SCOMM

78:55

MAY 10, 1992

TO: Senator Sam Cotten

From: Gene Burden, Tesoro Alaska Petroleum Company

Subject: Comments on Financial Responsibility Issues of HB 540

This is in response to your inquiry as to Tesoro Alaska's position on the status of the Financial Responsibility issues in HB540 and to our understanding of the justifications that have been relied on by Alyeska regarding the past and current requirements.

Current Version of HB 540

The current version passed by the House modified the language regarding financial responsibility and non-discrimination contained in the House Judiciary version as a result of discussions we had with Alyeska on Wednesday May 6. During those discussions we agreed to remove the reference to contract terms and costs from the items subject to the newly established concurrent jurisdiction of the State Courts and the APUC as part of what we understood would be Alyeska's agreement to not attempt to kill the remaining nondiscrimination provisions that are still in the version passed by the House. Mike Ford was present and modified his work draft to reflect these changes. After Mike left the meeting to prepare the House Amendments Alyeska advised Tesoro that it wanted more amendments to the non-discrimination provisions. When we objected to these changes, Alyeska's representatives and Tesoro mutually agreed that there was no agreement in regards to this matter. Faced with this impasse Representative Hudson declared that despite Alyeska's objections that the protections would be left in the bill. We failed to contact Mike Ford to advise that the concessions we had made were invalid due to Alyeska's decision to seek further weakening of the non-discrimination provisions.

Tesoro's Justifications for these Non-discrimination Provisions

The initial financial responsibility requirements by Alyeska were $1 Billion in directly actionable financial responsibility which we could not meet. After passage of HB 196 in 1991 Alyeska agreed to accept insurance but increased the amount to $1.2 Billion. This was far in excess of an appropriate amount for a number of reasons including the following :

1. With passage of HB 196 Alyeska was immunized for simple negligence so the only costs that would be reimbursed would be for actual costs of clean-up for a period that might be as short as 72 hours. There is no conceivable way that Alyeska could expend $1.2 billion for initial cleanup. In fact, we understand that, in prior spill drills, no more than $30 million was projected for initial cleanup costs. We believe that the difference between $30 million and $1.2 billion reflects Alyeska's desire to be indemnified for gross negligence and intentional misconduct claims. Tesoro's current contract provides for no such indemnification, and we are confident that any attempt to indemnify Alyeska for these cases of extreme misconduct would be void as a matter of public policy;

2. In addition to being excessive in amount, Alyeska's requirements fail to reflect the relatively lower risk posed by Tesoro's operation. Alyeska currently seeks the same of amount of financial responsibility for each Tesoro voyage that it does from owner company voyages using much larger tankers.

3. Aside from its smaller size, Tesoro's tanker, the Overseas Washington, is double bottomed, operates with hydrostatic loading, and does not carry over 380,000 bbls per voyage which is one of the smallest, if not the smallest, routine cargoes transported from Valdez. How do you justify the same financial responsibility requirement for a double bottomed vessel tranporting 380,000 bbls as you do for a single bottomed vessel transporting 1.5 Million or more bbls?;

3. Alaska law requires precisely those distinctions that Alyeska has refused to recognize. AS 46.04.030(k)(3)(A) establishes a planning standard for vessels transporting less than 500,000 bbls requiring a cleanup of 50,000 bbls vs. the standard of cleanup of 300,000 bbls for the larger tankers carrying over 500,000 bbls. Further, AS 46.04.030(m) allows for further reductions in cleanup planning standards for vessels having the kind of preventive features present on the Overseas Washington. Thus, under state law Alyeska's initial response obligations are at least 6 times higher for virtually all other tankers carrying ANS crude than they are for Tesoro, yet Alyeska's financial responsibility requirements for that initial response are identical;

4. Alyeska has acknowledged that its $1.2 billion requirement was not derived through an assessment of the absolute or relative risk presented by Tesoro's activities. I asked Alyeska's attorneys in a meeting following last year's session what their justification was for increasing the requirements

from $1 Billion to $1.2 Billion. Their answer, which further illustrates our position, was because "That is all the insurance we think can be obtained!"

5. Aside from Alyeska's excessive financial responsibility requirements, recent dealings with the owner companies have convinced us that Tesoro can expect to continue to bear disproportionate burdens unless the legislature provides some reasonable protections. During the last quarter of 1991 Tesoro, as one of the 5 shippers in Prince William Sound, was asked to participate with the other shippers in developing a near shore response plan for Prince William Sound. We were advised that our contribution rate would be 20%, even though we transport only about 3.5% of the oil transported by TAPS. After objecting to the rate and rationale (i.e. "a pro-rata participation") we were offered an opportunity to participate at 10% and we understand that Chevron was offered participation at 10%. The remaining shippers (ARCO, EXXON, and BP) were to share the remaining 80% which we understood would be shared on the basis of volume transported which was our original proposal. In the event Alyeska spins off a private co-op for spill response what will be the options available to small shippers? There is no other response organization with sufficient equipment to satisfy the Prince William Sound Contingency Plan requirements. What will be the participation levels? Will they be based on the number of voyages, "pro-rata", or another factor that will further erode Tesoro's ability to remain in business? It should be noted that our tanker enters Prince William Sound approximately once per week; however we have only one ship vs. the other shippers who have multiple vessels. In addition the financial responsibility is provided to cover exposure on a per voyage basis, not on an annual basis which if calculated on each company's total tanker volumes would still reflect our 3.5%+/- volume of TAPS oil.

6. Alaska established financial responsibility requirements in HB 567 in 1990 which recognizes the difference in vessel sizes and requires financial responsibility equal to $300 per barrel of tanker capacity. (AS 46.04 (c)(1)). It is difficult to understand Alyeska's reluctance to vary the requirements on the basis of cargo volume.

7. Alyeska is alleged to have broad response and clean-up obligations in current litigation with the State of Alaska and the federal government. The federal legislature is currently considering legislation that appears to further lock Alyeska in to clean-up duties. The arguments of such a duty on the basis of existing state and federal right of way agreements, the Trans Alaska Pipeline Act, and the legislation currently proposed in the federal Energy Bill could individually, or collectively, make clear Alyeska's duty to respond in Alaska waters. If this occurs, it is possible that Alyeska will seek even more financial responsibility from the remaining shippers.

8. Alyeska has sent two communications that were intended to assuage our concerns regarding these matters. The first was a paragraph on no letterhead, no date, and unsigned that based on counsel's opinion was totally unenforceable. The second letter was from Mike Williams and contained assurances of Alyeska's intentions to work with Tesoro on these matters provided the version of HB 540 that passed out of Oil & Gas was eventually passed into law. Again, counsel opinion was that the assurances were inadequate to protect our interests in view of the variables that exist.

Conclusions:

We believe that the non-discrimination provisions contained in the version of HB540 passed out of House Judiciary provide necessary, as well as reasonable protections. These provisions create an even playing field, not one that only the majors can enter. I am sorry I will not be available on Monday May 11; however I will be back in Juneau on Tuesday. If you have any questions please contact Tesoro's counsel, Jon Tillinghast, at 586-2890.

Summary of Changes to CS for SSHB 540 (JUD) am

Section One. Technical change: deletes *federal or state laws* because the legislation 1) affects state laws and 2) can not affect federal law.

Sections Two through Seven. No changes.

Section Eight. Change the definition of "consistent" to "means in substantial compliance with a contingency plan."

Section Nine. No changes.

Section Ten. Adds "immediately contain and clean up a discharge or threatened discharge of oil transported by or due to the operation of the Trans Alaska Pipeline System or due to related activities, including activities related to a vessel en route to, berthed at, or transiting from the Trans Alaska Pipeline System marine terminal or while traveling on waters lying within Prince William Sound;" **This language was removed by an amendment on the House floor. It is being reinserted at the request of the governor and attorney general.**

Technical change adding "Prince William Sound" and clarifying its boundaries. A similar amendment was unanimously passed in the House but was unintentionally removed by a later amendment.

Adds language clarifying that the provisions addressed in this section regarding financial responsibility provisions imposed by the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, their common operating agent, are also applicable to an <u>agent or representative of either the holders and lessees or their common operating agent</u>. This clarifies that if a cooperative or other entity were to provide response services in Prince William Sound that private financial responsibility requirements must be fair and reasonable.

Section Eleven. No change.

Section Twelve. Technical changes: 1) replaces transfers of "management and control" of response actions to transfer of "response action service" to clarify the intent that the control of all response actions would be transferred, not just the management. 2) removes "initial" and instead refers to the period until response action services are approved for transfer by the state and federal on-scene coordinators (drafting error also fixed on this line). This prevents confusion because initial means this period prior to the transfer but was not defined in CS for SSHB 540 (JUD) am. 3) clarifies "Prince William Sound," and 4) makes references to "vessels" consistent throughout the bill by removing "tank."

Section Thirteen. No changes.

Section Fourteen. Technical change clarifying the definition of response action (see attached memorandum from the Division of Legal Services).

Section Fifteen. No changes.

Section Sixteen. At the request of Alaska Department of Environmental Conservation, changed January 1, 1993 to July 1, 1993 for the deadline to develop response action contractor registration regulations.

Section Seventeen and Eighteen. No changes.

Section Nineteen. At the request of the Alaska Department of Environmental Conservation, changed July 1, 1993 to January 1, 1994 for the deadline for the implementation of response action contractor registration regulations.

Section Twenty. No changes.

DIVISION OF LEGAL SERVICES

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MEMORANDUM May 10, 1992

SUBJECT: Definition of "response action" (SCS CSSSHB 540(O&G))

TO: Senator Sam Cotten

FROM: Michael F. Ford *M. F.*
Legislative Counsel

I have made a slight change to the definition that you requested be added to the above referenced bill. Because the definition of "response action services" that you requested was substantively identical to the definition of "response action" contained in AS 46.03, I have added a definition of "response action" to AS 46.04 that contains the language you requested. I have also slightly changed those provisions of SCS CSSSHB 540(O&G) relating to response action "services" to avoid any substantive change in the bill. This approach will maintain consistency in the use of the term "response action" between AS 46.03 and AS 46.04.

Please contact me if you have further questions.

MFF:lmb
92-116.lmb

Overview of Senate CS for SSHB 540 (O&G)
Financial Responsibility Provision

The primary purpose of the bill is to limit the potential liability of response action contractors (RAC) for their acts or omissions in the course of responding to releases or threatened releases of oil. This does not remove protections to the public but instead ensures that response action liabilities remain with the spiller. Rather than simple negligence, RACs are held to a gross negligence standard. The spiller remains liable for a RACs simple negligence.

By limiting the liability of RACs, the financial responsibility protections RACs require to ensure payment for response can be lowered because the RAC's liability and risk of law suits is substantially reduced. Independent non-owner company shipper requests for lower, and more reasonable, proof of financial responsibility provisions was a primary impetus for this legislation--$1.2 billion in proof of financial responsibility is imposed by Alyeska on Tesoro. Reducing Alyeska's risks should reduce these financial responsibility requirements.

Section 10 of Senate CS for SSHB 540 (O&G) contains provisions to ensure that private financial responsibility provisions, including a charge or contract term, required of independent shippers are fair and reasonable. Charges and contract terms are included in the bill to ensure that financial provisions imposed by a spill cooperative (if one were to be formed) would also be fair and reasonable.

A financial responsibility requirement in excess of $10 million must not exceed the potential cost of containment and cleanup as provided in the applicable contingency plan approved under AS 46.04.030. In Alyeska spill drills, these costs have been estimated at $30 million. In state statute (AS 46.04.900 (5)), containment and cleanup is very broadly defined as all direct and indirect costs including administrative overhead. It has been argued that these costs do not include the cost of defense of third-party damage lawsuits. It should be noted, however, that the legislation limits a RAC's liability to gross negligence. Requiring a shipper to provide proof of financial responsibility to protect a RAC against its own gross negligence is poor public policy and unlikely to be supported by the courts.

The legislation also requires proof of financial responsibility to vary among each vessel in proportion to the volume of oil carried on a per voyage basis. This approach is consistent with state financial responsibility provisions imposed under HB 567. Proof of financial responsibility is required to be posted on each vessel voyage because the probability of a spill is identical on each voyage (the chances of rolling a "six" is the same each time the die is rolled). While the probability of a spill remains the same with each voyage, the potential damages and cleanup costs vary with the volume of oil spilled. Thus, the requirement that charges vary by volume. However, the volume likely to spilled can be reduced by investments in technological prevention measures--also consistent with HB 567. Thus, the requirement that charges be reduced to reflect credits granted a vessel by the Alaska Department of Environmental Conservation.

The legislation also allows for the review of financial responsibility requirements by the superior court and Alaska Public Utilities Commission. This review is not automatic but at the request of a vessel owner, operator, or charterer.

HOW ALYESKA GETS REIMBURSED FOR RESPONSE SERVICES

1. **Alyeska runs all stand-by and equipment response costs through the pipeline transportation tariff as required expenditures.** Therefore, initial capitalization expenses, on-going equipment acquisition and maintenance, and basic operations are already paid up front. These tariff costs are prorated on a pre barrel basis.

2. **When Alyeska provides response services, its contracts with the shippers provide for complete reimbursement for all direct and indirect expenses incurred by Alyeska's response.** This is true regardless of whether the response action is under the direction of Alyeska, the contracting vessel/responsible party, the Coast Guard, or any other government agency. These expenses specifically include:

   •all legal fees and costs, including for in-house attorneys;
   •salaries, benefit, taxes, including for in-house staff;
   •materials and supplies purchased or used, including transportation costs;
   •all communication expenses, including installation;
   •third party equipment and vessel charges;
   •reimbursement for use of Alyeska-owned equipment;
   •restoration of all Alyeska vessels;
   •all third party contract charges;
   •all incidental costs (transportation, housing, etc.) incurred supporting any participant;
   •all transportation charges;
   •all incidental expenses; and
   •administrative overhead.

   The contracts provided for periodic invoices to be paid by wire transfer in immediately available funds without any deductions. After 30 days, interest is assessed at 2 percentage points above current prime rate at listed financial institutions.

3. **Alyeska's contracts also provide for complete indemnification regardless of fault.** The items specifically included are:

   •damage to equipment or property owned by Alyeska or another party;
   •bodily injury, including sickness, for all persons; and
   •environmental or resources damages.

The indemnification includes Alyeska, its owner companies, and their affiliates against all claims, including those caused by Alyeska's own actions, to the fullest extent permitted by law; indemnification is in addition to full reimbursement for response services. The indemnity includes coverage for all legal expenses.

4. To ensure funds for these requirements, **Alyeska requires financial responsibility in excess of $1 billion demonstrated through self-insurance, insurance/bonding, or other security.** Alyeska could recoup its expenses or losses through this financial security as well as directly through the contracting vessel. Alyeska's contracts also set out detailed terms for arbitration of disputes. Alyeska may also have its own insurance protections, the costs of which are run through the tariff.

5. Likewise, Alyeska's *Port Information Manual* mandates that vessels calling upon the terminal are strictly liable to Alyeska, and must provide full reimbursement and complete indemnification for all expenses or claims.

6. Alyeska would also have all basic statutory and common law causes of action to recover any loss against the contracting vessel and all other parties liable under the law, including the owner of the oil.

7. Although regulations have not been completed regarding the use of federal response funds, **Alyeska would be eligible for payment from the $1 billion federal response fund.** These funds would certainly be made available when Alyeska's response actions were requested by federal government officials. The state's funds are available to pay for response services directed by the state of Alaska.

8. **If, by remote chance, none of the above sources paid Alyeska as expected, Alyeska could recoup its expenses or losses through placing these costs through the tariff.** Therefore, these costs would ultimately be passed on to the public as consumers or in state tax or royalty losses.

Summary

Alyeska has remarkable financial protections. It is probably better protected than any other oil spill response entity by virtue of its aggressive contract terms, its monopoly on spill response services in Prince William Sound, and its extraordinary financial responsibility requirements. The most Alyeska has to lose is interest on response funds expended, because if the contracting vessel, other responsible parties, government funds, and insurance/bonding all fail to pay for response costs, the costs can be put through the tariff.

If response costs cannot ultimately be passed on to the consumer, they will be borne collectively by those using the pipeline. This is the real source of Alyeska's fear: that if all financial recovery systems fail, the owner companies might have to pay for each other's mishaps.

The state has been repeatedly assured that granting limited liability to response action contractors is not risky for those suffering damages due to a spill because of the state and federal response funds and financial responsibility requirements. Alyeska's requirements for financial protection are significantly higher than the state's own financial responsibility requirements and response fund. Alyeska faces an extremely low risk of suffering a financial loss. However, if there is a risk to be faced, who should bear that risk -- the public or the common enterprise operating the activity?

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May 5, 1992

Senator Sam Cotton
Chairman
Senate Committee on Oil and Gas
Alaska State Legislature
Juneau, Alaska 99801-1182

Dear Senator Cotton:

This letter responds to your letter of April 24, 1992 about the profit earned by Alyeska and/or the TAPS owners as the result of the oil spill related capital and operating expenditures made by Alyeska. This response, which the Department of Law authorized me to prepare, elaborates on the information previously furnished to you in my letter dated November 5, 1991, which became part of a report prepared by the Citizens' Oversight Council on Oil and Other Hazardous Substances.

To begin, Alyeska incurs capital and operating expenditures on behalf of the seven TAPS owners. The TAPS owners reimburse Alyeska for their pro rata shares of the expenses Alyeska incurs on their behalf. Alyeska does not mark up those expenses to include a profit.

As for the TAPS owners, a distinction must be made between capital expenses and current operating expenses. Current operating expenses, including those relating to oil spills or oil spill prevention, are passed on dollar-for-dollar, without any profit markup, in TAPS tariffs and thus reduce the wellhead value of ANS oil and the State royalties and taxes based on that wellhead value.

Capital expenses, including those relating to oil spills or oil spill prevention, are added to the TAPS owners' rate base. Capital costs are then recovered through TAPS tariffs over the remaining life of the TAPS by the depreciation charge. In addition, to the extent the capital cost has yet to be recovered and so remains in the TAPS rate base, the TAPS owners are entitled to earn a rate of return on their invested capital.

The calculation of the TAPS owners' rate of return is governed by the TAPS Settlement Agreement between the State and the TAPS owners, which was approved by the Federal Energy Regulatory Commission and the Alaska Public Utilities Commission. The total rate of return consists of three elements: (1) a "real" (i.e., net of inflation) rate of return of 6.4 percent per annum, plus (2) the current inflation rate in the Consumer Price Index, plus (3) an allowance to provide for State and Federal income tax on the first two elements. Moreover, the second, current inflation element and the associated State and Federal income tax, is itself capitalized and amortized over the remaining life of the investment. This treatment of the inflation element of the rate of return is often referred to as a "trended original cost" or "TOC" method.

To show you the practical consequences of these calculations, I have attached a bar chart showing how the composition of the total TAPS revenues over the remaining life of the TAPS would be affected if the TAPS owners make the operating and capital expenses for 1989-1997 projected in my November 5, 1991 letter. Note that while we have not sought to project any oil spill related expenses beyond 1997, the capital expenses incurred before that date will continue to have an effect after that date.

Making no adjustment for the time value of money, the cumulative effect from 1989-2011 of the 1989-1997 outlays would be as follows:

	Cumulative Amount 1989-2011 (Million $)
Expenditures	
Operating Expense	$161.1
Initial Investment	447.2
Total Expenditures	$608.3
TAPS Revenue Effect:	
Operating Expense	$161.1
Depreciation	447.2
After-Tax Margin @ 6.4%	140.3
Inflation Write-Up	84.5
Income Tax Allowance	151.2
Total Revenue Effect	$984.3

From an accounting perspective, the After-Tax Margin, Inflation Write-Up and Income Tax Allowance, which together total $376.0 million, represent the cumulative before-tax operating profit to the TAPS owners resulting from the $447.2 cumulative capital outlays. From a regulatory perspective, these three elements represent the "cost of capital" invested by the TAPS owners.

I hope this letter is responsive to your inquiry. If not, or if you have any further questions, please let me know.

Sincerely,

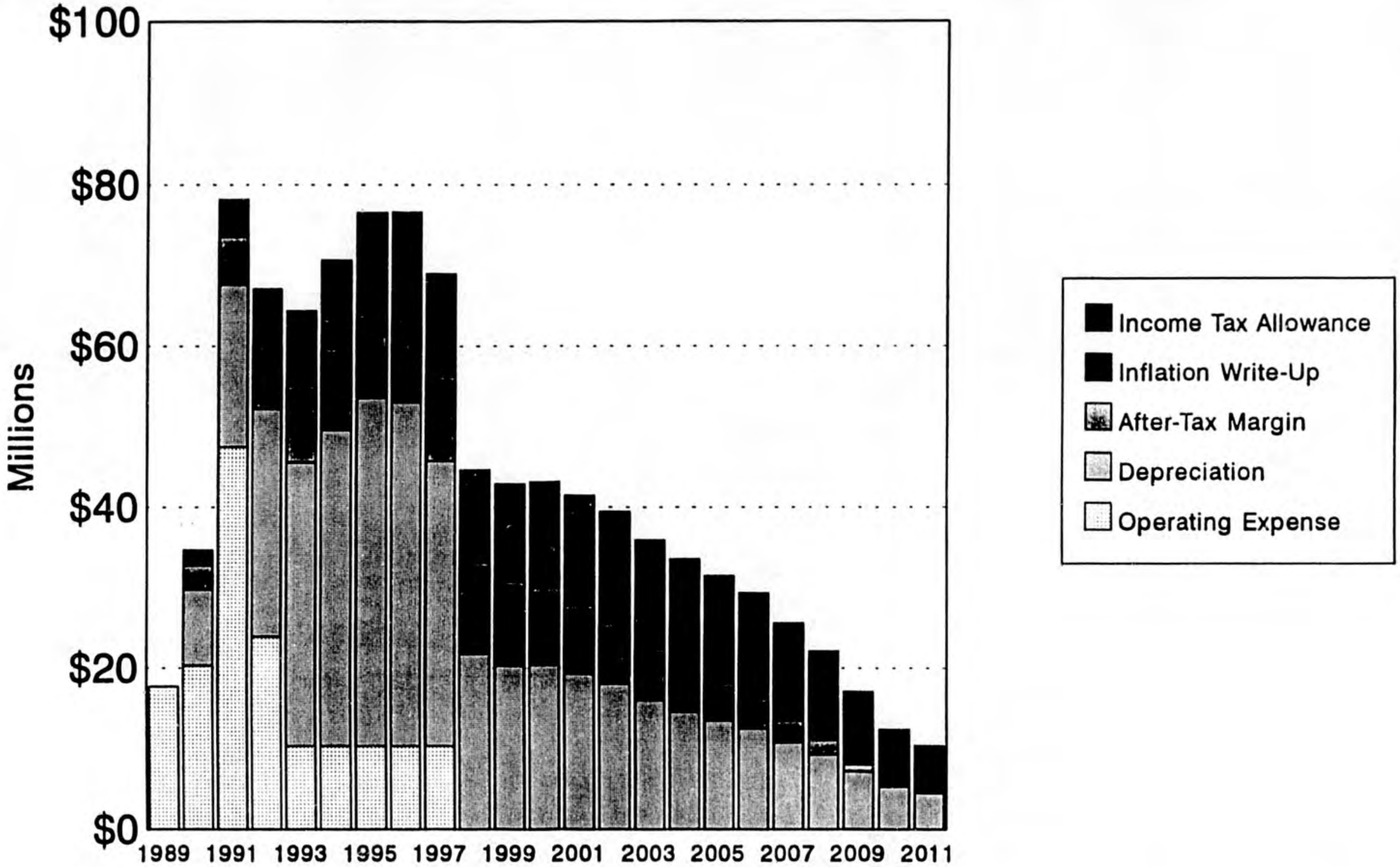
Thomas Horst

Thomas Horst

Attachment

EFFECT OF OIL SPILL EXPENDITURES ON TAPS REVENUES

Oil Spill Expenditures Estimated from 1989 through 1997



Horst & Frisch Incorporated
May 5, 1992

Senate CS SSHB 540 (O&G)- Overview of Provisions Regarding Liability Limitation and Registration of Response Action Contractors

Senate CS SSHB 540 (O&G) limits the civil liability of response action contractors (RACs) engaged in releases or threatened releases of oil. A responding RAC is not civilly liable for removal costs or damages as long as the RAC's actions were consistent with federal (33 U.S.C. 1321(d)), and state and regional contingency plans (AS 46.04.200 and .210). If the RAC is listed and agrees to be listed on an approved vessel/facility (AS 46.04.030) contingency plan, the RAC's actions must also be consistent with the applicable vessel/facility contingency plan. In either case, a RAC's liability is limited if its actions were directed by a state or federal on-scene coordinator. Under Senate CS SSHB 540 (O&G) rather than being held to a simple negligence standard, a RAC's civil liability would be limited to gross negligence, intentional misconduct, and personal injury or death.

This liability limitation is extended to all persons engaged in a response action including a professional, for-profit business; a regional, non-profit cooperative; a fishermen under contract to a RAC or a contingency plan holder; a vessel of opportunity; or a volunteer.

The liability limitation is extended to all responding parties through the definition of "response action contractor" which is not changed in Senate CS SSHB 540 (O&G). **The current statutory definition broadly identifies a RAC as anyone responding to a release or threatened release of oil. The intent of this broad definition is to encourage response by providing RAC indemnification to a wide array of potential responders.**

In Senate CS SSHB 540 (O&G), **exceptions to limitations on RAC liability include:**

1) an action for personal injury or death,
2) the RAC acts with gross negligence or intentional misconduct,
3) the RAC was otherwise liable for the release or threatened release under AS 46.03.822 (e.g., is the responsible party), or

4) if the RAC was knowingly listed as the **primary responder** on a contingency plan approved by the Alaska Department of Environmental Conservation (DEC), but was not registered with DEC.

To ensure a prompt, aggressive, and competent response, Senate CS SSHB 540 (O&G) contains provisions for a ***voluntary*** **RAC registration and approval** process. However, for a RAC to be listed as a **primary** responder on a vessel or facility contingency plan approved under AS 46.04.030 by DEC, a RAC must be registered. DEC may not approve a vessel or facility contingency plan under AS 46.04.030 unless the **primary responder** identified on the contingency plan is registered with the department. ***Under this program, volunteers, secondary responders, and any parties transporting equipment need not be registered with DEC.***

Provisions of the bill related to RAC registration and approval have a delayed effective date. ***The liability limitation provisions are effective immediately.***

A M E N D M E N T No. _____

1964

OFFERED IN THE SENATE BY SENATOR

TO: CSSSHB 540 (JUDICIARY)

Page 6, line 6, after "party"

Insert: "and potential reimbursement of and indemnity to the common operating agent for claims, liabilities, and all other costs and obligations as required by the contract"

Page 6, line 10, after "vessel"

Insert: "and frequency of voyages by the tank vessel"

Delete: "per voyage"

Page 6, line 11, after "System"

Insert: "."

Delete: the semicolon and remaining material through line 13.

Page 6, line 14, after "court"

Insert: "has"

Delete: "and, with respect to intrastate voyages, the Alaska Public Utilities Commission, under AS 42.05.361 - 42.05.431, have concurrent"

Page 6, line 15

Delete "and enjoin"

Page 6, lines 19 - 24

Delete all material.

Page 9, line 21

Delete Section 15 and renumber remaining sections.

holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, or their common operating agent, (1) must be fair, reasonable, and nondiscriminatory; and (2) with respect to any financial responsibility requirement in excess of $10,000,000, (A) may not exceed the potential cost of containment and cleanup that the operating agent may reasonably be expected to incur under its contract with the owner, operator, or charterer of the tank vessel before the transfer of cleanup and containment management and control to the responsible party; *Insert see below in establishing the financial responsibility requirement, the common operating agent shall assume that transfer of management and control will occur at the earliest practicable time following a discharge or a threat of discharge; and (B) must vary among each tank vessel in proportion to the volume of oil carried by each tank vessel and frequency of voyages by the tank vessel ~~per voyage~~ from the marine terminal serving the Trans Alaska Pipeline System. ~~; for purposes of this subparagraph, the volume of oil carried by the vessel must be reduced by the percentage of spill reduction credits granted that vessel under regulations adopted by the department.~~

(i) The superior court ~~and, with respect to intrastate voyages, the Alaska Public Utilities Commission, under AS 42.05.361 - 42.05.431, have concurrent~~ has jurisdiction to review ~~and enjoin~~ a financial responsibility or insurance provision described in this section at the request of a tank vessel owner, operator, or lessee. Except as provided in this subsection, nothing in this section affects the jurisdiction of the Alaska Public Utilities Commission.

~~(j) If an injunction is sought in a court under (i) of this section for a violation of (h) of this section, the court shall grant a temporary restraining order or preliminary injunction if the tank vessel owner, operator, or lessee demonstrates that the financial responsibility or insurance provision probably violates (h) of this section, even if other requirements for a temporary restraining order or preliminary injunction are not met. However, the court may require security before issuing an injunction or temporary restraining order under this subsection.~~

* Sec. 11. AS 46.04.030(e) is amended to read:

(e) The department may attach reasonable terms and conditions to its approval or modification of a contingency plan that the department determines are necessary to ensure that the applicant for a contingency plan has access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel as provided in (k) of this section, and to ensure that the applicant complies with the contingency plan. __If a contingency plan submitted to the department for approval relies on__

*"and potential reimbursement of and indemnity to the common operating agent for claims, liabilities, and all other costs and obligations as required by the contract"

action duties of another person or the liability of another person for a discharge or threatened discharge. Upon the request of the person required to respond to a discharge or threatened discharge under this subsection, the obligation imposed by this subsection may be transferred to another person required by law to respond to the discharge or threatened discharge if the transfer is approved by the federal and state on-scene coordinators. In this subsection, "Prince William Sound" has the meaning given in AS 46.04.030(r).

(h) A charge, contract term, or financial responsibility requirement imposed by the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, the holders and lessees' common operating agent, or the agent or representative of either the holders and lessees, or their common operating agent, on or for a vessel traveling from a marine terminal and related to containing and cleaning up a discharge or threatened discharge of oil or the obligations imposed under (g) of this section

(1) must be fair, reasonable, and nondiscriminatory; and

(2) with respect to a financial responsibility requirement in excess of $10,000,000, must

(A) not exceed the potential cost of containment and cleanup as provided in the applicable contingency plan under AS 46.04.030 that the agent may reasonably be expected to incur from a discharge or threatened discharge of oil from that vessel before the transfer of cleanup and containment management and control to the responsible party; in establishing the financial responsibility requirement, the common operating agent shall assume that transfer of management and control will occur at the earliest practicable time following the discharge or threat of discharge; and

(B) vary among each vessel in proportion to the volume of oil carried by each vessel per voyage from a marine terminal; for purposes of this subparagraph, the volume of oil carried by the vessel must be reduced by the percentage of spill reduction credits granted that vessel under regulations adopted by the department.

(i) The superior court and, with respect to intrastate voyages, the Alaska Public Utilities Commission, under AS 42.05.361 - 42.05.431, have concurrent jurisdiction to review and enjoin a charge, contract term, or financial responsibility requirement described under (h) of this section at the request of a vessel owner, operator, or charterer. Except as provided in this subsection, nothing in this section affects the jurisdiction of the Alaska Public Utilities Commission.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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May 12, 1992

The Honorable Sam Cotten
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: HB 540, descriptive title

Dear Senator Cotten:

You requested our advice whether the title of CSSSHB 540(JUD) am is sufficiently descriptive of provisions added to the substitute version offered by the Senate Oil and Gas Committee (SCS CSSSHB 540(O&G)).

Specifically, your question addresses the material added on page 5, lines 26 - 30. This provision adds an obligation of the common operating agent for the holder and lessees of the right-of-way agreement for the trans-Alaska pipeline to immediately contain and clean up a discharge or threatened discharge of oil transported by pipeline. Earlier versions of the bill required the agent to provide for initial response to a discharge of oil through a contractor under contract terms specified elsewhere in the bill. In relevant part, the title of CSSSHB 540(JUD) reads as follows:

> An Act relating to liability for release or threatened release of a hazardous substance; relating to the liability of an oil spill response action contractor for release or threatened release of a hazardous substance; relating to contracts by the common operating agent for the holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System to provide response services to tank vessels[.]

The Alaska Constitution requires that "the subject of each bill shall be expressed in the title." Alaska Const. art. II, § 13. The purpose of the descriptive title rule is to guard against inadvertence, stealth, and fraud in legislation. State v. A.L.I.V.E Voluntary, 606 P.2d 769 (Alaska 1980). If the title of a bill does not accurately describe the contents, the validity of the legislature's enactment may be challenged. However, the challenging party must prove a substantial and plain violation of the state constitution. Suber v. Alaska State Bond Comm., 414 P.2d 546 (Alaska 1966).

The lead-in phrase of the title of the version of the bill passed by the house appears to encompass most, if not all, of the subject matter contained in the bill. Persons are put on notice that the bill would enact statutes "relating to liability for the release or threatened release of a hazardous substance." The term "hazardous substance" is commonly understood and is defined by law to include oil. AS 46.03.826(5). The word "liability" means "an obligation or duty owed," or "obligated according to law or equity." Websters' Third New International Dictionary 1302 (2d Coll. ed.). The new material added in the senate version of the bill expressly requires the immediate containment of a discharge of oil. This creates a duty or obligation to act in a certain way. In other words, the entity mentioned in the bill is liable to act in a certain way.

In our opinion, the title of the version of the bill passed by the House of Representatives would be descriptive of the version of the bill offered by the Senate Oil and Gas Committee. Other phrases in the title would not plainly or substantially mislead a person as to the contents of the bill. Even though the contents of the bill have changed between the House and Senate versions, the title gives sufficient notice of the general subject matter of the bill and does not mislead as to the contents.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: James L. Baldwin
James L. Baldwin
Assistant Attorney General

JLB:jal

of a bill does not accurately describe the contents, the validity of the legislature's enactment may be challenged. However, the challenging party must prove a substantial and plain violation of the state constitution. Suber v. Alaska State Bond Comm., 414 P.2d 546 (Alaska 1966).

The lead-in phrase of the title of the version of the bill passed by the house appears to encompass most, if not all, of the subject matter contained in the bill. Persons are put on notice that the bill would enact statutes "relating to liability for the release or threatened release of a hazardous substance." The term "hazardous substance" is commonly understood and is defined by law to include oil. AS 46.03.826(5). The word "liability" means "an obligation or duty owed," or "obligated according to law or equity." Websters' Third New International Dictionary 1302 (2d Coll. ed.). The new material added in the senate version of the bill expressly requires the immediate containment of a discharge of oil. This creates a duty or obligation to act in a certain way. In other words, the entity mentioned in the bill is liable to act in a certain way.

In our opinion, the title of the version of the bill passed by the House of Representatives would be descriptive of the version of the bill offered by the Senate Oil and Gas Committee. Other phrases in the title would not plainly or substantially mislead a person as to the contents of the bill. Even though the contents of the bill have changed between the House and Senate versions, the title gives sufficient notice of the general subject matter of the bill and does not mislead as to the contents.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: James T. Baldwin
James L. Baldwin
Assistant Attorney General

JLB:jal

Delivered to Al Hastings @ approximately 4 pm.

Alyeska pipeline SERVICE COMPANY

240 MAIN STREET, SUITE 600, JUNEAU, ALASKA 99801 (907) 463-4664 FAX 463-4660

May 12, 1992

O.E. Burden, Vice President
Marketing and Government Relations
Tesoro Petroleum
P.O. Box 190272
Anchorage, Alaska 99501

we have no (j) in the bill, - we deleted it (i) is exactly like HB 540(Jud) am so i assume it's contract terms of our vessel.

Dear Mr. Burden:

CSSSHB 540 Judiciary, which was passed by the House of Representatives last Friday, meets the expectations of Alyeska Pipeline Service Company and its owners for a satisfactory bill providing for limited responder immunity in Alaska, except for those provisions in Sec. 10, which seek to add AS 46.04.020 (h), (i) and (j). These provisions deal with the financial responsibility requirement which applies to vessel owners/operators contracting with Alyeska for initial response to vessel spills. Alyeska believes that these provisions, as written, are inherently discriminatory, unduly restrictive and unconstitutional.

Alyeska fully intends to establish its financial responsibility requirement at a level which is reasonable, given its expected level of risk under any new statute. If CSSSHB 540 becomes Alaska law with the financial responsibility provisions modified, such that they are reasonable to Alyeska, Alyeska and its owners would be willing to significantly lower its financial responsibility requirement for contracting vessels.

Any new financial responsibility requirement would be applied on a nondiscriminatory basis to all contracting vessels. In Tesoro's case, our expectation is that the new requirement would be on the order of one-half of the current CGL insurance level required, provided satisfactory P & L insurance coverage is maintained and so long as vessels chartered by Tesoro and covered by the Oil Spill Response Services Agreement demonstrate a safe operating record.

Sincerely,

ALYESKA PIPELINE SERVICE COMPANY

Paul M. Richards

By: Paul M. Richards, Manager
Government Relations

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
BP Oil Shipping Co., USA	Prince William Sound	Keystone Shipping	Shipco 667	Keystone Shipping	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping*
BP Oil Shipping Co., USA	OMI Columbia	OMI Corp.	OMI Challenger Transport Co.	OMI Challenger Transport Co.	Ocean Mgt., Inc.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Alaska	Maritime Overseas Corp.	Intercontinental Bulktank Corp.	Intercontinental Bulktank Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Boston	Maritime Overseas Corp.	Cambridge Tankers, Inc.	Cambridge Tankers, Inc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Chicago	Maritime Overseas Corp.	First Shipmor Assoc.	First Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Juneau	Maritime Overseas Corp	Juneau Tanker Corp.	Juneau Tanker Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas New York	Maritime Overseas Corp.	Third Shipmor Assoc.	Third Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Ohio	Maritime Overseas Corp.	Second Shipmor Assoc.	Second Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Keystone Canyon	Keystone Shipping Co.	Shipco 2296, Inc.	Keystone Shipping	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	Thompson Pass	Interocean Mgt. Corp.	Shipco 2298, Inc.	Interocean Mgt. Corp.	Interocean Mgt. Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Tonsina	Keystone Shipping Co.	Shipco 668, Inc.	Keystone Shipping Co.	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	BT Alaska	Marine Transport Line, Inc.	Bankers Trust Company	Marine Transport Line, Inc.	Marine Transport Line, Inc.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	BT San Diego (no longer calling)	Marine Transport Line, Inc.	Bankers Trust Company	Marine Transport Line, Inc.	Marine Transport Line, Inc.	Alyeska	BP Oil Shipping Co., USA

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
BP Oil Shipping Co., USA	Brooks Range	Interocean Mgt. Corp.	Shipco 2297, Inc.	Interocean Mgt. Corp.	Interocean Mgt. Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Aspen	Trinidad Corp.	653 Leasing Co.	Trinidad Corp.	Trinidad Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Atigun Pass	Keystone Shipping Co.	Shipco. 6695, Inc.	Keystone Shipping Co.	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	Glacier Bay	Trinidad Corp.	GNP Barge & Tanker Co.	Trinidad Corp.	Trinidad Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Kenai	Keystone Shipping Co.	Connecticut National Bank	Keystone Shipping Co.	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	Overseas Arctic	Maritime Overseas Corp.	Overseas Bulktank Corp.	Overseas Bulktank Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Admiralty Bay	Trinidad Corp.	652 Leasing Co.	Trinidad Corp.	Trinidad Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	American Trader	Penn-Attransco Corporation	Penn-Attransco Corporation	Penn-Attransco Corporation	Penn-Attransco Corporation	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Chesapeake Trader (no longer calling in Alaska)	Penn-Attransco Corporation	Attransco, Inc.	Penn-Attransco Corporation	Penn-Attransco Corporation	Alyeska	BP Oil Shipping Co., USA

* Keystone Shipping provided COC with this information; however, BP said they alone, would provide secondary response.

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VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE CONTRACT	SECONDARY RESPONSE
N/A	ARCO Alaska	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Anchorage	Arco Marine Inc.	Northern Trust Co.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO California	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Fairbanks	Arco Marine Inc.	Bank of America National Trust Savings Assn.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Independence	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Juneau	Arco Marine Inc.	Bankers Trust Co.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
Arco Marine Inc.	M/V Overseas Philadelphia	Maritime Overseas Corp.	Philadelphia Tanker Corp.	Philadelphia Tanker Corp.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Sag River	Arco Marine Inc.	Oil Tankers Leasing Corp.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Spirit	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Texas	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
N/A	EXXON San Francisco	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON Baton Rouge	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON North Slope	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON New Orleans	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON Long Beach	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON Benicia	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON Baytown	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON Philadelphia	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
Amerada Hess Corporation	Southern Lion	Maritime Overseas Corp.	Interocean Tanker Corp.	Interocean Tanker Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Northern Lion	Maritime Overseas Corp.	Second United Shipping Corp.	Second United Shipping Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Western Lion	Maritime Overseas Corp.	First United Shipping Corp.	First United Shipping Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Eastern Lion	Maritime Overseas Corp.	Third United Shipping Corp.	Third United Shipping Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Mt. Cabrite	Atlantis Agency Corporation	Serpentsea Corporation	Amerada Hess Corporation	Atlantis Agency Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Saint Lucia	Atlantis Agency Corporation	Swansea Corporation	Amerada Hess Corporation	Atlantis Agency Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Seal Island	Atlantis Agency Corporation	Seal Island Shipping Corporation	Amerada Hess Corporation	Atlantis Agency Corp.	Alyeska	BP Oil Shipping Co., USA

VESSEL CHARTERER	VESSEL NAM	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
Chevron USA	Chevron Washington	Chevron USA	First Interstate Bank of CA	Chevron USA	Chevron Shipping Co.	Alyeska	Chevron Shipping for Chevron USA
Chevron USA	Chevron Oregon	Chevron USA	First Interstate Bank of CA	Chevron USA	Chevron Shipping Co.	Alyeska	Chevron Shipping for Chevron USA
Chevron USA	Chevron Mississippi	Chevron USA	First Interstate Bank of CA	Chevron USA	Chevron Shipping Co.	Alyeska	Chevron Shipping for Chevron USA
Chevron USA	Chevron Louisiana	Chevron USA	Connecticut National Bank	Chevron USA	Chevron Shipping Co.	Alyeska	Chevron Shipping for Chevron USA
Chevron USA	Chevron California	Chevron USA	First Interstate Bank of CA	Chevron USA	Chevron Shipping Co.	Alyeska	Chevron Shipping for Chevron USA

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
Tesoro Alaska Petroleum Company	Overseas Washington	Maritime Overseas Corp.	Fourth Shipmor Assoc.	Fourth Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	Tesoro Alaska Petroleum Company

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is further amended by adding at the end thereof the following:

"SEC. 32. ALASKA OCS SUBSISTENCE REVIEW.—Prior to issuing any five-year program under section 18 of this Act, conducting any lease sale, or approving any plan or permit for exploration, development, or production activities in the Alaska region authorized by this Act, the Secretary shall comply with section 810 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3120). At the lease sale stage the Secretary shall fully consider the effects of exploration, development, and production upon subsistence uses.".

Subtitle B—Trans-Alaska Pipeline

SEC. 2711. RESPONSIBILITY OF RIGHT-OF-WAY HOLDER.

Title II of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) is amended by adding at the end thereof the following:

"RESPONSIBILITY OF RIGHT-OF-WAY HOLDER

"SEC. 208. In addition to the existing duties to respond to, contain, and clean up oil spills within the State of Alaska, including Prince William Sound, under section 204(b) of this Act and other laws and requirements, the holder of the right-of-way shall file an Oil Spill Contingency Plan for Prince William Sound with the Secretary of the Interior and other appropriate authorities.".

Conservation Act ("ANILCA") prior to issuing any five-year program under section 18 of the OCSLA, conducting any lease sale, or approving any plan or permit for exploration, development, or production activities in the Alaska region. In a 1987 decision, Amoco Production Co. v. Village of Gambell, 480 U.S. 531 (1987), the Supreme Court ruled that ANILCA did not apply to OCS leasing. Accordingly, section 2702 is necessary since the Department of the Interior is not compelled to comply with the subsistence review requirements of ANILCA, and yet has greatly expanded OCS leasing activities in Alaska. Nearly one-half of the total acres to be leased under the current five-year plan are in Alaska waters.

In section 810 of ANILCA, Congress required all Federal agencies, prior to undertaking actions that could affect subsistence activities, to publicly review the proposed Federal actions to determine whether they would significantly restrict subsistence uses and to take steps to minimize adverse impacts upon subsistence uses and resources.

To protect the health, sustenance, traditional local economies and culture of Alaska Natives and other residents of rural Alaska, Congress included title VIII in ANILCA. Section 804 of title VIII established a priority for subsistence use of fish stocks in all waters in Alaska and wildlife populations on Federal public lands in Alaska. In extending the application of section 810 of ANILCA to OCSLA leasing in section 2702, the Committee reaffirms its strong commitment to the protections of subsistence resources and uses set forth in Title VIII of ANILCA.

Section 2702 specifically requires the Secretary to comprehensively consider the effects of exploration, development, and production upon subsistence resources and uses at the lease sale stage. The existence of later governmental reviews and approvals under the OCSLA and other applicable laws shall not affect the Secretary's duties to undertake comprehensive consideration at the lease sale stage. The Committee notes the significance of the lease sale decision and the major commitment it entails by both government and industry. To the extent that the reasoning in Secretary of the Interior v. California, 464 U.S. 312 (1984), Tribal Village of Akutan v. Hodel, 869 F. 2d 1185 (1989) and Village of False Pass v. Clark, 733 F.2d 605 (9th Cir. 1984) is inconsistent with the Committee's recognition of the significance of the lease sale stage, it is rejected.

Subtitle B--Trans-Alaska Pipeline

Section 2711 amends the 1973 Trans-Alaska Pipeline

Authorization Act ("TAPAA") by adding a new section 208 which requires Alyseka Pipeline Service Company ("Alyeska"), in addition to existing duties to respond to, contain and clean up oil spills within the State of Alaska, to file an Oil Spill Contingency Plan for Prince William Sound with the Secretary of the Interior. The Committee notes that, notwithstanding the Secretary's role in oil spill matters under section 204(b) of TAPAA, Alyeska (designated agent for British Petroleum, Exxon, Arco and four other companies which possess the pipeline right-of-way), has not been required by the Secretary to submit an oil spill cleanup plan for review.

Since the Exxon Valdez oil spill in 1989, Alyeska has taken a revisionist history position that it is a "voluntary response contractor" and not obligated to respond to any spill of oil transported by the Trans-Alaska Pipeline once it is loaded on tankers in Valdez. Alyeska's current position contrasts vividly with its past commitments, including the Oil Spill Contingency Plan for Prince William Sound (January 1987) in effect at the time of Exxon Valdez disaster.

The Committee rejects Alyeska's position in the strongest possible terms as contrary to existing law and agreements and irresponsible in light of Alyeska's past oil spill contingency plans and public assurances. Congress and the Administration have consistently intended that Alyeska - the entity on site with oil spill response equipment - has a binding, legally enforceable duty to respond to and clean up oil spills.

Section 204(b) of TAPPA, as amended by section 8101 of the Oil Pollution Act of 1990 (P.L. 101-380), requires the "control and total removal" of any pollutant within the State of Alaska by the holder of the right-of-way and at the holder's expense. This statutory duty is mirrored in provisions of the Department of the Interior's Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline with the holders. Once oil carried by the Trans-Alaska pipeline is loaded on a vessel at Valdez, the liability regime of the Oil Pollution Act applies. However, nothing in that Act diminished Alyeska's longstanding duty to respond to and clean up oil spills in Prince William Sound and elsewhere within the boundaries of the State of Alaska.

Section 2712 amends TAPPA to establish a new section 209 which requires that no less than 80 percent of any amounts received by the United States in settlement of claims arising from the Exxon Valdez oil spill litigation shall be used to acquire land or otherwise protect fish and wildlife habitat in Prince William Sound and Gulf of Alaska areas impacted by the

102D CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPT. 102-474 Part 9

COMPREHENSIVE NATIONAL ENERGY POLICY ACT

MAY 5, 1992.—Ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries,

submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 776]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 776) to provide for improved energy efficiency, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments to the bill as reported by the Committee on Energy and Commerce are as follows:

Page 153, lines 7 through 9, amend the section head of section 205 to read as follows:

SEC. 205. COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 AND OTHER ENVIRONMENTAL LAWS.

Page 156, after line 12, insert the following new subsection:

(c) NEPA COMPLIANCE.—Unless explicitly superseded or waived by this Act, the Federal Energy Regulatory Commission shall comply with the National Environmental Policy Act of 1969 in implementing section 7 of the Natu-

55-211

(f) INAPPLICABILITY TO MEDICAL DEVICES.—Subsections (a) through (c) shall not apply with respect to plutonium in any form contained in a medical device designed for individual human application.

(g) INAPPLICABILITY TO MILITARY USES.—Subsections (a) through (c) shall not apply to plutonium in the form of nuclear weapons or to other shipments of plutonium determined by the Department of Energy to be directly connected with the United States national security or defense programs.

(h) PAYMENT OF COSTS.—All costs incurred by the Nuclear Regulatory Commission associated with the testing program required by this section, and administrative costs related thereto, shall be reimbursed to the Nuclear Regulatory Commission by any foreign country receiving plutonium shipped through the United States in containers specified by the Commission.

(i) DEFINITION.—The term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and any other territory or possession of the United States.

SEC. 2102. OIL POLLUTION AMENDMENTS.

(a) FEDERAL WATER POLLUTION CONTROL ACT.—Section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)) is amended by adding at the end the following:

"(12) WITHHOLDING CLEARANCE.—The Secretary of the Treasury, at the request of the Administrator or the Secretary of the department in which the Coast Guard is operating, shall withhold or revoke—

"(A) the clearance required by section 4197 of the Revised Statutes of the United States;

"(B) a permit to proceed required under section 4367 of the Revised Statutes of the United States; and

"(C) a permit to depart required under section 443 of the Tariff Act of 1930;

as applicable, for a vessel that is subject to, or the owner, operator, or person in charge of which is subject to, a penalty under paragraph (6) or (7). Clearance or a permit withheld or revoked under this paragraph may be granted upon the filing of a bond or other surety satisfactory to the Administrator or the Secretary.".

(b) OIL POLLUTION ACT.—Section 1002 of the Oil Pollution Act of 1990 (Public Law 101-380; 104 Stat. 503) is amended by adding the following new subsection:

"(e) The costs and damages described in subsection (b) shall constitute a maritime lien on the vessel that may be recovered in an action in rem in the district court of the United States for any district within which a vessel may be found.".

SEC. 2103. EXXON VALDEZ SETTLEMENT FUND HABITAT ACQUISITION.

(a) LIMITATION OF EFFECT.—Nothing in this Act shall affect—

(1) the expenditure or use of sums received by the United States as a result of the settlement of the EXXON VALDEZ litigation, as described in section 207 of Public Law 102-229; or

(2) the development and implementation of a restoration plan and budget pursuant to the Memorandum of Agreement and Consent Decree entered into by the United States and the State of Alaska, as approved by the United States District Court for the District of Alaska on October 8, 1991.

(b) AUTHORITY TO ACQUIRE HABITAT.—The Federal Trustees identified in the Agreement and Consent Decree described in subsection (a) of this section are authorized and encouraged to purchase from willing sellers land or interests in land determined by the Federal Trustees to be important habitat for the conservation of fish and wildlife resources in the State of Alaska.

SEC. 2104. RESPONSIBILITY OF RIGHT-OF-WAY HOLDER.

Title II of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) is amended by adding the following new section:

"RESPONSIBILITY OF RIGHT-OF-WAY HOLDER

"SEC. 208. In addition to the existing duties to respond to, contain, and clean up oil spills within the State of Alaska, including Prince William Sound, under section 204(b) of this Act and other laws and requirements, the holder of the right-of-way shall submit an oil spill response plan for Prince William Sound to the Secretary of Transportation for approval under section 4202 of the Oil Pollution Act of 1990.".

BACKGROUND, NEED, AND PURPOSE OF AMENDMENTS

As reported by the Committee on Energy and Commerce, the purpose of H.R. 776 is to enact a comprehensive national energy policy that gradually and steadily increases U.S. energy security in cost-effective and environmentally beneficial ways.

The Committee on Merchant Marine and Fisheries received a sequential referral of H.R. 776 for consideration of those provisions within titles II, XVI, and XVII that fall within the jurisdiction of the Committee pursuant to rule X of the House rules. The amendments to H.R. 776 reported by the Committee on Merchant Marine and Fisheries cover a broad range of issues consistent with the purpose of the Committee on Energy and Commerce bill and within the jurisdiction of the Committee on Merchant Marine and Fisheries.

Section 2711 of the amendment to H.R. 776 reported by the Interior Committee amends the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) to require Alyeska Pipleine Service Company, the holder of the right-of-way for the Trans-Alaska pipeline, to file an oil spill contingency plan with the Secretary of the Interior for oil spills into Prince William Sound, Alaska. Section 2104 of the amendment reported by the Merchant Marine and Fisheries Committee requires the Alyeska Pipeline Service Company to file an oil spill response plan with the Secretary of Transportation for approval under section 4202 of the Oil Pollution Act of 1990 (33 U.S.C. 1321(j)).

The Oil Pollution Act of 1990 applies to all oil spills from vessels or facilities into the navigable waters or adjoining shorelines or the exclusive economic zone of the United States. Section 4202 of the Oil Pollution Act established a national oil spill planning and response system. Under that section, owners or operators of tank vessels or facilities are required to submit oil spill contingency plans for approval by the U.S. Coast Guard. The Coast Guard is required to promptly review the plans, require amendments to any plan that does not meet approval, approve plans that are acceptable, and periodically review plans to ensure that they continue to provide the oil spill cleanup capability necessary under the circumstances. Section 2104 of the Committee amendment requires the Alyeska oil spill response plan to be submitted and approved under this established plan review system. The Coast Guard, not the Interior Department, has the expertise to ensure that the appropriate level of oil spill preparedness is maintained in Prince William Sound, Alaska.

Committee Action

H.R. 776 was introduced by Congressmen Sharp and Dingell (and others) on February 4, 1991, and reported, with an amendment, by the Committee on Energy and Commerce on March 30, 1992. Titles II, XVI, and XVII were sequentially referred to the Committee on Merchant Marine and Fisheries for a period ending not later than May 1, 1992. On April 30, 1992, the Committee met to consider and mark up H.R. 4722 and H.R. 776.

During the Committee's consideration of H.R. 776, Mr. Studds offered (for himself and Chairman Jones) an amendment to title II clarifying the applicability of NEPA to the natural gas pipeline permitting process under the Natural Gas Act and the Natural Gas Policy Act of 1978. The amendment was approved by voice vote.

The Committee considered no amendments to section 1701, but Mrs. Unsoeld and Mr. Studds engaged in a colloquy regarding recent efforts by FERC to promulgate a very restrictive definition of the term "fishways" under the Federal Power Act. The Committee supported the provision as reported by the Energy and Commerce Committee with the understanding that it overturns the FERC action and reasserts the exclusive authority of the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to prescribe needed fishways.

Mr. Jones offered an amendment adding the text of H.R. 4722, the "Marine and Coastal Environment and Global Climate Protection Act of 1992," as amended and ordered reported earlier in the markup, as title XX. The amendment was approved by a 28–16 roll call vote.

Other amendments were offered and included in an additional title, Miscellaneous Merchant Marine and Fisheries Provisions (Title XXI). Chairman Jones, on behalf of the Committee leadership, offered an amendment adding section 2101 addressing the shipment of plutonium on vessels and testing requirements for the containers that hold the radioactive material. The Chairman offered the amendment to protect the Committee's jurisdiction over the subject of international maritime law and the maritime shipment of hazardous cargoes. The Committee agreed to the amendment by voice vote. A similar amendment to H.R. 776 was adopted in the Committee on Interior and Insular Affairs.

Mr. Jones offered an amendment adding section 2102, which restores authority to Customs, at the request of the Coast Guard and the Environmental Protection Agency, to detain a vessel when the vessel owner has failed to pay administrative and civil penalties under the Clean Water Act. The provision also amends the Oil Pollution Act of 1990 to establish *in rem* jurisdiction over a vessel for removal costs and damages for which the vessel's owner, operator, or person in charge is liable under the Act. The amendment was adopted by voice vote.

Mr. Young offered an amendment adding section 2103 to authorize and encourage expenditures of *Exxon Valdez* settlement funds received by the United States for acquisition of land or interests in land determined by the Federal Trustees to be important fish and wildlife habitat. The amendment was adopted by voice vote.

Mr. Young also offered an amendment adding section 2104 to require the Alyeska Pipeline Service Company, as agent for the right-of-way holders for the Trans-Alaska Pipeline, to submit an oil spell response plan to the Secretary of Transportation for approval under the Oil Pollution Act of 1990. The amendment was adopted by voice vote.

Mr. Studds offered an amendment (added to Title XVII) that authorizes the U.S. Army Corps of Engineers to construct, operate and maintain a small vertical axis hydro-turbine on Cape Cod Canal in southeastern Massachusetts. The Committee adopted the amendment by voice vote.

Mr Anderson of California moved that the Committee order H.R. 776, the Comprehensive National Energy Policy Act, as amended, reported to the House. The motion was approved by voice vote.

Section-by-Section Analysis

Title II—Natural Gas Pipeline

Sec. 205. Compliance with the National Environmental Policy Act and other environmental laws

The Committee amended the title of section 205 of H.R. 776 and added a subsection (c) at the end of the section. The new subsection tacks. The Monterey Bay attacks were videotaped in what could be the best documentation of such incidents. Page 7

■ Oil-barrel blues
Workers on the North Slope seem to be undergoing increasing stress as oil production declines and companies lay off workers or reduce benefits. Long-time workers fear companies may eventually abandon Alaska for countries where development is easier. Page 11

■ Defensive gardening
Flower theft and shrub rustling are problems year-round in New York City, but Mother's Day is the worst. That's when larcenous folks pick flowers for Mom from public places. Gardeners respond with strategies for foiling the light-fingered. Page 17

SHOWERS

Light winds and a 60 percent chance of rain tonight, diminishing to mostly cloudy with a 50 percent chance of showers Saturday. Page 2

STOCKS

The Dow Jones average of 30 industrials rose 6.04 points to 3,369.41.
Advancing issues slightly outnumbered declining ones on the New York Stock Exchange, with 850 up, 818 down and 594 unchanged.
Big Board volume totaled 168.67 million shares, against 199.08 million shares on Thursday.
The NYSE's composite index rose 0.12 to 229.20. Page 11

INDEX

I think they should be held to the same standard as everybody else," said Tom Brice, an aide to Fairbanks Sen. Shirley Craft. "If they're willing to include themselves in that, that would be another question entirely."

Brice plans to run as a Democrat for a Fairbanks House seat, but has not filed an intent letter.

Another Craft aide, Eldon Mulder of Anchorage, has filed a letter of intent and plans to run as a Republican for an Anchorage House seat. Melva Krogseng of Soldotna, a aide to Rep. Ramona Barnes, has also filed a letter of intent to run for office.

Rep. David Finkelstein, D-Anchorage, said there has been an understanding that legislative aides would hold off filing for office until their job ended. That avoids potential conflicts of interest, such as misusing their position to raise money or affect legislation.

"Legislative aides are able to affect and control the process," he said. "They shouldn't be doing that."

Legislative aide positions are often a stepping stone to legislator
Please turn to Ethics, Page 8

THE JUNEAU EMPIRE

JUNEAU COLOR

In 1990, her name was on the front page of every newspaper in Alaska. A state senator for a dozen years, Arliss Sturgulewski took her second shot at the governor's office with both barrels blazing, debating, campaigning and shaking hands across the muskeg, pavement and tundra of Alaska.

But two years later, quietly, she's wrapping up her political career, finishing her final legislative session and making plans for what to do with something rarer than gold – free time.

"After 14 years and a couple of tries for governor, it's just time for me to change course a little bit in my life. I've always believed that you set goals for yourself and you work on those but you should try to be as much in control of your life as you can," Sturgulewski says.

Her new goals include taking more time for travel, art collecting, financial investments and family – and keeping her eye on a few key issues.

"I want to stay involved in public policy and work on the outside and I hope to affect some things," she says.

No one should ever expect Sturgulewski, 64, to completely disappear from the political scenery, says Deve Rose, the recently retired head of the Alaska Permanent Fund Corp., who served with her on the Anchorage assembly in the 1970s.

"I don't think Arliss will ever really hang it up. She's always be an activist because she's really a very caring person. She's just too active to disappear," Rose says.

Born Arliss Wright, Sturgulewski grew up in a small town near Blaine, Wash. Her father was a logger and her mother, who died when she was young, was

Sturgulewski graduated from the University of Washington with a business and economics degree and took a job with a beauty products company. After a few years, the firm was sold and her job was transferred to the East Coast.

"New Jersey didn't seem very appealing to a westerner, so I headed north instead."

In 1952, she journeyed up the Alaska Highway, "the kind of thing you wouldn't let your daughter do."

The trip was not pleasant. "I remember the dirt and the mud and the mosquitoes and the generators and it seemed to go forever," she says.

Planning only a two-week vacation stay, she was offered an office job in Anchorage by a small group of restaurants. As spring bloomed and the dirt of winter washed away, she decided the little town was lovely and decided to stay.

Shortly thereafter, she met a
Please turn to Color, Page 8

"We just feel we've gone as far as we could possibly go," Campbell said.

Campbell said the administration agreed to offer a constitutional amendment that would require the Legislature to provide for subsistence, as long as the amendment is tied to changes in federal subsistence law.

Kitka said the offer was not good enough.

AFN has supported a constitutional amendment to provide a guaranteed subsistence preference for rural residents.

The debate stems from a 1989 Alaska Supreme Court ruling that said the rural preference in state law was unconstitutional because it discriminated against city residents.

The federal government assumed subsistence management on Alaska's federal lands two years ago because federal law requires a rural preference.

Hickel wants to regain control of those lands. Hickel has set a July 1 deadline for the Legislature to act on the issue.

House gets stuck on oil-spill liability bill

By BRIAN S. AKRE
THE ASSOCIATED PRESS

With only five days remaining in the legislative session, bill movement came to a virtual standstill on the House floor Thursday night as a complicated dispute over an oil-spill liability measure consumed the chamber.

The House met well into the night on House Bill 540, after a second day of back-room wrangling between lawmakers, lobbyists and lawyers for the oil industry. The dispute all but halted work on other legislation scheduled for floor debate.

The bill would give cleanup contractors limited immunity from oil-spill damage claims. That immunity already exists temporarily in state law, and HB540 would make it permanent.

But the major dispute was over a provision that would clarify that Alyeska Pipeline Service Co. is responsible for initially responding to and cleaning up crude spills in Prince William Sound. Alyeska is the oil-company consortium that runs the trans-Alaska pipeline and Valdez oil terminal.

The unusual attention paid to the bill and Alyeska's objections is a sign of the oil-industry's enduring clout in the Legislature, three years after the Exxon Valdez oil spill. The industry is a major contributor to lawmakers' re-election campaigns.

Alyeska contends it is not required to respond to spills except under contracts with its shippers, which require a response only during the first three days after a spill.

State and federal officials disagree, insisting the federal trans-Alaska pipeline law requires Alyeska to clean up any spill in the sound, with no time limit.

The House recessed several times Wednesday and Thursday while lawmakers worked on amendments. When they finally returned to the floor Thursday night with intentions of voting on the bill, at least seven amendments were offered – including a six-page proposal that included numerous changes.

Several lawmakers objected to the six-page amendment, which, among other things, would remove the Alyeska response provision.

Rep. Gene Kubina, D-Valdez, said the amendment was "greased" and asked for each proposed change to be considered separately. Rep. David Finkelstein, D-Anchorage, agreed.

"There's no public hearings, no public input," Finkelstein said. "These are important provisions and we should vote them up and down."

As the debate over the amend-
Please turn to Liability, Page 8

Professor Hazelwood

Exxon Valdez ex-skipper to teach seamanship

By LARRY McSHANE
THE ASSOCIATED PRESS

NEW YORK – It sounds like a bad comedy skit: The boozy captain behind the nation's worst oil spill giving would-be sailors tips on staying alert. But Joseph Hazelwood's class sets sail next week, and environmental groups are not amused.

"This is prime matter for Leno, Carson, Letterman, Saturday Night Live," said Mike Matz of the Sierra Club. "This is truly amazing. ... I don't know why anyone would hire Joe Hazelwood to teach a class after the reputation he garnered in that spill."

Someone did – the Maritime College of the State University of New York, where Hazelwood graduated in 1968. Twenty-one years later, he was at the helm of the Exxon Valdez when it struck a reef and dumped 11 million gallons of crude oil into Alaska's Prince William Sound.

Hazelwood was convicted of misdemeanor negligence, but acquitted of the more serious charges that he was drunk and reckless when the accident occurred. He was spared any jail time and sentenced to 1,000 hours of community service.

> *'This is prime matter for Leno, Carson, Letterman, Saturday Night Live.'*
>
> **– Mike Matz, Sierra Club spokesman**

Hazelwood, 45, admitted violating the Coast Guard rule against drinking within four hours of leaving port at Valdez and negligently leaving the bridge of a tanker.

He had a history of alcohol abuse and failed a sobriety test 11 hours after the accident.

The Coast Guard suspended his license for nine months in the summer of 1990. "Rather than an instructor on keeping watch, Hazelwood would be better on how to avoid jail time," said Greenpeace spokeswoman Dorothy Smith.

The captain will set sail on the Empire State, a training vessel for 500 students, on May 16. The ship will be out for two months.

Hazelwood's duties include giving pointers on "standing watch on the bridge and teaching cadets how to stand watch," said Adm. Floyd Miller, the college president.

While Miller defended the school's hiring of Hazelwood, others had trouble believing it was true. Another teacher at the school said they thought it was a bad joke; a National Audubon Society spokeswoman giggled nervously before saying the group had no comment.

But Matz, who heads the Sierra Club's Alaskan Coalition, had plenty to say about the hiring.

"Can you imagine students sitting through classes with Joe Hazelwood, whose greatest claim to fame is an 11-million-gallon oil spill? It's astonishing to me," Matz said.

Former Valdez Mayor John Devens said the appointment might not be all bad. "If it's true that we learn from our mistakes, Joe ought to be a heck of a good teacher," Devens said Thursday.

MONDAY/ COLUMNIST DAVE BARRY ON WORKING AT HOME

Juneau Empire 8 MAY 1992

Dallas Morning News

WASHINGTON – The chairman of the House civil rights subcommittee has denounced the Federal Emergency Management Agency for collecting the names of gay employees and urged that the practice be ended.

Rep. Don Edwards, D-Calif., said that compiling lists of workers based on their sexual orientation was "a violation of human rights" and should play no part in an agency's procedures for granting security clearances.

Edwards reacted Thursday to a report by The Dallas Morning News that top FEMA officials induced a gay employee last fall to provide a list of other gays in exchange for receiving permission to travel to Poland.

"It's outrageous what they did," said Edwards, the chairman of the House Judiciary Committee's Civil and Constitutional Rights Subcommittee. "This is way out of line."

FEMA officials acknowledged that Jerald Johnson provided a list of eight gay employees, which was turned over to the agency's Security Office. But they denied that Johnson was pressured into giving the names.

Agency spokesman Anthony Venti declined to comment Thursday on The News' article or criticisms from Congress, gay rights groups and the labor union that represents FEMA workers that the agency acted improperly.

Venti reiterated that the list was being kept in a locked safe and would not be used unless "another allegation down the road was made."

Lorri L. Jean, deputy director of FEMA's San Francisco regional office and an acknowledged lesbian, insisted in an interview that Johnson's situation was not an indication that the agency was conducting a "witch hunt".

"There are bigoted, homophobic attitudes at FEMA like anywhere else, but as far as an agency policy (against gays) sanctioned by the agency's leadership, absolutely not," Jean said.

She noted that she has one of the highest security clearances in the agency and has been repeatedly promoted. She described FEMA, her employer since 1983, as "a wonderful environment in which to work."

Jean said an employee's sexual orientation could be relevant to the security clearance process if "someone is deep in the closet and could, because of that, be a blackmail risk."

Johnson, 32, told The News and members of a House subcommittee that FEMA officials urged him repeatedly to provide names of gay employees after he acknowledged being gay and said he knew of others who were.

After initially refusing to provide agency security officials with a list, Johnson said he relented last fall so that he would be allowed to take a one-month leave to work as a consultant for the Polish government.

Johnson said the agency's director of security, John Lilley, Executive Director Thomas McQuillan and Director Wallace Stickney all urged him to comply with the request to provide a list of gay workers.

Lilley and McQuillan declined to comment through an agency spokesman. Stickney said in an interview Wednesday that it was solely Johnson's decision to provide the list.

Venti, the agency spokesman, also denied Thursday that McQuillan had asked another openly gay employee, Robert Parisien, to persuade Johnson to provide the agency with a list of gay workers.

onto tankers at Valdez.

"I came just at the time the money did, and in many ways it was grabbing a hold of a comet. The pressures that come with too much money, too fast, too little of a structure (made it) very hard to be thoughtful," she says.

As a legislator, Sturgulewski says she had no grand scheme to reshape Alaska government or politics. Instead, her interest was bringing her views and priorities

interfered with her gubernatorial ambitions.

But that never stopped Sturgulewski from making he[r] presence known, says Howard Weaver, editor of the state's la[rg]est newspaper, the Anchorag[e Dai]ly News.

"I think Arliss occupies in many ways a unique role. She['s] been denied the center stage i[n] party and state politics but ha[s ex]ercised leadership and influen[ce] far beyond the simple positio[n]

Ethics...

Continued from Page 1

status. Finkelstein himself worked as a legislative aide for an Anchorage senator before running for office. At least seven other legislators worked as aides before assuming office.

Mulder said he spoke to Craft and other top senators before he filed for office.

"They all said there was nothing prohibiting it, nothing barring it, so I did it," he said. "To say I can hand money to people or influence the distribution of funds is not accurate at all."

Mulder said he is waiting until the end of session to raise money, as is Robinson.

Candidates cannot raise funds until they file a letter of intent with the Alaska Public Offices Commission.

Robinson said not being able to file until after the session also would also put her at a disadvantage with opponents who are not lawmakers.

"You are put in the underdog status, your opponents are able t[o ...] support," she said. "They've [...] fund-raising letters. ... It de[...] puts that staff person in an [...] disadvantage."

Robinson is running for th[e Men]denhall Valley House seat crea[ted by] Gov. Walter J. Hickel's reapp[ortion]ment plan, which is in the ha[nds of] Juneau Superior Court Judge [...] Weeks who is to rule on five [chal]lenges to the plan, includin[g ...] partly financed by the city-boro[ugh].

Chuck [...] and Robe[...] city-borough assembly m[...] George Davidson, a Republica[n].

Both Robinson and Dinding[...] their candidacy hinges on H[ickel's] reapportionment plan bein[g ap]proved. They say they will wit[hdraw] if Rep. Bill Hudson, a Juneau [Repub]lican, is not able to run for [...] Senate seat, created by Hicke[l...] includes the Matanuska and M[enden]hall valleys and the Prince W[...]

Liability...

Continued from Page 1

ments continued, the long hours began to take their toll on lawmakers.

Rep. Ramona Barnes, R-Anchorage, accused environmental activist Chip Thoma of distributing a letter to lawmakers suggesting those who support the bill are taking money from an oil lobbyist. She moved to have Thoma removed from the gallery, but House Speaker Ben Grussendorf called a recess to let tempers cool.

The main part of the bill, dealing with the immunity issue, has been a subject of less debate. Proponents say that without the immunity, the risk of damage lawsuits could lead cleanup contractors to not respond to spills.

"From The Apothecary Jar"

Possible cure for cystic fibrosis came a big step closer as doctors at the National Heart, Lung and Blood Institute, Bethesda, Maryland, successfully implanted healthy copies of a defective gene into the lungs of experimental animals. Human tests are a year away.

• • •

Isolated systolic hypertension (when ...

daily news
5/12/92

Sen. Jim Duncan, Rep. Mike Navarre, Sen. Jay Kerttula and Sen. Dick Shultz confer on funding for the Alaska Aerospace Corp. in Juneau on Monday. The House-Senate conference committee finished its work on the state operating budget Monday night.

Cole: Spill bill full of 'loopholes'

By RALPH THOMAS
Daily News reporter

JUNEAU — Attorney General Charlie Cole went into his trial-lawyer mode Monday — pounding a table and waving exhibits — to make his case that Alyeska Pipeline Service Co. should be bound by law to clean up all crude oil spills in Prince William Sound.

Cole, testifying before the Senate Oil and Gas Committee, criticized a cleanup contract between Alyeska and BP Exploration to illustrate his argument that the state has no "ironclad" assurances Alyeska will act if there's another spill. He said there are many holes in the fine print of the contracts that could allow Alyeska to stay on the beach.

"I guarantee you, if there's a spill and Alyeska's out there and somehow they don't respond, there'll be enough lawyers from Texas on the landing strip, heading into Valdez, that it'll blow the fuses in the system, saying, 'You see, it is in the fine print.' "

Monday's hearing was the Senate's first on the oil spill liability bill that shackled the House for three days last week. The bill's primary purpose is to give cleanup contractors some immunity from damage claims.

The House measure used to include a clause making Alyeska responsible for

Please see Back Page, **SPILL BILL**

■ **RACE TO ADJOURNMENT:** More on the legislature in Metro. **B-1**

■ **SPILL TEST CANCELED:** Permit delay kills plan to burn 1,000 barrels. **B-4**

ERIK HILL / Anchorage Daily News
Attorney General Charlie Cole

TUESDAY
RAIN LIKELY
High 48; low 38
Details, Page A-8
Weatherline, 278-7000

SECTIONS

FEATURES

Stray bullets in shooting of teen hit hotel room

Police say store owner emptied gun; guests found bullet holes

BILL ROTH / Anchorage Daily News
Police keep watch Monday at the Lo-Mark store.

By MARILEE ENGE
and PETER BLUMBERG
Daily News reporters

The store owner who shot a fleeing teen-ager in the back late Saturday also fired at least two stray rounds through the wall of a neighboring hotel, according to two guests who found bullet holes in their room.

"Not only did he kill that child, he could have killed one or both of us," said Deborah Mihalko, who shared the room with her husband Paul.

Anchorage police said Clyde Thompson, 18, was shot and killed by the owner of Lo-Mark Furniture, at 9th Avenue and Gambell Street. The owner spotted the youth and several friends trying to steal a helium-filled advertising balloon from the roof of the furniture store.

Police Chief Kevin O'Leary said the gunman emptied a six-shot revolver in the attack.

The balloon was bounty in a scavenger hunt organized by Service High School seniors.

The police have not identified the shooter by name, but neighbors and official business documents list the store owners as James Lowe and his wife, Donna.

Lowe has not been charged in the shooting. Police say they are continuing their investigation.

Assistant District Attorney Steve Branch-

Please see Back Page, **SHOOTING**

■ **TO OWN A GUN OR NOT:** One man who thought he had the question answered struggles with it again. **B-1**

Best friend plans memorial pool tournament

Family and friends remember scavenger-hunt shooting victim as 'fun-loving guy'

"the baby," according to his

scraps redistricting

REAPPORTIONMENT BACKGROUND

■ **WHAT IS REAPPORTIONMENT?:** The redrawing of election districts based on the every-10-year census to conform to the one-person, one-vote rule of the U.S. Supreme Court. The redrawing aims to ensure that each elected official represents the same number of citizens.

■ **HOW ALASKA IS DISTINCT?:** It's the only state that gives the governor almost total power to draw state House and Senate districts. Gov. Wally Hickel finished his plan last fall.

■ **WHAT HAPPENED TO HICKEL'S PLAN?:** A coalition of Democrats, Natives and local governments sued in state court to strike down Hickel's plan. After a two-week trial in Juneau, Superior Court Judge Larry Weeks threw it out.

■ **WHY?:** Judge Weeks said Hickel's five-member reapportionment board broke state laws requiring open meetings and records while crafting much of the plan in secret. He ruled the plan violated Alaskans' constitutional rights to be treated equally ...duals and groups.

: The state will ask the Alaska Supreme Court ... ks' order. Failing that, the state must come up with a new plan in 40 days and allow the plaintiffs to help craft it. The filing deadline for this year's elections is June 1. If a plan is not approved by then, the state could extend the deadline or the court could order the elections conducted using Alaska's existing districts.

fer:

"I told Georgianna, 'You ...y out of my district and I stay out of yours,'" Ma...ean said.

In his press conference, ...le said Weeks didn't real... how hard it was to fol...w the federal Voting ...ghts Act and the state ...nstitution at the same ...ne.

"I think Judge Weeks, in ...s opinion, sort of tossed ...f the requirements of the ...ting Rights Act lightly," ...le said.

Elsewhere in the Capitol, ...ws of Weeks' ruling ...ought smiles, jokes and ...lief. By 11 a.m., legislative ...ies had hijacked the big ...llway copiers on five of ...e six floors of the capitol ...d were churning out cop...s of the 106-page decision.

"Oh, what a tangled web ...weave, when first we set ...t to deceive," said Sen. ...liss Sturgulewski, R-An...orage, when she learned of ...e decision about 9 a.m. ...nday.

Unlike most politicians in ...e building, who plan to ...n this year, Sturgulewski ...retiring.

"There are many smiling faces around here," she said.

House Speaker Ben Grussendorf, D-Sitka, didn't like the way Sitka would have been divided by the Hickel plan.

"You've heard of blind justice? That old lady couldn't help but lift her blindfold and peek on this one," he said.

"It would have been the worst race," said Joyce Kerttula, wife and aide to Sen. Jay Kerttula, the Palmer Democrat who has won all but one campaign for the legislature since his election to the House in 1960.

Kerttula would have faced a tough choice. He could have tried to file for the "frequent flier" district that joined Juneau's Mendenhall Valley with an area in Mat-Su where he owns a farm house.

The other choice was to run in a Palmer-Eagle River district against Sen. Sam Cotten in the Democratic primary. If he won that, he would have faced Sen. Rick Halford, R-Chugiak, in the general election.

"We still would have won, though," she said.

SPILL BILL: Cole: Contract full of holes

Continued from Page A-1

cleaning up all crude spills in Prince William Sound. But the provision was scrapped last week on the House floor and replaced with one that would rely on the cleanup contracts Alyeska now has with oil shippers to ensure a response.

The Alyeska clause was put back in Monday night, however, after the Senate oil and gas panel — led by chairman Sam Cotten, D-Eagle River — rewrote the bill once more. The measure now has one day — all that's left in the session — to get past the Senate Judiciary Committee, the full Senate and another House vote.

Meanwhile, the administration took its strongest stand yet when Steve Hole, Gov. Wally Hickel's deputy chief of staff, said the governor would veto the spill liability bill if it comes to him without the Alyeska provision.

In the aftermath of the 1989 Exxon Valdez oil spill, Alyeska has said it will respond to spills on a "volunteer" basis, bound only by its contracts with shippers. But, in lawsuits over the spill, state and federal lawyers contend the pipeline consortium is legally responsible for cleaning up all tanker spills.

Cole said Hickel asked him to pull and review one of Alyeska's cleanup contracts. He picked one signed in 1990 between the pipeline firm and its largest parent company — BP Exploration.

Cole also blasted a section of the contract that says, "Alyeska shall have the right in its sole discretion, but shall have no obligation, to replace any vessel or equipment ... (if it) becomes inoperative or unavailable ... as a result of deficiency of men or stores."

"Does that give you a lot of comfort?" Cole said. "They just say ... 'Goodness, we have a little deficiency of personnel to run these boats. Maybe we forgot to put some oil in the engine.' I don't know."

He went on, "The House would say, 'That's good enough for us, boys. We have a lot of assurance that Alyeska's going to be right out there.' Sure."

Wood couldn't explain what the clause meant, but said the state has the power under existing cleanup regulations to review the contracts.

"And I'm sure the ship owners would be more than willing to sit down and talk about that if he's got a problem," Wood said.

That's exactly what Cole has in mind. He said his review of the Alyeska-BP contract had so alarmed the administration that the Department of Law will now take a close look at the rest of Alyeska's cleanup contracts. And Cole said the state would jerk a shipper's cleanup plan — required for operations in Prince William Sound — if companies fail to fix problems spotted by the state.

Since the 1989 spill, Alyeska has charged about $200 million in cleanup preparation costs to the tariff paid by the pipeline's owner companies, Cole said. About a quarter of that came out of the state's pocket, he said, because higher pipeline tariffs mean lower wellhead oil prices, which mean lower state revenues.

Holding up a document, Cole said, "Here's Alyeska pocketing — look at this — 50 million of the state's dollars. And they say, 'We don't have any duty to respond.'"

Cole questioned whether such costs can legitimately be included in the tariff. He said he would ask the state's attorney on pipeline tariff issues to file a complaint against Alyeska with the Federal Energy Regulatory Commission to try to recover the $50 million.

ts from firing that killed teen strike hotel room

$315 million from the state's general fund, according to the Legislative Finance Division. Several hundred million dollars more comes from the federal government, much of it for road, airport and other transportation projects.

not working properly, creating a health hazard.

• **Road work:** $8.5 million – mostly federal money – for road construction projects including widening, repaving and other work on Glacier Highway, Egan Drive, Doug-

• **Access road:** [illegible] for further study of road routes out of Juneau, including highways along the Taku River and up Lynn Canal.

• **School construction projects:** $800,000 to help plan a new elementary school, repair existing schools,

• **Fire training center repairs:** $150,000 toward $256,000 needed for roof repairs at the William Hagevig Regional Fire Training Center, operated by the municipality.

• **JAMI renovations:** $150,000 for

Please turn to Projects, Page 8

[illegible] ber to retire by Aug. 1, 1993.

Municipal government workers can apply January through June 1993, to retire by February 1994.

Duncan's bill, which passed the

Please turn to RIP, Page 8

CLOUDY

Cloudy tonight with light winds and low temperatures in the lower 40s.

The outlook for Wednesday is a 50 percent chance of light rain, with high temperatures in the lower 50s. **Page 2**

STOCKS

The Dow Jones average of 30 industrials fell 12.46 to 3,385.12.

Declining issues outnumbered advances by about 4 to 3 on the New York Stock Exchange, with 731 up, 978 down and 551 unchanged.

Big Board volume totaled 194.45 million shares today, against 155.74 million shares Monday.

The NYSE's composite index fell 1.02 to 229.45. **Page 7**

INDEX

Hudson in an oil-spill mess

Lawmaker attacked on cleanup legislation

By DIRK MILLER
THE JUNEAU EMPIRE

For most of his political life, Juneau Rep. Bill Hudson has tread the middle ground, seeking compromise between liberal and conservative colleagues.

Some of his critics, though, say he crossed that centerline this session, steering a bill through the House that would loosen the standards that oil-spill cleanup contractors are held to in the event of lawsuits.

Hudson's bill stumped the House for more than two days while the Juneau Republican laboriously worked to remove a provision added to the bill that would have made Alyeska Pipeline Service Co. responsible for cleaning up all crude-oil spills in Prince William Sound.

Now, Hudson finds himself in the center of an emotional battle pitting his bill on the side of big oil companies, opposing fellow members of the House majority, the attorney general's office and environmental groups. It has been an unusual position of power for Hudson, who for his previous two terms was a member of the powerless House minority.

Environmentalists say Hudson used his power on the oil industry's behalf and that he relied on industry lawyers, rather than the state, for advice.

Hudson said that is untrue and unfair.

His bill, he said, requires Alyeska to provide cleanup services on a contract basis to shipping companies, an improvement over current law.

But in court cases over the 1989 Exxon Valdez oil spill, Alaska and the federal government have asserted that Alyeska is required to clean up all tanker spills in Prince William Sound.

Alyeska operates the trans-Alaska pipeline and the Valdez tanker terminal. It is owned by seven North Slope oil producers: Exxon, Arco, British Petroleum, Mobil, Amerada Hess, Phillips and Unocal.

The bill's original intent was to reduce the liability of companies that respond to oil spills. Under Hudson's bill, to win a lawsuit against a cleanup company, a person would have to prove "gross negligence" in order to collect damages. Currently, the law requires a lesser standard, called "simple negligence."

Hudson said the change would ease the burden faced by fuel shippers along Alaska's coastline. It also would encourage oil-spill responses, he said, by reducing the risk of lawsuits faced by cleanup contractors.

The bill would also help Tesoro Alaska Petroleum in a dispute with Alyeska over bonding requirements.

Hudson said state attorneys have failed to adequately help him with the legislation and he admits he has relied on industry lawyers for advice.

"One has to be aware of the fact that they (state lawyers) are in court asserting claims for damages that relate to the grounding of the Exxon Valdez," he said. "While they have asserted that nothing they have counseled us on or nothing that they would have in this law is intended to positively or negatively affect those actions, they seem to be consistently trying to reassert them in this law."

To pass his version of the bill, Hudson had to create an odd coalition of 13 members of the Democratic-led House majority and all 13 members of

Please turn to Hudson, Page 8

MARK KELLEY/JUNEAU EMPIRE

Rep. Bill Hudson: 'It hurts me to find myself denigrated. ...'

Climber survives long fall

THE ASSOCIATED PRESS

ANCHORAGE – A man who survived a deadly fall on Mount McKinley this week says he plans to return to his other love: piano playing.

Tim Hagan won't play much, though, until the left side of his body heals from a 1,500-foot fall off the west buttress of Mount McKinley on Sunday.

Another climber on Mount McKinley wasn't so lucky. Page 6.

"I thought this was it," Hagan recalled Monday from his hospital bed in Anchorage.

Hagan, 38, and climbing partners Tim Hood and Paul Kogelmann – all from the Seattle area – met in Talkeetna 17 days ago for their ill-fated three-week assault on McKinley.

The climbers had made their way to the 13,000-foot level when Hood developed fluid in the lungs and had to be helped down off the mountain.

Please turn to Climber, Page 8

WEDNESDAY: THE ALASKA MARINE HIGHWAY SYSTEM [illegible]

Juneau Empire 5/12/92

bills and resolutions in a
n, day-and-night floor ses-
nday. Most were measures
chambers agreed needed to
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sual, was considerably slow-

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ecial Committee on Oil and
committee heard Attorney
Charles Cole make a final
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Pipeline Service Co. to re-
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ommittee chairman, Sen.
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ys last week, exacerbating
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battered women's and chil-
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OO-FM and TV: $35,000 to-
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aska Trails Council: $5,000 to
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funds.

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an, who has been climbing
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rs, broke his left arm in a
in avalanche in Scotland in
Mount McKinley was his first
peak.
he says he probably will not
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o climb. I was going to do
r this summer, but I think I'll
e hikes for awhile."
t, he said, he plans to play the

RIP...

Continued from Page 1

Senate in February, went through some changes before gaining House approval Monday.

A provision was added allowing the state to resurrect the program in following years if the state faces serious financial problems or layoffs are imminent.

"There's an automatic triggering device that says the commissioner of the Administration Department can initiate a retirement incentive program whenever the commissioner thinks it should be appropriate," said Juneau Democratic Rep. Fran Ulmer, who carried the bill through the House.

The House also inserted a provision that prohibits state workers for three years from taking over their old jobs on a contract basis after taking early retirement.

Before the bill was passed, it came under attack from several House Republicans who said it would cost money and only benefit government workers.

Rep. Robin Taylor said too many state workers quit and come back to make money working on contract. "All of these people want to have their cake and eat it too," the Wrangell Republican said.

Rep. Terry Martin said the bill defeats the purpose of training government employees, especially teachers. "We pay good teachers to stay in the system," said the Anchorage Republican. "Now we're going to say, 'Get out of it, you're making too much money."

The bill passed the House 28-10. The Senate concurred with the House changes on a quick 13-7 vote this morning.

Gov. Walter J. Hickel is expected to sign the legislation. His administration commissioner, Nancy Bear Usera, gave her support to the bill as a budget-cutting tool in February.

Though the Herolds and hundreds of other public sector workers may opt out of their jobs, the program is not for everyone.

Marie Drake Middle School sixth grade teacher Mary Becker said she considered taking early retirement but probably won't.

"It's a good money-saver for the school district and it's good for teachers too," said Becker, as she helped pack up about 80 students this morning for a three-day survival school at Echo Bay.

"I probably won't take it because I enjoy teaching so much. I had thought about it, but I guess I'm just not ready for it," she said.

Hudson...

Continued from Page 1

the Republican-led House minority. The bill passed 26-14 on Friday afternoon, after locking the House up in debate for more than two days.

"There's eight of us that have been reaching out within the caucus to gain a little more balance, a little less green, and a little more middle ground and a little less liberal and a little more conservative," he said. "Sometimes we have to force our way, to form these strange coalitions in order to get the job done."

Though his main intent in the legislation was to ease the financial risk to spill cleanup contractors, Hudson spent most of the marathon debate trying to remove a provision added in another committee that required Alyeska to respond to all oil spills in Prince William Sound.

"Most of us who lived through it called it the debate from hell," said Rep. Fran Ulmer, D-Juneau.

Sen. Sam Cotten, D-Eagle River, the Oil and Gas Committee chairman in the Senate, said Hudson "flip flopped" during the long hours of discussion on the bill. "He was pounded on by both sides," Cotten said. "He'd seem like he agreed on something and then wouldn't do it."

Attorney General Charles Cole undid Hudson's work Monday in Cotten's committee. He said the Hickel administration opposes Hudson's bill.

Though Alyeska says its cleanup obligations are spelled out in its contracts with oil shippers, Cole said the state wants it specified in law that the pipeline service company is responsible for spill cleanups.

"I don't question his (Hudson's) motives, I know he's worked very hard on this bill," Cole said.

But others have attacked Hudson.

Riki Ott is one of the people behind the Oil Reform Alliance, a group formed after the Exxon Valdez spill to try and affect changes in state oil-spill laws.

She said Hudson has used his power as a lawmaker to help the industry, ignoring the people of Prince William Sound. "He is in my opinion, one of the more dangerous legislators down here," Ott said. "He pretends to be what he isn't."

In 1990, the Alaska Environmental Lobby rated Hudson as one of the most environmentally friendly members of the House's Republican minority caucus. Hudson voted to pass legislation favored by environmentalists more times than any of his Republican colleagues during the 1989 and 1990 sessions.

... of lawmakers will not be ... said Marna Sanford, executive direc-

tor of the lobby.

Last session, Hudson joined the Democrat-led majority in return for the chairmanship of a newly created special committee on oil and gas. Since then, Ott said, Hudson's campaign contributions from oil interests have risen.

"If you look at his campaign contribution sheets, he's gotten more and more oil money," Ott said.

In 1991, Hudson received $4,900 from oil companies – $3,000 from Alyeska's owner companies and $400 from Alyeska lobbyists. In 1990, an election year, Hudson received $3,000 from Alyeska's owner companies and another $750 from other oil interests.

Hudson said the campaign money came in unsolicited. "It hurts me to find myself denigrated as someone who may not care about the sound or is favoring big oil."

Hudson, meanwhile, has aspirations to a Senate seat that was created by Hickel's reapportionment plan, which includes the Mendenhall Valley, Prince William Sound and parts of the Matanuska Valley north of Anchorage. The plan, however, was rejected Monday by Juneau Superior Court Judge Larry Weeks.

"It's not in my best interest to anger a bunch of emotional fishermen in Prince William Sound," Hudson said. "When you do legislation for the state of Alaska, you have to do what you think is right and face the political consequences of your decision."

Industry officials say Hudson has been misjudged by environmental groups.

Larry Wood, an Alyeska attorney, said the company worked with Hudson because he understood the issue and was in favor of spill-cleanup liability changes.

"Rep. Hudson has been one of the legislators that has supported the adoption of limited responder immunity in Alaska," Wood said. He denied that Hudson was toeing the industry's line.

"I think Rep. Hudson has very carefully listened to all sides of the issue," Wood said, "and has formulated decisions based upon input that he's received from all sides to it."

— Richard "Chip" Mullen, manager of the Southeast Alaska Petroleum Resource Organization in Ketchikan, said Hudson's bill would keep the coalition of 20 fuel suppliers and consumers afloat. The group is a network that allows the sharing of spill-response equipment in Southeast.

"If our companies cannot transport oil in compliance with the law, they will not transport oil," Mullen said. "I think he has exhibited a high degree of professional statesman qualities."

The organization includes Echo Bay Mines, Greens Creek Mi...

Council Recommendations

came off the president's podium and followed Halford off the Senate

was a result of lawmakers delaying their business until the last minute.

case to join the House floor under way upstairs.

Juneau Empire 5/12/92

Cole: Alyeska owes state $50 million for spill deductio[n]

THE ASSOCIATED PRESS

The battle over an oil spill liability bill continues in Juneau. Attorney General Charles Cole says he will demand that Alyeska Pipeline Service Co. repay $50 million to the state.

The money represents the amount the state lost in oil revenues over the past four years due to Alyeska's Exxon Valdez spill cleanup costs, Cole told a Senate oil and gas committee on Monday.

"Here's Alyeska pocketing $50 million of the state's dollars and they're saying, 'We don't have any duty to respond,'" Cole said.

He said he would start tariff proceedings with the Federal Energy Regulatory Commission in Washington to get the money returned – plus interest.

"They're entitled to only necessary operating expenses," Cole said. "If they say they have no duty to respond to a spill, then it's not a necessary or reasonable operating expense."

Alyeska attorney Larry Wood said Cole had no legal basis to ask for the money's return.

The demand was the latest volley in the fight over an oil spill liability bill passed by the House earlier this week. Cole and a key Democratic senator are trying to change the bill.

Sen. Sam Cotten, D-Eagle River, put a legal provision in a substitute bill Monday that would force Alyeska to start cleanups of any tanker spill in Prince William Sound.

The bill must go through the Senate Judiciary Committee, be passed on the Senate floor and returned for House approval – all before midnight tonight – to become law.

Alyeska maintains in Exxon Valdez lawsuits it is a "volunteer" spill responder and that Alyeska's only legal duties to clean up spills are outlined in privately negotiated contracts with shippers. They say the contracts are enough to ensure the company contains spills in Prince William Sound.

Cole has said that the contracts are not enough to protect the state. On Monday he used an Alyeska contract with BP America Inc. to prove his point. A clause says Alyeska would not have to replace cleanup equipment that breaks, gets stranded or is "unavailable" because Alyeska does not have the people to run it.

"That give you a lot of comfort?" Cole asked the Senate Judiciary Committee. "The House would say, 'That's good enough for us, boys.'"

Cole also denounced a section he said wou[ld] Alyeska to avoid spills over 1,000 barrels, but A[...] Wood said Cole was misreading the contract. Co[...] the contract "confusing."

The Exxon Valdez spilled 250,000 barrels, n[...] million gallons, after it hit Bligh Reef on March 2[...]

The contracts also do not cover "orphan" s[...] no shipper will claim. Alyeska said the Coa[...] should clean those spills and give the federal go[...] the bill. Cole said giving responsibility to any [...] tion other than Alyeska would create confusion [...] response in the critical early hours of a spill.

"The state is not a party to these contracts. [...] know the terms of these contracts and we have [...] monitoring these contracts," Cole said.