

SCOMM

62:11

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

FURTHER

RES
FIN

4/8/89

DATE TURNED INTO OFFICE _____

Mr. President:

OIL & GAS

Committee considered

SB 271

civil penalties for the unpermitted discharge of uncontaminated crude oil and for the failure to implement an oil discharge contingency plan in

and recommended:

☒ replace with CS Oil & Gas ☒ same title

☐ attached amendment(s) and

☐ new title

☐ _____ letter of intent adopted

☐ do pass

☐ do not pass

☐ no recommendation

☒ individual recommendations

☐ further referral to _____

FISCAL NOTE(S) attached ☐ zero
☐ appropriation no FN attached

☐ fiscal impact
☐ Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

Tim Kelly

OTHER RECOMMENDATIONS

Rick Halford NO REC

Al Adams NO REC

Chair

signature and recommendation

☐ Committee backup attached

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Tim Kelly
Senator Rick Halford
Senator Paul Fischer
Senator Al Adams



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SENATE SPECIAL COMMITTEE ON OIL AND GAS

To: Members of the Senate Special
Committee on Oil and Gas

From: Senator Drue Pearce, Chair

Re: SB 271, Sponsor Statement

Date: April 11, 1989

This legislation will put into effect a necessary civil penalty structure that 1). will compensate the public for the unquantifiable and undetectable natural resource and environmental damage caused by massive oil discharge and 2). will provide oil handlers with a meaningful incentive to perform their operations as safely as possible.

The existing civil penalty statute, AS 46.03.758, caps liability at \$100,000,000. It can be expected that the massive discharge into Prince William Sound will cost the state much more in terms of damage to the environment, tourism, the fisheries industry and the well-being of the residents of the effected areas.

While in 1977 the legislature attempted to draft a civil penalty statute which would provide the incentive to the oil companies to operate in a prudent and responsible manner, extensive lobbying by the industry significantly watered-down the legislation. The original legislation contained penalties of \$50, \$25 and \$10 per gallon depending on what type of environment was impacted. The current penalties, ranging from \$10 to \$1 per gallon, do not carry the weight necessary to adversely impact a multi-national corporation's profit.

Even at the lower penalty levels, the industry regarded the penalties as excessive. In a House Judiciary Committee Meeting on March 4, 1977, an Exxon lobbyist testified that

"the penalty limits in this bill are so excessively high that they threaten the viability of the oil business in the State of Alaska. The risks of spilling all of the oil in a large tanker are very minimal. But for example, a 250,000 dead weight ton tanker

carries 250,000 tons or approximately 1.7 million barrels of oil. At 42 gallons/barrel, that's 73,500,000 gallons. At \$50/gallon, that's \$3.5 billion, even at the reduced maximum penalty of \$10, the penalty would be \$735 million."

I have introduced SB 271 to provide the type of incentive that will be seriously considered by the oil companies. This bill only deals with the catastrophic discharge of crude oil, spills in excess of 100,000 barrels. The \$1,000 and \$2,000 per barrel penalties should garner serious thought toward safe operations.

I have also included an incentive section, similar to the present law, which would credit the oil companies for each barrel cleaned up within 36 hours of the discharge. This does not apply to chemical dispersions.

These penalties will be increased fivefold for those acts that are based on gross negligence or intentional acts or when the defendant did not take reasonable measures to clean up the discharged oil.

These penalties supersede all other penalties for the discharge of oil. The penalties may be reduced in the defendant can demonstrate that the discharge was caused solely by the negligent act of a third party who cannot be found jointly and severally liable for the discharge.

Section 4 extends the civil penalty provisions of this bill to any person who has an oil discharge contingency plan who fails to respond in a manner required by law.

In conclusion, even though an event such as a massive oil spill, may have a low risk probability, it is important to raise the penalties to the level where this risk is taken into account when making operational decisions.

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM

April 7, 1989

SUBJECT: Civil Penalties for Oil Discharges
(Work Order No. 6-1197)

TO: Senator Drue Pearce, Chair
Senate Special Committee on Oil and Gas

FROM: Terri Lauterbach *TLW*
Legislative Counsel

Enclosed is a draft relating to your request to increase civil penalties for the discharge of crude oil.

Section 1 of the draft amends the definition of "oil" in the current civil penalty statute to exclude uncontaminated crude oil.

Section 2 of the draft enacts a new penalty scheme for discharges of uncontaminated crude oil. It assumes a finding of liability under another statute and imposes a civil penalty that would be in addition to any other liability of the discharger. The penalty would be approximately \$24 per gallon for the first 420,000 gallons and \$48 per gallon for discharges over that amount. However, I have drafted the penalty in terms of barrels, as you requested.

Subsection (b) establishes the incentive for cleanup in the first 36 hours, as you requested. Subsection (c) is patterned after AS 46.03.758(b)(2), causing a higher penalty on a showing of gross negligence or failure to reasonably respond to a discharge. Subsection (d) is patterned after AS 46.03.758(i). Subsection (e) is patterned after AS 46.03.758(j). The definition in subsection (f) is patterned after the definition in AS 46.03.758(1)(3). (Note that it includes discharges on public land - you had asked about discharges on land when we last spoke.)

At your direction, I have not included a subsection on mitigation like that of AS 46.03.758(g). I have also not

Senator Drue Pearce, Chair
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included a subsection patterned after AS 46.03.758(h) because those exceptions would be covered in the underlying liability determination that would occur before the new civil penalty section would be applicable.

Section 3 makes a technical change to accommodate the new civil penalties enacted by secs. 2 and 4 of the draft.

Section 4 makes a person who fails to implement a contingency plan jointly and severally liable for a civil penalty assessed under AS 46.03.759. If it is your intent that their penalty be separate and in addition to the other person's penalty, please let me know, and I will redraft section 4. As drafted, the penalty is not limited to oil terminal facilities, but would be applicable to anyone who didn't respond adequately if their plan called for them to respond to a particular discharge.

Sections 5 and 6 make technical changes to accommodate the new civil penalties enacted by secs. 2 and 4 of the draft.

For your information, I have enclosed a general summary of statutes related to oil pollution discharges like the Prince William Sound disaster and a bibliography of material available at the Alaska State Library related to oil spills. The bibliography was prepared by the Alaska State Library.

If I can be of further assistance, please let me know.

TL:gc
WKG9/024

Enclosure

**STATE OF ALASKA
1989 LEGISLATIVE SESSION**

BILL VERSION: SB 271
PUBLISH DATE: 4/8/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to civil penalties
for discharge of unpermitted contaminated
oil discharge contingency plan
Sponsor: Senate Special Committee on
Oil and Gas

Agency Affected: Environmental Conservation
BRU: Environmental Quality
crude oil and for failure to implement an
Components: Environmental Quality

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Dan Easton **Phone:** 465-2640
Division: Environmental Quality **Date:** April 11, 1989
Approved by Commissioner: A.D. Kuhl **Date:** 4/13/89
Agency: Alaska Department of Environmental Conservation

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 271
PUBLISH DATE: 4/14/89

FISCAL NOTE

REQUEST:

Revision Date: _____

Title: An Act relating to civil penalties

Agency Affected: DEC

for the unpermitted discharge of uncontaminated crude oil...

BRU: _____

Sponsor: _____

Requestor: Senator Pearce

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Amy D. Kyle

Division: Commissioner's Office

Phone: 465-2600

Date: _____

Approved by Commissioner: A. D. Kyle

Agency: Department of Environmental Conservation

Date: 4/18/89

Distribution (by preparer):

Legislative Finance

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Requestor

Office of Management and Budget

Impacted Agency(ies)