

SCOMM

78:42

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

Volume III:     Passage of HB 567 from Introduction to Legislature to Consideration by the Senate Special Committee on Oil and Gas

1. Summary of legislative history of HB 567.
2. Transmittal letters from Governor Steve Cowper to Speaker of the House Sam Cotten and President of the Senate Tim Kelly for HB 565, HB 566 and HB 567 (2/21/90).
3. Drafts of HB 567 from Department of Law File No. 773-90-0053 (dated February 1990).
4. "Letter of Intent for HB 567" (undated).
5. Fiscal Note for HB 567 from DEC (2/19/90); and Fiscal Note for HB 567 from Alaska Department of Fish and Game (ADF&G) (2/14/90).
6. Charts listing the existing and proposed financial responsibility requirements for non-crude barges, existing non-crude barge companies, non-crude terminals, and Barrow non-crude terminals (undated).
7. "SB 504/HB 567" summarizing contents of the 2/21/90 version of these bills (undated).
8. Memorandum from Representatives Menard and Davidson, Co-chairmen of the House Resources Committee to all teleconference sites enclosing charts of issues in HB 565 and HB 567 to be discussed at teleconference (undated).
9. Excerpts from minutes of House Resources Committee meeting held on 2/26/90 regarding HB 565, HB 566, and HB 567.
10. Letter from Walt Schlotfeldt, President of Petro Star Inc. to Representative Curt Menard voicing concerns regarding HB 567 (3/7/90).
11. Excerpts from minutes of House Resources Committee meeting held on 3/8/90 regarding HB 565, HB 566 and HB 567.
12. Comments of the Alaska Rural Electric Cooperative Association on HB 567 and SB 504 (3/8/90).
13. Excerpts from minutes of House Resources Committee meeting held on 3/9/90 regarding HB 565, HB 566 and HB 567.



14. Written testimony on HB 567 by Dave Bouker, General Manager of Nushagak Electric Cooperative (3/9/90).
15. Memorandum from Bernie Saupe, Saupe Enterprises, Inc. to House Resources Committee expressing concerns about effect of HB 567 on small fuel distributors (3/8/90).
16. Written testimony on HB 565, HB 566, and HB 567 by Riki Ott, Oil Reform Alliance (3/9/90).
17. Letter from Tim Robertson, Vice President of Oil Spill Prevention and Response, Regional Citizen Advisory Committee to Representative Curt Menard enclosing position paper on various proposed legislation, including HB 567 (3/12/90).
18. Excerpts from minutes of House Resources Committee held on 3/14/90 on HB 567.
19. Memorandum from DEC Commissioner Dennis D. Kelso to Governor Steve Cowper presenting alternatives to the provisions currently in HB 567/SB 504 on additional requirements for financial responsibility and oil spill contingency plans for non-crude oil facilities (3/16/90).
20. "Statement of Jerry A. Aspland, President, ARCO Marine, Inc., Before the Alaska House Resources Committee, House Bill 567" (3/20/90).
21. Memorandum from Ray Gillespie, Gillespie & Associates, Lobbying and Governmental Affairs, to Representatives Menard and Davidson, Co-Chairmen, House Resources Committee regarding civil penalty and financial responsibility for non-crude oil distributors (3/21/90).
22. Letter from Jim Ramaglia, Vice President, North Pacific Fuel to Representative Cliff Davidson regarding financial responsibility and penalties with respect to refined oil terminals (2/21/90).
23. Memorandum from Assistant Attorney General John A. McDonagh to DEC Deputy Commissioner Amy Kyle regarding draft language on small terminal facilities issue; amends HB 567 by adding a new section AS 42.04.065 (3/20/90).
24. Graph and charts showing fuel storage capacity of 100 Alaska rural electric utilities by the Alaska Energy Authority (3/23/90).
25. Work draft of HB 567 (Resources) with handwritten notes (3/27/90).
26. Work draft of HB 567 (Resources) (3/28/90).
27. Amendment to CSHB 567 (Resources) (3/28/90).

28. Excerpts from minutes of House Resources Committee meeting held on 3/28/90
29. Memorandum from Ray Gillespie, Gillespie & Associates, Lobbying and Governmental Affairs, to Representatives Menard and Davidson, Co-Chairmen, House Resources Committee supplementing 3/21/90 memo on civil penalty and financial responsibility for non-crude oil distributors (3/29/90).
30. Letter from Dave Hutchens, Executive Director of the Alaska Rural Electric Cooperative Association, Inc. to Representative Cliff Davidson opposing increasing the rate of financial responsibility on refined storage petroleum storage tanks from \$25 to \$35 per barrel (3/29/90).
31. Typewritten notes on CSHB 567 by R. Foster (3/29/90).
32. Draft of HB 567 (Resources) with handwritten notes (3/30/90).
33. Excerpts from the minutes of House Resources Committee meeting held on 3/30/90.
34. House Committee Report by the House Resources Committee on HB 567 (3/30/90).
35. Draft of CS HB 567 (Resources) (4/2/90).
36. Fiscal Notes on CSHB 567 (Resources) and CSHB 567 (Finance) from DEC (4/2/90).
37. "CS HB 567 (Resources)" section analysis (4/2/90).
38. "HB 567/SB 504 Contingency Planning, Financial Responsibility, Tanker Inspections" with handwritten note (undated).
39. "Amendment to HB 567" proposing amending AS 46.04.040(c) "Proposed Amendment for H.B. 567" proposing amending AS 46.04.040(e); and "Analysis of Amendments" (4/11/90).
40. Miscellaneous amendments to CSHB 567 (Resources) (undated).
41. "Proposed Changes to House Bill 567 from CS HB 567 (Res) to CS HB 567 ( ) draft 4/20/90 changes relative to CS HB 567 (Res) (4/20/90).
42. Letter from W. Gene Burden, Vice President, Administration and Government Relations, Tesoro Alaska Petroleum Company, to House Finance Committee Members regarding the option of the State of Alaska of not enforcing the provisions requiring financial assurance (4/21/90).
43. Fiscal Notes from ADF&G for CSHB 567 (Finance) (4/23/90).





04/30/90 3750 (H) ADVANCED TO THIRD READING 5/1 CALENDAR  
 05/01/90 3785 (H) READ THE THIRD TIME CSHB 567(FIN) AM  
 05/01/90 3786 (H) PASSED Y25 N14 X1  
 05/01/90 3787 (H) EFFECTIVE DATE FAILED Y26 N13 X1  
 05/01/90 3787 (H) ...CHANGES TITLE OF LEGISLATION  
 05/01/90 3787 (H) JACKO NOTICE OF RECONSIDERATION  
 05/02/90 3805 (H) RECON TAKEN UP - IN THIRD READING  
 05/02/90 3806 (H) MOVED TO BOTTOM OF CALENDAR  
 05/02/90 3830 (H) IN THIRD READING  
 05/02/90 3831 (H) TITLE AMENDMENT BY NAVARRE  
 05/02/90 3831 (H) TITLE AMENDMENT ADP Y26 N12 X2  
 05/02/90 3832 (H) 2ND TITLE AMENDMENT BY HUDSON  
 05/02/90 3832 (H) 2ND TITLE AM FAILED Y19 N19 X2  
 05/02/90 3833 (H) RESCIND PREVIOUS VOTE FLD Y19 N19 X2  
 05/02/90 3833 (H) PASSED ON RECONSIDERATION Y25 N13 X2  
 05/02/90 3834 (H) EFFECTIVE DATE FAILED Y26 N12 X2  
 05/02/90 3846 (H) TRANSMITTED TO (S)  
 05/02/90 3841 (S) READ THE FIRST TIME - REFERRAL(S)  
 05/02/90 3841 (S) OIL & GAS, THEN FINANCE  
 05/02/90 4202 (S) O&G RPT SCS 2DP 1NR(TECH TITLE CHANGE)  
 05/08/90 4203 (S) TWO ATTACHED AMENDMENTS  
 05/08/90 4204 (S) LETTER OF INTENT WITH O&G REPORT  
 05/08/90 4205 (S) FNS PUBLISHED (DEC, F&G, DNR)  
 05/08/90 4205 (S) ZERO FN PUBLISHED (DNR)  
 05/08/90 4235 (S) FIN RPT SCS 2DP 5NR  
 05/08/90 4235 (S) FNS PUBLISHED (DEC, F&G)  
 05/08/90 4235 (S) ZERO FN PUBLISHED (DNR)  
 05/08/90 4235 (S) FIN RECOMMEND O&G LETTER OF INTENT  
 05/08/90 4258 (S) RULES TO CALENDAR 5/8/90  
 05/08/90 4271 (S) READ THE SECOND TIME  
 05/08/90 4271 (S) FIN SCS ADOPTED UNAN CONSENT  
 05/08/90 4272 (S) AM NO 1 MOVED BY COGHILL  
 05/08/90 4272 (S) AM NO 1 FAILED Y4 N16  
 05/08/90 4272 (S) ADVANCED TO THIRD READING UNAN CONSENT  
 05/08/90 4272 (S) ADOPTED O&G LETTER OF INTENT  
 05/08/90 4272 (S) READ THE THIRD TIME SCS CSHB 567(FIN)  
 05/08/90 4273 (S) PASSED Y19 N1  
 05/08/90 4273 (S) EFFECTIVE DATE SAME AS PASSAGE  
 05/08/90 4300 (S) TRANSMITTED TO (H) AS AMENDED  
 05/08/90 4338 (H) CONSIDER HB 567 Y26 N14  
 05/08/90 4338 (H) CONCUR AM OF (S) Y25 N15  
 05/08/90 4339 (H) EFFECTIVE DATE PASSED Y30 N10  
 06/22/90 4407 (H) 9:00AM 6/4/90 TRANSMITTED TO GOVERNOR  
 07/24/90 4576 (H) SIGNED INTO LAW 6/26 CHAPTER 191 SLA 90  
 07/24/90 4576 (H) EFFECTIVE DATE OF LAW 6/27/90

HB 568

"An Act relating to the definition of qualified domestic relations orders for retirement plan interest and payment exemptions."

PRIME SPONSOR: STATE AFFAIRS COMMITTEE

CURRENT STATUS: (H) JUD

STATUS DATE: 03/30/90

| JRN-DATE | JRN-PG | (H) | ACTION                            |
|----------|--------|-----|-----------------------------------|
| 02/22/90 | 2515   | (H) | READ THE FIRST TIME - REFERRAL(S) |
| 02/22/90 | 2515   | (H) | STATE AFFAIRS                     |
| 02/23/90 | 2539   | (H) | ADDITIONAL REFERRAL TO JUDICIARY  |
| 03/30/90 | 3029   | (H) | STA RPT 2DP 4NR                   |
| 03/30/90 | 3029   | (H) | -ZERO FISCAL NOTE (ADM) 3/30/90   |
| 03/30/90 | 3029   | (H) | REFERRED TO JUDICIARY             |

HB 569

CSHB 569(RES)

"An Act relating to the maximum length of salmon seine vessels."

PRIME SPONSOR: RESOURCES COMMITTEE

CURRENT STATUS: CHAPTER 24 SLA 90 STATUS DATE: 04/27/90

| JRN-DATE | JRN-PG | (H) | ACTION                                   |
|----------|--------|-----|------------------------------------------|
| 02/22/90 | 2515   | (H) | READ THE FIRST TIME - REFERRAL(S)        |
| 02/22/90 | 2515   | (H) | RESOURCES                                |
| 03/07/90 | 2658   | (H) | RES RPT CS(RES) 7DP 1NR                  |
| 03/07/90 | 2658   | (H) | -ZERO FISCAL NOTE (F&G) 3/7/90           |
| 03/13/90 |        | (H) | RULES TO CALENDAR 3/14/90                |
| 03/14/90 | 2767   | (H) | READ THE SECOND TIME                     |
| 03/14/90 | 2767   | (H) | RES CS ADOPTED UNAN CONSENT              |
| 03/14/90 | 2767   | (H) | ADVANCED TO THIRD READING UNAN CONSENT   |
| 03/14/90 | 2767   | (H) | READ THE THIRD TIME CSHB 569(RES)        |
| 03/14/90 | 2768   | (H) | PASSED Y38 N- X1 A1                      |
| 03/14/90 | 2768   | (H) | GRUENBERG NOTICE OF RECONSIDERATION      |
| 03/15/90 | 2800   | (H) | RECONSIDERATION NOT TAKEN UP             |
| 03/15/90 | 2800   | (H) | TRANSMITTED TO (S)                       |
| 03/16/90 | 2883   | (S) | READ THE FIRST TIME - REFERRAL(S)        |
| 03/16/90 | 2883   | (S) | RESOURCES                                |
| 03/29/90 | 3107   | (S) | RES RPT 5DP                              |
| 03/29/90 | 3107   | (S) | PREVIOUS H ZERO FN (F&G)                 |
| 04/07/90 | 3285   | (S) | RULES TO CALENDAR 4/7/90                 |
| 04/07/90 | 3289   | (S) | READ THE SECOND TIME                     |
| 04/07/90 | 3289   | (S) | ADVANCED TO THIRD READING UNAN CONSENT   |
| 04/07/90 | 3289   | (S) | READ THE THIRD TIME CSHB 569(RES)        |
| 04/07/90 | 3289   | (S) | PASSED Y17 N- X3                         |
| 04/07/90 | 3289   | (S) | RETURN TO (H), TRANSMIT TO GOVERNOR NEXT |
| 04/11/90 | 3263   | (H) | 12:00 PM 4/11/90 TRANSMITTED TO GOVERNOR |
| 04/28/90 | 3668   | (H) | SIGNED INTO LAW 4/27 CHAPTER 24 SLA 90   |
| 04/28/90 | 3668   | (H) | EFFECTIVE DATE OF LAW 7/26/90            |

HB 570

"An Act relating to state procurement."

PRIME SPONSOR: JUDICIARY COMMITTEE

CURRENT STATUS: (H) RUL

STATUS DATE: 04/05/90

| JRN-DATE | JRN-PG | (H) | ACTION                            |
|----------|--------|-----|-----------------------------------|
| 02/27/90 | 2566   | (H) | READ THE FIRST TIME - REFERRAL(S) |
| 02/27/90 | 2566   | (H) | TRANSPORTATION, STATE AFFAIRS     |
| 03/15/90 | 2786   | (H) | TRA RPT 3DP 2NR                   |
| 03/15/90 | 2786   | (H) | -ZERO FISCAL NOTE (ADM) 3/15/90   |
| 04/05/90 | 3161   | (H) | STA RPT CS(SA) 1DP 3NR            |
| 04/05/90 | 3162   | (H) | -PREVIOUS ZERO FN (ADM) 3/15/90   |
| 04/05/90 | 3162   | (H) | REFERRED TO RULES                 |

|          |      |     |                                          |
|----------|------|-----|------------------------------------------|
| 04/03/90 | 3112 | (H) | ADVANCE TO 3RD READING FLD Y21 N16       |
| 04/03/90 | 3112 | (H) | WILL ADVANCE TO 3RD RDG 4/4 CALENDAR     |
| 04/04/90 | 3142 | (H) | READ THE THIRD TIME CSHB 566(FIN)        |
| 04/04/90 | 3142 | (H) | PASSED Y23 N17                           |
| 04/04/90 | 3143 | (H) | EFFECTIVE DATE FAILED Y25 N15            |
| 04/04/90 | 3143 | (H) | PHILLIPS NOTICE OF RECONSIDERATION       |
| 04/05/90 | 3152 | (H) | RECON TAKEN UP - IN THIRD READING        |
| 04/05/90 | 3152 | (H) | TITLE AMENDMENT BY NAVARRE               |
| 04/05/90 | 3152 | (H) | TITLE AMENDMENT ADOPTED UNAN CONSENT     |
| 04/05/90 | 3153 | (H) | MOTION: RETURN TO SECOND FOR AM 3        |
| 04/05/90 | 3153 | (H) | AMENDMENT NO 3 BY REIGER                 |
| 04/05/90 | 3153 | (H) | RETURN MOTION ADOPTED Y28 N10 X2         |
| 04/05/90 | 3154 | (H) | AM NO 3 FAILED Y15 N22 X2 A1             |
| 04/05/90 | 3154 | (H) | PASSED ON RECONSIDERATION Y24 N13 X2 A1  |
| 04/05/90 | 3155 | (H) | EFFECTIVE DATE FAILED Y25 N13 X2         |
| 08/02/90 |      | (H) | ..CSHB 566(FIN)(TITLE AM)(EFD FLD)       |
| 04/05/90 | 3172 | (H) | TRANSMITTED TO (S)                       |
| 04/05/90 | 3248 | (S) | READ THE FIRST TIME - REFERRAL(S)        |
| 04/05/90 | 3248 | (S) | OIL AND GAS, THEN FINANCE                |
| 04/05/90 | 3248 | (S) | PUBLIC HEARING NOTICE WAIVED, RULE 23(A) |
| 04/11/90 | 3359 | (S) | O&G RPT SCS 4DP TECH TITLE CHANGE        |
| 04/11/90 | 3360 | (S) | FNS TO SCS PUBLISHED (DEC, MVA)          |
| 04/11/90 | 3360 | (S) | ZERO FN TO SCS PUBLISHED (LAW)           |
| 05/06/90 | 4085 | (S) | FIN RPT SCS 5DP 2NR (TECH TITLE CHANGE)  |
| 05/06/90 | 4086 | (S) | ZERO FN TO SCS PUBLISHED (DMVA, LAW)     |
| 05/06/90 | 4086 | (S) | FN PUBLISHED (DEC)                       |
| 05/08/90 | 4174 | (S) | RULES TO CALENDAR 5/8/90                 |
| 05/08/90 | 4193 | (S) | READ THE SECOND TIME                     |
| 05/08/90 | 4193 | (S) | FIN SCS ADOPTED UNAN CONSENT             |
| 05/08/90 | 4193 | (S) | ADVANCED TO THIRD READING UNAN CONSENT   |
| 05/08/90 | 4193 | (S) | READ THE THIRD TIME SCS CSHB 566(FIN)    |
| 05/08/90 | 4194 | (S) | PASSED Y19 N- X1                         |
| 05/08/90 | 4195 | (S) | EFFECTIVE DATE SAME AS PASSAGE           |
| 05/08/90 | 4300 | (S) | TRANSMITTED TO (H) AS AMENDED            |
| 05/08/90 | 4311 | (H) | HELD UNDER UNFINISHED BUSINESS           |
| 05/08/90 | 4318 | (H) | BRING UP FOR CONSIDERATION Y25 N14 A1    |
| 05/08/90 | 4319 | (H) | CONCUR AM OF (S) Y22 N18                 |
| 05/08/90 | 4320 | (H) | EFFECTIVE DATE FLD Y24 N16               |
| 05/08/90 | 4320 | (H) | ..SCS CSHB 566(FIN)(EFD FLD H)           |
| 06/22/90 | 4408 | (H) | MANIFEST ERROR REPORTED                  |
| 06/22/90 | 4409 | (H) | 11:45AM 6/4/90 TRANSMITTED TO GOVERNOR   |
| 07/24/90 | 4576 | (H) | SIGNED INTO LAW 6/26 CHAPTER 190 SLA 90  |
| 07/24/90 | 4576 | (H) | EFFECTIVE DATE OF LAW 9/24/90            |

HB 567

SCS CSHB 567(FIN)

"An Act relating to oil discharge prevention and contingency plan requirements, financial responsibility requirements related to oil, penalties, and inspection authority of the Department of Environmental Conservation; relating to the oil and hazardous substance release response fund and responses to oil and hazardous substance emergencies; authorizing the Department of Environmental Conservation and municipalities to enter into agreements pertaining to vessel traffic control and monitoring systems; and providing for an effective date."

PRIME SPONSOR: RULES COMMITTEE

BY REQUEST OF THE GOVERNOR

CURRENT STATUS: CHAPTER 191 SLA 90

STATUS DATE: 06/26/90

| JRN-DATE | JRN-PG | ACTION                                       |
|----------|--------|----------------------------------------------|
| 02/22/90 | 2514   | (H) READ THE FIRST TIME - REFERRAL(S)        |
| 02/22/90 | 2514   | (H) RESOURCES, FINANCE                       |
| 02/22/90 | 2515   | (H) GOVERNOR'S TRANSMITTAL LETTER            |
| 02/22/90 | 2515   | (H) -2 FISCAL NOTES (DEC, F&G) 2/22/90       |
| 04/02/90 | 3067   | (H) RES RPT CS(RES) NEW TITLE 4DP INR        |
| 04/02/90 | 3068   | (H) -2 PREVIOUS FNS (DEC, F&G) 2/22/90       |
| 04/24/90 | 3473   | (H) FIN RPT CS(FIN) NEW TITLE 3DP 7NR        |
| 04/24/90 | 3473   | (H) -2 FISCAL NOTES (DEC, H.F./N) 4/24/90    |
| 04/25/90 |        | (H) RULES TO CALENDAR 4/26/90                |
| 04/26/90 | 3599   | (H) READ THE SECOND TIME                     |
| 04/26/90 | 3600   | (H) MOTION TO TABLE BILL UNAN CONSENT        |
| 04/30/90 | 3728   | (H) MOTION TO TAKE FROM TABLE PENDING        |
| 04/30/90 | 3729   | (H) TAKE OFF TABLE PASSED Y23 N16 X1         |
| 04/30/90 | 3730   | (H) IN SECOND READING                        |
| 04/30/90 | 3730   | (H) FIN CS ADOPTED UNAN CONSENT              |
| 04/30/90 | 3731   | (H) AMENDMENT NO 1 BY MENARD                 |
| 04/30/90 | 3731   | (H) AM NO 1 ADOPTED UNAN CONSENT             |
| 04/30/90 | 3731   | (H) AMENDMENT NO 2 BY MENARD                 |
| 04/30/90 | 3732   | (H) AM TO AMENDMENT NO 2 BY FURNACE          |
| 04/30/90 | 3732   | (H) AM TO AM 2 FLD Y17 N22 X1                |
| 04/30/90 | 3733   | (H) AM NO 2 ADOPTED Y34 N5 X1                |
| 04/30/90 | 3733   | (H) AMENDMENT NO 3 BY DONLEY WITHDRAWN       |
| 04/30/90 | 3734   | (H) AMENDMENT NO 4 BY HUDSON                 |
| 04/30/90 | 3734   | (H) AM NO 4 ADOPTED Y37 N2 X1                |
| 04/30/90 | 3735   | (H) AMENDMENT NO 5 BY HANLEY                 |
| 04/30/90 | 3735   | (H) AM NO 5 FAILED Y16 N23 X1                |
| 04/30/90 | 3735   | (H) AMENDMENT NO 6 BY PETTYJOHN              |
| 04/30/90 | 3736   | (H) AM NO 6 ADOPTED Y20 N19 X1               |
| 04/30/90 | 3736   | (H) AMENDMENT NO 7 BY FURNACE                |
| 04/30/90 | 3737   | (H) AM NO 7 FAILED Y16 N23 X1                |
| 04/30/90 | 3737   | (H) AMENDMENT NO 8 BY LEHAN                  |
| 04/30/90 | 3737   | (H) AM NO 8 FAILED Y17 N22 X1                |
| 04/30/90 | 3738   | (H) AMENDMENT NO 9 BY SHARP                  |
| 04/30/90 | 3738   | (H) AM NO 9 FAILED Y18 N21 X1                |
| 04/30/90 | 3739   | (H) AMENDMENT NO 10 BY HUDSON                |
| 04/30/90 | 3739   | (H) AM TO AM 10 ADOPTED UNAN CONSENT         |
| 04/30/90 | 3739   | (H) AM NO 10AM ADOPTED UNAN CONSENT          |
| 04/30/90 | 3739   | (H) AMENDMENT NO 11 BY TAYLOR                |
| 04/30/90 | 3740   | (H) AM NO 11 FAILED Y17 N22 X1               |
| 04/30/90 | 3741   | (H) AMENDMENT NO 12 BY LEHAN WITHDRAWN       |
| 04/30/90 | 3742   | (H) AMENDMENT NO 13 BY FURNACE               |
| 04/30/90 | 3742   | (H) AM NO 13 FAILED Y15 N21 X3 A1            |
| 04/30/90 | 3742   | (H) AMENDMENT NO 14 BY FURNACE               |
| 04/30/90 | 3743   | (H) AM NO 14 FAILED Y15 N22 X3               |
| 04/30/90 | 3743   | (H) AMENDMENT NO 15 BY HUDSON                |
| 04/30/90 | 3743   | (H) AM NO 15 FAILED Y15 N22 X3               |
| 04/30/90 | 3744   | (H) AMENDMENT NO 16 BY LEHAN                 |
| 04/30/90 | 3744   | (H) AM NO 16 FAILED Y15 N22 X3               |
| 04/30/90 | 3744   | (H) AMENDMENT NO 17 BY HUDSON                |
| 04/30/90 | 3745   | (H) AM NO 17 FAILED Y15 N22 X3               |
| 04/30/90 | 3745   | (H) AMENDMENT NO 18 BY ZAWACKI               |
| 04/30/90 | 3746   | (H) AM NO 18 FAILED Y15 N22 X3               |
| 04/30/90 | 3746   | (H) AMENDMENT NO 19 BY FURNACE               |
| 04/30/90 | 3746   | (H) AM NO 19 FAILED Y12 N25 X3               |
| 04/30/90 | 3747   | (H) AMENDMENT NO 20 BY LEHAN                 |
| 04/30/90 | 3747   | (H) AM NO 20 FAILED Y16 N21 X3               |
| 04/30/90 | 3748   | (H) AMENDMENT NO 21 BY TAYLOR                |
| 04/30/90 | 3748   | (H) AM NO 21 FAILED Y16 N21 X3               |
| 04/30/90 | 3748   | (H) AMENDMENT NO 22 BY FURNACE               |
| 04/30/90 | 3749   | (H) AM NO 22 FAILED Y14 N23 X3               |
| 04/30/90 | 3750   | (H) ADVANCED TO THIRD READING FLD Y23 N14 X3 |



2

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

773-90-0051  
773-90-0052  
~~773-90-0053~~

February 21, 1990

The Honorable Tim Kelly  
President of the Senate  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting three bills implementing recommendations made by the Alaska Oil Spill Commission.

One bill authorizes the governor to use the oil and hazardous substance release response fund, established under AS 46.08.010, to respond to declared disaster emergencies under AS 26.23.020(c). The bill also repeals the exception in AS 46.04.080(a) that requires the Department of Environmental Conservation (DEC) to perform the duties of the Division of Emergency Services during a catastrophic oil discharge. Finally, the bill creates in statute the State Emergency Response Commission, presently established by an administrative order.

Another bill extensively revises AS 46.03.758 - 46.03.763, which deals with civil penalties for oil spills. In general, the bill increases penalties for spills and eliminates unwarranted exemptions and defenses.

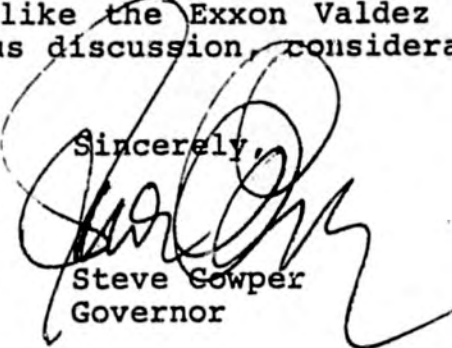
The third bill strengthens DEC's authority to require compliance with oil discharge contingency plans. Of particular significance is the requirement that applicants for contingency plans must maintain sufficient resources to contain and remove, within the shortest possible time, a realistic maximum oil discharge. Next, this bill increases the financial responsibility requirements for offshore oil exploration and production activities, to guarantee that in the event of another spill, significant financial resources will exist to compensate damaged parties, including the state. Finally, this bill authorizes DEC to inspect oil industry facilities and tankers to guarantee compliance with contingency plans and to assure structural integrity of the equipment.

Sectional analyses of each bill, describing the bills in detail, will be provided by my staff.

As you know, the Oil Spill Commission "Executive Summary," issued last month, includes over 50 recommendations. Through this legislation, as well as other bills already under consideration by the legislature (House Bill 409, Senate Bills 359, 421, and 497), most of those recommendations are being addressed. Furthermore, additional legislative proposals based upon these recommendations are still under consideration, and, after review of the full commission report, just released, additional proposals might be forthcoming.

The Oil Spill Commission, after extensive study, has identified several ways for the state to improve its ability to prevent future spills and to better respond if a serious spill occurs again. These bills are critical to prevent another disaster like the Exxon Valdez spill. I therefore urge your serious discussion, consideration, and passage of these measures.

Sincerely,



Steve Cowper  
Governor



STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

HB 565  
HB 566  
HB 567

February 21, 1990

The Honorable Sam Cotten  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting three bills implementing recommendations made by the Alaska Oil Spill Commission.

One bill authorizes the governor to use the oil and hazardous substance release response fund, established under AS 46.08.010, to respond to declared disaster emergencies under AS 26.23.020(c). The bill also repeals the exception in AS 46.04.080(a) that requires the Department of Environmental Conservation (DEC) to perform the duties of the Division of Emergency Services during a catastrophic oil discharge. Finally, the bill creates in statute the State Emergency Response Commission, presently established by an administrative order.

Another bill extensively revises AS 46.03.758 - 46.03.763, which deals with civil penalties for oil spills. In general, the bill increases penalties for spills and eliminates unwarranted exemptions and defenses.

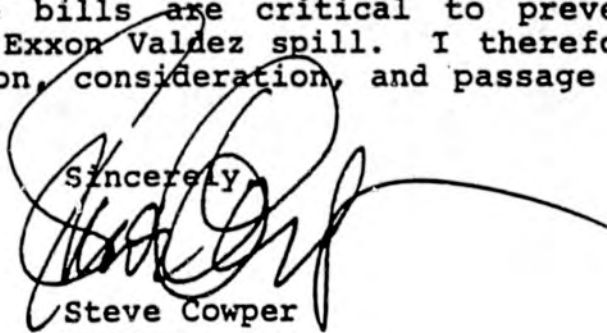
The third bill strengthens DEC's authority to require compliance with oil discharge contingency plans. Of particular significance is the requirement that applicants for contingency plans must maintain sufficient resources to contain and remove, within the shortest possible time, a realistic maximum oil discharge. Next, this bill increases the financial responsibility requirements for offshore oil exploration and production activities, to guarantee that in the event of another spill, significant financial resources will exist to compensate damaged parties, including the state. Finally, this bill authorizes DEC to inspect oil industry facilities and tankers to guarantee compliance with contingency plans and to assure structural integrity of the equipment.

Sectional analyses of each bill, describing the bills in detail, will be provided by my staff.

As you know, the Oil Spill Commission "Executive Summary," issued last month, includes over 50 recommendations. Through this legislation, as well as other bills already under consideration by the legislature (House Bill 409, Senate Bills 359, 421, and 497), most of those recommendations are being addressed. Furthermore, additional legislative proposals based upon these recommendations are still under consideration, and, after review of the full commission report, just released, additional proposals might be forthcoming.

The Oil Spill Commission, after extensive study, has identified several ways for the state to improve its ability to prevent future spills and to better respond if a serious spill occurs again. These bills are critical to prevent another disaster like the Exxon Valdez spill. I therefore urge your serious discussion, consideration, and passage of these measures.

Sincerely,

A large, stylized handwritten signature in black ink, likely belonging to Steve Cowper, is written over the word "Sincerely," and extends to the right.

Steve Cowper  
Governor

3



773-90-0053

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 567

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

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

9

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

11

\* Section 1. AS 46.04.030 is amended to read:

12

Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person

13

may not cause or permit the operation of an oil terminal facility in

14

the state unless an oil discharge contingency plan for the facility

15

has been approved by the department and has been properly implemented.

16

[THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO

17

APPROVE AN OIL DISCHARGE CONTINGENCY PLAN FOR THE PURPOSES OF THIS

18

SECTION.]

19

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

20

the operation of an offshore exploration or production facility in the

21

state unless an oil discharge contingency plan for the facility has

22

been approved by the department and has been properly implemented.

23

(c) A person may not operate a tanker vessel or an oil barge

24

within the waters of the state, or cause or permit the transfer of oil

25

to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]

26

an oil barge, unless an oil discharge contingency plan for the tank

27

vessel or oil barge has been approved by the department and has been

28

properly implemented. [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b),

29

IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS

1 SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL  
2 DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN  
3 APPROVED BY THE DEPARTMENT.]

4 (d) The department is the only state agency that has the power  
5 to approve, modify, or revoke an oil contingency plan for the purposes  
6 of this section, and the department shall exercise its power in a  
7 timely manner. Except for prosecutions under AS 46.03.790(b), it is  
8 not a defense to an action brought for a violation of (a) - (c) of  
9 this section that the person charged believed that a current oil  
10 discharge contingency plan had been approved by the department.

11 (e) Before the department approves or modifies an oil discharge  
12 contingency plan under this section, the department shall provide a  
13 copy of the oil discharge contingency plan to the Department of Fish  
14 and Game and to the Department of Natural Resources and shall provide  
15 those departments a reasonable opportunity to review and comment on  
16 the plan.

17 (f) An applicant for an oil discharge contingency plan required  
18 by this section shall maintain in its area of operation, singly or in  
19 conjunction with other operators in its area of operation, sufficient  
20 oil discharge containment, storage, transfer, and removal equipment,  
21 manpower, and resources to rapidly contain a realistic maximum oil  
22 discharge and to remove that discharge within the shortest possible  
23 time.

24 (g) An oil discharge contingency plan must be renewed at least  
25 every three years.

26 (h) [(e)] The department may attach reasonable terms and  
27 conditions to its approval or modification of an oil discharge  
28 contingency plan which the department [IT] determines are necessary to  
29 insure that the applicant for an oil discharge contingency plan has

1 access to sufficient resources to protect environmentally sensitive  
2 areas and to contain, clean up, and mitigate potential oil discharges  
3 from the facility or vessel within the shortest possible time after  
4 the discharge and to ensure that the applicant properly implements the  
5 oil discharge contingency plan [THE SHORTEST FEASIBLE TIME]. The oil  
6 discharge contingency plan must provide for the use of the best  
7 available technology by the applicant. The department may require an  
8 applicant or holder of an approved contingency plan to take steps  
9 necessary to demonstrate its ability to carry out the contingency  
10 plan, including

11 (1) periodic training;  
12 (2) response team exercises; and  
13 (3) verifying access to inventories of available equipment,  
14 supplies, and personnel.

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

23 (1) approval was obtained by fraud or misrepresentation;  
24 (2) the operator does not have access to the quality or  
25 quantity of resources identified in the plan; [OR]  
26 (3) a term or condition of approval or modification has  
27 been violated; or  
28 (4) the plan has not been properly implemented.

29 (j) [(g)] Failure of a holder of an approved or modified oil



1 discharge contingency plan to properly implement the plan, or to have  
2 access to the quality or quantity of resources identified in the plan  
3 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources  
4 within the shortest feasible time in the event of a spill, is a  
5 violation of this chapter for purposes of AS 46.03.760(a), 46.03.765,  
6 46.03.790, and any other applicable law. If the holder of an approved  
7 or modified oil discharge contingency plan fails to respond to and  
8 conduct cleanup operations of an unpermitted discharge of crude oil  
9 with the quality and quantity of resources identified in the plan and  
10 in a manner required under the plan, the holder is strictly liable,  
11 jointly and severally, for the civil penalty assessed under  
12 AS 46.03.758, 46.03.759, or 46.03.760 against any other person for  
13 that discharge.

14 \* Sec. 2. AS 46.04.040 is amended to read:

15 Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A  
16 person may not cause or permit the operation of a crude [AN] oil  
17 terminal facility in the state unless the person has furnished to the  
18 department, and the department has approved, proof of financial  
19 ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE  
20 DEPARTMENT]. Proof of financial responsibility may not be less than  
21 \$50,000,000 per incident. [ABILITY TO RESPOND IN DAMAGES NEED NOT  
22 EXCEED \$50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN \$10, PER  
23 INCIDENT, FOR EACH BARREL OF STORAGE CAPACITY AT THE OIL TERMINAL  
24 FACILITY: OR (2) \$1,000,000, WHICHEVER IS GREATER.]

25 (b) A person may not cause or permit the operation of a  
26 non-crude oil terminal or storage facility in the state unless the  
27 person has furnished to the department, and the department has ap-  
28 proved, proof of financial ability to respond in damages. Proof of  
29 financial responsibility may not be less than

1                   (1) \$1,000,000 for terminal or storage facilities with a  
2                   total storage capacity of 5,000 to 10,000 barrels; and

3                   (2) \$50,000,000 for terminal or storage facilities with a  
4                   total storage capacity of greater than 10,000 barrels.

5                   (c) A [AFTER JULY 1, 1981, A] person may not cause or permit the  
6                   operation of an offshore exploration or production facility in the  
7                   state unless the person has furnished to the department, and the  
8                   department has approved, proof of financial ability to respond in  
9                   damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial  
10                   responsibility may not be less than \$50,000,000 [\$35,000,000] per  
11                   incident.

12                   (d) [(c)] A person may not operate a tanker vessel or an oil  
13                   barge within the waters of the state, or cause or permit the transfer  
14                   of oil to or from a tank vessel, [OR, AFTER JANUARY 1, 1981, TO OR  
15                   FROM] or an oil barge, unless the person has furnished to the  
16                   department, and the department has approved, proof of financial  
17                   [RESPONSIBILITY] ability to respond in damages [FOR THE TANK VESSEL OR  
18                   BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial  
19                   responsibility may not be less than

20                   (1) \$500,000,000 per incident for a tank vessel or barge  
21                   carrying crude oil;

22                   (2) \$20,000,000 for a tank vessel or barge carrying  
23                   non-crude oil or other hazardous substance greater than 300 gross  
24                   tons;

25                   (3) \$1,000,000 for a tank vessel or barge carrying  
26                   non-crude oil or other hazardous substance less than or equal to 300  
27                   gross tons. [FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE  
28                   IN THE FOLLOWING AMOUNTS:

29                   (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE

1 TRANSPORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY  
2 THE FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC.  
3 204(c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

4 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY SEC  
5 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS GREATER;

6 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY SEC.  
7 311(p)(1) OF THE CLEAN WATER ACT, OR \$20,000,000, WHICHEVER IS  
8 GREATER.]

9 (e) [(d)] Except for prosecutions under AS 46.03.790(b), it is  
10 not a defense to an action brought for violation of (a) - (c) [(c)] of  
11 this section that the person charged believed in good faith that proof  
12 of financial ability to respond in damages had been furnished to, and  
13 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF  
14 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

15 (f) [(e)] Financial responsibility may be demonstrated by  
16 self-insurance, insurance, surety, [OR] guarantee, or other security  
17 approved by the department, under terms the department may prescribe.  
18 An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e),  
19 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER  
20 AS 46.03.759] may be brought in a state court directly against the  
21 insurer or another person providing evidence of financial  
22 responsibility. The applicant, and an insurer, surety, [OR]  
23 guarantor, or other person providing security approved by the  
24 department shall appoint an agent for service of process in the state.  
25 An insurer must either be authorized by the Department of Commerce and  
26 Economic Development to sell insurance in the state or be an  
27 unauthorized insurer listed by the Department of Commerce and Economic  
28 Development as not disapproved for use in the state.

29 (g) [(f)] Acceptance of proof of financial responsibility



1 expires

2 (1) one year from its issuance for self-insurance;

3 (2) on the effective date of a change in the surety bond,  
4 guarantee, [OR] insurance agreement, or other security approved by the  
5 department; or

6 (3) on the expiration or cancellation of the surety bond,  
7 guarantee, [OR] insurance agreement, or other security approved by the  
8 department.

9 (h) [(g)] The person whose proof of financial responsibility is  
10 accepted by the department under this section shall notify the  
11 department at least 30 days before the effective date of a change,  
12 expiration or cancellation in the surety bond, guarantee, [OR]  
13 insurance agreement, or other security approved by the department.  
14 Application for renewal of acceptance of proof of financial  
15 responsibility under this section must be filed at least 30 days  
16 before the date of expiration.

17 (i) [(h)] The department, after notice and hearing, may revoke  
18 acceptance of proof of financial responsibility if it determines that

19 (1) acceptance was procured by fraud or misrepresentation;  
20 or

21 (2) a change of circumstance has occurred other than a  
22 change specified in (f)(1) - (3) of this section, which would have  
23 warranted denial of the application.

24 (j) [(i)] Financial responsibility under this section extends to  
25 a loss compensable under AS 46.03.760(e) or 46.03.822 and an  
26 assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or  
27 AS 46.04.030(g).

28 \* Sec. 3. AS 46.04.050 is amended to read:

29 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of

1 the operations and the minimal danger to the environment posed by the  
2 activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an  
3 oil terminal facility that has an effective storage capacity of less  
4 than 5,000 [10,000] barrels of oil.

5 \* Sec. 4. AS 46.04.060 is amended to read:

6 Sec. 46.04.060. INSPECTIONS. In addition to any other rights of  
7 access or inspection conferred upon the department by law or  
8 otherwise, the department may at reasonable times enter and inspect  
9 oil [OIL] terminal facilities, [OFFSHORE] exploration and production  
10 facilities, tank vessels, and oil barges within the territorial  
11 jurisdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE  
12 DEPARTMENT] to

13 (1) ensure compliance with the provisions of this chapter;

14 or

15 (2) examine the structural integrity of tank vessels and  
16 oil barges.

17 \* Sec. 5. AS 46.04.900 is amended by adding a new paragraph to read:

18 (18) "realistic maximum oil discharge" means the maximum  
19 and most damaging oil discharge that the department estimates could  
20 occur during the lifetime of the vessel or facility based on the size,  
21 location, and capacity of the vessel or facility; on the department's  
22 knowledge and experience with the vessel or facility or with similar  
23 vessels or facilities; and on the department's analysis of possible  
24 mishaps at the vessel or facility or at similar vessels or facilities.

25 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

*Amend Cls / Bailly / Henry / McDon*

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

*separate  
copies*

1 IN THE HOUSE

2 HOUSE BILL NO. 567

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the strengthening of the state's  
7 oil contingency plan requirements, financial respon-  
8 sibility requirements, and inspection authority under  
9 AS 46.04; and providing for an effective date."

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

11 \* Section 1. AS 46.04.030 is amended to read:

12 Sec. 46.04.030. OIL DISCHARGE CONTINGENCY PLANS. (a) A person  
13 may not cause or permit the operation of an oil terminal facility in  
14 the state unless an oil discharge contingency plan for the facility  
15 has been approved by the department and has been properly implemented.  
16 [THE DEPARTMENT IS THE ONLY STATE AGENCY WHICH HAS THE POWER TO  
17 APPROVE AN OIL DISCHARGE CONTINGENCY PLAN FOR THE PURPOSES OF THIS  
18 SECTION.]

19 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit  
20 the operation of an offshore exploration or production facility in the  
21 state unless an oil discharge contingency plan for the facility has  
22 been approved by the department and has been properly implemented.

23 (c) A person may not operate a tanker vessel or an oil barge  
24 within the waters of the state, or cause or permit the transfer of oil  
25 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]  
26 an oil barge, unless an oil discharge contingency plan for the tank  
27 vessel or oil barge has been approved by the department and has been  
28 properly implemented. [EXCEPT FOR PROSECUTIONS UNDER AS 46.03.790(b),  
29 IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLATION OF THIS



1 SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CURRENT OIL  
2 DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE HAD BEEN  
3 APPROVED BY THE DEPARTMENT.]

4 (d) The department is the only state agency that has the power  
5 to approve, modify, or revoke an oil contingency plan for the purposes  
6 of this section, and the department shall exercise its power in a  
7 timely manner. Except for prosecutions under AS 46.03.790(b), it is  
8 not a defense to an action brought for a violation of (a) - (c) of  
9 this section that the person charged believed that a current oil  
10 discharge contingency plan had been approved by the department.

11 (e) Before the department approves or modifies an oil discharge  
12 contingency plan under this section, the department shall provide a  
13 copy of the oil discharge contingency plan to the Department of Fish  
14 and Game and to the Department of Natural Resources and shall provide  
15 those departments a reasonable opportunity to review and comment on  
16 the plan.

17 (f) An applicant for an oil discharge contingency plan required  
18 by this section shall maintain in its area of operation, singly or in  
19 conjunction with other operators in its area of operation, sufficient  
20 oil discharge containment, storage, transfer, and removal equipment,  
21 manpower, and resources to rapidly contain a realistic maximum oil  
22 discharge and to remove that discharge within the shortest possible  
23 time.

24 (g) An oil discharge contingency plan must be renewed at least  
25 every three years.

26 (h) [(e)] The department may attach reasonable terms and  
27 conditions to its approval or modification of an oil discharge  
28 contingency plan which the department [IT] determines are necessary to  
29 insure that the applicant for an oil discharge contingency plan has

1 access to sufficient resources to protect environmentally sensitive  
2 areas and to contain, clean up, and mitigate potential oil discharges  
3 from the facility or vessel within the shortest possible time after  
4 the discharge and to ensure that the applicant properly implements the  
5 oil discharge contingency plan [THE SHORTEST FEASIBLE TIME]. The oil  
6 discharge contingency plan must provide for the use of the best  
7 available technology by the applicant. The department may require an  
8 applicant or holder of an approved contingency plan to take steps  
9 necessary to demonstrate its ability to carry out the contingency  
10 plan, including

- 11 (1) periodic training;
- 12 (2) response team exercises; and
- 13 (3) verifying access to inventories of available equipment,  
14 supplies, and personnel.

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

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

29 (j) [(g)] Failure of a holder of an approved or modified oil

1 discharge contingency plan to properly implement the plan, or to have  
2 access to the quality or quantity of resources identified in the plan  
3 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources  
4 within the shortest feasible time in the event of a spill, is a  
5 violation of this chapter for purposes of AS 46.03.760(a), 46.03.765,  
6 46.03.790, and any other applicable law. If the holder of an approved  
7 or modified oil discharge contingency plan fails to respond to and  
8 conduct cleanup operations of an unpermitted discharge of crude oil  
9 with the quality and quantity of resources identified in the plan and  
10 in a manner required under the plan, the holder is strictly liable,  
11 jointly and severally, for the civil penalty assessed under  
12 AS 46.03.758, 46.03.759, or 46.03.760 against any other person for  
13 that discharge.

14 \* Sec. 2. AS 46.04.040 is amended to read:

15 Sec. 46.04.040. PROOF OF FINANCIAL RESPONSIBILITY. (a) A  
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17 terminal facility in the state unless the person has furnished to the  
18 department, and the department has approved, proof of financial  
19 ability to respond in damages [WHICH HAS BEEN ACCEPTED BY THE  
20 DEPARTMENT]. Proof of financial responsibility may not be less than  
21 \$50,000,000 per incident. [ABILITY TO RESPOND IN DAMAGES NEED NOT  
22 EXCEED \$50,000,000 BUT MUST BE IN AN AMOUNT (1) NOT LESS THAN \$10, PER  
23 INCIDENT, FOR EACH PARREL OF STORAGE CAPACITY AT THE OIL TERMINAL  
24 FACILITY: OR (2) \$1,000,000, WHICHEVER IS GREATER.]

25 (b) A person may not cause or permit the operation of a  
26 non-crude oil terminal or storage facility in the state unless the  
27 person has furnished to the department, and the department has ap-  
28 proved, proof of financial ability to respond in damages. Proof of  
29 financial responsibility may not be less than



1                   (1) \$1,000,000 for terminal or storage facilities with a  
2                   total storage capacity of 5,000 to 10,000 barrels; and

3                   (2) \$50,000,000 for terminal or storage facilities with a  
4                   total storage capacity of greater than 10,000 barrels.

5           (c) A [AFTER JULY 1, 1981, A] person may not cause or permit the  
6           operation of an offshore exploration or production facility in the  
7           state unless the person has furnished to the department, and the  
8           department has approved, proof of financial ability to respond in  
9           damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial  
10          responsibility may not be less than \$50,000,000 [\$35,000,000] per  
11          incident.

12          (d) [(c)] A person may not operate a tanker vessel or an oil  
13          barge within the waters of the state, or cause or permit the transfer  
14          of oil to or from a tank vessel, [OR, AFTER JANUARY 1, 1981, TO OR  
15          FROM] or an oil barge, unless the person has furnished to the  
16          department, and the department has approved, proof of financial  
17          [RESPONSIBILITY] ability to respond in damages [FOR THE TANK VESSEL OR  
18          BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial  
19          responsibility may not be less than

20                   (1) \$500,000,000 per incident for a tank vessel or barge  
21                   carrying crude oil;

22                   (2) \$20,000,000 for a tank vessel or barge carrying  
23                   non-crude oil or other hazardous substance greater than 300 gross  
24                   tons;

25                   (3) \$1,000,000 for a tank vessel or barge carrying  
26                   non-crude oil or other hazardous substance less than or equal to 300  
27                   gross tons. [FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE  
28                   IN THE FOLLOWING AMOUNTS:

29                   (1) FOR A TANK VESSEL OR OIL BARGE INVOLVED IN THE

1 TRANSPORTATION OF TRANS-ALASKA PIPELINE OIL, THE AMOUNT REQUIRED BY  
2 THE FEDERAL MARITIME COMMISSION UNDER 43 U.S.C. 1653(c)(3) (SEC.  
3 204(c)(3), TRANS-ALASKA PIPELINE AUTHORIZATION ACT);

4 (2) FOR ANY OTHER OIL BARGE, THE AMOUNT REQUIRED BY SEC  
5 311(p)(1) OF THE CLEAN WATER ACT, OR \$1,000,000, WHICHEVER IS GREATER;

6 (3) FOR ANY OTHER TANK VESSELS, THE AMOUNT REQUIRED BY SEC.  
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10 not a defense to an action brought for violation of (a) - (c) [(c)] of  
11 this section that the person charged believed in good faith that proof  
12 of financial ability to respond in damages had been furnished to, and  
13 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF  
14 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

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16 self-insurance, insurance, surety, [OR] guarantee, or other security  
17 approved by the department, under terms the department may prescribe.  
18 An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e),  
19 46.03.822, or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER  
20 AS 46.03.759] may be brought in a state court directly against the  
21 insurer or another person providing evidence of financial  
22 responsibility. The applicant, and an insurer, surety, [OR]  
23 guarantor, or other person providing security approved by the  
24 department shall appoint an agent for service of process in the state.  
25 An insurer must either be authorized by the Department of Commerce and  
26 Economic Development to sell insurance in the state or be an  
27 unauthorized insurer listed by the Department of Commerce and Economic  
28 Development as not disapproved for use in the state.

29 (g) [(f)] Acceptance of proof of financial responsibility

1 expires

2 (1) one year from its issuance for self-insurance;

3 (2) on the effective date of a change in the surety bond,  
4 guarantee, [OR] insurance agreement, or other security approved by the  
5 department; or

6 (3) on the expiration or cancellation of the surety bond,  
7 guarantee, [OR] insurance agreement, or other security approved by the  
8 department.

9 (h) [(g)] The person whose proof of financial responsibility is  
10 accepted by the department under this section shall notify the  
11 department at least 30 days before the effective date of a change,  
12 expiration or cancellation in the surety bond, guarantee, [OR]  
13 insurance agreement, or other security approved by the department.  
14 Application for renewal of acceptance of proof of financial  
15 responsibility under this section must be filed at least 30 days  
16 before the date of expiration.

17 (i) [(h)] The department, after notice and hearing, may revoke  
18 acceptance of proof of financial responsibility if it determines that

19 (1) acceptance was procured by fraud or misrepresentation;  
20 or

21 (2) a change of circumstance has occurred other than a  
22 change specified in (f)(1) - (3) of this section, which would have  
23 warranted denial of the application.

24 (j) [(i)] Financial responsibility under this section extends to  
25 a loss compensable under AS 46.03.760(e) or 46.03.822 and an  
26 assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or  
27 AS 46.04.030(g).

28 \* Sec. 3. AS 46.04.050 is amended to read:

29 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of



1 the operations and the ~~maximum~~ damage to the environment posed by the  
2 activities, AS 46.04.030, ~~46.04.040~~ and 46.04.060 do not apply to an  
3 oil terminal facility that has an effective storage capacity of less  
4 than 5,000 [10,000] barrels of oil.

5 \* Sec. 4. AS 46.04.060 is amended to read:

6 Sec. 46.04.060. INSPECTIONS. In addition to any other rights of  
7 access or inspection conferred upon the department by law or  
8 otherwise, the department may at reasonable times enter and inspect  
9 oil [OIL] terminal facilities, [OFFSHORE] exploration and production  
10 facilities, tank vessels, and oil barges within the territorial  
11 jurisdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE  
12 DEPARTMENT] to

13 (1) ensure compliance with the provisions of this chapter;

14 or

15 (2) examine the structural integrity of tank vessels and  
16 oil barges.

17 \* Sec. 5. AS 46.04.900 is amended by adding a new paragraph to read:

18 (18) "realistic maximum oil discharge" means the maximum  
19 and most damaging oil discharge that the department estimates could  
20 occur during the lifetime of the vessel or facility based on the size,  
21 location, and capacity of the vessel or facility; on the department's  
22 knowledge and experience with the vessel or facility or with similar  
23 vessels or facilities; and on the department's analysis of possible  
24 mishaps at the vessel or facility or at similar vessels or facilities.

25 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

4

## Letter of Intent for HB 567

Subsection (k) (3) (C) of HB 567 provides that a contingency plan holder must demonstrate that the equipment, personnel, and other resources maintained outside of the plan holder's region of operation will be deployed and operating at the discharge site within 72 hours.

Like all other provisions in Section (k), subsection (k) (3) (C) is subject to Section (l) which provides that the Section (k) provisions are not clean up or performance standards for the discharge response. Rather, the Section (k) requirements, including those in subsection (k) (3) (C), are planning requirements for determining what will be in any particular contingency plan.

The subsection (k) (3) (C) planning provisions require a demonstrated plan for moving equipment, personnel, and other resources necessary to deploy and operate that equipment and personnel to the discharge site. The provision includes deployment and operation of the equipment and personnel to ensure that there are systems and plans to actually use the additional equipment in a manner that is well orchestrated to supplement and enhance the equipment and personnel from the plan holder's region of operation.

However, both segments of the contingency plan -- the deployment of the in-region equipment and the transportation and deployment of the out-of-region equipment -- are subject to Section (l). Neither segment creates a performance standard under the terms of HB 567. So, if a contingency plan has been approved, based upon a demonstrated plan of action to get equipment, personnel, and other resources to the site, it would not be a violation of the terms of A.S. 46.04.030 if unforeseeable circumstances result in a failure to actually deploy and operate all equipment within 72 hours.



5



STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: HB 567 No. 2  
PUBLISH DATE: HOUSE 2/22/90

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act relating to the strengthening  
of the DEC's oil contingency plan  
Sponsor: Rules Committee  
Requestor: Governor

Agency Affected: Environ Conservation  
BRU: Environ Quality

Components: Environ Quality

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | 489.8 | 489.8 | 489.8 | 489.8 | 489.8 | 489.8 |
| TRAVEL            | 30.0  | 30.0  | 30.0  | 30.0  | 30.0  | 30.0  |
| CONTRACTUAL       | 376.0 | 376.0 | 376.0 | 376.0 | 376.0 | 376.0 |
| SUPPLIES          | 9.5   | 9.5   | 9.5   | 9.5   | 9.5   | 9.5   |
| EQUIPMENT         | 47.5  | 47.5  | 47.5  | 47.5  | 47.5  | 47.5  |
| LAND&STRUCTURES   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   |
| GRANTS, CLAIMS    | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   |
| MISCELLANEOUS     | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   |
| TOTAL OPERATING   | 952.8 | 952.8 | 952.8 | 952.8 | 952.8 | 952.8 |

|         |     |     |     |     |     |     |
|---------|-----|-----|-----|-----|-----|-----|
| CAPITAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|---------|-----|-----|-----|-----|-----|-----|

|         |     |     |     |     |     |     |
|---------|-----|-----|-----|-----|-----|-----|
| REVENUE | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|---------|-----|-----|-----|-----|-----|-----|

FUNDING: (Thousands of Dollars)

|               |       |       |       |       |       |       |
|---------------|-------|-------|-------|-------|-------|-------|
| GENERAL FUND  | 952.8 | 952.8 | 952.8 | 952.8 | 952.8 | 952.8 |
| FEDERAL FUNDS | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   |
| OTHER         | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   |
| TOTAL         | 952.8 | 952.8 | 952.8 | 952.8 | 952.8 | 952.8 |

POSITIONS:

|           |     |     |     |     |     |     |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 9.0 | 9.0 | 9.0 | 9.0 | 9.0 | 9.0 |
| PART-TIME | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| TEMPORARY | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

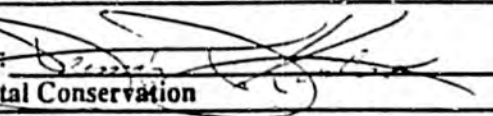
ANALYSIS: (Attach a separate page if necessary)  
Impact on FY 90 depends upon effective date.

Prepared by: Dan Easton

Division: Environmental Quality

Phone: 465-2640

Date: 2/16/90

Approved by Commissioner: 

Agency: Environmental Conservation

Date: 2/19/90

Distribution (by preparer) :

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: HB 567 No. 1  
PUBLISH DATE: HOUSE 2/22/90

## FISCAL NOTE

### REQUEST:

Revision Date: \_\_\_\_\_  
Title: An act strengthening DEC's  
contingency plan and inspection requirements  
Sponsor: Governor Riecke  
Requestor: Governor  
Agency Affected: Department of Fish and Game  
BRU: Habitat Division  
Components: Habitat

### EXPENDITURES/REVENUES: (Thousands of Dollars)

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

|         |   |  |  |  |  |  |
|---------|---|--|--|--|--|--|
| CAPITAL | 0 |  |  |  |  |  |
|---------|---|--|--|--|--|--|

|         |   |  |  |  |  |  |
|---------|---|--|--|--|--|--|
| REVENUE | 0 |  |  |  |  |  |
|---------|---|--|--|--|--|--|

### FUNDING: (Thousands of Dollars)

|               |       |  |  |  |  |  |
|---------------|-------|--|--|--|--|--|
| GENERAL FUND  | 156.5 |  |  |  |  |  |
| FEDERAL FUNDS | 0     |  |  |  |  |  |
| OTHER         | 0     |  |  |  |  |  |
| TOTAL         | 156.5 |  |  |  |  |  |

### POSITIONS:

|           |   |  |  |  |  |  |
|-----------|---|--|--|--|--|--|
| FULL-TIME | 2 |  |  |  |  |  |
| PART-TIME | 1 |  |  |  |  |  |
| TEMPORARY | 0 |  |  |  |  |  |

### ANALYSIS : (Attach a separate page if necessary) (Explanation Attached)

FY 90 Impact: Personal Services 51.9  
(3/24-6/30/90 Travel 2.0  
Contractual 4.0  
Supplies 1.0  
Equipment 7.0  
TOTAL 65.9

Prepared by Frank Riecke Phone: 465-4105  
Division: Habitat Date: 2/14/90

Approved by Commissioner: [Signature] Date: 2/14/90  
Agency: ADF&G

### Distribution (by preparer):

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

## Continuation of fiscal note analysis

FY91 Line Itemization -

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

EXPLANATION

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

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



Continuation of Explanation

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

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

6

FINANCIAL RESPONSIBILITY REQUIREMENTS  
NON-CRUDE BARGES

| <u>Barge Size (BBLs)</u> | <u>Existing Requirements</u> | <u>Proposed Requirements</u> |
|--------------------------|------------------------------|------------------------------|
| < 5,000                  | \$1 million                  | None                         |
| 5,000 - 10,000           | \$1 million                  | \$1 million                  |
| 20,000                   | \$1 million                  | \$2 million                  |
| 30,000                   | \$1 million                  | \$3 million                  |
| 40,000                   | \$1 million                  | \$4 million                  |
| 50,000                   | \$1 million                  | \$5 million                  |
| 75,000                   | \$1 million                  | \$7.5 million                |
| 100,000                  | \$1 million                  | \$10 million                 |
| 150,000                  | \$1 million                  | \$15 million                 |



# FINANCIAL RESPONSIBILITY REQUIREMENTS

## EXISTING NON-CRUDE BARGE COMPANIES

| <u>COMPANY</u> | <u>LARGEST<br/>BARGE SIZE (BBLs)</u> | <u>EXISTING<br/>REQUIREMENTS</u> | <u>NEW<br/>REQUIREMENTS</u> |
|----------------|--------------------------------------|----------------------------------|-----------------------------|
| Crowley        | 154,608                              | \$ 1 million                     | \$15.5 million              |
| Foss           | 75,510                               | \$ 1 million                     | \$ 7.6 million              |
| United Marine  | 74,100                               | \$ 1 million                     | \$ 7.4 million              |
| Delta Western  | 50,000                               | \$ 1 million                     | \$ 5.0 million              |
| Northland      | 39,000                               | \$ 1 million                     | \$ 3.9 million              |
| Brix Maritime  | 21,750                               | \$ 1 million                     | \$ 2.1 million              |
| Alaska Marine  | 16,031                               | \$ 1 million                     | \$ 1.6 million              |
| White Pass     | 12,828                               | \$ 1 million                     | \$ 1.3 million              |
| Yutana         | 7,600                                | \$ 1 million                     | \$ 1 million                |
| Moody's        | 5,476                                | \$ 1 million                     | \$ 1 million                |
| Kugkaktlike    | 3,600                                | \$ 1 million                     | None                        |
| Smith          | 1,768                                | \$ 1 million                     | None                        |

Note: Barges listed are only those that have fulfilled financial responsibility requirements through June 30, 1990, and submitted contingency plans.

FINANCIAL RESPONSIBILITY REQUIREMENTS  
NON-CRUDE TERMINALS

| <u>Terminal Size (BBLs)</u> | <u>Existing Requirements</u> | <u>Proposed Requirements</u> |
|-----------------------------|------------------------------|------------------------------|
| <10,000                     | None                         | None                         |
| 10,000-40,000               | \$1 million                  | \$1 million                  |
| 50,000                      | \$1 million                  | \$1.25 million               |
| 100,000                     | \$1 million                  | \$2.5 million                |
| 500,000                     | \$5 million                  | \$12.5 million               |
| 1,000,000                   | \$10 million                 | \$25.0 million               |
| 1,500,000                   | \$15 million                 | \$37.5 million               |

# FINANCIAL RESPONSIBILITY REQUIREMENTS

## BARROW NON-CRUDE TERMINALS

| <u>FACILITY</u>                   | <u>SIZE (BBLs)</u> | <u>EXISTING<br/>REQUIREMENTS</u> | <u>NEW<br/>REQUIREMENTS</u> |
|-----------------------------------|--------------------|----------------------------------|-----------------------------|
| Block B Tank<br>Farm (Eskimo Inc) | 68,095             | \$ 1 million                     | \$ 1.7 million              |
| Barrow Oil<br>Terminal (NSB)      | 24,240             | \$ 1 million                     | \$ 1 million                |
| Browerville<br>(Eskimo Inc)       | 1,430              | None                             | None                        |

Block B Tank Farm and the Barrow terminal are currently required to have contingency plans and have submitted them to DEC for approval. The Browerville facility had a contingency plan in the past, but reduced its capacity and is no longer required to have a plan.



7

## **SB 504/HB 567**

### **Facility Contingency Plans Strengthened**

- o Strengthens DEC's authority to require and enforce oil discharge contingency plans.
- o Requires that plans be implemented.
- o Clarifies authority to approve, modify or revoke.
- o Requires response capability to remove a realistic maximum oil discharge within the shortest possible time.
- o Provides opportunity for other agencies to comment on contingency plans.
- o Authorizes DEC to revoke contingency plans if not implemented.

### **Financial Responsibility Requirements Strengthened**

- o Strengthens financial responsibility requirements.
- o Establishes a 50,000,000 financial responsibility limit for crude oil terminal facilities.
- o Establishes a 1,000,000 financial responsibility for non-crude oil terminal facilities with a storage capacity of 5,000 to 10,000 barrels.
- o Establishes a 50,000,000 financial responsibility for non-crude terminal facilities with a storage capacity of more than 10,000 barrels.
- o Establishes 50,000,000 financial responsibility for offshore exploration and product facilities.
- o Establishes 50,000,000 financial responsibility for crude oil tank vessels and barges.
- o Establishes a 20,000,000 financial responsibility requirement for > 300 gross ton tank vessels and barges carrying non-crude oil. (300 gross tons = 224,400 gallons = 5342 bbls)
- o Establishes a 1,000,000 financial responsibility requirement for < 300 gross ton tank vessels and barges carrying non-crude.

### **Extend the Requirement for Contingency Plans**

- o Lowers the effective storage capacity above which a contingency plan is required from 10,000 barrels to 5,000 barrels.

### **Inspection Authority Strengthened**

- o Authorizes DEC to enter and inspect oil terminal facilities, exploration and production facilities, tank vessels and oil barges.
- o Authorizes DEC to examine structural integrity of tank vessels and oil barges.

### **Spill Scenario**

- o Defines "realistic maximum oil discharge" and requires facility plans to address this.

**SENATE BILL 504/HOUSE BILL 567**  
**Oil Contingency Plan Requirements**  
**Financial Responsibility Requirements**  
**Vessel Inspection**  
2/21/90 Version

This bill has three major components:

- 1) It strengthens the Department of Environmental Conservation's (DEC's) authority to require and enforce oil discharge contingency plans.
- 2) It strengthens the financial responsibility requirements for shippers of oil and hazardous substances.
- 3) Authorizes DEC to inspect facilities related to the production and shipping of oil, as well as examine the structural integrity of tank vessels and oil barges.

**OIL CONTINGENCY PLAN REQUIREMENTS**

- \* Establishes an explicit standard for facility oil spill contingency plans to include a response capability for response to a realistic maximum discharge within the shortest possible time.
- \* Requires that contingency plans be properly implemented and gives DEC authority to revoke the plan if not properly implemented.
- \* Provides the Department of Fish & Game and the Department of Natural Resources an opportunity to comment on contingency plans.
- \* Requires contingency plans for facilities with a storage capacity of 5,000 barrels or more.

**FINANCIAL RESPONSIBILITY REQUIREMENTS**

- \* Requires proof of financial responsibility in the following amounts:

|                                                |               |
|------------------------------------------------|---------------|
| Crude oil terminal facilities                  | \$ 50 million |
| Non-crude oil terminal facilities              |               |
| 5,000 - 10,000 barrel storage capacity         | \$ 1 million  |
| Non-crude oil terminal facilities              |               |
| 10,000+ barrel storage capacity                | \$ 50 million |
| Offshore exploration and production facilities | \$ 50 million |
| Onshore exploration and production facilities  | Not addressed |
| Crude oil tank vessels and barges              | \$500 million |
| Non-crude oil tank vessels and barges          |               |
| Larger than 300 gross tons                     | \$ 20 million |
| Non-crude oil tank vessels and barges          |               |
| Smaller than 300 gross tons                    | \$ 1 million  |
- \* Ensures that shippers and handlers of oil and hazardous substances have the financial capability of dealing with the damages from a major spill.

**VESSEL INSPECTION**

- \* Provides the state with the authority to inspect tankers to ensure their structural integrity.
- \* Asserts affirmatively that the state may inspect oil terminal facilities, exploration and production facilities, tank vessels and oil barges.



## **SB 503/HB 566**

### **Use of Response Fund During Declared Disaster Emergency**

- o Authorizes Governor to use money from response fund for declared disaster emergencies.

### **Expand Role of Division of Emergency Services (DES) during Declared Disaster Emergency**

- o Clarifies DEC emergency order authority and distinguishes it from DES's authority to respond to declared disaster emergencies.
- o Returns duties of DES during catastrophic oil discharges from DEC during declared disaster emergencies.

### **State Emergency Response Commission**

- o Establishes the Alaska State Emergency Response Commission.

## **SB 502/HB 565**

### **Strengthen Civil Penalties**

- o Modify legislative findings in non-crude oil damages and penalty provisions to make consistent.
- o Increase maximum per gallon civil penalties for non-crude oil discharges into various receiving environments.
- o Provides that spiller establish the amount of oil which entered each receiving environment.
- o Removes penalty exemption for non-crude oil discharges less than 18,000 gallons.
- o Allows spiller to deduct the number of gallons of non-crude oil recovered within 36 hours of the spill.
- o Allows that civil penalties may be offset without affecting ability to recover damages, restoration or other costs.
- o Removes penalty exemption for crude oil discharges of less than 18,000 gallons.
- o Changes the multiplier for negligence to five
- o Revises and streamlines civil penalties and damages statute.
- o Raises civil penalties for 500 to 2,500 per day for each violation.
- o Expands states authority to recover attorney fees.
- o Removes mitigation defense and makes other changes to Section 11.

### **Amends Rule 82, Alaska Rule of Civil Procedure**

- o Rule 82 amended by Section 10.

8

To: All Teleconference Sites

From: Rep. Menard, Co-chair House Resources  
Rep. Davidson, Co-chair House Resources

Attached is the Governor's new proposal regarding financial responsibility requirements in HB 567. The financial responsibility requirements in the original version of HB 567 have been withdrawn.

Both HB 565 and HB 567 are being modified by the House Resources Committee. Tonight we welcome additional assistance and comments on both bills as we continue our efforts to craft legislation that meets the needs of Alaskans and minimize costs for small utilities and fuel distributors.



## NON-CRUDE ISSUES ADDRESSED IN HB 565 AND HB 567

| <u>ISSUE</u>             | <u>EXISTING LAW</u>                                                                                                                                                                                                                                                                                                                                                                          | <u>ADMINISTRATION<br/>PROPOSAL 3/15/90</u>                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Penalty Levels           | <p>\$10/gallon for anadromous stream or other freshwater environment;</p> <p>\$2.50/gallon for sensitive or confined saltwater areas;</p> <p>\$1/gallon for unconfined saltwater, public land or freshwater without significant aquatic resources.</p> <p>Subject to a schedule that varies for toxicity, degradability and dispersal characteristics, as well as receiving environment.</p> | <p>\$12.50/gallon for any surface or subsurface freshwater environment;</p> <p>\$8/gallon for sensitive or confined saltwater areas;</p> <p>\$6/gallon for unconfined saltwater, public land or subsurface land.</p> <p>Subject to the existing schedule that varies for toxicity, degradability and dispersal characteristics.</p>                                                                           |
| Exemptions               | <p>Spills of less than 18,000 gallons <u>are not</u> subject to penalties under AS 46.03.758.</p>                                                                                                                                                                                                                                                                                            | <p>Spills of less than 18,000 gallons <u>are</u> subject to penalties under AS 46.03.758.</p>                                                                                                                                                                                                                                                                                                                 |
| Cleanup Credit           | <p>Allows the court to deduct the amount of oil removed from the environment when calculating penalties, with no regard for the length of time involved in the cleanup operation.</p>                                                                                                                                                                                                        | <p>Allows the court to deduct the amount of oil removed from the environment within the first 36 hours of a discharge onto surface water or land when calculating penalties.</p> <p>Does not allow any credit for subsurface spills.</p>                                                                                                                                                                      |
| Financial Responsibility | SEE ATTACHED CHART                                                                                                                                                                                                                                                                                                                                                                           | SEE ATTACHED CHART                                                                                                                                                                                                                                                                                                                                                                                            |
| Contingency Plans        | <p>Not required for facilities with less than 10,000 barrels storage capacity.</p>                                                                                                                                                                                                                                                                                                           | <p>Not required for facilities with less than 10,000 barrels storage capacity. The department would be given the authority to survey, inspect, and inventory facilities with a storage capacity between 5,000 and 10,000 barrels. The department will report back to the legislature within a year with recommendations to address oil spill prevention and response for facilities under 10,000 barrels.</p> |

TABLE 1

**Oil Contingency Plan Requirements  
Financial Responsibility Requirements  
Vessel Inspection**

| TYPE OF FACILITY                                      | CURRENT FINANCIAL RESPONSIBILITY REQUIREMENTS                                                            | SB 504<br>HB 567 | PROPOSED 3/15<br>REVISION                                                                                                                                             |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Crude Oil Terminals</b>                            |                                                                                                          |                  |                                                                                                                                                                       |
| > 10,000 bbl.                                         | \$1 million up to \$50 million @ \$10/bbl. capacity                                                      | \$50 million     | \$50 million                                                                                                                                                          |
| 5 - 10,000 bbl.                                       | None                                                                                                     | \$50 million     | \$50 million                                                                                                                                                          |
| <b>Non-Crude Terminals</b>                            |                                                                                                          |                  |                                                                                                                                                                       |
| > 10,000 bbl.                                         | \$1 million up to \$50 million @ \$10/bbl. capacity                                                      | \$50 million     | 10 to 20,000 bbl. = \$5 million<br>> 20,000 bbl. = \$10 million                                                                                                       |
| 5 to 10,000 bbl.                                      | None                                                                                                     | \$1 million      | None                                                                                                                                                                  |
| <b>Offshore exploration and production facilities</b> |                                                                                                          |                  |                                                                                                                                                                       |
|                                                       | \$35 million                                                                                             | \$50 million     | \$50 million                                                                                                                                                          |
| <b>Crude Oil Tank Vessels and Barges</b>              |                                                                                                          |                  |                                                                                                                                                                       |
|                                                       | TAPS = \$14 million, Non-TAPS = \$20 million.<br>TAPS covered for an additional \$86 million per vessel. | \$500 million    | \$500 million                                                                                                                                                         |
| <b>Non-Crude Oil Tank Vessels and Barges</b>          |                                                                                                          |                  |                                                                                                                                                                       |
|                                                       | Tank Vessels = \$20 million, Barges = \$1 million                                                        | \$20 million     | < 5,000 bbl = None<br>5,000 to 10,000 bbl = \$5 million<br>10,000 to 50,000 bbl = \$1 million<br>50,000 to 100,000 bbl = \$10 million<br>100,000 + bbl = \$20 million |

Note: the following notes are not based on a comprehensive review of vessels and facilities; rather, they are examples of how the proposed revisions might affect some operators.

Currently there are 6 Tanker Vessels chartered by Petro-Diamond and Petro-Marine that are under 50,000 bbl. capacity and are required to have \$20 million coverage. Under proposed revisions of 3/15 their Financial Responsibility requirement would drop to \$1 million.

From information provided in contingency plans, all of Yutana Barge Lines barges are under 10,000 bbl., therefore their Financial Responsibility requirement would be cut in half to \$500 thousand.

Crowley has 10 barges listed at over 100,000 bbl., but they are covered by surety bond and not a regular insurance policy.

United Marine Tug and Barge, Inc. has at least 2 barges over 50,000 bbl., so their coverage would increase from \$1 million to \$10 million.

9



CHAMBER = H  
SOURCE = HRES  
DATE = 900226  
YEAR = 90  
TIME = 1500  
DOCUMENT TEXT

## HOUSE RESOURCES COMMITTEE

February 26, 1990

3:00 p.m.

## MEMBERS PRESENT

Representative Mike Davis  
Representative Bill Hudson  
Representative Mike Navarre  
Representative Bert Sharp

## MEMBERS ABSENT

Co-Chairman Cliff Davidson

SBC

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PAGE =

2 OF

43

Co-Chairman Curt Menard  
Representative Richard Foster  
Representative Walt Furnace  
Representative George Jacko

## HOUSE MEMBERS PRESENT

Representative Sam Cotten

## COMMITTEE CALENDAR

- \* HB 565 - "An Act relating to strengthening the civil penalty and damage provisions concerning the discharge of oil and other environmental violations; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

HELD in Committee for further consideration.

SBC

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\* HB 566 - "An Act authorizing the governor to spend money from the oil and hazardous substance release response fund for declared disasters; expanding the role of the division of emergency services during oil-spill-related declared disasters; establishing the Alaska State Emergency Response Commission; and providing for an effective date."

HELD in Committee for further consideration.

HB 56- "An Act relating to the strengthening of the state's oil contingency plan requirements, financial responsibility requirements, and inspection authority under AS 46.04; and providing for an effective date."

HELD in Committee for further consideration.

#### WITNESS REGISTER

SBC

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HRES90022615 DOCUMENT= 2 OF 15 PAGE = 4 OF 43

John McDonagh  
Assistant Attorney General  
Department of Law  
100 Cushman, Suite 400  
First National Center  
Fairbanks, AK 99701  
452-1568

POSITION STATEMENT: Information/Questions

Carol Wilson  
Special Assistant  
Department of Natural Resources  
400 Willoughby Avenue  
Juneau, AK 99801  
465-2400

POSITION STATEMENT: Information/Questions

PREVIOUS ACTION

SBC

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fund for declared disasters; expanding the role of the division of emergency services during oil-spill-related declared disasters; establishing the Alaska State Emergency Response Commission; and providing for an effective date."

PRIME SPONSOR: RULES BY REQUEST OF THE GOVERNOR

| JRN-DATE | JRN-PAGE |     | ACTION                            |
|----------|----------|-----|-----------------------------------|
| 02/22/90 | 02514    | (H) | READ THE FIRST TIME - REFERRAL(S) |
| 02/22/90 | 02514    | (H) | RESOURCES, FINANCE                |
| 02/22/90 | 02514    | (H) | GOVERNOR'S TRANSMITTAL LETTER     |
| 02/22/90 | 02514    | (H) | 2 FISCAL NOTES (DEC, F&G)         |

BILL:HB 567

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

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PRIME SPONSOR: RULES BY REQUEST OF THE GOVERNOR

| JRN-DATE | JRN-PAGE |     | ACTION                               |
|----------|----------|-----|--------------------------------------|
| 02/22/90 | 02514    | (H) | READ THE FIRST TIME - REFERRAL(S)    |
| 02/22/90 | 02514    | (H) | RESOURCES, FINANCE                   |
| 02/22/90 | 02515    | (H) | GOVERNOR'S TRANSMITTAL LETTER        |
| 02/22/90 | 02515    | (H) | 2 FISCAL NOTES (DEC, F&G)<br>2/22/90 |

ACTION NARRATIVE

Tape HRC 90-258, Side A

Number 000

REPRESENTATIVE MIKE DAVIS, Acting Chairman, called the meeting to order at 3:12 p.m., noting members in

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Number 4

JOHN MCDONAGH, Assistant Attorney General, Department of Law, stated he would overview the oil spill bill package. He began by stating the overriding principle of the bills is that something has been learned from the Exxon Valdez accident which can be translated into three major themes: 1) deterrence and prevention; 2) response; and 3) recovery.

Mr. McDonagh advised committee members he would first overview HB 565 which is an act strengthening penalties for oil discharge. He said Sections 1-6 deal with one existing statute, AS 46.03.750. Those sections amend the statute to make it more consistent with legislation passed last year. He added the statute has been tightened in several respects.

Mr. McDonagh explained in Section 2, the maximum per gallon

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Representative Cotten felt HB 566 did not really give the Governor any additional authority. He asked if there had been concern that an internal conflict between the commissioner and the Governor might exist.

Mr. McDonagh said that was not a concern. He said the process one has to go through in DEC to get the money approved needs to be streamlined to be quicker and more effective.

(Representative Davis requested the following testimony be transcribed verbatim.)

Number 126

Mr. McDonagh:

House Bill 567 is an act strengthening DEC's oil spill contingency plan and financial responsibility authority. And I do want to mention those are separate concerns and I

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think it is important as we go through this bill to analyze those two separately. Number one, the requirement for a contingency plan and a requirement that the contingency plan be properly implemented and number two, separate and distinct from that, what, if any financial responsibility changes should be made in the existing financial responsibility structure.

Section 1 of the bill strengthens DEC's authority to require and enforce oil discharge contingency plans. Interestingly enough, there is no expressed requirement and law that contingency plans, although they have to be prepared, that they be properly implemented. That was perceived as a major problem and we have corrected that problem in the legislation hopefully by requiring that contingency plans be properly implemented. Section 1 also clarifies and strengthens DEC's authority to approve, modify and revoke contingency plans. It requires contingency plan applicants to maintain in their areas of operations sufficient resources to contain and remove a

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HRES90022615 DOCUMENT= 2 OF 15 PAGE = 22 OF 43

realistic maximum oil discharge within the shortest possible time. It provides the Alaska Department of Fish and Game (ADF&G) and the Department of Natural Resources (DNR) an opportunity to comment on contingency plans and authorizes DEC to revoke a contingency plan if the plan has not been properly implemented. I want to come back to those in light of the actual language of the statute.

If you take a look at page 1 of the bill, you will see in AS 46.03.030 (a), (b), (c), the requirement that the plan be properly implemented has been added. Subsection (a) deals with the operation of an oil terminal facility. It requires a contingency plan for an oil terminal facility which is the case now, and requires it be properly implemented. Subsection (b) deals with offshore exploration and production facilities. Right now offshore exploration and production facilities do require an oil discharge contingency plan; the only change in here is to make sure that those are properly implemented. Subsection (c) right now requires that before one can transfer oil to

HRES90022615 DOCUMENT= 2 OF 15 PAGE = 23 OF 43

or from a tank vessel, a contingency plan must be prepared but look at that language for a minute. There is nothing at all which says one has to have a contingency plan for operating a tanker or an oil barge within state waters. You only have to have a contingency plan right now, under the language at least, if you are transferring oil to or from that body. We have learned from Exxon Valdez, those spills can occur while transporting as easily or more easily than they occur while loading or discharging the oil. It seemed to make a lot of sense to put in a requirement that a person cannot operate that tank vessel or oil barge in the state, unless they get a contingency plan and again, the proper implementation.

Representative Cotten:

It looks like you are going to get some new language and I know it is going to come up at some point so what we are talking about is offshore operations. It is common knowledge that at one point it was considered, that language

Mr. McDonagh:

I think the committee is well aware that there was, and I think the committee has been supplied with, a copy of the previous draft of this bill which had that language in it.

Representative Cotten:

I interrupted you in the middle of a thought there and I was hoping you would finish your discussion on the...maybe you had.

Mr. McDonagh:

Right now Mr. Speaker, the contingency plan authority does not extend to those onshore facilities and that becomes a policy call at that point, whether one wants to require such facilities to have contingency plans and/or, again they are separate issues as I pointed out, to meet

SBC

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2 /2

financial responsibility requirements. I point out that the contingency plan requirement and the financial responsibility requirements under existing law, regardless of the nature of the facility, only kick in for oil terminals at least, where the storage capacity is greater than 10,000 barrels. That has been lowered to 5,000 in this bill. But it becomes a policy call as to whether or not it is appropriate or inappropriate to extend some kind of requirements to onshore facilities.

Representative Cotten:

Help me get into focus here, what kind of facilities are we talking about here which would be either included or excluded?

Number 242

Mr. McDonagh:

SBC

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Mr. Speaker, take the North Slope. I suppose one could look to exploration wells, production facilities that would include - perhaps DEC could speak to this better than I can - but it would seem to me to include production wells, the gathering pipelines - it would include any exploratory wells.

Representative Cotten:

I thought you were involved when the discussions were taking place but it is helping me to focus in on whether it is a good idea or not by thinking about specific facilities and you have talked about exploration wells, production wells, pipeline gathering - was there anything else identified which people had different opinions about?

Mr. McDonagh:

I do not recall that any other specifics actually came up; it seemed to me there was another aspect of the discussion

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Number 294

Representative Sharp said it was pointed out that facilities with storage capacity over 10,000 barrels would be subject to proof of financial responsibility. He asked if that would include refineries which directly off-load from tankers to their crude oil storage tanks.

Mr. McDonagh responded it is important to remember that two different things are being considered; there are contingency plan requirements and there is also a requirement of whether or not to have financial responsibility proof and at what level that proof should be. He said if Rep. Sharp was referring to a terminal facility such as Valdez, it is covered under existing contingency plan authority. Mr. McDonagh reminded committee members that one of the reasons the onshore provision did not remain is because there was a view within the administration that it was already being handled under

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as set forth in Section 5 is unchanged and he asked members to look at the definition. Mr. McDonagh explained that the definition allows the department to look at the location, the capacity, the size of the vessel or facility, and other factors to make a determination of what the "realistic maximum expected" amount is.

Tape HRC 90-259, Side A

Number 000

Representative Cotten asked what the next step would be. Mr. McDonagh said the next step is for DEC to look at the facilities, vessels, tankers, etc. and determine a matrix, but what is essential is to get the information into the contingency plan. Rep. Cotten asked what happens if someone disagrees with DEC.

Mr. McDonagh responded the likely result is that DNR and DEC will promulgate regulations which more specifically

SBC

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2 / 2

look to the particular class of the tanker, the age of the vessel, the size, where it is located, etc.

Mr. McDonagh stated, in response to the "shortest possible time" question, the prior draft oHB 56 contained language which would have required containment, cleanup and mitigation within 72 hours after the event. He said DNR had serious reservations about it and there was discussion at the cabinet level about it; what resulted was a compromise.

Number 76

Representative Davis clarified that the response could be initiated after 72 hours and still be within the law.

Mr. McDonagh responded that was the concern with the language.

Number 85

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Mr. McDonagh informed committee members that in regard to the financial responsibility provisions, the goal was to set forth a framework which would respond to the notion that crude oil is different, small tanks and tankers are different than large tanks and tankers, etc. He asked members to look at page 4, Section 2, lines 15-24, which deal with crude terminal facilities and require financial responsibility of \$50,000,000. He noted previously, the maximum was \$50,000,000 down to as low as \$1,000,000; now it is a flat \$50,000,000 per incident for crude oil terminal facilities.

Mr. McDonagh stated under subsection (b) non-crude oil terminal and storage facilities are addressed. He pointed out the financial responsibility limits reflect the different sizes of the facilities. He said under subsection (c) the proof of financial responsibility has been raised.

Mr. McDonagh said subsection (d) states that one cannot

SBC

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operate a tanker vessel or an oil barge in the waters of the state without financial responsibility protection. He added the differing impacts of crude and non-crude oil and differing sizes of barges is reflected.

Mr. McDonagh noted in terms of financial responsibility, a provision expanding the types of financial responsibility which can be provided has been added.

Number 154

Representative Hudson asked in regard to financial responsibility, what does "per incident" mean.

Mr. McDonagh explained the \$50,000,000 insurance coverage has to be maintained at all times even if an incident has occurred.

Number 175

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REPRESENTATIVE WALT FURNACE wondered, in terms of financial responsibility, if a company can secure liability coverage for such a large amount.

Mr. McDonagh explained the coverage required is not for each vessel. He said he did not know how much it costs to have \$500,000,000 coverage for a fleet.

Representative Furnace further questioned if the insurance requirements were realistic and again asked if it was obtainable. He also asked Mr. McDonagh, referring to page 4, line 26, to give an example of a non-crude oil terminal or storage facility.

Mr. McDonagh responded an example would be a plant on a river supplying fuel to and from a barge.

Number 247

Mr. McDonagh said the final section on page 3 gives DEC the

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ability to inspect tankers for structural integrity.

Number 271

Representative Furnace wondered if DEC would absorb liability by performing inspections. Mr. McDonagh said the consideration behind the section is that someone needs to perform inspections and noted the U.S. Coast Guard has the authority now but does not exercise it to the degree that the state feels comfortable with. He said any time the state is given the responsibility there is always a possibility that someone might not exercise it properly.

Number 361

ADJOURNMENT

The time of adjournment was not noted.

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**PETRO STAR INC.**

Telephone (907) 488-0730  
Telecopier (907) 488-9057  
TELEX 36-686

P.O. Box 56239  
North Pole, Alaska 99705  
**Walt Schlotfeldt**  
President

March 7, 1990

Mr. Curt Menard  
Co-Chair  
House Resources Committee  
Alaska State Legislature  
P.O. Box V (M-3100)  
Juneau, Alaska 99811

RE: HB 567

Dear Chairmar Menard:

I would like to preface my comments on HB 567 with an introduction to our company. Petro Star is a wholly owned subsidiary of the Arctic Slope Regional Corporation. Our operations include the refining and distribution of heating/diesel fuel products in Alaska, primarily the Interior. Our refinery takes approximately 6,500 bpd of State of Alaska Royalty Crude from the Trans-Alaska Pipeline. Approximately 1,500 bpd of heating/diesel fuels are produced and stored in five tanks ranging in size from 2,500 bbls to 10,000 bbls. Our total storage capacity at the refinery is 27,500 bbls. These products are distributed by truck to our customers. We have outlets in Fairbanks, North Pole and Delta Junction.

I have many concerns with HB 567. I would like to raise my concerns point by point, starting at the beginning of the Bill.

-- Under existing statutes, "A person may not cause or permit the operation of an oil terminal facility in the State unless an oil discharge plan for the facility has been approved by the Department..." Due to the delays incurred in obtaining approval from the Department, for whatever reasons, I suggest that this be amended to "submitted." This would then place the burden on the DEC to quickly review the plan and make their recommendations in a timely manner. This is especially important if SB 502 is passed, and penalties of from \$2,500 to \$100,000 per day may be assessed. Petro Star just received (after four months) approval of our plan. The DEC's approval gives us one month to modify, with their specific



recommendations, our submitted plan. It's approval is limited to a three-year period. We also must re-submit for approval of a new plan once the Department has finalized their review and revisions of contingency plan approval criteria.

-- Sec. 1(a): Adding the language "...and has been properly implemented" is very subjective.

-- Throughout the Bill, the words "tanker vessel" and "tank vessel" are used interchangeably. Although this Bill does not affect tanker trucks, the current definition of tank vessels ("tank vessel" means a self-propelled vessel that is constructed or converted to carry liquid bulk cargo in tanks...) appears to allow tanker trucks to be "tank vessels". This should be clarified. HB 315 was amended to correct this in the House Judiciary Committee. Their amendment defines tank vessel as "a vessel that is constructed or adapted to carry or that carries, as a means of transportation by water, oil or hazardous material in bulk as cargo or cargo residue."

-- Sec. 1(d): The term "timely" is very subjective and should be further defined.

-- Sec. 1(e): The approval of an oil spill contingency plan is currently not an easy process. Approval may be delayed for significant periods of time. DEC is charged with protecting the environment of Alaska. The inclusion of the Department of Fish & Game and the Department of Natural Resources in the approval process would be a serious mistake. I can envision the requirements of contingency plans expanding exponentially to the point of meaninglessness. The time to get approval on a plan would be lengthened. The practicality and effectiveness of a plan would be questionable.

-- Sec. 1(f): This section is totally unreasonable. Requiring applicants for oil discharge contingency plans to maintain all of the resources necessary to remove a spill in its area of operation (on-site) is totally unrealistic. What does "shall maintain in its area of operation" mean? The industry would probably have difficulty in



committing to a pooling of resources because we are not willing to assume any potential liability for non-responsiveness to our competition. Please note that this paragraph applies to "applicants." Why would an applicant need to maintain all of the resources if an applicant is not allowed to operate a terminal? I have serious problems with the requirement that we have all manpower in our "area of operation". Does this mean that I must keep all staff required on the payroll ready to respond to a spill? This could be terribly expensive. I am concerned about the cost of maintaining the other resources required.

The meaning of the term "realistic maximum oil discharge" is very confusing to me. In interpreting the definition, I would presume that, due to our total tank capacity, PSI would be required to plan for a 27,500-bbl. spill. This is ludicrous, since our largest storage tank is only 10,000 bbl. I do not think we should be required to plan to respond even to a 10,000-bbl. spill because these tanks are installed within a lined containment area. What is the national incidence of complete tank failures? As you see, Section 1(f) would be terribly detrimental to PSI.

-- Sec. 1(g): It will be costly to Petro Star to resubmit a contingency plan every three years. We are currently required to submit a new contingency plan if we change our operations. As I have already stated, the DEC is currently limiting the approval period for these plans to three years. The existing requirement to resubmit plans upon changes in operations seems adequate.

-- Sec. 1(h): The word "reasonable" is subjective and should be defined. The words "sufficient resources" are subjective. The word "shortest" is very subjective. Is 36 hours the shortest possible time? I interpret the words "best available technology" to mean that we will be required to continually upgrade all of our plan and equipment as new technology is developed. Technology in this area is currently developing very rapidly and we would be hard-pressed to monitor and acquire such technology at the speed that we would

probably be required. Why should the Department require an applicant to demonstrate ability through training, exercises and equipment? Would these be required prior to the start-up of a new facility?

-- Sec. 1(j): The word "shortest" is subjective.

-- Sec. 2: What is a crude oil facility? In last night's testimony, the pipeline was referred to by the DEC as an adjunct to the Valdez terminal. Could the Petro Star refinery be considered an adjunct to the Valdez terminal? We currently have less than 1,000 bbls. of crude oil in process at any given time. Does this crude oil make us a crude oil terminal facility? Please define crude oil terminal facility.

-- Sec. 2(d)(2) & (3): We currently deliver to barges on the Tanana and on the Yukon. These barges (Yukon) can be as large as 10,000 bbls. What evidence of financial ability will these barge owners provide us prior to loading fuel? Can we accept a notice from the Department which may have subsequently been rescinded? How will we know for sure? Am I inheriting some liability in this area?

-- My most serious problem with this Bill is the requirement in Section 2(b)(2) to have \$50 million proof of financial responsibility. This would be a very serious problem for PSI and would likely put us out of business. I believe any reasonable person would be hard-pressed to determine how our small operation could possibly generate a \$50 million risk. We currently have \$1 million insurance.

I have highlighted the many concerns I have with HB 567. The Department is over-reacting to the Exxon Valdez spill by imposing requirements on many segments of the State which would be unreasonable. I hope that the Governor, the Legislature and the Department have considered the staffing levels and availability of knowledgeable, experienced personnel to be able to effectively implement the significant changes which the Governor's oil spill packages will create. Also, please consider the punitive nature and level of penalties which SB 432, SB 502 and HB 315 would impose, even under HB 567. Lastly, and most significantly,

Chairman Curt Menard  
March 7, 1990  
Page 5

please consider my request to input some REASON into any oil spill bills and consider their effects on facilities around the State of all sizes and potential risks. Please consider the consequences to the people of the State as consumers.

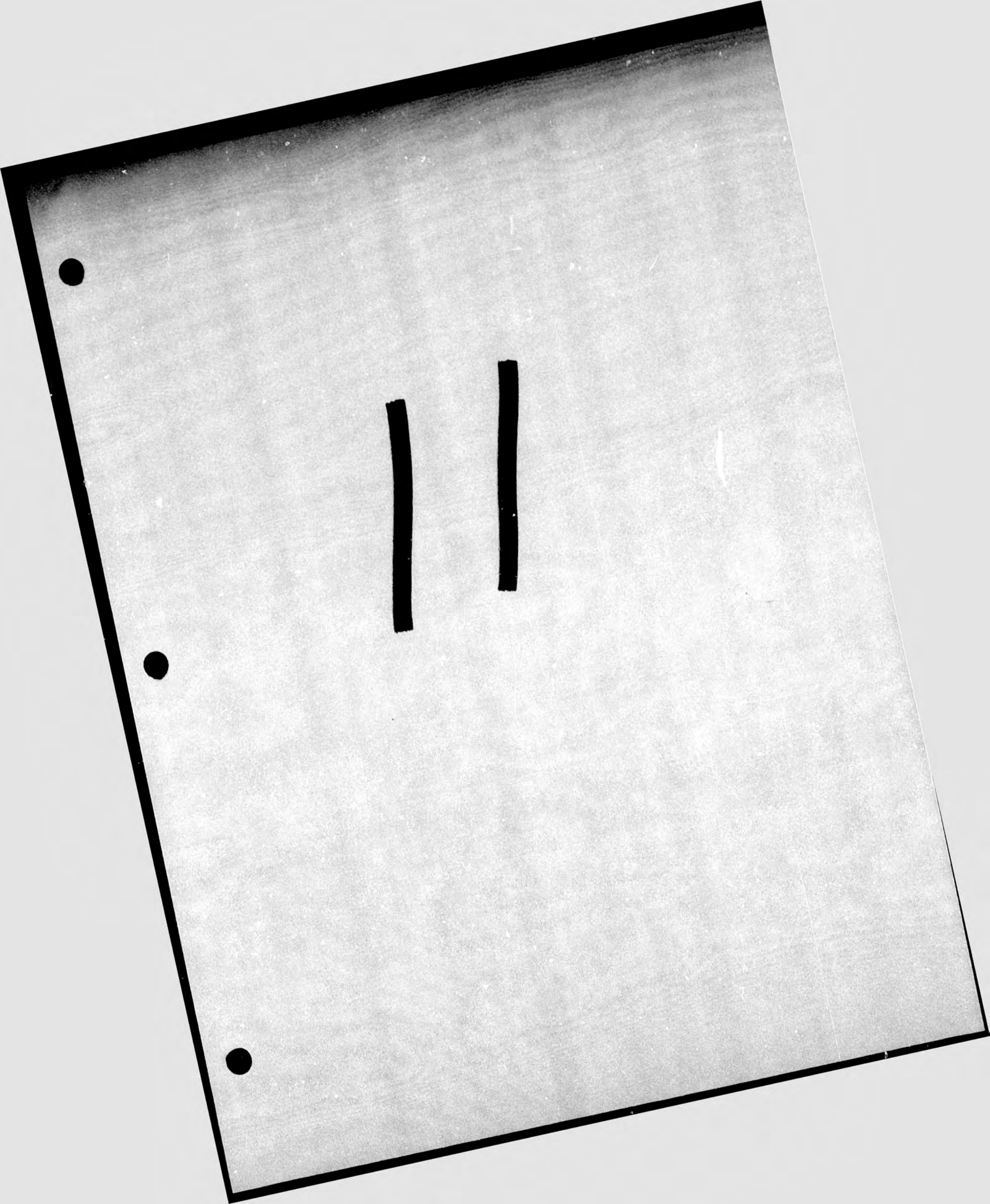
I appreciate this opportunity to provide these comments, and would be happy to answer any questions that you may have.

Sincerely,



Walt Schlotfeldt  
President







CHAMBER = H  
SOURCE = HRES  
DATE = 900308  
YEAR = 90  
TIME = 1500  
DOCUMENT TEXT

HOUSE RESOURCES COMMITTEE  
March 8, 1990  
3:00 p.m.

## MEMBERS PRESENT

Co-Chairman Cliff Davidson  
Co-Chairman Curt Menard  
Representative Walt Furnace  
Representative Bill Hudson  
Representative George Jacko  
Representative Mike Navarre

## MEMBERS ABSENT

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Representative Mike Davis  
Representative Richard Foster  
Representative Bert Sharp

## COMMITTEE CALENDAR

HB 565 - "An Act relating to strengthening the civil penalty and damage provisions concerning the discharge of oil and other environmental violations; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

HELD in Committee for further consideration.

HB 566 - "An Act authorizing the governor to spend money from the oil and hazardous substance release response fund for declared disasters; expanding the role of the division of emergency services

SBC

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during oil-spill-related declared disasters;  
establishing the Alaska State Emergency Response  
Commission; and providing for an effective  
date."

HELD in Committee for further consideration.

HB 56- "An Act relating to the strengthening of the  
state's oil contingency plan requirements,  
financial responsibility requirements, and  
inspection authority under AS 46.04; and  
providing for an effective date."

HELD in Committee for further consideration.

WITNESS REGISTER

Larry Dietrick, Director  
Division of Environmental Quality  
Department of Environmental Conservation

SBC

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P.O. Box 0

Juneau, AK 99811

465-2640

POSITION STATEMENT: Information/Questions

Walt Parker, Chairman  
Alaska Oil Spill Commission  
3724 Campbell Air Strip  
Anchorage, AK 99504  
333-5189

Via Teleconference Anchorage

POSITION STATEMENT: Concerns

John Sund, Member  
Alaska Oil Spill Commission  
2335 Sixth Avenue  
Ketchikan, AK 99901  
225-9292

Via Teleconference Ketchikan

POSITION STATEMENT: Concerns

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HRES90030815 DOCUMENT= 3 OF 15 PAGE = 7 OF 14  
 02/22/90 02514 (H) 2 FISCAL NOTES (DEC, F&G)  
 02/27/90 02576 (H) CORRECTED ZERO FISCAL NOTE (F&G)  
 2/27/90  
 02/27/90 02576 (H) (REPLACES PREVIOUS F&G FISCAL  
 NOTE)

BILL:HB 567

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

PRIME SPONSOR: RULES BY REQUEST OF THE GOVERNOR

| JRN-DATE | JRN-PAGE |     | ACTION                               |
|----------|----------|-----|--------------------------------------|
| 02/22/90 | 02514    | (H) | READ THE FIRST TIME -<br>REFERRAL(S) |
| 02/22/90 | 02514    | (H) | RESOURCES, FINANCE                   |
| 02/22/90 | 02515    | (H) | GOVERNOR'S TRANSMITTAL LETTER        |

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HRES90030815 DOCUMENT= 3 OF 15 PAGE = 8 OF 14  
 02/22/90 02515 (H) 2 FISCAL NOTES (DEC, F&G)  
 2/22/90

#### ACTION NARRATIVE

Tape HRC 90-271, Side A

Number 000

CO-CHAIRMAN CLIFF DAVIDSON called the meeting to order at  
 3:21 p.m. and stated they would be hearing from various  
 people concerning HB 565, HB 566 and HB 567.

Number 009

LARRY DIETRICK, Director, Division of Environmental  
 Quality, Department of Environmental Conservation (DEC),  
 stated he would overview the oil spill prevention program  
 and how the proposed legislation relates to the overall oil  
 spill program from the prevention, preparedness and

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Mr. Dietrick summarized each bill for committee members.

Number 445

Co-Chairman Davidson asked if Section 2 of HB 56 is the area which affects additional facilities. Mr. Dietrick stated currently there is an exemption provision, Section 3, which picks up the additional facilities. Co-Chairman Davidson questioned how many facilities would be affected. Mr. Dietrick estimated approximately 30. Co-Chairman Davidson wondered if there was a determination of how the additional 30 businesses would be affected financially. Mr. Dietrick stated the cost would be for the preparation of a contingency plan but noted DEC had not determined individual costs but are in the process of determining what the premiums are. He added the difficulty with financial responsibility is that each facility is site

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2 / 2

HRES90030815 DOCUMENT= 3 OF 15 PAGE = 12 OF 14  
specific and although they are insurable, it is difficult to make estimates because of the differences in each facility.

Co-Chairman Davidson asked if the costs are higher in rural Alaska than in more populated areas of the state. Mr. Dietrick said it depends on the spill scenario especially response capability.

Number 513

Representative Furnace asked for the list of the 30 facilities as well as financial data on each.

Number 542

WALT PARKER, Chairman, Alaska Oil Spill Commission, stated he would review HB 565, HB 566 and HB 56 and how each bill relates to the recommendations of the Alaska Oil Spill Commission. (Refer to Attachment #2 for Mr. Parker's

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Number 132

JOHN SUND, member of the Alaska Oil Spill Commission, stated the legislation proposed is a good start but does not go far enough to reduce the risk of a catastrophic oil spill. He added the fundamental point to remember is the only way to stop a catastrophic oil spill is to prevent it. He said the bills deal with contingency planning, financial responsibility and penalties and it is the committee's responsibility to go forward and deal more in the role of prevention, commenting on various prevention measures including transportation systems. Mr. Sund stated positive action is needed which will set a state transportation system in place. He added the Alaska Oil Spill Commission had many recommendations in connection with prevention.

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HRES90030815 DOCUMENT= 3 OF 15 PAGE = 14 OF 14  
Mr. Sund emphasized the importance of the Citizens  
Oversight Council which is not contained in any of the  
bills.

ADJOURNMENT

The meeting was adjourned at 5:15 p.m.

END OF DOCUMENT

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Alaska Rural Electric Cooperative Association  
Comments Regarding  
House Bill 567 -and- Senate Bill 504

March 8, 1990

Section 2 of SB 504 would have a devastating impact on the electric utilities throughout the state.

Just among ARECA members alone, the following small cooperative or municipal utilities have fuel tanks large enough that Section 2(b)(2), as presently written, would require them to maintain \$50,000,000 in storage facilities liability insurance:

Kotzebue Electric Association  
Nome Joint Utilities  
Nushagak Electric Cooperation (Dillingham)  
Naknek Electric Association

It would be an utter impossibility for these small systems to comply with that requirement. Moreover, some of the larger electric utilities -- such as Chugach Electric Association in Anchorage -- maintain fuel oil storage facilities as back-up generation fuel or as primary fuel. For these utilities, too, \$50,000,000 liability coverage would be prohibitively expensive or impossible to find.

In all cases, insurance costs would be borne by the utilities' consumers in the form of rate increases -- very large ones in many cases.

Present law requires even the small utilities to demonstrate financial responsibility for \$1 million. Quotations for pollution liability insurance policies with very restricted coverage\* have ranged from \$23,000 to \$45,000 per year each.

Nushagak Electric presently maintains a \$1 million pollution liabilities insurance policy with Lloyds of London at an annual cost of \$23,000. The other cooperatives decided that so little of their real exposure to potential clean-up costs would be covered by the commercial policies available that they have arranged to be essentially self-insured through a program made available by the ARECA Insurance Exchange. This arrangement complies with DEC requirements, but it does nothing to transfer the liability to a third party.

\* Coverage on available insurance policies is limited to third party liability cases. They pay nothing for cleanup of oil spills on the insured's own property. All of the tanks owned by these utilities are properly diked, so the utilities fully expect any likely oil spills to be confined to their property, in which case the insurance policy would be of no benefit.



To provide an understanding of the scale involved in the small utilities, we would submit the following information from Nushagak Electric as a representative example.

Nushagak Electric serves fewer than 1,100 consumers. Its net assets are a little less than \$2 million, and its annual revenues are about \$2.4 million. Approximately \$2.2 million is spent to pay for annual operating expenses. Despite its small size, Nushagak Electric has more than 24,000 barrels of fuel tank capacity. This amount of storage is necessary because of the limited time available to receive fuel shipments each year.

In addition to the above examples, there are many even smaller electric utilities providing essential service to small villages or other communities scattered throughout the state. Many of these systems would be impacted by Section 2(b)(1), which would require \$1,000,000 in liability coverage for refined oil storage facilities between 5,000 and 10,000 barrels in size. The \$1,000,000 requirement for these very small utilities would be as impossible as the \$50,000,000 would be for those with storage facilities greater than 10,000 barrels.

The present law imposes a hardship on the electric utilities -- most of them non-profit corporations or municipally owned -- for which we have unsuccessfully sought relief in earlier legislative sessions.

We propose that refined petroleum products be exempted from the requirement of Section 2(b)(1) and (2) of the proposed legislation. We believe this makes good sense because this would exempt electric utilities from an impossible requirement, and because refined petroleum products do not have the same level of toxicity as crude oil. We hope reason will prevail here.



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POSITION STATEMENT: OPPOSEHB 567

Annie McKenzie

Alaska Environmental Lobby Volunteer

P.O. Box 72

Seldovia, Alaska 99663

234-7816

POSITION STATEMENT: COMMENTS OHB 567

David Bouker

Nushagak Electric

Dillingham, Alaska

Via Teleconference Dillingham

POSITION STATEMENT: OPPOSEHB 56AND 59 504

Dan Stockdell

Kodiak, Alaska

Via Teleconference Kodiak

POSITION STATEMENT: SUPPORTHB 56WITH STRONGER  
DEFINITIONS

SBC

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2 / 2

John Michaelson

Public Works Director

City of Seldovia

Seldovia, Alaska

Via Teleconference Seldovia

POSITION STATEMENT: GENERAL COMMENTS

Michael O'Meara

P.O. Box 1125

Homer, Alaska 99603

235-8635

Via Teleconference Homer

POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567

Dr. Riki Ott

Oil Reform Alliance

P.O. Box 1271

Cordova, Alaska

586-2820

SBC

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2 / 2

Larry Markley  
ARECA  
302-C Assembly Building  
211 4th Street  
Juneau, Alaska 99801  
463-3636  
POSITION STATEMENT: OPPOSED THB 567

Karen Wood  
Alaska Center For The Environment  
700 H. Street, #4  
Anchorage, Alaska 99601  
274-3621  
Via Teleconference Anchorage  
POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567  
WITH CHANGES

SBC

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2 / 2

Nancy Lethcoe  
Alaska Wilderness Sailing Safaris  
P.O. Box 1697  
Valdez, Alaska 99686  
835-8006  
Via Teleconference Valdez  
POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567  
WITH RESERVATIONS

Mike Milligan  
Kodiak, Alaska  
Via Teleconference Kodiak  
POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567

John Caffarford  
Seldovia, Alaska 99663  
Via Teleconference Seldovia  
POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567

Marilyn Caffarford

SBC

M-M23 FX

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Seldovia, Alaska 99663  
Via Teleconference Seldovia  
POSITION STATEMENT: COMMENTS

June Ruling  
Seldovia, Alaska 99663  
Via Teleconference Seldovia  
POSITION STATEMENT: COMMENTS

Rose Specht  
P.O. Box 1439  
Homer, Alaska 99603  
Via Teleconference Homer  
235-7112  
POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567

Mary Eagleson  
Prince William Sound Conservation Alliance  
P.O. Box 1697  
Valdez, AK 99686

SBC

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Via Teleconference Valdez  
POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567

Tim O'Leary  
Homer, Alaska  
Via Teleconference Homer  
POSITION STATEMENT: SUPPORTS HB 565, HB 566 ANHB 567

Jennifer Dilly  
Seldovia, Alaska  
Via Teleconference Seldovia  
POSITION STATEMENT: SUPPORTHB 56WITH CHANGES

William Rieth  
P.O. Box 1398  
Kodiak, Alaska 99615  
POSITION STATEMENT: COMMENTS ON HB 565 AND HB 566

PREVIOUS ACTION

SBC

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2/22/90

02/27/90 02576 (H) (REPLACES PREVIOUS F&amp;G ZERO FN)

BILL:HB 567

TITLE: "An Act relating to the strengthening of the state's oil contingency plan requirements, financial responsibility requirements, and inspection authority

under

AS 46.04; and providing for an effective date."

PRIME SPONSOR: RULES BY REQUEST OF THE GOVERNOR

| JRN-DATE | JRN-PAGE |     | ACTION                            |
|----------|----------|-----|-----------------------------------|
| 02/22/90 | 02514    | (H) | READ THE FIRST TIME - REFERRAL(S) |
| 02/22/90 | 02514    | (H) | RESOURCES, FINANCE                |
| 02/22/90 | 02515    | (H) | GOVERNOR'S TRANSMITTAL LETTER     |
| 02/22/90 | 02515    | (H) | 2 FISCAL NOTES (DEC, F&G) 2/22/90 |

## ACTION NARRATIVE

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2 /2

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TAPE HRC-273, SIDE A

Number 000

CO-CHAIRMAN CURT MENARD called the meeting to order at 3:12 p.m., noting members in attendance. He informed members they would be hearing industry and public testimony on HB 565, HB 566, and HB 567. He added the meeting was being teleconferenced statewide.

Number 035

JOHN RINGSTAD, representing British Petroleum (Alaska), Inc. (BP), read a statement directed primarily to HB 565, HB 566, and HB 567 but also addressed the general subject of laws affecting the oil spill response program. (Refer to Attachment No. 1 for Mr. Ringstad's testimony which can be found at the Alaska Legislative Reference Library or at the House Resources Committee Room, Capitol Building, Room

SBC

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2 /2

Co-chairman Davidson asked Mr. Ringstad if BP wanted the committee to examine historical legislative pieces that were taken out of Alaskan law in the 1970's. Mr. Ringstad said their concern was more general, in that BP felt the committee should consider the whole picture of the oil spill system when proposing legislation. Co-chairman Davidson requested that Mr. Ringstad and Mr. Raider provide a list of numbered legislation and specific statutes that BP would like the committee to consider. Mr. Ringstad agreed to provide such a list.

Number 366

MIKE SMITH, Alaska Area Attorney for Exxon Company, U.S.A., read a statement by teleconference from Anchorage addressed at HB 566 and HB 567. (Refer to Attachment No. 2 for Mr. Smith's testimony which can be found at the Alaska Legislative Reference Library or at the House Resources Committee Room, Capitol Building, Room 124.)

SBC

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Co-Chairman Davidson explained that testimony heard during the oil commission hearings reported that more than 50 percent of the cracks in the United States tanker fleet existed in the traffic travelling to and from Alaska. He asked for Mr. Smith's comments. Mr. Smith disclosed that a significant part of the domestic fleet does come to Alaska. He stated, however, that he was not aware of a significant tanker incident in relation to the Valdez trade which resulted from failure to detect a fault during inspection.

Number 645

BILL SCHOEPHOESTER, representing Petro-Marine Services, an Alaska-owned petroleum marketer and distributor, next testified by teleconference from Anchorage oHB 567. Regarding the oil discharge contingency plans, he felt there should be a mechanism defined for companies to operate legally during the time new laws are being written. He also stated that adding departments to the review process would increase the time taken to implement the

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plans, and agencies, such as the Department of Natural Resources (DNR) and the Alaska Department of Fish and Game (ADF&G), should have a limited scope defined. Mr. Schoephoester said the financial responsibility and insurance requirements section oHB 56 should be reviewed with the insurance industry and revised to reflect what damage the facility could actually do. He projected that even responsible operators might not be able to purchase insurance proposed bHB 56 (specifically, Section 2(j)) at any cost. In closing, he expressed the opinion thaHB 56 must define the term "realistic maximum discharge" as being different for each operator. In this regard, Mr. Schoephoester suggested an appeal process for companies be provided for in this statute.

TAPE HRC-273, SIDE B

Number 000

Co-Chairman Davidson asked Mr. Schoephoester if his company

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handled crude and he answered "No, only refined products." Co-Chairman Davidson then asked Mr. Schoephoester what guidelines his company would use to determine financial liability. Mr. Schoephoester responded that they have no set guidelines as such, but his company's financial responsibility is currently under \$2 million. However, he added current legislation which bases liability on the amount of storage at a facility is a reasonable approach.

Number 069

ANNIE MCKENZIE, Alaska Environmental Lobby, read a prepared statement directed at the inadequacy of contingency plans as proposed iHB 567. (Refer to Attachment No. 3 for Ms. McKenzie's testimony which can be found at the Alaska Legislative Reference Library or at the House Resources Committee Room, Capitol Building, Room 124.)

Number 178

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2 /2

DAVID BOUKER, representing the Nushagak Electric Cooperation, presented his comments by teleconference from Dillingham regarding the negative impact on state electric utilities iHB 56 and Senate Bill 304 were enacted. A copy of his statement was being faxed to the committee. (Refer to Attachment No. 4 for Mr. Bouker's testimony which can be found at the Alaska Legislative Reference Library or at the House Resources Committee Room, Capitol Building, Room 124.) He urged the committee to review the insurance requirements oHB 56 and the resulting economic impact on Alaska electric utilities.

Number 249

Co-Chairman Menard thanked Mr. Bouker for the good points raised in his testimony and assured him the committee would be considering these issues during the redraft process of HB 567.

Number 257

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Co-Chairman Davidson asked Mr. Bouker what product was used at Nushagak Electric. Mr. Bouker replied they use number two diesel.

Number 265

REPRESENTATIVE GEORGE JACKO questioned Mr. Bouker about Nushagak Electric's current insurance costs. Mr. Bouker stated 1989 premiums were approximately \$21,000 and 1988 premiums were \$23,000 annually and, as a point of reference, added that the 1989 cost for fuel was approximately \$650,000.

Number 284

Co-Chairman Menard asked Mr. Bouker what he felt would be a fair financial responsibility to the electric utilities industry. Mr. Bouker answered that the current insurance requirements were enough.

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Number 311

Representative Hudson asked what was the total fuel capacity of Nushagak. Mr. Bouker replied 1,040,000 gallons.

Co-Chairman Menard inquired as to the age of the fuel tanks. Mr. Bouker stated they were financed in 1985 and have never been inspected by the DEC.

Number 336

DAN STOCKDELL, a participant in the Kodiak environmental cleanup effort, testified oHB 56by teleconference from Kodiak. He felt it was critical to actually implement the oil discharge contingency plans once they became law. He was of the opinion that "a realistic maximum oil discharge" should be taken to mean the total capacity of the facility. Also, he objected to the term "shortest possible time" as

SBC

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undefined. Mr. Stockdell added that the financial responsibility for an oil discharge should be implemented on a sliding scale considering the size of the operation. He agreed that the DEC needs to be able to respond in a timely manner. He suggested changes to the section dealing with inspection authority to include pipelines, tanks, etc.

Number 389

The written testimony of JOHN MICHAELSON from Seldovia was read by teleconference by the moderator. He maintained that the people of Alaska have faith in their government to implement legislation to protect their interests.

MIKE O'MEARA next testified by teleconference from Homer. He maintained that HB 565, HB 566 and HB 56 are not extreme and he supports them wholeheartedly. Regarding SB 504 and HB 567 he stated that prevention should be an integral part of all response plans with implementation demonstrated; plans should be prepared for "worst case"

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scenarios; response should be immediate with targeted containment in 72 hours; plans should cover all onshore and offshore facilities including vessels and pipelines; and, evidence of financial responsibility should be required of all facilities. He added that regional indemnification could be provided through additional allocations to the response fund. Mr. O'Meara expressed support for the proposed citizen's oversight council. He added that a complete copy of his testimony was available from the Senate Oil and Gas Committee or the office of the Environmental Lobby. (Refer to Attachment No. 5 for Mr. O'Meara's testimony which can be found at the Alaska Legislative Reference Library or at the House Resources Committee Room, Capitol Building, Room 124.)

Number 511

DR. RIKI OTT, Oil Reform Alliance, stated the Oil Reform Alliance supported the intention of HB 565, HB 566 and HB 567 with changes. Dr. Ott felt that existing legislation

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booklets entitled THE CITIZEN'S GUIDE TO HAZARDOUS AND TOXIC WASTE SITES OF FAIRBANKS, ALASKA, and ENVIRONMENTAL COMPLIANCE AUDIT OF OIL AND GAS INDUSTRY IN KENAI, ALASKA, which they might find helpful. She stated emphatically that refined oil products are every bit as toxic as crude oil.

Dr. Ott suggested the cooperative effort by all applicants of oil discharge contingency plans in the formation of a centralized depot with equipment located throughout the state. She added that on the subject of financial responsibility, the Alliance felt the past performance of each particular industry should be considered as well as their size.

In closing, Dr. Ott expressed that the federal agencies did not have the adequate expertise to carry out thorough inspections and the state should get involved through the DEC.

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Number 000

Regarding HB 566, Dr. Ott stated the Oil Reform Alliance believed the DEC should be in charge over the DES. (Refer to Attachment No. 6 for Dr. Ott's testimony and enclosures which can be found at the Alaska Legislative Reference Library or at the House Resource Committee Room, Capitol Building, Room 124.)

Number 050

LARRY MARKLEY, Alaska Rural Electric Cooperative Association (ARECA), presented testimony to the committee in person. He advised the committee to look closely at the impact the propose HB 56 would have on small electric utilities and cited Naknek Electric Association as an example, which has less than 1,000 consumers and received an insurance quote two years ago of \$40,000 annually.

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Number 092

Representative Navarre asked Mr. Markley if some type of insurance pool has been studied for members of ARECA. Mr. Markley replied saying the cooperatives (other than Nushagek Electric) banded together and self-insured themselves for \$1 million each, because no other alternative was available. He added that the proposed legislation would also affect larger utilities, such as Chugach in Anchorage, which currently has insurance coverage of \$25 million for a premium of \$500,000.

Mr. Markley stated that very small electric utilities are already suffering financial hardship under current legislation. Also, the utilities industry has had a good record in the state. For these reasons, he proposed that refined products be exempted from the proposed legislation iHB 567Section 2.

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In conclusion, Mr. Markley stated that the utilities industry supports giving DEC the necessary resources, and suggested some sort of time frame be included in HB 567, Section 1, for DEC approval of oil discharge contingency plans. (Refer to Attachment No. 7 for Mr. Markley's testimony which can be found at the Alaska Legislative Reference Library or at the House Resources Committee Room, Capitol Building, Room 124.)

Number 219

KAREN WOOD, Alaska Center for the Environment, stated she supported the intent of HB 565, HB 565 and HB 567 but felt some changes should be made. Specifically, she felt the limit of 18,000 gallons of crude oil, as proposed in HB 565, was too high. Regarding HB 565, Ms. Wood wanted other hazardous substances besides oil included in the bill. She added that in regard to oil spill contingency plans in HB 567 prevention of spills should also be addressed, and legislation should be expanded to include onshore

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facilities as well as offshore. Ms. Wood, responding to Mr. Markley's testimony, disagreed that refined products should be exempted from financial responsibility legislation in HB 567. In conclusion, she felt that start of emergency cleanup operations should be required immediately after the discovery of an oil spill.

Number 310

NANCY LETHCOE, Alaska Wilderness Sailing Safaris, next testified by teleconference from Valdez. Although in favor of the oil industry in Alaska, she had been opposed to the tanker route to Valdez, preferring instead a pipeline through Canada and the mid-west. Ms. Lethcoe expressed support for HB 565, HB 566 and HB 567 with some reservations. Specifically, she disagreed with the exemption of 18,000 gallons of crude; the DEC was the best equipped to handle quick response to a spill and that department should retain the lead role with the DES in a strong supportive role; adequate equipment to contain the

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CHAMBER = H

SOURCE = HRES

DATE = 900309

YEAR = 90

TIME = 1500

DOCUMENT TEXT

## HOUSE RESOURCES COMMITTEE

March 9, 1990

3:00 p.m.

## MEMBERS PRESENT

Co-Chairman Curt Menard

Co-Chairman Cliff Davidson

Representative Walt Furnace

Representative Bill Hudson

Representative George Jacko

Representative Mike Navarre

## MEMBERS ABSENT

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Representative Mike Davis

Representative Richard Foster

Representative Bert Sharp

## COMMITTEE CALENDAR

## Teleconference

HB 565 - "An Act relating to strengthening the civil penalty and damage provisions concerning the discharge of oil and other environmental violations; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

HELD in Committee For Further Consideration.

HB 566 - "An Act authorizing the governor to spend money from the oil and hazardous substance

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release response fund for declared disasters; expanding the role of the division of emergency services during oil-spill-related declared disasters; establishing the Alaska State Emergency Response Commission; and providing for an effective date."

HELD in Committee For Further Consideration.

HB 56- "An Act relating to the strengthening of the state's oil contingency plan requirements, financial responsibility requirements, and inspection authority under AS 46.04; and providing for an effective date."

HELD in Committee For Further Consideration.

WITNESS REGISTER

John Ringstad  
British Petroleum Exploration (Alaska), Inc.

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P.O. Box 196612

Anchorage, Alaska 99510

463-5242

POSITION STATEMENT: OPPOSES HB 565, SUPPORTS HB 566,  
SUPPORTS 567 WITH CHANGES

Michael Smith

Alaska Area Attorney

Exxon Company, U.S.A.

P.O. Box 196601

Anchorage, Alaska 99519

561-5331

Via Teleconference Anchorage

POSITION STATEMENT: SUPPORTS HB 566 WITH CHANGES,  
OPPOSEHB 567

Bill Schoephoester

Petro-Marine Services

Anchorage, Alaska

Via Teleconference Anchorage

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TESTIMONY - HB 567

MY NAME IS DAVE BOUKER. I AM THE GENERAL MANAGER OF NUSHAGAK ELECTRIC COOPERATIVE, A SMALL RURAL NON-PROFIT ELECTRIC UTILITY WHICH PROVIDES POWER TO THE COMMUNITIES OF DILLINGHAM AND ALEKNAGIK.

I AM HERE TO TESTIFY ON HB 567 AND MORE SPECIFICALLY ON THAT SECTION WHICH MODIFIES AS 46.04.040 TITLED, "PROOF OF FINANCIAL RESPONSIBILITY."

AT THIS TIME, AN OIL TERMINAL OPERATOR OF A FACILITY WITH 10,000 BARRELS (BBLs) OF STORAGE, OR GREATER, IS REQUIRED TO SHOW ABILITY TO SELF-INSURE OR TO HAVE AN INSURANCE POLICY OF \$1 MILLION TO INDICATE PROOF OF FINANCIAL RESPONSIBILITY FOR A SPILL DURING TRANSFER OPERATIONS. THE POLICY WHICH WE CURRENTLY HAVE IN FORCE IS WRITTEN BY LLOYDS OF LONDON AND COSTS US IN EXCESS OF \$21,000 PER YEAR.

THE PROPOSED HB 567 WOULD INCREASE THE REQUIRED COVERAGE FROM \$1 MILLION TO \$50 MILLION. AN INCREASE OF 50 FOLD. WE HAD EXTREME DIFFICULTY IN OBTAINING THE EXISTING POLICY BECAUSE NO U.S. CARRIER WOULD TOUCH IT. OUR NET WORTH IS LESS THAN \$2 MILLION AND I DO NOT BELIEVE THAT WE ARE INSURABLE FOR ANYTHING OVER THAT AMOUNT.

WE ARE LOCATED NORTH OF DUTCH HARBOR AND THIS MEANS THAT WE CAN ONLY RECEIVE FUEL DELIVERY DURING THE SUMMER MONTHS. THEREFORE, WE

HB 567 Testimony, Page 2

HAVE TO HAVE THE STORAGE CAPACITY TO CARRY US THROUGH FROM SEPTEMBER TO MAY OR JUNE. THE LOCAL WHOLESALE DISTRIBUTOR IS IN MUCH THE SAME POSITION. IF THE INSURANCE COVERAGE REQUIREMENTS INCREASE 50 FOLD, YOU CAN BE ASSURED THAT THE ATTENDANT COSTS OF THAT INSURANCE WILL MEAN SUBSTANTIAL INCREASE IN COST OF POWER, HEATING FUEL, AND GASOLINE TO RURAL COMMUNITIES LEAST ABLE TO PAY.

ONE POSSIBLE ALTERNATIVE TO THIS ISSUE MIGHT BE TO INCREASE THE EXEMPTION IN AS 46.04.050 TO 50,000 BBLs OF REFINED PRODUCTS, BECAUSE THEY ARE FAR LESS DANGEROUS THAN CRUDE AND RAPIDLY DISSIPATE IN THE ATMOSPHERE IN THE EVENT OF A SPILL. IN ADDITION, AN EXEMPTION AT THIS LEVEL WOULD PROBABLY ACCOMMODATE MOST FUEL INVENTORIES IN WESTERN ALASKA. HOWEVER, THIS ASPECT SHOULD BE LOOKED INTO BEFORE ANY FINAL DECISION IS MADE.

WE BELIEVE THAT THE CATASTROPHE OF THE OIL SPILL IN PRINCE WILLIAM SOUND GENERATED THIS BILL. HOWEVER, IT SHOULD BE NOTED THAT THE OIL COMPANIES ARE NOT AS FINANCIALLY IMPACTED BY THE BILL AS THE SMALL RURAL COMMUNITIES BECAUSE MOST OF THE OIL COMPANIES ARE FINANCIALLY SOUND ENOUGH TO SELF-INSURE WHILE WE HAVE TO IMMEDIATELY PUT UP THE CASH TO BUY INSURANCE FROM SOME FOREIGN ENTITY OR PURCHASE A LETTER OF CREDIT AND, OBVIOUSLY, WE WILL HAVE DIFFICULTY IN PURCHASING A \$50 MILLION LETTER OF CREDIT. I WOULD URGENTLY RECOMMEND THE COMMITTEE TO REVIEW THESE PROPOSED REQUIREMENTS AND THEIR ECONOMIC IMPACT BECAUSE THEY APPEAR TO PRESENT IMPOSSIBLE CONDITIONS TO US. (3/9/90:lwb\rptdb)

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Chevron



SAUPE ENTERPRISES, INC.  
P.O. BOX 70510  
FAIRBANKS, AK 99707

FAX TRANSMITTAL RECORD

FAX NUMBER - (907) 452-1033  
Telephone - (907) 452-1238  
Date Mar. 8, 1990

TO: House Resources Committee ATTN: \_\_\_\_\_  
FAX# % Rep. Sharp (Gloria) SUBJECT: H.B.-567  
21-465-2294 (#Pages Sent: This plus one)

Message: Testimony offered to members of the House Resource Comm.  
relative to H.B.-567:

My name is Bernie Saupe' - I have owned and operated a small fuel distributorship here in Fairbanks for 15 years.

I appreciate the opportunity to testify, because I'm one of the little guys that will be put out of business by this Bill.

It is heartening to me, and to others like me, to know that you all share the concern, confusion, and uncertainty that we feel regarding H.B.-567. I applaud any attempts to identify exactly what the Bill will require, and I share your fear that the regulations may not coincide with the intent of the Bill.

The chairman of the study commission stated that their study included 3 large marine terminals and huge ocean-going super-tankers - yet the requirements proposed in "567" include little operations like my Fairbanks bulk plant! In fact, plants as small as 1/4 our size, along with many river barges, would also be put out of business by "567" - many rural villages depend on facilities like these for economical fuel delivery! (I might note here that while we have almost 40,000 Bbls. of storage on site, we typically use only about 5,000 Bbls. at any given time.)

The DEC has indicated an adequate contingency plan includes virtually absolute and predictable control of 250,000/barrel releases. "567" requires me and many others like me to maintain the capability of recovering an unspecified portion of such a spill in an unspecified period of time. This is totally unrealistic - first of all, it would literally take us a whole year to spill that much product, based on our average thru-put for any 12-month period. A year-long spill is probably as unlikely a scenario as our being able to meet "567"'s requirements! Secondly, if it's impossible for major companies like Arco Shipping to comply with this contingency plan, it's utterly ridiculous for anyone our size to even suggest we could comply in any respect!

It's pretty obvious there are significant differences between a 1,000-foot ocean-going vessel and our little plant on Illinois St. There are worlds of differences between us and an Alyeska, or a Nikiski, or even a Drift River. There are even major differences between us and the 3 other plants like mine that are within 600 feet of my office! Yet "567" fails to see any difference between all of these examples! Again, if folks like Arco can't comply, it's clear that I and dozens of others like me, are instantly out of business!



Even greater and more immediate impacts are revealed by the "fantasy-world" financial-responsibility requirements of "567". It would be sheer hysteria for me to even anticipate \$50 million coverage from any source! If my customers would tolerate a 20 or 30¢ increase in my prices, I might be able to handle premiums for a year or so, but there's still nobody out there to offer the coverage if I could afford it! The \$50 million requirement would instantly strangle my business, and my company could then be faced with a subsequent bankruptcy.

For the last 4 or 5 years, we've been hard-pressed to obtain the \$1 million coverage presently required - and we usually have only one carrier available to write it. Several years ago I attempted to add an extra umbrella of \$500,000 but the additional premium for just the  $\frac{1}{2}$  million extra was \$53,000!! Multiply that sort of costs by a 50-fold increase, and you could only guess what the annual premium might be!

Fortunately I don't have to attempt such estimates and projections. I'd like to quote verbatim from a letter I received ~~Monday~~ from my insurance broker: Quote:

"The limit of \$50 million per incident is simply not available for an operation of your size in today's marketplace. Underwriters I contacted stated not only no, but "Hell No."..... and,

"If, by some stretch of the imagination, this limit was available to you, the cost of this coverage alone would be in the neighborhood of half a million dollars." End of Quote.

I don't know what else I could tell you, or of any nicer way to say it - so I'll just say thanks for hearing me, and I sincerely hope you'll remember all us little guys out here while you figure out what our future may hold! Thanks again!

  
Bernie Saupé

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# Oil Reform Alliance



TESTIMONY BEFORE HOUSE RESOURCES COMMITTEE  
ON  
HB 565, HB 566, AND HB567

March 9, 1990

My name is Riki Ott. I am a commercial fisherman and Cordova resident. My training is in marine pollution: I have a Masters in oil pollution and a doctorate in sediment pollution. I am President of the Oil Reform Alliance, which is a grassroots coalition among commercial fishermen, environmentalist, and others within and outside Alaska who are dedicated to reforming oil industry practices that impact communities on social, economic, and environmental levels.

The Oil Reform Alliance (ORA) supports the intention of House Bills 565, 566, and 567. In the wake of the Exxon Valdez, we find that existing laws are clearly inadequate regarding the State's role in prevention and management of catastrophic oil spills from large facilities and tankers. In addition, we find that there are serious problems with spills, leaks, and illegal dumping of oil and hazardous wastes from numerous smaller facilities and operators statewide. We are very pleased with and strongly support the intent of this package to comprehensively address all polluters.

First, some general statements; then, some specific language changes.

Strengthening the state's role in prevention of oil spills seems to be the main theme of HB567. I find it an appalling state of affairs that the State has allowed the oil industry to proceed without common sense safeguards like state-approved contingency plans in place to protect other resources, the public, and the environment. Such oversight sends a clear message to industry that we don't care.

The public needs the assurance that industry has considered its safety and the environment in the event of an emergency as evidenced by an approved contingency plan. If DEC is currently a bottleneck in the approval process, then we ask the legislature to find out why and address this problem.



However, we urge caution on two accounts: 1) that DEC should not be forced to approve a contingency plan within a set time frame as this could result in industry pressuring DEC to approve a faulty plan; and 2) that the review process should NOT be extended to the Depts. of Fish and Game and Natural Resources as this would only further lengthen the approval process by including reviewers with limited expertise in this area.

We recommend the following specific language changes: to cover all facilities, on page 1, line 20, delete the word "offshore;" and on page 2, delete section (e) in its entirety which refers to multiple department review of contingency plans.

After the Exxon Valdez spill, Alyeska now claims they are prepared to respond to a maximum spill of 250,000 barrels. During testimony on these bills in the Senate Oil and Gas Committee, it was evident that 250,000 barrels has become the new industry standard.

This is NOT acceptable to the ORA. The Exxon Valdez only spilled one fifth of its cargo and tankers up to fifty percent larger than the Exxon Valdez carry oil from the terminal.

We ask that the industry assume a greater share of the inherent risk associated with transportation/production of oil -- as they have done in other parts of the world -- rather than push off this risk on the public. This is not an unrealistic request. In an area of northern Europe the geographic equivalent of Alaska, the combined response from scattered depots is 500,000 bbl/hr or 50 times the current capacity in the state.

We recommend that the language on page 2, lines 21-23, read: "...manpower and resources to rapidly respond to a maximum oil discharge in the time frame specified by the oil discharge contingency plan(s), but not to exceed 72 hours."

We can't require the oil industry to contain a spill because this may be impossible due to weather or other forces beyond their control. We can't require the oil industry to remove a discharge because this would eliminate the potential for dispersant use or burning as these methods do not remove oil, but instead force it into the air or water column.

But we can require the oil industry to stockpile the necessary equipment and pre-train the necessary manpower for rapid response to a maximum oil discharge. We stress that this language should apply to any applicants for an oil discharge contingency plan.



The current evacuation of the Drift River terminal is a forceful reminder that contingency plans must encompass total contents of terminals and tankers. What the oil industry calls redundancy, the public calls safety.

On page 2, lines 24-25, we recommend the following wording: "(g) An oil discharge contingency plan must be reviewed by DEC and upgraded, if necessary, by the applicant at least every three years."

We bring to the committee members' attention a booklet entitled: "A Citizen's Guide to Hazardous and Toxic Waste Sites of Fairbanks, Alaska" prepared for the Northern Alaska Environmental Center. This booklet documents and ranks 33 toxic waste problems ranging from a residential yard sprayed with PCBs to buried experimental military nuclear reactors. Twenty-five of the 33 toxic waste problems involved some form of petroleum hydrocarbons.

Ranked No. 1 was the Fairbanks MUS city wells: "the sole source of all Fairbanks public water is contaminated with fuel. Benzene is present in city wells up to 13 ppb (the drinking water standard is 5 ppb.)

Ranked No. 2 was MAPCO which were "fined for polluting drinking water, not reporting spills, selling improperly identified fuel and dumping hazardous waste. Benzene contaminates the groundwater 4,000 times in excess of drinking water standards."

Ranked No. 3 was the Fort Wainwright Army Base which contaminated over 40 acres in a single gasoline/diesel spill and has at least nine leaking underground fuel storage tanks.

Ranked No. 5 was the Eielson Air Force Base which reportedly had the largest underground fuel spill in North America: over 10 million gallons on 2.7 acres. "The pollution is so widespread a lake on base is nicknamed "POL lake;" short for "petroleum, oil and lubricants. Eielson has a proposal to DEC to inject 12 million tons/yr of waste water underground."

Ranked No. 9 was PetroStar with fuel spills contaminating soils and groundwater. "Monitoring wells between MAPCO and PetroStar are now contaminated."

It is quite clear that spilling oil is not a phenonema specific to tankers in Valdez or big operators like Alyeska. Nor is Fairbanks alone in this problem. A similar booklet on hazardous and toxic waste sites is available for the Kenai area. We also bring to the committee's attention a compliance chronology on the Tesoro refinery and a New York Times article on a fuel oil barge explosion in Arthur Kill.

Little operators as well as big operators have accidents and the ORA insists that legislators address all polluters to minimize risks to the public and environment. Don't cop out and pass a bill that only protects us from part of the problem.

There is a general misconception that refined products are less toxic than crude oil. In reality, refined products contain the most toxic fraction of crude oil. This fraction is also the most volatile and soluble. For example, benzene dissolves rapidly into groundwater. Comparative toxicity of refined versus unrefined oil depends upon physical and biological parameters of the environment in which the discharge occurred.

So work for full protection. Consider options. For example, the American Petroleum Institute or the oil industry within the state could form a PIRO type depot with equipment located throughout the state. This could be a cooperative effort with participation from all applicants of oil discharge contingency plans.

A similar type of cooperative cooperation could be used to address industry concerns in the section on financial responsibility. Proof of financial responsibility should be evaluated based on size of operation with limits increased for large operators to the maximum allowed by the state (\$500,000). Decreases could be awarded for good behavior based on past performance.

Requiring adequate proof of financial responsibility is well within the capability of the industry. Last September, fishermen, environmentalists, and tourism/recreational groups held a marine demonstration in front of Alyeska protesting Amerada Hess charters of Liberian-flagged, Israeli-registered, Italian-crewed tankers, some of which were up to 50% larger than the Exxon Valdez. We demanded a billion dollar bond for these tankers and Amerada Hess posted it. Amerada Hess is only a minor owner (1.5%) of Alyeska: surely the other owners could post similar bonds.

And finally the scope of Sec. 4, which deals with DEC inspections of oil industry operations, needs to be increased by adding this language after (2) on line 16: "(3) examine the structural integrity of terminals, pipelines, and other facilities related to the exploration, production, and transportation of oil."

The fleet carrying North Slope crude accounts for 13% of the U.S. tanker fleet, but this same 13% accounts for 52% of the structural failures in the fleet. Tankers are supposedly inspected by the Coast Guard. The Alyeska facility and Trans-Alaska Pipeline are also supposedly

inspected by federal agencies, but the Alyeska facility has never been inspected in 12 years of operation and recent tests for corrosion in the pipeline have revealed extensive problems in 300 of the 800 miles.

Clearly, there is something very wrong with the federal inspection programs. Until such time as the federal government strengthens these programs and carries out its duties, the ORA strongly supports state (DEC) oversight in all these areas, either directly or as part of a joint state/federal effort. The legislature should provide DEC with the funds to contract expertise to conduct these inspections.

Last in HB567, the ORA recommends the following wording on page 8, line 18, for section (5): "(18) "maximum oil discharge" means the maximum oil discharge that could occur during the lifetime of the vessel or facility.

Very briefly, in HB566, there is confusion within the ranks of the ORA as to the language and intent of the sections dealing with duties of DEC versus DES. However, there is a strong consensus that we want DEC telling DES what to do during an oil or hazardous substance discharge emergency, not vice versa.

Thank you for the opportunity to testify.



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REGIONAL CITIZEN ADVISORY COMMITTEE

March 12, 1990

Representative Curt Menard  
P.O. Box V  
Juneau, AK. 99811

Dear Mr. Menard:

Attached is some information about the Regional Citizen's Advisory Committee (RCAC) and a memorandum with regards to our positions on pending State Legislation. Our Legislative Sub-Committee will be working to develop position papers, testimony, and in some cases specific language for oil spill related bills. The fifteen directors of RCAC look forward to working with the legislature as well as the oil industry to put in place the best laws possible to prevent, respond to, and mitigate the impacts from future oil spills.

Thank You.



Tim Robertson  
V.P. Oil Spill Prevention & Response

TR/ph  
cc: Marilyn Hyman

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THE FOLLOWING REPORT, AS CORRECTED, WAS APPROVED BY THE RCAC ON MARCH 9, 1990

Memorandum -- 9 March 1990

To: RCAC

From: Legislative Subcommittee

Your legislative subcommittee recommends RCAC take a supporting position on the following legislation:

1. SB359/Comparable House Measure

Establishes \$10 million within the Sec. 470 funds to support social and economic needs of a municipal response to a spill, through DCRA.

RCAC would support the efforts of the Oiled Mayors. In our statements, we would remind people of our stand that we feel the Alyeska plan, as submitted, is inadequate because it does not address social and economic impact of a spill.

2. SB 497/HB 409

Part of the Governor's oil spill package, the bill strengthens DEC access to terminal facilities, allows for administrative penalties, changes methods for compliance orders and provides for environmental audits.

The bill has passed committees of referral in the House and awaits floor action.

RCAC should support the legislation, as it brings Alaska environmental law in step with the rest of the country and strengthens RCAC's access.

In doing so, we should support proper funding and staffing of DEC for enforcement of this law and laws they already have.

3. SB504/HB567

The bill, submitted by Gov. Cowper and the Oil Spill Commission, would raise the standard for mandatory response plans. RCAC should support the bill with the following additions or caveats:

a. The bill should mandate prevention as well as response in contingency plans.

b. RCAC's should be recognized as a part of both the review of a

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**RCAC Legislative Subcommittee Report -- page two**

plan and as essential to the operation of any plan. This is a good place to further mandate agency cooperation with citizen's advisory committees. We feel this legislation, if sufficiently modified, is the best way to tackle the concerns behind the Resources Committee bill draft that would create RCAC's on the state level.

c. On the bill's most controversial provision, we suggest the RCAC support language which would have a spill contained within 72 hours and picked up within the shortest possible time. Language also implies that immediate response is not required under the law, and we should clarify that language. Finally, on the issue of "realistic maximum discharge" vs. "most probable discharge" we support the former in concept, but believe RCAC should review this specific language further until we better understand the effect it would have on the current plan.

d. We would like to see the bill mandate legal and social and economic provisions of a prevention/response plan, and to see the DEC-Alyeska agreement on handoff of a response to a spiller recognized and clarified in the law.

e. We should note in testimony that several parts of the current law seem not to have been enforced by DEC, and use that to support a strong fiscal note for this provision, including funding of community review of response plans.

4. The RCAC will follow HB 565, SB 502, SB 503, HB 566, HB 315, HB 316 and legislation concerning citizens advisory committees and citizens suits. We will gain committee concurrence before taking a position.

5. Resources required: For the amendments we propose to SB 304/HB 567 we will attempt to have an amendment written by legislative staff but may wish to hire drafting counsel and to bill back some secretarial time. We wish to have the ability for a member of the committee to be in Juneau at immediate notice. We will teleconference with the RCAC as a whole if any change from these positions is required. We do not believe a retained lobbyist is required. We would welcome participation from anyone on the committee not currently on the subcommittee.

Position papers we prepare on these issues will be distributed to RCAC members in advance of use in order to involve our constituents in the process and to keep them up to speed.

Pending approval of Messrs. Walker and Butler, Tim Robertson will serve as co-chair for state legislation. Mead Treadwell will serve as co-chair for federal legislation. RCAC will plan to have someone in Juneau during the session's last week.



## REGIONAL CITIZENS ADVISORY COMMITTEE

The Regional Citizens Advisory Committee (RCAC) offers the best chance for the public to influence oil industry operations in this state. The RCAC is The Alaskan version of the successful system of citizen participation in the formulation of oil storage and transportation policy in the remote Shetland Islands of Scotland.

The formation of an interim RCAC, originally named the Alyeska Citizens Advisory Committee (ACAC), was initiated by the Alyeska Pipeline Service Company in June, 1989. Alyeska was responding to the need for citizens' participation in the process of formulating an effective oil spill prevention and response plan for Prince William Sound, as required by Alaska Department of Environmental Conservation in aftermath of the Exxon Valdez grounding.

The 15 committee members represent the communities of Prince William sound, the Kenai Peninsula and Kodiak Island, as well as fishing, conservation, aquaculture and native groups. No member of the committee represents Alyeska or the owner corporations.

As a fully independent entity, this interim committee has vigorously pursued its goals. The RCAC has begun its review of the Alyeska Oil Spill Response and Contingency Plan, and has taken on the additional responsibilities of monitoring the Alyeska Pipeline Terminal in order to help ensure its environmentally correct operation and the safe shipping of North slope Crude through Prince William Sound.

To guarantee the continued existence of a citizens advisory group, the committee is now in the process of developing bylaws and articles of incorporation as a nonprofit corporation, as well as negotiating a contract between RCAC and Alyeska for the permanent committee.

The interim committee has also involved itself in federal oil spill legislation. Most recently, RCAC modified Senate legislative language mandating a citizens advisory committee system, and in November sent a three-member subcommittee to Washington, D.C., to support the inclusion of this language in oil spill legislation before the House of Representatives. The concept of the advisory committee was introduced in the Senate by Senator Murkowski as a section of the oil spill liability bill passed in August.

The advisory committee language supported by RCAC was attached by Representative Young to the Coast Guard appropriations bill passed in October, rather than to the House version of the oil spill liability bill. The advisory committee language was later dropped from the legislation in conference, but Rep. Young's action succeeded in bringing the issue to the fore in the House, which is now on record as strongly supporting the concept. Senate and House members are expected to conference in March on the oil spill bill, chances are good that the Citizen Advisory Legislation will be part of the final bill.



The RCAC legislative subcommittee is planning to work towards better State Legislation related to Oil Spill Prevention and Response as well as Oil Spill Impact Mitigation. With its regional representation and independent status, the RCAC can add legislative refinements based on knowledge gained through real involvement.

The RCAC can act as an effective watchdog to the oil industry in Alaska. The first line of defense against oil spill or oil-related impacts is prevention. This is the field of endeavor which will be actively pursued by the environmental and technical subcommittees to be appointed by the RCAC. In addition, the RCAC will interact with federal and state regulatory agencies on an ex-officio basis.

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## ACAC MEMBERS

March 1, 1990

| NAME                                                 | ADDRESS                                                | PHONE                        | FAX                  |
|------------------------------------------------------|--------------------------------------------------------|------------------------------|----------------------|
| GEORGIA BUCK<br>CITY OF<br>WHITTIER                  | CITY OF WHITTIER<br>P.O. BOX 808<br>WHITTIER, AK 99693 | 472-2327(WK)                 | 472-2404             |
| JIM BUTLER<br>PENINSULA<br>BORO. REP                 | 144 N. BINKLEY AVE<br>SOLDOTNA, AK 99689               | 262-7815(WK)<br>283-5633(HM) | 262-1892             |
| CHARLES<br>CHRISTIANSEN<br>MAYOR<br>LARSEN BAY       | BOX 8<br>LARSEN BAY, AK 99615                          | 347-2203                     |                      |
| WAYNE COLEMAN<br>KODIAK ISLAND<br>BOROUGH            | 710 MILL BAY RD<br>KODIAK, AK 99615                    | 486-5736                     | 486-2886             |
| CHRIS GATES<br>CITY OF SEWARD<br>VP-PORT OPS/<br>VTS | 5th & ADAMS<br>BOX 167<br>SEWARD, AK 99684             | 224-3331(WK)<br>224-8667(HM) | 224-3248             |
| MARILYN LELAND<br>C.D.F.U.<br>SECRETARY              | BOX 839<br>CORDOVA, AK 99574                           | 424-3447(WK)<br>424-7778(HM) | 424-3430             |
| JOHN McMULLEN<br>PSWAC                               | PWSAC OFFICE<br>CORDOVA, AK 99574                      | 424-7511(WK)                 | 424-7514             |
| STACIE PASCAL<br>CHUGACH<br>ALASKA CORP.             | 3000 A STREET<br>SUITE 400<br>ANCHORAGE, AK 99503      | 563-8868(WK)                 | 563-8402             |
| TIM ROBERTSON<br>CITY OF<br>SELDOVIA<br>VP-O.S.R.    | DRAWER B<br>SELDOVIA, AK 99623                         | 234-7469(WK)<br>234-7491(HM) | 234-7430             |
| ANN ROTHE<br>NAT'L WLD.<br>FEDERATION<br>CHAIRPERSON | 750 W. 2ND AVE<br>SUITE 200<br>ANCHORAGE, AK           | 258-4800(WK)                 | 258-4811             |
| LESLIE SMITH<br><br>KODIAK CITY                      | 710 MILL BAY RD.<br>KODIAK, AK 99615                   | 486-8642(WK)                 | 486-8600             |
| MARGE TILLION<br>CITY OF HOMER                       | P.O. BOX 835<br>HOMER, AK 99603                        | 235-7085(HM)<br>(CITY)       | 235-7085<br>235-3140 |
| MEAD TREADWELL<br>P.O. BOX<br>CORDOVA<br>VP-SCIENCE  | P.O. BOX 835<br>CORDOVA, AK 99574                      | 424-0200(WK)<br>424-0000(HM) | 424-0000             |
| PHI WALKER<br>CITY OF VALDEZ<br>MEASURER             | 500 W. 3RD AVE.<br>ANCHORAGE, AK 99501                 | 263-6251(WK)<br>274-7522(WK) | 263-8320             |
| JASON WELLS<br>VP-TERM/ENV.                          | P.O. BOX 835<br>CORDOVA, AK 99574                      | 895-4874(WK)                 |                      |

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CHAMBER = H  
SOURCE = HRES  
DATE = 900314  
YEAR = 90  
TIME = 1520  
DOCUMENT TEXT

HOUSE RESOURCES COMMITTEE  
MARCH 14, 1990  
3:20 p.m.

## MEMBERS PRESENT

Rep. Cliff Davidson, Co-Chairman  
Rep. Curt Menard, Co-Chairman  
Rep. Mike Davis  
Rep. Richard Foster  
Rep. Walt Furnace  
Rep. Bill Hudson  
Rep. George Jacko  
Rep. Mike Navarre

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providing for an effective date."

## NOT HEARD

HB 578 "An Act creating a citizens' oversight council on  
oil and other hazardous substances and regional  
advisory committees.

## HELD IN COMMITTEE

Overview by Insurance Industry Representatives oHB 567

## WITNESS REGISTER

Michael Padden  
Ribelin Lowell & Co.  
341 W. Tudor Rd., Suite 201  
Anchorage, AK 99503  
561-1250

POSITION STATEMENT: Provided information

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Paul Greenaway  
Horace Holman Marine & Overseas Ltd.  
12 Camomile St.  
London, England  
01-283-7522

POSITION STATEMENT: Provided information

John Gimblet  
Horace Holman Marine & Overseas Ltd.  
12 Camomile St.  
London, England  
01-283-7522

POSITION STATEMENT: Provided information

Walt Parker, Chairman  
Oil Spill Commission  
3724 Campbell Air Strip  
Anchorage, AK 99504  
333-5189

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PAGE =

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POSITION STATEMENT: Provided information

Esther Wunnicke  
Oil Spill Commission  
3601 C St., Suite 400  
Anchorage, AK 99510

POSITION STATEMENT: Provided information

Christopher Gates  
Port Marketing Director  
Box 167  
Seward, AK 99664  
224-3331

POSITION STATEMENT: Supports HB 578

Larry Smith  
Kachemak Resources Institute  
Fritz Cove  
Homer, AK  
235-7090

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POSITION STATEMENT: Supports HB 578

Jim Butler  
144 N. Binkley  
Soldotna, AK 99669  
262-1218

POSITION STATEMENT: Supports HB 578

Wayne Coleman  
710 Mill Bay Rd.  
Kodiak, AK 99615  
486-5736

POSITION STATEMENT: Supports HB 578

Milligan

21

, AK 99615

94

ION STATEMENT: Supports HB 578

Nancy Hillstrand

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02/22/90 02514 (H) READ THE FIRST TIME -  
REFERRAL(S)  
02/22/90 02514 (H) RESOURCES, FINANCE  
02/22/90 02514 (H) GOVERNOR'S TRANSMITTAL LETTER  
02/22/90 02514 (H) -2 FISCAL NOTES (DEC, F&G)  
02/27/90 02576 (H) -CORRECTED ZERO FISCAL  
NOTE(F&G) 2/22/90  
02/27/90 02576 (H) (REPLACES PREVIOUS F&G ZERO FN)

ACTION NARRATIVE

TAPE HRC 90-284, SIDE A

Number 000

CHAIRMAN CLIFF DAVIDSON called the meeting to order at 3:25 p.m. Present were Co-chairman Menard, Representatives Hudson, Foster, and Navarre. He announced HB 432 would be moved to the bottom of the agenda, and the committee would first have the overview and then comments would be taken on

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HB 567. The committee would then take testimony on HB 578 and HB 566. Co-chairman Davidson noted Rep. Davis had joined the meeting. He then introduced John Gimblet, Paul Greenaway and Michael Padden.

Number 024

JOHN GIMBLET informed the committee he has been a marine insurance broker with Lloyd's of London for 33 years. He gave committee members his background.

MIKE PADDEN, a broker with the Ribelin and Lowell Company in Anchorage, Alaska, informed committee members he places marine insurance for primarily Alaskan businesses.

PAUL GREENAWAY introduced himself as a colleague of Mr. Gimblet's, and stated he sells marine insurance to the London market.

Number 036

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Chairman Davidson asked Mr. Padden, Mr. Gimblet and Mr. Greenaway to address HB 56 from the perspective of the insurance industry regarding risks. Mr. Gimblet responded there are a number of issues that need to be addressed from the insurance industry's perspective. He felt he would have difficulty convincing London insurers of the value of insuring Alaskan vessels as some of the provisions of HB 56 would be viewed as imprecise in certain features. He addressed the provision requiring a terminal operator to have a \$1,000,000 policy for a 10,000 barrel capacity and a \$50,000,000 policy if they had one additional barrel over the 10,000. He stated it would be difficult, for the insurance industry would prefer to see different limits for different tank capacities. Second, he believed there should be some thought given to differentiating between those who hold and store crude oil and those who hold and store refined products because crude oil and refined products represent completely different risks to insurance underwriters.

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Number 066

REP. MIKE DAVIS asked for clarification of the different risks. Mr. Gimblet replied the cost of cleanup of a crude oil spill is generally much higher than the cost of cleanup of a refined product spill because a larger percentage of the refined product evaporates into the atmosphere.

Number 078

REP. WALT FURNACE asked Mr. Gimblet if his company is currently providing insurance coverage to the petroleum industry in Alaska. Mr. Gimblet answered individual companies within the Lloyd's market do insure Alaskan petroleum companies. Rep. Furnace asked if the imprecision in HB 56 Mr. Gimblet referred to earlier would inhibit the availability of insurance for the petroleum industry. Mr. Gimblet stated it is extraordinarily difficult to follow the world insurance market at present, but he noted the

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existing level of coverage would cover cleanup costs only when there was evidence of a personal injury or property damage. He continued that this is a limitation to the statute requirements. Rep. Furnace asked Mr. Gimblet to project what the market looks like for the future, considering the difficulty he has experienced over the past five years. Mr. Gimblet stated the companies available through London underwriters have a \$1,000,000 limit for marine terminals, which incorporates the existing Alaska statute provision.

He stated senior underwriters at Lloyd's would be prepared to discuss the availability of a \$10,000,000 limit for marine terminals.

Number 124

Rep. Furnace asked what the approximate costs are of the \$1,000,000 policy and \$10,000,000 policy. Mr. Gimblet stated the cost would be determined by the layout of the

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terminal and various factors such as through-put of products, age of tanks, etc. Rep. Furnace asked if there are other providers, other than Lloyd's of London, capable of meeting the need of the petroleum industry in Alaska under the proposed statute change. Mr. Gimblet replied that a number of large American companies are capable but they have been unable to identify any other set of underwriters other than Lloyd's that actually provide insurance. He stated if Lloyd's is successful in increasing the limit to \$10,000,000, this may interest other underwriters in participating in a group program for the excess of \$10,000,000. He explained that his company is present at the meeting because they have taken a tremendous interest in the legislation in order to continue the protection of their existing clients.

Number 169

CO-CHAIRMAN CURT MENARD asked how they rate the differences between the cleanup of contamination on surface water

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versus groundwater contamination. Mr. Gimblet stated he cannot answer that question as he is not a specialist in that area. He explained they are there to learn what may be required of Alaskan companies and how they may respond to those requirements in the form of an insurance policy. Co-chairman Menard asked about the unavailability of insurance for leaking underground storage tank sites before and after the cleanup. Mr. Gimblet stated few underwriters wish to be involved in underground storage tank insurance as the tanks could have been leaking for a number of years and may have left residues in the soils. He explained the difficulty, from an underwriter's point of view, is determining at what point their liability will cease.

Number 208

REP. BILL HUDSON referred to the provision concerning inspections iHB 567. He asked Mr. Gimblet if his company underwrites oil tankers. Mr. Gimblet clarified that he is a broker, not an underwriter. Rep. Hudson asked, if he

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were an underwriter, would he be conducting inspections. Mr. Gimblet replied the classification society lays down very strict rules about the examination of both the internal and external inspection of the vessel, which he believed occurred every year. He added there are local and federal laws in the United States and in the United Kingdom pertaining to vessel construction. Rep. Hudson asked, in determining the rates for liability policies, what would be the increase in insurance. Mr. Gimblet responded that he would need a more restricted platform from which to answer that question, but he stated it would be a multiple of many times.

Number 260

REP. MIKE NAVARRE asked if Mr. Gimblet worked in other countries, and if so, what do other jurisdictions require in terms of client responsibility, and how doeHB 567 compare. Mr. Gimblet replied a number of the European countries are awaiting the common market governance to

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determine one set of rules and regulations for operators within the member countries of that group. He was unaware of responding to specific laws in other countries, his business has been at the request of a particular client who needs a broker to review its existing limits of liability and to offer advice as to fiscal and legal findings.

Number 291

Rep. Furnace asked if other states have increased their liability limits, and if so, how are those limits being met, and are they higher than Alaska's. Mr. Gimblet stated the average terminal operator is purchasing higher limits of liability in their 1990 policies but he was unaware whether the stimulus was coming from Congress or any external force. He suspected the higher limits were in response to the foreseen risks of a third party being injured or third party property being damaged by a spill and the potential for litigation.

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Number 315

Mr. Gimblet went on to explain that in the majority of policies being placed in the United States, the way in which a pollution-responding policy is structured, it is primarily not a pollution responding policy, it is a legal liability policy, therefore the pollution is the stimulus by which a claim is made against the insured. Under the terms of the standing insurance policy, no cleanup costs are recoverable by the insured, therefore before anything is done about a spill, there must be a suit against the insured or there must be physical bodily injury or property damage. He stated he and his colleagues do not feel that is not the perspective of the proposed legislation, which they believe is intended to elicit financial responsibility for cleanup costs immediately in the absence of a lawsuit.

Number 339

Rep. Furnace clarified that most clients are looking for

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coverage for bodily injury and property damage as opposed to cleanup costs, but Alaska is looking primarily for cleanup cost coverage. Mr. Gimblet explained that the Alaska legislation intends to elicit from insurers that in the event an insured operation has a spill, and in the absence of a legal liability or bodily injury or property damage, there may be an argument, based on insurance law, that they do not have to respond to insurance costs. He stated that they believe that any person who must be financially responsible to the existing statutes, and any amendments to the Alaska statutes must have, as its first base, the premise that it is much better to have people cleaning up the spill immediately after it happens, rather than waiting for a lawsuit to occur.

Number 375

Rep. Davis asked how much of the industry is self-insured, and given the fact that there is a lot of litigation underway as a result of the Exxon Valdez spill, does that

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affect the climate of issuing further policies. Mr. Gimblet responded the insurance industry will run, and the London market is composed of both Lloyd's and the representative insurance companies from virtually every country in the world. He explained it is common knowledge that the vast majority of insurers have looked at the Exxon Valdez situation and other pollution situations and they are frightened by the ramifications; the has caused some to withdraw from that market.

Number 422

Rep. Davis commented that it is in the state's best interest to ensure that adequate coverage exists. Mr. Gimblet stated if any government passes laws that the insurance industry is unable to respond to, it is very difficult for the brokering industry to obtain coverage for the clients.

Number 441

SBC

M-M23 FX

2 /2



Rep. Davis stated the recent climate helped to foster the vacuum, and the state is now trying to ensure that such a climate doesn't continue, which is why the legislation was introduced.

Number 465

Rep. Navarre stated the bottom line is that we are having a tough time finding people who will insure the financial responsibilities that we are asking for. He expressed concern that the state does not want to force operators out of business or to operate without coverage. The intention of the bill is to figure out a way to protect against the cost of environmental litigation. He stated maybe insurance pools or a state fund should be looked at since the risk may be too high for the insurance industry because they are in the business to make money.

Number 494

SBC

M-M23 FX

2 /2

Mr. Gimblet clarified the insurance market is trying to respond and he intends to continue to work with underwriters to put together policies to cover the basic \$10,000,000 liability requirement. He stated the insurance industry does not want to turn its back on this issue because it is too difficult; it is trying to grapple with the issue in a productive manner. He stated a terminal operator in Juneau would most likely be unable to provide \$50,000,000 in coverage and it is questionable whether the inherent risk would require even more than \$1,000,000.

Number 499

Chairman Davidson thanked Mr. Gimblet, Mr. Greenaway and Mr. Padden for their presentation.

TAPE HRC 90-284, SIDE B

Number 000

SBC

M-M23 FX

2 /2

19

# MEMORANDUM

# State of Alaska

TO: The Honorable Steve Cowper  
Governor

DATE: March 16, 1990

FILE NO.:

THRU:

TELEPHONE NO.: 465-2600

FROM: Dennis D. Kelso *advised for*  
Commissioner  
Department of Environmental  
Conservation

SUBJECT: Financial  
Responsibility  
and Contingency  
Plans

Per your request, the following is a briefing/decision memorandum presenting alternatives to the provisions currently in HB 567/SB 504 on the issue of additional requirements for financial responsibility and oil spill contingency plans for non-crude oil facilities.

## Summary of the Issue

The current House and Senate bills increase the amounts of financial responsibility required at most currently regulated facilities. They also lower the threshold at which oil terminals are required to have both contingency plans and proof of financial responsibility from 10,000 barrels to 5,000 barrels of storage capacity.

You have asked us to revisit this issue and propose alternatives that may be more workable for smaller operators.

Attached in Table 1 is a comparison of existing requirements for financial responsibility, the levels proposed in the 2/21 legislation, and proposed new levels.

## Decision Required

It is necessary to decide whether to propose amendments to the governors bills on this subject.

The House Resources Committee is marking up all the oil spill bills within the next couple of days, and it would be prudent to propose any changes to this committee.

## Key Agencies and Interest Groups

There was some concern expressed by the Department of Natural Resources over the financial responsibility requirements. They felt it was important not to prevent any further development of the oil industry by making the



requirements so onerous as to preclude exploration and production of oil.

DEC has felt that it is necessary to protect the state and its citizens by ensuring that shippers and handlers of oil have the financial capability and preparedness to deal effectively with spills. The exemption from current law for facilities or shippers of less than 10,000 barrels leaves a group of facilities with a significant spill potential without contingency plans or any demonstrated readiness to deal with a spill. Some method needs to be developed that will allow us to adequately protect the state's interests.

Various other groups have been testifying at the legislative hearings on these issues. Some of the owners and operators of oil distribution companies have said that the financial responsibility requirements are too high and that insurance to meet these requirements would be prohibitively expensive.

Concern has been expressed about the effect on villages bulk fuel storage tanks. No villages have testified on these issues, but the concern has been raised by others.

A variety of others have been involved with this issue, including many people from the communities affected by the Exxon oil spill. In general, these people seem to want strong legislation requiring contingency plans for facilities such as refineries, pipelines and onshore facilities. Some have suggested that financial responsibility levels for tankers should be \$1 billion.

#### Options

Options for contingency plans and financial responsibility are presented separately.

#### Contingency Plans

1. Leave the threshold for contingency plans at 5,000 barrels of storage, as currently proposed in the legislation.

Pro: Demonstrates a commitment by the administration to deal with a broader group of facilities with the potential for significant spills.

Con: Does not address the issue of requiring contingency plans for a whole new group of operators. By still requiring the contingency plan, this group of facilities and operators now become part of the regulated community.

2. Delete the new requirement for contingency plans at the



5,000 barrel level.

Pro: Removes the opposition to the bill that is coming from the newly regulated community.

Con: Leaves the state in exactly the same position we are in now without any means to deal with spill response for this group of potential spillers. May be construed that the administration is backing down at the slightest hint of controversy.

3. Replace the contingency plan requirements with statutory authority for DEC to survey, inventory and inspect facilities with less than 10,000 barrels storage capacity. This authority will direct DEC to conduct inspections, identify problem areas, and report back to the Legislature with findings.

Pro: Provides a method for the department to begin getting a handle on the facilities that fall into the 5-10,000 barrel category. This type of approach would allow us to prepare design standards, examine secondary containment methods, and take a more detailed look at what should be required for contingency plans for this size facilities. It would provide the data necessary to structure a program that has realistic standards that can be properly incorporated.

Con: May be construed that the administration is backing down on its original stance in favor of stronger environmental protection laws. Giving DEC the authority to begin inspecting new facilities will still meet some resistance.

#### Financial Responsibility

A. Leave the proof of financial responsibility levels for non-crude facilities as proposed in the existing legislation.

Pro: Assures that operators working in the state have the capability of dealing with the damages caused by a major spill.

Con: Guarantees opposition to the bill from small operators who feel that the cost of this proof would be prohibitively high.

B. Drop the financial responsibility requirements for non-crude facilities.

Pro: Removes all of the controversy over the increased

financial responsibility requirements for non-crude facilities.

Con: Leaves the state in a position to have to pay cleanup costs in the event of a spill by a party that cannot afford cleanup and damage costs. Also may be construed that the administration is backing down from its original proposal to tighten safeguards.

C. Modify the financial responsibility requirements to include a tiered approach for non-crude facilities. We have attached a proposal that does this.

Pro: Tries to deal fairly with the issue and makes the proposal less onerous than the existing legislation. Reinforces the concept that the administration wants to continue moving along a path that will help us have environmentally responsible development.

Con: Will not completely satisfy all parties, since there will be increased financial responsibility requirements for some operators (while others will be lowered from existing requirements).

#### Recommendations

We recommend a modification to both the financial responsibility requirements for non-crude facilities and the contingency plan requirements (options 3 and C). It is essential that the state have some assurance of financial responsibility and we believe that the tiered approach we have developed is fair and attainable. A recent presentation by representatives of the insurance industry showed that industry standards for tankers would be in line at the \$900 million level and that policies are available for terminals at the \$10 million level. (See the attached memo by Jeff Bush.)

The recommended approach to the contingency plan issue allows us to begin gathering the data necessary to develop the most appropriate standards to address spills at smaller facilities. This approach starts off by educating people about spill issues and contingency plans and provides them with technical assistance and recommendations. This would provide a nonregulatory approach for the small business person.

cc: Garrey Peska, Chief of Staff  
Bob Evans, Deputy Chief of Staff  
Denby Lloyd, Special Staff Assistant

TABLE 1

**Oil Contingency Plan Requirements  
Financial Responsibility Requirements  
Vessel Inspection**

| TYPE OF FACILITY                                      | CURRENT FINANCIAL RESPONSIBILITY REQUIREMENTS                                                            | SB 504<br>HB 567 | PROPOSED 3/15<br>REVISION                                                                                                                                                   |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Crude Oil Terminals</b>                            |                                                                                                          |                  |                                                                                                                                                                             |
| > 10,000 bbl.                                         | \$1 million up to \$50 million @ \$10/bbl. capacity                                                      | \$50 million     | \$50 million                                                                                                                                                                |
| 5 - 10,000 bbl.                                       | None                                                                                                     | \$50 million     | \$50 million                                                                                                                                                                |
| <b>Non-Crude Terminals</b>                            |                                                                                                          |                  |                                                                                                                                                                             |
| > 10,000 bbl.                                         | \$1 million up to \$50 million @ \$10/bbl. capacity                                                      | \$50 million     | 10 to 20,000 bbl. = \$5 million<br>> 20,000 bbl. = \$10 million                                                                                                             |
| 5 to 10,000 bbl.                                      | None                                                                                                     | \$1 million      | None                                                                                                                                                                        |
| <b>Offshore exploration and production facilities</b> |                                                                                                          |                  |                                                                                                                                                                             |
|                                                       | \$35 million                                                                                             | \$50 million     | \$50 million                                                                                                                                                                |
| <b>Crude Oil Tank Vessels and Barges</b>              |                                                                                                          |                  |                                                                                                                                                                             |
|                                                       | TAPS = \$14 million, Non-TAPS = \$20 million.<br>TAPS covered for an additional \$86 million per vessel. | \$500 million    | \$500 million                                                                                                                                                               |
| <b>Non-Crude Oil Tank Vessels and Barges</b>          |                                                                                                          |                  |                                                                                                                                                                             |
|                                                       | Tank Vessels = \$20 million, Barges = \$1 million                                                        | \$20 million     | < 5,000 bbl. = None<br>5,000 to 10,000 bbl. = \$.5 million<br>10,000 to 50,000 bbl. = \$1 million<br>50,000 to 100,000 bbl. = \$10 million<br>100,000 + bbl. = \$20 million |

Note: the following notes are not based on a comprehensive review of vessels and facilities; rather, they are examples of how the proposed revisions might affect some operators.

Currently there are 6 Tanker Vessels chartered by Petro-Diamond and Petro-Marine that are under 50,000 bbl. capacity and are required to have \$20 million coverage. Under proposed revisions of 3/15 their Financial Responsibility requirement would drop to \$1 million.

From information provided in contingency plans, all of Yutana Barge Lines barges are under 10,000 bbl., therefore their Financial Responsibility requirement would be cut in half to \$500 thousand.

Crowley has 10 barges listed at over 100,000 bbl., but they are covered by surety bond and not a regular insurance policy.

United Marine Tug and Barge, Inc. has at least 2 barges over 50,000 bbl., so their coverage would increase from \$1 million to \$10 million.



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Statement of  
Jerry A. Aspland  
President, ARCO Marine, Inc.  
Before the Alaska House Resources Committee  
House Bill 567  
Juneau, Alaska  
March 20, 1990

Dear Chairmen Davidson and Menard:

I appreciate the opportunity to express the views of ARCO Marine, Inc. on House Bill 567, Oil Spill Contingency Plans/Requirements.

Before addressing the legislation, I would like to offer a few general comments on oil spill prevention, response and clean-up.

Prevention is the key to avoiding oil spills. I am concerned that most legislation, both federal and state, is concentrating on oil spill clean-up and penalties and not enough is being done on prevention. Vessel traffic system, ratification of the standards of training and watch keeping, new selection and certification criteria of seagoing personnel are just a few areas of prevention which must be addressed. Prevention is the key to avoiding oil spills, and it must be addressed in a logical and rational manner.

ARCO Marine's experience shows that the success of an effective clean-up operation is dependent, not only on the adequacy of resources but, most importantly, on good human interaction and cooperation among industry, government and the members of the community. It is essential that in responding to spills all the elements of this network work together and integrate their efforts to mitigate the problem.

There are two key factors in a successful spill response and clean-up:

The first is sufficient pre-planning aimed at a realistic goal. It is essential to develop an environmental map, identifying

environmentally sensitive areas, and to prepare a matrix that prioritizes the level of protection that would be afforded to each of these environmentally sensitive locations. It is also important to prepare, in advance, a list of available equipment, their locations, and the strategy of deploying such equipment. Last, continual training of those directly involved in clean-up is a necessity.

The second factor is the management of the clean-up efforts. This demands decisiveness, experience and expertise in spill response, and the ability to utilize resources efficiently. Without good management, all the contingency plans and equipment can not be utilized most effectively.

While ARCO Marine has many concerns with this legislation, we have decided to state our views on one specific aspect of HB 567 with which we believe compliance is impossible. Section 1 of HB 567, amends AS 46.04.030 (f) to mandate that an applicant for an oil discharge contingency plan demonstrate an ability to rapidly contain a realistic maximum oil discharge, and to remove that discharge within the shortest possible time. This mandate represents a radical policy departure from the existing regulatory requirement that an oil discharge contingency plan provide for containment and removal of the most likely oil spill. Moreover, this mandate is simply impossible to achieve given the current limitations in oil spill response technology. In other words, the requirements to demonstrate a rapid response and removal of a realistic maximum oil discharge, as defined, is rationally meaningless. Environmental eradication of large spills, such as these that are well beyond 10,000 barrels is currently neither technologically nor operationally feasible. With this in mind, I know of no way that ARCO Marine could meet the proposed requirements for obtaining an approved oil discharge contingency plan.

Furthermore, let us assume this legislation passes and we try to meet the intended meaning of the legislation, we will spend considerable amount of resources, along with state officials, and not accomplish



much because we will pass the point of no return on mechanical recovery and not be able to finish the job. Therefore we would strongly recommend that the legislation be amended to reflect a target amount of oil spilled to be removed within the shortest possible time and a scenario plan for the maximum amount of oil discharged.

ARCO Marine is already among only a few marine companies that hold approved oil spill contingency plans with the State of Alaska. Additionally, our oil spill response team has demonstrated its ability with its clean-up efforts in the 1985 Port Angeles oil spill and several training exercises, including the 1988 exercise in Valdez. Recently, we were able to provide expertise and assistance in the Huntington Beach oil spill response in Southern California.

If ARCO Marine is incapable of complying with proposed HB 567, I believe that demonstrates a fundamental shortcoming with the legislation.

I would like to thank you for the opportunity to submit comments. ARCO Marine, Inc. stands ready to assist your committee. If you have any questions, I would be pleased to hear from you regarding this statement or any other related subjects.

Jerry Aspland  
President  
ARCO Marine, Inc.



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*Ray Gillespie*  
Gillespie & Associates  
Lobbying & Governmental Affairs



Please reply to: ☒ 10390 Mendenhall Loop Road ☐ 215 Fidalgo Ave., Suite 201  
Juneau, Alaska 99801 Kenai, Alaska 99611  
(907) 463-3375 (907) 283-5405

M E M O R A N D U M

TO: Representative Cliff Davidson  
Representative Curt Menard  
Co-Chairmen  
House Resources Committee

FROM: Ray Gillespie

DATE: March 21, 1990

SUBJECT: HB 565 and HB 567 - Civil Penalty and Financial  
Responsibility for Non-Crude Oil Distributors

I represent Petro Marine, Delta Western and Crowley Maritime, which are relatively small distributors of refined products, such as marine fuel and petroleum products, rather than crude oil. This memo contains thoughts and comments on the legislation as it may affect owners and operators of distribution facilities in Alaska:

- I. Appendix G to the Alaska Oil Spill Commission Report is entitled "The Role of Insurance for the Preparedness and Response to Oil Spills: Liability and Compensation Issues". This report should be carefully reviewed by the Committee and its recommendations seriously examined prior to action on HB 565 and 567. Neither the Alaska Oil Spill Commission report nor Appendix G recommends any specific changes to Alaska liability or penalty laws with respect to non-crude oil distributors.

On the contrary, Appendix G recommends that the Commission and the State Legislature review the analysis of the civil penalty scheme, oil spill liability and compensation thesis, written by W.J. Graham in 1989. This thesis was done at the University of Washington, Institute of Marine Studies and is entitled "Oil Spill Liability and Compensation: A Review of and Evaluation of Alaska's Civil Penalty Scheme." A copy of this paper has been provided to Committee staff.

- II. Other Observations and comments on Appendix G:

- A. The report references the U.S. Government Accounting Office, 1987 report, which states that the insurance industry has maintained that the basic concerns of underwriting, risk the process of identifying and evaluating risks and setting the premiums to be charged cannot be satisfied when assessing a pollution risk, making them sometimes uninsurable.
  - B. It suggests that insurance requirements of this nature have historically been addressed through national programs, such as the National Flood Insurance Program, the Flood Disaster Protection Act, the Federal Emergency Management Act and Earthquake Insurance Programs.
  - C. The House Resources Committee may wish to examine the pertinent provisions of Federal legislation to ensure that HB 567 is coordinated with pending Federal legislation, which may also contain liability provisions according to the report.
  - D. It may be advisable for the Resources Committee to hear from the author of Appendix G, Mr. Clancy Phillipsborn of Boulder, Colorado.
- III. With specific reference to HB 565 and 567, Delta Western, Petro Marine and Crowley Maritime offer the following general comments:
- A. Tank facilities owned and operated by these entities are located in the following communities: Unalaska, Nome, Kotzebue, Seward, Dutch Harbor, Kodiak, Nikiski, Anchorage and Juneau. With the exception of one small Anchorage lube plant and a small facility in Juneau, each of these facilities would be subject to the \$50 million financial responsibility requirement of HB 567.
  - B. Earlier testimony before the House Resources Committee by insurance representatives from Lloyds of London and an Anchorage marine insurance broker indicate that \$50 million is not available for many small companies operating these size facilities.



The testimony indicated that \$10 million might be available, depending upon the particular owner and operator, the size and age of the tanks and the type and nature of mitigation and prevention practices and policies in place at the specific location.

- C. The term "realistic maximum oil discharge" as the standard for demonstrating contingency spill plan cleanup capability needs further refinement. The tank farms referenced above range from a single tank to up to 18 tanks. Must these operators be prepared to cleanup a spill that presupposes full loss of the entire capacity of all the tanks, such as resulting from a catastrophic earthquake? If so, what manpower and equipment will be required and are the costs realistic for small operators of tank farms?
- D. It is apparent that some kind of transition mechanism should be in place while the new contingency plans are written and approved and the necessary manpower and equipment put on site after the effective date of the legislation and before final approval of the plans.
- E. With respect to tanks vessels or barges in excess of 300 gross tons, HB 567 would require \$20 million of coverage. This requirement does not necessarily reflect the risk of harm posed by tank vessels or barges nor does it necessarily reflect insurance which may be available in the market place. Much of the refined petroleum products sold in the state are transported by independent barge owners under charter to the distributors, such as Petro Marine, Crowley and Delta Western.
- F. There are several other issues that should be addressed by the committee such as:
  - 1. Must operators with multiple farms meet the financial responsibility requirement for each facility or will blanket coverage meet the requirements of HB 567?
  - 2. Will small operators be able to fairly compete with large operators if both must meet the same financial responsibility requirements?



3. Will it be necessary to insure against the civil penalties contained in HB 565 in addition to the financial responsibility requirements of HB 567? See Section 2(j) of HB 567 which indicates that both types of coverage or responsibility must be demonstrated prior to contingency plan approval. If this is true, then the financial responsibility requirements are placed further out of reach for small operators.
4. For tank vessels and barges does the financial responsibility refer to each vessel or is blanket coverage sufficient?

We believe the Committee should seriously consider deleting non-crude from the bills at this time, to allow further examination of the serious and complicated issues surrounding small operators.

Thank you for the opportunity to address these bills. The companies I represent are willing and anxious to work further with the Committee on these bills. We suggest that sufficient time and study be devoted to HB 565 and 567 so that the small operators and distributors of refined products can serve the Alaskan consumer in a safe and efficient manner at reasonable prices.

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Rep. Cliff Davidson  
Juneau Alaska

March 21, 1989

Dear Cliff:

Re: HB 565 and HB 567

I have reviewed the contents of the above mention bills and have a couple of concerns about them.

The areas that concern me the most are Financial Responsibility and Penalties, in regards to refined oil terminals.

BACKGROUND

In Alaska, everything runs on Petroleum Products, fishing, timber, heating homes, airplanes, and automobiles. The fuel distributor (and his oil terminal) play a vital link in basic survival in Alaska.

If laws are passed that make it more expensive for a fuel distributor to operate, the Alaskan consumer is the only one who will pay the bill.

If laws are passed that force the fuel distributor out of business then the Alaskan consumer has no place to purchase the vital products he needs to run industry, heat his home, just basicly survive.

When you get away from the parts of Alaska linked to the Oil Refineries on the Kenai Peninsula (or Fairbanks) by road, Oil Terminals have to be able to be able to supply the city, village or cannery for extended periods of time. So the size of the storage needs to be large.

Costs of ocean transportation increase as the quantity of fuel delivered decrease. Weather conditions can keep a fuel barge from reaching its destination for days, weeks or in some situations all winter. Because of conditions like this the fuel distributor needs to have adequate storage to take a large quantity of fuel and still not be in a "run out" situation.

## FINANCIAL RESPONSIBILITY

There should be a sliding scale attached to financial responsibility. To classify all terminals over a 10,000 bbls the same is grossly unfair. An amount per barrel stored would be more fair, so a facility storing 15,000 barrels would not have the same responsibility as one storing 150,000 barrels.

The legislature needs to consider what is available for Terminals Operators to cover the financial responsibility requirement. We are not all Exxon or Arco with unlimited resources to pledge. To those of us that are Alaskan owned business, this means buying insurance. The coverage may not be available or the price may be out of sight.

At one point a few years ago many dealers were not covered because the coverage was simply not available.

More thought needs to go into the regulations covering Refined Oil Terminals in the State. It is not good government to pass laws that cause extreme hardship and have no solution.

## PENALTIES

The emphasis on penaltys is obviously designed to catch companies like Exxon that do major damage and have lots of money. The net effect of these penaltys on a smaller company (fishing boat, freighter, independent oil company etc) could be devistaitng. A person may not be able to clean up the spill, fix the problem that caused the spill and still pay the penaltys.

## PREVENTION

It is important that Oil Terminal Owners keep upgrading their facilities, if we have to put all our resources into paying insurance and saving accounts to pay fines in case we have a problem. There is that much less money to us to make our Facilities more enviromentaly safe.

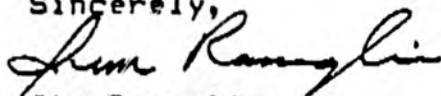


CLOSING

We need to keep our environment safe and clean for ourselves and our children, but we need to do it in a manner that is reasonable and not destructive to business and consumers. There are only two types of individuals to pay these costs, taxpayers and consumers.

As you make you laws please consult with the industry which will be affected by the laws, the insurance companies which will need to provide the coverage. This will result in a system that works. To many times the legislature will pass a bill that creates an unworkable law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Ramaglia".

Jim Ramaglia  
Vice President

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MAR 28 '90 11:39 ATTORNEY GENERAL

Attachment 3

P.2/4

**MEMORANDUM****State of Alaska****Department of Law**

TO: Amy Kyle  
Deputy Commissioner  
Department of Environmental  
Conservation

DATE: March 20, 1990

FILE NO:

TEL NO: 452-1568

FROM: John A. McDonagh  
Assistant Attorney General  
Department of Law

SUBJECT: Oil Spill Legislation--  
Small oil terminal  
facilities survey

Pursuant to your request, here is draft legislative language on the small terminal facilities issue. The proposed language would authorize DEC to survey, inspect, and inventory non-crude oil terminal facilities with storage capacities between 5,000 and 10,000 barrels. After completion of the survey, DEC would (i) provide a report to the legislature which includes the survey results and proposals for appropriate legislation, and (ii) notify each facility of the facility's inspection results and provide the facility with recommendations to correct deficiencies.

As I understand it, the administration will ask the House Resources Committee to add this proposed language to H.B. 567. In return, the administration will drop the H.B. 567 language that requires contingency plans and financial responsibility guarantees for non-crude oil terminal facilities in the 5,000 to 10,000 capacity range. The proposed language is as follows:

1. Amend H.B. 567 by adding a new section, AS 46.04.065, which provides as follows:

**Sec. 46.04.065. SMALL TERMINAL FACILITIES SURVEY.**

(a) The department shall survey, inspect, and inventory each non-crude oil terminal facility with a storage capacity of between 5,000 and 10,000 barrels in order to determine:

- (1) the specific storage capacity;
- (2) the type of non-crude oil products stored;
- (3) the age, design, construction, and general condition of the facility;
- (4) the design and construction standards applicable or relevant and appropriate for each type of facility;
- (5) the existence or absence of spill containment structures and equipment;
- (6) the ability to respond to a spill event;



MAR 29 '90 11:48 ATTORNEY GENERAL

P.3/4

Amy Kyle  
Deputy Commissioner  
Department of Environmental Conservation

March 20, 1990  
Page 2

(7) the environmental sensitivity of the area in which the facility is located, and the potential risk to the environment if a spill occurs;

(8) the existence or absence of surface and subsurface pipelines and storage tanks; and

(9) any other appropriate factors.

(b) No later than January 31, 1991, the department shall report the results of the survey conducted under subsection (a) to the legislature. The department shall also recommend legislation to address oil spill prevention and response at new and existing non-crude oil terminal facilities with storage capacities of less than 10,000 barrels.

(c) Upon completion of the survey conducted under subsection (a), the department may notify each facility of the results of the facility's inspection and may provide the facility with recommendations concerning any identified deficiencies.

2. Amend H.B. 567 by changing the language of AS 46.04.050 (pg. 7, ln. 29--pg. 8, ln. 4) to read:

Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of the operations and the uncertain [MINIMAL] danger to the environment posed by the activities, AS 46.04.030 and [,] 46.04.040 [AND 46.04.060] do not apply to a non-crude oil terminal facility that has an effective storage capacity of less than 10,000 barrels of oil.

JAM/jah



# Attachment 4

## Proposed Amendments to HB 565 Regarding Dollars Per Gallon Penalties

1. Revise proposed AS 46.04.758(b) (1) (pg. 2, ln. 24--pg. 3, ln. 3) to read as follows:

Subject to (2) of this subsection, the penalties for the following categories of receiving environments may not exceed

(A) \$12.50 per gallon of oil that enters any surface or subsurface freshwater environment;

(B) \$8.00 per gallon of oil that enters an estuarine, intertidal, or confined saltwater environment;

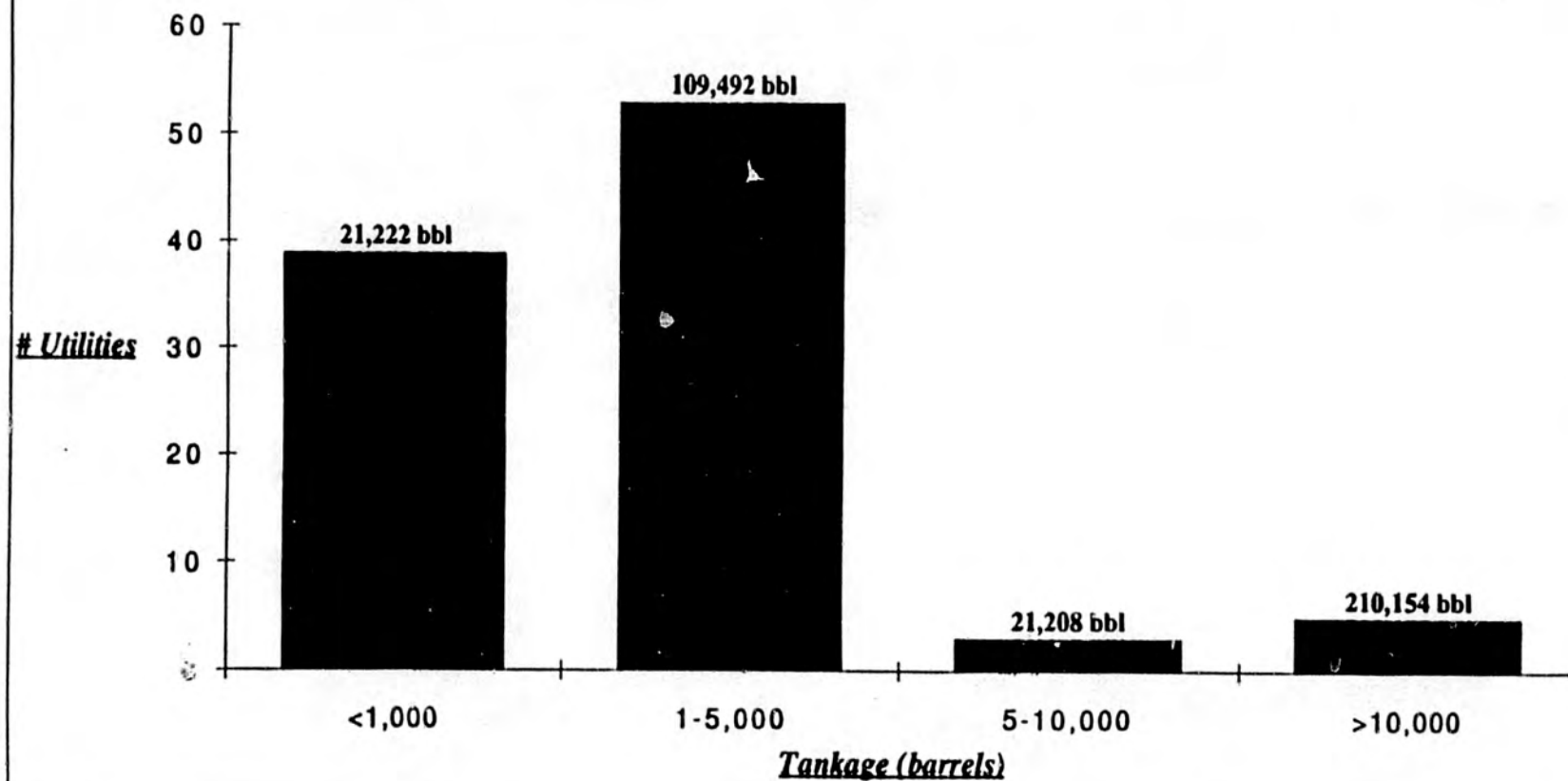
(C) \$6.00 per gallon of oil that enters an unconfined saltwater environment or onto the land or subsurface land of the state.

2. Revise proposed AS 46.04.758(f) (pg. 4, ln. 27--pg. 5, ln. 6) to read as follows:

For purposes of assessing a penalty under (b) of this section, in determining how many gallons of oil have been discharged onto a surface freshwater or saltwater environment or onto the surface land of the state, the court shall deduct the number of discharged gallons of oil that the defendant proves were removed by the defendant from the environment within the first 36 hours after the discharge as a result of a cleanup operation undertaken in conformity with applicable state and federal law. The dispersal of oil through burning, the use of chemical agents, biological additives, sinking agents, or other means is not considered removal for purposes of this subsection. This subsection does not apply to oil discharged into subsurface water or land of the state.

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### Fuel Tankage of 100 Rural Alaska Utilities



# Bulk Fuel Storage Capacity of Some Alaska Rural Electric Utilities

| Community                | Gallons | Barrels |
|--------------------------|---------|---------|
| <u>&lt; 1000 Barrels</u> |         |         |
| 1 Akiachak               | 30,000  | 714     |
| 2 Allakaket              | 20,000  | 476     |
| 3 Anaktuvuk Pass         | 35,000  | 833     |
| 4 Arctic Village         | 18,000  | 429     |
| 5 Atmautluak             | 28,000  | 667     |
| 6 Atkasuk                | 17,000  | 405     |
| 7 Beaver                 | 30,000  | 714     |
| 8 Bethel                 | 40,000  | 952     |
| 9 Birch Creek            | 8,000   | 190     |
| 10 Chuathbaluk           | 20,000  | 476     |
| 11 Circle                | 10,000  | 238     |
| 12 Clarks Point          | 10,000  | 238     |
| 13 Crooked Creek         | 20,000  | 476     |
| 14 Eagle                 | 15,000  | 357     |
| 15 Ekwok                 | 2,500   | 60      |
| 16 Hoonah                | 35,018  | 834     |
| 17 Hughes                | 10,000  | 238     |
| 18 Igiugig               | 25,000  | 595     |
| 19 Kaktovik              | 20,000  | 476     |
| 20 Kasaan                | 20,500  | 488     |
| 20 Klawock               | 1,140   | 27      |
| 21 Kokhanok Bay          | 20,000  | 476     |
| 22 Koliganek             | 25,000  | 595     |
| 23 Kwigillingok          | 30,000  | 714     |
| 24 Levelok               | 30,000  | 714     |
| 25 Newtok                | 20,000  | 476     |
| 26 Nuiqsut               | 40,000  | 952     |
| 27 Old Harbor            | 1,950   | 46      |
| 28 Pedro Bay             | 40,000  | 952     |
| 29 Platinum              | 10,000  | 238     |
| 30 Point Lay             | 20,000  | 476     |
| 31 Rampart               | 40,000  | 952     |
| 32 Red Devil             | 20,000  | 476     |
| 33 Ruby                  | 7,000   | 167     |
| 34 Sheldon Point         | 30,000  | 714     |
| 35 Sleetmute             | 20,000  | 476     |
| 36 Stony River           | 20,000  | 476     |
| 37 Takotna               | 30,000  | 714     |
| 38 Telida                | 12,000  | 286     |
| 39 Venetie               | 15,000  | 357     |
|                          | 45,200  | 1,076   |
|                          |         | 21,222  |



# Bulk Fuel Storage Capacity of Some Alaska Rural Electric Utilities

| Community                    | Gallons | Barrels |
|------------------------------|---------|---------|
| <u>1,000 - 5,000 Barrels</u> |         |         |
| <u>1</u> Alakanuk            | 124,534 | 2,965   |
| <u>2</u> Ambler              | 101,546 | 2,418   |
| <u>3</u> Angoon              | 45,200  | 1,076   |
| <u>4</u> Anvik               | 51,903  | 1,236   |
| <u>5</u> Central             | 45,000  | 1,071   |
| <u>6</u> Chalkyitsik         | 65,000  | 1,548   |
| <u>7</u> Chevak              | 137,530 | 3,275   |
| <u>8</u> Cordova             | 55,000  | 1,310   |
| <u>9</u> Eek                 | 67,253  | 1,601   |
| <u>10</u> Elim               | 67,899  | 1,617   |
| <u>11</u> Emmonak            | 129,617 | 3,086   |
| <u>12</u> Gambell            | 107,521 | 2,560   |
| <u>13</u> Goodnews Bay       | 64,057  | 1,525   |
| <u>14</u> Grayling           | 66,255  | 1,578   |
| <u>15</u> Holy Cross         | 77,439  | 1,844   |
| <u>16</u> Hooper Bay         | 158,642 | 3,777   |
| <u>17</u> Huslia             | 66,255  | 1,578   |
| <u>18</u> Kake               | 46,000  | 1,095   |
| <u>19</u> Kaltag             | 87,103  | 2,074   |
| <u>20</u> Kiana              | 113,393 | 2,700   |
| <u>21</u> Kivalina           | 94,743  | 2,256   |
| <u>22</u> Kongiganak         | 60,000  | 1,429   |
| <u>23</u> Koyuk              | 69,110  | 1,645   |
| <u>24</u> Lower Kalskag      | 81,184  | 1,933   |
| <u>25</u> Marshall           | 76,324  | 1,817   |
| <u>26</u> Mekoryuk           | 80,172  | 1,909   |
| <u>27</u> Minto              | 42,000  | 1,000   |
| <u>28</u> Mountain Village   | 176,055 | 4,192   |
| <u>29</u> New Stuyahook      | 80,508  | 1,917   |
| <u>30</u> Nightmute          | 47,000  | 1,119   |
| <u>31</u> Nikolai            | 55,360  | 1,318   |
| <u>32</u> Noatak             | 80,508  | 1,917   |
| <u>33</u> Norvik             | 144,901 | 3,450   |
| <u>34</u> Nulato             | 113,400 | 2,700   |
| <u>35</u> Nunapichuk         | 152,197 | 3,624   |
| <u>36</u> Pilot Station      | 94,633  | 2,253   |
| <u>37</u> Point Hope         | 62,000  | 1,476   |
| <u>38</u> Quinhagak          | 100,247 | 2,387   |
| <u>39</u> Russian Mission    | 55,581  | 1,323   |
| <u>40</u> Saint Michael      | 75,304  | 1,793   |
| <u>41</u> Savoonga           | 133,623 | 3,182   |
| <u>42</u> Scammon Bay        | 80,957  | 1,928   |
| <u>43</u> Selawik            | 130,527 | 3,108   |

# Bulk Fuel Storage Capacity of Some Alaska Rural Electric Utilities

| Community                                | Gallons           | Barrels         |
|------------------------------------------|-------------------|-----------------|
| <u>1,000 - 5,000 Barrels (cont'd)</u>    |                   |                 |
| <u>44</u> Shageluk                       | 53,032            | 1,263           |
| <u>45</u> Shaktoolik                     | 59,807            | 1,424           |
| <u>46</u> Shishmaref                     | 114,743           | 2,732           |
| <u>47</u> Shungnak                       | 113,655           | 2,706           |
| <u>48</u> Stebbins                       | 79,941            | 1,903           |
| <u>49</u> Togiak                         | 130,226           | 3,101           |
| <u>50</u> Tooksook Bay                   | 98,931            | 2,356           |
| <u>51</u> Tuntutuliak                    | 60,000            | 1,429           |
| <u>52</u> Tununak                        | 73,271            | 1,745           |
| <u>53</u> Wales                          | 51,590            | 1,228           |
|                                          |                   | 109,492         |
| <u>5,000-10,000 Barrels</u>              |                   |                 |
| <u>1</u> Iliamna                         | 315,000           | 7,500           |
| <u>2</u> Saint Mary's                    | 215,751           | 5,137           |
| <u>3</u> Unalakleet                      | 360,000           | 8,571           |
|                                          |                   | 21,208          |
| <u>&gt;10,000 Barrels</u>                |                   |                 |
| <u>1</u> Kotzebue                        | 2,150,000         | 51,190          |
| <u>2</u> Naknek                          | 1,660,000         | 39,524          |
| <u>3</u> Nome                            | 3,400,000         | 80,952          |
| <u>4</u> Nushagak                        | 1,064,481         | 25,345          |
| <u>5</u> Wainwright                      | 552,000           | 13,143          |
|                                          |                   | 210,154         |
| <br><u>TOTALS 100 Utilities surveyed</u> |                   |                 |
|                                          | <u>15,207,217</u> | <u>362,077</u>  |
|                                          | Total gallons     | Total Barrels   |
|                                          | <u>152.072</u>    | <u>3.621</u>    |
|                                          | Average gallons   | Average Barrels |

25

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO 567 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to oil discharge prevention and  
7 contingency plan requirements, financial respon-  
8 sibility requirements related to oil and hazardous  
9 substances, and inspection authority of the Depart-  
10 ment of Environmental Conservation; authorizing  
11 certain additional uses of the oil and hazardous  
12 substance release response fund; and providing for an  
13 effective date."

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

15 \* Section 1. AS 46.03.759(c) is amended to read:

6 (c) Subject to the \$500,000,000 maximum set under (a) of this  
7 section the court shall assess four <sup>5</sup> times the penalty set out in (a)  
8 of this section if the court finds

9 (1) the discharge was caused by the gross negligence or  
0 intentional act of the defendant;

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

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

5 \* Sec. 2. AS 46.04.020(e) is amended to read:

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



1 (1) facilitate coordinated and effective oil discharge  
2 response in the state;

3 (2) provide for cooperative review of oil discharge preven-  
4 tion and contingency plans submitted to the department under AS 46.-  
5 04.030;

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

9 (4) provide for cooperative oil discharge notification  
10 procedures.

11 \* Sec. 3. AS 46.04.030 is amended to read:

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

13 (a) A person may not cause or permit the operation of an oil terminal  
14 facility in the state unless an oil discharge prevention and contin-  
15 gency plan for the facility has been approved by the department and  
16 has been properly implemented [. THE DEPARTMENT IS THE ONLY STATE  
17 AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE CONTINGENCY  
18 PLAN FOR THE PURPOSES OF THIS SECTION].

19 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit  
20 the operation of an [OFFSHORE] exploration or production facility in  
21 the state unless an oil discharge prevention and contingency plan for  
22 the facility has been approved by the department and has been properly  
23 implemented.

24 (c) A person may not operate a tank vessel or <sup>RICKIE</sup> [an oil] barge  
25 within the waters of the state, or cause or permit the transfer of oil  
26 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]  
27 an oil barge, unless an oil discharge prevention and contingency plan  
28 for the tank vessel or oil barge has been approved by the department  
29 and has been properly implemented [EXCEPT FOR PROSECUTIONS UNDER

1 AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLA-  
2 TION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CUR-  
3 RENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE  
4 HAD BEEN APPROVED BY THE DEPARTMENT].

5 (d) A [AN OIL DISCHARGE] contingency plan must be renewed at  
6 least every three years.

7 (e) The department may attach reasonable terms and conditions to  
8 its approval or modification of a [AN OIL DISCHARGE] contingency plan  
9 that the department [WHICH IT] determines are necessary to ensure  
10 [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan  
11 has access to sufficient resources to protect environmentally sensi-  
12 tive areas and to contain, clean up, and mitigate potential oil dis-  
13 charges at or from the facility or vessel as provided in (j) of this  
14 section, and to ensure that the applicant properly implements the  
15 contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DIS-  
16 CHARGE] contingency plan must provide for the use of the best avail-  
17 able technology by the applicant. The department may require an  
18 applicant or holder of an approved contingency plan to take steps  
19 necessary to demonstrate its ability to carry out the contingency  
20 plan, including

- 1 (1) periodic training;  
2 (2) response team exercises; and  
3 (3) verifying access to inventories of available equipment,  
4 supplies, and personnel.

5 (f) The department, after notice and opportunity for hearing,  
6 may modify its approval of a [AN OIL DISCHARGE] contingency plan if  
7 the department [IT] determines that a change has occurred in the  
8 operation of a facility [, MARINA] or vessel necessitating an amended  
9 or supplemented plan, or the operator's discharge experience

1 demonstrates a necessity for modification. The department, after  
2 notice and opportunity for hearing, may revoke its approval of a [AN  
3 OIL DISCHARGE] contingency plan if the department [IT] determines that

4 (1) approval was obtained by fraud or misrepresentation;

5 (2) the operator does not have access to the quality or  
6 quantity of resources identified in the plan; [OR]

7 (3) a term or condition of approval or modification has  
8 been violated; or

9 (4) the plan has not been properly implemented.

10 (g) Failure of a holder of an approved or modified [OIL DIS-  
11 CHARGE] contingency plan to properly implement the plan, or to have  
12 access to the quality or quantity of resources identified in the plan  
13 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources as  
14 required under (j) of this section in the event of a spill, [WITHIN  
15 THE SHORTEST FEASIBLE TIME] is a violation of this chapter for pur-  
16 poses of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applica-  
17 ble law. If the holder of an approved or modified [OIL DISCHARGE]  
18 contingency plan fails to respond to and conduct cleanup operations of  
19 an unpermitted discharge of crude oil with the quality and quantity of  
20 resources identified in the plan and in a manner required under the  
21 plan, the holder is strictly liable, jointly and severally, for the  
22 civil penalty assessed under AS 46.03.758, 46.03.759, or 46.03.760  
23 against any other person for that discharge.

24 \* Sec. 4. AS 46.04.030 is amended by adding new subsections to read:

5 (h) The department is the only state agency that has the power  
6 to approve, modify, or revoke a contingency plan for the purposes of  
7 this section. The department shall exercise its power under this  
8 section in a timely manner. Except for prosecutions under AS 46.03.-  
9 790(b), it is not a defense to an action brought for a violation of

RICKLE

DEC only

1 (a) - (c) of this section that the person charged believed that a  
2 current contingency plan had been approved by the department.

3 (i) Before the department approves or modifies a contingency  
4 plan under this section, the department shall provide a copy of the  
5 contingency plan to the Department of Fish and Game and to the Depart-  
6 ment of Natural Resources and shall provide those departments a rea-  
7 sonable opportunity to review and comment on the plan.

8 (j) An applicant for a contingency plan required under this  
9 section shall maintain in its area of operation, singly or in conjunc-  
10 tion with other operators in its area of operation, sufficient oil  
11 discharge containment, storage, transfer, and removal equipment,  
12 personnel, and resources to rapidly <sup>respond</sup> ~~contain~~ a

13 (1) realistic maximum oil discharge and to remove that  
14 discharge within the shortest possible time if the contingency plan is  
15 ~~designed for an oil discharge~~ <sup>designed for an oil discharge</sup> on shore + offshore  
for an exploration or production facility;

16 (2) discharge in an amount equal to the capacity of the  
17 largest oil storage tank at the facility and to remove that discharge  
18 within 72 hours if the contingency plan is for an oil terminal facil-  
19 ity; if the department determines that the oil terminal facility is  
20 located in an area of high risk because of natural or manmade condi-  
21 tions outside of the facility, the department may increase the volume  
22 requirement under this paragraph so that the contingency plan must be  
23 designed for response to a discharge that is greater in amount than  
24 the capacity of the largest oil storage tank at the facility;

25 (3) discharge of oil in an amount equal to the maximum  
26 capacity of the vessel or barge and to remove that discharge within 72  
27 hours if the contingency plan is for a tank vessel or oil barge.

28 (k) In this section

29 (1) "contingency plan" means an oil discharge prevention



1 and contingency plan required under this section;

2 (2) "properly implement" means, with respect to a contin-  
3 gency plan,  
4

5  
6 \* Sec. 5. AS 46.04.040(a) is amended to read:

7 (a) A person may not cause or permit the operation of an oil  
8 terminal facility in the state unless the person has furnished to the  
9 department, and the department has approved, proof of financial abil-  
10 ity to respond in damages. Proof of financial responsibility for a  
11 crude oil terminal may not be less than \$50,000,000 per incident.  
12 Proof of financial responsibility for a noncrude oil terminal may not  
13 be less than \$25 per barrel <sup>or 2 million</sup> for the first 80,000 barrels of total  
14 noncrude oil storage capacity at the terminal and \$50 per barrel for  
15 each barrel of noncrude oil storage capacity that exceeds 80,000  
16 barrels [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT. ABILITY TO RE-  
17 SPOND IN DAMAGES NEED NOT EXCEED \$50,000,000 BUT MUST BE IN AN AMOUNT  
18 (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH BARREL OF STORAGE CAPAC-  
19 ITY AT THE OIL TERMINAL FACILITY: OR (2) \$1,000,000, WHICHEVER IS  
20 GREATER]. *Maximum \$50 million*

21 \* Sec. 6. AS 46.04.040(b) is amended to read:

22 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the  
23 operation of an offshore exploration or production facility in the  
24 state unless the person has furnished to the department, and the  
25 department has approved, proof of financial ability to respond in  
26 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial  
27 responsibility for an exploration or production facility may not be  
28 less than \$50,000,000 [\$35,000,000] per incident. *1/1/81 11:00*

29 \* Sec. 7. AS 46.04.040(c) is amended to read:

*Ricker*  
*State of*

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

(1) <sup>700,000,000</sup> \$500,000,000 per incident for a tank vessel or barge carrying crude oil;

(2) \$100 per barrel of storage capacity or \$1,000,000, whichever is greater, for a tank vessel or barge carrying noncrude oil or other hazardous substance in an amount of 5,000 barrels or more  
*maximum: existing \$20 million*  
[RESPONSIBILITY FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT. FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

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

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

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

\* Sec. 8. AS 46.04.040(d) is amended to read:

(d) Except for prosecutions under AS 46.03.790(b), it is not a defense to an action brought for violation of (a) - (c) [(c)] of this section that the person charged believed in good faith that proof of

1 financial ability to respond in damages had been furnished to, and  
2 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF  
3 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

4 \* Sec. 9. AS 46.04.040(e) is amended to read:

5 (e) Financial responsibility may be demonstrated by self-insur-  
6 ance, insurance, surety, [OR] guarantee, or other security approved by  
7 the department, under terms the department may prescribe. An action  
8 brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822,  
9 or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.-  
10 759] may be brought in a state court directly against the insurer or  
11 another person providing evidence of financial responsibility. The  
12 applicant, and an insurer, surety, [OR] guarantor, or other person  
13 providing security approved by the department shall appoint an agent  
14 for service of process in the state. An insurer must either be au-  
15 thorized by the Department of Commerce and Economic Development to  
16 sell insurance in the state or be an unauthorized insurer listed by  
17 the Department of Commerce and Economic Development as not disapproved  
18 for use in the state.

19 \* Sec. 10. AS 46.04.040(f) is amended to read:

20 (f) Acceptance of proof of financial responsibility expires  
21 (1) one year from its issuance for self-insurance;  
22 (2) on the effective date of a change in the surety bond,  
23 guarantee, [OR] insurance agreement, or other security approved by the  
24 department; or  
25 (3) on the expiration or cancellation of the surety bond,  
26 guarantee, [OR] insurance agreement, or other security approved by the  
27 department.

28 \* Sec. 11. AS 46.04.040(g) is amended to read:

29 (g) The person whose proof of financial responsibility is

1 accepted by the department under this section shall notify the depart-  
2 ment at least 30 days before the effective date of a change, expira-  
3 tion or cancellation in the surety bond, guarantee, [OR] insurance  
4 agreement, or other security approved by the department. Application  
5 for renewal of acceptance of proof of financial responsibility under  
6 this section must be filed at least 30 days before the date of ex-  
7 piration.

8 \* Sec. 12. AS 46.04 is amended by adding a new section to read:

9 Sec. 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar  
10 amounts in AS 46.04.040 change, as provided in this section, according  
11 to and to the extent of changes in the Consumer Price Index for all  
12 urban consumers for the Anchorage metropolitan area compiled by the  
13 Bureau of Labor Statistics, United States Department of Labor (the  
14 index). The index for January of the year in which this section  
15 becomes effective is the reference base index.

16 (b) The dollar amounts change on October 1 of each year. After  
17 calculation of the new amounts, the resulting amounts shall be rounded  
18 to the nearest cent.

19 (c) If the index is revised, the percentage of change is cal-  
20 culated on the basis of the revised index. If a revision of the index  
21 changes the reference base index, a revised reference base index is  
22 determined by multiplying the reference base index applicable by the  
23 rebasing factor furnished by the United States Bureau of Labor Statis-  
24 tics. If the index is superseded, the index referred to in this sec-  
25 tion is the one represented by the Bureau of Labor Statistics as  
26 reflecting most accurately changes in the purchasing power of the  
27 dollar for Alaskan consumers.

18 (d) The department shall adopt a regulation announcing

19 (1) on or before June 30 of each year, the changes in



1 dollar amounts required by (b) of this section; and

2 (2) promptly after the changes occur, changes in the index  
3 required by (c) of this section, including, if applicable, the numer-  
4 ical equivalent of the reference base index under a revised reference  
5 base index and the designation or title of any index superseding the  
6 index.

7 (e) The department shall also provide notification of a change  
8 in dollar amounts required under (b) of this section to the clerks of  
9 court in each judicial district of the state.

10 \* Sec. 13. AS 46.04.050 is amended to read:

11 Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of  
12 the operations and the minimal danger to the environment posed by the  
13 activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an  
14 oil terminal facility that has an effective storage capacity of less  
15 than 5,000 [10,000] barrels of crude oil or less than 10,000 barrels  
16 of noncrude oil.

17 \* Sec. 14. AS 46.04.060 is amended to read:

18 Sec. 46.04.060. INSPECTIONS. <sup>Adm.</sup> In addition to other rights of  
19 access or inspection conferred upon the department by law or other-  
20 wise, the department may at reasonable times enter and inspect oil  
21 [OIL] terminal facilities, [OFFSHORE] exploration and production  
22 facilities, tank vessels, and oil barges within the territorial juris-  
23 isdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE DE-  
24 PARTMENT] to

25 (1) ensure compliance with the provisions of this chapter;

26 or

27 (2) examine the structural integrity of tank vessels and  
28 oil barges. *terminals & pipeline*

29 \* Sec. 15. AS 46.04.200 is amended to read:

1           Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall  
2 prepare and annually review and revise a statewide master oil and  
3 hazardous substance discharge [AND] prevention and contingency plan.

4           (b) The state master plan prepared under this section must

5               (1) take into consideration the elements of an oil dis-  
6 charge prevention and contingency plan approved or submitted for  
7 approval under AS 46.04.030;

8               (2) clarify and specify the respective responsibilities of  
9 each of the following in the assessment, containment, and cleanup of a  
10 catastrophic oil discharge or of a significant discharge of a hazard-  
11 ous substance into the environment of the state:

12                   (A) agencies of the state;

13                   (B) municipalities of the state;

14                   (C) appropriate federal agencies;

15                   (D) operators of facilities;

16                   (E) private parties whose land and other property may  
17 be affected by the oil or hazardous substance discharge; and

18                   (F) other parties identified by the commissioner as  
19 having an interest in or the resources to assist in the contain-  
20 ment and cleanup of an oil or hazardous substance discharge;

21               (3) specify the respective responsibilities of parties  
22 identified in (2) of this subsection in an emergency response; and

23               (4) identify actions necessary to reduce the likelihood of  
24 catastrophic oil discharges and significant discharges of hazardous  
25 substances.

26           (c) In preparing and annually reviewing the state master plan,  
27 the commissioner shall

28               (1) consult with municipal and community officials, and  
29 with representatives of affected regional organizations;

1 (2) submit the draft plan to the public for review and  
2 comment;

3 (3) submit to the legislature for review, not later than  
4 the 10th day following the convening of each regular session, the plan  
5 and any annual revision of the plan; and

6 (4) require or schedule unannounced oil spill drills to  
7 test the sufficiency of an oil discharge prevention and contingency  
8 plan approved under AS 46.04.030 or of the cleanup plans of a party  
9 identified under (b)(2) of this section.

10 \* Sec. 16. AS 46.04.210(a) is amended to read:

11 (a) For any region of the state, the boundaries of which are  
12 determined by the commissioner by regulation, in which the department  
13 is required to review and approve an oil discharge prevention and  
14 contingency plan submitted by a person under AS 46.04.030, the depart-  
15 ment shall prepare and annually review and revise a regional master  
16 oil and hazardous substance discharge [AND] prevention and contingency  
17 plan.

18 \* Sec. 17. AS 46.04.900(8) is amended to read:

19 (8) "[OFFSHORE] exploration or production facility" means a  
20 platform, vessel, or other facility used to explore for or produce  
21 hydrocarbons in the waters of the state or on land in the state; the  
22 term does not include vessels used for stratigraphic drilling or other  
23 operations that [WHICH] are not authorized or intended to drill to a  
24 producing formation;

25 \* Sec. 18. AS 46.04.900 is amended by adding a new paragraph to read:

26 (18) "realistic maximum oil discharge" means the maximum and  
27 most damaging oil discharge that the department estimates could occur  
28 during the lifetime of the vessel or facility based on the size,  
29 location, and capacity of the vessel or facility; on the department's

1 knowledge and experience with the vessel or facility or with similar  
2 vessels or facilities; and on the department's analysis of possible  
3 mishaps at the vessel or facility or at similar vessels or facilities.

4 \* Sec. 19. AS 46.08.040 is amended to read:

5 Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use  
6 money from the fund to

7 (1) investigate and evaluate the release or threatened  
8 release of oil or a hazardous substance, and contain, clean up, and  
9 take other necessary action, such as monitoring and assessing, to  
10 address a release or threatened release of oil or a hazardous sub-  
11 stance that poses an imminent and substantial threat to the public  
12 health or welfare, or to the environment;

13 (2) pay all costs incurred

14 (A) to establish and maintain the oil and hazardous  
15 substance response office and for the expenses of the oil and  
16 hazardous substance response corps and the oil and hazardous  
17 substance response depots established by that office;

18 (B) to review oil discharge prevention and contingency  
19 plans submitted under AS 46.04.030;

20 (C) to conduct training, response exercises, inspec-  
21 tions, and tests, in order to verify equipment inventories and  
22 ability to prevent and respond to oil and hazardous substance  
23 release emergencies, and to undertake other activities intended  
24 to verify or establish the preparedness of the state, a munic-  
25 ipality, or a party required by AS 46.04.030 to have an approved  
26 contingency plan to act in accordance with that plan; and

27 (D) to verify or establish proof of financial respon-  
28 sibility required by AS 46.04.040;

29 (3) provide matching funds for participation in federal oil



1 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-  
2 hensive Environmental Response, Compensation, and Liability Act of  
3 1980); [AND]

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

7 (5) prepare, review, and revise

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

11 (B) a regional master oil and hazardous substance  
12 discharge [AND] prevention and contingency plan required by  
13 AS 46.04.210; and

14 (6) restore the environment by addressing the effects of an  
15 oil or hazardous substance release.

16 \* Sec. 20. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. By  
17 January 25, 1992, the Department of Environmental Conservation shall sur-  
18 vey, inspect, and prepare an inventory of noncrude oil terminal facilities  
19 in the state with an effective storage capacity of 5,000 to 10,000 barrels  
20 and report to the legislature its written recommendations concerning dis-  
21 charge prevention and contingency requirements or design review require-  
22 ments that should be enacted for these facilities.

23 \* Sec. 21. This Act takes effect immediately under AS 01.10.070(c).  
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go0530hJ  
Lauterbach  
3/28/90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO 567 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to oil discharge prevention and  
7 contingency plan requirements, financial respon-  
8 sibility requirements related to oil and hazardous  
9 substances, and inspection authority of the Depart-  
10 ment of Environmental Conservation; authorizing  
11 certain additional uses of the oil and hazardous  
12 substance release response fund; and providing for an  
13 effective date."

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

15 \* Section 1. AS 46.03.759(c) is amended to read:

16 (c) Subject to the \$500,000,000 maximum set under (a) of this  
17 section the court shall assess four times the penalty set out in (a)  
18 of this section if the court finds

19 (i) the discharge was caused by the gross negligence or  
20 intentional act of the defendant;

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

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

25 \* Sec. 2. AS 46.04.020(e) is amended to read:

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

1 (1) facilitate coordinated and effective oil discharge  
2 response in the state;

3 (2) provide for cooperative review of oil discharge preven-  
4 tion and contingency plans submitted to the department under AS 46.-  
5 04.030;

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

9 (4) provide for cooperative oil discharge notification  
10 procedures.

11 \* Sec. 3. AS 46.04.030 is amended to read:

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

13 (a) A person may not cause or permit the operation of an oil terminal  
14 facility in the state unless an oil discharge prevention and contin-  
15 gency plan for the facility has been approved by the department and  
16 has been properly implemented [. THE DEPARTMENT IS THE ONLY STATE  
17 AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE CONTINGENCY  
18 PLAN FOR THE PURPOSES OF THIS SECTION].

19 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit  
20 the operation of an [OFFSHORE] exploration or production facility in  
21 the state unless an oil discharge prevention and contingency plan for  
22 the facility has been approved by the department and has been properly  
23 implemented.

24 (c) A person may not operate a tank vessel or an oil barge  
25 within the waters of the state, or cause or permit the transfer of oil  
26 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]  
27 an oil barge, unless an oil discharge prevention and contingency plan  
28 for the tank vessel or oil barge has been approved by the department  
29 and has been properly implemented [EXCEPT FOR PROSECUTIONS UNDER



1 AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLA-  
2 TION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CUR-  
3 RENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE  
4 HAD BEEN APPROVED BY THE DEPARTMENT].

5 (d) A [AN OIL DISCHARGE] contingency plan must be renewed at  
6 least every three years.

7 (e) The department may attach reasonable terms and conditions to  
8 its approval or modification of a [AN OIL DISCHARGE] contingency plan  
9 that the department [WHICH IT] determines are necessary to ensure  
10 [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan  
11 has access to sufficient resources to protect environmentally sensi-  
12 tive areas and to contain, clean up, and mitigate potential oil dis-  
13 charges at or from the facility or vessel as provided in (j) of this  
14 section, and to ensure that the applicant properly implements the  
15 contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL DIS-  
16 CHARGE] contingency plan must provide for the use of the best avail-  
17 able technology by the applicant. The department may require an  
18 applicant or holder of an approved contingency plan to take steps  
19 necessary to demonstrate its ability to carry out the contingency  
20 plan, including

- 21 (1) periodic training;  
22 (2) response team exercises; and  
23 (3) verifying access to inventories of available equipment,  
24 supplies, and personnel.

25 (f) The department, after notice and opportunity for hearing,  
26 may modify its approval of a [AN OIL DISCHARGE] contingency plan if  
27 the department [IT] determines that a change has occurred in the  
28 operation of a facility [, MARINA] or vessel necessitating an amended  
29 or supplemented plan, or the operator's discharge experience

1 demonstrates a necessity for modification. The department, after  
2 notice and opportunity for hearing, may revoke its approval of a [AN  
3 OIL DISCHARGE] contingency plan if the department [IT] determines that

4 (1) approval was obtained by fraud or misrepresentation;

5 (2) the operator does not have access to the quality or  
6 quantity of resources identified in the plan; [OR]

7 (3) a term or condition of approval or modification has  
8 been violated; or

9 (4) the plan has not been properly implemented.

10 (g) Failure of a holder of an approved or modified [OIL DIS-  
11 CHARGE] contingency plan to properly implement the plan, or to have  
12 access to the quality or quantity of resources identified in the plan  
13 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources as  
14 required under (j) of this section in the event of a spill, [WITHIN  
15 THE SHORTEST FEASIBLE TIME] is a violation of this chapter for pur-  
16 poses of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applica-  
17 ble law. If the holder of an approved or modified [OIL DISCHARGE]  
18 contingency plan fails to respond to and conduct cleanup operations of  
19 an unpermitted discharge of crude oil with the quality and quantity of  
20 resources identified in the plan and in a manner required under the  
21 plan, the holder is strictly liable, jointly and severally, for the  
22 civil penalty assessed under AS 46.03.758, 46.03.759, or 46.03.760  
23 against any other person for that discharge.

24 \* Sec. 4. AS 46.04.030 is amended by adding new subsections to read:

25 (h) The department is the only state agency that has the power  
26 to approve, modify, or revoke a contingency plan for the purposes of  
27 this section. The department shall exercise its power under this  
28 section in a timely manner. Except for prosecutions under AS 46.03.-  
29 790(b), it is not a defense to an action brought for a violation of

1 (a) - (c) of this section that the person charged believed that a  
2 current contingency plan had been approved by the department.

3 (i) Before the department approves or modifies a contingency  
4 plan under this section, the department shall provide a copy of the  
5 contingency plan to the Department of Fish and Game and to the Depart-  
6 ment of Natural Resources and shall provide those departments a rea-  
7 sonable opportunity to review and comment on the plan.

8 (j) An applicant for a contingency plan required under this  
9 section shall maintain in its area of operation, singly or in conjunc-  
10 tion with other operators in its area of operation, sufficient oil  
11 discharge containment, storage, transfer, and removal equipment,  
12 personnel, and resources to rapidly contain a

13 (1) realistic maximum oil discharge and to remove that  
14 discharge within the shortest possible time if the contingency plan is  
15 for an exploration or production facility;

16 (2) discharge in an amount equal to the capacity of the  
17 largest oil storage tank at the facility and to remove that discharge  
18 within 72 hours if the contingency plan is for an oil terminal facil-  
19 ity; if the department determines that the oil terminal facility is  
20 located in an area of high risk because of natural or manmade condi-  
21 tions outside of the facility, the department may increase the volume  
22 requirement under this paragraph so that the contingency plan must be  
23 designed for response to a discharge that is greater in amount than  
24 the capacity of the largest oil storage tank at the facility;

25 (3) discharge of oil in an amount equal to the maximum  
26 capacity of the vessel or barge and to remove that discharge within 72  
27 hours if the contingency plan is for a tank vessel or oil barge.

28 (k) In this section

29 (1) "contingency plan" means an oil discharge prevention

1 and contingency plan required under this section;

2 (2) "properly implement" means, with respect to a contin-  
3 gency plan,

4  
5  
6 \* Sec. 5. AS 46.04.040(a) is amended to read:

7 (a) A person may not cause or permit the operation of an oil  
8 terminal facility in the state unless the person has furnished to the  
9 department, and the department has approved, proof of financial abil-  
10 ity to respond in damages. Proof of financial responsibility for a  
11 crude oil terminal may not be less than \$50,000,000 per incident.  
12 Proof of financial responsibility for a noncrude oil terminal may not  
13 be less than \$35 per barrel of total noncrude oil storage capacity at  
14 the terminal or [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT. ABILITY  
15 TO RESPOND IN DAMAGES NEED NOT EXCEED \$50,000,000 BUT MUST BE IN AN  
16 AMOUNT (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH BARREL OF STORAGE  
17 CAPACITY AT THE OIL TERMINAL FACILITY; OR (2)] \$1,000,000, whichever  
18 is greater, subject to a maximum of \$50,000,000.

19 \* Sec. 6. AS 46.04.040(b) is amended to read:

20 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the  
21 operation of an [OFFSHORE] exploration or production facility in the  
22 state unless the person has furnished to the department, and the  
23 department has approved, proof of financial ability to respond in  
24 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial  
25 responsibility for an offshore exploration or production facility may  
26 not be less than \$50,000,000 [\$35,000,000] per incident. Proof of  
27 financial responsibility for an onshore exploration or production  
28 facility may not be less than \$20,000,000 per incident.

29 \* Sec. 7. AS 46.04.040(c) is amended to read:



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

8 (1) \$500,000,000 per incident for a tank vessel or barge  
9 carrying crude oil;

10 (2) \$100 per barrel of storage capacity or \$1,000,000,  
11 whichever is greater, subject to a maximum of \$35,000,000, for a tank  
12 vessel or barge carrying noncrude oil or other hazardous substance in  
13 an amount of 5,000 barrels or more [RESPONSIBILITY FOR THE TANK VESSEL  
14 OR BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT. FINANCIAL RESPONSIBIL-  
15 ITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

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

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

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

26 \* Sec. 8. AS 46.04.040(d) is amended to read:

27 (d) Except for prosecutions under AS 46.03.790(b), it is not a  
28 defense to an action brought for violation of (a) - (c) [(c)] of this  
29 section that the person charged believed in good faith that proof of

1 financial ability to respond in damages had been furnished to, and  
2 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF  
3 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

4 \* Sec. 9. AS 46.04.040(e) is amended to read:

5 (e) Financial responsibility may be demonstrated by self-insur-  
6 ance, insurance, surety, [OR] guarantee, or other security approved by  
7 the department, under terms the department may prescribe. An action  
8 brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822,  
9 or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.-  
10 759] may be brought in a state court directly against the insurer or  
11 another person providing evidence of financial responsibility. The  
12 applicant, and an insurer, surety, [OR] guarantor, or other person  
13 providing security approved by the department shall appoint an agent  
14 for service of process in the state. An insurer must either be au-  
15 thorized by the Department of Commerce and Economic Development to  
16 sell insurance in the state or be an unauthorized insurer listed by  
17 the Department of Commerce and Economic Development as not disapproved  
18 for use in the state.

19 \* Sec. 10. AS 46.04.040(f) is amended to read:

20 (f) Acceptance of proof of financial responsibility expires

21 (1) one year from its issuance for self-insurance;

22 (2) on the effective date of a change in the surety bond,  
23 guarantee, [OR] insurance agreement, or other security approved by the  
24 department; or

25 (3) on the expiration or cancellation of the surety bond,  
26 guarantee, [OR] insurance agreement, or other security approved by the  
27 department.

28 \* Sec. 11. AS 46.04.040(g) is amended to read:

29 (g) The person whose proof of financial responsibility is

1 accepted by the department under this section shall notify the depart-  
2 ment at least 30 days before the effective date of a change, expira-  
3 tion or cancellation in the surety bond, guarantee, [OR] insurance  
4 agreement, or other security approved by the department. Application  
5 for renewal of acceptance of proof of financial responsibility under  
6 this section must be filed at least 30 days before the date of ex-  
7 piration.

8 \* Sec. 12. AS 46.04 is amended by adding a new section to read:

9 Sec. 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar  
10 amounts in AS 46.04.040 change, as provided in this section, accord-  
11 ing to and to the extent of changes in the Consumer Price Index for all  
12 urban consumers for the Anchorage metropolitan area compiled by the  
13 Bureau of Labor Statistics, United States Department of Labor (the  
14 index). The index for January of the year in which this section  
15 becomes effective is the reference base index.

16 (b) The dollar amounts change on October 1 of each third year  
17 according to the percentage change between the index for January of  
18 that year and the most recent index used to determine whether to  
19 change the dollar amounts. After calculation of the new amounts, the  
20 resulting amounts shall be rounded to the nearest cent.

21 (c) If the index is revised, the percentage of change is cal-  
22 culated on the basis of the revised index. If a revision of the index  
23 changes the reference base index, a revised reference base index is  
24 determined by multiplying the reference base index applicable by the  
25 rebasing factor furnished by the United States Bureau of Labor Statis-  
26 tics. If the index is superseded, the index referred to in this sec-  
27 tion is the one represented by the Bureau of Labor Statistics as  
28 reflecting most accurately changes in the purchasing power of the  
29 dollar for Alaskan consumers.

(d) The department shall adopt a regulation announcing

(1) on or before June 30 of each third year, the changes in dollar amounts required by (b) of this section; and

(2) promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(e) The department shall also provide notification of a change in dollar amounts required under (b) of this section to the clerks of court in each judicial district of the state.

\* Sec. 13. AS 46.04.050 is amended to read:

Sec. 46.04.050. EXEMPTIONS. Because of the restricted nature of the operations and the minimal danger to the environment posed by the activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an oil terminal facility that has an effective storage capacity of less than 5,000 [10,000] barrels of crude oil or less than 10,000 barrels of noncrude oil.

\* Sec. 14. AS 46.04.060 is amended to read:

Sec. 46.04.060. INSPECTIONS. In addition to other rights of access or inspection conferred upon the department by law or otherwise, the department may at reasonable times enter and inspect oil [OIL] terminal facilities, [OFFSHORE] exploration and production facilities, tank vessels, and oil barges within the territorial jurisdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE DEPARTMENT] to

(1) ensure compliance with the provisions of this chapter;

or

(2) examine the structural integrity of tank vessels, oil



1 barges, oil terminal facilities, oil exploration and production facil-  
2 ities, pipelines, and other facilities related to the exploration,  
3 production, storage, and transportation of oil.

4 \* Sec. 15. AS 46.04.200 is amended to read:

5 Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall  
6 prepare and annually review and revise a statewide master oil and  
7 hazardous substance discharge [AND] prevention and contingency plan.

8 (b) The state master plan prepared under this section must

9 (1) take into consideration the elements of an oil dis-  
10 charge prevention and contingency plan approved or submitted for  
11 approval under AS 46.04.030;

12 (2) clarify and specify the respective responsibilities of  
13 each of the following in the assessment, containment, and cleanup of a  
14 catastrophic oil discharge or of a significant discharge of a hazard-  
15 ous substance into the environment of the state:

16 (A) agencies of the state;

17 (B) municipalities of the state;

18 (C) appropriate federal agencies;

19 (D) operators of facilities;

20 (E) private parties whose land and other property may  
21 be affected by the oil or hazardous substance discharge; and

22 (F) other parties identified by the commissioner as  
23 having an interest in or the resources to assist in the contain-  
24 ment and cleanup of an oil or hazardous substance discharge;

25 (3) specify the respective responsibilities of parties  
26 identified in (2) of this subsection in an emergency response; and

27 (4) identify actions necessary to reduce the likelihood of  
28 catastrophic oil discharges and significant discharges of hazardous  
29 substances.

1 (c) In preparing and annually reviewing the state master plan,  
2 the commissioner shall

3 (1) consult with municipal and community officials, and  
4 with representatives of affected regional organizations;

5 (2) submit the draft plan to the public for review and  
6 comment;

7 (3) submit to the legislature for review, not later than  
8 the 10th day following the convening of each regular session, the plan  
9 and any annual revision of the plan; and

10 (4) require or schedule unannounced oil spill drills to  
11 test the sufficiency of an oil discharge prevention and contingency  
12 plan approved under AS 46.04.030 or of the cleanup plans of a party  
13 identified under (b)(2) of this section.

14 \* Sec. 16. AS 46.04.210(a) is amended to read:

15 (a) For any region of the state, the boundaries of which are  
16 determined by the commissioner by regulation, in which the department  
17 is required to review and approve an oil discharge prevention and  
18 contingency plan submitted by a person under AS 46.04.030, the depart-  
19 ment shall prepare and annually review and revise a regional master  
20 oil and hazardous substance discharge [AND] prevention and contingency  
21 plan.

22 \* Sec. 17. AS 46.04.900(8) is amended to read:

23 (8) "[OFFSHORE] exploration or production facility" means a  
24 platform, vessel, or other facility used to explore for or produce  
25 hydrocarbons in the waters of the state or on land in the state; the  
26 term does not include vessels used for stratigraphic drilling or other  
27 operations that [WHICH] are not authorized or intended to drill to a  
28 producing formation;

29 \* Sec. 18. AS 46.04.900 is amended by adding a new paragraph to read:

(18) "realistic maximum oil discharge" means the maximum and most damaging oil discharge that the department estimates could occur during the lifetime of the vessel or facility based on the size, location, and capacity of the vessel or facility; on the department's knowledge and experience with the vessel or facility or with similar vessels or facilities; and on the department's analysis of possible mishaps at the vessel or facility or at similar vessels or facilities.

\* Sec. 19. AS 46.08.040 is amended to read:

Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use money from the fund to

(1) investigate and evaluate the release or threatened release of oil or a hazardous substance, and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment;

(2) pay all costs incurred

(A) to establish and maintain the oil and hazardous substance response office and for the expenses of the oil and hazardous substance response corps and the oil and hazardous substance response depots established by that office;

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

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

1 contingency plan to act in accordance with that plan; and

2 (D) to verify or establish proof of financial respon-  
3 sibility required by AS 46.04.040;

4 (3) provide matching funds for participation in federal oil  
5 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-  
6 hensive Environmental Response, Compensation, and Liability Act of  
7 1980); [AND]

8 (4) recover the costs to the state or to a municipality of  
9 a containment and cleanup resulting from the release or the threatened  
10 release of oil or a hazardous substance; [.]

11 (5) prepare, review, and revise

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

15 (B) a regional master oil and hazardous substance  
16 discharge [AND] prevention and contingency plan required by  
17 AS 46.04.210; and

18 (6) restore the environment by addressing the effects of an  
19 oil or hazardous substance release.

20 \* Sec. 20. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. (a) By  
21 January 31, 1991, the Department of Environmental Conservation shall sur-  
22 vey, inspect, and prepare an inventory of noncrude oil terminal facilities  
23 in the state with an effective storage capacity of 5,000 to 10,000 barrels  
24 in order to determine for each facility

25 (1) its actual storage capacity;

26 (2) the type of noncrude oil products stored;

27 (3) its age, design, construction, and general condition;

28 (4) the design and construction standards applicable or rele-

29 vant;



1 (5) the presence or absence of containment structures and equip-  
2 ment;

3 (6) its ability to respond to a release or threatened release;

4 (7) the environmental sensitivity of the surrounding area and  
5 the potential risk to the environment if a release occurs;

6 (8) the presence or absence of surface and subsurface pipelines  
7 and storage tanks; and

8 (9) other appropriate information.

9 (b) By January 31, 1991, the Department of Environmental Conservation  
10 shall report to the legislature the results of the survey required under  
11 (a) of this section and its written recommendations concerning discharge  
12 prevention and contingency requirements or design review requirements that  
13 should be enacted for noncrude oil terminal facilities with storage capac-  
14 ities of less than 10,000 barrels.

15 (c) Upon completion of the survey required under (a) of this section,  
16 the Department of Environmental Conservation may

17 (1) notify each facility of the results of the facility's in-  
18 spection; and

19 (2) provide each facility with recommendations and technical  
20 assistance concerning identified deficiencies.

21 \* Sec. 21. This Act takes effect immediately under AS 01.10.070(c).  
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27

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 2, line 1, after "discharge":

Insert "prevention and"

Page 2, line 2, after "state":

Insert ", including agreements relating to development and enforcement of vessel traffic control and monitoring systems for tank vessels and oil barges operating in or near the waters of the state"

3,000,000.00

400,000.00  
120,000.00



28



CHAMBER = H  
SOURCE = HRES  
DATE = 900328  
YEAR = 90  
TIME = 1500  
DOCUMENT TEXT

HOUSE RESOURCES COMMITTEE  
March 28, 1990  
3:00 p.m.

## MEMBERS PRESENT

Co-Chairman Curt Menard  
Co-Chairman Cliff Davidson  
Representative Mike Davis  
Representative Walt Furnace  
Representative Bill Hudson  
Representative George Jacko  
Representative Mike Navarre  
Representative Bert Sharp

SBC

M-M23 FX

2 / 2

## MEMBERS ABSENT

Representative Richard Foster

## COMMITTEE CALENDAR

Teleconference (listen only)

CS HB 448 (RES) - "An Act relating to guide-outfitter use area permits, the Big Game Commercial Services Board, and guide-outfitters, transporters, and providers of other big game commercial services."

CS for HB 448 (RES) was reported out of Committee with INDIVIDUAL RECOMMENDATIONS.

CS HB 565 (RES) - "An Act relating to strengthening the civil penalty and damage provisions concerning the discharge of oil and other environmental violations;

SBC

M-M23 FX

2 / 2

CS for HB 565 (RES) was HELD in Committee for further consideration.

CHB 56(RES) - "An Act relating to the strengthening of the state's oil contingency plan requirements, financial responsibility requirements, and inspection authority under AS 46.04; and providing for an effective date."

CS foHB 56(RES) was HELD in Committee for further consideration.

WITNESS REGISTER

Johanna Munson  
Legislative Aide to Representative Menard  
Room 124, Capitol Building, P.O. Box V

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POSITION STATEMENT: AMENDMENTS AND QUESTIONS ON CSHB 565  
AND CSHB 567

Dr. Riki Ott  
Oil Reform Alliance  
P.O. Box 1271  
Cordova, Alaska 99574  
586-2820

POSITION STATEMENT: SUPPORTED CSHB 565 AND CSHB 567 WITH  
CHANGES

Dave Hutchins  
Alaska Rural Electric Cooperative Association  
302-C Assembly Building  
211 4th Street  
Juneau, Alaska 99801  
463-3636

POSITION STATEMENT: OPPOSED TO CSHB 567

Ray Gillespie  
Representing small petroleum distributors

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## POSITION STATEMENT: OPPOSED TO CSHB 567 AS WRITTEN

## PREVIOUS ACTION

BILL: HB 448  
TITLE: "An Act relating to guide-outfitter use area  
permits, the Big Game Commercial Services Board, and  
guide-outfitters, transporters, and providers of  
other big game commercial services."

## PRIME SPONSOR: RULES BY REQUEST

| JRN-DATE | JRN-PAGE |     | ACTION                               |
|----------|----------|-----|--------------------------------------|
| 01/26/90 | 02199    | (H) | READ THE FIRST TIME -<br>REFERRAL(S) |
| 01/26/90 | 02199    | (H) | RESOURCES, JUDICIARY , FINANCE       |

BILL: HB 565  
TITLE: "An Act relating to strengthening the civil penalty  
and damage provisions concerning the discharge of

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oil and other environmental violations; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

PRIME SPONSOR: RULES BY REQUEST OF THE GOVERNOR

| JRN-DATE | JRN-PAGE |     | ACTION                                  |
|----------|----------|-----|-----------------------------------------|
| 02/22/90 | 02512    | (H) | READ THE FIRST TIME - REFERRAL(S)       |
| 02/22/90 | 02512    | (H) | RESOURCES, JUDICIARY, FINANCE           |
| 02/22/90 | 02513    | (H) | GOVERNOR'S TRANSMITTAL LETTER           |
| 02/22/90 | 02512    | (H) | FISCAL NOTE (F&G) 2/22/90               |
| 02/22/90 | 02512    | (H) | ZERO FISCAL NOTE (DEC) 2/22/90          |
| 02/27/90 | 02576    | (H) | CORRECTED ZERO FISCAL NOTE(F&G) 2/22/90 |
| 02/27/90 | 02576    | (H) | (REPLACES PREVIOUS F&G FISCAL NOTE)     |

BILL:HB 567

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TITLE: "An Act relating to oil discharge prevention and contingency plan requirements, financial responsibility requirements related to oil, penalties, and inspection authority of the Department of Environmental Conservation; relating to the oil and hazardous substance release response fund and responses to oil and hazardous substance emergencies; authorizing the Department of Environmental Conservation and municipalities to enter into agreements pertaining to vessel traffic control and monitoring systems; and providing for an effective date."

PRIME SPONSOR: RULES BY REQUEST OF THE GOVERNOR

| JRN-DATE | JRN-PAGE |     | ACTION                            |
|----------|----------|-----|-----------------------------------|
| 02/22/90 | 02514    | (H) | READ THE FIRST TIME - REFERRAL(S) |
| 02/22/90 | 02514    | (H) | RESOURCES, FINANCE                |
| 02/22/90 | 02515    | (H) | GOVERNOR'S TRANSMITTAL LETTER     |
| 02/22/90 | 02515    | (H) | 2 FISCAL NOTES (DEC, F&G)         |

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2/22/90

## ACTION NARRATIVE

TAPE HRC-307, SIDE A

Number 000

CO-CHAIRMAN CURT MENARD called the meeting to order at 3:25 p.m. and noted the members in attendance. He informed the committee they would be hearing testimony on CSHB 448, CSHB 565, and CSHB 567, in that order.

Number 31

HB 448

JOHANNA MUNSON, a staff member in Representative Menard's office, briefly explained the changes from the original version of HB 448 and CSHB 448 (Res), as distributed to the

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Number 619

Co-Chairman Davidson MOVED to report out of Committee CS for HB 565 (RES) with INDIVIDUAL RECOMMENDATIONS. There being an OBJECTION, a roll was called. CS for HB 565 (RES) was reported out of Committee with five yeas and three nays.

Number 637

Marilyn Heiman next proceeded to review, for the committee, all the changes in the CS foHB 56 which were different than the original governor's bill.

Referring to page 1, lines 23-24 of CSHB 567, Ms. Heiman stated that the words "prevention and" were inserted before the words "contingency plan" wherever they appeared in the bill.

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Next, on page 5, starting at line 8, contingency plan requirements were broken out for three types of facilities: an exploration or production facility, an oil storage tank, and a vessel or barge. For a production facility, the requirement would be to have equipment to remove a realistic maximum oil discharge in the shortest possible time. For an oil terminal facility, they would be required to remove the discharge within 72 hours and be prepared to remove an oil spill the size of the largest storage tank at that facility. Facilities in high risk areas could be required by DEC to increase the response requirement to greater than the capacity of the largest oil storage tank at the facility. For a tanker or barge, the applicant for a contingency plan would have to plan to remove the discharge the size of the capacity of the vessel within 72 hours.

Ms. Heiman, referring to page 6, line 12, stated that for non-crude oil, proof of responsibility may not be less

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than \$35 per barrel or \$1 million, whichever was greater, with a maximum of \$50 million. Therefore, all financial responsibility would fall within the \$1 million to \$50 million range.

On page 6, starting at line 26, Ms. Heiman reported adding the proof of financial responsibility for an onshore exploration or production facility to be not less than \$20 million. Also, the financial responsibility for an offshore facility was increased from \$35 million to \$50 million.

On page 7, starting at line 10, the financial responsibility for crude oil tankers was changed to \$100 per barrel of storage capacity or \$1 million, whichever was greater, subject to a maximum of \$35 million.

TAPE HRC-308, SIDE A

Number 000

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Ms. Heiman continued her explanation of changes incorporated in CSHB 567.

On page 9, the dollar amounts for proof of financial responsibility are tied to the Anchorage Consumer Price Index, similar to the provision added to CSHB 565. These figures would be subject to adjustment every three years (line 16).

Number 33

Co-Chairman Davidson asked if there had been a change in the language on page 7, line 13, since the work session last night, which stated "5,000 barrels or more."

Ms. Heiman replied that there had been no further changes, and the figure remained at 5,000 barrels or more.

Ms. Heiman continued her explanation of changes in CSHB

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567. On page 10, line 29, the phrase "... oil terminal facilities, oil exploration and production facilities, pipelines, and other facilities relating to the exploration, production, storage, and transportation of oil" had been added to the language of the governor's bill. She explained that this was for inspections specifically. She mentioned that she had received a letter from DEC regarding the procedures for inspecting vessels, which she would provide to the committee members.

On page 11, section 15 was also amended to add the words "prevention and" in front of "contingency plan."

On page 13, section 19, "Purposes of the Fund" contains language from Representative Brown's bill which is presently in the House Resources Committee, HB 421. This bill allows DEC to use money from the oil and hazardous substance release response fund to review oil discharge prevention and contingency plans, and to conduct training, inspections, etc.

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Section 20 on page 14, is an attempt to deal with the problem of those facilities with between a 5,000 and 10,000 barrel storage capacity. These facilities are not required to have a contingency plan or proof of financial responsibility at this time. This section requires the DEC to recommend a proposal for contingency planning, plan review, and oil spill prevention at these types of facilities by January 31, 1991.

Number 119

Representative Furnace asked what was the maximum amount of insurance available from Lloyd's of London for a facility, as they discussed at a previous meeting. He was referring to page 6 of CSHB 567 which would require \$20 million and \$50 million proof of financial responsibility for onshore and offshore facilities, respectively.

Representative Navarre stated that Lloyd's of London was referring to storage facilities and barges when they

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limited insurance available to \$5 million. He pointed out that financial responsibility of \$35 million is already required in law for an offshore exploration or production facility.

Representative Furnace then asked if \$50 million of liability coverage was available for these facilities.

Chairman Menard answered that it was possible to buy it, however, the question was at what cost.

Representative Navarre was of the opinion that showing \$50 million worth of financial responsibility was not as difficult for these large facilities as it was for smaller operators.

Number 177

Representative Davis MOVED to adopt CSHB 567 (RES), hJ Lauterbach, March 28, 1990 version. It was so ordered,

SBC

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HRES90032815 DOCUMENT= 7 OF 15 PAGE = 49 OF 53  
with one objection noted from Representative Furnace.

Number 191

Chairman Menard announced that the CS foHB 56(RES) was before the committee and open for discussion. However, it would be held in committee today for further discussion tomorrow.

Number 212

DAVE HUTCHINS of the Alaska Rural Electric Cooperative Association (ARECA) testified before the committee on CS HB 567. Referring to page 6, line 13, Mr. Hutchins explained that changing the proof of responsibility for a non-crude oil terminal to not less than \$35 per barrel (from \$25 per barrel) would have a devastating effect on rural electric utilities. Kotzebue Electric, for example, would have an increased financial responsibility to more than \$1,750,000. This insurance would cost the utility in

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the neighborhood of \$70,000 to \$75,000 annually. Even by self-insuring within the ARECA group it would be difficult because they are limited by their net worth.

Number 257

Representative Hudson asked what the \$100,000 insurance premium for Yotsuba Electric would cover, if it did not cover the cost of any cleanup.

Mr. Hutchins replied that the commercial insurance paid for third party liability only. It did not pay for cleanup of the part of any spill within the facility's own dikes.

Number 275

RAY GILLESPIE, representing Crowley Maritime, Petro-Marine, and Delta Western (small distributors of refined petroleum products in Alaska), next testified before the committee on CHB 567. All of these distributors own terminal

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facilities that exceed 10,000 barrels in capacity. He urged the committee to hold CSHB 567 to hear more public testimony. He added that the companies he represented had not even had a chance to respond to the previous versions of HB 56 yet.

Mr. Gillespie pointed out that he had sent a memo containing valid questions to the committee last week which had not been addressed.

Mr. Gillespie referred to Appendix G to the Alaska Oil Spill Commission Report, which deals specifically with the insurance issue. He stated that neither the Alaska Oil Spill Commission Report nor the Appendix G suggests or recommends any changes with respect to financial responsibility for non-crude distributors. In fact, the recommendation made in these reports is that the legislature, with the assistance of expertise in the insurance industry, study this issue.

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Mr. Gillespie distributed copies of correspondence between the Transportation Institute, the Attorney General's office, and the Commissioner of DEC, dealing with a similar problem encountered in 1981 -1982. (Refer to Attachment No. 4 for Mr. Gillespie's handout which can be found at the Alaska Legislative Reference Library or at the House Resource Committee Room, Capitol Building, Room 124.) He felt that the market may not be able to reasonably provide the requirements of the proposed legislation. In such a situation, the Attorney General's office would be unable or unwilling to enforce the statutes.

Mr. Gillespie noted that the new language in the CS indicates that the contingency plan for oil terminal facilities would require on-site personnel and equipment to clean up a spill of the largest tank at the facility. Federal regulations require that a dike be constructed of sufficient size to contain the contents of the tank. He asked the committee if the language in CS HB 567 meant containment of an oil spill within 72 hours of cleanup and

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disposal of that spill. He commented that in some rural areas, equipment might not reasonably be available, and suggested an accommodation for this be included in the legislation.

Number 373

Representative Navarre sympathized with Mr. Gillespie's clients who were rushed to respond to various versions of HB 567. He reminded Mr. Gillespie that this committee was the first of three house committee referrals, and there was a time limit before the end of session.

Chairman Menard adjourned the meeting at 5:22 p.m.

END OF DOCUMENT

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*Ray Gillespie*  
Gillespie & Associates  
Lobbying & Governmental Affairs



Please reply to:    ☒ 10390 Mendenhall Loop Road    ☐ 215 Fidalgo Ave., Suite 201  
                                 Juneau, Alaska 99801                                    Kenai, Alaska 99611  
                                 (907) 463-3375                                    (907) 283-5405

M E M O R A N D U M

TO:            Representative Cliff Davidson  
                Representative Curt Menard  
                Co-Chairmen  
                House Resources Committee

FROM:        Raymond A. Gillespie ✓

DATE:        March 29, 1990

SUBJECT:     House Bill 567

At your request, this will supplement my memo of March 21, 1990.

Petro Marine, Crowley Maritime and Delta Western have all provided written testimony to the Committee. Petro Marine has also offered oral testimony. Those comments have identified the following concerns:

1. Financial responsibility requirements need to be realistic so that operators are able to obtain coverage in the marketplace.
2. There is a need for a transition mechanism as the companies move to meet the more stringent requirements of the new contingency plans required by HB 567.
3. The latest committee substitute requires that a contingency plan for an oil storage facility provide for removal of an amount equal to the capacity of the largest storage tank at the facility within 72 hours. In nearly all cases our facilities exceed 10,000 barrels. Federal EPA regulation require a secondary containment mechanism, usually a dike, that will contain not less than the greatest amount of liquid that would be released from the largest tank, assuming the tank was full plus a free board of at least twelve (12) inches. In addition, walls of the dike area are required to be of earth, steel, concrete or solid masonry, designed to be liquid tight and to withstand full hydrostatic head. Therefore the question is, will the secondary containment system such as a dike, that complies with Federal law, meet the requirement of the 72 hour cleanup requirement?

Containment of a spill within the dike area prevents spread and further harm from a spill, however, in remote areas of the state it may not be reasonable possible to secure enough equipment and manpower to contain that spill from the dike area within 72 hours. HB 567 require?

4. The latest committee substitute requires that a barge have sufficient equipment to cleanup a spill equal to the maximum capacity of the vessel or barge within 72 hours. Is it realistically possible to carry sufficient equipment and manpower on a barge to accomplish this? Delta Western has two million gallon barges which ply the Alaska waters. We are attempting to find out exactly with more precision what this requirement will mean in terms of manpower and equipment.

5. The committee substitute of 3/27/90 stated a financial responsibility requirement of a storage tank facility in excess of 5,000 barrels of \$25.00 per barrel for the first 80,000 barrels and \$50.00 per barrel for each barrel in excess of 80,000 barrels. The companies are currently attempting to work with their insurance companies to find out if such coverage is available.

However, the 3/28/90 committee substitute has changed that to \$35.00 per barrel financial responsibility requirement for non-crude oil storage terminal. We have not yet had the opportunity to work with the insurance industry yet on the latest CS.

6. The term "properly implemented" should be further defined so that companies know with more precision what equipment and manpower will be required to meet the contingency plan approval requirements.

Attached is a copy of the recommendations made by Mr. Clancy Phillipsborn, the author of Appendix G. Appendix G to the Alaska Oil Spill Commission Report recommends, among other things, that the Legislature review the analysis of the civil penalty scheme for oil spill liability and compensation in Alaska which was done as a master thesis at the University of Washington, Institute of Marine Studies. In addition, it recommends a review of pending Federal Legislation which may accomplish similar goals, those of the Alaska Legislature in defining a liability and compensation system.

March 29, 1990  
Page Three

Again, my clients are prepared to work with the Committee to draft a reasonable bill. These operators share the concern for implementing the highest level of safety procedures and prevention techniques, however, they must register objection to hastily conceived legislation.

Attachment



30





## ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301  
ANCHORAGE, ALASKA 99503 • (907) 276-3235

March 29, 1990

Representative Cliff Davidson  
Alaska State House of Representatives  
Pouch V  
Juneau, Alaska 99811

RE: House Bill 567

Dear Representative Davidson:

This letter is in response to your request that I put in writing the essence of the remarks I made to the House Resources Committee yesterday.

My basic point is that increasing the rate of financial responsibility on refined petroleum storage tanks from \$25 to \$35 per barrel may seem like a small change, but it is devastating to some of the rural utilities I represent.

### Kotzebue Electric Association

One Example is Kotzebue Electric Association, which has 51,190 barrels of tank capacity. Under present law, they must demonstrate financial responsibility of \$1 million. Under the draft CS for HB 567 considered on March 27, their requirement would increase to \$1,279,750 (\$25 per barrel). Under the draft CS considered yesterday, their requirement would be \$1,791,650 (\$35 per barrel). We swallowed hard and decided not to object to this feature of the March 27 draft, but the increase in the March 28 draft is more than they can reasonably do.

To satisfy the \$35 per barrel requirement, with an insurance policy, Kotzebue Electric would have to buy a \$2 million policy. I estimated the cost of such policy based on the assumption that they would have a peak of 2.1 million gallons of fuel in storage. The current rate on the first \$1 million of coverage is 2.1 cents per gallon. I estimated the rate on the second \$1 million at 50% of the rate for the first \$1 million. This calculation produces an annual premium of \$66,150.

As I explained to the committee, this policy would cover third party liability only. It would not pay a nickel for cleanup costs for the portion of an oil spill remaining on the utility's own property.

DEMOCRACY IN ACTION

Representative Cliff Davidson  
March 29, 1990  
Page Two

Kotzebue Electric would have difficulty maintaining their present arrangement with the ARECA Insurance Exchange to demonstrate financial responsibility because their net assets are only a little more than \$2 million, and they would have to commit essentially all of their credit to guarantee their ability to pay this one obligation. It would leave no credit for things like buying fuel.

Nome Joint Utilities

Nome Joint Utilities is a second example. Their storage capacity is 80,952 barrels. They presently self-insure their \$1 million financial responsibility.

Under the March 27 draft, Nome's requirement would increase to \$2,047,600. Under the March 28 draft, their requirement would be \$2,8733,320. To satisfy this requirement with insurance, they would have to buy a \$3 million policy. I estimated the cost of such a policy based on the assumption that their peak fuel storage would be 3.2 million gallons. The rate on the first \$1 million is currently 2.1 cents per gallon. I estimated the rates for the second and third \$1 million layers at 50% and 25% respectively of the rate for the primary layer. This calculates out to \$117,600 in premiums.

The average cost per consumer per year for these insurance policies would be about \$67 in Kotzebue and \$101 in Nome. Another witness suggested that this doesn't really matter because the state would pay most of the cost through the PCE program. The fact is, PCE pays much less of utility costs than is generally supposed. The portion of the KWH sales which are subject to PCE assistance is 46% in Kotzebue and 43% in Nome. The full cost of the rest of the sales are paid by the consumers.

Cliff, we want to be reasonable, but we urgently ask you and the committee to get the rate for financial responsibility back to \$25 per barrel. After all, that is an increase of 150% from the current rate of \$10 per barrel.

Sincerely



David Hutchens  
Executive Director

Testimony by Annie McKenzie  
House Resources Committee  
March 9, 1990

HB 567

Mr. Chairman and committee members: My name is Annie McKenzie. I am a small business owner from Seldovia and am currently serving as a volunteer for the Alaska Environmental Lobby. I served as volunteer coordinator for the Seldovia response team during the Exxon-Valdez spill. From that perspective, I'd like to comment on contingency plans in house bills 567.

Contingency plans must prepare for cleanup of total discharge of contents within 72 hours. If this is impossible to achieve, as stated by Jerry Asplund of ARCO Marine (Senate Special Subcommittee on Oil & Gas hearing, March 5, 1990), then the amount of product being transported should be decreased to a level than can be adequately dealt with. The bill must also include language for immediate implementation of contingency plans.

Contingency plans must call for adequate equipment to be stockpiled in strategic locations. Industry testimony earlier this week at Senate Oil & Gas indicated they plan only to list equipment availability. Stockpiling of emergency materials for a worst case scenario became evident in Seldovia & other coastal communities outside PWS during the Exxon-Valdez spill. We built cumbersome home-designed log and seine boom to protect our bays since all available commercial boom was used initially in Prince William Sound.

The industry was also unable to provide sufficient tankerage for waste oil. A modified fleet of Seldovia fishing boats collecting oil off the water was shut down a number of times because barges, we were told, were all being used in Prince William Sound. These are a couple of examples of the lack of preparation by the oil industry for a large spill and the need for stockpiling of materials.

The contingency plan for the area south of Seal Rock calls only for use of dispersants. This is inadequate since weather does not always allow for their use. We should have well-placed stockpiles of equipment and materials along with coast with plans for utilization.

All oil-spill contingency plans should have well-developed

methods for disposing of all collected waste materials. Exxon-Valdez waste was disposed of in landfills outside the state, a method which threatens purity of groundwater, and by incineration, a method which releases dioxins and furans into the environment. Dioxins and furans are some of the most powerful and deadly toxins known. Minute amounts of these chemicals are known to cause cancer, birth defects, and immune deficiency responses. They are fat soluble, remaining in the food chain from the smallest organisms up through fish and mammals to humans. Incinerating away from populated areas does not protect humans from their damage, since contaminated fish may travel long distances before being caught and consumed. The purity of Alaskan fish and the health of consumers should not be placed at risk by incineration of oily waste.



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For The Record

R Foster 24 MAR 90

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Notes: CSHB 567

1. Commercial insurance only covers insured for 3rd party liability, not for cost of clean up on insured's own property.
  2. Testimony from various representatives of the electric co-op or fuel carriers have expressed doubts about even the availability of necessary coverage.
  3. Letter presented by Mr. Ray Gillespie (lobbyist for Petro Marine, Crowley and Delta Western), indicated the state would not be able to apply statutes requiring coverage when such coverage is unavailable in the marketplace. This issue needs to be addressed, if not now, certainly before final passage.
- 

Specific amendments or points to be read into the record:

1. Although Section 13 EXEMPTIONS relieves the 72 hour clean up requirements of Section 4 (page 5, line 16-18), facilities greater than 10,000 barrels (420,000 gallons) are not excluded. From my experience in rural Alaska, this mandate to clean up the maximum oil discharge possible, is unrealistic. There are limited resources to draw from and little suggestion as to where a community or firm is to obtain assistance. This is all very new to the industry and I feel relief is in order for non-crude facilities. Paragraph "j", page 5, lines 8-12 list necessary arrangements that must be on stand by at any given time. This is far beyond the capacity of communities like Nome or Naknek or Kotzebue. I would suggest we limit this immediate response to crude oil terminals, not applying to non-crude facilities. The contingency plans that are approved by the department can address the response appropriate for the non-crude operation.
2. Section 20, page 14, SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. This survey is required to be completed by January 31, 1991. From past experience with state government, and from the condition of rural community tank farms, let alone the sheer number of facilities, there is no way this will get done. The department has grown so fast and the issues so complex, they will need far more time to adequately address the

requirement and provide a meaningful report to the legislature.

3. SECTION 20, page 14, SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. This section directs the department to survey and inspect all storage facilities between 5,000 and 10,000 barrels (210,000 - 420,000 gallons) in the state but I don't see a fiscal note attached to fund this survey project. I can only imagine there are some 200-300 such facilities all across the state. This could be a significant financial burden and heavily impacts this bill.

4. Finally, reference the letter from Mr. Dave Hutchens letter to Rep. Davidson, regarding the insurance issue, SECTION 5, page 6, line 13. This increase from current law, \$10.00 per barrel, to \$35.00 per barrel, as proposed in this bill, has serious financial consequences for small rural utilities and I would request the committee reconsider the \$25.00 per barrel, as Mr. Hutchens suggests.



32



Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO 567 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

19 \* <sup>NEW Sec.</sup> Section 1. AS 29.35.020 is amended by adding a new subsection to  
20 read:

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

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

27 (c) Subject to the \$500,000,000 maximum set under (a) of this  
28 section the court shall assess five [FOUR] times the penalty set out  
29 in (a) of this section if the court finds

1 (1) the discharge was caused by the gross negligence or  
2 intentional act of the defendant;

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

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

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

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

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

17 (2) provide for cooperative review of oil discharge preven-  
18 tion and contingency plans submitted to the department under AS 46.-  
19 04.030;

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

23 (4) provide for cooperative oil discharge notification  
24 procedures.

25 \* Sec. 4. AS 46.04.030 is amended to read:

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

27 (a) A person may not cause or permit the operation of an oil terminal  
28 facility in the state unless an oil discharge prevention and contin-  
29 gency plan for the facility has been approved by the department and

1 has been properly implemented [. THE DEPARTMENT IS THE ONLY STATE  
2 AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE CONTINGENCY  
3 PLAN FOR THE PURPOSES OF THIS SECTION].

4 (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit  
5 the operation of an [OFFSHORE] exploration or production facility in  
6 the state unless an oil discharge prevention and contingency plan for  
7 the facility has been approved by the department and has been properly  
8 implemented.

9 (c) A person may not operate a tank vessel or an oil barge  
0 within the waters of the state, or cause or permit the transfer of oil  
1 to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]  
2 an oil barge, unless an oil discharge prevention and contingency plan  
3 for the tank vessel or oil barge has been approved by the department  
4 and has been properly implemented [EXCEPT FOR PROSECUTIONS UNDER  
5 AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLA-  
6 TION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CUR-  
7 RENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE  
8 HAD BEEN APPROVED BY THE DEPARTMENT].

9 (d) A [AN OIL DISCHARGE] contingency plan must be renewed at  
0 least every three years.

1 (e) The department may attach reasonable terms and conditions to  
2 its approval or modification of a [AN OIL DISCHARGE] contingency plan  
3 that the department [WHICH IT] determines are necessary to ensure  
4 [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan  
5 has access to sufficient resources to protect environmentally sensi-  
6 tive areas and to contain, clean up, and mitigate potential oil dis-  
7 charges at or from the facility or vessel as provided in (i) of this  
8 section, and to ensure that the applicant properly implements the  
9 contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL

1 DISCHARGE] contingency plan must provide for the use of the best  
2 available technology by the applicant. The department may require an  
3 applicant or holder of an approved contingency plan to take steps  
4 necessary to demonstrate its ability to carry out the contingency  
5 plan, including

- 6 (1) periodic training;  
7 (2) response team exercises; and  
8 (3) verifying access to inventories of available equipment,  
9 supplies, and personnel.

10 (f) The department, after notice and opportunity for hearing,  
11 may modify its approval of a [AN OIL DISCHARGE] contingency plan if  
12 the department [IT] determines that a change has occurred in the  
13 operation of a facility [, MARINA] or vessel necessitating an amended  
14 or supplemented plan, or the operator's discharge experience demon-  
15 strates a necessity for modification. The department, after notice  
16 and opportunity for hearing, may revoke its approval of a [AN OIL  
17 DISCHARGE] contingency plan if the department [IT] determines that

- 8 (1) approval was obtained by fraud or misrepresentation;  
9 (2) the operator does not have access to the quality or  
10 quantity of resources identified in the plan; [OR]  
11 (3) a term or condition of approval or modification has  
12 been violated; or  
13 (4) the plan has not been properly implemented.

14 (g) Failure of a holder of an approved or modified [OIL DIS-  
15 CHARGE] contingency plan to properly implement the plan, or to have  
16 access to the quality or quantity of resources identified in the plan  
17 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources as  
18 required under (j) of this section in the event of a spill. [WITHIN  
19 THE SHORTEST FEASIBLE TIME] is a violation of this chapter for



1 purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any other  
2 applicable law. If the holder of an approved or modified [OIL DIS-  
3 CHARGE] contingency plan fails to respond to and conduct cleanup  
4 operations of an unpermitted discharge of crude oil with the quality  
5 and quantity of resources identified in the plan and in a manner  
6 required under the plan, the holder is strictly liable, jointly and  
7 severally, for the civil penalty assessed under AS 46.03.758, 46.03.-  
8 759, or 46.03.760 against any other person for that discharge.

9 \* Sec. 5. AS 46.04.030 is amended by adding new subsections to read:

0 (h) The department is the only state agency that has the power  
1 to approve, modify, or revoke a contingency plan for the purposes of  
2 this section. The department shall exercise its power under this  
3 section in a timely manner. Except for prosecutions under AS 46.03.-  
4 790(b), it is not a defense to an action brought for a violation of  
5 (a) - (c) of this section that the person charged believed that a  
6 current contingency plan had been approved by the department.

7 (i) Before the department approves or modifies a contingency  
8 plan under this section, the department shall provide a copy of the  
9 contingency plan to the Department of Fish and Game and to the Depart-  
0 ment of Natural Resources and shall provide those departments a rea-  
1 sonable opportunity to review and comment on the plan.

2 (j) An applicant for a contingency plan required under this  
3 section shall maintain in its area of operation, singly or in conjunc-  
4 tion with other operators in its area of operation, sufficient oil  
5 discharge containment, storage, transfer, and removal equipment,  
6 personnel, and resources to rapidly contain a

7 (1) realistic maximum oil discharge and to remove that  
8 discharge within 72 hours if the contingency plan is for an explora-  
9 tion or production facility;

1 (2) discharge in an amount equal to the capacity of the  
2 largest oil storage tank at the facility and to remove that discharge  
3 within 72 hours if the contingency plan is for an oil terminal facil-  
4 ity; if the department determines that the oil terminal facility is  
5 located in an area of high risk because of natural or manmade condi-  
6 tions outside of the facility, the department may increase the volume  
7 requirement under this paragraph so that the contingency plan must be  
8 designed for response to a discharge that is greater in amount than  
9 the capacity of the largest oil storage tank at the facility;

0 (3) discharge of oil in an amount equal to the maximum  
1 capacity of the vessel or barge and to remove that discharge within 72  
2 hours if the contingency plan is for a tank vessel or oil barge.

3 (k) In this section

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

6 (2) "properly implement" means, with respect to a contin-  
7 gency plan, to

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

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

13 (C) fulfill the assurances espoused in the plan in the  
14 manner described in the plan;

15 (D) comply with terms and conditions attached to the  
16 plan by the department under the authority of (e) of this sec-  
17 tion; and

18 (E) successfully demonstrate the ability to carry out  
19 the plan when required by the department under (e) of this

1 section;

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

9 \* Sec. 6. AS 46.04.040(a) is amended to read:

10 (a) A person may not cause or permit the operation of an oil  
11 terminal facility in the state unless the person has furnished to the  
12 department, and the department has approved, proof of financial abil-  
13 ity to respond in damages. Proof of financial responsibility for a  
14 crude oil terminal may not be less than \$50,000,000 per incident.  
15 Proof of financial responsibility for a noncrude oil terminal may not  
16 be less than \$25 per barrel of total noncrude oil storage capacity at  
17 the terminal or [WHICH HAS BEEN ACCEPTED BY THE DEPARTMENT. ABILITY  
18 TO RESPOND IN DAMAGES NEED NOT EXCEED \$50,000,000 BUT MUST BE IN AN  
19 AMOUNT (1) NOT LESS THAN \$10, PER INCIDENT, FOR EACH BARREL OF STORAGE  
20 CAPACITY AT THE OIL TERMINAL FACILITY: OR (2)] \$1,000,000, whichever  
21 is greater, subject to a maximum of \$50,000,000.

22 \* Sec. 7. AS 46.04.040(b) is amended to read:

23 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the  
24 operation of an [OFFSHORE] exploration or production facility in the  
25 state unless the person has furnished to the department, and the  
26 department has approved, proof of financial ability to respond in  
27 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial  
28 responsibility for an offshore exploration or production facility may  
29 not be less than \$50,000,000 [\$35,000,000] per incident. Proof of

1 financial responsibility for an onshore exploration or production  
2 facility may not be less than \$20,000,000 per incident.

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

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

11 (1) \$500,000,000 per incident for a tank vessel or barge  
12 carrying crude oil;

13 (2) \$100 per barrel of storage capacity or \$1,000,000,  
14 whichever is greater, subject to a maximum of \$35,000,000, for a tank  
15 vessel or barge carrying noncrude oil or other hazardous substance in  
16 an amount of 5,000 barrels or more [RESPONSIBILITY FOR THE TANK VESSEL  
17 OR BARGE HAS BEEN ACCEPTED BY THE DEPARTMENT. FINANCIAL RESPONSIBIL-  
18 ITY UNDER THIS SUBSECTION SHALL BE IN THE FOLLOWING AMOUNTS:

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

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

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

29 \* Sec. 9. AS 46.04.040(d) is amended to read:



1 (d) Except for prosecutions under AS 46.03.790(b), it is not a  
2 defense to an action brought for violation of (a) - (c) [(c)] of this  
3 section that the person charged believed in good faith that proof of  
4 financial ability to respond in damages had been furnished to, and  
5 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF  
6 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

7 \* Sec. 10. AS 46.04.040(e) is amended to read:

8 (e) Financial responsibility may be demonstrated by self-insur-  
9 ance, insurance, surety, [OR] guarantee, or other security approved by  
0 the department, under terms the department may prescribe. An action  
1 brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822,  
2 or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.-  
3 759] may be brought in a state court directly against the insurer or  
4 another person providing evidence of financial responsibility. The  
5 applicant, and an insurer, surety, [OR] guarantor, or other person  
6 providing security approved by the department shall appoint an agent  
7 for service of process in the state. An insurer must either be au-  
8 thorized by the Department of Commerce and Economic Development to  
9 sell insurance in the state or be an unauthorized insurer listed by  
0 the Department of Commerce and Economic Development as not disapproved  
1 for use in the state.

2 \* Sec. 11. AS 46.04.040(f) is amended to read:

3 (f) Acceptance of proof of financial responsibility expires

4 (1) one year from its issuance for self-insurance;

5 (2) on the effective date of a change in the surety bond,  
6 guarantee, [OR] insurance agreement, or other security approved by the  
7 department; or

8 (3) on the expiration or cancellation of the surety bond,  
9 guarantee, [OR] insurance agreement, or other security approved by the

1        department.

2        \* Sec. 12. AS 46.04.040(g) is amended to read:

3                (g) The person whose proof of financial responsibility is ac-  
4                cepted by the department under this section shall notify the depart-  
5                ment at least 30 days before the effective date of a change, expira-  
6                tion or cancellation in the surety bond, guarantee, [OR] insurance  
7                agreement, or other security approved by the department. Application  
8                for renewal of acceptance of proof of financial responsibility under  
9                this section must be filed at least 30 days before the date of ex-  
0                piration.

1        \* Sec. 13. AS 46.04 is amended by adding a new section to read:

2                Sec. 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar  
3                amounts in AS 46.04.040 change, as provided in this section, according  
4                to and to the extent of changes in the Consumer Price Index for all  
5                urban consumers for the Anchorage metropolitan area compiled by the  
6                Bureau of Labor Statistics, United States Department of Labor (the  
7                index). The index for January of the year in which this section  
8                becomes effective is the reference base index.

9                (b) The dollar amounts change on October 1 of each third year  
0                according to the percentage change between the index for January of  
1                that year and the most recent index used to determine whether to  
2                change the dollar amounts. After calculation of the new amounts, the  
3                resulting amounts shall be rounded to the nearest cent.

4                (c) If the index is revised, the percentage of change is cal-  
5                culated on the basis of the revised index. If a revision of the index  
6                changes the reference base index, a revised reference base index is  
7                determined by multiplying the reference base index applicable by the  
8                rebasing factor furnished by the United States Bureau of Labor Statis-  
9                tics. If the index is superseded, the index referred to in this

1 section is the one represented by the Bureau of Labor Statistics as  
2 reflecting most accurately changes in the purchasing power of the  
3 dollar for Alaskan consumers.

4 (d) The department shall adopt a regulation announcing

5 (1) on or before June 30 of each third year, the changes in  
6 dollar amounts required by (b) of this section; and

7 (2) promptly after the changes occur, changes in the index  
8 required by (c) of this section, including, if applicable, the numer-  
9 ical equivalent of the reference base index under a revised reference  
0 base index and the designation or title of any index superseding the  
1 index.

2 (e) The department shall also provide notification of a change  
3 in dollar amounts required under (b) of this section to the clerks of  
4 court in each judicial district of the state.

5 \* Sec. 14. AS 46.04.050 is amended to read:

6 Sec. 46.04.050. EXEMPTIONS. The provisions of [BECAUSE OF THE  
7 RESTRICTED NATURE OF THE OPERATIONS AND THE MINIMAL DANGER TO THE  
8 ENVIRONMENT POSED BY THE ACTIVITIES,] AS 46.04.030, 46.04.040, and  
9 46.04.060 do not apply to an oil terminal facility that has an effec-  
0 tive storage capacity of less than 5,000 [10,000] barrels of crude oil  
1 or less than 10,000 barrels of noncrude oil.

2 \* Sec. 15. AS 46.04.060 is amended to read:

3 Sec. 46.04.060. INSPECTIONS. In addition to other rights of  
4 access or inspection conferred upon the department by law or other-  
5 wise, the department may at reasonable times enter and inspect oil  
6 [OIL] terminal facilities, [OFFSHORE] exploration and production  
7 facilities, tank vessels, and oil barges within the territorial juris-  
8 diction of the state in order [ARE SUBJECT TO INSPECTION BY THE DE-  
9 PARTMENT] to

1 (1) ensure compliance with the provisions of this chapter;  
2 or

3 (2) examine the structural integrity of tank vessels, oil  
4 barges, oil terminal facilities, oil exploration and production facil-  
5 ities, pipelines, and other facilities related to the exploration,  
6 production, storage, and transportation of oil.

7 \* Sec. 16. AS 46.04.200 is amended to read:

8 Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall  
9 prepare and annually review and revise a statewide master oil and  
0 hazardous substance discharge [AND] prevention and contingency plan.

1 (b) The state master plan prepared under this section must

2 (1) take into consideration the elements of an oil dis-  
3 charge prevention and contingency plan approved or submitted for  
4 approval under AS 46.04.030;

5 (2) clarify and specify the respective responsibilities of  
6 each of the following in the assessment, containment, and cleanup of a  
7 catastrophic oil discharge or of a significant discharge of a hazard-  
8 ous substance into the environment of the state:

- 9 (A) agencies of the state;  
0 (B) municipalities of the state;  
1 (C) appropriate federal agencies;  
2 (D) operators of facilities;  
3 (E) private parties whose land and other property may  
4 be affected by the oil or hazardous substance discharge; and

5 (F) other parties identified by the commissioner as  
6 having an interest in or the resources to assist in the contain-  
7 ment and cleanup of an oil or hazardous substance discharge;

8 (3) specify the respective responsibilities of parties  
9 identified in (2) of this subsection in an emergency response; and



1 (4) identify actions necessary to reduce the likelihood of  
2 catastrophic oil discharges and significant discharges of hazardous  
3 substances.

4 (c) In preparing and annually reviewing the state master plan,  
5 the commissioner shall

6 (1) consult with municipal and community officials, and  
7 with representatives of affected regional organizations;

8 (2) submit the draft plan to the public for review and  
9 comment;

0 (3) submit to the legislature for review, not later than  
1 the 10th day following the convening of each regular session, the plan  
2 and any annual revision of the plan; and

3 (4) require or schedule unannounced oil spill drills to  
4 test the sufficiency of an oil discharge prevention and contingency  
5 plan approved under AS 46.04.030 or of the cleanup plans of a party  
6 identified under (b)(2) of this section.

7 \* Sec. 17. AS 46.04.210(a) is amended to read:

8 (a) For any region of the state, the boundaries of which are  
9 determined by the commissioner by regulation, in which the department  
0 is required to review and approve an oil discharge prevention and  
1 contingency plan submitted by a person under AS 46.04.030, the depart-  
2 ment shall prepare and annually review and revise a regional master  
3 oil and hazardous substance discharge [AND] prevention and contingency  
4 plan.

5 \* Sec. 18. AS 46.04.900(8) is amended to read:

6 (8) "[OFFSHORE] exploration or production facility" means a  
7 platform, vessel, or other facility used to explore for or produce  
8 hydrocarbons in the waters of the state or on land in the state; the  
9 term does not include vessels used for stratigraphic drilling or other

1 operations that [WHICH] are not authorized or intended to drill to a  
2 producing formation;

3 \* Sec. 19. AS 46.08.040 is amended to read:

4 Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use  
5 money from the fund to

6 (1) investigate and evaluate the release or threatened  
7 release of oil or a hazardous substance, and contain, clean up, and  
8 take other necessary action, such as monitoring and assessing, to  
9 address a release or threatened release of oil or a hazardous sub-  
0 stance that poses an imminent and substantial threat to the public  
1 health or welfare, or to the environment;

2 (2) pay all costs incurred

3 (A) to establish and maintain the oil and hazardous  
4 substance response office and for the expenses of the oil and  
5 hazardous substance response corps and the oil and hazardous  
6 substance response depots established by that office;

7 (B) to review oil discharge prevention and contingency  
8 plans submitted under AS 46.04.030;

9 (C) to conduct training, response exercises, inspec-  
0 tions, and tests, in order to verify equipment inventories and  
1 ability to prevent and respond to oil and hazardous substance  
2 release emergencies, and to undertake other activities intended  
3 to verify or establish the preparedness of the state, a munic-  
4 ipality, or a party required by AS 46.04.030 to have an approved  
5 contingency plan to act in accordance with that plan; and

6 (D) to verify or establish proof of financial respon-  
7 sibility required by AS 46.04.040;

8 (3) provide matching funds for participation in federal oil  
9 discharge cleanup activities and under 42 U.S.C. 9601 - 9657

1 (Comprehensive Environmental Response, Compensation, and Liability Act  
2 of 1980); [AND]

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

6 (5) prepare, review, and revise

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

0 (B) a regional master oil and hazardous substance  
1 discharge [AND] prevention and contingency plan required by  
2 AS 46.04.210; and

3 (6) restore the environment by addressing the effects of an  
4 oil or hazardous substance release.

5 \* Sec. 20. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. (a) By  
6 January 31, 1992, the Department of Environmental Conservation shall sur-  
7 vey, inspect, and prepare an inventory of noncrude oil terminal facilities  
8 in the state with an effective storage capacity of 5,000 to 10,000 barrels  
9 in order to determine for each facility

0 (1) its actual storage capacity;

1 (2) the type of noncrude oil products stored;

2 (3) its age, design, construction, and general condition;

3 (4) the design and construction standards applicable or rele-  
4 vant;

5 (5) the presence or absence of containment structures and equip-  
6 ment;

7 (6) its ability to respond to a release or threatened release;

8 (7) the environmental sensitivity of the surrounding area and  
9 the potential risk to the environment if a release occurs;

1 (8) the presence or absence of surface and subsurface pipelines  
2 and storage tanks; and

3 (9) other appropriate information.

4 (b) By January 31, 1992, the Department of Environmental Conservation  
5 shall report to the legislature the results of the survey required under  
6 (a) of this section and its written recommendations concerning discharge  
7 prevention and contingency requirements or design review requirements that  
8 should be enacted for noncrude oil terminal facilities with storage capac-  
9 ities of less than 10,000 barrels.

10 (c) Upon completion of the survey required under (a) of this section,  
11 the Department of Environmental Conservation may

12 (1) notify each facility of the results of the facility's in-  
13 spection; and

14 (2) provide each facility with recommendations and technical  
15 assistance concerning identified deficiencies.

16 (d) The Department of Environmental Conservation may conduct the  
17 inspections required under this section notwithstanding the provisions of  
18 AS 46.04.050. The department shall conduct the inspections at reasonable  
19 times.

20 \* Sec. 21. This Act takes effect immediately under AS 01.10.070(c).



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CHAMBER = H

SOURCE = HRES

DATE = 900330

YEAR = 90

TIME = 1500

DOCUMENT TEXT

## HOUSE RESOURCES COMMITTEE

March 30, 1990

3:00 p.m.

## MEMBERS PRESENT

Representative Curt Menard, Co-Chairman

Representative Mike Davis

Representative George Jacko, Vice-Chairman

Representative Mike Navarre

Representative Bert Sharp

## MEMBERS ABSENT

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Representative Cliff Davidson, Co-Chairman

Representative Richard Foster

Representative Walt Furnace

Representative Bill Hudson

## COMMITTEE CALENDAR

HJR 32 - Relating to subsistence and commercial  
fishing in Glacier Bay National Park.

REPORTED OUT of committee.

HB 476 - "An Act relating to compensation of members  
of the Board of Fisheries and the Board of  
Game."

REPORTED OUT of committee.

HB 567- "An Act relating to the strengthening of the  
state's oil contingency plan requirements,

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financial responsibility requirements, and inspection authority under AS 46.04; and providing for an effective date."

REPORTED OUT of committee.

HB 308 - "An Act amending the license fee payable for a fisheries business license, and establishing procedures to account for receipts from the license fees and their use; and imposing a penalty for engaging or attempting to engage in a fisheries business without a license; and providing for an effective date."

Rescheduled.

WITNESS REGISTER

Jay Nelson, Legislative Aide to

SBC

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Representative Cliff Davidson

P.O. Box V

Juneau, Alaska 99811

465-3715

POSITION STATEMENT: Overview HJR 92 and HB 476

Marilyn Heiman, Legislative Aide to

Representative Curt Menard

P.O. Box V

Juneau, Alaska 99811

465-2679

POSITION STATEMENT: Overview HB 567

Gene Burden

Tesoro Alaska

561-5521

POSITION STATEMENT: Concern HB 567

John McDonagh

Department of Law

SBC

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100 Cushman, Suite 400  
Fairbanks, AK 99701  
452-1568

POSITION STATEMENT: Information

Terri Lauterbach  
Legislative Legal Counsel  
P.O. Box Y  
Juneau, Alaska 99811  
465-2450

POSITION STATEMENT: Information

Charlie Elder  
2042 Crataegus  
Anchorage, Alaska 99509  
274-3276  
POSITION STATEMENT: ConcernHB 567

Don Koch, Marketing Section  
Division of Insurance

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Department of Commerce and Economic Development  
P.O. Box 0  
Juneau, Alaska 99811  
465-2577

POSITION STATEMENT: Information

Anne Rothe, President  
Regulatory Citizens Advisory Commission  
Anchorage, Alaska  
POSITION STATEMENT: Supports CHB 567

Dave Bouker  
Nushagak Electric  
Box 350  
Dillingham, Alaska 99576  
POSITION STATEMENT: ConcernHB 567

Riki Ott  
Oil Reform Alliance  
P.O. Box 1271

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Cordova, AK 99574

586-2088

POSITION STATEMENT: Supports intent oHB 567

## PREVIOUS ACTION

BILL: HJR 92

TITLE: Relating to subsistence use and commercial fishing  
in Glacier Bay National Park.

PRIME SPONSOR: RULES

| JRN-DATE | JRN-PAGE |     | ACTION                               |
|----------|----------|-----|--------------------------------------|
| 03/13/90 | 02736    | (H) | READ THE FIRST TIME -<br>REFERRAL(S) |
| 03/13/90 | 02736    | (H) | RESOURCES                            |

BILL: HB 476

TITLE: "An Act relating to members of the Board of  
Fisheries and the Board of Game."

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PRIME SPONSOR: DAVIDSON

CO-SPONSOR: ULMER

| JRN-DATE | JRN-PAGE |     | ACTION                               |
|----------|----------|-----|--------------------------------------|
| 02/06/90 | 02306    | (H) | READ THE FIRST TIME -<br>REFERRAL(S) |
| 02/06/90 | 02306    | (H) | RESOURCES, FINANCE                   |

BILL: HB 567

TITLE: "An Act relating to oil discharge prevention and  
contingency plan requirements, financial respon-  
sibility requirements related to oil, penalties, and  
inspection authority of the Department of Environ-  
mental Conservation; relating to the oil and hazard-  
ous substance release response fund and responses to  
oil and hazardous substance emergencies; authorizing  
the Department of Environmental Conservation and  
municipalities to enter into agreements pertaining  
to vessel traffic control and monitoring systems;

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PRIME SPONSOR: RULES BY REQUEST OF THE GOVERNOR

| JRN-DATE | JRN-PAGE |     | ACTION                                |
|----------|----------|-----|---------------------------------------|
| 02/22/90 | 02514    | (H) | READ THE FIRST TIME -<br>REFERRAL(S)  |
| 02/22/90 | 02514    | (H) | RESOURCES, FINANCE                    |
| 02/22/90 | 02515    | (H) | GOVERNOR'S TRANSMITTAL LETTER         |
| 02/22/90 | 02515    | (H) | -2 FISCAL NOTES (DEC, F&G)<br>2/22/90 |

BILL: HB 306

TITLE: "An Act amending the license fee payable for a fish-  
eries business license, and establishing procedures  
to account for receipts from the license fees and  
their use; and imposing a penalty for engaging or  
attempting to engage in a fisheries business without  
a license; and providing for an effective date."

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The committee next addressed HB 567.

Number 135

MARILYN HEIMAN, legislative aide to Rep. Menard, gave an overview on the CS tHB 567. A new section was added to allow a municipality to enter into an agreement with the United States Coast Guard and the United States Environmental Protection Agency to develop and enforce vessel traffic control and monitoring systems for oil barges and tank vessels carrying oil operating in or near the waters of the state. Provisions were also made so the state can enter into this type of an agreement. The fines for negligent discharge were changed to correspond with HB 565, requiring a title change. The term "properly implement" is defined on PAGE 6. The proof of financial responsibility for a noncrude oil terminal facility is \$25 per barrel or a minimum of \$1,000,000 and a maximum of \$50,000,000, on PAGE 7, LINE 16. On PAGE 8, LINE 7, the

SBC

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words "operating the tank vessel or oil barge" were added to clarify that a refinery or noncrude facility unloading or transferring crude does not have to have the financial responsibility required of a crude vessel. PAGE 11, LINE 16 was changed to say "...[t]hese provisions in this bill do not apply to facilities that are 5,000 to 10,000 barrels..." On PAGE 13, LINE 15, the date has been changed to 1992.

Number 220

GENE BURDEN testified on behalf of Tesoro Alaska stating the requirement that response be made within 72 hours is technically not feasible in most of the areas in the state. The issue of having a \$500,000,000 proof of financial responsibility should be reviewed further.

Number 258

Rep. Navarre stated he was unsure whether different amounts

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should be written for smaller tankers. With regard to the financial responsibility requirement, maybe the department should have some discretion to reduce the amount necessary by a certain percentage, upon a showing and acceptance by the department that preventative measures put in place by the party required to have the financial responsibility are of such a nature that they significantly reduce the potential for a spill.

Number 291

Rep. Sharp asked if Tesoro would fall over the 5,000 barrel requirement. Mr. Burden replied yes.

Number 315

Rep. Navarre asked if his above suggestion about financial responsibility could be written into statute.

JOHN McDONAGH, assistant attorney general with the

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Department of Law, testified via teleconference and replied yes.

Rep. Navarre stated he made this suggestion because it is in line with what the consensus has been with both the oil spill commission and others, in that prevention ought to be where the focus should be.

Number 333

REP. MIKE DAVIS asked, if there was an oil spill, and vessels were out picking up that oil, would that oil be considered crude oil and would the vessels have to have the same kind of liability. Mr. McDonagh replied no, those vessels are not going to be required to have that type of financial responsibility. The tanker transport vessels are the ones required to have that type of financial responsibility.

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Rep. Davis then asked if the Drift River facility used barges to take out some of that oil, would they have the \$500,000,000 liability requirements. Mr. McDonagh replied the \$500,000,000 provision as currently written in HB 567 applies to tank vessels and barges that carry crude oil, regardless of size.

Number 399



that has to be met before the department can approve the contingency plan. He believed 72 hours looks like a real problem.

Number 113

Mr. McDonagh agreed 72 hours would be a serious problem if one was required to complete a cleanup within 72 hours. That is why it is very important to distinguish between the planning function and the response/liability function.

Number 151

CHARLIE ELDER, retired employee of the Standard Oil Company, testified on behalf of himself stating these types of bills will substantially decrease Alaska's chances of obtaining infusion of new capital money. A contingency plan is not an unusual thing. HB 567 in essence, neglects the environmental impact which might have occurred with a spill.

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Number 307

Rep. Davis stated there is a growing sector of our society that is very concerned about a self-regulated industry, like the oil and gas industry. This is something that is not going to go away. Industry may have had a blow in getting capital, but incidents like Cook Inlet and Prince William Sound create an instability. The industry is partially to blame for that.

Number 329

Mr. Elder responded he had no arguments with Rep. Davis' comments, he just wanted to present his testimony.

Number 353

Rep. Navarre stated he had been thinking about vessel size and financial responsibility and he will try and come up

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with some language to change that. The way it is currently written, smaller tankers are penalized.

Number 383

DON KOCH, chief of market surveillance at the division of insurance of the department of commerce and economic development, stated the division does not see much of this type of insurance, because typically it is placed in markets that are not admitted to write in the state of Alaska. As a result, the division really is not cognizant of what the rates or costs are for these products. Lloyds of London is currently able to handle about \$10,000,000 per operator. The P&I clubs are currently seeking to put limits together for \$1,000,000,000 for pollution liability coverage. The federal government currently requires \$500,000,000 as Mr. Koch understands it. Shell Oil is now requiring \$900,000,000 coverage for its subcontractors. Typically, that is placed through the P&I clubs. The likely minimum premium on any policy written would be

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\$15,000, and the likely deductible would be \$25,000. As a rating measure, the through-put capacity would be looked at. Rates would be determined on an individual basis.

Number 506

Rep. Davis asked if other states were taking a look at and changing their liability laws. Mr. Koch replied it was his impression that Alaska may be on the leading edge on this issue.

Number 559

ANNE ROTHE, president of the Regional Citizens Advisory Committee (RCAC), testified on RCAC's behalf in support of CSHB 567. RCAC is pleased to see an emphasis placed on prevention. RCAC advocated the following readiness standards be included in all contingency plans. First, require demonstrated preparedness that puts initial response and containment crews at the site of a spill

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within 2 hours; second, require demonstrated preparedness for response that will contain or remove the majority of the maximum spill within 72 hours; and third, require that the plan be complete and include the entire response cycle and cover the entire geographic scope appropriate to (indiscernible).

Number 629

DAVE BOUKER of Nushagak Electric commented the reduction of financial responsibility from \$35 to \$25 per barrel would enable a terminal operator for a noncrude facility to add the \$1,000,000 limit up to 1,680,000 gallons. Some facilities may exceed that capacity. The division of insurance should possibly put together some type of pooling arrangement. The \$100 per barrel for the barges is of substantial concern, because based on that requirement, the barge serving Dillingham would require \$6,000,000 worth of coverage. If through-put is going to be discussed, the insurance expense for a barge would be phenomenal.

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Regarding the consumer price index, Mr. Bouker felt Dillingham would also be severely impacted by the use of the CPI.

TAPE HRC 90-311, SIDE A

Number 000

Rep. Navarre commented with respect to the cost of living being six percent higher and the consumer price index in Anchorage being used, the financial responsibility would serve to the benefit of Dillingham.

Number 013

RIKI OTT testified on behalf of the Oil Reform Alliance (ORA) in support of the intention of HB 56 to have a performance standard of 72 hours and leaving that requirement in the bill.

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Ms. Lauterbach stated she and Mr. McDonagh had come up with the following changes to CSHB 567: PAGE 4, LINES 28 through 29, DELETE "as required under (j) of this section" and INSERT "in the shortest possible time." PAGE 6, AFTER LINE 12, ADD a new subsection (k) which would read "[N]otwithstanding (j) of this section, failure to remove a discharge within 72 hours does not constitute failure to properly implement a plan for purposes of (g) of this section."

Number 049

Rep. Navarre suggested clarifying the \$25 per barrel is per incident for each barrel of noncrude; and also the \$100 per barrel mentioned on PAGE 8.

Number 077

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Rep. Davis made a MOTION to adopt the CS THB 567.  
Hearing no objections, Chairman Menard ADOPTED the CS.

Rep. Davis made a MOTION to adopt the amendment suggested by Ms. Lauterbach to DELETE "as required under (j) of this section" and INSERT "in the shortest possible time."  
Hearing no objections, Chairman Menard ADOPTED the amendment.

Rep. Davis made a MOTION to adopt the amendment to PAGE 5, AFTER LINE 12, ADD a new subsection (k) which would read "[N]otwithstanding (j) of this section, failure to remove a discharge within 72 hours does not constitute failure to properly implement a contingency plan for purposes of (g) of this section. Hearing no objections, Chairman Menard ADOPTED the amendment.

Number 101

Rep. Navarre made a MOTION to amend PAGE 7, LINE 16 after

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"\$25 per" ADD "incident for each"; and on PAGE 8, LINE 13,  
after "\$100 per" ADD "incident for each." Hearing no  
objections, Chairman Menard ADOPTED the amendment.

Rep. Navarre then made a MOTION to move CSHB 567 out of  
committee with individual recommendations. Hearing no  
objections, Chairman Menard MOVED CSHB 567 out of committee  
with individual recommendations.

Number 111

Chairman Menard then adjourned the meeting at 4:47 p.m.

END OF DOCUMENT

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# HOUSE COMMITTEE REPORT

(9)

Date Referred: February 22, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 3/30/90

The RESOURCES Committee considered:

HB 567

HOUSE BILL NO. 567

OIL SPILL CONTINGENCY PLANS/REQUIREMENTS

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

## RECOMMENDATIONS:

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

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [ ] fiscal impact \_\_\_\_\_  
[ ] zero fiscal note \_\_\_\_\_  
[ ] zero with analysis \_\_\_\_\_

- 2 [X] fiscal note(s) 2/22/90 ADF+G, DEC  
[ ] zero fiscal note(s) \_\_\_\_\_  
[ ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

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SIGNING:

(Check approp. column)

|                    | Do Not<br>Pass | No Rec                              | Amend |
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[Signature]  
Chairman's Signature



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Original sponsor(s): Rules/Governor

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO 567 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

27 (c) Subject to the \$500,000,000 maximum set under (a) of this  
28 section the court shall assess five [FOUR] times the penalty set out  
29 in (a) of this section if the court finds

1 (1) the discharge was caused by the gross negligence or  
2 intentional act of the defendant;

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

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

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

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

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

17 (2) provide for cooperative review of oil discharge preven-  
18 tion and contingency plans submitted to the department under AS 46.-  
19 04.030;

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

23 (4) provide for cooperative oil discharge notification  
24 procedures.

25 \* Sec. 4. AS 46.04.030 is amended to read:

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

27 (a) A person may not cause or permit the operation of an oil terminal  
28 facility in the state unless an oil discharge prevention and contin-  
29 gency plan for the facility has been approved by the department and

1     has been properly implemented [. THE DEPARTMENT IS THE ONLY STATE  
2     AGENCY WHICH HAS THE POWER TO APPROVE AN OIL DISCHARGE CONTINGENCY  
3     PLAN FOR THE PURPOSES OF THIS SECTION].

4             (b) A [AFTER JANUARY 1, 1981, A] person may not cause or permit  
5     the operation of an [OFFSHORE] exploration or production facility in  
6     the state unless an oil discharge prevention and contingency plan for  
7     the facility has been approved by the department and has been properly  
8     implemented.

9             (c) A person may not operate a tank vessel or an oil barge  
10    within the waters of the state, or cause or permit the transfer of oil  
11    to or from a tank vessel or [, OR, AFTER JANUARY 1, 1981, TO OR FROM]  
12    an oil barge, unless an oil discharge prevention and contingency plan  
13    for the tank vessel or oil barge has been approved by the department  
14    and has been properly implemented [EXCEPT FOR PROSECUTIONS UNDER  
15    AS 46.03.790(b), IT IS NOT A DEFENSE TO AN ACTION BROUGHT FOR VIOLA-  
16    TION OF THIS SUBSECTION THAT THE PERSON CHARGED BELIEVED THAT A CUR-  
17    RENT OIL DISCHARGE CONTINGENCY PLAN FOR THE TANK VESSEL OR OIL BARGE  
18    HAD BEEN APPROVED BY THE DEPARTMENT].

19            (d) A [AN OIL DISCHARGE] contingency plan must be renewed at  
20    least every three years.

21            (e) The department may attach reasonable terms and conditions to  
22    its approval or modification of a [AN OIL DISCHARGE] contingency plan  
23    that the department [WHICH IT] determines are necessary to ensure  
24    [INSURE] that the applicant for a [AN OIL DISCHARGE] contingency plan  
25    has access to sufficient resources to protect environmentally sensi-  
26    tive areas and to contain, clean up, and mitigate potential oil dis-  
27    charges at or from the facility or vessel as provided in (j) of this  
28    section, and to ensure that the applicant properly implements the  
29    contingency plan [WITHIN THE SHORTEST FEASIBLE TIME]. The [OIL

1 DISCHARGE] contingency plan must provide for the use of the best  
2 available technology by the applicant. The department may require an  
3 applicant or holder of an approved contingency plan to take steps  
4 necessary to demonstrate its ability to carry out the contingency  
5 plan, including

- 6 (1) periodic training;
- 7 (2) response team exercises; and
- 8 (3) verifying access to inventories of available equipment,  
9 supplies, and personnel.

10 (f) The department, after notice and opportunity for hearing,  
11 may modify its approval of a [AN OIL DISCHARGE] contingency plan if  
12 the department [IT] determines that a change has occurred in the  
13 operation of a facility [, MARINA] or vessel necessitating an amended  
14 or supplemented plan, or the operator's discharge experience demon-  
15 strates a necessity for modification. The department, after notice  
16 and opportunity for hearing, may revoke its approval of a [AN OIL  
17 DISCHARGE] contingency plan if the department [IT] determines that

- 18 (1) approval was obtained by fraud or misrepresentation;
- 19 (2) the operator does not have access to the quality or  
20 quantity of resources identified in the plan; [OR]
- 21 (3) a term or condition of approval or modification has  
22 been violated; or
- 23 (4) the plan has not been properly implemented.

24 (g) Failure of a holder of an approved or modified [OIL DIS-  
25 CHARGE] contingency plan to properly implement the plan, or to have  
26 access to the quality or quantity of resources identified in the plan  
27 or [AND, IN THE EVENT OF A SPILL,] to respond with those resources  
28 within the shortest possible [FEASIBLE] time in the event of a spill  
29 is a violation of this chapter for purposes of AS 46.03.760(a),



1 46.03.765, 46.03.790, and any other applicable law. If the holder of  
2 an approved or modified [OIL DISCHARGE] contingency plan fails to  
3 respond to and conduct cleanup operations of an unpermitted discharge  
4 of crude oil with the quality and quantity of resources identified in  
5 the plan and in a manner required under the plan, the holder is  
6 strictly liable, jointly and severally, for the civil penalty assessed  
7 under AS 46.03.758, 46.03.759, or 46.03.760 against any other person  
8 for that discharge.

9 \* Sec. 5. AS 46.04.030 is amended by adding new subsections to read:

10 (h) The department is the only state agency that has the power  
11 to approve, modify, or revoke a contingency plan for the purposes of  
12 this section. The department shall exercise its power under this  
13 section in a timely manner. Except for prosecutions under AS 46.03.-  
14 790(b), it is not a defense to an action brought for a violation of  
15 (a) - (c) of this section that the person charged believed that a  
16 current contingency plan had been approved by the department.

17 (i) Before the department approves or modifies a contingency  
18 plan under this section, the department shall provide a copy of the  
19 contingency plan to the Department of Fish and Game and to the Depart-  
20 ment of Natural Resources and shall provide those departments a rea-  
21 sonable opportunity to review and comment on the plan.

22 (j) An applicant for a contingency plan required under this  
23 section shall maintain in its area of operation, singly or in conjunc-  
24 tion with other operators in its area of operation, sufficient oil  
25 discharge containment, storage, transfer, and removal equipment,  
26 personnel, and resources to rapidly contain a

27 (1) realistic maximum oil discharge and to remove that  
28 discharge within 72 hours if the contingency plan is for an explora-  
29 tion or production facility;

1           (2) discharge in an amount equal to the capacity of the  
2 largest oil storage tank at the facility and to remove that discharge  
3 within 72 hours if the contingency plan is for an oil terminal facil-  
4 ity; if the department determines that the oil terminal facility is  
5 located in an area of high risk because of natural or manmade condi-  
6 tions outside of the facility, the department may increase the volume  
7 requirement under this paragraph so that the contingency plan must be  
8 designed for response to a discharge that is greater in amount than  
9 the capacity of the largest oil storage tank at the facility;

10           (3) discharge of oil in an amount equal to the maximum  
11 capacity of the vessel or barge and to remove that discharge within 72  
12 hours if the contingency plan is for a tank vessel or oil barge.

13           (k) Notwithstanding (j) of this section, failure to remove a  
14 discharge within 72 hours does not constitute failure to properly  
15 implement a contingency plan for purposes of (g) of this section.

16           (1) In this section

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

19               (2) "properly implement" means, with respect to a contin-  
20 gency plan, to

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

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

26                   (C) fulfill the assurances espoused in the plan in the  
27 manner described in the plan;

28                   (D) comply with terms and conditions attached to the  
29 plan by the department under the authority of (e) of this

1 section; and

2 (E) successfully demonstrate the ability to carry out  
3 the plan when required by the department under (e) of this sec-  
4 tion;

5 (3) "realistic maximum oil discharge" means the maximum and  
6 most damaging oil discharge that the department estimates could occur  
7 during the lifetime of the vessel or facility based on the size,  
8 location, and capacity of the vessel or facility; on the department's  
9 knowledge and experience with the vessel or facility or with similar  
10 vessels or facilities; and on the department's analysis of possible  
11 mishaps at the vessel or facility or at similar vessels or facilities.

12 \* Sec. 6. AS 46.04.040(a) is amended to read:

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

25 \* Sec. 7. AS 46.04.040(b) is amended to read:

26 (b) A [AFTER JULY 1, 1981, A] person may not cause or permit the  
27 operation of an [OFFSHORE] exploration or production facility in the  
28 state unless the person has furnished to the department, and the  
29 department has approved, proof of financial ability to respond in

1 damages [HAS BEEN ACCEPTED BY THE DEPARTMENT]. Proof of financial  
2 responsibility for an offshore exploration or production facility may  
3 not be less than \$50,000,000 [\$35,000,000] per incident. Proof of  
4 financial responsibility for an onshore exploration or production  
5 facility may not be less than \$20,000,000 per incident.

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

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

14 (1) \$500,000,000 per incident for a tank vessel or barge  
15 carrying crude oil;

16 (2) \$100, per incident, for each barrel of storage capacity  
17 or \$1,000,000, whichever is greater, subject to a maximum of  
18 \$35,000,000, for a tank vessel or barge carrying noncrude oil or other  
19 hazardous substance in an amount of 5,000 barrels or more [RESPONSI-  
20 BILITY FOR THE TANK VESSEL OR BARGE HAS BEEN ACCEPTED BY THE DEPART-  
21 MENT. FINANCIAL RESPONSIBILITY UNDER THIS SUBSECTION SHALL BE IN THE  
22 FOLLOWING AMOUNTS:

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

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



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

4 \* Sec. 9. AS 46.04.040(d) is amended to read:

5 (d) Except for prosecutions under AS 46.03.790(b), it is not a  
6 defense to an action brought for violation of (a) - (c) [(c)] of this  
7 section that the person charged believed in good faith that proof of  
8 financial ability to respond in damages had been furnished to, and  
9 approved by, the department [THE VESSEL OPERATOR POSSESSED PROOF OF  
10 FINANCIAL RESPONSIBILITY ACCEPTED BY THE DEPARTMENT].

11 \* Sec. 10. AS 46.04.040(e) is amended to read:

12 (e) Financial responsibility may be demonstrated by self-insur-  
13 ance, insurance, surety, [OR] guarantee, or other security approved by  
14 the department, under terms the department may prescribe. An action  
15 brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822,  
16 or AS 46.04.030(g) [OR TO COLLECT PENALTIES IMPOSED UNDER AS 46.03.-  
17 759] may be brought in a state court directly against the insurer or  
18 another person providing evidence of financial responsibility. The  
19 applicant, and an insurer, surety, [OR] guarantor, or other person  
20 providing security approved by the department shall appoint an agent  
21 for service of process in the state. An insurer must either be au-  
22 thorized by the Department of Commerce and Economic Development to  
23 sell insurance in the state or be an unauthorized insurer listed by  
24 the Department of Commerce and Economic Development as not disapproved  
25 for use in the state.

26 \* Sec. 11. AS 46.04.040(f) is amended to read:

27 (f) Acceptance of proof of financial responsibility expires  
28 (1) one year from its issuance for self-insurance;  
29 (2) on the effective date of a change in the surety bond,

1     guarantee, [OR] insurance agreement, or other security approved by the  
2     department; or

3             (3) on the expiration or cancellation of the surety bond,  
4     guarantee, [OR] insurance agreement, or other security approved by the  
5     department.

6     \* Sec. 12. AS 46.04.040(g) is amended to read:

7             (g) The person whose proof of financial responsibility is ac-  
8     cepted by the department under this section shall notify the depart-  
9     ment at least 30 days before the effective date of a change expira-  
10    tion or cancellation in the surety bond, guarantee, [OR] insurance  
11    agreement, or other security approved by the department. Application  
12    for renewal of acceptance of proof of financial responsibility under  
13    this section must be filed at least 30 days before the date of ex-  
14    piration.

15    \* Sec. 13. AS 46.04 is amended by adding a new section to read:

16             Sec. 46.04.045. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar  
17     amounts in AS 46.04.040 change, as provided in this section, according  
18     to and to the extent of changes in the Consumer Price Index for all  
19     urban consumers for the Anchorage metropolitan area compiled by the  
20     Bureau of Labor Statistics, United States Department of Labor (the  
21     index). The index for January of the year in which this section  
22     becomes effective is the reference base index.

23             (b) The dollar amounts change on October 1 of each third year  
24     according to the percentage change between the index for January of  
25     that year and the most recent index used to determine whether to  
26     change the dollar amounts. After calculation of the new amounts, the  
27     resulting amounts shall be rounded to the nearest cent.

28             (c) If the index is revised, the percentage of change is cal-  
29     culated on the basis of the revised index. If a revision of the index

1 changes the reference base index, a revised reference base index is  
2 determined by multiplying the reference base index applicable by the  
3 rebasing factor furnished by the United States Bureau of Labor Statis-  
4 tics. If the index is superseded, the index referred to in this sec-  
5 tion is the one represented by the Bureau of Labor Statistics as  
6 reflecting most accurately changes in the purchasing power of the  
7 dollar for Alaskan consumers.

8 (d) The department shall adopt a regulation announcing

9 (1) on or before June 30 of each third year, the changes in  
10 dollar amounts required by (b) of this section; and

11 (2) promptly after the changes occur, changes in the index  
12 required by (c) of this section, including, if applicable, the numer-  
13 ical equivalent of the reference base index under a revised reference  
14 base index and the designation or title of any index superseding the  
15 index.

16 (e) The department shall also provide notification of a change  
17 in dollar amounts required under (b) of this section to the clerks of  
18 court in each judicial district of the state.

19 \* Sec. 14. AS 46.04.050 is amended to read:

20 Sec. 46.04.050. EXEMPTIONS. The provisions of [BECAUSE OF THE  
21 RESTRICTED NATURE OF THE OPERATIONS AND THE MINIMAL DANGER TO THE  
22 ENVIRONMENT POSED BY THE ACTIVITIES,] AS 46.04.030, 46.04.040, and  
23 46.04.060 do not apply to an oil terminal facility that has an effec-  
24 tive storage capacity of less than 5,000 [10,000] barrels of crude oil  
25 or less than 10,000 barrels of noncrude oil.

26 \* Sec. 15. AS 46.04.060 is amended to read:

27 Sec. 46.04.060. INSPECTIONS. In addition to other rights of  
28 access or inspection conferred upon the department by law or other-  
29 wise, the department may at reasonable times enter and inspect oil

1 [OIL] terminal facilities, [OFFSHORE] exploration and production  
2 facilities, tank vessels, and oil barges within the territorial juris-  
3 isdiction of the state in order [ARE SUBJECT TO INSPECTION BY THE DE-  
4 PARTMENT] to

5 (1) ensure compliance with the provisions of this chapter;  
6 or

7 (2) examine the structural integrity of tank vessels, oil  
8 barges, oil terminal facilities, oil exploration and production facil-  
9 ities, pipelines, and other facilities related to the exploration,  
10 production, storage, and transportation of oil.

11 \* Sec. 16. AS 46.04.200 is amended to read:

12 Sec. 46.04.200. STATE MASTER PLAN. (a) The department shall  
13 prepare and annually review and revise a statewide master oil and  
14 hazardous substance discharge [AND] prevention and contingency plan.

15 (b) The state master plan prepared under this section must

16 (1) take into consideration the elements of an oil dis-  
17 charge prevention and contingency plan approved or submitted for  
18 approval under AS 46.04.030;

19 (2) clarify and specify the respective responsibilities of  
20 each of the following in the assessment, containment, and cleanup of a  
21 catastrophic oil discharge or of a significant discharge of a hazard-  
22 ous substance into the environment of the state:

23 (A) agencies of the state;

24 (B) municipalities of the state;

25 (C) appropriate federal agencies;

26 (D) operators of facilities;

27 (E) private parties whose land and other property may  
28 be affected by the oil or hazardous substance discharge; and

29 (F) other parties identified by the commissioner as



1           having an interest in or the resources to assist in the contain-  
2           ment and cleanup of an oil or hazardous substance discharge;

3           (3) specify the respective responsibilities of parties  
4           identified in (2) of this subsection in an emergency response; and

5           (4) identify actions necessary to reduce the likelihood of  
6           catastrophic oil discharges and significant discharges of hazardous  
7           substances.

8           (c) In preparing and annually reviewing the state master plan,  
9           the commissioner shall

10           (1) consult with municipal and community officials, and  
11           with representatives of affected regional organizations;

12           (2) submit the draft plan to the public for review and  
13           comment;

14           (3) submit to the legislature for review, not later than  
15           the 10th day following the convening of each regular session, the plan  
16           and any annual revision of the plan; and

17           (4) require or schedule unannounced oil spill drills to  
18           test the sufficiency of an oil discharge prevention and contingency  
19           plan approved under AS 46.04.030 or of the cleanup plans of a party  
20           identified under (b)(2) of this section.

21   \* Sec. 17. AS 46.04.210(a) is amended to read:

22           (a) For any region of the state, the boundaries of which are  
23           determined by the commissioner by regulation, in which the department  
24           is required to review and approve an oil discharge prevention and  
25           contingency plan submitted by a person under AS 46.04.030, the depart-  
26           ment shall prepare and annually review and revise a regional master  
27           oil and hazardous substance discharge [AND] prevention and contingency  
28           plan.

29   \* Sec. 18. AS 46.04.900(8) is amended to read:

1           (8) "[OFFSHORE] exploration or production facility" means a  
2 platform, vessel, or other facility used to explore for or produce  
3 hydrocarbons in the waters of the state or on land in the state; the  
4 term does not include vessels used for stratigraphic drilling or other  
5 operations that [WHICH] are not authorized or intended to drill to a  
6 producing formation;

7 \* Sec. 19. AS 46.08.040 is amended to read:

8           Sec. '6.08.040. PURPOSES OF THE FUND. The commissioner may use  
9 money from the fund to

10           (1) investigate and evaluate the release or threatened  
11 release of oil or a hazardous substance, and contain, clean up, and  
12 take other necessary action, such as monitoring and assessing, to  
13 address a release or threatened release of oil or a hazardous sub-  
14 stance that poses an imminent and substantial threat to the public  
15 health or welfare, or to the environment;

16           (2) pay all costs incurred

17           (A) to establish and maintain the oil and hazardous  
18 substance response office and for the expenses of the oil and  
19 hazardous substance response corps and the oil and hazardous  
20 substance response depots established by that office;

21           (B) to review oil discharge prevention and contingency  
22 plans submitted under AS 46.04.030;

23           (C) to conduct training, response exercises, inspec-  
24 tions, and tests, in order to verify equipment inventories and  
25 ability to prevent and respond to oil and hazardous substance  
26 release emergencies, and to undertake other activities intended  
27 to verify or establish the preparedness of the state, a munic-  
28 ipality, or a party required by AS 46.04.030 to have an approved  
29 contingency plan to act in accordance with that plan; and

1                   (D) to verify or establish proof of financial respon-  
2                   sibility required by AS 46.04.040;

3                   (3) provide matching funds for participation in federal oil  
4 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-  
5 hensive Environmental Response, Compensation, and Liability Act of  
6 1980); [AND]

7                   (4) recover the costs to the state or to a municipality of  
8 a containment and cleanup resulting from the release or the threatened  
9 release of oil or a hazardous substance; [.]

10                  (5) prepare, review, and revise

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

14                   (B) a regional master oil and hazardous substance  
15 discharge [AND] prevention and contingency plan required by  
16 AS 46.04.210; and

17                  (6) restore the environment by addressing the effects of an  
18 oil or hazardous substance release.

19       \* Sec. 20. SURVEY OF SMALL NONCRUDE OIL TERMINAL FACILITIES. (a) By  
20 January 31, 1992, the Department of Environmental Conservation shall sur-  
21 vey, inspect, and prepare an inventory of noncrude oil terminal facilities  
22 in the state with an effective storage capacity of 5,000 to 10,000 barrels  
23 in order to determine for each facility

24                  (1) its actual storage capacity;

25                  (2) the type of noncrude oil products stored;

26                  (3) its age, design, construction, and general condition;

27                  (4) the design and construction standards applicable or rele-  
28 vant;

29                  (5) the presence or absence of containment structures and

1 equipment;

2 (6) its ability to respond to a release or threatened release;

3 (7) the environmental sensitivity of the surrounding area and  
4 the potential risk to the environment if a release occurs;

5 (8) the presence or absence of surface and subsurface pipelines  
6 and storage tanks; and

7 (9) other appropriate information.

8 (b) By January 31, 1992, the Department of Environmental Conservation  
9 shall report to the legislature the results of the survey required under  
10 (a) of this section and its written recommendations concerning discharge  
11 prevention and contingency requirements or design review requirements that  
12 should be enacted for noncrude oil terminal facilities with storage capac-  
13 ities of less than 10,000 barrels.

14 (c) Upon completion of the survey required under (a) of this section,  
15 the Department of Environmental Conservation may

16 (1) notify each facility of the results of the facility's in-  
17 spection; and

18 (2) provide each facility with recommendations and technical  
19 assistance concerning identified deficiencies.

20 (d) The Department of Environmental Conservation may conduct the  
21 inspections required under this section notwithstanding the provisions of  
22 AS 46.04.050. The department shall conduct the inspections at reasonable  
23 times.

24 \* Sec. 21. This Act takes effect immediately under AS 01.10.070(c).



36

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 567 (Res)

PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

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

Agency Affected: Environ. Conservation  
BRU: Environmental Quality  
Components: Environmental Quality

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 91   | FY 92   | FY 93   | FY 94   | FY 95   | FY 96   |
|-------------------|---------|---------|---------|---------|---------|---------|
| PERSONAL SERVICES | 665.0   | 614.0   | 563.0   | 563.0   | 563.0   | 563.0   |
| TRAVEL            | 60.0    | 52.5    | 45.0    | 45.0    | 45.0    | 45.0    |
| CONTRACTUAL       | 562.0   | 554.0   | 546.0   | 546.0   | 546.0   | 546.0   |
| SUPPLIES          | 14.0    | 13.0    | 12.0    | 12.0    | 12.0    | 12.0    |
| EQUIPMENT         | 70.0    | 65.0    | 60.0    | 60.0    | 60.0    | 60.0    |
| LAND&STRUCTURES   |         |         |         |         |         |         |
| GRANTS, CLAIMS    |         |         |         |         |         |         |
| MISCELLANEOUS     |         |         |         |         |         |         |
| TOTAL OPERATING   | 1,371.0 | 1,298.5 | 1,226.0 | 1,226.0 | 1,226.0 | 1,226.0 |
| CAPITAL           | 0.0     | 1,298.5 | 1,226.0 | 1,226.0 | 1,226.0 | 1,226.0 |
| REVENUE           | 0.0     | 0.0     | 0.0     | 0.0     | 0.0     | 0.0     |

FUNDING: (Thousands of Dollars)

|               |         |         |         |         |         |         |
|---------------|---------|---------|---------|---------|---------|---------|
| GENERAL FUND  | 0.0     | 0.0     | 0.0     | 0.0     | 0.0     | 0.0     |
| FEDERAL FUNDS | 0.0     | 0.0     | 0.0     | 0.0     | 0.0     | 0.0     |
| OTHER         | 1,371.0 | 1,298.5 | 1,226.0 | 1,226.0 | 1,226.0 | 1,226.0 |
| TOTAL         | 1,371.0 | 1,298.5 | 1,226.0 | 1,226.0 | 1,226.0 | 1,226.0 |

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Further analysis attached.

Prepared by: Lynn Kent

Division: Environmental Quality

Phone: 465-2630

Date: 4/2/90

Approved by Commissioner: A.D. Kyle

Agency: Environmental Conservation

Date: 4/2/90

Distribution (by preparer):

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

Adopted

## FISCAL ANALYSIS

### Sections 1, 2, and 3

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

### Section 4

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

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

### Section 5

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

### Section 6

Section 6 has no fiscal impact on the Department.



#### Section 7

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

#### Sections 8 and 9

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

#### Sections 10, 11 and 12

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

#### Section 13

Section 13 has no fiscal impact on the Department.

#### Section 14

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

#### Section 15

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

#### Sections 16 and 17

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

#### Section 18

Section 18 has no fiscal impact on the Department.



### Section 19

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

### Section 20

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

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

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

Bill Version: CSHB 567(Fin) No. 3

PUBLISH DATE: HOUSE 4/24/90

FISCAL NOTE

REQUEST:

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

Agency Affected: Environ. Conservation  
BRU: Environmental Quality  
Components: Environmental Quality

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

|         |     |         |         |         |         |         |
|---------|-----|---------|---------|---------|---------|---------|
| CAPITAL | 0.0 | 1,298.5 | 1,226.0 | 1,226.0 | 1,226.0 | 1,226.0 |
|---------|-----|---------|---------|---------|---------|---------|

|         |     |     |     |     |     |     |
|---------|-----|-----|-----|-----|-----|-----|
| REVENUE | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|---------|-----|-----|-----|-----|-----|-----|

FUNDING: (Thousands of Dollars)

|                                |         |         |         |         |         |         |
|--------------------------------|---------|---------|---------|---------|---------|---------|
| GENERAL FUND                   | 0.0     | 0.0     | 0.0     | 0.0     | 0.0     | 0.0     |
| FEDERAL FUNDS                  | 0.0     | 0.0     | 0.0     | 0.0     | 0.0     | 0.0     |
| OTHER <small>resources</small> | 1,371.0 | 1,298.5 | 1,226.0 | 1,226.0 | 1,226.0 | 1,226.0 |
| TOTAL                          | 1,371.0 | 1,298.5 | 1,226.0 | 1,226.0 | 1,226.0 | 1,226.0 |

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Further analysis attached.

Prepared by: Lynn Kent  
Division: Environmental Quality

Phone: 465-2630  
Date: 4/2/90

Approved by Commissioner: *ADK*  
Agency: Environmental Conservation

Date: 4/2/90

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

## FISCAL ANALYSIS

### Sections 1, 2, and 3

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

### Section 4

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

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

### Section 5

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

### Section 6

Section 6 has no fiscal impact on the Department.

### Section 7

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

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### Sections 10, 11 and 12

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

### Section 15

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

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

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### Section 19

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

### Section 20

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

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

37

CS HB 567 (RESOURCES)

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

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

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

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

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

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

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



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

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

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

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

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

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

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

SECTION 18 - Defines an exploration and production facility.

SECTION 19 - Allows DEC to use money from the 470 fund to review industry contingency plans and to conduct training, response exercises, inspections and tests in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies.

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



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

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

*No action position on offshore/onshore*

39



AMENDMENT TO HB 567

APRIL 11, 1990

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

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

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

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



PROPOSED AMENDMENT FOR H.B. 567

APRIL 11, 1990

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

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

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

or

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

ANALYSIS OF AMENDMENTS  
HB 567  
DATED APRIL 11, 1990

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

EXAMPLES OF FINANCIAL RESPONSIBILITY AT TOTAL  
VESSEL CAPACITY

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

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

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

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

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

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A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 4, lines 1 - 2:

Delete "of the best available technology by the applicant"

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

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 5, lines 20 - 21:

Delete "a reasonable opportunity"

Insert "no more than 15 days"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 5, line 22:

Delete "An applicant for a"

Insert "The holder of an approved"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 5, line 23:

Delete "maintain in its area of operation"

Insert "have access to"

Page 5, line 24:

Delete "in its area of operation"



A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

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

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

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 8, lines 18 - 19:

Delete "or other hazardous substance"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 567 (Resources)

Page 14, after line 6:

Insert a new bill section to read:

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

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

Renumber the following bill sections accordingly.

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4/20/90  
Rep. Kay Brown

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

Section 4

page 4, lines 1-2

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

page 4, line 10

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

Section 5

page 5, lines 20-21

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

page 5, line 22

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

page 5, line 23-24

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

page 7, line 12

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

#### Section 6

page 7, line 25

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

#### Section 8

page 8, line 14

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

page 8, line 18-19

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

#### Section 10

page 9, lines 12-25

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

#### Section 11

page 10, line 1

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

page 10, line 4

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

Section 12

page 10, line 11

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

page 10, line 15

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

Other sections renumbered accordingly.

Section 15

page 12, line 11

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

Section 18

page 14, line 7

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

Other sections renumbered accordingly.

42



W. Gene Burden  
Vice President  
Administration & Government Relations

April 21, 1990

HOUSE FINANCE COMMITTEE MEMBERS:

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

Subject: H.B. 567

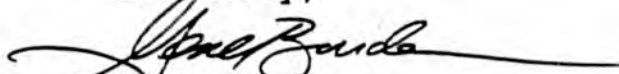
The current version of HB 567, if passed, will present the State of Alaska and Tesoro Alaska with a difficult problem:

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

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

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

Sincerely,

  
Gene Burden

Enclosures

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

### **1. CURRENT STATUS:**

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

### **2. PROPOSED STATUS:**

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

**\*Example of Tesoro Alaska Petroleum Company**

 **SORIERO &  
SEFFENS INC**

April 18, 1990

Mr. Gene Burden  
Tesoro Alaska Petroleum Company

Re: Insurance Companies admitted in Alaska

Dear Gene:

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

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

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

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

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

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

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



Mr. Gene Burden  
April 18, 1990  
Page 2

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

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

Very truly yours,



Mark R. Mozell

MRM:dg

MRM-1727



43

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 567 (Fin)  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING           | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|---------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES   | 135.9 |       |       |       |       |       |
| TRAVEL              | 6.0   |       |       |       |       |       |
| CONTRACTUAL         | 13.6  |       |       |       |       |       |
| SUPPLIES            | 1.0   |       |       |       |       |       |
| EQUIP <sup>NT</sup> |       |       |       |       |       |       |
| LAND & STRUCTURES   |       |       |       |       |       |       |
| GRANTS, CLAIMS      |       |       |       |       |       |       |
| MISCELLANEOUS       |       |       |       |       |       |       |
| TOTAL OPERATING     | 156.5 |       |       |       |       |       |

|         |   |  |  |  |  |  |
|---------|---|--|--|--|--|--|
| CAPITAL | 0 |  |  |  |  |  |
|---------|---|--|--|--|--|--|

|         |   |  |  |  |  |  |
|---------|---|--|--|--|--|--|
| REVENUE | 0 |  |  |  |  |  |
|---------|---|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

|               |       |  |  |  |  |  |
|---------------|-------|--|--|--|--|--|
| GENERAL FUND  | 0     |  |  |  |  |  |
| FEDERAL FUNDS | 0     |  |  |  |  |  |
| OTHER *       | 156.5 |  |  |  |  |  |
| TOTAL         | 156.5 |  |  |  |  |  |

POSITIONS:

|           |   |  |  |  |  |  |
|-----------|---|--|--|--|--|--|
| FULL-TIME | 2 |  |  |  |  |  |
| PART-TIME | 1 |  |  |  |  |  |
| TEMPORARY | 0 |  |  |  |  |  |

ANALYSIS : (Attach a separate page if necessary)

\* Oil and Hazardous Substance Release Response Fund

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

Distribution (by preparer):

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

Adopted

Continuation of fiscal note analysis

FY91 Line Itemization -

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

EXPLANATION

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

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



Continuation of Explanation

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

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



STATE OF ALASKA  
1990 LEGISLATIVE SESSION

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

FISCAL NOTE

REQUEST:

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

|         |   |  |  |  |  |  |
|---------|---|--|--|--|--|--|
| CAPITAL | 0 |  |  |  |  |  |
|---------|---|--|--|--|--|--|

|         |   |  |  |  |  |  |
|---------|---|--|--|--|--|--|
| REVENUE | 0 |  |  |  |  |  |
|---------|---|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

|               |       |  |  |  |  |  |
|---------------|-------|--|--|--|--|--|
| GENERAL FUND  | 0     |  |  |  |  |  |
| FEDERAL FUNDS | 0     |  |  |  |  |  |
| OTHER *       | 156.5 |  |  |  |  |  |
| TOTAL         | 156.5 |  |  |  |  |  |

POSITIONS:

|           |   |  |  |  |  |  |
|-----------|---|--|--|--|--|--|
| FULL-TIME | 2 |  |  |  |  |  |
| PART-TIME | 1 |  |  |  |  |  |
| TEMPORARY | 0 |  |  |  |  |  |

ANALYSIS : (Attach a separate page if necessary)

\* Oil and Hazardous Substance Release Response Fund

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

Distribution (by preparer):

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

## Continuation of fiscal note analysis

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

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

EXPLANATION

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

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

Continuation of Explanation

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

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



# HOUSE COMMITTEE REPORT

(11)

Date Referred: April 2, 1990

FURTHER REFERRALS:

Date of Committee Action: 4/23/90

The FINANCE Committee considered:

HB 567

HOUSE BILL NO. 567

OIL SPILL CONTINGENCY PLANS/REQUIREMENTS

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

## RECOMMENDATIONS:

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

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

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

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

## SIGNING DO PASS:

## SIGNING:

(Check approp. column)

Do Not  
Pass  
No Rec  
Amend

Jim Ulmer Ulmer  
Harvey Brown Brown  
Koponen Koponen

|                                      | Do Not<br>Pass | No Rec | Amend |
|--------------------------------------|----------------|--------|-------|
| <u>Greg Hoffman</u> Hoffman          | X              |        |       |
| <u>Ronald J. Carson</u> Carson       | X              |        |       |
| <u>Chuck Swackhammer</u> Swackhammer | X              |        |       |
| <u>Shultz</u> Shultz                 | X              |        |       |
| <u>Rieger</u> Rieger                 |                | ✓      |       |
| <u>Barnes</u> Barnes                 |                | ✓      |       |
| <u>Phillips</u> Phillips             |                | ✓      |       |

Greg Hoffman Hoffman  
Chairman's Signature  
Ronald J. Carson Carson