

ALASKA LEGISLATURE COMMITTEE FILES 1905-1900

3570

HRES

HB

467

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HB

470

446



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**HOUSE
COMMITTEE REPORT**

(9)
Date referred: 1/22/86

JUDICIARY

FURTHER REFERRALS: FINANCE

DATE: 2/12/86

The RESOURCES Committee has considered SSHB 467

"An Act relating to the herding of fish."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- _____ new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

Herrmann Adelheid Herrmann
Sundt [Signature]
Thompson [Signature]
Cator [Signature]
Pearce [Signature]
Wallis F. Kaywellin

SIGNING OTHER RECOMMENDATIONS:

M.W. Miller No Rec ~~M.W. Miller~~
Roger Jenkins No Rec ~~Jenkins~~

Adelheid Herrmann
Chairman

LETTER OF INTENT FOR HOUSE BILL 437

House Bill 467 is intended to prohibit the herding of fish by aircraft. It is not the intent of the legislature to otherwise restrict the legal uses of aircraft for spotting schools of fish in conjunction with commercial fishing operations.

Adelheid Herrmann 2/12/86
Co- Chair Adelheid Herrmann



Official Business

Alaska State Legislature

House of Representatives

Special Committee on Fisheries

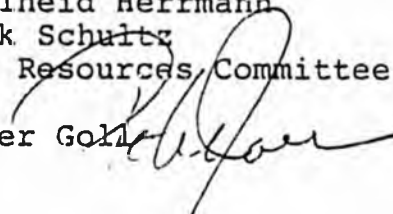
Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

M E M O R A N D U M

February 8, 1986

TO: Representative Adelheid Herrmann
Representative Dick Schultz
Co-chairmen, House Resources Committee

FROM: Representative Peter Goll 

SUBJECT: SSHB 467

Sponsor Substitute for House Bill 467 is designed to clarify state policy regarding the use of aircraft in fishing operations.

It prohibits the use of aircraft to herd fish. The legislation was drafted at the request of commercial fishermen for statutory language to prevent what they consider to be a dangerous and unfair use of aircraft in fishing operations.

Allegations that a helicopter was successfully used to drive herring from shallow waters into a waiting seine last year and numerous questions to the Fisheries Committee as to the state of the law necessitated this bill to clarify the rights of pilots prior to the 1986 fishing season.

The Alaska Department of Fish and Game strongly supported the bill during testimony before the House Special Committee on Fisheries. A Department spokesman said fisheries managers are concerned that widespread use of aircraft in this manner could increase the fishing power of vessels to the point where they would be concerned about opening some fisheries.

This legislation was thoroughly discussed and strongly endorsed by the UFA's member organizations at their recent annual meeting.

Present law does not provide the state with the necessary legal tools to halt the herding of fish by aircraft. The language is patterned after a regulation prohibiting the use of aircraft to herd or drive wildlife. This regulation has been successfully used several times, the most recent conviction coming in a case where a big game guide used an airplane to drive brown bear toward his clients.

SSHB467

February 8, 1986

Page Two

One issue raised during hearings on the legislation is whether the state has the proper jurisdiction to enforce the restrictions. I posed that question to the Alaska headquarters of the Federal Aviation Administration, and was advised that the state has the proper authority. As examples, the FAA cited regulations relating to the herding of game, aerial wolf hunts and airborne hunting.

I respectfully request that you consider the attached letter of intent for the legislation. The purpose of the letter is to clarify that the legislation is not intended to restrict the use of spotter planes in any commercial fishery.

LETTER OF INTENT FOR HOUSE BILL 467

House Bill 467 is intended to prohibit the herding of fish by aircraft. It is not the intent of the legislature to otherwise restrict the legal uses of aircraft for spotting schools of fish in conjunction with commercial fishing operations.



Official Business

Alaska State Legislature

House of Representatives

Special Committee on Fisheries

Pouch V
Juneau, Alaska 99811


Phone:
(907) 465-4924

M E M O R A N D U M

January 30, 1986

TO: Representative Mike Miller
Chairman, House Judiciary Committee

Representative Adelheid Herrmann
Co-Chairman, House Resources Committee

FROM: Representative Peter Goll 
Chairman, House Special Committee on Fisheries

SUBJECT: SSHB 467 (An Act relating to the herding of fish)

During hearings by the Special Committee on Fisheries on SSHB 467, two points were raised regarding the penalties proposed in this legislation. It was decided that these matters would be the most appropriately addressed by the Judiciary Committee.

Specifically, Representative Mike Navarre suggested that the \$1,000 fine allowed under the legislation may not provide a significant enough deterrent when such fishing operations might allow a fishermen to catch \$400,000 worth of fish in a single set of a seine. Representative Navarre said he would like to have the deterrent effect of higher fines examined more closely.

A second issue the Fisheries Committee decided to ask the Judiciary Committee to examine is whether specific language should be added to the legislation regarding confiscation of aircraft used in such violations.

I appreciate your consideration of these two issues.



Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

M E M O R A N D U M

January 18, 1986

TO: Members
House Special Committee on Fisheries

FROM: Representative Peter Goll
Chairman

SUBJECT: SSHB 467

The first meeting this session of the House Special Committee on Fisheries will take place at 8:30 a.m. Tuesday, January, 21, 1986, in Room 17 of the Capitol Building. Up for consideration will be SSHB 467, An Act relating to the herding of fish.

This legislation is designed to prevent the use of aircraft in the herding of fish into commercial fishing gear. I drafted the legislation at the request of commercial fishermen who wished to halt what they considered to be a dangerous and unfair use of aircraft in fishing operations.

This concern was raised when a helicopter was successfully used to drive herring from shallow waters into a waiting seine during the Sitka herring fishery last spring. The estimated value of helicopter-aided haul of herring was \$400,000.

The fishermen who approached me contend the practice not only represented an unfair use of aircraft but endangered other vessels crowded into an extremely small fishing area. The Department of Fish and Game and Division of Fish and Wildlife Protection have voiced concern about the practice becoming more widespread.

As the attached correspondence from the Departments of Law and Fish and Game reveal, present law does not provide the state with the necessary legal tools to halt the herding of fish by aircraft. After discussing the matter with the Department of Law, I introduced the sponsor substitute to shift the focus of enforcement from the fisherman to the pilot.

House Bill 467
January 18, 1986
Page Two

The sponsor substitute is patterned after a regulation prohibiting the use of aircraft to herd or drive wildlife. This regulation has been successfully used several times, the most recent conviction coming in a case where a big game guide used an airplane to drive brown bear toward his clients.

Some attorneys in the Department of Law believe the actions of an aircraft in driving fish toward a fishing net will be easier to prove than the mental state of a fisherman.

DEPARTMENT OF PUBLIC SAFETY

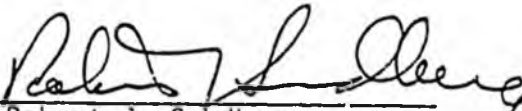
POSITION PAPER - CS SSB 467 (FISH)

NEUTRAL

HB 467 - "An Act relating to the herding of fish."

The Division of Fish & Wildlife Protection is neutral on this bill. It would be difficult, in many cases, to obtain sufficient evidence to prove the elements of the crime that an aircraft did in fact drive or herd fish. The Division of Fish & Wildlife Protection would pursue the most obvious cases where sufficient evidence and witnesses are available to prove the elements of the crime. In conjunction with the Department of Law, marginal cases, lacking sufficient evidence to prove the elements of herding or driving fish by aircraft will not be prosecuted.

This bill does not specifically address safety. However, with the high number of aircraft presently being used as fish spotters, any measures that will decrease hazardous flying conditions and increase the safety margins for all participants is a positive approach.


Robert J. Sundberg
Commissioner, Public Safety

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 1/29/86

REQUEST

Bill/Resolution No.: CSSHB 467 (FISH)
 Title: Relating to the herding
of fish.
 Sponsor: Goll
 Requestor: H. Resources
 Date of Request: 1/24/86

FISCAL DETAIL

Agency Affected: Dept. of Public Safety
 Program Category Affected: Fish & Wildlife Protection
 BRU, Program or Subprogram(s) Affected: Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: J. R. Nutgrass
 Division: Fish & Wildlife Protection

Phone: 269-5509
 Date: 1/26/86

Approved by Commissioner: [Signature]
 Agency: Public Safety

Date: 1/27/86

Distribution (by Agency preparing fiscal note):

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

7/1/84

MEMORANDUM

State of Alaska

TO: Steven Pennoyer
Deputy Commissioner
Dept. of Fish & Game

DATE: May 29, 1985

FILE NO:

Norman C. Gorsuch
Attorney General

TELEPHONE NO: 465-3600

FROM: By: Larri Irene Spengler
Assistant Attorney General
Department of Law

SUBJECT: helicopter herring
herding

Attached is a copy of a letter I recently prepared in response to questions from Representative Ben Grussendorf on the herding of herring by helicopter. It sounds as though he and Representative Goll are concerned about the same episode. As you can see, I agree with your analysis, and have added more information, in response to the specific questions put by Representative Grussendorf.

LIS:dlm

Attachment

cc w/ attachment: Representative Peter Goll ✓
Ken Parker, ADF&G

SILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99911
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 29, 1985

The Honorable Ben Grussendorf
Speaker of the House
P.O. Box 923
Sitka, Alaska 99335

Re: helicopter herring herding

Dear Representative Grussendorf:

You have asked several questions based on an incident which apparently occurred during the Sitka herring sac roe fishery in April, involving the herding of herring by a helicopter. The activity as you described it involved a helicopter hovering near the beach a few feet above the water, frightening the herring away from the aircraft. This is probably not illegal under current statutes and regulations. It is fairly clear that the helicopter would be exempt from vessel licensing requirements, since vessel is defined in AS 16.05.940(27) as a floating craft. However, the pilot of the helicopter would probably have to have a commercial fishing license, since commercial fisherman is defined in AS 16.05.940(4) as individuals who participate directly or indirectly in the taking of fish.

The activity you described probably does not constitute waste of herring, which would be prohibited by AS 16.10.173. That statute defines waste as the failure to use the flesh of commercially-taken herring for certain specified purposes, which does not seem on its face to apply. In any event, there would be a factual question. Further, the prohibition on wanton waste in AS 16.30.010 applies only to specified game animals.

The Board of Fisheries technically has the authority to prohibit the use of helicopters or aircraft in fishing, under the general regulatory powers set out in AS 16.05.251(a). However, it has been the experience of the Department of Public Safety, Division of Fish and Wildlife Protection, in the past that such prohibitions are very hard to enforce, if not virtually impossible. The board does not have the authority to prohibit helicopters or airplanes from flying at certain heights or speeds, nor from entering certain areas. That authority is preempted by the

federal government through the FAA. Therefore, if helicopters or airplanes are present above an area where fishing is going on, it is necessary to prove that the helicopter or airplane was participating in the fishing, in association with a vessel or set of gear below. It might be helpful for you to contact the Division of Fish and Wildlife Protection about the enforcement problems.

Of course, putting aside the enforcement problems, any individual may submit a regulatory proposal to the Board of Fisheries under 5 AAC 96.610. Interested people could contact the Department of Fish and Game, Division of Boards, 465-4110, about the time frame for submitting such proposals. Of course, simply because a proposal is submitted does not mean the board will automatically adopt it in regulation, since the board must weigh all factors, including enforceability.

If you have any further questions, please give me a call.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: ^{15/}
Larri Irene Spengler
Assistant Attorney General

LIS:dlm

cc: Elizabeth A. Stewart
Director
Division of Boards
Department of Fish & Game

Captain Jack Jordan
Division of Fish & Wildlife Protection
Department of Public Safety

commodity bidding business." In other words, a crab stick is a crab stick is a crab stick.

While some experts claim "the end of the boom is nowhere in sight" and suggest that the market could hit a billion pounds by 1990, Berelson offers a more sobering vision. "Once the novelty wears off," he said, "the consumer will be disenchanted if quality slips. People have too many options today, and low quality gets lost in the backwater."

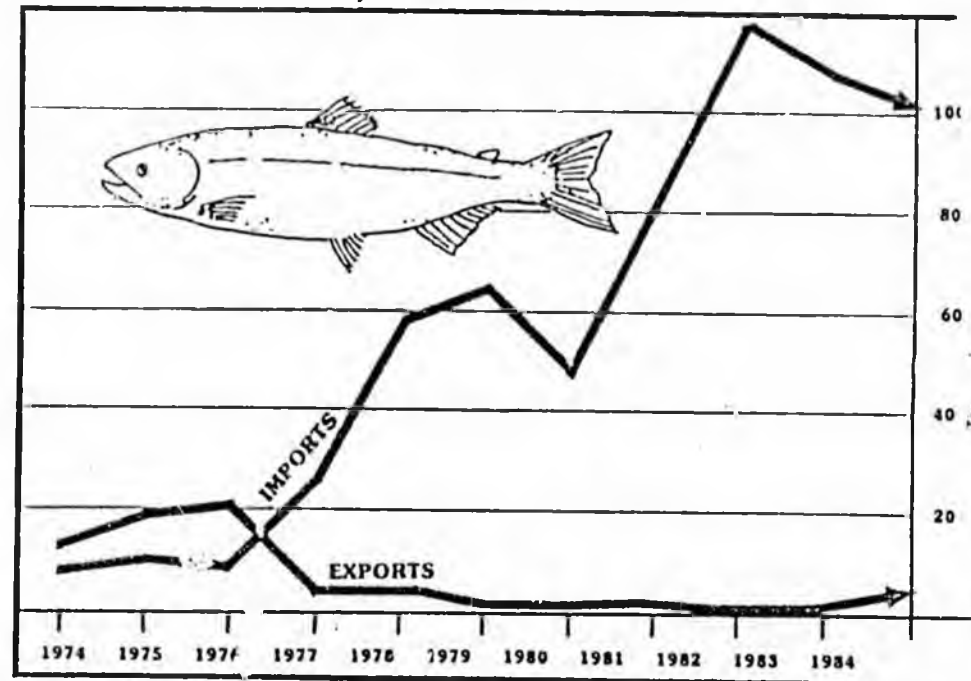
Hopefully, Berelson's boom and doom scenario is premature, but it'll be up to the industry to see that quality and value stay high. Seafood analogs don't have to go the way of the fish stick.

Fish sticks don't even have to go the way of the fish stick, judging from the new products in John Oaksmith's freezer case at Fisherman's Terminal. How about minced pollock nuggets or reformed pollock fillets from the 'Arctic Trawler?' Solves the problem of portioning small fillets and you'd be surprised how they hang together. Breaded or not, here they come. Good, too!

If you've got a helicopter, here's a tip for next year: Sitka herring. One enterprising skipper reportedly nailed 400 tons by stretching his net across the mouth of a bay filled with herring and seiners trying to catch them. When the herring saw the helicopter hovering overhead like a giant eagle, they split for deep water, right into the waiting purse seine. Now who would ever have thought of that?

Speaking of herring, you already know the Southeast prices, \$1000 a ton for seine and \$1350 for gillnet. Beats the pants off of last year, and bodes well for the next herring stops. No doubt you'll know the halibut price by the time the issue hits the streets. At press time all we know is that last year's cold storage fish have been spoken of

JAPAN SALMON IMPORTS AND EXPORTS, 1974-1984 (PRODUCT WEIGHT)



Prior to passage of the Magnuson Act, Japan caught 65% of its salmon on the high seas and exported more than it imported. Since then imports have grown steadily along with demand, and by 1983 the high seas catch represented only 15% of the total supply.

the fresh again. Prices should start high for them and drop like a rock when the rest hits the wharf.

U.S. Customs law requires that some species, including rockfish, taken by a Canadian vessel must be caught within their territorial waters (12-miles) if direct delivery is made to U.S. ports. Under the provisions of the IPHC, however, a Canadian fisherman is allowed to deliver halibut directly to ports in the United States. "As far as we know"

MEMORANDUM

State of Alaska

TO: Larri I. Spengler
Assistant Attorney General
Department of Law

DATE: May 22, 1985

FILE NO:

TELEPHONE NO: 465-4100

FROM: Steven Pennoyer *S Pennoyer*
Deputy Commissioner
Department of Fish and Game

SUBJECT: Commercial
Fishing--Aircraft

Representative Goll sent two of his constituents over to talk to us about an incident that occurred during the 1985 Sitka Sound herring sac-roe fishery. The two, who are participants in that fishery, observed a helicopter being used to herd herring into a seine. They felt that type of activity was illegal, and that both the aircraft and the pilot should be licensed. We told them that as far as we could determine, there are no laws that prohibit the harassing of fish or the use of aircraft to take fish. It did seem clear that AS 16.05.940(27) would exempt such aircraft from the vessel licensing requirements, and that since the pilot's activities were a direct participation in the taking of fish, he would have to have a Commercial Fisheries Entry Commission permit or a crew member's license.

Representative Goll requested that if we determined that the helicopter's activities were not prohibited by law, we would ask you for your determination. If you agree with us, I think Representative Goll will plan on introducing some type of legislation to prohibit or restrict the activity.

cc: The Honorable Peter Goll
Ken Parker

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: 907 / 465-4100

June 11, 1985

The Honorable Peter Goll
Alaska State House
P. O. Box 581
Haines, AK 99827

JUN 14 1985

Dear Representative Goll:

Thank you for your letter of May 28 regarding use of aircraft in fishing. We will be available to assist you in developing the recommendations, although, quite frankly, I am not sure what the "solution" will be.

The first decision point is: what are the problems and what needs to be done about it. The use of aircraft has its advantages and disadvantages. In some locations, for example, the Togiak herring fishery, the use of spotters makes the fishery operate efficiently. On the flip side, driving herring with a helicopter in a very fast-paced fishery, like Sitka herring, can cause management problems. These two factors will most likely have to be considered in any piece of legislation which is drafted. Also, in some cases, restricted use of aircraft could have allocative overtones, i.e., big boat vs. small boat, local vs. nonlocal, and seine vs. gill net. The department will have to be careful to not appear to favor one side over the other as we assist you and then testify before the various legislative committees.

An equally difficult task is going to be the forging of something that is enforceable. The major problem the Board of Fisheries has had with requests to restrict the use of aircraft is that its authorities are limited in the field. I expect the Legislature will have the same problem. While both bodies can restrict the use of aircraft in fishing operations, the state cannot control the airspace; only the federal government has the authority. So, what happens is a situation where if restrictions are in place, the pilot and fishermen can avoid citation by saying the aircraft was used for supplies or navigation, and the state must prove otherwise. This is the experience we had when spotter aircraft were prohibited in the Kodiak herring fishery.

The Honorable
Peter Goll

-2-

June 11, 1985

My staff will be glad to contribute our past experience regarding regulations relative to the use of aircraft in fishing operations to your drafting process. I will ask Bob Clasby to work directly with Rodger Painter on this.

Sincerely,



Don W. Collinsworth
Commissioner

cc: Bob Clasby
Rodger Painter
Larri Spengler

GENERAL PROVISIONS

5 AAC 39.175. USE OF LIGHTS PROHIBITED. It is unlawful to use artificial lights to attract salmon out of closed waters for the purpose of a commercial taking.

Authority: AS 16.05.251(a)(4),(7),(8)

5 AAC 39.180. TIME LIMIT FOR PRESERVATION OF SALMON. It is unlawful to preserve for sale as food any salmon, unless it has been canned, salted, iced, frozen, brine chilled, smoked or dried within 48 hours after being killed.

Authority: AS 16.05.250(3)

5 AAC 39.185. POLICY ON CLOSURES DUE TO ILLEGAL FISHING. (a) Some fisheries have had a documented history of illegal commercial fishing dating back to 1968. Enforcement efforts by the Department of Public Safety have been largely ineffective in controlling this recurring problem on a long-term basis. The Board recognizes the difficulty of enforcement in some areas of the state, and, although the current regulations are sufficient to protect fish stocks, they may be ineffective due to special enforcement problems.

(b) In the interest of the conservation of valuable renewable fish resources, the Board of Fisheries directs the commissioner, or his authorized designee, to take the following actions given the specified circumstances. If illegal fishing activities develop to the point that regulations pertaining to protection of fish stocks become ineffective, the commissioner shall consider closing the affected fishery by emergency order for a period of up to one week. When the fishery reopens and illegal fishing continues to be a problem, the appropriate fishery may be closed for an additional period of time. Continued violations may result in additional closures of the fishery.

Authority: AS 16.05.06C
AS 16.05.251(a)(4) and (7)

5 AAC 39.196. DRIVING SALMON PROHIBITED. It is unlawful to drive or attempt to drive salmon from waters closed to salmon fishing.

Authority: AS 16.05.251(7) and (8)
AS 16.10.010

5 AAC 39.195. ANNOUNCEMENT OF EMERGENCY ORDERS. Announcement of emergency orders will be publicized and made known to interested persons, fishermen, buyers, packers and canneries by one or more of the following means if possible:

- (1) radio transmission by department stations;
- (2) notice posted at canneries and public places;
- (3) press releases and announcements in local newspapers and commercial radio stations;
- (4) telegrams and commercial radio facilities.

Authority: AS 16.05.060

5 AAC 39.197. UNLAWFUL POSSESSION OF FISH. No person may possess, purchase, sell, barter or transport fish within the state or within waters subject to the jurisdiction of the state if that person knows or has reason to know that the fish were taken or possessed in contravention of chs.3-39 of this title.

Authority: AS 16.05.251(a)(10)

GENERAL PROVISIONS

5 AAC 39.198. FOREIGN FISH PROCESSING PERMITS. (a) Except as provided in this chapter, a foreign fishing vessel is prohibited from engaging in fish processing in the internal waters of Alaska.

(b) A foreign fishing vessel may engage in fish processing in the internal waters of Alaska if

(1) the foreign nation under which it is flagged will be a party to an agreement or a treaty, as required by 16 U.S.C. § 1856(c), and during the time the vessel will engage in the fish processing;

(2) the owner or operator of the foreign fishing vessel, or a person representing the owner or operator, applies to the governor for, and is granted, a foreign processing permit for the vessel to engage in fish processing in the internal waters of Alaska.

(c) The governor will not grant a permit under (b)(2) of this section if he determines that fish processors in Alaska have adequate capacity, and will use that capacity to process all of the United States harvested fish from the fishery concerned that are landed in Alaska.

(d) In determining whether or not fish processors in Alaska have adequate capacity, and will use that capacity, to process all of the United States harvested fish from the fishery, the governor will, in his discretion, consider the following factors:

(1) the total allowable catch expected in the fishery;

(2) availability and capability of harvesting vessels in Alaska, seasonal fish and processing schedules, and marketing and other similar conditions in the fishery concerned and in alternative fisheries;

(3) availability of labor, adequacy and condition of processing machine freezers, and cold storage facilities of fish processors in Alaska, and the ability, intent and plans of those processors to process particular species;

(4) economic considerations, including contracts, agreements, and negotiations for the purchase of United States harvested fish by processors in Alaska;

(5) geographical considerations including proximity of harvest areas to facilities of fish processors in Alaska; and

(6) the extent to which fish processors in Alaska have processed particular species.

(e) An owner or operator of a foreign fishing vessel who submits an application for a permit to engage in fish processing in the internal waters of Alaska must

(1) state the reasons why fish processors in Alaska do not have adequate capacity, or will not use their capacity, to process all of the United States harvested fish from the fishery concerned that are landed;

(2) provide the following information

(A) vessel description and identification;

(B) names and descriptions of the vessels, if known, from which the applicant will purchase fish;

- 110. Unclassified game
- 115. Waterfowl, snipe, and cranes
- 120. (Repealed)
- 125. Control of predation by wolves
- 126. Wolf predation control programs

5 AAC 81.070. BIG GAME. Repealed 4/5/81.

5 AAC 81.072. GENERAL GAME PROVISIONS. The following methods and means of taking game are prohibited:

(1) by shooting from, on, or across a highway;

(2) with the use of poisons except with the written consent of the Board of Game;

(3) with the use of helicopter or rotorcraft in any manner, including transportation either to or from the field of any unprocessed game or parts of game, hunters or hunting gear, or any equipment used in the pursuit or retrieval of game; this paragraph does not apply to transportation of hunters, hunting gear, or game during emergency rescue operations in a life-threatening situation;

(4) unless otherwise provided in this chapter, from any mechanical vehicle or from a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased; however, a motor-driven boat underway may be used in taking wolves and coyotes in all units, and in taking caribou in Unit 23;

(5) with use of an aircraft, snowmachine, motor-driven boat, or other motorized vehicle for the purpose of driving, herding, or molesting game;

(6) with the use or aid of a machine gun, set gun, or a shotgun larger than 10 gauge;

6/30/81, Reg. 78; am 7/17/82, Reg. 83; 6/30/83, Reg. 86; am 6/30/84, Reg. 90)

Authority: AS 16.05.2

Editor's Note: The text of 5 AAC 81.072 is based on 5 AAC 81.120 which was in effect before 1980.

5 AAC 81.075. BIG GAME. (a) The following methods and means of taking big game are prohibited, in addition to the prohibitions listed 5 AAC 81.072:

(1) with the aid or use of a dog, except the dogs may be used to hunt black bear under the terms of a permit issued by the commissioner under 5 AAC 81.040;

(2) with the use of traps, snares, or barbed arrows;

(3) while big game animals are swimming except that swimming caribou may be taken in Unit 23;

(4) a person who has been airborne may not take or assist in taking big game until after 3:00 a.m. following the day in which the flying occurred; however, this subsection does not apply to the following:

(A) taking or assisting in taking Sitka black-tailed deer in Units 1 - 6 and 8;

(B) repealed 6/23/85;

(5) from any boat in Units 1 - 5, except that wolves may be taken in Units 1 - 5 from a boat;

(6) repealed 6/28/85.

(b) The following methods and means of taking big game are authorized:

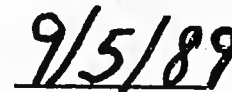
(1) with a shotgun, muzzle-loading rifle, or rifle or pistol using center-firing cartridges;



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

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HB 470
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HOUSE
COMMITTEE REPORT

2/10

Date referred: 1/13/86

FURTHER REFERRALS: FINANCE

DATE: Feb 7, 1986

The RESOURCES Committee has considered HB 470

"An Act relating to the release of oil and hazardous substances; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 470 (RES) same title
- new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note/s Sup 82
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Jenkins Roger L. Jenkins

Sund John Sund

Thompson James W. Thompson

Herrmann Adelheid Herrmann

Wallis F. Kay Wallis

Cato Bitter Cato

Wm Pearce (No Rec)

Dick Shultz (No Rec)

M.W. Miller (No Rec)

Miller (NP)

Dick Shultz
Co-Chairman Shultz

HB 470 AMENDMENT #1

page 4, line 21

46.09.080
Sec. 46.08.080 is amended to read:

not made page 8

Sec. 46.08.080. REGULATIONS. The commissioner shall adopt regulations necessary to implement the provisions of this chapter. Regulations shall include criteria directing the commissioner when to commence containment and cleanup activities. The department shall adopt these regulations not later than October 1, 1987.

HB 470 AMENDMENT #2

page 6, line 17

Sec. 46.09.020 (b) is amended to read:

adopted

(b) The commissioner shall develop [ADOPT] guidelines prescribing general procedures and methods to be used in the containment and cleanup of a hazardous substance [AND IN THE DISPOSAL OF WASTE FROM THE CONTAINMENT OR CLEANUP]. The department shall develop these guidelines not later than October 1, 1987.

January

HB 470 AMENDMENT #3

page 8, line 18

46.08.080
Sec. 46.09.080 is amended to read:

page 4 line 15

Sec. 46.09.080. REGULATIONS. The commissioner shall adopt regulations necessary to implement the provisions of this chapter. The department shall adopt these regulations not later than October 1, 1987.

Proposed amendments to CSHB 470 (Resources), drafted by Rep. Mike Davis with members of the House Resources Committee.

Page 4 Line 18
Page 1, Line 29

A new subsection (d) is added to Sec. 46.08.010 to read:

27
28
(d) For the purposes of this section, a capital improvement includes a building, but does not include a dike, retaining wall, or other improvement to real property necessary to implement the provisions of this chapter.

Page 2, Line 27

Sec. 46.08.040(3) is amended to read:

27 amended
28
(3) help the Department of Labor to assist [employers] emergency response personnel in developing safety education programs under AS 18.60 for employees who may be called upon to respond to a release of oil or a hazardous substance;

Page 6, Line 15

Sec. 46.09.020(b) is deleted and rewritten to read:

(b) The commissioner shall develop guidelines prescribing general procedures and methods to be used in the containment and cleanup of hazardous substances. The commissioner shall develop these guidelines not later than January 1, 1987.

Page 13, Line 21

26
Sec. 15 is deleted.

Hein ✓
2/6/86

Original sponsors: Davis, Koponen,
Hurley, et al

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 470 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the release of oil and hazardous
7 substances; and providing for an effective date."

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

9 * Section 1. AS 46 is amended by adding a new chapter to read:

10 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

11 Sec. 46.08.005. PURPOSE. The legislature finds and declares
12 that the release of oil or hazardous substances into the environment
13 presents a real and substantial threat to the public health and wel-
14 fare, to the environment, and to the economy of the state. The legis-
15 lature therefore concludes that it is in the best interest of the
16 state and its citizens to provide a readily available fund for the
17 payment of the expenses incurred by the Department of Environmental
18 Conservation in the protection of the environment of the state from
19 the release of oil or hazardous substances.

20 Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in
21 the state general fund the oil and hazardous substance release re-
22 sponse fund. The fund shall be administered by the commissioner of
23 environmental conservation, but the commissioner of revenue shall be
24 the custodian of the fund.

25 (b) Money from an appropriation made to the fund remaining in
26 the fund at the end of a fiscal year remains available for expenditure
27 in successive fiscal years.

28 (c) The fund shall be used for actual expenses incurred under
29 AS 46.08.040. The fund may not be used for capital improvements.

1 Sec. 46.08.020. FINANCING OF THE FUND. The legislature may
2 appropriate from the following sources to the fund:

3 (1) money received from federal, state, or other sources or
4 from a private donor;

5 (2) money recovered or otherwise received from parties
6 responsible for the containment and cleanup of oil or a hazardous
7 substance at a specific site, but excluding funds from performance
8 bonds and other forms of financial responsibility held in escrow
9 pending satisfactory performance of a privately financed response
10 action;

11 (3) fines, penalties, or damages recovered under this
12 chapter or other law for costs incurred by the state as a result of
13 the release or threatened release of oil or a hazardous substance.

14 Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS
15 SUBSTANCE RELEASES. It is the intent of the legislature and declared
16 to be the public policy of the state that funds for the abatement of a
17 release of oil or a hazardous substance will always be available.

18 Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval
19 of the governor, the commissioner may use money from the fund to

20 (1) contain and clean up releases or threatened releases of
21 oil or a hazardous substance;

22 (2) undertake plans, inspections, sampling, tests, inves-
23 tigation, public notification, damage assessment, surveys, analyses,
24 engineering, construction, operations, and maintenance necessary or
25 appropriate to contain and clean up releases or threatened releases of
26 oil or hazardous substances;

27 (3) help the Department of Labor to assist employers in
28 developing safety education programs under AS 18.60 for employees who
29 may be called upon to respond to a release of oil or a hazardous

1 substance;

2 (4) provide matching funds for participation in federal oil
3 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
4 hensive Environmental Response, Compensation and Liability Act of
5 1980); and

6 (5) recover the cost to the state or to a municipality of a
7 containment and cleanup resulting from the release or the threatened
8 release of oil or a hazardous substance.

9 Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall
10 maintain accounting records showing the income and expenses of the
11 fund.

12 (b) By July 1 of each year, the department shall determine the
13 projected cost for the following fiscal year of monitoring, operating,
14 and maintaining sites where response has been completed or is expected
15 to be continued during the fiscal year.

16 (c) The commissioner shall consult with the commissioner of
17 revenue and the governor before adopting regulations governing fund
18 accounting. The department shall develop procedures and adopt rules
19 governing the expenditure of, and accounting for, money expended from
20 the fund, and may not delay implementation of this chapter pending the
21 effective date of the procedures and rules.

22 (d) The proper state officer shall pay disbursements from the
23 fund on presentation of vouchers signed by the governor or the gover-
24 nor's authorized representative.

25 Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner
26 shall submit a report to the governor and to the legislature not later
27 than the 10th day following the convening of each regular session of
28 the legislature. The report may include information considered sig-
29 nificant by the commissioner but must include:

1 (1) the amount of money expended under AS 46.08.040 during
2 the preceding fiscal year; and

3 (2) the amount and source of money received and money
4 recovered during the preceding fiscal year as specified in AS 46.08.-
5 020.

6 Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)
7 The commissioner shall seek reimbursement promptly under this section,
8 AS 46.03.760(e), or federal law for the cost incurred in the cleanup
9 or containment of oil or a hazardous substance that has been released.

10 (b) The attorney general, at the request of the commissioner,
11 may seek to recover money expended by the department under this chap-
12 ter or other law to contain and clean up oil or a hazardous substance
13 that has been released or to control the threatened release of oil or
14 a hazardous substance.

15 Sec. 46.08.080. REGULATIONS. The commissioner shall adopt
16 regulations necessary to implement the provisions of this chapter.

17 Sec. 46.08.900. DEFINITIONS. In this chapter

18 (1) "commissioner" means the commissioner of environmental
19 conservation;

20 (2) "containment and cleanup" includes the direct and
21 indirect efforts associated with the prevention, abatement, contain-
22 ment, or removal of a hazardous substance, the restoration of the
23 environment to its former state, and incidental administrative costs;

24 (3) "department" means the Department of Environmental
25 Conservation;

26 (4) "employee" means a person who works for an employer in
27 a place that is not used primarily as a personal residence;

28 (5) "employer" means a person, including the state and a
29 political subdivision of the state, who has one or more employees

1 working in a place that is not used primarily as a personal residence;

2 (6) "fund" means the oil and hazardous substance release
3 response fund;

4 (7) "hazardous substance" means

5 (A) an element or compound that, when it enters into
6 or on the surface or subsurface land or water of the state,
7 presents an imminent and substantial danger to the public health
8 or welfare, or to fish, animals, vegetation, or any part of the
9 natural habitat in which fish, animals, or wildlife may be found;
10 or

11 (B) a substance defined as a hazardous substance under
12 state or federal law or by regulations adopted under state or
13 federal law;

14 (8) "oil" means petroleum products of any kind and in any
15 form, whether crude, refined, or a petroleum by-product, including
16 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily
17 refuse, oil mixed with other wastes, liquified natural gas, propane,
18 butane, and other liquid hydrocarbons regardless of specific gravity;

19 (9) "release" means an intentional or unintentional release
20 into the environment of the state.

21 * Sec. 2. AS 46 is amended by adding a new chapter to read:

22 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

23 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)

24 Except as provided in (b) of this section, a person in charge of a
25 vehicle, vessel or container from which, or a place at which, a haz-
26 ardous substance is released shall report the release to the depart-
27 ment and appropriate public safety agencies promptly after learning of
28 the release.

29 (b) The commissioner may enter into an agreement with a person

1 for the periodic reporting of a controlled release of a hazardous
2 substance if the release is not into water.

3 Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS
4 SUBSTANCE. (a) A person who causes a release of a hazardous sub-
5 stance shall make reasonable efforts to contain and clean up the
6 hazardous substance promptly after learning of the release, unless the
7 commissioner determines

8 (1) after consulting the Environmental Protection Agency or
9 appropriate public safety agencies, that containment or cleanup is
10 technically infeasible;

11 (2) that containment or cleanup would cause greater en-
12 vironmental damage than the release would cause if unabated; or

13 (3) that containment or cleanup would pose a greater threat
14 to human life or health than the release itself.

15 (b) The commissioner shall adopt guidelines prescribing proce-
16 dures and methods to be used in the containment and cleanup of a
17 hazardous substance and in the disposal of waste from the containment
18 or cleanup.

19 (c) If the commissioner determines that the containment or
20 cleanup of a hazardous substance undertaken is inadequate, the commis-
21 sioner may direct the person undertaking the containment or cleanup to
22 cease and may undertake the containment or cleanup directly or by
23 contract.

24 (d) If it appears to the commissioner that the cause or respon-
25 sibility for the release of a hazardous substance is unclear or unex-
26 plained, the commissioner may immediately undertake the containment
27 and cleanup of the release unless the commissioner determines

28 (1) after consulting the Environmental Protection Agency or
29 appropriate public safety agencies, that containment or cleanup is

1 technically infeasible;

2 (2) that containment or cleanup would cause greater en-
3 vironmental damage than the release would cause if unabated; or

4 (3) that containment or cleanup would pose a greater threat
5 to human life or health than the release itself.

6 (e) The commissioner shall enter into agreement with the En-
7 vironmental Protection Agency, and may enter into agreements with
8 other persons and municipalities, in order to

9 (1) facilitate a coordinated and effective hazardous sub-
10 stance release response in the state;

11 (2) provide for cooperative hazardous substance release
12 notification procedures; or

13 (3) provide for cooperative review of hazardous substance
14 release response contingency plans submitted to the department.

15 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
16 request the governor to determine that an actual or imminent release
17 of a hazardous substance constitutes a disaster emergency under
18 AS 26.23. If the governor declares a disaster emergency under AS 26.-
19 23, the commissioner may assist the adjutant general in the relief of
20 the emergency.

21 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.
22 The commissioner may contract with a person or a municipality for
23 personnel, equipment, or services that may be useful to carry out the
24 requirements of this chapter. If the commissioner determines that it
25 is infeasible to contract with a person or a municipality, the commis-
26 sioner may establish and maintain containment and cleanup personnel,
27 equipment, and supplies necessary to carry out the requirements of
28 this chapter.

29 Sec. 46.09.050. PEACE OFFICERS. Employees of the department

1 designated by the commissioner as enforcement officers in the imple-
2 mentation of this chapter are peace officers of the state.

3 Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter
4 into supplementary agreements, reciprocal arrangements, and compacts
5 with another state or country for the implementation of this chapter
6 subject to the approval of the Congress of the United States, if
7 required, under the Constitution of the United States.

8 Sec. 46.09.070. MUNICIPALITIES. (a) If a provision of this
9 chapter or of a regulation adopted by the commissioner under this
10 chapter conflicts with the charter, ordinance, or regulation of a
11 municipality, the provision of this chapter or of the regulation
12 adopted by the commissioner under this chapter prevails.

13 (b) Authority to contain, clean up, or prevent a release or
14 threatened release of oil or of a hazardous substance, and to exercise
15 other powers necessary to implement AS 46.08 - AS 46.09, are granted
16 to municipalities that do not otherwise have that authority. Except
17 as provided in (a) of this section, a municipality may exercise its
18 police power within the area of the municipality.

19 Sec. 46.09.080. REGULATIONS. The commissioner shall adopt
20 regulations necessary to implement the provisions of this chapter.

21 Sec. 46.09.900. DEFINITIONS. In this chapter

22 (1) "commissioner" means the commissioner of environmental
23 conservation;

24 (2) "containment and cleanup" includes the direct and
25 indirect efforts associated with the prevention, abatement, contain-
26 ment, or removal of a hazardous substance, the restoration of the
27 environment to its former state, and incidental administrative costs;

28 (3) "department" means the Department of Environmental
29 Conservation;

1 (4) "hazardous substance" means

2 (A) an element or compound that, when it enters into
3 or on the surface or subsurface land or water of the state,
4 presents an imminent and substantial danger to the public health
5 or welfare, or to fish, animals, vegetation, or any part of the
6 natural habitat in which fish, animals, or wildlife may be found;
7 or

8 (B) a substance defined as a hazardous substance under
9 state or federal law or by regulations adopted under state or
10 federal law;

11 (5) "release" means an intentional or unintentional release
12 into the environment of the state.

13 * Sec. 3. AS 26.23.050(b) is amended to read:

14 (b) Whenever, and to the extent that, money is needed to cope
15 with a disaster, the first recourse shall be to funds regularly appro-
16 priated to state and local agencies. The second recourse shall be to
17 funds available in the disaster relief fund or the oil and hazardous
18 substance release response fund, as appropriate. If money available
19 from these sources is insufficient, and if the governor finds that
20 other sources of money to cope with the disaster are not available or
21 are insufficient, the governor may, notwithstanding any limitation
22 imposed by AS 37.07.080(e), transfer and spend money appropriated for
23 other purposes or, in situations involving natural disasters, borrow
24 from the United States government or other public or private sources
25 for a term not to exceed two years.

26 * Sec. 4. AS 26.23.230(1) is amended to read:

27 (1) "disaster" means the occurrence or imminent threat of
28 widespread or severe damage, injury, or loss of life or property
29 resulting from any natural or nonmilitary man-made cause including,

1 but not limited to, fire, flood, earthquake, landslide, mudslide,
2 avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL
3 OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT
4 DANGER OR DAMAGE], volcanic activity, epidemic, air contamination,
5 blight, infestation, explosion, riot, equipment failure, or shortage
6 of food, water, fuel, or clothing, or the release of oil or a hazard-
7 ous substance requiring prompt action to avert environmental danger or
8 damage;

9 * Sec. 5. AS 37.05.159 is amended by adding a new subsection to read:

10 (g) Notwithstanding the provisions of (b) of this section and
11 AS 37.07.080(e), the governor may transfer \$1,000,000 during a fiscal
12 year from the reserve for emergency operating expenses account to the
13 oil and hazardous substance release response fund (AS 46.08).

14 * Sec. 6. AS 44.19.050 is amended to read:

15 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,
16 "disaster" means the occurrence or imminent threat of widespread or
17 severe damage, injury, or loss of life or property resulting from any
18 natural or man-made cause including, but not limited to, fire, flood,
19 earthquake, landslide, avalanche, wind-driven water, weather condi-
20 tion, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING
21 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air
22 contamination, blight, infestation, explosion, [OR] riot, or the
23 release of oil or a hazardous substance requiring prompt action to
24 avert environmental danger or damage.

25 * Sec. 7. AS 46.03.290(a) is amended to read:

26 (a) When the department finds that an actual or imminent dis-
27 charge of oil, a hazardous substance, or low level radioactive mate-
28 rials to the air, water, land or subsurface land of the state poses an
29 immediate threat to the public health or welfare, or the environment

1 of the state, it may issue an order declaring an emergency and direct-
2 ing a person or persons to take action the department believes neces-
3 sary to meet the emergency, and protect the public health, welfare, or
4 environment.

5 * Sec. 8. AS 46.03.760(a) is amended to read:

6 (a) A person who violates or causes or permits to be violated a
7 provision of this chapter other than AS 46.03.250 - 46.03.314, or a
8 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of
9 the department, or a permit, approval, or acceptance, or term or
10 condition of a permit, approval, or acceptance issued under this
11 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the
12 state for a sum to be assessed by the court of not less than \$500 nor
13 more than \$100,000 for the initial violation, nor more than \$5,000 for
14 each day after that on which the violation continues, and that shall
15 reflect, when applicable,

16 (1) reasonable compensation in the nature of liquidated
17 damages for any adverse environmental effects caused by the violation,
18 that shall be determined by the court according to the toxicity,
19 degradability and dispersal characteristics of the substance dis-
20 charged, the sensitivity of the receiving environment, and the degree
21 to which the discharge degrades existing environmental quality;

22 (2) reasonable costs incurred by the state in detection,
23 investigation, and attempted correction of the violation;

24 (3) the economic savings realized by the person in not
25 complying with the requirement for which a violation is charged.

26 * Sec. 9. AS 46.03.765 is amended to read:

27 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-
28 tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09
29 or of a regulation, a lawful order of the department, or permit,

1 approval, or acceptance, or term or condition of a permit, approval,
2 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.
3 In actions brought under this section, temporary or preliminary relief
4 may be obtained upon a showing of an imminent threat of continued
5 violation, and probable success on the merits, without the necessity
6 of demonstrating physical irreparable harm. The balance of equities
7 in actions under this section may affect the timing of compliance, but
8 not the necessity of compliance within a reasonable period of time.

9 * Sec. 10. AS 46.03.780(a) is amended to read:

10 (a) A person who violates a provision of this chapter, [OR]
11 AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this
12 chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an
13 order, permit, or other determination of the department made under the
14 provisions of this chapter, [OR] AS 46.04. or AS 46.09, respectively,
15 and thereby causes the death of fish, animals, or vegetation or other-
16 wise injures or degrades the environment of the state is liable to the
17 state for damages.

18 * Sec. 11. AS 46.03.790(a) is amended to read:

19 (a) Except as provided in (d) - (f) of this section, a person
20 who negligently violates a provision of this chapter, [OR] AS 46.04,
21 or AS 46.09, or of a regulation, lawful order of the department, or
22 permit, approval, or acceptance, or term or condition of a permit,
23 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
24 AS 46.09 is guilty of a class B misdemeanor.

25 * Sec. 12. AS 46.03.790(b) is amended to read:

26 (b) Except as provided in (d) - (f) of this section, a person
27 who knowingly violates a provision of this chapter, [OR] AS 46.04, or
28 AS 46.09, or of a regulation, lawful order of the department, or
29 permit, approval, or acceptance, or term or condition of a permit,

1 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
2 AS 46.09 is guilty of a class A misdemeanor.

3 * Sec. 13. AS 46.03.790(d) is amended to read:

4 (d) Notwithstanding (a) and (b) of this section, a person who
5 fails to provide or falsely states information required under AS 46.-
6 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,
7 upon conviction, is punishable by a fine of not more than \$25,000, or
8 by imprisonment for not more than one year, or by both. Each unlawful
9 act constitutes a separate offense.

10 * Sec. 14. AS 46.04.010 is amended to read:

11 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-
12 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-
13 760(e), AS 46.08.070, or from an applicable federal fund, for the
14 expenses it incurs in cleaning up or containing a discharge of oil.
15 If the department obtains reimbursement for a portion of its expenses
16 from a federal fund, the remainder of the expenses incurred may be
17 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by
18 the department under this section shall be deposited in the general
19 fund and may be appropriated by the legislature to the oil and hazar-
20 dous substance release response fund (AS 46.08).

21 * Sec. 15. AS 46.03.758(k) is repealed.

22 * Sec. 16. This Act takes effect immediately in accordance with AS 01.-
23 10.070(c).

January 28, 1986

SUBJECT: CSHB 470 (Resources)

TO: Rep. Mike Davis

FROM: Ed Hein, LAA *EJH*

Enclosed is the draft committee substitute requested on your behalf by Jonathan Sperber. He asked whether the draft allows the Department of Environmental Conservation to contract with municipalities and entities in unincorporated communities.

Proposed Sec. 46.09.020(e) provides that the commissioner may enter into agreements with "other persons or municipalities." Proposed Sec. 46.09.040 provides that the commissioner may contract with a person or a municipality. Under existing law, AS 01.10.060, "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person. This definition applies in this bill and appears to cover virtually any "entity" that is organized in an unincorporated community, such as a fire department, for example.

"Municipality" is likewise defined in AS 01.10.060 and

- One of two -

Rep. Mike Davis
Jan. 28, 1986
Page 2

organized under state law.

includes all forms of local government. This definition took effect January 1, 1986, and applies to this bill.

Thus, in my opinion, the bill provides the authority to contract that you desire.

If you have further questions or comments, feel free to contact me at your convenience.

X X X

- two of two -

Proposed CS for HB 470 (Resources)

Page 5, Line 16

Corrects a typographical error, in which the word 'or' had inadvertently been omitted.

Page 7, Line 7

Expands language allowing the commissioner to enter into agreements with other persons and municipalities.

Page 7, Line 12

Allows the commissioner to enter into agreements with other persons and municipalities in order to provide for cooperative review of hazardous substance release response contingency plans submitted to the department.

Page 8, Line 12

New language, stating that the authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement AS 46.08 - AS 46.09, are granted to municipalities that do not otherwise have that authority.

Page 9, Line 10

Corrects a typographical error, in which a definition was numbered incorrectly.

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 470 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the release of oil and hazardous
7 substances; and providing for an effective date."

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

9 * Section 1. AS 46 is amended by adding a new chapter to read:

10 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

11 Sec. 46.08.005. PURPOSE. The legislature finds and declares
12 that the release of oil or hazardous substances into the environment
13 presents a real and substantial threat to the public health and wel-
14 fare, to the environment, and to the economy of the state. The legis-
15 lature therefore concludes that it is in the best interest of the
16 state and its citizens to provide a readily available fund for the
17 payment of the expenses incurred by the Department of Environmental
18 Conservation in the protection of the environment of the state from
19 the release of oil or hazardous substances.

20 Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in
21 the state general fund the oil and hazardous substance release re-
22 sponse fund. The fund shall be administered by the commissioner of
23 environmental conservation, but the commissioner of revenue shall be
24 the custodian of the fund.

25 (b) Money from an appropriation made to the fund remaining in
26 the fund at the end of a fiscal year remains available for expenditure
27 in successive fiscal years.

28 Sec. 46.08.020. FINANCING OF THE FUND. The legislature may
29 appropriate from the following sources to the fund:

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

3 (2) money recovered or otherwise received from parties
4 responsible for the containment and cleanup of oil or a hazardous
5 substance at a specific site, but excluding funds from performance
6 bonds and other forms of financial responsibility held in escrow
7 pending satisfactory performance of a privately financed response
8 action;

9 (3) fines, penalties, or damages recovered under this
10 chapter or other law for costs incurred by the state as a result of
11 the release or threatened release of oil or a hazardous substance.

12 Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS
13 SUBSTANCE RELEASES. (a) It is the intent of the legislature and
14 declared to be the public policy of the state that funds for the
15 abatement of a release of oil or a hazardous substance will always be
16 available.

17 (b) Notwithstanding the establishment of the fund under AS 46.-
18 08.010, the commissioner shall, to the extent available, prefer funds
19 appropriated to the department in the abatement of a release of oil or
20 a hazardous substance. If appropriated funds are not available, then
21 the commissioner may use money from the fund or, if the governor
22 issues a proclamation of a disaster emergency under AS 26.23, funds
23 available for disaster relief under AS 26.23.050 may be used in the
24 abatement of a release of oil or a hazardous substance.

25 Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval
26 of the governor, the commissioner may use money from the fund to

27 (1) contain and clean up releases or threatened releases of
28 oil or a hazardous substance;

29 (2) undertake plans, inspections, sampling, tests,

1 investigations, surveys, analyses, engineering, construction, opera-
2 tions, and maintenance necessary or appropriate to contain and clean
3 up releases or threatened releases of oil or hazardous substances;

4 (3) ^{assist} facilitate the efforts of the Department of Labor under
5 AS 18.60 to assist employers to develop safety education programs for
6 employees who may be called upon to respond to a release of oil or a
7 hazardous substance;

8 (4) provide matching funds for participation in federal oil
9 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
10 hensive Environmental Response, Compensation and Liability Act of
11 1980); and

12 (5) recover the cost to the state or to a municipality of a
13 containment and cleanup resulting from the release or the threatened
14 release of oil or a hazardous substance.

15 Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall
16 maintain accounting records showing the income and expenses of the
17 fund.

18 (b) By July 1 of each year, the department shall determine the
19 projected cost for the following fiscal year of monitoring, operating,
20 and maintaining sites where response has been completed or is expected
21 to be continued during the fiscal year.

22 (c) The commissioner shall consult with the commissioner of
23 revenue and the governor before adopting regulations governing fund
24 accounting. The department shall develop procedures and adopt rules
25 governing the expenditure of, and accounting for, money expended from
26 the fund, and may not delay implementation of this chapter pending the
27 effective date of the procedures and rules.

28 (d) The proper state officer shall pay disbursements from the
29 fund on presentation of vouchers signed by the governor or the

AS 46.03.758

(g) Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. In determining whether mitigating circumstances exist, the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply. If mitigating circumstances are proven by a preponderance of the evidence, the court may reduce or totally eliminate the penalty, in accordance with the purposes of this section.

(h) A person otherwise liable for penalties under (e) of this section is not liable if he demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

- (1) an act of God;
- (2) an act of a third person with intent to cause a discharge, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) — (3) of this section;
- (3) a negligent or intentional act of the State of Alaska or the United States; or
- (4) an act of war.

(i) Notwithstanding AS 46.03.875, a person liable under this section is not also liable for the discharge of oil under AS 46.03.760(a). A person causing or permitting a discharge of oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than \$500 for the discharge.

(j) The court may reduce the penalty imposed under this section if the person charged demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) — (3) of this section.

*

(k) Penalties received by the state under this section shall be deposited in the general fund and credited to a special account called the "oil spill mitigation account". The legislature may annually appropriate from the oil spill mitigation account a sum equivalent to the amount of penalties received under this section for the calendar year preceding the legislative session in which the appropriation is made, the appropriations to be made for the purpose of restoring and enhancing environments affected by oil pollution, including but not limited to the funding of aquaculture projects.

(l) As used in this section,

February 6, 1986

SUBJECT: CSHB 470 (Resources)

TO: Rep. David Thompson

FROM: Ed Hein, LAA *EH*

You have asked whether proposed AS 46.08.010(b), which appears at page 1, lines 25 - 27 of CSHB 470 (Resources) (2/6/86 draft), violates the prohibition against dedicated funds in Alaska Constitution, Art. IX, sec. 7. You also have asked whether the bill's language is binding on future legislatures.

The language in question is an anti-lapse clause, which should be read as if it included the phrase, "Notwithstanding the provisions of AS 37.25.010." Subsection (b) is an exception to the requirement of AS 37.25.010 that one-year appropriations lapse on June 30 of the fiscal year for which appropriated. If an appropriation to the response fund did not specify a lapse date or make reference to AS 37.25.010, subsection (b) would control.

Subsection (b) does not violate the dedicated fund prohibition because that applies only to state revenue placed in a fund automatically, without being appropriated. Money in the response fund must have been appropriated to it. The response fund is not a dedicated fund.

If you have further questions, feel free to contact me at your convenience.

c.c.: Rep. Richard Shultz

Proposed amendments to CSHB 470

Page 1, Line 28

Sec. 46.08.010. A new subsection (c) is added to read:

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. The fund may not be used for capital improvements.

2
adopted

Page 2, Line 29

Sec. 46.08.040. Subsection (2) is amended to read:

(2) undertake plans, inspections, sampling, tests, investigations, public notification, damage assessment, surveys, analyses, engineering, construction, operations, and maintenance necessary or appropriate to contain and cleanup releases or threatened releases of oil or hazardous substances;

3
adopted

Page 6, Line 13

Sec. 46.09.020 (a) (1) is amended to read:

(1) after consulting the Environmental Protection Agency ~~or~~ and other public safety agencies, as appropriate, that containment or cleanup is technically infeasible; or

6

Page 6, Line 17

Sec. 46.09.020 (b) is amended to read:

(b) The commissioner shall adopt [regulations] guidelines prescribing procedures and methods to be used in the containment and cleanup of a hazardous substance and in the disposal of waste from the containment or cleanup.

11

Page 7, Line 1

Sec. 46.09.020 (d) (1) is amended to read:

(1) after consulting the Environmental Protection Agency ~~or~~ and other public safety agencies, as appropriate, that containment or cleanup is technically infeasible; or

Page 9, Line 12

Sec. 26.23.050 (b) is amended to read:

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to funds regularly appropriated to state and local agencies. The second recourse shall be to funds available in the disaster relief fund or the oil and hazardous substance release response fund, as appropriate. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding any limitation imposed by AS 37.07.080(e), transfer and spend money appropriated for other purposes or, in situations involving natural disasters, borrow from the United States government or other public or private sources for a term not to exceed two years.

Page 9, Line 24

Sec. 37.05.159 (g) is amended to read:

(g) Notwithstanding the provisions of (b) of this section and AS 37.07.080(e), the governor may transfer [a maximum of \$10,000,000] \$1,000,000 during a fiscal year from the reserve for emergency operating expenses account to the oil and hazardous substance release response fund (AS 46.08).

1 governor's authorized representative.

2 Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner
3 shall submit a report to the governor and to the legislature not later
4 than the 10th day following the convening of each regular session of
5 the legislature. The report may include information considered sig-
6 nificant by the commissioner but must include:

7 (1) the amount of money expended under AS 46.08.040 during
8 the preceding fiscal year; and

9 (2) the amount and source of money received and money
10 recovered during the preceding fiscal year as specified in AS 46.08.-
11 020.

12 Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)
13 The commissioner shall seek reimbursement promptly under this section,
14 AS 46.03.760(e), or federal law for the cost incurred in the cleanup
15 or containment of oil or a hazardous substance that has been released.

16 (b) The attorney general, at the request of the commissioner,
17 may seek to recover money expended by the department under this chap-
18 ter or other law to contain and clean up oil or a hazardous substance
19 that has been released or to control the threatened release of oil or
20 a hazardous substance.

21 Sec. 46.08.080. REGULATIONS. The commissioner shall adopt
22 regulations necessary to implement the provisions of this chapter.

23 Sec. 46.08.900. DEFINITIONS. In this chapter

24 (1) "commissioner" means the commissioner of environmental
25 conservation;

26 (2) "containment and cleanup" includes the direct and
27 indirect efforts associated with the prevention, abatement, contain-
28 ment, or removal of a hazardous substance, the restoration of the
29 environment to its former state, and incidental administrative costs;

1 (3) "department" means the Department of Environmental
2 Conservation;


3 (4) "employee" means a person who works for an employer in
4 a place that is not used primarily as a personal residence;

5 (5) "employer" means a person, including the state and a
6 political subdivision of the state, who has one or more employees
7 working in a place that is not used primarily as a personal residence;

8 (6) "fund" means the oil and hazardous substance release
9 response fund;

10 (7) "hazardous substance" means

11 (A) an element or compound that, when it enters into
12 or on the surface or subsurface land or water of the state,
13 presents an imminent and substantial danger to the public health
14 or welfare, or to fish, animals, vegetation, or any part of the
15 natural habitat in which fish, animals, or wildlife may be found;

16 
17 (B) a substance defined as a hazardous substance under
18 state or federal law or by regulations adopted under state or
19 federal law;

20 (8) "oil" means petroleum products of any kind and in any
21 form, whether crude, refined, or a petroleum by-product, including
22 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily
23 refuse, oil mixed with other wastes, liquified natural gas, propane,
24 butane, and other liquid hydrocarbons regardless of specific gravity;

25 (9) "release" means an intentional or unintentional release
26 into the environment of the state.

27 * Sec. 2. AS 46 is amended by adding a new chapter to read:

28 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

29 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)

1 Except as provided in (b) of this section, a person in charge of a
2 vehicle, vessel or container from which, or a place at which, a haz-
3 arduous substance is released shall report the release to the depart-
4 ment^{#9} promptly after learning of the release.

5 (b) The commissioner may enter into an agreement with a person
6 for the periodic reporting of a controlled release of a hazardous
7 substance if the release is not into the water of the state. ²⁵ delete

8 Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS
9 SUBSTANCE. (a) A person who causes a release of a hazardous sub-
10 stance shall make reasonable efforts to contain and clean up the
11 hazardous substance promptly after learning of the release, unless the
12 commissioner determines

13 (1) after consulting the Environmental Protection Agency,
14 that containment or cleanup is technically infeasible; or ^{#6}

15 (2) that containment or cleanup would cause greater en-
16 vironmental damage than the release would cause if unabated.

17 (b) The commissioner shall adopt ^{said changes} regulations prescribing proce-
18 dures and methods to be used in the containment and cleanup of a
19 hazardous substance and in the disposal of waste from the containment
20 or cleanup. ⁴¹²

21 (c) If the commissioner determines that the containment or
22 cleanup of a hazardous substance undertaken is inadequate, the commis-
23 sioner may direct the person undertaking the containment or cleanup to
24 cease and may undertake the containment or cleanup directly or by
25 contract.

26 (d) If it appears to the commissioner that the cause or respon-
27 sibility for the release of a hazardous substance is unclear or unex-
28 plained, the commissioner may immediately undertake the containment
29 and cleanup of the release unless the commissioner determines

1 (1) after consulting the Environmental Protection Agency,
2 that containment or cleanup is technically infeasible; or

3 (2) that containment or cleanup would cause greater en-
4 vironmental damage than the release would cause if unabated.

5 (e) The commissioner shall enter into agreement with the En-
6 vironmental Protection Agency, and may enter into agreements with
7 other persons ~~and municipalities~~ in order to

8 (1) facilitate a coordinated and effective hazardous sub-
9 stance release response in the state;

10 (2) provide for cooperative hazardous substance release
11 notification procedures; or

12 ~~(3) provide for cooperative review of hazardous substance~~
13 ~~release response contingency plans submitted to the department.~~

14 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
15 request the governor to determine that an actual or imminent release
16 of a hazardous substance constitutes a disaster emergency under
17 AS 26.23. If the governor declares a disaster emergency under AS 26.-
18 23, the commissioner may assist the adjutant general in the relief of
19 the emergency.

20 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.
21 The commissioner may contract with a person or a municipality for
22 personnel, equipment, or services that may be useful to carry out the
23 requirements of this chapter. If the commissioner determines that it
24 is infeasible to contract with a person or a municipality, the commis-
25 sioner may establish and maintain containment and cleanup personnel,
26 equipment, and supplies necessary to carry out the requirements of
27 this chapter.

28 Sec. 46.09.050. PEACE OFFICERS. Employees of the department
29 designated by the commissioner as enforcement officers in the

1 implementation of this chapter are peace officers of the state.

2 Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter
3 into supplementary agreements, reciprocal arrangements, and compacts
4 with another state or country for the implementation of this chapter
5 subject to the approval of the Congress of the United States, if
6 required, under the Constitution of the United States.

7 Sec. 46.09.070. MUNICIPALITIES. (a) If a provision of this
8 chapter or of a regulation adopted by the commissioner under this
9 chapter conflicts with the charter, ordinance, or regulation of a
10 municipality, the provision of this chapter or of the regulation
11 adopted by the commissioner under this chapter prevails.

12 (b) Authority to contain, clean up, or prevent a release or
13 threatened release of oil or of a hazardous substance, and to exercise
14 other powers necessary to implement AS 46.08 - AS 46.09, are granted
15 to municipalities that do not otherwise have that authority. Except
16 as provided in (a) of this section, a municipality may exercise its
17 police power within the area of the municipality.

18 Sec. 46.09.080. REGULATIONS. The commissioner shall adopt
19 regulations necessary to implement the provisions of this chapter.

20 Sec. 46.09.900. DEFINITIONS. In this chapter

21 (1) "commissioner" means the commissioner of environmental
22 conservation;


23 (2) "containment and cleanup" includes the direct and
24 indirect efforts associated with the prevention, abatement, contain-
25 ment, or removal of a hazardous substance, the restoration of the
26 environment to its former state, and incidental administrative costs;

27 (3) "department" means the Department of Environmental
28 Conservation;

29 (4) "hazardous substance" means

1 (A) an element or compound that, when it enters into
2 or on the surface or subsurface land or water of the state,
3 presents an imminent and substantial danger to the public health
4 or welfare, or to fish, animals, vegetation, or any part of the
5 natural habitat in which fish, animals, or wildlife may be found;
6 or

7 (B) a substance defined as a hazardous substance under
8 state or federal law or by regulations adopted under state or
9 federal law;

10  "release" means an intentional or unintentional release
11 into the environment of the state.

12 * Sec. 3. AS 26.23.230(1) is amended to read:

13 (1) "disaster" means the occurrence or imminent threat of
14 widespread or severe damage, injury, or loss of life or property
15 resulting from any natural or nonmilitary man-made cause including,
16 but not limited to, fire, flood, earthquake, landslide, mudslide,
17 avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL
18 OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT
19 DANGER OR DAMAGE], volcanic activity, epidemic, air contamination,
20 blight, infestation, explosion, riot, equipment failure, or shortage
21 of food, water, fuel, or clothing, or the release of oil or a hazard-
22 ous substance requiring prompt action to avert environmental danger or
23 damage;

24 * Sec. 4. AS 37.05.159 is amended by adding a new subsection to read:

25 (g) Notwithstanding the provisions of (b) of this section and
26 AS 37.07.080(e), the governor may transfer a maximum of \$10,000,000
27 during a fiscal year from the reserve for emergency operating expenses
28 account to the oil and hazardous substance release response fund
29 (AS 46.08).

1 * Sec. 5. AS 44.19.050 is amended to read:

2 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,
3 "disaster" means the occurrence or imminent threat of widespread or
4 severe damage, injury, or loss of life or property resulting from any
5 natural or man-made cause including, but not limited to, fire, flood,
6 earthquake, landslide, avalanche, wind-driven water, weather condi-
7 tion, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING
8 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air
9 contamination, blight, infestation, explosion, [OR] riot, or the
10 release of oil or a hazardous substance requiring prompt action to
11 avert environmental danger or damage.

12 * Sec. 6. AS 46.03.290(a) is amended to read:

13 (a) When the department finds that an actual or imminent dis-
14 charge of oil, a hazardous substance, or low level radioactive mate-
15 rials to the air, water, land or subsurface land of the state poses an
16 immediate threat to the public health or welfare, or the environment
17 of the state, it may issue an order declaring an emergency and direct-
18 ing a person or persons to take action the department believes neces-
19 sary to meet the emergency, and protect the public health, welfare, or
20 environment.

21 * Sec. 7. AS 46.03.760(a) is amended to read:

22 (a) A person who violates or causes or permits to be violated a
23 provision of this chapter other than AS 46.03.250 - 46.03.314, or a
24 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of
25 the department, or a permit, approval, or acceptance, or term or
26 condition of a permit, approval, or acceptance issued under this
27 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the
28 state for a sum to be assessed by the court of not less than \$500 nor
29 more than \$100,000 for the initial violation, nor more than \$5,000 for

1 each day after that on which the violation continues, and that shall
2 reflect, when applicable,

3 (1) reasonable compensation in the nature of liquidated
4 damages for any adverse environmental effects caused by the violation,
5 that shall be determined by the court according to the toxicity,
6 degradability and dispersal characteristics of the substance dis-
7 charged, the sensitivity of the receiving environment, and the degree
8 to which the discharge degrades existing environmental quality;

9 (2) reasonable costs incurred by the state in detection,
10 investigation, and attempted correction of the violation;

11 (3) the economic savings realized by the person in not
12 complying with the requirement for which a violation is charged.

13 * Sec. 8. AS 46.03.765 is amended to read:

14 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-
15 tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09
16 or of a regulation, a lawful order of the department, or permit,
17 approval, or acceptance, or term or condition of a permit, approval,
18 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.
19 In actions brought under this section, temporary or preliminary relief
20 may be obtained upon a showing of an imminent threat of continued
21 violation, and probable success on the merits, without the necessity
22 of demonstrating physical irreparable harm. The balance of equities
23 in actions under this section may affect the timing of compliance, but
24 not the necessity of compliance within a reasonable period of time.

25 * Sec. 9. AS 46.03.780(a) is amended to read:

26 (a) A person who violates a provision of this chapter, [OR]
27 AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this
28 chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an
29 order, permit, or other determination of the department made under the

1 provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively,
2 and thereby causes the death of fish, animals, or vegetation or other-
3 wise injures or degrades the environment of the state is liable to the
4 state for damages.

5 * Sec. 10. AS 46.03.790(a) is amended to read:

6 (a) Except as provided in (d) - (f) of this section, a person
7 who negligently violates a provision of this chapter, [OR] AS 46.04,
8 or AS 46.09, or of a regulation, lawful order of the department, or
9 permit, approval, or acceptance, or term or condition of a permit,
10 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
11 AS 46.09 is guilty of a class B misdemeanor.

12 * Sec. 11. AS 46.03.790(b) is amended to read:

13 (b) Except as provided in (d) - (f) of this section, a person
14 who knowingly violates a provision of this chapter, [OR] AS 46.04, or
15 AS 46.09, or of a regulation, lawful order of the department, or
16 permit, approval, or acceptance, or term or condition of a permit,
17 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
18 AS 46.09 is guilty of a class A misdemeanor.

19 * Sec. 12. AS 46.03.790(d) is amended to read:

20 (d) Notwithstanding (a) and (b) of this section, a person who
21 fails to provide or falsely states information required under AS 46.-
22 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,
23 upon conviction, is punishable by a fine of not more than \$25,000, or
24 by imprisonment for not more than one year, or by both. Each unlawful
25 act constitutes a separate offense.

26 * Sec. 13. AS 46.04.010 is amended to read:

27 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-
28 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-
29 760(e), AS 46.08.070, or from an applicable federal fund, for the

1 expenses it incurs in cleaning up or containing a discharge of oil.
2 If the department obtains reimbursement for a portion of its expenses
3 from a federal fund, the remainder of the expenses incurred may be
4 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by
5 the department under this section shall be deposited in the general
6 fund and may be appropriated by the legislature to the oil and hazar-
7 dous substance release response fund (AS 46.08).

8 * Sec. 14. AS 46.03.758(k) is repealed.

9 * Sec. 15. This Act takes effect immediately in accordance with AS 01.-
10 10.070(c).

HB 470
Question and Answer Overview

Why is there a need for the Oil and Hazardous Substance Release Response Fund?

Releases of oil and hazardous substances pose a direct threat to the public health, environment, and economy of the state. HB 470 would provide ADEC with the statutory authority and readily available funding necessary to contain and cleanup releases of these materials. The response fund would allow ADEC to respond to future releases of oil and hazardous substances, as well as to cleanup existing sites.

What is the relationship between the response fund and the federal 'Superfund' program?

The 'Superfund' is directed toward the nationwide cleanup of existing sites. The Environmental Protection Agency evaluates these sites on a national priority basis to determine which sites will receive federal funding. Because this ranking system is biased in favor of densely populated areas, Alaska is expected to receive only slight assistance from the 'Superfund'. HB 470 does make provision, however, for the federal requirement that states provide matching funds of between 10 percent and 50 percent of site cleanup costs in order to receive 'Superfund' money.

Who decides which sites will be cleaned up?

The commissioner of ADEC is given the authority to determine which sites will be cleaned up. The commissioner may also, by regulation, develop criteria for prioritizing the cleanup of existing sites. It is the intent of this legislation, however, that money in the response fund always remain available for the containment and cleanup of future releases of oil and hazardous substances.

When would the response fund be used?

Persons responsible for the release of oil or hazardous substances must notify ADEC of the release and then begin containment and cleanup efforts. ADEC may use money from the response fund for these purposes, however, if the responsible party's containment and cleanup efforts are inadequate or if the cause of the release is unclear or unexplained.

HB 470
Sectional Analysis

* Section 1.

Chapter 8. Oil and Hazardous Substance Releases.

Sec. 46.08.005. Statement of purpose declaring the release of oil or hazardous substances into the environment to be a threat to the public health and welfare, environment, and economy of the state. Concludes that it is in the best interest of the state to have funds readily available for ADEC to respond to releases of these materials.

Sec. 46.08.010. Establishes the Oil and Hazardous Substance Release Response Fund. The fund is administered by ADEC, although the Dept. of Revenue is custodian of the fund.

Sec. 46.08.020. Lists sources from which the legislature may appropriate money to the fund. Sources include the state and federal governments, money recovered from parties responsible for a release of oil or hazardous substances for containment and cleanup expenses, and fines, penalties, or damages received from a party responsible for such a release.

Sec. 46.08.030. (a) Statement of legislative intent that funds for the abatement of a release of oil or a hazardous substance will always be available.

(b) The commissioner shall use money appropriated to the department for response to releases of oil or hazardous substances before using money in the fund for such purposes. Money may also be available to respond to a release through the Disaster Relief Fund if the governor proclaims such a release to be a disaster emergency under AS 26.23.

Sec. 46.08.040. Lists acceptable uses of money from the fund, subject to the approval of the governor. These uses are to contain and cleanup releases or threatened releases of oil or hazardous substances, conduct work associated with such a release or threatened release, assist the Dept. of Labor in working with employers to develop employee safety education programs, provide matching funds for federal oil discharge and 'Superfund' (CERCLA) programs, and recover costs resulting from the release or threatened release of oil or hazardous substances.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

HB 470
Question and Answer Overview

Why is there a need for the Oil and Hazardous Substance Release Response Fund?

Releases of oil and hazardous substances pose a direct threat to the public health, environment, and economy of the state. HB 470 would provide ADEC with the statutory authority and readily available funding necessary to contain and cleanup releases of these materials. The response fund would allow ADEC to respond to future releases of oil and hazardous substances, as well as to cleanup existing sites.

What is the relationship between the response fund and the federal 'Superfund' program?

The 'Superfund' is directed toward the nationwide cleanup of existing sites. The Environmental Protection Agency evaluates these sites on a national priority basis to determine which sites will receive federal funding. Because this ranking system is biased in favor of densely populated areas, Alaska is expected to receive only slight assistance from the 'Superfund'. HB 470 does make provision, however, for the federal requirement that states provide matching funds of between 10 percent and 50 percent of site cleanup costs in order to receive 'Superfund' money.

Who decides which sites will be cleaned up?

The commissioner of ADEC is given the authority to determine which sites will be cleaned up. The commissioner may also, by regulation, develop criteria for prioritizing the cleanup of existing sites. It is the intent of this legislation, however, that money in the response fund always remain available for the containment and cleanup of future releases of oil and hazardous substances.

When would the response fund be used?

Persons responsible for the release of oil or hazardous substances must notify ADEC of the release and then begin containment and cleanup efforts. ADEC may use money from the response fund for these purposes, however, if the responsible party's containment and cleanup efforts are inadequate or if the cause of the release is unclear or unexplained.

How does the funding mechanism of the response fund work?

The Oil and Hazardous Substance Release Response Fund is modeled after the Disaster Relief Fund and the Fire Suppression Fund. These three funds are also similar in that they are all directed toward the abatement of emergency situations. The response fund allows the governor to transfer up to \$10 million during a fiscal year from the emergency operating expenses account to the fund, and money remaining in the fund at the end of a fiscal year remains available for expenditure in successive fiscal years.

The response fund may also receive legislative appropriations based on federal grants, money recovered from responsible parties for containment and cleanup, money recovered from responsible parties for fines, penalties or damages, and other sources.

What level of accounting oversight is provided for?

The response fund is administered by ADEC, although the commissioner of the Dept. of Revenue is custodian of the fund. Accounting records are maintained by ADEC, and the commissioner of ADEC must consult with the Governor and the commissioner of the Dept. of Revenue before adopting regulations governing fund accounting. The commissioner must also submit a fiscal report regarding the response fund to the Governor and the Legislature no later than the 10th day of each regular legislative session.

How does the response fund affect businesses and local communities?

The commissioner may enter into agreements with businesses, municipalities, and other entities in order to facilitate a coordinated and effective oil and hazardous substance release response in the state. Agreements may also be entered into that provide for oil and hazardous substance release notification procedures.

What provisions are made for the training and safety of workers cleaning up these materials?

Money from the response fund may be used to facilitate the efforts of the Department of Labor to assist employers in developing safety education programs for employees who may be called upon to respond to a release of oil or a hazardous substance.

HB 470
Sectional Analysis

* Section 1.

Chapter 8. Oil and Hazardous Substance Releases.

Sec. 46.08.005. Statement of purpose declaring the release of oil or hazardous substances into the environment to be a threat to the public health and welfare, environment, and economy of the state. Concludes that it is in the best interest of the state to have funds readily available for ADEC to respond to releases of these materials.

Sec. 46.08.010. Establishes the Oil and Hazardous Substance Release Response Fund. The fund is administered by ADEC, although the Dept. of Revenue is custodian of the fund.

Sec. 46.08.020. Lists sources from which the legislature may appropriate money to the fund. Sources include the state and federal governments, money recovered from parties responsible for a release of oil or hazardous substances for containment and cleanup expenses, and fines, penalties, or damages received from a party responsible for such a release.

Sec. 46.08.030. (a) Statement of legislative intent that funds for the abatement of a release of oil or a hazardous substance will always be available.

(b) The commissioner shall use money appropriated to the department for response to releases of oil or hazardous substances before using money in the fund for such purposes. Money may also be available to respond to a release through the Disaster Relief Fund if the governor proclaims such a release to be a disaster emergency under AS 26.23.

Sec. 46.08.040. Lists acceptable uses of money from the fund, subject to the approval of the governor. These uses are to contain and cleanup releases or threatened releases of oil or hazardous substances, conduct work associated with such a release or threatened release, assist the Dept. of Labor in working with employers to develop employee safety education programs, provide matching funds for federal oil discharge and 'Superfund' (CERCLA) programs, and recover costs resulting from the release or threatened release of oil or hazardous substances.

How does the response fund affect existing state programs?

The state is attempting to gain federal authorization to establish a state-controlled hazardous waste management program (RCRA). Negotiations between the state and the Environmental Protection Agency would not be affected by establishment of the response fund. Industry requirements regarding RCRA authorization would also remain unaffected by creation of the fund.

The Oil Spill Mitigation Account would be repealed immediately upon the effective date of the Oil and Hazardous Substance Release Response Fund.

(c) The commissioner, upon determining that containment and cleanup activities by a responsible party are inadequate, may order the person to cease the activity and ADEC may then take over the containment and cleanup operation.

(d) The commissioner may immediately undertake the containment and cleanup of a release if the cause of the release is unclear or unexplained. The same restrictions delineated in (a) of this section apply in this situation.

(e) The commissioner may enter into agreements with persons, including public or private corporations, municipalities, and unincorporated communities, in order to facilitate a coordinated and effective hazardous substance response in the state, provide for cooperative hazardous substance release notification procedures, or provide for cooperative review of hazardous substance contingency plans submitted to the department.

Sec. 46.09.030. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency, the commissioner may assist the adjutant general (Division of Emergency Services) in the relief of the emergency.

Sec. 46.09.040. The commissioner may contract with a person, including a public or private corporation, municipality or unincorporated community, for personnel, equipment, or services in order to carry out the purposes of this chapter. If such a contract is infeasible, the commissioner may establish and maintain personnel, equipment, and supplies for containment and cleanup purposes.

Sec. 46.09.050. ADEC employees designated by the commissioner as enforcement officers for the purposes of this chapter are also peace officers of the state.

Sec. 46.09.060. For the purposes of this chapter, the commissioner may enter into agreements, arrangements, or compacts with other states or countries.

Sec. 46.09.070. In the event of a regulatory conflict between the state and a municipality regarding the containment and cleanup of releases, the provisions of this chapter or regulations adopted by the commissioner prevail.

Sec. 46.09.080. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.09.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

Sec. 46.08.050. Delineates accounting procedures of the fund. Accounting records are maintained by ADEC, and by July 1 of each year the department must determine projected costs of the fund for the next fiscal year. The commissioner must adopt rules governing fund accounting, but shall consult with the governor and the commissioner of the Dept. of Revenue before adopting regulations in this regard.

Sec. 46.08.060. No later than the 10th day of each regular legislative session, the commissioner must submit a fiscal report to the legislature and the governor. The report must include the amount of money expended from the fund, and the amount and source of money recovered or received by the fund, during the previous fiscal year.

Sec. 46.08.070. (a) The commissioner is directed to seek reimbursement for costs incurred in the containment or cleanup of releases.

(b) At the request of the commissioner, the attorney general may attempt to recover money expended by the department in responding to releases or threatened releases of oil or hazardous substances.

Sec. 46.08.080. The commissioner shall adopt regulations in order to carry out the provisions of this chapter.

Sec. 46.08.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

* Section 2.

Chapter 9. Hazardous Substance Release Control.

Note: AS 46.09 is modeled after AS 46.04 (Oil Pollution Control).

Sec. 46.09.010. A person in charge of a unit from which a hazardous substance is released must promptly notify ADEC of the release. Persons may, however, enter into agreements with the commissioner for the periodic reporting of a controlled release of hazardous substances if the release is not into the waters of the state.

Sec. 46.09.020. (a) A person responsible for a release must make reasonable efforts to contain and cleanup the release unless the commissioner determines that containment and cleanup is either technically infeasible, or that such action would create greater environmental harm than the release itself.

(b) The commissioner must adopt regulations prescribing procedures and methods for containing and cleaning up releases and for disposing of wastes from a release.

(c) The commissioner, upon determining that containment and cleanup activities by a responsible party are inadequate, may order the person to cease the activity and ADEC may then take over the containment and cleanup operation.

(d) The commissioner may immediately undertake the containment and cleanup of a release if the cause of the release is unclear or unexplained. The same restrictions delineated in (a) of this section apply in this situation.

(e) The commissioner may enter into agreements with persons, including public or private corporations, municipalities, and unincorporated communities, in order to facilitate a coordinated and effective hazardous substance response in the state, provide for cooperative hazardous substance release notification procedures, or provide for cooperative review of hazardous substance contingency plans submitted to the department.

Sec. 46.09.030. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency, the commissioner may assist the adjutant general (Division of Emergency Services) in the relief of the emergency.

Sec. 46.09.040. The commissioner may contract with a person, including a public or private corporation, municipality or unincorporated community, for personnel, equipment, or services in order to carry out the purposes of this chapter. If such a contract is infeasible, the commissioner may establish and maintain personnel, equipment, and supplies for containment and cleanup purposes.

Sec. 46.09.050. ADEC employees designated by the commissioner as enforcement officers for the purposes of this chapter are also peace officers of the state.

Sec. 46.09.060. For the purposes of this chapter, the commissioner may enter into agreements, arrangements, or compacts with other states or countries.

Sec. 46.09.070. In the event of a regulatory conflict between the state and a municipality regarding the containment and cleanup of releases, the provisions of this chapter or regulations adopted by the commissioner prevail.

Sec. 46.09.080. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.09.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

* Section 13.

Sec. 46.04.010. ADEC is directed to promptly seek reimbursement for expenses incurred in the containment or cleanup of oil discharges, and the commissioner may request the attorney general to assist in the recovery of funds from responsible parties. Money received by ADEC under this section may be appropriated by the legislature to the response fund.

* Section 14.

Sec. 46.03.758. (k) The Oil Spill Mitigation Account is repealed.

* Section 15.

Sec. 01.10.070. (c) Immediate effective date.

* Section 3.

Sec. 26.23.230. (l) The definition of "disaster" is expanded to include the release of a hazardous substance.

* Section 4.

Sec. 37.05.159. (g) The governor may transfer a maximum of \$10 million during a fiscal year from the reserve for emergency operating expenses account to the fund.

* Section 5.

Sec. 44.19.050. The definition of "disaster" is expanded to include the release of a hazardous substance.

* Section 6.

Sec. 46.03.290. (a) Departmental findings regarding the declaring of an emergency are expanded to include oil and hazardous substances.

* Section 7.

Sec. 46.03.760. (a) Provides for civil liabilities for persons violating provisions of AS 46.09.

* Section 8.

Sec. 46.03.765. The superior court has jurisdiction to enjoin a violation of AS 46.09.

* Section 9.

Sec. 46.03.780. (a) Liability to the state for damages for injury or degradation to the environment in violation of AS 46.09.

* Section 10.

Sec. 46.03.790. (a) A person who negligently violates a provision of AS 46.09 is guilty of a class B misdemeanor.

* Section 11.

Sec. 46.03.790. (b) A person who knowingly violates a provision of AS 46.09 is guilty of a class A misdemeanor.

* Section 12.

Sec. 46.03.790. (d) A person who fails to provide or falsely states information required under AS 46.09 is guilty of a misdemeanor and, upon conviction, may be punished by a fine of not more than \$25,000 or by imprisonment for not more than one year, or both.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 470

NOTE: In the 1987 Budget, the agency also requested one additional position, funded by Federal Superfund (CERCLA) dollars, to manage contracts to perform investigations of sites where hazardous materials may have been inappropriately managed or disposed. This position would also negotiate for federal dollars to clean up sites which are eligible for the Superfund, to supplement the State monies in this response fund.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HR 470

In order to manage a program which responds to both immediate and long-term releases of oil and hazardous substances and make effective use of the funds created by this proposed legislation, several new positions would be required. TOTAL REQUEST

Funding for nine months is requested for FY 87 210.7

A. Program Management

1. A program person to develop regulations, negotiate contracts, initiate appropriate cost-recovery actions, coordinate training and report to the legislature.

2. An administrative assistant to monitor contracts, track and record expenditures from the fund, maintain records describing incidents across the State and other data necessary to obtain cost recovery and to prepare reports to the legislature.

3. A clerk/typist to provide clerical support and enter data into computer files.

Response Capability

1. Three environmental field officer positions to investigate reports of spilled materials, monitor cleanup activities, work with community government and safety agencies on plans for responding to local emergencies involving chemical spills/fires. The field officers would be assigned as follows: 1) one and one-half positions in Anchorage for the Southcentral Region; 2) one position in Fairbanks for the Northern Region; and 3) a half-time position in Juneau for the Southeast Region.

B. Support Costs

1. Travel funds of 5.0 per technical and field officer position and 3.0 for the administrative position will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs. 28.0

2. Contractual funds of about 5.0 per position are required to pay office costs including telephones, Xeroxing, word processing, utilities, janitorial costs, printing and advertising costs and registration fees for training courses. An additional 20.0 is requested for use in contracting with approved laboratories for analyses of hazardous materials/wastes which are beyond the technical and safety limitations of the Department's laboratory. 53.5

3. Funds for office supplies amounting to about 1.5 are requested for each position; 2.0 is requested to replace expendable field sampling and safety supplies for each field officer; and 5.0 is requested to repair laboratory testing equipment and replace supplies. 23.5

Equipment funds of about 2.0 are requested for desks, chairs, partitions, bookshelves and similar items necessary to equip the office of each position. 14.0

329.7

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 170

In order to manage a program which responds to both immediate and long-term releases of oil and hazardous substances and make effective use of the fund created by this proposed legislation, several new positions would be required. TOTAL REQUEST

Funding for nine months is requested for FY 87 210.7

A. Program Management

1. A program person to develop regulations, negotiate contracts, initiate appropriate cost-recovery actions, coordinate training and report to the legislature.

2. An administrative assistant to monitor contracts, track and record expenditures from the fund, maintain records describing incidents across the State and other data necessary to obtain cost recovery and to prepare reports to the legislature.

3. A clerk/typist to provide clerical support and enter data into computer files.

Response Capability

1. Three environmental field officer positions to investigate reports of spilled materials, monitor cleanup activities, work with community government and safety agencies on plans for responding to local emergencies involving chemical spills/fires. The field officers would be assigned as follows: 1) one and one-half positions in Anchorage for the Southcentral Region; 2) one position in Fairbanks for the Northern Region; and 3) a half-time position in Juneau for the Southeast Region.

B. Support Costs

1. Travel funds of 5.0 per technical and field officer position and 3.0 for the administrative position will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs. 28.0

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Equipment funds of about 2.0 are requested for desks, chairs, partitions, bookshelves and similar items necessary to equip the office of each position. 14.0

329.7

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 170
 Title : An Act Relating to the
Release of Oil and Hazardous
Substances
 Sponsor : Rep. M. Davis
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Environmental Conservation
 BRU : Environmental Quality

 Components : Director's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		210.7	264.5	264.6		
TRAVEL		28.0	28.0	28.0		
CONTRACTUAL		53.5	53.5	53.5		
SUPPLIES		23.5	23.5	23.5		
EQUIPMENT		14.0	2.0	2.0		
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		329.7	371.6	371.6		

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		7.0*	7.0	7.0		
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

*6.0 FTE

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : S.W. Hungerford
 Division : Environmental Quality

Phone : 465-2666
 Date : 1/17/86

Approved by Commissioner : _____
 Agency : Dept. of Environmental Conservation

Date : 1/17/86

Distribution (by Agency preparing fiscal note) :

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 470

NOTE: In the 1987 Budget, the agency also requested one additional position, funded by Federal Superfund (CERCLA) dollars, to manage contracts to perform investigations of sites where hazardous materials may have been inappropriately managed or disposed. This position would also negotiate for federal dollars to clean up sites which are eligible for the Superfund, to supplement the State monies in this response fund.

Position Title Ecologist II			No. of Positions One	Range/Step 18 A	Barg. Unit GGU	Gov.	Approv.	Disapp.
Time Status Full Time	Staff Months 12	RP Number	Location Juneau		Election District	Leg.		
Justification								
Type of Expenditure			Amount					
1	2	3						
Salary	28.1							
Benefits	8.3							
Premium Pay								
Other								
Total Personal Services		36.4						
Travel		5.0						
Contractual		25.0						
Commodities		6.5						
Equipment		2.0						
Other								
Total Cost		74.9						
Receipt Code		Funding Source						
		Federal Receipts 1002						
		G. F. Match 1003						
		General Funds 1004 74.9						
		I-A Receipts 1005						
		Program Receipts 1028						
		CIP Receipts 1061						
		Other						
<div style="border: 1px solid black; padding: 5px; width: fit-content;"> For B&M Use Only Key Number _____ </div>								

This new position will be responsible for writing regulations related to implementation of this bill, including procedures to be used in containment and cleanup of a hazardous substance, reporting the release of a hazardous substance, use of the response fund, procedures to assess fines, penalties and recovery of costs. This person will also negotiate contracts to contain and clean up incidents requiring immediate response, determine liability for incidents, initiate appropriate actions to recover costs or other penalties, coordinate a training and safety program for field staff and report program activities to appropriate State and federal agencies and the State Legislature.

We expect to fill this position on October 1, 1986. Funding for nine months has been requested for FY 87.

Request For New Position

Agency Environmental Conservation
BRU Environmental Quality
Component Water Quality Management

Page _____ of _____
Revised Date _____

FY 87

Position Title Administrative Assistant II			No. of Positions One	Range/Step 14 A	Barg. Unit GGU	Gov.	Approv.	Disapp.																									
Time Status Full Time	Staff Months 12	RP Number	Location Juneau	Election District	Leg.																												
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>Amount</th> </tr> <tr> <th>1</th> <th>2</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>21.2</td> </tr> <tr> <td>Benefits</td> <td>6.8</td> </tr> <tr> <td>Premium Pay</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td>28.0</td> </tr> <tr> <td>Travel</td> <td>3.0</td> </tr> <tr> <td>Contractual</td> <td>5.0</td> </tr> <tr> <td>Commodities</td> <td>1.5</td> </tr> <tr> <td>Equipment</td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Cost</td> <td>39.5</td> </tr> </tbody> </table>			Type of Expenditure	Amount	1	2	Salary	21.2	Benefits	6.8	Premium Pay		Other		Total Personal Services	28.0	Travel	3.0	Contractual	5.0	Commodities	1.5	Equipment	2.0	Other		Total Cost	39.5	Justification This new position will assist the program staff by preparing documents necessary to contract for services to contain and clean up hazardous substances, by recording and tracking expenditures from the response fund and preparing the fiscal reports required to report program activities to the Legislature. This person will also maintain records describing incidents and spills from across the State and other data necessary to obtain cost-recovery from responsible parties. We expect to fill this position on October 1, 1986. Funding for nine months has been requested for FY 87.				
Type of Expenditure	Amount																																
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Benefits	6.8																																
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**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Water Quality Management

FY 87

Page _____ of _____
Revised Date _____

Position Title Clerk Typist III			No. of Positions One	Range/Step 8 A	Barg. Unit GGU	Gov. LEG	Approv.	Disapp.
Time Status Full Time	Staff Months 12	RP Number	Location Juneau		Election District			
Type of Expenditure			Justification					
		Amount	<p>This new position will provide clerical support to the new program staff and enter data into computer files established to record program activities. This person will be required to prepare regulations, contract documents and fiscal reports as well as routine correspondence.</p> <p>We expect to fill this position on October 1, 1987.</p> <p>Funding for nine months has been requested for FY 87.</p>					
1	2	3						
Salary	14.7							
Benefits	5.3							
Premium Pay								
Other								
Total Personal Services		20.0						
Travel								
Contractual		3.5						
Commodities		1.5						
Equipment		2.0						
Other								
Total Cost		27.0						
Receipt Code	Funding Source							
	Federal Receipts	1002						
	G. F. Match	1003						
	General Funds	1004	27.0					
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1061						
	Other							
<div style="border: 1px solid black; padding: 5px;"> For B&M Use Only Key Number _____ </div>								

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Water Quality Management

Page _____ of _____
 Revised Date _____

FY 87

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Barg. Unit GGU	Gov.	Approv.	Disapp.																																													
Time Status Perm. Part Time	Staff Months 6	RP Number	Location Juneau		Election District	Leg.																																															
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>1</th> <th>2</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td></td> <td>18.7</td> <td rowspan="4"></td> </tr> <tr> <td>Benefits</td> <td></td> <td>5.6</td> </tr> <tr> <td>Premium Pay</td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td colspan="2">Total Personal Services</td> <td></td> <td>24.3</td> </tr> <tr> <td>Travel</td> <td></td> <td></td> <td>5.0</td> </tr> <tr> <td>Contractual</td> <td></td> <td></td> <td>5.0</td> </tr> <tr> <td>Commodities</td> <td></td> <td></td> <td>3.5</td> </tr> <tr> <td>Equipment</td> <td></td> <td></td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="2">Total Cost</td> <td></td> <td>39.8</td> </tr> </tbody> </table>			Type of Expenditure	1	2	3	Salary		18.7		Benefits		5.6	Premium Pay			Other			Total Personal Services			24.3	Travel			5.0	Contractual			5.0	Commodities			3.5	Equipment			2.0	Other				Total Cost			39.8	Justification This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.					
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**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Southeast Region

Page	of
Revised Date	

FY 87

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 1B A	Barg. Unit GGU	Gov. LEA	Approv.	Disapp.	
Time Status Full Time	Staff Months 12	RP Number	Location Anchorage		Election District				
Type of Expenditure			Justification						
		Amount	<p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p> <p>We expect to fill this position on October 1, 1986.</p> <p>Funding for nine months has been requested for FY 87.</p>						
1	2	3							
Salary	28.1								
Benefits	8.3								
Premium Pay									
Other									
Total Personal Services		36.4							
Travel		5.0							
Contractual		5.0							
Commodities		3.5							
Equipment		2.0							
Other									
Total Cost		51.9							
Receipt Code	Funding Source								
	Federal Receipts	1002							
	G. F. Match	1003							
	General Funds	1004							51.9
	I-A Receipts	1005							
	Program Receipts	1028							
	CIP Receipts	1061							
	Other								
For B&M Use Only Key Number									

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Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Barg. Unit GGU	Gov.	Approv.	Disapp.																									
Time Status Full Time	Staff Months 12	RP Number	Location Fairbanks	Election District	Leg.																												
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>Amount</th> </tr> <tr> <th>1</th> <th>2</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>32.1</td> </tr> <tr> <td>Benefits</td> <td>9.2</td> </tr> <tr> <td>Premium Pay</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td>41.3</td> </tr> <tr> <td>Travel</td> <td>5.0</td> </tr> <tr> <td>Contractual</td> <td>5.0</td> </tr> <tr> <td>Commodities</td> <td>3.5</td> </tr> <tr> <td>Equipment</td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Cost</td> <td>56.8</td> </tr> </tbody> </table>			Type of Expenditure	Amount	1	2	Salary	32.1	Benefits	9.2	Premium Pay		Other		Total Personal Services	41.3	Travel	5.0	Contractual	5.0	Commodities	3.5	Equipment	2.0	Other		Total Cost	56.8	Justification <p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p> <p>We expect to fill this position on October 1, 1987.</p> <p>Funding for nine months has been requested for FY 87.</p>				
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