

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
2083 SCOMM 78: SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

Section 7

Section 7 requires approximately 60 additional facilities (onshore exploration and production facilities) to demonstrate proof of financial responsibility. One-half of an Administrative Assistant III is necessary to carry out the additional workload of reviewing and approving the financial responsibility documentation for these facilities.

Sections 8 and 9

Sections 8 and 9 have no fiscal impact on the Department.

Sections 10, 11 and 12

These sections broaden the forms of security acceptable to demonstrate financial responsibility. The Department will need to evaluate what forms of security will be acceptable to the state and define those by regulation (.5 Administrative Assistant III)

Section 13

Section 13 has no fiscal impact on the Department.

Section 14

This section requires crude oil terminals with a capacity between 5,000 and 10,000 barrels to have approved contingency plans. This will not significantly increase the workload for the Department.

Section 15

This section provides authority to the Department to inspect the structural integrity of tank vessels, oil barges, oil terminal facilities, pipelines. Outside expertise is necessary for some of this activity. The Department will require two FTE (Environmental Field Officer III) and contractual funds (\$450.0) to implement this section.

Sections 16 and 17

Sections 16 and 17 are for drafting clarification and do not have a fiscal impact on the Department.

Section 18

Section 18 has no fiscal impact on the Department.

Section 19

Section 19 broadens the use of the Oil and Hazardous Substance Release Response Fund. The fiscal impact to the Department comprises the total of this fiscal note.

Section 20

This section requires the Department to conduct a survey of small non-crude oil terminal facilities with storage capacities between 5,000 and 10,000 barrels. There are over 30 of these facilities, most of which are located in rural areas. The inspections will involve a technical review of facility design and construction, prevention measures, and spill response capability. The Department will provide technical assistance to the facility owners/operators to enhance their spill prevention and response capabilities. In addition the Department will submit a report to the legislature outlining the types of problems at these facilities and suggestions for improvement. The inspections and technical assistance will require two Environmental Field Officers. Compilation of the statewide inspection information and recommendations report to the legislature will require one Ecologist II. The survey is required to be done within two years. One EFO position is for just one year, while the other one is for the two years of the survey. The Department proposes to keep the Ecologist II for subsequent years to initiate implementation of accepted recommendations.

Position	100	200	300	400	500	Total
Ecologist II	51.0	5.0	8.0	1.0	5.0	70.0
2 Env. Field Ofc II's	102.0	10.0	16.0	2.0	10.0	140.0
2 Env. Field Ofc III's	102.0	10.0	16.0	2.0	10.0	140.0
Ecologist II	51.0	5.0	8.0	1.0	5.0	70.0
Admin. Asst. III	36.0	0.0	8.0	1.0	5.0	50.0
2 Env. Field Ofc III	102.0	10.0	16.0	2.0	10.0	140.0
Contractual (inspections)			450.0			450.0
2 Env. Field Ofc III	102.0	15.0	16.0	2.0	10.0	145.0
Ecologist II	51.0	5.0	8.0	1.0	5.0	70.0
2 Clerk Typist III's	68.0	0.0	16.0	2.0	10.0	96.0
TOTALS	665.0	60.0	562.0	14.0	70.0	\$1,371.0

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: CSHB 567(Fin)
No. 3

PUBLISH DATE: HOUSE 4/24/90

FISCAL NOTE

REQUEST:

Revision Date: 4/2/90
Title: An act relating to contingency
plan requirements, financial responsibility...
Sponsor: Rules/Governor
Requestor: HFinance

Agency Affected: Environ. Conservation
BRU: Environmental Quality

Components: Environmental Quality

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	665.0	614.0	563.0	563.0	563.0	563.0
TRAVEL	60.0	52.5	45.0	45.0	45.0	45.0
CONTRACTUAL	562.0	554.0	546.0	546.0	546.0	546.0
SUPPLIES	14.0	13.0	12.0	12.0	12.0	12.0
EQUIPMENT	70.0	65.0	60.0	60.0	60.0	60.0
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1,371.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0

CAPITAL	0.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER responsible funds	1,371.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0
TOTAL	1,371.0	1,298.5	1,226.0	1,226.0	1,226.0	1,226.0

POSITIONS:

FULL-TIME	12.0	12.0	12.0	12.0	12.0	12.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	2.0	1.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

Further analysis attached.

Prepared by: Lynn Kent

Division: Environmental Quality

Phone: 465-2630

Date: 4/2/90

Approved by Commissioner: *ADK*

Agency: Environmental Conservation

Date: 4/2/90

Distribution (by preparer) :

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

FISCAL ANALYSIS

Sections 1, 2, and 3

These sections allow the Department and municipalities to enter into agreements relating to vessel traffic control and monitoring systems and alter penalty provisions. There is no fiscal impact to the Department from these sections.

Section 4

This section requires certain facilities and vessels to include prevention measures in their contingency plans. One Ecologist II is necessary to develop prevention regulations such as design, construction and operation standards for the various types of facilities and vessels. In addition, field staff will require additional time to review the prevention portions of the plan and to perform more detailed facility inspections. Statewide, this will increase the workload by two FTE (Environmental Field Officer II's)

In addition, this section requires a new class of facilities - onshore exploration and production facilities - to develop oil discharge prevention and contingency plans. There are approximately 60 sites with multiple currently operating in the state. Two Environmental Field Officers are necessary to evaluate these contingency plans, inspect facilities for compliance with the approved contingency plans, and to develop and participate in spill drills designed to test the ability of the contingency plans.

Section 5

Section 5 of the bill requires the Department to provide a copy of a contingency plan to the Departments of Fish and Game and Natural Resources and provide those agencies with an opportunity to review and comment on the plans. The coordination of review for over 70 plan reviews annually will require one additional FTE (Ecologist II).

Section 6

Section 6 has no fiscal impact on the Department.

Section 7

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CS HB 567 (RESOURCES)

SECTION 1 - Allows a municipality to enter into agreements with the U.S. Coast Guard to develop and enforce a vessel traffic control and monitoring systems for tank vessels and barges.

SECTION 2 - Increases the fine for a discharge which was grossly negligent and adds language to include prevention requirements in contingency plans.

SECTION 3 - Allows DEC to enter into agreements with the U.S. Coast Guard to prevent oil discharges and develop and enforce vessel traffic control and monitoring systems for tank vessels and barges.

SECTION 4 - Requires that persons may not operate a tank vessel or oil barge without having a prevention and contingency plan and that contingency plans be properly implemented. Failure to respond to a spill in the shortest possible time is a violation of the chapter.

SECTION 5 - Authorizes DEC to revoke, modify or approve contingency plans. Provides opportunity for Fish and Game and DNR to comment on contingency plans. Requires an applicant for a contingency plan to plan for the removal of a discharge within 72 hours. Requires that an exploration or production facility contingency plan provide for response to the realistic maximum discharge, an oil terminal facility plan provide for response to a discharge from the largest tank at the facility, and a tanker or barge contingency plan provide for response to a discharge equal to the capacity of the vessel. Defines "properly implement" and "maximum realistic discharge."

SECTION 6-8 - Strengthens financial responsibility requirements and establishes:

1. \$50 million minimum for crude oil terminal facilities
2. \$25/barrel for non-crude oil terminal facilities with a minimum of \$1 million and a maximum of \$ 50 million
3. \$500 million for crude oil tankers and barges
4. \$100/barrel for non crude tankers and barges with a minimum of \$1 million and a maximum of \$35 million

5. \$50 million for offshore exploration and production facilities \$20 million for onshore exploration and production facilities.

SECTION 9 - It is not a defense from the financial responsibility requirement to argue that the person believed they had satisfied the financial responsibility requirements.

SECTION 10-12 - Describes methods for establishing financial responsibility and adds "security approved by the Department" as a method.

SECTION 13 - Adjusts the financial responsibility requirement with the consumer price index every three years.

SECTION 14 - Exempts crude oil terminal facilities smaller than 5000 barrels and non-crude oil terminal facilities smaller than 10,000 barrels.

SECTION 15 - Authorizes DEC the authority to inspect oil terminal facilities, exploration and production facilities, tank vessels and barges to ensure compliance and examine structural integrity of these facilities.

SECTION 16 & 17 - Includes prevention planning in the state's master and regional contingency plans.

SECTION 18 - Defines an exploration and production facility.

SECTION 19 - Allows DEC to use money from the 470 fund to review industry contingency plans and to 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.

SECTION 20 - Authorizes DEC to survey small non-crude oil terminal facilities with storage capacity of 5-10,000 barrels and report to the legislature with the results of the survey and make recommendations to the legislature regarding prevention and contingency requirements that should be enacted for non-crude oil terminal facilities.

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HB 567/SB 504 Contingency Planning, Financial Responsibility,
Tanker Inspections

1. Strengthen DEC's authority to require and enforce contingency plans and approve, modify and revoke plans
2. Require that plans be properly implemented
3. Requires response capability to remove a spill the quantity of the capacity of a tanker or the quantity of the largest tank at a tank farm or more if the facility is in a high risk area, require response capability to contain a spill within 72 hours
4. insert the words "prevention and" before the words "contingency plans" in all locations
5. delete the words "off shore"
6. Give DEC authority to use 470 funds for review of industry contingency plans
7. Financial responsibility for non-crude facilities ???
8. \$50 million for crude oil terminal facilities
9. \$50 million for offshore exploration
10. \$500 million for crude oil tank vessels and barges
11. Authorize inspections of tankers for structural integrity
12. Authority to require escort vessels
13. Authority to require direct radio contact between vessel and terminal and record transmissions
14. Authority to require navigational enhancements or vessel traffic system in areas at risk
15. Require terminal to report to DEC as soon as a vessel is in distress

No action position on offshore/onshore

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AMENDMENT TO HB 567

APRIL 11, 1990

Sec. 8. AS 46.04.040 (c) is amended to read:

(c) A person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel [,] or [,AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless the person operating the tank vessel or oil barge has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility under this subsection may not be less than

(1) \$300, per incident, for each barrel transported or \$20,000,000, whichever is greater, subject to a maximum of \$500,000,000, for a tank vessel or barge carrying crude oil;

(2) \$100, per incident, for each barrel transported or \$1,000,000, whichever is greater, subject to a maximum of \$35,000,000, for a tank vessel or barge carrying noncrude oil or other hazardous substance in an amount of 5,000 barrels or more [RESPONSIBILITY FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT. FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION ...]

PROPOSED AMENDMENT FOR H.B. 567

APRIL 11, 1990

SEC. 10. AS 46.04.040(e) is amended to read:

(e) Financial responsibility may be demonstrated by self-insurance, insurance, surety, [OR] guarantee, or other security approved by the department or other security approved by the department, under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760 (a) or (e), 46.03.822, or AS 46.03.030(g) [or to collect penalties imposed under AS 46.03.759] may be brought [in a state court] directly against the insurer or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, [or] guarantor, or other person providing security approved by the department shall, if otherwise doing business in the state, appoint an agent for service of process in the state. An insurer must either be:

(1) authorized by the Department of Commerce and Economic Development to sell insurance in the state [or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state.];

or

(2) an established insurer of pollution risk, or a club or association of insureds covering pollution risk, satisfactory to the department.

ANALYSIS OF AMENDMENTS

HB 567

DATED APRIL 11, 1990

1. The first amendment is to Sec. 8 and changes the level of financial responsibility for crude oil vessels to an amount that corresponds with the size of cargo transported based on a \$300 per barrel rate with a minimum coverage of \$20 Million and a cap at \$500 Million. This is consistent with the methodology currently recommended for non-crude oil transporters and recognizes the wide variance in crude oil tanker cargoes in Alaska. The actual affect on financial responsibility levels is illustrated in the following vessels which for these purposes are presumed to be fully loaded:

EXAMPLES OF FINANCIAL RESPONSIBILITY AT TOTAL VESSEL CAPACITY

Vessel	Size (MDWT)	Capacity [98%] 7.2 bbl/ton	Financial Responsibility Required
Northern Lion	265	1,869,840	\$560,952,000 [\$500,000,000]
Brooklyn	225	1,587,600	\$476,280,000
Chevron Oregon	150	1,058,400	\$317,520,000
Cove Liberty	69	486,864	\$146,059,200
Nordic Sun	20	141,120	\$ 42,336,000
Note: Actual cargoes often are less than maximum rated capacities.			

The second change to this section is to change the basis of financial responsibility from vessel size to cargo for noncrude as well as crude.

2. The second amendment is to Sec. 10. AS 46.04.040(e) which is amended to address the problems of acquiring insurance coverage under the proposed higher levels of financial responsibility. The changes are intended to make proof of coverage through a protection and indemnity club of insurers (often referred to as "P & I Clubs"). There are several provisions of current law (AS 46.04.040(e)) that prevent P & I Clubs from being accepted as insurers:

1. The required "direct action" against the insurer;
2. The requirement that the direct action may be brought in Alaska "state court";
3. The requirement that the insurer be authorized by the Division of Insurance to sell insurance in Alaska, or be listed by that Division as an authorized insurer "not disapproved for use"; and
4. The requirement that the insurer appoint an agent of service of process in the state.

This proposed amendment deletes three of the 4 provisions listed above and retain the "direct action" requirement.

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A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 4, lines 1 - 2:

Delete "of the best available technology by the applicant"

Insert "by the applicant of the best technology that was available a
the time the contingency plan was submitted or renewed [OF THE BEST AVAIL
ABLE TECHNOLOGY BY THE APPLICANT]"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 5, lines 20 - 21:

Delete "a reasonable opportunity"

Insert "no more than 15 days"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 5, line 22:

Delete "An applicant for a"

Insert "The holder of an approved"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 5, line 23:

Delete "maintain in its area of operation"

Insert "have access to"

Page 5, line 24:

Delete "in its area of operation"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 7, line 24. ~~WEEK~~ "\$10,000,000":

Insert ". For purposes of this subsection, an oil terminal facility that stores both crude oil and noncrude oil is subject to the financial responsibility requirements applicable to the type of facility that corresponds to the type of oil storage that predominates at the facility. However, if the facility stores more noncrude oil than crude oil, the \$25 per incident, per barrel requirement of this subsection applies to each barrel of oil storage capacity at the facility"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 8, lines 18 - 19:

Delete "or other hazardous substance"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 14, after line 6: ✓

Insert a new bill section to read:

"* Sec. 19. AS 46.04.900(15) is amended to read:

(15) "tank vessel" means a self-propelled waterborne vessel that is constructed or converted to carry liquid bulk cargo in tanks and includes tankers, tankships, and combination carriers when carrying oil; the term does not include vessels carrying oil in drums, barrels, or other packages, or vessels carrying oil as fuel or stores for that vessel;"

Renumber the following bill sections accordingly.

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4/20/90
Rep. Kay Brown

PROPOSED CHANGES TO HOUSE BILL 567
from
CS HB 567 (Res) to CS HB 567 () draft 4/20/90
changes relative to CS HB 567 (Res)

Section 4

page 4, lines 1-2

Amends language requiring that contingency plans must provide for the "best available technology." Clarifies that the plan must provide for the best available technology at the time the plan was submitted or renewed.

page 4, line 10

Adds language to provide that a plan holder may request modification of a contingency plan in the event of changed circumstances that would warrant changes to the contingency plan.

Section 5

page 5, lines 20-21

Amends language concerning the review of contingency plans by ADF&G and DNR to provide that regulations will be issued to describe the process and timelines for the conduct of agency reviews.

page 5, line 22

Amends language to clarify that the holder of an approved contingency plan (not just an applicant for approval of a plan) must maintain sufficient containment equipment to contain a spill.

page 5, line 23-24

Amends language concerning the requirement that contingency plan holders maintain sufficient equipment in the "area" of operation to the "region" of operation as defined in regulations under AS 46.04.210 (a) (i.e., SB 261/Regional and Master Contingency Plans).

page 7, line 12

Adds definition of "region of operation" as a region established by regulation under AS 46.04.210 (a) (i.e., SB 261/Regional and Master Contingency Plans).

Section 6

page 7, line 25

Adds language to define the type of facility (crude vs. non-crude) in terms of the "type of oil that predominates at the facility" for purposes of establishing applicable financial responsibility requirements.

Section 8

page 8, line 14

Amends the financial responsibility requirements for crude oil tank vessels and barges. Changes the flat \$500,000,000 coverage requirement to a sliding scale of coverage based on the size of storage capacity (\$300 per barrel of capacity). Minimum requirement of \$100,000,000 coverage.

page 8, line 18-19

Amends the financial responsibility requirements for non-crude oil (i.e., refined products) tank vessels and barges. Deletes phrase "or other hazardous substance" to eliminate ambiguity about what substances are or are not covered.

Section 10

page 9, lines 12-25

Rewritten to clarify that financial responsibility requirements may be met through the use of "letters of credit" or "protection and indemnity" clubs (so-called "group of insureds" or "P&I" clubs). Language added to exclude P&I clubs from the regulatory jurisdiction of the Department of Commerce and Economic Development.

Section 11

page 10, line 1

Adds "letter of credit" or "other proof of financial responsibility" to the list of means by which financial responsibility may be demonstrated.

page 10, line 4

Adds "letter of credit" or "other proof of financial responsibility" to the list of means by which financial responsibility may be demonstrated.

Section 12

page 10, line 11

Adds "letter of credit" or "other proof of financial responsibility" to the list of means by which financial responsibility may be demonstrated.

page 10, line 15

New Section 13 added to provide that the department shall issue a certificate to an applicant upon the department's acceptance and approval of financial responsibility.

Other sections renumbered accordingly.

Section 15

page 12, line 11

Adds authority for DEC to participate in the examination of tank vessels and oil barges with the US Coast Guard.

Section 18

page 14, line 7

Adds new Section 20. Amends definition of "tank vessel" to clarify that this refers to "waterborne" vessels.

Other sections renumbered accordingly.

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W. Gene Burden
Vice President
Administration & Government Relations

April 21, 1990

HOUSE FINANCE COMMITTEE MEMBERS:

Representatives Lyman Hoffman,	Kay Wallis,
Ramona Barnes,	Ron Larson,
Randy Phillips,	C.E. Swackhammer
Niilo Kaponen	Kay Brown
Dick Shultz	Steve Rieger
Fran Ulmer	

Subject: H.B. 567

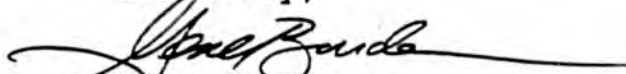
The current version of HB 567, if passed, will present the State of Alaska and Tesoro Alaska with a difficult problem:

If the bill is passed as presently written the State will have the option of not enforcing the provisions requiring financial assurance or refuse a permit for Tesoro Alaska to operate.

Alaska currently has a "direct action" requirement for insurers used for demonstrating financial responsibility. Tesoro Alaska anticipates a requirement to provide \$200 Million in insurance and is not large enough to meet the new higher requirements via self insurance. There is inadequate capacity among insurers who have registered agents in the State and are subject to direct action to meet this level of financial responsibility. Our only option is to meet the level required via an insurance pool which will be made up of predominately international insurers who will not register for service in Alaska or any other state.

Additional information is attached. We suggest that the implications of this problem be considered and that further Administration evaluation be completed before this portion of the bill proceeds. Otherwise, this bill poses a serious threat to Tesoro Alaska, its 200+ Alaska employees, and the economy of the Kenai Peninsula Borough as well as Alaska's supply of jet fuel, gasoline, and heating oils.

Sincerely,


Gene Burden

Enclosures

EXAMPLE OF EFFECT OF HB 567/SB504 ON DEMONSTRATION OF FINANCIAL RESPONSIBILITY

1. CURRENT STATUS:

1. Financial responsibility met via self-insurance evidenced by corporate assets.
2. Also maintains primary and excess liability insurance coverage in excess of the statutory requirements with insurance pool consisting of 15 underwriters and over 100 insurance entities.
3. Provisions of AS 46.04.040(e) [regarding requirement for insurance companies providing party evidence of financial responsibility to be subject to "direct action" in Alaska courts, appoint an agent in Alaska, and be authorized by the Division of Insurance] have not been of concern to due to the self-insurance.

2. PROPOSED STATUS:

1. Tesoro expects to carry as much as \$200 Million to cover largest tanker that may be chartered for transport of ANS royalty crude oil.
2. Tesoro can not self insure to the level of \$200 Million.
3. The insurance industry registered in Alaska does not have the capacity to underwrite \$200 Million in pollution liability requiring the majority (projected to be all amounts in excess of \$25 Million) to be obtained via the insurance pools whose members will not register for service in Alaska or any other state.
4. In the absence of a waiver, or little change in the level of financial responsibility requirements it is unlikely that Tesoro Alaska's insurance coverage will meet the requirements called for in these bills.
5. Compliance with this statute is a prerequisite to maintaining a permit to operate.

***Example of Tesoro Alaska Petroleum Company**

 **SORIERO &
SEFFENS INC**

April 18, 1990

Mr. Gene Burden
Tesoro Alaska Petroleum Company

Re: Insurance Companies admitted in Alaska

Dear Gene:

In light of recent proposed legislation in Alaska that may require evidencing financial responsibility for Pollution Liability we discussed the following:

1. Number of separate underwriters required on a given account;
2. Number of insurance companies licensed to conduct business in Alaska; and
3. Direct action by Alaskan government against underwriters.

We previously discussed the number of underwriters on any given large commercial account. Please refer to my letter of April 12, 1990, wherein I advised that a substantial number of underwriters are required in order to subscribe to any account needing high levels of insurance protection.

The main theme behind this letter is to focus on if Alaska requires evidence of financial responsibility which could be addressed by the procurement of insurance, whether the subscribing underwriters are admitted in Alaska, and would accept direct action against them.

As respects the number of insurers that are "admitted", which effectively means licensed to conduct business in Alaska, I consulted A.M. Best Company's Key Rating Guide for Property-Casualty Insurers and can confirm that there are a substantial number (over one hundred) of companies licensed in Alaska. Most of these are standard stock companies underwriting Automobile Liability, Workers Compensation and General Liability Insurance subject to Insurance Services Organization (ISO) forms. ISO is a national firm designed to promote uniformity in rating and policy wordings between states and insurers. Most companies subscribe to their rating structure and policy wordings as these have been tried and tested in court and provide a common ground for comparison.

Pollution Liability would be considered a coverage afforded under a General Liability placement but, unfortunately, the ISO form has a specific exclusion whereby coverage for Pollution Incidents is virtually excluded. As such, this impedes our ability to obtain Pollution coverage from the standard stock companies.

Some companies, though, may delete this exclusion subject to an additional premium but then we are back to the dilemma of obtaining adequate capacity. I would suspect that sole use of these carriers would enable an insurance buyer to purchase only 25 Million in coverage. Consequently, the buyer would be required to access "non-admitted insurers". These underwriters offer abundant capacity but would not be amenable to direct action by the state.

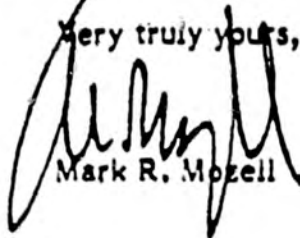


Mr. Gene Burden
April 18, 1990
Page 2

A direct action statute would be onerous for the buyer because underwriters typically will not agree to this since liability policies are written on an indemnity basis. In other words, the underwriters will reimburse the Assured once the Assured has paid the claim. By having direct action the underwriters effectively take the place of the insured and this violates the principal of indemnification. Ultimately, a direct action statute will reduce the number of underwriters that a buyer can access for Pollution Liability whereas to the contrary, if there is no direct action statute, adequate capacity for Pollution Liability will exist.

Gene, the above is a brief summary of the difficulties involved in obtaining Pollution coverage and agreement from underwriters for direct action. If you or any members of the House committee would like to discuss this further, I would welcome the opportunity to meet with you or them, or at least call them to hear their concerns.

Very truly yours,



Mark R. Mozell

MRM:dg

MRM-1727

43

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 567 (Fin)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Fish and Game
Title: An Act strenghtening DEC's BRU: Habitat Division
contingency plan and inspection requirements.
Sponsor: Rules Committee/Governor Components: Habitat
Requestor: House Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	135.9					
TRAVEL	6.0					
CONTRACTUAL	13.6					
SUPPLIES	1.0					
EQUIP ^{NT}						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	156.5					

CAPITAL	0					
---------	---	--	--	--	--	--

REVENUE	0					
---------	---	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER *	156.5					
TOTAL	156.5					

POSITIONS:

FULL-TIME	2					
PART-TIME	1					
TEMPORARY	0					

ANALYSIS : (Attach a separate page if necessary)

* Oil and Hazardous Substance Release Response Fund

Prepared by: House Finance Committee Phone: 465-3727
Division: Co-Chairman Ron Larson Date: 4/23/90
Co-Chairman Lyman Hoffman
Approved by Commissioner: _____ Date: 4/23/90
Agency: _____

Distribution (by preparer):

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

Adopted

Continuation of fiscal note analysis

FY91 Line Itemization -

PCN/NEW	RANGE/STEP	CLASSIFICATION	NO. MONTHS (COST)	LOCATION
New	18C	Habitat Biologist III	12 (54.0)	Anchorage
New	18C	Habitat Biologist III	12 (61.1)	Fairbanks
6118	16J	Cartographer III	3 (13.5)	Anchorage
New	8C	Clerk/Typist III	1.5 (3.8)	Anchorage
6131	7A	Clerk/Typist III	1.5 (3.5)	Fairbanks
TOTAL			\$135.9	

EXPLANATION

As a result of the Exxon Valdez oil spill, it has become apparent that existing oil spill contingency plans are inadequate. Consequently, the U.S. Coast Guard (USCG) is reviewing and updating its regional contingency plans, and the state intends to re-evaluate the adequacy of at least the major nongovernmental contingency plans. This effort has already been initiated and we anticipate that, at a minimum, the state will participate in planning projects for Prince William Sound, Cook Inlet, the Beaufort Sea, and possibly other areas such as the Chukchi Sea. The state will also be involved in re-evaluating and potentially expanding the Dispersant Use Guidelines and Wildlife Protection Guidelines, which have incorporated into the USCG Alaska Region spill contingency plan. In order to protect the state's interests in fish and wildlife populations, habitats, and public uses of these resources, ADF&G will require additional staff to dedicate specifically to contingency planning.

The principal resources at risk because of oil and other hazardous substance releases are fish and wildlife, and the ADF&G is the state agency with the expertise and statutory mandate to provide information and recommendations regarding these resources. The department must compile and provide information on the distribution, abundance, and critical life function needs of fish and wildlife populations that may be affected by a spill or other release. Based on this information, the department must recommend mitigation measures that will afford the highest possible level of fish and wildlife protection. Examples of mitigation decisions are

Continuation of Explanation

the identification of areas that are biologically suitable for oil dispersant use, identification of areas of highest priority for containment or defensive booming, identification of criteria for deploying shoreline cleanup equipment and crews, and the selection of shoreline cleanup techniques that will maximize biological benefits and minimize biological costs.

At present, ADF&G has no funding allocated to perform this function. Between February 16 and June 30 of FY90, ADF&G will need: 9 months of HBIII, 2.25 months of CTIII, and 1.0 month of CartIII. ADF&G will also require two computers and funding for other support services as noted above.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

No. 4
BILL VERSION: CSHB 567(Fin)
PUBLISH DATE: HOUSE 4/24/90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act strengthening DEC's
contingency plan and inspection requirements.
Sponsor: Rules Committee/Governor
Requestor: House Finance
Agency Affected: Fish and Game
BRU: Habitat Division
Components: Habitat

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	135.9					
TRAVEL	6.0					
CONTRACTUAL	13.6					
SUPPLIES	1.0					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	156.5					

CAPITAL	0					
---------	---	--	--	--	--	--

REVENUE	0					
---------	---	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER *	156.5					
TOTAL	156.5					

POSITIONS:

FULL-TIME	2					
PART-TIME	1					
TEMPORARY	0					

ANALYSIS : (Attach a separate page if necessary)

* Oil and Hazardous Substance Release Response Fund

Prepared by: House Finance Committee Phone: 465-3727
Division: Co-Chairman Ron Larson Date: 4/23/90
Co-Chairman Lyman Hoffman
Approved by Commissioner: [Signature] Date: 4/23/90
Agency: _____

Distribution (by preparer):

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

Continuation of fiscal note analysis

No. 4
CSHB 567(Fin)
HOUSE 4/24/90FY91 Line Itemization -

PCN/NEW	RANGE/STEP	CLASSIFICATION	NO. MONTHS (COST)	LOCATION
New	18C	Habitat Biologist III	12 (54.0)	Anchorage
New	18C	Habitat Biologist III	12 (61.1)	Fairbanks
6118	16J	Cartographer III	3 (13.5)	Anchorage
New	8C	Clerk/Typist III	1.5 (3.8)	Anchorage
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TOTAL			\$135.9	

EXPLANATION

As a result of the Exxon Valdez oil spill, it has become apparent that existing oil spill contingency plans are inadequate. Consequently, the U.S. Coast Guard (USCG) is reviewing and updating its regional contingency plans, and the state intends to re-evaluate the adequacy of at least the major nongovernmental contingency plans. This effort has already been initiated and we anticipate that, at a minimum, the state will participate in planning projects for Prince William Sound, Cook Inlet, the Beaufort Sea, and possibly other areas such as the Chukchi Sea. The state will also be involved in re-evaluating and potentially expanding the Dispersant Use Guidelines and Wildlife Protection Guidelines, which have incorporated into the USCG Alaska Region spill contingency plan. In order to protect the state's interests in fish and wildlife populations, habitats, and public uses of these resources, ADF&G will require additional staff to dedicate specifically to contingency planning.

The principal resources at risk because of oil and other hazardous substance releases are fish and wildlife, and the ADF&G is the state agency with the expertise and statutory mandate to provide information and recommendations regarding these resources. The department must compile and provide information on the distribution, abundance, and critical life function needs of fish and wildlife populations that may be affected by a spill or other release. Based on this information, the department must recommend mitigation measures that will afford the highest possible level of fish and wildlife protection. Examples of mitigation decisions are

Continuation of Explanation

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At present, ADF&G has no funding allocated to perform this function. Between February 16 and June 30 of FY90, ADF&G will need: 9 months of HBIII, 2.25 months of CTIII, and 1.0 month of CartIII. ADF&G will also require two computers and funding for other support services as noted above.

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 2, 1990

FURTHER REFERRALS:

Date of Committee Action: 4/23/90

The FINANCE Committee considered:

HB 567

HOUSE BILL NO. 567

OIL SPILL CONTINGENCY PLANS/REQUIREMENTS

"An Act relating to the strengthening of the state's oil contingency plan requirements, financial responsibility requirements, and inspection authority under AS 46.04; and providing for an effective date."

RECOMMENDATIONS:

- [X] be replaced with CS HB 567 (FIN) [] the same title
[] have attached amendment(s) [X] a new title
[] do pass
[] do not pass
[X] no recommendation
[] individual recommendations
[] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- (2) [X] fiscal impact DEC H FIN CMTE.
[] zero fiscal note
[] zero with analysis

- [] fiscal note(s)
[] zero fiscal note(s)
[] zero fn/analysis

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass
No Rec
Amend

[Signature] UMER
[Signature] BROWN
[Signature] KOPONEN

	Do Not Pass	No Rec	Amend
<u>[Signature]</u> Hoffman	X		
<u>[Signature]</u> Carson	X		
<u>[Signature]</u> Swackhammer	X		
<u>[Signature]</u> Shultz	X		
<u>[Signature]</u> Rieger		✓	
<u>[Signature]</u> Barnes		✓	
<u>[Signature]</u> Phillips		✓	

[Signature] Hoffman
Chairman's Signature
[Signature] Carson

SCOMM

78:43

LEGISLATIVE HISTORY OF AMENDMENT
TO AS 46.04.040
PROOF OF FINANCIAL RESPONSIBILITY
(HB 567: 1990)

Volume IV: (A) Consideration of SCS CSHB 567 by the Senate
Special Committee on Oil and Gas

1. Excerpt from minutes of Senate Special Committee on Oil and Gas meeting held on 4/30/90.
2. Excerpt from minutes of Senate Special Committee on Oil and Gas meeting held on 5/2/90.
3. Chart entitled "Financial Responsibility Requirements" showing the differences in requirements between CS HB 567 (Finance) and SCS HB 567 (Oil & Gas) (undated).
4. Draft of SCS for CS for HB 567 (Oil & Gas) (undated).
5. "Letter of Intent for Senate CS for CS for HB 567 (Oil and Gas)" (undated).
6. Amendment Nos. 1 through 8 to 5/3/90 draft for SCS CSHB 567.
7. Three amendments to SCS CSHB 567 (Oil & Gas) (undated).
8. Excerpt from minutes of Senate Special Committee on Oil and Gas meeting held on 5/3/90.
9. Fiscal notes from ADF&G (4/23/90), DEC (5/4/90) and DNR for SCS CSHB 567 (Oil & Gas) (5/5/90).
10. Excerpt from minutes of Senate Special Committee on Oil and Gas meeting held on 5/7/90.
11. Sectional analysis of SCS CS HB 567 (Oil & Gas) (5/8/90).
12. Draft of SCS for CS for HB 567 (Oil & Gas) (5/8/90).
13. Senate Finance Committee Report from Senate Special Committee on Oil and Gas on CS HB 567 (Finance) (5/8/90).

**LEGISLATIVE HISTORY OF AMENDMENT
TO AS 46.04.040
PROOF OF FINANCIAL RESPONSIBILITY
(HB 567: 1990)**

Volume IV: (B) Attorney General Review and Enactment of SCS
 CS HB 567 (Finance)

1. Letter from Kari Repplinger, Legislative Staff Assistant, Office of the Governor to Attorney General Douglas B. Baily re transmitting SCS CS HB 567 (Finance) for review by his office (6/4/90).
2. PROFS note from Assistant Attorney General Arthur H. Petersen to John McDonagh regarding review of SCS CSHB 566 (Finance) and SCS CSHB 567 (Finance) (6/4/90).
3. Draft letter from Attorney General Douglas B. Baily to Governor Steve Cowper regarding review of SCS CSHB 567 (Finance) (6/12/90).
4. Letter from Attorney General Douglas B. Baily to Governor Steve Cowper regarding review of SCS CSHB 567 (Finance) (6/15/90).
5. SCS CSHB 567 (Finance) as passed by the Alaska House and Senate on 5/8/90.
6. Letters to Speaker of the House Sam Cotten and President of the Senate Tim Kelly from Governor Steve Cowper regarding signing of SCS CS HB 567 (Finance) and forwarding to Lieutenant Governor's office for permanent filing (6/26/90).

AI

SO&G90043009 DOCUMENT= 10 OF 15 PAGE = 1 OF 31
CHAMBER = S
SOURCE = SO&G
DATE = 900430
YEAR = 90
TIME = 0917
DOCUMENT TEXT

SENATE SPECIAL COMMITTEE ON OIL AND GAS
April 30, 1990
9:17 A.M.

MEMBERS PRESENT

Senator Drue Pearce, Chairman
Senator Rick Halford
Senator Al Adams

MEMBERS ABSENT

Senator Paul Fischer
Senator Tim Kelly

SBC

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2 /2

SO&G90043009 DOCUMENT= 10 OF 15 PAGE = 2 OF 31

OTHER MEMBERS PRESENT

Senator Bettye Fahrenkamp
Senator Mike Szymanski
Representative Curt Menard
Representative Kay Brown
Representative Mike Navarre

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 567 (Finance) am
"An Act relating to oil discharge prevention and
contingency plan requirements, financial responsibility
requirements related to oil, penalties, and inspection
authority of the Department of Environmental Conservation;
relating to the oil and hazardous substance release
response fund and responses to oil and hazardous substance
emergencies; and authorizing the Department of
Environmental Conservation and municipalities to enter into

SBC

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2 /2

SENATE BILL NO. 504

"An Act relating to the strengthening of the state's oil
contingency plan requirements, financial responsibility
requirements, and inspection authority under AS 46.04; and
providing for an effective date."

WITNESS REGISTER

Denby Lloyd, Special Assistant
Office of the Governor
P.O. Box A
Juneau, Alaska 99811-0101
POSITION STATEMENT: Commented oHB 567.

Larry Dietrick, Director
Division of Environmental Quality
P.O. Box 0

SBC

M-M23 FX

2 /2

SD&G90043009 DOCUMENT= 10 OF 15 PAGE = 4 OF 31
Juneau, Alaska 99811-1800
POSITION STATEMENT: Commented oHB 567.

Robert Shoaf
Alyeska Pipeline Service
800 F Street # B-2
Juneau, Alaska 99801
POSITION STATEMENT: Commented oHB 567.

Doug Mertz, Assistant Attorney General
Department of Law
P.O. Box K
Juneau, Alaska 99811
POSITION STATEMENT: Commented oHB 567.

Chip Thoma
Box 338
Douglas, Alaska 99824
POSITION STATEMENT: Commented oHB 567.

SBC

M-M23 FX

2 /2

Marilyn Heiman, Legislative Aide
 Representative Curt Menard
 P.O. Box V
 Juneau, Alaska 99811
 POSITION STATEMENT: Commented oHB 567.

Larry Smith
 Oil Reform Alliance
 P.O. Box 1271
 Cordova, Alaska 99574
 POSITION STATEMENT: Commented oHB 567.

John Tillinghast, Legal Counsel
 Tesoro Alaska Petroleum Company
 P.O. Box 190272
 Anchorage, Alaska 99519
 POSITION STATEMENT: Commented oHB 567.

David Rogers, Legal Counsel
 Senate Oil and Gas Committee

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2 / 2

P.O. Box V
 Juneau, Alaska 99811
 POSITION STATEMENT: Commented oHB 567.

Mike Williams
 Alyeska Pipeline Service
 Anchorage, Alaska
 POSITION STATEMENT: Commented oHB 567.

Pam Brody
 Alaska Environmental Lobby
 P.O. Box 22151
 Juneau, Alaska 99802-2151
 POSITION STATEMENT: Commented oHB 567.

David Parish, Legal Counsel
 EXXON Company, U.S.A.
 421 Judy Lane
 Juneau, Alaska 99801
 POSITION STATEMENT: Commented oHB 567.

885

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2 / 2

PREVIOUS SENATE COMMITTEE ACTION

HB 56- No previous action to record.

SB 504 - See Special Committee on Oil & Gas minutes dated 2/28/90, 3/5/90, 3/6/90, 3/14/90, 4/10/90, 4/28/90, and 4/29/90.

ACTION NARRATIVE
TAPE 1, SIDE 1

Number 001

Senator Pearce called the Oil and Gas Committee working group to order at 9:17 a.m. She announce HB 56 OIL SPILL CONTINGENCY PLANS/REQUIREMENTS to be up for consideration.

Denby Lloyd, Special Assistant for the Governor, commented

SBC

M-M23 FX

2 /2

on proposed changes to HB 567. He said they included pipeline and exploration and production facilities for contingency planning requirements and had lowered the proof of financial responsibility for on-shore exploration facilities to \$5 million.

Senator Szymanski asked about the changes on page 3. Mr. Lloyd explained there was a concern about whether or not a contingency plan could realistically be implemented before there was an oil spill. He said the intent was to have the equipment on hand and the personnel trained.

Mr. Lloyd said that page 13 described more adequately how DEC would implement their inspection authorities in coordination with other agencies with jurisdiction and said that the inspections would deal with structural integrity and the operating and mechanical systems of pipelines and facilities.

Senator Fahrenkamp asked how many agencies would do

SBC

M-M23 FX

2 /2

inspections. Mr. Lloyd said the intent was not to duplicate, but to use the expertise in various agencies, and route those through the Pipeline Coordinator's Office. He said that inspections would be coordinated with federal and state agencies with jurisdiction.

Senator Pearce asked if a written determination were necessary in cases where there were no other coordinating agencies.

Larry Dietrick said the state would not do an inspection unless it was determined that the Coast Guard had done nothing to initiate an inspection. The state will not do substitute inspections. He said the determination would be a judgmental call and wouldn't necessarily need to be written. However, they had no objection to putting it in writing.

Senator Fahrenkamp said she was concerned with state liability and thought that advice to the Coast Guard should

SBC

M-M23 FX

2 /2

SD&G90043009 DOCUMENT= 10 OF 15 PAGE = 10 OF 31
always be written to protect the State.

Number 353

Mr. Lloyd said they modified the definition of "exploration facilities" to segregate different types of facilities so they could be dealt with appropriately in contingency planning requirements.

Number 496

Robert Shoaf, Alyeska Pipeline Service, said on page 9, line 8, in the proof of financial responsibility section, that "may not be less than" should be changed to "shall be" and suggested making the same change throughout the bill to make some sort of liability cap.

Senator Adams requested a range of figures for financial responsibility for the committee to refer to. Mr. Shoaf said that he didn't have one, but their main interest was

SBC

M-M23 FX

2 /2

Mr. Shoaf said that his understanding of the "at or" phrase was that the terminal facilities become legally responsible for spills from vessels at the terminal. This is a change from federal and state law where the spiller is required to have a contingency plan. So they would want the "at or" phrase removed. Another reason to delete "at or" would be so that the small village terminals in western Alaska would not be liable for the barges that bring them fuel.

Senator Fahrenkamp said that was a good point and that she would have further questions on the subject of liability in small villages.

Number 694

Mr. Shoaf said on page 4, line 25 that they suggest adding "material" to make the phrase mean the ability to respond

SBC

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2 /2

SD&G90043009 DOCUMENT= 10 OF 15 PAGE = 12 OF 31
to a spill would be impacted. He also suggested inserting after 90 (b) on page 5, line 19, "and except for reliance on a certificate of plan approval issued by the Department." On page 10, line 1 he suggested a similar phrase, "and except for reliance on a certificate that the state's financial responsibility requirements have been met."

TAPE 1, SIDE 2

Number 001

There was discussion on securing a financial letter of credit for the contractual relationship between a vessel and the terminal it ties up to. Senator Fahrenkamp was concerned with insurance for small operators.

Doug Mertz, Assistant Attorney General, commented that when you add "material" to "terms and conditions" you are insuring future legal controversies, because it is vague.

SBC

M-M23 FX

2 /2

He added that he did not think the state would revoke a contingency plan on a mere technicality.

Number 375

Mr. Mertz said that a certificate as proof of having a plan was a good idea, but would not work as proof that the plan had been properly implemented.

Senator Pearce asked if the terminal operators could not rely on a certificate, but every time a vessel came in would have to verify implementation. Mr. Mertz said that was the way the bill stood currently. Senator Szymanski suggested having authorizations for each terminal on the certificate.

Mr. Dietrick said if you really want to keep check on oil response capability that the oil terminal operators of necessity have intimate knowledge of the contingency plans for vessels. So they are the best people for that job. He

SBC

M-M23 FX

2 /2

said this would extend the responsibility from the state to the vessel owners and the terminal operators. Mr. Mertz added that the implementation could be documented with affidavits and be presented with the certificate.

Number 722

Chip Thoma, Juneau resident, commented that the terminal operators should be the responsible party.

There was discussion between Senator Fahrenkamp and Senator Szymanski about how the small terminal operators in the bush areas would be affected under the proposed scenario - without a cap on liability.

Senator Pearce asked if the storage barges had to have separate contingency plans and separate financial responsibility.

Marilyn Heiman, Legislative Aide for Representative Menard,

SBC

M-M23 FX

2 /2

said that they assumed the language was clear enough in the statute that the bill was not covering those types of barges and tankers.

TAPE 2, SIDE 1

Number 001

Larry Smith, Oil Reform Alliance, indicated his concern for the small terminal owners in the villages who might be put out of business because of the high cost of maintaining a contingency plan.

John Tillinghast, representing Tesoro, questioned the "good samaritan amendment." Mr. Dietrick said that a significant starting point would be that there are exemptions for people participating in spill cleanups.

Mr. Tillinghast, commenting on HB 567, said that financial responsibility was expressed in minimums rather than

SBC

M-M23 FX

2 / 2

maximums and that there were no standards or guidelines on how high liability could go. He said that as you increase the responsibilities of the response contractors, they are going to want to know if there is a statute that would limit their liability as there is in the federal "super fund law." He said there is a state statute, but it is differs from the "super fund law" in that the third party liability is limited only if he is complying with a DEC response action contract remedial action plan.

Number 418

Senator Pearce recessed the meeting at 11:13 a.m.

Senator Pearce called the work session to order at 6:53 p.m. She said that Senator Fahrenkamp, Senator Halford, Senator Szymanski, Representative Navarre, Representative Brown, and Representative Menard were present. She briefly reviewed the earlier portion of the meeting.

SBC

M-M23 FX

2 / 2

Senator Pearce asked if barges that are waiting to respond to a spill have to have their own contingency plans. Mr. Dietrick said that they are covered under a separate amendment which will be incorporated into the CS and would be exempted.

Number 191

Senator Szymanski said he did not agree with locking in the amount of financial responsibility. Senator Pearce suggested drafting "proof of \$50 million."

Dave Parish suggested taking the current definition of self insurance from the Administrative Code and putting that in the bill. Senator Szymanski did not agree with that, because of the numerous questions it would raise.

Number 377

SBC

M-M23 FX

2 /2

Mary Nordale, legal counsel for Alyeska, said she was concerned with being out of compliance with the contingency plans if material were loaned or given away.

Number 476

Mr. Mertz and Senator Szymanski discussed how materials would be replaced once they had been used for a spill response. Mr. Dietrick commented that in the case of the Exxon Valdez the replacement was worked out between DEC and Alyeska. He said that they would be concerned with exposing an area if its equipment were somewhere else being used. Mr. Williams commented that it wouldn't be fair to ask one company to shut down operations while its response equipment was being used elsewhere.

Senator Szymanski said he would prefer DEC to work that out in regulations.

SBC

M-M23 FX

2 /2

Mr. Mertz read a proposed insert, "and whose acts or omissions are not contrary to a response plan or orders via state or federal agency with jurisdiction over a discharge." Senator Pearce noted that the Administration supported the amendment. Mr. Mertz said this did not get anyone out of negligence or bad judgement.

Senator Pearce noted that there were no objections to Attachment #1 and went on the Attachment #2.

Number 681

Senator Szymanski asked what was meant by territorial jurisdiction of the state. Mr. Mertz said that was so the state would not go down and demand access to the vessel, for instance, if it's in dry dock in San Diego, outside the state. The point would be to not do something that would interrupt normal commerce.

SBC

M-M23 FX

2 / 2

Number 693

Ms. Heiman said that since vessels do not dry dock in Alaska, their only opportunity to look at a vessel may be in San Diego. Senator Szymanski asked Mr. Williams about that. Mr. Williams replied that the only place where you can actually inspect a ship is when it's in ballast on the voyage up to Alaska. They cannot be inspected very well in dry dock. Senator Szymanski suggested deleting the "territorial jurisdiction" language.

Senator Pearce reviewed how they would prepare for their next meeting.

TAPE 4, SIDE 1

Number 001

Senator Pearce adjourned the work session at 9:50 p.m.

SBC

M-M23 FX

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END OF DOCUMENT

A2

SO&G90050221 DOCUMENT= 11 OF 15 PAGE = 1 OF 25
CHAMBER = S
SOURCE = SO&G
DATE = 900502
YEAR = 90
TIME = 2112
DOCUMENT TEXT

SENATE SPECIAL COMMITTEE ON OIL AND GAS
May 2, 1990
9:12 P.M.

MEMBERS PRESENT

Senator Drue Pearce, Chairman
Senator Paul Fischer
Senator Tim Kelly

MEMBERS ABSENT

Senator Al Adams
Senator Rick Halford

SBC

M-M23 FX

2 / 2

SO&G90050221 DOCUMENT= 11 OF 15 PAGE = 2 OF 25

OTHER MEMBERS PRESENT

Senator Bettye Fahrenkamp
Senator Mike Szymanski
Senator Jay Kerttula

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 567 (Finance) am
"An Act relating to oil discharge prevention and
contingency plan requirements, financial responsibility
requirements related to oil, penalties, and inspection
authority of the Department of Environmental Conservation;
relating to the oil and hazardous substance release
response fund and responses to oil and hazardous substance
emergencies; and authorizing the Department of
Environmental Conservation and municipalities to enter into
agreements pertaining to vessel traffic control and
monitoring systems."

SBC

M-M23 FX

2 / 2

WITNESS REGISTER

Denby Lloyd, Special Assistant
Office of the Governor
P.O. Box A
Juneau, Alaska 99811-0101
POSITION STATEMENT: Commented oHB 567.

Bill Schoephoester
Petro Marine
1600 A Street, Suite 307
Anchorage, AK 99501

Larry Dietrick, Director
Division of Environmental Quality
P.O. Box D
Juneau, Alaska 99811-1900
POSITION STATEMENT: Commented oHB 567.

SBC

M-M23 FX

2 /2

80&G90050221 DOCUMENT=

11 OF

15

PAGE =

4 OF

25

Doug Mertz, Assistant Attorney General
Department of Law
P.O. Box K
Juneau, Alaska 99811
POSITION STATEMENT: Commented oHB 567.

Gene Burden
Tesoro Alaska Petroleum
P.O. Box 190272
Anchorage, Alaska 99519-0272
POSITION STATEMENT: Commented oHB 567.

Robert Shoaf
Alyeska Pipeline Service
800 F Street # B-2
Juneau, Alaska 99801
POSITION STATEMENT: Commented oHB 567.

Mike Williams
Alyeska Pipeline Service

SBC

M-M23 FX

2 /2

PREVIOUS SENATE COMMITTEE ACTION

HB 56- See Senate Oil & Gas minutes dated 1/30/90.

ACTION NARRATIVE
TAPE 1, SIDE 1

Number 001

Senator Pearce called the Oil and Gas Committee meeting to order at 9:12 p.m. She said they would be working from the Lauterbach workdraft of SCS CSHB 567 (O&G).

Senator Szymanski asked David Rogers, Legal Counsel for the Senate Oil and Gas Committee, if the title was alright.

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Mr. Rogers replied that it was fine the way it was.

Denby Lloyd, Special Assistant to the Governor, began reviewing the workdraft and said that there had been a lot of discussion on Section 5, response contracts and whether a contractor should be liable or should be repayed for his efforts participating in someone else's oil spill clean up efforts.

Mr. Lloyd said page 4, beginning on line 13, dealt with what types of exemptions should be allowed for tank vessels or oil barges that are operating in response to an oil discharge. He said that they agree that these vessels should not be required to have a contingency plan, and their proposed language is in the attachment.

In the original discussion of response standards, land and water spills were separate. He said that after much debate there was still a problem with defining "land" and "water." The north slope producers suggested having an allowable

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exemption for spills on land exceeding the 72 hour cleanup deadline, and they agree with that. However, most of the lands under discussion are "wetlands" which in federal regulations are defined as water. Mr. Lloyd said that they decided to have exemptions for all spills based on the DEC review of each plan and that that language is in another attachment.

Number 221

Mr. Lloyd highlighted the language that discussed how agencies were to coordinate their inspections.

On the subject of pipelines, he said the top of page 19 has a definition for pipelines. He said there was concern about pipelines that lead off and return between TAPS and refineries. He said it was not their intent to treat the return lines separately for a financial responsibility requirement. To take care of that problem he suggested deleting "oil refineries" on page 4. However, the returns

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lines need to be included with either TAPS or the refineries financial responsibility requirement.

Mr. Lloyd said they disagreed with repealing a paragraph on page 23, line 14.

Mr. Lloyd agreed there should be a standard for containment and cleanup equal to the maximum crude oil volume on board crude tank vessels and oil barges. That standard would be amplified by a specific requirement that there must be located in the applicable region all equipment and resources necessary to attain an oil recovery rate comparable to the manufacturer's rated oil skimming capacity that is equal to the crude oil volume divided by 72 hours. The intent is to deal with all the oil within 72 hours. He said they discussed the possibility of having along with the equipment on hand access to equipment outside the region of responsibility. He said that this idea was favored by the state, but was not agreed upon by all parties.

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Number 431

Bill Schoephoester, representing Petro Marine Services, said they were concerned that the standards were different for shipment of crude and non-crude oil.

Larry Dietrick, Director of Environmental Control, said that they agree with the concept of separate standards, but haven't had a chance to review their proposal.

Number 535

Mr. Lloyd said that they approved of the good samaritan clause.

Doug Mertz, Assistant Attorney General, commented that their concern was with the significant departure from present standards of liability for people who are involved in the business of transporting or dealing with oil. He

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said that the proposed standard broadens liability to any response contractor, and the biggest problem they have with that, in the case of Alyeska for instance, is that it can diminish the liability of the parent corporations.

Senator Szymanski said the intent behind that language was to try to protect the response action contractor from having the liability of the spiller.

Gene Burden, Tesoro Alaska Petroleum Company, said that federal law extends that liability limitation to response contractors who are under contract to federal authorities like the Coast Guard. The response contractor's liability has no bearing on the spillers' liability. So he didn't understand how the spillers liability could be changed.

Mr. Mertz commented that (c) and (d) on page 3 were not appropriate, because the legislature decided that a break in liability should only exist if there is departmental oversight. Providing it to someone under contract with a federal agency would take control away from the state.

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TAPE 1, SIDE 2

Number 001

There was discussion between Senator Szymanski, Mr. Burden, and Mr. Mertz on how to divide up liability.

Robert Shoaf, Alyeska Pipeline Service, explained that the liability language was developed to create within the state the capability of assisting others in responding to spills with equipment as well as personnel. The basic statutory frame work was in the proposal.

He said that tanker ownership and operations are separate from pipeline ownership and operations, simply because there are multiple owners of the pipeline and single ownership of the vessel. He commented that he thought a spiller was responsible for the actions of its agent, and he didn't think that would diminish the liability to

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Alyeska.

Number 259

Senator Szymanski said the language was not clear about whether the liability would go back to the tanker and he thought that should be worked out.

Number 326

Mike Williams, Alyeska, said that he did not oppose the language "except a tank vessel or oil barge that has received prior department approval to conduct response operations of a prevention and contingency plan."

Mr. Lloyd said they envisioned the expertise from various departments to be coordinated under the State Pipeline Coordinating Office.

John Walsh, Legislative Aide for Representative Foster,

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said the insurance company, in order to give proof of financial responsibility had to have inspected the vessel. If for some reason something happens to the vessel after the state inspection, he wanted to know what the state would be liable for. Mr. Mertz said that their inspections are backed up by the authority to shut something down if necessary. The inspections are usually information gathering, so their exposure is minimal.

Senator Fahrenkamp asked if the state would report to the insurer. Mr. Mertz replied that they report to the vessel owner and many times do not know who the insurance carrier is.

Bev Ward, ARCO, asked what kind of resolution process there existed if the Coast Guard didn't inspect a vessel in a timely manner. Mr. Mertz replied it depends on what comes after the inspection and how the owner responded to the inspection. He said the ultimate remedy would involve going to court.

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Ms. Ward said that ARCO was mainly concerned with vessel inspections and the possibility that they would delay their loading or unloading process. They were also concerned that the state might have too much say in the designing of ships.

Mr. Mertz said the State had no interest in getting into design inspections and this draft did not give them the authority to do that. Mr. Rogers said that the "reasonable time" language would deal with what was reasonable time for interference with normal activities.

TAPE 2, SIDE 1

Number 001

Senator Fahrenkamp commented that she was concerned how this legislation would affect getting fuel and electricity into Alaska's remote areas and the cost to the consumer.

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She said that she had talked to the Senate Resource Committee's oil tax consultants and they said that the state of Alaska would have a hard time attracting independent oil companies if this legislation were in effect.

Mr. Mertz said inspections were more difficult to carry out under the proposed legislation than is currently the law.

Number 250

Steve Lewis, Petro-Star Corporation, said striking the word "refinery" from the definition of pipeline does not deal with the Golden Valley pipeline which comes off TAPS.

Senator Pearce said that the pipeline is part of their refinery and its financial responsibility is included along with their facility. Financial responsibility does not increase because they have a pipeline that gets their oil from TAPS to the facility.

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Mr. Lloyd said that the definition of pipeline #1 deals only with crude oil and pipelines that only go between production facilities to marine vessels (the 48 inch line from Prudhoe to Valdez). He said the intent is to allow the operators of those pipelines to hold themselves under the umbrella of whomever they wish.

Ms. Ward commented that it seemed to her that everyone had to have some responsibility for common carrier pipelines.

Number 320

Senator Fahrenkamp asked what was the financial responsibility for docks and barges on the Yukon River. Mr. Lloyd answered that they were included in the non-crude portion of the bill.

Mr. Lewis said he was concerned for the barges on the Yukon and Tanana which generally carry more than 5,000 barrels.

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Senator Pearce answered that there was a small increase in liability for them, but not a large one as had been discussed.

Senator Pearce said for the record that she had in past interims and will again be working for Arctic Slope Consulting Group which is a fully owned subsidiary of the Arctic Slope Regional Corporation which also owns Petro Star.

Senator Pearce said that Mr. Dietrick had a list of all the barges and exactly how large they are and what their financial responsibility is currently and under the proposed version. There was discussion of contingency plans for small villages and barges.

Number 454

Charley Neal, Crowley Maritime Corporation, said they operate terminals in Kotzebue and deliver non-crude oil to

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130 villages in Alaska. He asked if the PNI's would issue certificates of insurance to their operators. Mr. Mertz said that they had accommodated the state's requirements to what was acceptable with the insurance companies.

Number 501

Larry Markley, representing the Alaska Electrical Cooperatives, said their rural members were concerned that there might be liability through equipment they paid to have stockpiled if it were used in a negligent way during a cleanup operation. Mr. Markley handed out language to the committee that would expand the definition of response action contractor to help clarify the situation.

Mr. Mertz's response to the suggestion was that it wasn't necessary, because it would be covered under the response action contractor any way. However, he said it was a good idea to clarify that point.

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Number 001

Mr. Humphrey said his concern was that there may be promises made in the contingency plan process that in reality might be hard to live up to. Mr. Lloyd said that they would discuss this with him, but the intent is to leave the final requirements for each situation up to the discretion of the DEC.

Number 135

Senator Pearce adjourned the meeting at 12:25 p.m.

END OF DOCUMENT

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A3

Financial Responsibility Requirements

TYPE OF FACILITY	CURRENT FINANCIAL RESPONSIBILITY REQUIREMENTS	CS HB 567 (Finance)	SCS HB 567 (Oil & Gas)
Crude Oil Terminals			
> 10,000 bbl.	\$1 million up to \$50 million @ \$10/bbl. capacity	\$50 million	\$50 million
5 - 10,000 bbl.	None	\$50 million	\$50 million
Non-Crude Terminals			
> 10,000 bbl.	\$1 million up to \$50 million @ \$10/bbl. capacity	\$1 million up to \$50 million @ \$25/bbl. capacity	Same as the H Finance version
5 to 10,000 bbl.	None	None	None
Offshore exploration and production facilities			
	\$35 million	\$50 million	\$50 million
Pipelines			
	Not specifically addressed	Not addressed	\$50 million
Onshore production facilities			
	None	\$20 million	\$20 million
Onshore exploration facilities			
	None	\$20 million	\$ 5 million
Crude Oil Tank Vessels and Barges			
	TAPS = \$14 million, Non-TAPS = \$20 million. TAPS covered for an additional \$86 million per vessel.	\$500 million	\$100+ million @ \$300/bbl. capacity
Non-Crude Oil Tank Vessels and Barges			
	Tank Vessels = \$20 million, Barges = \$1 million	\$1 million up to \$35 million @ \$100/bbl. capacity	Same as the H Finance version

A4

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE SENATE SPECIAL COMMITTEE ON OIL & GAS

2 SENATE CS FOR CS FOR HOUSE BILL NO. 567 (Oil & Gas)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to oil discharge prevention and
7 contingency plan requirements, financial respon-
8 sibility requirements related to oil, penalties, and
9 inspection authority of the Department of Environ-
10 mental Conservation; relating to the oil and hazard-
11 ous substance release response fund and responses to
12 oil and hazardous substance emergencies; authorizing
13 the Department of Environmental Conservation and
14 municipalities to enter into agreements pertaining to
15 vessel traffic control and monitoring systems; and
16 providing for an effective date."

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

18 * Section 1. AS 29.35.020 is amended by adding a new subsection to
19 read:

20 (d) A municipality may enter into agreements with the United
21 States Coast Guard, the United States Environmental Protection Agency,
22 and other persons relating to development and enforcement of vessel
23 traffic control and monitoring systems for oil barges and tank vessels
24 carrying oil operating in or near the waters of the state.

25 * Sec. 2. AS 46.03.759(c) is amended to read:

26 (c) Subject to the \$500 000 000 maximum set under (a) of this
27 section the court shall assess four times the penalty set out in (a)
28 of this section if the court finds

29 (1) the discharge was caused by the gross negligence or

1 intentional act of the defendant;

2 (2) the defendant did not take reasonable measures to
3 contain and clean up the discharged oil; or

4 (3) the defendant did not act or respond in accordance with
5 an approved oil discharge prevention and contingency plan.

6 * Sec. 3. AS 46.03.823(a) is amended to read:

7 (a) A person who is a response action contractor with respect to
8 a release or threatened release of a hazardous substance whose acts or
9 omissions are not contrary to a response plan or order by a state or
10 federal agency having jurisdiction over the release or threatened
11 release is not civilly liable for injuries, costs, damages, expenses,
12 or other liability that results from the release or threatened release
13 unless the release or threatened release is caused by an act or omis-
14 sion of the response action contractor that is negligent or grossly
15 negligent or constitutes intentional misconduct. To show negligence by
16 a response action contractor, a claimant must show that the acts or
17 omissions of the contractor under the response action contract were
18 not in accordance with generally accepted professional standards and
19 practices at the time the response action services were performed.

20 * Sec. 4. AS 46.03.823(b) is amended to read:

21 (b) The liability limitation under (a) of this section

22 (1) does not apply to a response action contractor who
23 would otherwise be liable for the release or threatened release under
24 state or federal law even if that person had not carried out a re-
25 sponse action with respect to the release or threatened release; and

26 (2) does apply only to releases for which notification to
27 the department was provided and received in the manner prescribed
28 under state law [STRICTLY LIABLE UNDER THIS SECTION].

29 * Sec. 5. AS 46.03.823(e) is amended to read:

1 (e) This section does not affect the liability of a response
2 action contractor that may arise from the response action contractor's
3 failure to comply with the terms or conditions of a

4 (1) response action contract or a remedial action plan if
5 one has been approved by the department; or

6 (2) contingency plan approved by the department where the
7 response action contractor is the plan holder.

8 * Sec. 6. AS 46.03.823(g)(2) is amended to read:

9 (2) "response action contract" means a written contract or
10 agreement to provide response action with respect to a release or
11 threatened release of a hazardous substance, entered into by a person
12 with

13 (A) the department; [OR]

14 (B) another person who has entered into an agreement
15 with the department that provides for response action subject to
16 the department's oversight and control;

17 (C) a federal agency with jurisdiction over the re-
18 lease or threatened release; or

19 (D) another person potentially liable for the release
20 or threatened release under state or federal law;

21 * Sec. 7. AS 46.03.823(g)(3) is amended to read:

22 (3) "response action contractor" means

23 (A) a person who enters into a response action con-
24 tract with respect to a release or threatened release of a haz-
25 ardous substance and who is carrying out the contract, including
26 a cooperative organization formed to maintain and supply response
27 equipment and materials that enters into a response action con-
28 tract relating to a release or threatened release; and

29 (B) a person who is retained or hired by and is under

1 the control of a person described in (A) of this paragraph to
2 provide services related to the response action contract.

3 * Sec. 8. AS 46.04.020(e) is amended to read:

4 (e) The department shall enter into negotiations for memoranda
5 of understanding or cooperative agreements with the United States
6 Coast Guard, the United States Environmental Protection Agency, and
7 other persons in order to

8 (1) facilitate coordinated and effective oil discharge
9 prevention and response in the state, including agreements relating to
10 development and enforcement of vessel traffic control and monitoring
11 systems for tank vessels and oil barges operating in or near the
12 waters of the state;

13 (2) provide for cooperative review of oil discharge preven-
14 tion and contingency plans submitted to the department under AS 46.-
15 04.030;

16 (3) provide for cooperative inspections of oil terminal
17 facilities by the department and the United States Coast Guard or
18 United States Environmental Protection Agency; and

19 (4) provide for cooperative oil discharge notification
20 procedures.

21 * Sec. 9. AS 46.04.030 is amended to read:

22 Sec. 46.04.030. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS.

23 (a) A person may not cause or permit the operation of an oil terminal
24 facility in the state unless an oil discharge prevention and contin-
25 gency plan for the facility has been approved by the department and
26 the person is in compliance with the plan [... THE DEPARTMENT IS THE
27 ONLY STATE AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE
28 CONTINGENCY PLAN FOR THE PURPOSES OF THIS SECTION].

29 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit

1 the operation of a pipeline or an [OFFSHORE] exploration or production
2 facility in the state unless an oil discharge prevention and contin-
3 gency plan for the pipeline or facility has been approved by the
4 department and the person is in compliance with the plan.

5 (c) Except as provided in (n) of this section, a [A] person may
6 not operate a tank vessel or an oil barge within the waters of the
7 state, or cause or permit the transfer of oil to or from a tank vessel
8 or [, OR, AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless an
9 oil discharge prevention and contingency plan for the tank vessel or
10 oil barge has been approved by the department and the person is in
11 compliance with the plan [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.-
12 790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS
13 SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL DIS-
14 CHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN
15 APPROVED BY THE DEPARTMENT].

16 (d) Upon approval of a contingency plan, the department shall
17 issue to the plan holder a certificate stating that the contingency
18 plan has been approved by the department. The certificate must in-
19 clude the name of the facility, pipeline, tank vessel, or oil barge
20 for which it is issued, the effective date of the contingency plan,
21 and the date by which the contingency plan must be submitted for
22 renewal. A [AN OIL DISCHARGE] contingency plan must be submitted for
23 renewal [RENEWED AT LEAST] every three years.

24 (e) The department may attach reasonable terms and conditions to
25 its approval or modification of a [AN OIL DISCHARGE] contingency plan
26 that the department [WHICH IT] determines are necessary to ensure
27 [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan
28 has access to sufficient resources to protect environmentally sensi-
29 tive areas and to contain, clean up, and mitigate potential oil

1 discharges from the facility or vessel as provided in (k) of this sec-
2 tion, and to ensure that the applicant complies with the contingency
3 plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DISCHARGE] contin-
4 gency plan must provide for the use [OF THE BEST AVAILABLE TECHNOLOGY]
5 by the applicant of the best technology that was available at the time
6 the contingency plan was submitted or renewed. The department may
7 require an applicant or holder of an approved contingency plan to take
8 steps necessary to demonstrate its ability to carry out the contingen-
9 cy plan, including

- 10 (1) periodic training;
- 11 (2) response team exercises; and
- 12 (3) verifying access to inventories of [AVAILABLE] equip-
13 ment, supplies, and personnel identified as available in the approved
14 contingency plan.

15 (f) Upon request of a plan holder or on the department's own
16 initiative, the [THE] department, after notice and opportunity for
17 hearing, may modify its approval of a [AN OIL DISCHARGE] contingency
18 plan if the department [IT] determines that a change has occurred in
19 the operation of a facility [, MARINA] or vessel necessitating an
20 amended or supplemented plan, or the operator's discharge experience
21 demonstrates a necessity for modification. The department, after
22 notice and opportunity for hearing, may revoke its approval of a [AN
23 OIL DISCHARGE] contingency plan if the department [IT] determines that

- 24 (1) approval was obtained by fraud or misrepresentation;
- 25 (2) the operator does not have access to the quality or
26 quantity of resources identified in the plan; [OR]
- 27 (3) a term or condition of approval or modification has
28 been violated; or
- 29 (4) the person is not in compliance with the contingency

1 plan and the deficiency materially affects the plan holder's response
2 capability.

3 (g) Failure of a holder of an approved or modified [OIL DIS-
4 CHARGE] contingency plan to comply with the plan, or to have access to
5 the quality or quantity of resources identified in the plan or [AND,
6 IN THE EVENT OF A SPILL,] to respond with those resources within the
7 shortest possible [FEASIBLE] time in the event of a spill is a vio-
8 lation of this chapter for purposes of AS 46.03.760(a), 46.03.765,
9 46.03.790, and any other applicable law. If the holder of an approved
10 or modified [OIL DISCHARGE] contingency plan fails to respond to and
11 conduct cleanup operations of an unpermitted discharge of crude oil
12 with the quality and quantity of resources identified in the plan and
13 in a manner required under the plan, the holder is strictly liable,
14 jointly and severally, for the civil penalty assessed under AS 46.03.-
15 758, 46.03.759, or 46.03.760 against any other person for that dis-
16 charge.

17 * Sec. 10. AS 46.04.030 is amended by adding new subsections to read:

18 (h) The department is the only state agency that has the power
19 to approve, modify, or revoke a contingency plan for the purposes of
20 this section. The department shall exercise its power under this
21 section in a timely manner. Except for prosecutions under AS 46.03.-
22 790(b) and except as provided in (i) of this section, it is not a
23 defense to an action brought for a violation of (a) - (c) of this
24 section that the person charged believed that a current contingency
25 plan had been approved by the department.

26 (i) It is a defense to an action brought for a violation of
27 (a) - (c) of this section that the person charged relied on a certifi-
28 cate of approval issued by the department under (d) of this section
29 unless the person knew or had reason to know at the time of the

1 alleged violation that approval of the plan had been revoked or that
2 the holder of the plan was not capable of carrying out the plan.

3 (j) Before the department approves or modifies a contingency
4 plan under this section, the department shall provide a copy of the
5 contingency plan to the Department of Fish and Game and to the Depart-
6 ment of Natural Resources for their review. The department shall by
7 regulation establish the procedures and time limits applicable to
8 agency review of contingency plans.

9 (k) Except as provided in (m) and (o) of this section, the
10 holder of an approved contingency plan required under this section
11 shall maintain, or have available under contract, in its region of
12 operation or in another region of operation approved by the depart-
13 ment, singly or in conjunction with other operators, sufficient oil
14 discharge containment, storage, transfer, and cleanup equipment,
15 personnel, and resources to meet the following response planning
16 standards:

17 (1) for a discharge from an oil terminal facility, the plan
18 holder shall plan to be able to contain or control, and clean up a
19 discharge equal to the capacity of the largest oil storage tank at the
20 facility within 72 hours, except that if the department determines
21 that the facility is located in an area of high risk because of natu-
22 ral or man-made conditions outside of the facility, it may increase
23 the volume requirement under this paragraph so that the contingency
24 plan must be designed for a response that is greater in amount than
25 the capacity of the largest oil storage tank at the facility;

26 (2) for a discharge from an exploration or production
27 facility or a pipeline, the plan holder shall plan to be able to
28 contain or control, and clean up the realistic maximum oil discharge
29 within 72 hours;

1 (3) for a discharge of crude oil from a tank vessel or oil
2 barge, the plan holder shall plan to be able to contain or control,
3 and clean up a realistic maximum oil discharge as provided in (A),
4 (B), and (C) of this paragraph:

5 (A) for tank vessels and oil barges having a cargo
6 volume of less than 500,000 barrels, the plan holder shall main-
7 tain at a minimum in the region of operation, equipment, person-
8 nel, and other resources sufficient to contain or control, and
9 clean up a 50,000 barrel discharge within 72 hours;

10 (B) for tank vessels and oil barges having a cargo
11 volume of 500,000 barrels or more, the plan holder shall maintain
12 at a minimum in its region of operation, equipment, personnel,
13 and other resources sufficient to contain or control, and clean
14 up a 300,000 barrel discharge within 72 hours;

15 (C) in addition to the minimum equipment, personnel,
16 and other resources required to be maintained within the region
17 of operation by (A) or (B) of this paragraph, a plan holder shall
18 maintain, either within or outside of the plan holder's region of
19 operation, additional equipment, personnel, and other resources
20 sufficient to contain or control, and clean up a realistic maxi-
21 mum discharge within the shortest possible time; the plan holder
22 must demonstrate that the equipment, personnel, and other re-
23 sources maintained outside the plan holder's region of operation
24 are accessible to the plan holder and will be deployed and op-
25 erating at the discharge site within 72 hours;

26 (4) for a discharge from a tank vessel or oil barge carry-
27 ing noncrude oil in bulk as cargo, the plan holder shall plan to be
28 able to contain or control 15 percent of the maximum capacity of the
29 vessel or barge or the realistic maximum oil discharge, whichever is

1 greater, within 48 hours and clean up the discharge within the short-
2 est possible time consistent with minimizing damage to the environ-
3 ment;

4 (5) for a discharge subject to the provisions of (1) - (3)
5 of this subsection that enters a receiving environment other than open
6 water, the time requirement for clean up of the portion of the dis-
7 charge that enters the receiving environment may, in the department's
8 discretion, be within the shortest possible time consistent with
9 minimizing damage to the environment.

10 (l) The provisions of (k) of this section do not constitute
11 cleanup standards that must be met by the holder of a contingency
12 plan. Notwithstanding (k) of this section, failure to remove a dis-
13 charge within the time periods set out in (k) of this section does not
14 constitute failure to comply with a contingency plan for purposes of
15 (g) of this section or for the purpose of imposing administrative,
16 civil, or criminal penalties under any other law.

17 (m) When considering whether to approve or modify a contingency
18 plan, the department may consider evidence that oil discharge preven-
19 tion measures such as double hulls or double bottoms on vessels or
20 barges, secondary containment systems, hydrostatic testing, enhanced
21 vessel traffic systems, or enhanced crew or staffing levels have been
22 implemented, and, in its discretion, may make exceptions to the re-
23 quirements of (k) of this section to reflect the reduced risk of oil
24 discharges from the facility, pipeline, vessel, or barge for which the
25 plan is submitted or being modified.

26 (n) A tank vessel or oil barge that is conducting, or is avail-
27 able only for conducting, oil discharge response operations is exempt
28 from the requirements of (c) of this section if the tank vessel or oil
29 barge has received prior approval of the department. The department

1 may approve exemptions under this subsection upon application and
2 presentation of information required by the department.

3 (o) A holder of an approved contingency plan does not violate
4 the terms of the contingency plan by furnishing to another plan hold-
5 er, with the approval of the department, equipment, materials, or
6 personnel to assist the other plan holder in a response to an oil
7 discharge. The plan holder shall replace or return the transferred
8 equipment, materials, and personnel as soon as feasible. The depart-
9 ment shall by regulation determine the maximum amount of equipment,
10 materials, or personnel and the maximum amount of time for which it
11 will approve a transfer.

12 (p) In this section,

13 (1) "contingency plan" means an oil discharge prevention
14 and contingency plan required under this section;

15 (2) "in compliance with the plan" means, with respect to a
16 contingency plan, to

17 (A) establish and carry out procedures identified in
18 the plan as being the responsibility of the holder of the plan;

19 (B) have access to and have on hand the quantity and
20 quality of equipment, personnel, and other resources identified
21 as being accessible or on hand in the plan;

22 (C) fulfill the assurances espoused in the plan in the
23 manner described in the plan;

24 (D) comply with terms and conditions attached to the
25 plan by the department under the authority of (e) of this sec-
26 tion; and

27 (E) successfully demonstrate the ability to carry out
28 the plan when required by the department under (e) of this sec-
29 tion;

1 (3) "realistic maximum oil discharge" means the maximum and
2 most damaging oil discharge that the department estimates could occur
3 during the lifetime of the facility or pipeline based on the size,
4 location, and capacity of the facility or pipeline; on the depart-
5 ment's knowledge and experience with the facility or pipeline or with
6 similar facilities or pipelines; and on the department's analysis of
7 possible mishaps at the facility or pipeline or at similar facilities
8 or pipelines;

9 (4) "region of operation," with respect to the holder of a
10 contingency plan, means the area where the operations of the holder
11 that require a contingency plan are located, the boundaries of which
12 correspond to the regional boundaries established by the commissioner
13 for regional master planning purposes under AS 46.04.210.

14 * Sec. 11. AS 46.04.040(a) is amended to read:

15 (a) A person may not cause or permit the operation of an oil
16 terminal facility in the state unless the person has furnished to the
17 department, and the department has approved, proof of financial abil-
18 ity to respond in damages. Proof of financial responsibility required
19 for a crude oil terminal is \$50,000,000 per incident. Proof of finan-
20 cial responsibility required for a noncrude oil terminal is \$25, per
21 incident, for each barrel of total noncrude oil storage capacity at
22 the terminal or [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT. ABILITY
23 TO RESPOND IN DAMAGES NEED NOT EXCEED \$50,000,000 BUT MUST BE IN AN
24 AMOUNT (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH BARREL OF STORAGE
25 CAPACITY AT THE OIL TERMINAL FACILITY: OR (2)] \$1,000,000, whichever
26 is greater subject to a maximum of \$50,000,000. For purposes of this
27 subsection, an oil terminal facility that stores both crude oil and
28 noncrude oil is subject to the financial responsibility requirements
29 applicable to the type of facility that corresponds to the type of oil

1 storage that predominates at the facility. However, if the facility
2 stores more noncrude oil than crude oil, the \$25 per incident, per
3 barrel requirement of this subsection applies to each barrel of oil
4 storage capacity at the facility.

5 * Sec. 12. AS 46.04.040(b) is amended to read:

6 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the
7 operation of a pipeline or an [OFFSHORE] exploration or production
8 facility in the state unless the person has furnished to the depart-
9 ment, and the department has approved, proof of financial ability to
10 respond in damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of
11 financial responsibility required for a pipeline or an offshore explo-
12 ration or production facility is \$50,000,000 [MAY NOT BE LESS THAN
13 \$35,000,000] per incident. Proof of financial responsibility required
14 for an onshore production facility is \$20,000,000 per incident. Proof
15 of financial responsibility required for an onshore exploration facil-
16 ity is \$5,000,000 per incident.

17 * Sec. 13. AS 46.04.040(c) is amended to read:

18 (c) Except as provided in (m) of this section, a [A] person may
19 not operate a tank vessel or an oil barge within the waters of the
20 state, or cause or permit the transfer of oil to or from a tank vessel
21 [,] or [, AFTER JANUARY 1, 1981, TO OR FROM] an oil barge, unless the
22 person operating the tank vessel or oil barge has furnished to the
23 department, and the department has approved, proof of financial abil-
24 ity to respond in damages. Proof of financial responsibility required
25 under this subsection is

26 (1) \$300. per incident, for each barrel of storage capacity
27 or \$100,000,000, whichever is greater, for a tank vessel or barge
28 carrying crude oil;

29 (2) \$100, per incident, for each barrel of storage capacity

1 or \$1,000,000, whichever is greater, subject to a maximum of
2 \$35,000,000, for a tank vessel or barge carrying noncrude oil [RESPON-
3 SIBILITY FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE DEPART-
4 MENT. FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE
5 FOLLOWING AMOUNTS:

6 (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE TRANS-
7 PORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY THE
8 FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC. 204
9 (c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

10 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY SEC. -
11 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS GREATER;

12 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY
13 SEC. 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS
14 GREATER].

15 * Sec. 14. AS 46.04.040(d) is amended to read:

16 (d) Except for prosecutions under AS 46.03.790(b) and except as
17 provided in (k) of this section, it is not a defense to an action
18 brought for violation of (a) - (c) [(c)] of this section that the
19 person charged believed in good faith that proof of financial ability
20 to respond in damages had been furnished to, and approved by, the
21 department [THE VESSEL OPERATOR POSSESSED PROOF OF FINANCIAL RESPON-
22 SIBILITY ACCEPTED BY THE DEPARTMENT].

23 * Sec. 15. AS 46.04.040(e) is amended to read:

24 (e) Financial responsibility may be demonstrated by (1) self-
25 insurance, (2) insurance, (3) surety, (4) [OR] guarantee, (5) letter
26 of credit approved by the department or (6) other proof of financial
27 responsibility approved by the department, including proof of finan-
28 cial responsibility provided by a group of insureds who have agreed to
29 cover pollution risks of members of the group under terms the