.70
Government Preparedness	4067.40
Industry Preparedness	2351.90
Underground Storage Tanks	108.30
Fund Administration & Support	746.50
Director's Office	123.00
Laboratory Operation & Maintenance	186.50
DCRA - SERC	13.50
DMVA/DES - SERC	11.00
DMVA/DES - Response Preparedness & Planning	210.00
DOA - PWS Communication System Maintenance	20.00
DOT/PF - SERC	6.50
DF&G - SERC	6.50
DF&G Industry Contingency Plan Reviews	45.40
DF&G - State & Regional Master Plan	140.20
DH&SS - Response Training	12.00
Labor - SERC	50.00
LAW - Regional & Central Office	9.50
LAW - Assistance to Exxon Valdez Private Plaintiffs	151.60
LAW - SERC Guidance	330.00
LAW - RP Identification, Enforcement & Cost Recovery	25.00
DNR - SERC	655.20
DNR - Industry Contingency Plan Reviews	9.50
DNR - State & Regional Master Plan	92.50
DPS - Environmental Crimes	124.60
DPS - SERC	50.00
U of A Research	200.00
TOTAL EXPENDITURES	10727.30
Revenues on 2 Cent Per Barrel (Per ADEC Estimate)	10400.00
Interest on Spill Reserve (50m, 5%)	2500.00
Exxon Valdez Reimbursements to Mitigation Account (\$28 million Through the Year 2001 - Annual Amounts May Vary)	3500.00
MINIMUM TOTAL REVENUES AVAILABLE	16400.00

	DEC/CME FY 95 Budget Review
Contaminated Sites	2747.30
DEC - Spill Prevention and Response, Director	980.70
Government Preparedness	4067.40
Industry Preparedness	2351.90
Underground Storage Tanks	108.30
Fund Administration & Support	746.50
Director's Office	123.00
Laboratory Operation & Maintenance	186.50
DCRA - SERC	13.50
DMVA/DES - SERC	11.00
DMVA/DES - Response Preparedness & Planning	210.00
DOA - PWS Communication System Maintenance	40.00
DOA - Two-way Radio Equipment Maintenance	20.00
DOT/PF - SERC	6.50
DF&G - SERC	6.50
DF&G Industry Contingency Plan Reviews	45.40
DF&G - State & Regional Master Plan	140.20
DH&SS - Response Training	12.00
Labor - SERC	50.00
LAW - Regional & Central Office	9.50
LAW - Assistance to Exxon Valdez Private Plaintiffs	151.60
LAW - SERC Guidance	330.00
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DNR - SERC	655.20
DNR - Industry Contingency Plan Reviews	9.50
DNR - State & Regional Master Plan	92.50
DPS - Environmental Crimes	124.60
DPS - SERC	50.00
U of A Research	200.00
TOTAL EXPENDITURES	13514.60
Revenues on 2 Cent Per Barrel (Per ADEC Estimate)	10400.00
Interest Spill Reserve (50m, 5%)	2500.00
Exxon Valdez Reimbursements to Mitigation Account (\$28 Million Through the Year 2001 - Annual Amounts May Vary)	3500.00
MINIMUM TOTAL REVENUES AVAILABLE	16400.00

**FY91 AND FY92
COUNCIL ON OIL & HAZARDOUS SUBSTANCES CONTRACTS**

Parker & Associates	12/27/90-02/15/91	4,500.00	Write briefing papers re: vessel fatigue, training, vessel traffic safety, etc.
Fineberg, Richard	03/01/91-04/07/91	2,000.00	Evaluate reg agency performance
Hayden, Gary	09/06/92-01/31/92	3,000.00	Research & prepare database of concerned groups
Vogt, Deborah	09/23/91-01/15/92	4,000.00	Research & prepare report on AK's role and status as an owner and shipper of crude oil
Fluetsch, David	10/01/91-01/31/92	4,500.00	Develop an analysis of the public's participation in the development of oil spill response capability requirements
Sheinberg Assoc	10/18/91-01/26/92	39,000.00	Review Programs & Policies of Alaska re: toxic subst spills
Mertz, Kemp	10/09/91-11/18/91	29,600.00	Review implementation of Alaska's oil spill prevention response
Frank, Michael	11/07/91-01/31/92	4,500.00	Research TAPS Authorization Act, prepare summaries
Heiman, Marilyn	11/22/91-03/21/92	4,000.00	Prepare databases, reports, recommendations Sec. 11, Ch. 92, SLA 1991

**FY91 AND FY92
COUNCIL ON OIL & HAZARDOUS SUBSTANCES CONTRACTS**

Gatton, Gail	12/16/91-01/06/92	5,000.00	Provide Assistance to the Council
Jt Venture Easton, Frank Svancara	01/27/92-05/29/92	40,000.00	Review permitting procedures & processes re: air quality and wastewater discharge permits. Recommend statutory, regulatory, or process improvements
Gatton, Gail	04/01/92-07/01/92	5,000.00	Collect info & evaluate agency program implementation of key pieces of State's oil spill prevention and response planning
Vogt, Deborah	04/01/92-07/01/92	5,000.00	Collect info & evaluate agency program implementation of key pieces of State's oil spill prevention and response planning
Gallagher, Tom	04/20/92-06/30/92	5,000.00	Prepare Who's Who directory for oil spill planning & response activities
Kelso, Dennis	05/15/92-09/01/92	5,000.00	Assist in analyzing recommendations of AK Oil Spill Commission.
Heiman, Marilyn	05/18/92-10/15/92	5,000.00	Research, document & analyze oil discharges & regulatory agencies' response to discharges

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 5/8/93

FURTHER: FINANCE

Date of 5-Day Notice: 1/13/94
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2/25/94

RESOURCES Committee considered SB 215

Oil and hazardous substance release response fund; repealing the authority in law by which marine highway vessels may be designed and constructed; amending requirements relating to the revision of state and regional master prevention and contingency plans; altering requirements applicable to liens for recovery of state expenditures; efd.

and recommends:

replace with _____ CS SB 215 (YES)

- same title
- new title
- technical title change (HB only)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DEC	2-24-94		X

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

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

OTHER RECOMMENDATIONS:

~~[Signature]~~
Mike Donley (NO REC)
Paul J. Haroff (No Fees - No Rec)

[Signature]
Mike Miller DO PASS
Chair Signature and Recommendation

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
410 WILLOUGHBY AVENUE, SUITE 105
JUNEAU, AK 99801-1795

Phone: (907) 465-5050
Fax: (907) 465-5070

**FEBRUARY 16, 1994 SENATE FINANCE COMMITTEE HEARING ON CS 8B215
RELATING TO THE OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
STATEMENT - JOHN SANDOR, COMMISSIONER, DEPT. OF ENVIRON. CONS.**

Mr. Chairman, I appreciate the opportunity to again testify on this proposed legislation. The Department appreciates the Legislature's closely examining the Oil and Hazardous Substance Release Response Fund and determining what opportunities there are to amend and improve the process by which this fund is managed and administered. We continue to work with legislators and committee staffs in search for a consensus approach and common goals which will assure a strong prevention program to reduce the risks of oil and hazardous substance spills, and a strong response program which will leave no doubt as to the State of Alaska's strong commitment to protect the environment, people and communities from the adverse impacts of such spills.

I want to reiterate the Administration's very positive record of improved management of the Response Fund. In 1991, I ordered an Internal Audit of this fund, and for the past three years have implemented a number of improvements in its management and administration. As a result we have been able to increase the fund balance of 6 million dollars in 1991 to 12 million in 1992, 24 million in 1993 and a projected balance of 37 million at the end of 1994. We are well on our way to achieving our objective of a 50 million dollar fund balance. A report of the Legislative Budget and Audit review of the response fund will soon be released.

I believe the Senate Resources subcommittee workshop involving representatives of interested parties at the table was especially productive. All parties presented important concerns which I hope the Committee will address. One of the major concerns was the shift of DEC General Funding to Fee Receipts. In FY 91, 61% of DEC's funding came from General Funds; now it is 29%.

Mr. Chairman, I want to again emphasize the Administration's strong commitment to environmental protection. When Governor Hickel was Secretary of Interior, and the Santa Barbara off-shore spill occurred, he instituted very dramatic changes in governmental oversight to not only clean-up the spill, but to put in place, prevention and response requirements that were tough but reasonable. His liability and financial responsibility requirements prompted some from the oil industry to seek his dismissal. He did not waiver.

We cannot afford to be less vigilant. We cannot afford to forget the lessons of the Exxon-Valdez Oil Spill. We cannot afford to make further reductions in our oversight, prevention and response capabilities. We cannot afford to be satisfied with half-time environmental coverage on the North Slope. We cannot afford to diminish our technical staffs even as we are reviewing the audits of an aging pipeline. At the same time, we do want to continue to improve the management of the Response Fund, and are carefully analyzing various options to achieving that objective.

We continue to favor the proposed improvements in the operation and management of the response fund that we have presented to the Senate and House Natural Resource Committees. At the February 11, 1994 Committee workshop, we also reported the Department's analyses of various options to split the nickel. Through this initial analysis we reported the 2 1/2 cent split of the nickel does not enable us to meet pollution prevention, environmental protection, response and restoration objectives. However, we also reported the 3 cent prevention/operations and 2 cent response split, with specific language changes could meet both our environmental protection and fund management objectives. A more thorough analysis by our accounting and financial management staff confirm this, and Mr. Bob Poe, Response Fund Manager, can provide a detailed briefing of this analysis.

At the February 11, 1994 workshop we also presented a "draft bill" with the 3 cent prevention and 2 cent response fund split. This proposal restores the state's ability to quickly respond to all spills of oil and hazardous substances, as well as restoration and research authorities, and assures adequate funding of activities of the Department of Military and Veterans Affairs (DMVA), and other agencies as the Legislature deems appropriate. It strengthens both the reporting and cost recovery requirements and provides for a report to the Governor of action on catastrophic or other significant releases that appear to require extraordinary action and funding. Although I still favor this approach to revisions in the fund, a 3 cent prevention and operations and 2 cent response alternative could be acceptable. The draft we presented February 11 was developed jointly with the Department of Law and has also been reviewed by others in the Executive Branch.

The Department also received a re-draft of CS- SB215 (version O), and we have very serious concerns about a number of specific provisions in that draft. These are included in an attachment to this statement. Also enclosed is a comparison of three Response Fund Restructuring Options when the nickel is split.

Page three - Senate Natural Resources Committee - Feb. 16, 1994

Mr. Chairman, I want to again point out that we have had several wake-up calls the last sixty days which should remind us of our vulnerability to accidents and natural disasters which will lead to oil and hazardous substance spills: The ARCO North Slope spill which was discovered the morning of December 30, 1993; the Overseas Ohio tanker vessel which hit an iceberg in Prince William Sound just 25 miles south of Valdez on January 2nd, 1994 and the more recent Los Angeles Earthquake. We will continue to have oil and hazardous substance spills, and must be prepared to effectively respond to them.

The State of Alaska must have strong and well-coordinated prevention, response, clean-up and restoration programs to deal with such incidents. The Alaska Division of Emergency Services in DMVA, the DEC and other units of State government are working together to achieve that objective.

Mr. Chairman, the Administration wants to work in partnership with the Alaska Legislature to not only improve the management of the response fund, but to also strengthen the State's prevention and response capability. Our February 11, 1994 proposal achieves that objective. A split funding formula which would allocate no less than 3 cents for the prevention, contingency planning and operations programs could also achieve that objective.

Thank you for the opportunity to participate in this hearing.

FILE:470FUND2

DEC'S MAJOR CONCERNS
CSSB 215 (RES)
(O VERSION 2/14/94)

- PROVIDES FOR FINAL SUSPENSION OF THE CATASTROPHIC (2-1/2 CENT) SURCHARGE IF THIS LEGISLATURE DOES NOT APPROPRIATE THE ENTIRE FUND BALANCE AT THE END OF THIS FISCAL YEAR, ESTIMATED TO BE \$37.4 MILLION, TO THE CATASTROPHIC ACCOUNT. (SEC. 32; PAGE 19)
- RESPONSES TO HAZARDOUS SUBSTANCES ARE NOT WITHIN THE SCOPE OF THE CATASTROPHIC RELEASE ACCOUNT. (SEC. 11; PAGE 8 AND SEC. 17; PAGE 11)
- THE 2-1/2 CENT SPLIT IS INSUFFICIENT TO ADEQUATELY FUND THE STATE'S PREVENTION AND NON-CATASTROPHIC RESPONSE PROGRAMS.
- REQUIRES AN "ADMINISTRATIVE ORDER" BY THE GOVERNOR WITHIN 5 DAYS OF THE COMMISSIONER BECOMING AWARE OF A RELEASE IN ORDER TO ACCESS THE CATASTROPHIC RELEASE ACCOUNT. (SEC. 20; PAGE 15)
- IT IS UNCLEAR WHETHER OR NOT RESPONSE CAN BEGIN BEFORE THE ORDER IS ISSUED AND IF SO, WHETHER OR NOT THE STATE'S RESPONSE ACTION WOULD HAVE TO STOP IF THE ORDER IS NOT ISSUED WITHIN THE 5 DAYS.
- THE CATASTROPHIC ACCOUNT WOULD RECEIVE ALL FINES AND PENALTIES COLLECTED BY THE STATE FOR OIL RELEASES - POTENTIALLY GIVING THE SPILLER THE BENEFIT OF THOSE FINES AND PENALTIES. (SEC. 16; PAGE 10)
- INCLUDES A DEFINITION FOR "THREATENED RELEASE." (SEC 26 AND SEC. 28; PAGE 18)

Response Fund Restructuring Options
Detailed Financial Comparison SB215 "O"

	Original Proposal 50% Catastrophic 50% Abatement	SB 215 Version "O" 50% Catastrophic 50% Abatement	DEC Proposal 40% Response Fund 60% Prevention Fund
Fiscal Year 1995			
Initial Benefit to Surcharge Payee	\$33.1	\$51.8	\$26.8
Beginning Balance of Response Fund			
Beginning Balance of Spill Account	\$31.6	\$50.3	\$25.3
Beginning Balance of Abatement Account	\$31.6	\$12.9	\$37.9
Total .05 Surcharge Collected in FY95			
Total Spill Surcharge Collected in FY95	\$13.1	\$0.0	\$10.5
Total Abatement Surcharge Collected in FY95	\$13.1	\$13.1	\$15.7
Prevention & Response Prgm. All Agencies	\$13.5	\$13.5	\$13.5
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3
Forward Funding for FY96 Program			
Ending Balance of Response Fund			
Ending Balance of Spill Account	\$31.6	\$50.3	\$24.5
Ending Balance of Abatement Account	\$17.3	(\$1.4)	\$24.4
Total Cost to Surcharge Payee	(\$7.2)	(\$39.0)	(\$0.9)
Suspension and Reimposition Calculation	\$45.0	\$50.8	\$35.3
Fiscal Year 1996			
Beginning Balance of Response Fund			
Beginning Balance of Spill Account	\$45.0	\$50.6	\$35.3
Beginning Balance of Abatement Account	\$30.4	\$11.7	\$40.1
Total .05 Surcharge Collected in FY96			
Total Spill Surcharge Collected in FY96	\$6.3	\$0.0	\$10.1
Total Abatement Surcharge Collected in FY96	\$12.7	\$12.7	\$15.2
Prevention & Response Prgm. All Agencies	\$13.9	\$13.9	\$13.9
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3
Forward Funding for FY97 Program			
Ending Balance of Response Fund			
Ending Balance of Spill Account	\$45.0	\$50.6	\$34.5
Ending Balance of Abatement Account	\$15.7	(\$3.0)	\$26.2
Total Cost to Surcharge Payee	\$18.7	\$12.4	\$25.0
Suspension and Reimposition Calculation	\$51.6	\$50.9	\$44.9

Response Fund Restructuring Options
Detailed Financial Comparison SB215 "O"

	Original Proposal 50% Catastrophic 50% Abatement	SB 215 Version "O" 50% Catastrophic 50% Abatement	DEC Proposal 40% Response Fund 60% Prevention Fund
Fiscal Year 1997			
Beginning Balance of Response Fund			
Beginning Balance of Spill Account	\$51.6	\$50.9	\$44.9
Beginning Balance of Abatement Account	\$28.3	\$9.6	\$41.4
Total .05 Surcharge Collected in FY97			
Total Spill Surcharge Collected in FY97	\$0.0	\$0.0	\$7.4
Total Abatement Surcharge Collected in FY97	\$12.4	\$12.4	\$14.9
Prevention & Response Prgm. All Agencies	\$14.3	\$14.3	\$14.3
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3
Forward Funding for FY98 Program			
Ending Balance of Response Fund			
Ending Balance of Spill Account	\$51.6	\$50.9	\$44.1
Ending Balance of Abatement Account	\$13.2	(\$5.5)	\$27.1
Total Cost to Surcharge Payee	\$12.1	\$12.1	\$22.0
Suspension and Reimposition Calculation	\$51.9	\$51.2	\$51.8
Fiscal Year 1998			
Beginning Balance of Response Fund			
Beginning Balance of Spill Account	\$51.9	\$51.2	\$51.8
Beginning Balance of Abatement Account	\$25.6	\$6.9	\$42.0
Total .05 Surcharge Collected in FY98			
Total Spill Surcharge Collected in FY98	\$0.0	\$0.0	\$0.0
Total Abatement Surcharge Collected in FY98	\$11.9	\$11.9	\$14.3
Prevention & Response Prgm. All Agencies	\$14.8	\$14.8	\$14.8
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3
Forward Funding for FY99 Program			
Ending Balance of Response Fund			
Ending Balance of Spill Account	\$51.9	\$51.2	\$51.0
Ending Balance of Abatement Account	\$10.1	(\$8.6)	\$27.2
Total Cost to Surcharge Payee	\$11.6	\$11.6	\$14.0
Suspension and Reimposition Calculation	\$52.2	\$51.5	\$51.3

Response Fund Restructuring Options
Detailed Financial Comparison SB215 "O"

	Original Proposal 50% Catastrophic 50% Abatement	SB 215 Version "O" 50% Catastrophic 50% Abatement	DEC Proposal 40% Response Fund 60% Prevention Fund
Fiscal Year 1999			
Beginning Balance of Response Fund			
Beginning Balance of Spill Account	\$52.2	\$51.5	\$51.3
Beginning Balance of Abatement Account	\$22.0	\$3.3	\$41.5
Total .05 Surcharge Collected in FY99			
Total Spill Surcharge Collected in FY99	\$0.0	\$0.0	\$0.0
Total Abatement Surcharge Collected in FY99	\$11.2	\$11.2	\$13.4
Prevention & Response Prgm. All Agencies	\$15.2	\$15.2	\$15.2
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3
Forward Funding for FY00 Program			
Ending Balance of Response Fund			
Ending Balance of Spill Account	\$52.2	\$51.5	\$50.5
Ending Balance of Abatement Account	\$6.0	(\$12.7)	\$26.3
Total Cost to Surcharge Payee	\$10.9	\$10.9	\$13.1
Suspension and Reimposition Calculation	\$52.5	\$51.8	\$50.8
Total Net Cost - 5 Years (no discount)	\$46.1	\$8.0	\$73.3
Total Net Cost After Tax Effect (40% tax)	\$27.6	\$4.8	\$44.0

**THE PRECEDING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE**

DEPT. OF ENVIRONMENTAL CONSERVATION

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March 24, 1994

The Honorable Drue Pearce, Co-Chair
The Honorable Steve Frank, Co-Chair
Senate Finance Committee
Capitol Building
Juneau, AK 99801

Dear Senators Pearce and Frank:

Attached is a bar chart which illustrates how the current CSSB215 version "I" compares with other possible versions of this bill which would better insure that Alaska's spill prevention and response program is adequately funded.

Two possible ways of splitting the nickel surcharge per barrel of oil are compared, the .025/.025 split as proposed in CSSB215 and a .03/.02 cent split of the nickel where 3 cents is applied to the contingency and abatement account. These two approaches to splitting the nickel surcharge are further illustrated by showing the financial impacts of these proposals when the existing \$37.4 million currently in the response fund is split, and when the \$37.4 million is fully applied to the catastrophic spill account.

The results of this comparison indicate that the version of CSSB215 before you today **will not** adequately fund the current spill prevention and response program. Under-funding, based on the attached assumptions, is expected to exceed \$8.7 million over five years. This figure does not, however, take into effect recent amendments proposed by the Senate Finance Committee.

These amendments include significantly expanding the types of capital projects which may be funded from the contingency and abatement account, resulting in significantly increased funding requirements for the account. It is impossible to estimate the level of increased funding required since the provision allows a wide range of possible capital projects. The amendment to include funding for the Storage Tank Assistance Program from the contingency and abatement account further weakens arguments that future Exxon payments to the State of Alaska will be available to assist in funding the State's spill prevention and response program. As you may know, we support applying 1 cent of the proposed increase in the motor fuel tax toward funding the Underground Storage Tank Assistance Program.

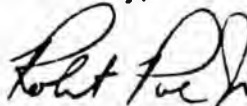
March 24, 1994

All other possible versions of the bill presented on the attached chart do not indicate an under-funding of the current spill prevention and response program within the first five years. However, the .025/.025 split which also splits the \$37.4 million currently in the response fund, will also result in under-funding of the program in approximately eight years. If demands for future capital projects funded through the contingency and abatement account become significant, the point in time when the spill prevention and response program is under-funded will come much sooner. Legislative history, as it relates to the 470 Fund, indicates that the use of this account for capital projects is likely to increase significantly.

The Hickel Administration does not support any version of this bill which does not provide at least 3 cents of the nickel surcharge toward the spill prevention and response program. In addition, a strong argument can be made that a significant portion of the \$37.4 million currently in the response fund came from general funds received prior to the time when the 5 cent surcharge was imposed. We therefore also support splitting the current response fund balance between the contingency and abatement account and the catastrophic spill account. In possible versions of this bill which include splitting the response fund, additional funding is made available to pay for badly needed capital projects like depots and corps and the Emergency Operations Center in Anchorage.

Today is the "morning after" the 5th Anniversary of the Exxon Valdez Oil Spill. As the recent Legislative Audit of the Oil and Hazardous Substance Release Response Fund pointed out, we may soon be approaching a new period of complacency in preventing future oil spills. The current version of CSSB215 before you today certainly supports this view. We strongly urge you to consider adopting a version of this bill similar to the one currently in the House Resources Committee which provides for a 3 cent surcharge to fund the contingency and abatement account and splitting the current balance of the response fund. We support this approach because it will guarantee that Alaska maintains a strong and adequately funded spill prevention and response program while, at the same time, quickly building to a \$50.0 million balance in the catastrophic spill account.

Sincerely,



Robert Poe, Jr.

Director of Administrative Services

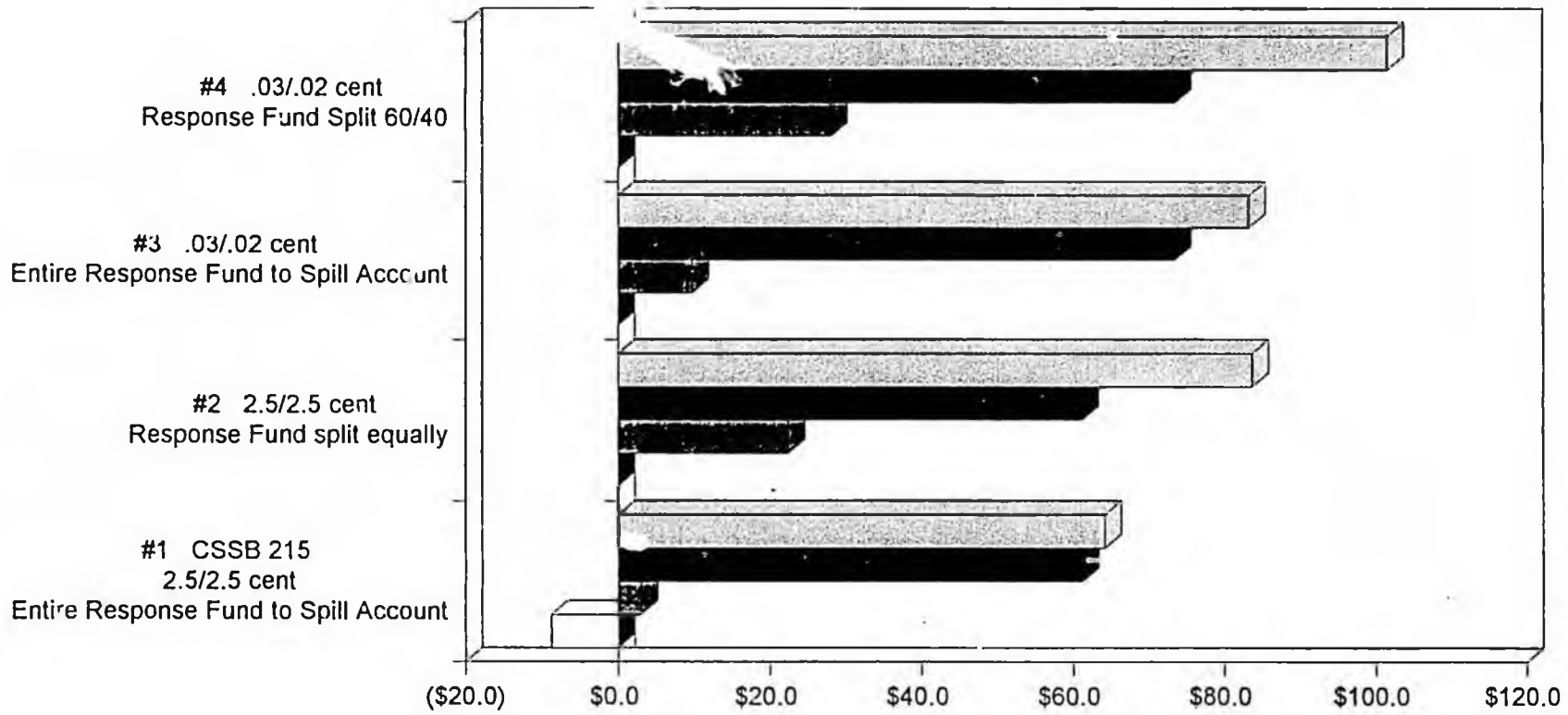
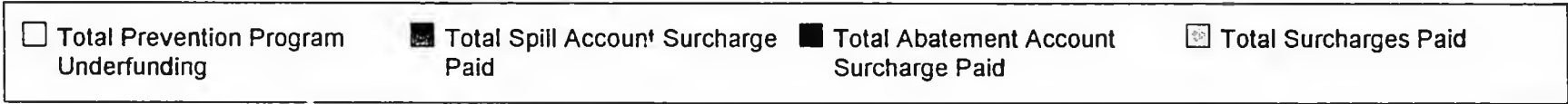
RGP\ (ASDIR\SB215I.BP)

Attachments

ASSUMPTIONS

1. The data summarized in the attached chart represents a five-year look at the financial effects of these possible changes to the current response fund statutes.
2. In identifying funds which would contribute to the contingency and abatement account, no interest or other mitigation account items are included in the calculation. These funds must be appropriated to the contingency and abatement account and there is nothing in CSSB215 which requires or specifically encourages the Legislature to appropriate these funds. In addition, Legislative history does not support the assumption that these funds will be appropriated to the contingency and abatement account.
3. In calculating the balance of the catastrophic spill account throughout the five years, it is assumed that \$0.8 million is spent each year from the catastrophic spill account to address spills of oil and hazardous substances which may occur each year.
4. \$0.3 million is assumed to be collected as cost recovery each year and is credited to the catastrophic spill account at the beginning of each succeeding fiscal year. This assumption appeared to be justified in light of the CSSB215 incentive clauses to assure that these funds are credited to the catastrophic spill account.
5. The State's spill prevention and response program for all agencies is assumed to be \$13.5 million in the first year and to increase by 3% each year thereafter.

Response Fund Restructuring Options Comparison of Proposals For SB215



3-22-94

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

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March 18, 1994

The Honorable Jeannette James
Alaska State House of Representatives
Room 501, State Capitol Building
Juneau, AK 99801-1182

Dear Representative James:

Thank you for your interest in response fund issues and for taking the time to express your concerns and questions to me. My letter will provide information you have asked for concerning long-term plans for emergency response depots and volunteer corps and contaminated sites.

In State statutes, the responsibility for establishing and managing the depots and corps rests with the Department of Military and Veterans Affairs (DMVA). I encourage you to contact DMVA directly for their response to this issue. Since our Department has worked with DMVA on this project over the years because of our responsibility to lead the State's response efforts for oil and hazardous substance spills, we are providing the following information as our best estimate at this time.

For the last two years, the Department of Environmental Conservation (DEC) has been working on the "Nearshore Demonstration Project" which was created by the Legislature in our FY 93 budget to develop a prototype nearshore oil spill response equipment package. This project will culminate in the deployment of two different equipment packages -- one for open water, crude spills and the other for inside passage, non-crude spills -- during April and May of this year for testing and evaluation. We expect to have the evaluation completed with recommendations for additional kinds of units not long after the tests. Based on the information we have developed so far, I am providing you estimates for coastal oil spill response packages that could be strategically placed around the State.

One unit, designed for open water coastal areas, consists of a small barge (to receive the product collected), deflection boom, and a skimmer designed to be operated by fishing vessels of opportunity. The estimated unit purchase price for