

SCOMM

118:22

Alaska State Legislature

Representative Jim Whitaker

House Special Committee on Oil and Gas, Chairman
House Resources Committee
House Health, Education, and Social Services
Committee
House State Affairs Committee
House Special Committee on Fisheries



House of Representatives
District 31

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Sponsor Statement

House Bill 194 – Disaster Assistance

House Bill 194 makes a technical statutory change as suggested by Legislative Legal Services. The Oil and Hazardous Substance Release Response Fund, under the administration of the Department of Environmental Conservation, was established to provide relief in the event of oil or hazardous substance discharges. In 1994, the name of this fund was changed to the Oil and Hazardous Substance Release *Prevention and* Response Fund, in order to establish an account intended to pay the expenses of making preparations for the possibility of a threatened release of oil or hazardous substances. All statutory references relating to the fund were amended to reflect the new name with the exception of AS 26.23.050(b). House Bill 194 corrects this oversight and brings the section into conformity with AS 46.08.010(a).

HOUSE BILL NO. 194**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-FIRST LEGISLATURE - FIRST SESSION****BY REPRESENTATIVE WHITAKER****Introduced: 4/13/99****Referred: House Special Committee on Oil and Gas, Resources****A BILL****FOR AN ACT ENTITLED**

1 "An Act correcting, in the Alaska Disaster Act, a reference to the former oil and
2 hazardous substance release response fund to describe that fund by its correct
3 name."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

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

6 (b) Whenever, and to the extent that, money is needed to cope with a disaster,
7 the first recourse shall be to money regularly appropriated to state and local agencies.
8 The second recourse shall be to money available in the disaster relief fund or, for oil
9 or hazardous substances discharges, the oil and hazardous substance release prevention
10 and response fund, as the governor determines appropriate. If money available from
11 these sources is insufficient, and if the governor finds that other sources of money to
12 cope with the disaster are not available or are insufficient, the governor may,
13 notwithstanding the limitations imposed by AS 37.07.080(e),
14 (1) transfer and spend money appropriated for other purposes; or

1

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

FISCAL NOTE

STATE OF ALASKA 2000 LEGISLATIVE SESSION

BILL NO. HB194

Revision Date: 17-Apr-00
Title: An Act correcting, in the Alaska Disaster Act,
a reference to the former oil and hazardous substance...
Sponsor: Rep. Whitaker
Requestor: (S) Calendar 4/17/00

Dept Affected: Military & Veterans Affairs
BRU: Disaster Planning & Control
Component: Disaster Planning & Control
Component Serial No. #1808

Expenditures/Revenues (Inflation not included unless otherwise noted below)

(Thousands of Dollars)

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
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 EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: \$ none

POSITIONS

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

ANALYSIS:

(Attach a separate page if necessary)

This bill corrects language that references the former oil and hazardous substance release response fund, and describes it correctly as the oil and hazardous substance release prevention and response fund.

There is no fiscal impact to the Division of Emergency Services as a result of implementation of this legislation.

Prepared by: Carol Carroll, Director
Division: Administrative Services
Approved by Commissioner: Phillip Oates
Agency: Military & Veterans Affairs

Phone: 465-4730
Date: 17-Apr-00
Date: 17-Apr-00

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FISCAL NOTE

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

BILL NO. HB 194

Revision Date/Time (Note if correction) _____ Dept. Affected Environmental Conservation
 Title An Act correcting a reference to the former oil and BRU Spill Prevention and Response
hazardous release response fund Component Prevention and emergency response
 Sponsor Rep. Whitaker
 Requester Senate Resources Component No. 2064

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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 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
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact

Prepared by: Larry Dietrick, Director Phone 465-5255
 Division Spill Prevention and Response Date/Time 4/14/00 5:37 PM
 Approved by Commissioner [Signature] Date 4-14-00
 Agency Department of Environmental Conservation

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB194

Revision Date: _____
Title: An Act correcting, in the Alaska Disaster Act,
a reference to the former oil and hazardous substance...
Sponsor: Rep. Whitaker
Requestor: (H)O&G

Dept Affected: Military & Veterans Affairs
BRU: Disaster Planning & Control
Component: Disaster Planning & Control
Component Serial No. #1808

Expenditures/Revenues (inflation not included unless otherwise noted below)

(Thousands of Dollars)

OPERATING EXPENDITURES	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
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 EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0
--------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: \$ none

POSITIONS

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

ANALYSIS:

(Attach a separate page if necessary)

This bill corrects language that references the former oil and hazardous substance release response fund, and describes it correctly as the oil and hazardous substance release prevention and response fund.

There is no fiscal impact to the Division of Emergency Services as a result of implementation of this legislation.

Prepared by: Carol Carroll, Director
Division: Administrative Services
Approved by Commissioner: [Signature]
Agency: Military & Veterans Affairs

Phone: 465-4730
Date: 19-Apr-99
Date: 4-19-99

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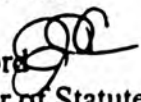
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 24, 1999

SUBJECT: Apparent Error in AS 26.23.050

TO: Representative Jim Whitaker, Chair
Oil & Gas Committee

FROM: James P. Crawford 
Assistant Revisor of Statutes

I wanted to point out what appears to be an error in AS 26.23.050(b). This section relates to financing efforts to cope with "disaster emergencies." In subsection (b), there is a reference to the "oil and hazardous substance release response fund":

Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to money regularly appropriated to state and local agencies. The second recourse shall be to money available in the disaster relief fund or, for oil or hazardous substances discharges, the oil and hazardous substance release response fund, as the governor determines appropriate. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding the limitations imposed by AS 37.07.080(e),

- (1) transfer and spend money appropriated for other purposes; or
- (2) borrow money for a term not to exceed two years.

However, that fund was renamed in 1994 as the "oil and hazardous substance release prevention and response fund." Section 21, ch. 128, SLA 1994. Consequently, the reference in AS 26.23.050(b) appears to be obsolete.

Ordinarily, this is the sort of problem that could easily be remedied in a revisor's bill, and I initially thought to include such a correction in this year's bill. However, in this case, when the fund was renamed, two different accounts within the fund were created: (1) the oil and hazardous substance release prevention account; and (2) the oil and hazardous substance release response account. Although the titles of the accounts might provide some clue, there is no definitive way to tell whether the 1994 legislature wanted recourse under AS 26.23.050(b) limited only to one particular account or, alternately, whether recourse could be had with respect to both accounts, at least under some circumstances.

Representative Jim Whitaker
March 24, 1999
Page 2

Because of this uncertainty, I do not think the correction should be made in a revisor's bill. However, given that it involves oil spills, at least in part, I did want to bring the issue to your attention in case you wanted to address the issue in a substantive bill sponsored by the Oil & Gas Committee.

JPC:pl
99-040.plm

LEGAL SERVICES

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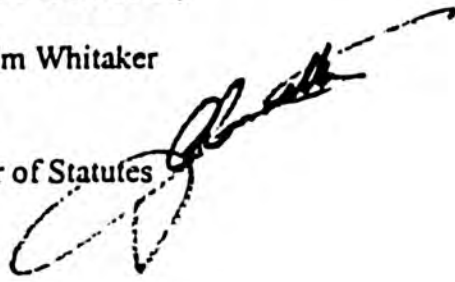
MEMORANDUM

April 9, 1999

SUBJECT: Correcting a reference to the former oil and hazardous substance release response fund in the Alaska Disaster Act (Work Order No. 1-LS0839\A)

TO: Representative Jim Whitaker

FROM: Jack Chenoweth
Assistant Revisor of Statutes



This memo accompanies a bill draft.

The oil and hazardous substance release prevention and response fund is composed of two accounts. One of the accounts, the response account, is intended to provide money "readily available to the commissioner [of environmental conservation] for the payment of the expenses incurred by the Department of Environmental Conservation during a response to a release or threatened release of oil or hazardous substances when authorized by AS 46.08.045 and for related purposes intended to address those releases." AS 46.08.005(1). The balance of the second account, the prevention account, is available for the state to use "during a response to a release of oil or a hazardous substance, other than one described in [AS 46.08.005(1)], and to a threatened release of oil or a hazardous substance, to pay the expenses of making preparations for the possibility of a release or threatened release of oil or hazardous substances, to reduce the amount, degree, or intensity of a release or threatened release, and for other related purposes identified in law." AS 46.08.005(2).

Though the bill, as drafted, does not limit the source of disaster relief by reference to a specific account, another statute, AS 26.23.020(g)(11), indicates which account is to serve as the source:

(g) In addition to any other powers conferred upon the governor by law, the governor may, under AS 26.23.010 - 26.23.220,

(11) use money from the oil and hazardous substance release *response* account in the oil and hazardous substance release prevention and response fund, established by AS 46.08.010, to respond to a declared disaster emergency related to an oil or hazardous substance discharge.

JBC:lmb
99-053.lmb
Enclosure

Commission under AS 26.23.077. (§ 3 ch 104 SLA 1977; am §§ 3, 4 ch 178 SLA 1990; am §§ 1 — 4 ch 32 SLA 1994)

Effect of amendments. — The 1990 amendment, in subsection (a), made stylistic changes in paragraph (5), deleted former paragraph (8) relating to preparation and distribution of catalogs or extracts listing assistance programs, and redesignated former paragraphs (9) through (12) as present paragraphs (8) through (11); and in subsection (e), deleted former paragraph (5) relating to provision for mobile support units, deleted former paragraph (7) relating to surveys, deleted former paragraph (10) relating to registration of certain equipment and housing, redesignated former paragraphs (6), (8), (9), and (11) through (14) as present paragraphs (5) through (11), and deleted "and public information" following "training" in present paragraph (5).

The 1994 amendment, effective August 6, 1994, in subsection (b), substituted "representatives of interjurisdictional disaster planning and service areas" for "interjurisdictional planning and disaster agencies" in the second sentence; in subsection (c), substituted "disaster planners" for "agencies" in the second sentence; in subsection (e), substituted "representatives of interjurisdictional disaster planning and service areas" for "interjurisdictional disaster agencies" in paragraph (5), added paragraph (12), and made a related stylistic change; and added subsection (f).

Sec. 26.23.045. Response corps; depots. (a) The department may establish a response corps. The corps consists of volunteers who register with the department and agree to be trained in techniques for emergency and disaster response and to be available on short notice to carry out responsibilities of the corps under an applicable incident command system. Members of the corps are entitled to per diem and expenses as determined by the department for training and for days spent in service to the state.

(b) The department may maintain emergency response depots in areas of the state identified for that purpose in the state emergency plan developed under AS 26.23.040. The depots shall be equipped in a manner that enables prompt response to emergencies and disasters. (§ 5 ch 32 SLA 1994)

Effective dates. — Section 5, ch. 32, SLA 1994, which enacted this section, took effect on August 6, 1994.

Sec. 26.23.050. Financing. (a) It is the intent of the legislature, and declared to be the policy of the state, that funds to meet disaster emergencies will always be available.

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to money regularly appropriated to state and local agencies. The second recourse shall be to money available in the disaster relief fund or, for oil or hazardous substances discharges, the oil and hazardous substance release response fund, as the governor determines appropriate. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding the limitations imposed by AS 37.07.080(e),

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

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

(c) Nothing in this section limits the governor's authority to apply for, receive, administer, and spend grants, gifts, or payments from any source, to aid in disaster prevention, preparedness, response, or recovery. (§ 3 ch 104 SLA 1977; am § 3 ch 59 SLA 1986; am § 5 ch 178 SLA 1990; am § 2 ch 190 SLA 1990)

Effect of amendments. — The first 1990 amendment, in subsection (b), substituted "money" for "funds" in the first and second sentences and substituted the language beginning "the limitations imposed" for "any limitation imposed by AS 37.07.080(e), transfer and spend money appropriated for other purposes or, in situations involving natural disasters,

borrow from the United States government or other public or private sources for a term not to exceed two years" at the end of the third sentence.

The second 1990 amendment, in the second sentence of subsection (b), inserted ", for oil or hazardous substances discharges," and "the governor determines".

maximum extent feasible, utilize the facilities of appropriate public agencies in the administration of the provisions of this chapter. (§ 1 ch 186 SLA 1970)

Sec. 46.07.080. Definitions. In this chapter

- (1) "commissioner" means the commissioner of environmental conservation;
- (2) "village" means an unincorporated community that has between 25 and 600 people residing within a two-mile radius, a second class city, or a first class city with not more than 600 residents. (§ 1 ch 186 SLA 1970; am § 6 ch 104 SLA 1971; am § 53 ch 53 SLA 1973; am § 28 ch 208 SLA 1975; am § 1 ch 72 SLA 1992)

Effect of amendments. — The 1992 amendment, effective September 14, 1992, in paragraph (2), added " , or a first class city with not more than 600 residents" to the end and made stylistic changes.

Chapter 08. Oil and Hazardous Substance Releases.

Article

1. Release Prevention and Response Fund; Reimbursement; Liens (§§ 46.08.005 — 46.08.080)
2. Oil and Hazardous Substance Response Office (§§ 46.08.100 — 46.08.190)
3. General Provisions (§ 46.08.900)

Cross references. — For other provisions related to oil pollution control, see AS 46.04; for other provisions related to hazardous substance release control,

see AS 46.09; for authority of municipalities to implement this chapter, see AS 46.09.060(b).

Article 1. Release Prevention and Response Fund; Reimbursement; Liens.

Section

05. Purpose of fund; description of accounts
10. Fund established
20. Financing of the oil and hazardous substance release prevention account; prevention mitigation account
25. Financing of the oil and hazardous substance release response account; release mitigation account
30. Intent concerning the abatement of oil or hazardous substance releases

Section

40. Uses of the fund
45. Use of the response account; declared disasters
50. Records of the fund
60. Report
70. Reimbursement for containment and cleanup
75. Liens against property as security for state expenditures
80. Regulations

Sec. 46.08.005. Purpose of fund; description of accounts. The legislature finds and declares that the release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it is in the best interest of the state and its citizens to provide a fund containing two accounts. Within the fund,

(1) one account consists of money readily available to the commissioner for the payment of the expenses incurred by the Department of Environmental Conservation during a response to a release or threatened release of oil or hazardous substances when authorized by AS 46.08.045 and for related purposes intended to address those releases;

(2) the other account consists of money that the state may use during a response to a release of oil or a hazardous substance, other than one described in (1) of this subsection, and to a threatened release of oil or a hazardous substance, to pay the expenses of making preparations for the possibility of a release or threatened release of oil or hazardous substances, to reduce the amount, degree, or intensity of a release or threatened release,

and for other related purposes identified in law. (§ 1 ch 59 SLA 1986; am § 2 ch 48 SLA 1991; am § 20 ch 128 SLA 1994)

Effect of amendments. — The 1991 amendment, effective September 13, 1991, inserted "and the Department of Transportation and Public Facilities" in the second sentence.

The 1994 amendment, effective October 2, 1994, in the introductory language, substituted "a fund con-

taining two accounts" for "a readily available fund" at the end of the second sentence and added "Within the fund," at the end; added the paragraph (1) designation and rewrote the provisions therein; and added paragraph (2).

Sec. 46.08.010. Fund established. (a) There is established in the state general fund the oil and hazardous substance release prevention and response fund. The fund shall be administered by the commissioner. The fund is composed of two accounts,

- (1) the oil and hazardous substance release prevention account;
- (2) the oil and hazardous substance release response account.

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

(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)(D) for the acquisition, repair, or improvement of assets as preparedness measures, the fund may not be used for capital improvements. (§ 1 ch 59 SLA 1986; am § 3 ch 48 SLA 1991; am §§ 21 — 23 ch 128 SLA 1994)

Effect of amendments. — The 1991 amendment, effective September 13, 1991, in subsection (c), added "Except as provided in AS 46.08.040(d)(2), the" to the beginning of the second sentence.

The 1994 amendment, effective October 2, 1994, in subsection (a), in the introductory language, inserted "prevention and" in the first sentence and added "The

fund is composed of two accounts," at the end and added paragraphs (1) and (2); in subsection (b), inserted "an account in," substituted "that account" for "the fund," and inserted "does not lapse and"; and, in subsection (c), substituted "in AS 46.08.040(a)(2)(D) for the acquisition, repair, or improvement of assets as preparedness measures" for "in AS 46.08.040(d)(2)."

NOTES TO DECISIONS

Funds validly appropriated. — Because the legislature has made the entire balance of the oil and hazardous substance release response fund available for expenditure, the amounts deposited into the fund

are already validly appropriated and therefore no longer available for appropriation. *Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994).

Sec. 46.08.020. Financing of the oil and hazardous substance release prevention account; prevention mitigation account. (a) The legislature may appropriate from the following sources to the prevention account in the fund:

(1) the annual estimated balance of the account maintained under AS 37.05.142 for deposits into the general fund of the proceeds of the oil conservation surcharge levied by AS 43.55.300;

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

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

(A) from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action; and

(B) described in AS 46.08.025(a)(3);

(4) 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; and

(5) the interest earned on the balance of the accounts maintained under AS 37.05.142 for deposits into the general fund from the proceeds of the surcharges levied under AS 43.55.201 and 43.55.300.