

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 00/2

4281 SRES SB 375 161

Position Title Administrative Assistant II			No. of Positions One	Range/Step 14 A	Borg. Unit GGU	Gov. LEJ	Approv.	Disapp.																																						
Time Status Full Time	Staff Months 12	RP Number	Location Juneau	Election District																																										
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>Amount</th> </tr> <tr> <th>1</th> <th>2</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>21.2</td> <td></td> </tr> <tr> <td>Benefits</td> <td>6.8</td> <td></td> </tr> <tr> <td>Premium Pay</td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td></td> <td>28.0</td> </tr> <tr> <td>Travel</td> <td></td> <td>3.0</td> </tr> <tr> <td>Contractual</td> <td></td> <td>5.0</td> </tr> <tr> <td>Commodities</td> <td></td> <td>1.5</td> </tr> <tr> <td>Equipment</td> <td></td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td>Total Cost</td> <td></td> <td>39.5</td> </tr> </tbody> </table>			Type of Expenditure	Amount	1	2	3	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 <p>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.</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>					
Type of Expenditure	Amount																																													
1	2	3																																												
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																																												
<table border="1"> <thead> <tr> <th>Receipt Code</th> <th>Funding Source</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td></td> <td>Federal Receipts 1002</td> <td></td> </tr> <tr> <td></td> <td>G. F. Match 1003</td> <td></td> </tr> <tr> <td></td> <td>General Funds 1004</td> <td>39.5</td> </tr> <tr> <td></td> <td>I-A Receipts 1005</td> <td></td> </tr> <tr> <td></td> <td>Program Receipts 1028</td> <td></td> </tr> <tr> <td></td> <td>CIP Receipts 1061</td> <td></td> </tr> <tr> <td></td> <td>Other</td> <td></td> </tr> </tbody> </table>			Receipt Code	Funding Source	Amount		Federal Receipts 1002			G. F. Match 1003			General Funds 1004	39.5		I-A Receipts 1005			Program Receipts 1028			CIP Receipts 1061			Other																					
Receipt Code	Funding Source	Amount																																												
	Federal Receipts 1002																																													
	G. F. Match 1003																																													
	General Funds 1004	39.5																																												
	I-A Receipts 1005																																													
	Program Receipts 1028																																													
	CIP Receipts 1061																																													
	Other																																													
For BAM Use Only Key Number _____																																														

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Water Quality Management

FY 87

Page _____ of _____
 Revised Date _____

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 1B A	Barg. Unit GGU	Gov.	Approv.	Disapp.	
Time Status Perm. Part Time	Staff Months 6	RP Number	Location Juneau	Election District					
Type of Expenditure			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 hazar chemicals. This person will work with exis g staff as a team of two for safety purpose en investigating incidents involving s' f 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>						
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						
Receipt Code			Funding Source						
			Federal Receipts 1002						
			G. P. Match 1003						
			General Funds 1004						
			I-A Receipts 1005						
			Program Receipts 102B						
			CIP Receipts 1061						
			Other						
			39.8						
For B&M Use Only									
Key Number									

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southeast Region

FY 87

Page of
 Revised Date

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Barg. Unit GGU	Gov. LAG	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								

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southcentral Region

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 Anchorage	Election District	Leg.																																										
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>2</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>1</td> <td></td> <td>3</td> </tr> <tr> <td>Salary</td> <td>18.7</td> <td></td> </tr> <tr> <td>Benefits</td> <td>5.6</td> <td></td> </tr> <tr> <td>Premium Pay</td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td></td> <td>24.3</td> </tr> <tr> <td>Travel</td> <td></td> <td>5.0</td> </tr> <tr> <td>Contractual</td> <td></td> <td>5.0</td> </tr> <tr> <td>Commodities</td> <td></td> <td>3.5</td> </tr> <tr> <td>Equipment</td> <td></td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td>Total Cost</td> <td></td> <td>39.8</td> </tr> </tbody> </table>			Type of Expenditure	2	Amount	1		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.					
Type of Expenditure	2	Amount																																													
1		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																																													
<table border="1"> <thead> <tr> <th>Receipt Code</th> <th>Funding Source</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td></td> <td>Federal Receipts 1002</td> <td></td> </tr> <tr> <td></td> <td>G. F. Match 1003</td> <td></td> </tr> <tr> <td></td> <td>General Funds 1004</td> <td>39.8</td> </tr> <tr> <td></td> <td>I-A Receipts 1005</td> <td></td> </tr> <tr> <td></td> <td>Program Receipts 1028</td> <td></td> </tr> <tr> <td></td> <td>CIP Receipts 1061</td> <td></td> </tr> <tr> <td></td> <td>Other</td> <td></td> </tr> </tbody> </table>			Receipt Code	Funding Source	Amount		Federal Receipts 1002			G. F. Match 1003			General Funds 1004	39.8		I-A Receipts 1005			Program Receipts 1028			CIP Receipts 1061			Other																						
Receipt Code	Funding Source	Amount																																													
	Federal Receipts 1002																																														
	G. F. Match 1003																																														
	General Funds 1004	39.8																																													
	I-A Receipts 1005																																														
	Program Receipts 1028																																														
	CIP Receipts 1061																																														
	Other																																														
For B&M Use Only Key Number																																															

**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Southcentral Region

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 Full Time	Staff Months 12	RP Number	Location Fairbanks	Election District	Leg.																																										
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>2</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>2</td> <td>3</td> </tr> <tr> <td>Salary</td> <td>32.1</td> <td></td> </tr> <tr> <td>Benefits</td> <td>9.2</td> <td></td> </tr> <tr> <td>Premium Pay</td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td></td> <td>41.3</td> </tr> <tr> <td>Travel</td> <td></td> <td>5.0</td> </tr> <tr> <td>Contractual</td> <td></td> <td>5.0</td> </tr> <tr> <td>Commodities</td> <td></td> <td>3.5</td> </tr> <tr> <td>Equipment</td> <td></td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td>Total Cost</td> <td></td> <td>56.8</td> </tr> </tbody> </table>			Type of Expenditure	2	Amount	1	2	3	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>					
Type of Expenditure	2	Amount																																													
1	2	3																																													
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																																													
<table border="1"> <thead> <tr> <th>Receipt Code</th> <th>Funding Source</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td></td> <td>Federal Receipts 1002</td> <td></td> </tr> <tr> <td></td> <td>G. F. Match 1003</td> <td></td> </tr> <tr> <td></td> <td>General Funds 1004</td> <td>56.8</td> </tr> <tr> <td></td> <td>I-A Receipts 1005</td> <td></td> </tr> <tr> <td></td> <td>Program Receipts 1028</td> <td></td> </tr> <tr> <td></td> <td>CIP Receipts 1061</td> <td></td> </tr> <tr> <td></td> <td>Other</td> <td></td> </tr> </tbody> </table>			Receipt Code	Funding Source	Amount		Federal Receipts 1002			G. F. Match 1003			General Funds 1004	56.8		I-A Receipts 1005			Program Receipts 1028			CIP Receipts 1061			Other																						
Receipt Code	Funding Source	Amount																																													
	Federal Receipts 1002																																														
	G. F. Match 1003																																														
	General Funds 1004	56.8																																													
	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 Northern Region

Page _____ of _____
Revised Date _____

FY 87

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill Resolution No. : HB 470
 Title : An Act Relating to the Release of Oil and Hazardous Substances
 Sponsor : Davis, Koponen, etc.
 Requestor : House Resources
 Date of Request : 1/14/86

FISCAL DETAIL

Agency Affected : Labor
 BRU : Occupational Safety and Health
 Components : Occupational Safety and Health

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL		5.0				
CONTRACTUAL						
SUPPLIES		5.0				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	10.0	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

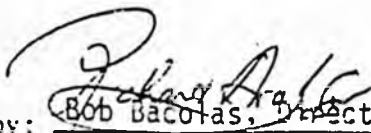
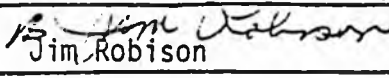
FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		10.0				
TOTAL	-0-	10.0	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS : Attach a separate page if necessary

Prepared by :  Bob Bacolas, Director Phone : 465-4870
 Division : Labor Standards and Safety Date : 1/21/86
 Approved by Commissioner :  Jim Robison Date : 1/21/86
 Agency : Labor

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requester
- Office of Management and Budget
- Interested Agencies

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. 470

The Department of Environmental Conservation, as the administrator of the "Oil and Hazardous Substance Release Response Fund" will transfer funding by Reimbursable Services Agreement to the Department of Labor. This will allow the Department of Labor to meet its responsibilities under the proposed Section 46.08.040(3).

The \$5000 travel monies will be used to send two industrial health consultants to the Environmental Protection Agency's (EPA's) Hazardous Materials Incidence Operations training course. It is estimated that it will cost \$2,500 each. The course is held at EPA's New Jersey training facility. This will assure that the Department's Occupational Safety and Health Consultation Section will have persons with knowledge to assist employers set up training programs.

The \$5000 in commodities will be used to purchase books and other written materials and films or video tapes recommended by EPA that can be loaned out to employers who need audio visual materials for their training classes.

This fiscal note assumes, though the bill has an "immediate effective date", the funding for the above will not be available until FY 87.

FILE
SIB 375 ①

HB 470: ISSUES & DISCUSSION

1) Issue: For what purpose should the fund be used?

Alternatives:

- (1) emergency/acute oil spill and hazardous substance release.
- (2) site investigation and cleanup.
- (3) combination as envisioned in current version of bill.

Discussion:

Proposed fund should be strictly limited to emergency or acute response to oil spill or hazardous substance releases, capital, nonlapsing in nature.

Concomitantly, one position should be added to DEC's operating budget specifically to continue their existing program of inspecting, investigating, sampling and analyzing hazardous waste sites. The new position would catalogue and prioritize sites according to level of hazard and recommend for consideration by the Legislature, capital cleanup funds in future budgets. Employee would also work closely with federal Corps of Engineers personnel to coordinate their cleanup efforts.

Language authorizing legislative appropriations from federal, private or other sources would assure that the State is receptive to such receipt and mission and specific projects could be further authorized if needed either through legislation or RP.

Department Concern:

Without the ability to use a portion of the fund for contract investigation, they will be unable to pursue the responsible party and eventually clean up spill or release. A prime example is the Nome oil spill. The Department will argue for the ability to utilize a portion of the fund for some site investigation. Without this ability, they cannot support the bill.

- 2) Issue: How should the fund be composed? How should it be capitalized? Should the Legislature place a cap on its size? Should there be an automatic transfer mechanism?

Alternatives:

- 1/31/02
2002-03-12-00000
- (1) Rainy Day Fund
 - (2) Transfers and reappropriations
 - (3) Capital budget appropriation

Discussion:

To assure maximum legislative review and oversight of the fund in accordance with its intended purpose, the Legislature should capitalize the fund one time with

subsequent capital appropriations based on fund use. The new, combined, oil spill and hazardous substance release fund should be patterned after the successful oil spill fund which was originally capitalized at about the \$1.5 million mark. The proposed \$1 million capitalization of HB 470 can occur by utilizing four sources of existing funding. First, transfer any remaining monies in the existing oil spill fund to the new fund. This amount should approximate \$150-200,000 in June 1986. Second, appropriate at least \$300,000 to existing fund as proposed in the Governor's capital budget. Third, the existing oil spill mitigation account currently has approximately \$19,000 sitting in it for possible appropriation by the Legislature or it lapses to the general fund. Department sources indicate that by June 1986 this account will accrue an additional \$300,000, also available for appropriation. Of the three actions, as much as \$800,000 could be realized. The remaining \$200,000 to fully capitalize the new fund at the \$1 million mark could come from two sources: One, capitalize Governor's request at \$500,000 level; or two, authorize the Governor to transfer/allocate, on a one-time basis, the difference between that amount created by the combination of the above mentioned sources and the Rainy Day Fund, up to a total not to exceed \$1 million. No further withdrawals from the Rainy Day Fund would be authorized. The Department can support this approach.

3) Issue: Municipal interest - Should the legislation authorize reimbursements? Should legislation provide guidelines for when/how reimbursements to municipalities should occur? Leave to Department or direct them to develop?

Apply or use mechanism to recover rather than

Discussion:

Bill currently provides a mechanism whereby the Department can contract with municipalities to provide emergency response with Departmental review. Also, provides that the Attorney General can assist in the collection of cleanup costs from responsible parties. Bill prohibits fund use for purchase of capital items with some exceptions.

→ contractual agreement

Do we need to do more

separate section burden on them to apply. Gov. may reimburse municipalities first enter into cleanup agreement.

The municipalities currently support the bill because they expect to see some ongoing reimbursement from the State for their first response. With a limit on the amount of funds available being subject to legislative appropriations, some erosion of support may occur.

At least three funding reimbursements should be discussed:

- (1) Where a municipality's first response team responds to an emergency requiring immediate action. The result would be that the municipality would respond and perhaps contract for actual cleanup.

*Guidelines
+ criteria*

*What is
what
agreement
would do*
*Not No
projects - capital
might contract
for services*

There is general agreement that this type of response activity is eligible for reimbursement.

(2) Is the payroll of municipal employees, either first responders or other reimbursable? There is no agreement here.

(3) Should the fund be used to buy rolling stock, i.e., fire trucks, ambulances, etc..or other response related equipment? There is no clear agreement here, although HB 470 as before the Committee has language which would prohibit the funds use for "capital improvements." Clearer guidance should be given here.

4) Issue: CIRI Amendment - Indemnification. Two legal opinions are attached which discuss the issue. Additionally, a proposed letter of intent is attached.

5) Issue: Definitions - Concern is that current definition in HB 470 is not specific enough. Is it too broad? What laws are included in the umbrella of "state or federal law or by regulations adopted under state or federal law"?

Discussion:

Attached is a legal description of what is covered. One option would be to reference each state and federal statute with a proviso that would allow for the

addition or inclusion of future federal or state laws in this area. A problem with a string such as this is that it might polarize constituencies for or against the bill. A second option would be to use the broad definitions and during further discussion or debate to include the actual statute references with short titles and partial lists of substances for members. Such lists then become part of the legislative history but do not inordinately clutter the statute.

6) Issue: Fiscal Notes, DEC and Labor

Discussion:

DEC - Propose paring down to two (2) environmental field officers to investigate reports of spilled substances, monitor cleanup, etc... Costs associated with each of these positions approximates \$51.9, total \$103.8.

Other proposed positions in the fiscal note of the Department included a person to write regs, cleanup and containment procedures and negotiate contracts, and a clerk typist.

Propose that DEC spread this management responsibility over existing personnel.

*need atleast
- 3 - FOX
Kessia
SC + Anchorage
S.E.*

The Department feels strongly that because of the regulations and guidelines required in the current draft, they need a full-time professional position to coordinate this activity. They could, absent these requirements, otherwise spread the administrative burden over their current staff in oil spill response with the addition of one half-time equivalent. The Department will speak to this.

Labor - The Department's fiscal note responds to the requirement that they develop safety education programs for employers of emergency response employees. Labor proposes the use of \$10,000 to send existing employees to the EPA's hazardous materials incidence operations training course and to purchase training manuals for ongoing training.

Discussion:

Should the Department of Labor be responsible for training?

At least one municipality recommended that DEC should use fund monies to contract "with a person, or a municipality of the state for personnel, equipment, or services necessary to carry out all training,..."

7) Issue: Should DEC personnel be designated as peace officers?

Discussion:

Suggest this section be deleted.

MEMORANDUM

TO: Rep. Pat Pourchot
 FROM: Staff
 RE: HB 470
 DATE: February 25, 1986

In preparation for the Finance Subcommittee meeting on HB 470, February 25, 1986, in addition to each member's bill file, copies of the following are provided:

- Department of Environmental Conservation fiscal note;
- legislative and fiscal history of the Oil Pollution Control Program;
- letter from Alaska Miners Association;
- proposed amendment from Cook Inlet Region Incorporated re: indemnification protection;
- letter from Division of Retirement and Benefits re: DEC employees as peace officers; and
- DEC Hazardous Waste Management Program overview.

Additionally, to frame the meeting, the Commissioner of DEC has been asked to respond specifically to the following:

- State and departmental policy re: hazardous waste;
- State and departmental plan for dealing with hazardous waste;
- schedule for implementing policy;
- SB 503 implementation;
- what is a hazardous substance as envisioned in this bill;
- FY 87 budget increments as they relate to the above;

- other bills which should be considered in the subcommittee's review of HB 470;
- the CIRI amendment and the broad issue of indemnification and the state's liability;
- federal monies; which federal programs might be used to match or offset state dollars;
- effect on municipal governments and question of reimbursements; and
- the proposed funding mechanism for the fund.

Finally, Jay Hogan, Director of Budget Review, OMB, will discuss the Rainy Day Account, how it works, the "continuing" nature of other appropriations from the fund, and alternative funding mechanisms for HB 470.

The second hearing of the subcommittee has been scheduled for Friday, February 28, from 8:00 a.m. to 10:00 a.m. in Capitol Room 17.

(B) a person repairing his own or a family member's motor vehicle;
 (4) "repair" or "repairs" means the improvement, adjustment, replacement, examination, diagnosis, maintenance, servicing, removal or installation of any component or part of a motor vehicle, but does not include towing or the supply of motor fuel to a motor vehicle. (§ 1 ch 146 SLA 1976; am § 21 ch 144 SLA 1977)

Effect of amendment. — The 1977 amendment, in paragraph (2), substituted "AS 28.35.260" for "AS 28.10.650," "under AS 28.10" for "with the Department of Public Safety under AS 28.10.040," and "jurisdiction" for "state."

Article 10. Miscellaneous.

Section

900. Indemnification agreements contra to public policy

Sec. 45.45.900. Indemnification agreements contra to public policy. A provision, clause, covenant, or agreement contained in, collateral to, or affecting any construction contract which purports to indemnify the promisee against liability for damages for (1) death or bodily injury to persons, (2) injury to property, (3) design defects or (4) any other loss, damage or expense arising under (1), (2), or (3) of this section from the sole negligence or wilful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to the promisee, is against public policy and is void and unenforceable; however, this provision does not affect the validity of any insurance contract, workers' compensation or agreement issued by an insurer subject to the provisions of AS 21. (§ 1 ch 155 SLA 1975; am § 60 ch 94 SLA 1980)

Effect of amendment. — The 1980 amendment substituted "workers'" for "workmen's" near the end of the section. Editor's note. This section derives from former AS 45.47.010, which was redesignated as AS 45.45.900 by the 1980 amendment.

Chapter 50. Competitive Practices and Regulation of Competition.

Article

1. Trademarks (§§ 45.50.010 — 45.50.200)
2. Log Brands (§§ 45.50.210 — 45.50.325)
3. Authorship (§§ 45.50.330 — 45.50.460)
4. Unfair Trade Practices and Consumer Protection (§§ 45.50.471 — 45.40.561)
5. Monopolies; Restraint of Trade (§§ 45.50.562 — 45.50.596)
6. Deceptive Advertising of Civil Defense Aids (§§ 45.50.600 — 45.50.606)
- 7-12. [Reserved]
13. Alaska Gasoline Products Leasing Act (§§ 45.50.800 — 45.50.850)
14. [Reserved]
15. Miscellaneous (§ 45.50.900)

TEXT OF PROPOSED AMENDMENT TO H.B. 470

A.S. 45.45.900 is amended by adding at the end thereof the following language:

" , or a provision, clause, covenant, or agreement of indemnification respecting the handling, containment or cleanup of oil or hazardous substances as defined in A.S. 46."

CIRI

SUGGESTED LEGISLATIVE HISTORY FOR PROPOSED AMENDMENT TO H.B. 470

This provision of the statute is intended to facilitate agreements of indemnification within the private sector regarding clean up of toxic and hazardous substances. It clarifies that a hazardous waste clean up contract is not a "construction contract" and therefore is not subject to the restrictions upon indemnification agreements found in A.S. 45.45.900. The statute provides certainty for parties who voluntarily enter into indemnification agreements, and therefore will allow parties to freely negotiate such protections as between themselves. Typically, such an indemnification clause will be negotiated between the private party responsible for the creation and discharge of the hazardous private substance (e.g., an oil company which has oil contaminated with PCB's) and the private party hired by that company to clean up or eliminate the hazardous substance. Such clauses will operate in lieu of liability insurance, which is at present exceptionally difficult to acquire in this area.

It also is important to confirm what the provision does not do. The provision does not provide in any way for an exemption from liability for mishandling of hazardous substances. Any injured party -- members of the public, the State, or other companies -- will have all their rights to pursue their full legal remedies. The provision will operate, in effect, to enhance legal remedies for injured persons by facilitating an additional layer of "deep pockets" behind the clean up company. Moreover, the provision does not require any entity, private or public, to enter into an indemnification agreement. The statute confirms that such agreements are legal, but preserves the complete freedom of all parties to decline to enter into such an agreement.

SCH:sj
(19/32)

MEMORANDUM

State of Alaska

TO: Commissioner Bill Ross
Department of Environmental
Conservation

DATE: February 27, 1986

FILE NO: 366-354-86

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General

SUBJECT: Proposed amendment
to CSHB 470 (Res)
and state and
municipal liability

By: Joseph W. Geldhof
Assistant Attorney General
Dept. of Law

By memorandum dated February 25, 1986 you requested our review and counsel pertaining to House Bill 470, an act related to the release of oil and hazardous substances. Specifically, you wanted to know if passage of the act would alter municipal or state liability compared to current law. You also sought our review of a proposed amendment to the act which would change law found at AS 45.45.900. This proposed amendment addresses indemnification arrangements related to the cleanup of hazardous substances.

I.

ALTERATION OF LIABILITY

The proposal in CSHB 470 (Res) to create an oil and hazardous substance release response fund in and of itself does not change or shift liability for the use, transportation or improper disposal of oil or hazardous substances. The provisions related to the fund are embodied section 1 of the bill and, if established, would be embodied in a new chapter of Title 46.

Section 2 of the proposed legislation would create another new chapter in Title 46 pertaining to hazardous substance release control. Certain provisions within this section provide additional reporting requirements for persons using or transporting hazardous substances when a hazardous substance is released. Specifically, the proposed AS 46.09.010 would require in part that:

...a person in charge of a vehicle, vessel or container from which, or a place at which, a hazardous substance is released shall report the release to the department and appropriate public safety agencies promptly after learning of the release.

The act would also require at proposed AS 46.09.020 that:

A person who causes a release of a hazardous substance shall make reasonable efforts to contain and cleanup the hazardous substance promptly after learning of the release...

Neither of these two proposed provisions dramatically shifts liability compared to current state or federal law. Current state law at AS 46.03.90 et seq. and AS 46.03.296 in particular give the Department of Environmental Conservation reasonably stringent control over the disposal and transportation of hazardous waste. The proposed act makes explicit the extent and degree to which the regulated community will be required to comply with state law related to hazardous wastes. In practical terms, the enforcement standards for certain conduct are more clearly articulated through the proposed legislation. The application of sanctions as outlined in AS 46.03.760 - 790 to certain conduct is also more obvious.

In terms of liability, passage of CSHB 470 (Res) would establish statutory reporting and cleanup requirements which persons, and organizations (including, as appropriate, municipalities) would be required to follow in addition to the more general requirements now found in AS 46.03 and 04.

Another aspect of the proposed legislation which may modestly alter liability is the definition for hazardous substance found at line 4 on page 9 of the bill. Hazardous substance is arguably defined more broadly than the current definition of "hazardous waste" found in AS 46.03.900. Either of these definitions would require technical analysis by DEC during application. Still, our sense is that the proposed definition for "hazardous substance" is or has a potential to be more inclusive. Thus, we believe that the proposed definition for "hazardous substance" may potentially expand liability for persons or organizations using, transporting or disposing of hazardous substances.

The remaining portions of the proposed act deal with administration of the fund and technical amendments to existing law which apply the current sanctions found in AS 46.03 to regulated activities under the proposed act.

II.

PROPOSED AMENDMENT REGARDING CONTRACTOR INDEMNIFICATION

A proposed amendment to CSHB 470(Res) is being circulated which would alter current law found at AS 45.45.900. The current statute states:

Indemnification Agreements Contra to Public Policy. A provision, clause, covenant, or agreement contained in, collateral to, or affecting any construction contract which purports to indemnify the

promisee against liability for damages for (1) death or bodily injury to persons, (2) injury to property, (3) design defects or (4) any other loss, damage or expense arising under (1), (2), or (3) of this section from the sole negligence or wilful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to the promisee, is against public policy and is void and unenforceable; however, this provision does not affect the validity of any insurance contract, workers' compensation or agreement issued by an insurer subject to the provisions of AS 21.

The proposed amendment would add the following language to the existing statute: ", or a provision, clause, covenant, or agreement of indemnification respecting the handling, containment or cleanup of hazardous substances as defined in A.S. 46."

This proposed language has been offered by an organization which is interested in cleaning up oil and hazardous substances in Alaska to avoid a literal application of the prohibition found in AS 45.45.900. While application of AS 45.45.900 to the cleanup or containment of oil or hazardous substances is by no means certain, the fear exists that any and all indemnification agreements pertaining to containment and cleanup of oil or hazardous substance may not be binding.

This might create a problem because responsible persons and organizations interested in providing services to control or cleanup hazardous substances may be reluctant to engage in such activity because of the apparent prohibition on indemnification agreements found in AS 45.45.900. If the control and cleanup activity is characterized as a construction agreement, a literal reading of the current statute implies that the cleanup contractor cannot be indemnified by the entity seeking containment and cleanup of the release. The question of indemnification is particularly important because procurement of liability insurance by a cleanup contractor is virtually impossible to obtain in the context of hazardous release cleanup operations and very expensive in the context of oil spills.

What the amendment proposes is language which would create an opportunity for a firm, person, or organization which created the oil or hazardous substance problem or for the entity seeking cleanup of the release to contractually indemnify a cleanup contractor. This does not absolve the cleanup contractor from liability. It merely creates a situation where the person responsible for the release or spill (or the organization

attempting to cleanup the mess, i.e. state or municipality) and the cleanup contractor can allocate the liability between themselves without fear that the current AS 45.45.900 will be interposed as a defense.

For example, a corporation (SPILLEZE) is responsible for the release of 1000 gallons of toxic substance. SPILLEZE retains a contractor (KLEENEZE) for containment and cleanup of the toxic substance. KLEENEZE will typically seek an indemnification agreement from SPILLEZE for any liability arising out of the containment and cleanup activity not associated with the KLEENEZE's willful misconduct.

In certain circumstances a firm or person responsible for releasing oil or hazardous substances will sign such an indemnification agreement with a responsible containment and cleanup contractor. Enactment of the proposed amendment would afford an opportunity to execute indemnification agreements in these circumstances.

This analysis may be slightly different the situation where the state seeks a contractor to contain and cleanup an oil or hazardous substance release. Recently the Alaska Supreme Court stated in Rogers and Babler, a Division of MAPCO Alaska, Inc, v. State of Alaska, _____ P.2d _____ No. 3018, Jan. 31, (Alaska 1986):

We are not inclined to accept a reading of the statute that would invalidate the indemnity provisions in every contract entered into between the state and construction contractors. We think AS 45.45.900 should come into effect only when it is determined, as between the state and the contractors, that the state is solely negligent.

Thus, the supreme court of Alaska, at least with respect to the state, is suggesting that the apparent prohibition on indemnification agreements in construction contracts found at AS 45.45.900 will only apply when the promisee is completely negligent and seeks to hold an innocent promisor accountable.

Under these circumstances, enactment of this amendment may not be necessary but it would probably reduce the legal uncertainty for responsible containment and cleanup contractors and encourage their participation in this difficult business. Passage of this amendment would create an opportunity for arms length bargaining regarding the question of liability. If the department wants to encourage this type of contractual discussion, enactment of this amendment seems appropriate.

Commissioner Bill Ross
Department of Environmental
Conservation
AG File No. 366-354-86

February 27, 1985
Page 5

If the state ever engages the services of a containment and cleanup contractor we trust DEC will work closely and cooperatively with the Department of Law regarding the terms of any proposed indemnification agreement.

III.

CONCLUSION

Two provisions in section 2 of CSHB 470 (Res) would create specific statutory presumptions for persons using or transporting oil or hazardous substances. As such, liability for these particular activities is spelled out with greater specificity, although not necessarily increased. The proposed amendment pertaining to indemnification would merely afford an opportunity for a considered debate on the allocation of liability by removing the apparent statutory bar to indemnification agreements in construction contracts related to cleanup and containment of oil spills and release of hazardous substances.

JWG:rn

cc: G. Thomas Koester
Art Peterson
Doug Mertz
Rep. Mike Davis

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: 2/14/86

REQUEST

Bill/Resolution No. HB 470 (KES)
 Title: An Act Relating to the Release of Oil and Hazardous Substances
 Sponsor: Rep. Mike 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		182.7	227.3	227.3		
TRAVEL		25.0	28.0	28.0		
CONTRACTUAL		48.5	53.5	53.5		
SUPPLIES		22.0	23.5	23.5		
EQUIPMENT		12.0	2.0	2.0		
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		290.2	334.3	334.3		

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		290.2	334.3	334.3		
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

*5.0 FTE

FULL-TIME		4	4	4		
PART-TIME		2	2	2		
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

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

Phone: 465-2666
 Date: 2/14/86

Approved by Commissioner: Bill K.
 Agency: Department of Environmental Conservation

Date: 2/14/86

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 476

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
REQUIEST

Funding for nine months is requested for FY 87

182.7

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. 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 management will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs.

25.0

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.

48.5

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.

22.0

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

12.0

290.2

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	Borg. Unit GGU	Gov. Leg.	Approv.	Disapp.
Time Status Full Time	Staff Months 12	RP Number	Location Juneau		Election District			
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					
			O. P. Match 1003					
			General Funds 1004 74.9					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1051					
			Other					
<div style="border: 1px solid black; padding: 5px; width: fit-content;"> For EAM 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 7 of 8
 Revised Date _____

FY 87

Position Title Clerk Typist III			No. of Positions One	Range/Step B A	Borg. Unit GGU	Gov. L23	Approv.	Disapp.
Years Status Full Time	Staff Months 12	RP Number	Location Juneau		Election District			
Type of Expenditure			Justification					
	2	3	<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>					
Salary	14.7							
Benefits	5.3							
Pension Pay								
Other								
Total Personnel Services		20.0						
Travel								
Contractual		3.5						
Commodities		1.5						
Equipment		2.0						
Other								
Total Cost		27.0						
Receipt Code	Funding Source							
	Federal Receipts 1602							
	S. F. Receipts 1603							
	General Funds 1614		27.0					
	I-A Receipts 1605							
	Program Receipts 1628							
	CIP Receipts 1661							
	Other							
For B&M Use Only Key Number								

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Water Quality Management

FY 87

Page 4 of 8
 Revised Date

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 1B A	Borg. Unit GGII	Gov. Edg.	Approv.	Disapp.																																																											
Time Status Perm. Part Tim	Staff Number 6	RP Number	Location Juneau		Bureau District																																																														
<table border="1"> <thead> <tr> <th>Type of Expenses</th> <th>1</th> <th>2</th> <th>Amount</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td></td> <td>18.7</td> <td></td> <td></td> </tr> <tr> <td>Benefits</td> <td></td> <td>5.6</td> <td></td> <td></td> </tr> <tr> <td>Premium Pay</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total Annual Salary</td> <td></td> <td></td> <td></td> <td>24.3</td> </tr> <tr> <td>Travel</td> <td></td> <td></td> <td></td> <td>5.0</td> </tr> <tr> <td>Contractual</td> <td></td> <td></td> <td></td> <td>5.0</td> </tr> <tr> <td>Commodities</td> <td></td> <td></td> <td></td> <td>3.5</td> </tr> <tr> <td>Equipment</td> <td></td> <td></td> <td></td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total Cost</td> <td></td> <td></td> <td></td> <td>39.8</td> </tr> </tbody> </table>			Type of Expenses	1	2	Amount	3	Salary		18.7			Benefits		5.6			Premium Pay					Other					Total Annual Salary				24.3	Travel				5.0	Contractual				5.0	Commodities				3.5	Equipment				2.0	Other					Total Cost				39.8	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>				
Type of Expenses	1	2	Amount	3																																																															
Salary		18.7																																																																	
Benefits		5.6																																																																	
Premium Pay																																																																			
Other																																																																			
Total Annual Salary				24.3																																																															
Travel				5.0																																																															
Contractual				5.0																																																															
Commodities				3.5																																																															
Equipment				2.0																																																															
Other																																																																			
Total Cost				39.8																																																															
<table border="1"> <thead> <tr> <th>Receipt Code</th> <th>Funding Source</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td></td> <td>Federal Receipts 1032</td> <td></td> </tr> <tr> <td></td> <td>G. E. Math 1003</td> <td></td> </tr> <tr> <td></td> <td>General Funds 1004</td> <td>39.8</td> </tr> <tr> <td></td> <td>I-A Receipts 1005</td> <td></td> </tr> <tr> <td></td> <td>Program Receipts 1020</td> <td></td> </tr> <tr> <td></td> <td>CIP Receipts 1061</td> <td></td> </tr> <tr> <td></td> <td>Other</td> <td></td> </tr> </tbody> </table>			Receipt Code	Funding Source	Amount		Federal Receipts 1032			G. E. Math 1003			General Funds 1004	39.8		I-A Receipts 1005			Program Receipts 1020			CIP Receipts 1061			Other																																										
Receipt Code	Funding Source	Amount																																																																	
	Federal Receipts 1032																																																																		
	G. E. Math 1003																																																																		
	General Funds 1004	39.8																																																																	
	I-A Receipts 1005																																																																		
	Program Receipts 1020																																																																		
	CIP Receipts 1061																																																																		
	Other																																																																		
For B&M Use Only Key Number _____																																																																			

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southeast Region

FY 87

Page 5 of 8
 Revised Date

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Bud. Unit GGII	Gov. 143	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. 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						
			I-A Receipts 1005						
			Program Receipts 1028						
			CIP Receipts 1061						
			Other						
			51.9						
<div style="border: 1px solid black; padding: 5px; width: fit-content;"> For B&M Use Only Key Number _____ </div>									

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southcentral Region

FY 87

Page 6 of 8
 Revised Date

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Org. Unit GGU	Gov.	Approv.	Disapp.
Time Status Perm. Part Time	Staff Months 6	RP Number	Location Anchorage		Election District	Leg.		
Type of Expenditure			Justification					
Annual			<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>					
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						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004		39.8					
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For B&M Use Only								
Key Number								

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southcentral Region

Page 7 of 8
 Revised Date

FY 87

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Org. Unit GGD	Gov. Leg.	Approv.	Blkoff.																																																											
Time Status Full Time	Staff Months 12	RP Number	Location Fairbanks	Election District																																																															
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>1</th> <th>2</th> <th>Annual</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td></td> <td>32.1</td> <td></td> <td></td> </tr> <tr> <td>Benefits</td> <td></td> <td>9.2</td> <td></td> <td></td> </tr> <tr> <td>Provision Pay</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total Personnel Services</td> <td></td> <td></td> <td></td> <td>41.3</td> </tr> <tr> <td>Travel</td> <td></td> <td></td> <td></td> <td>5.0</td> </tr> <tr> <td>Contractual</td> <td></td> <td></td> <td></td> <td>5.0</td> </tr> <tr> <td>Commodities</td> <td></td> <td></td> <td></td> <td>3.5</td> </tr> <tr> <td>Equipment</td> <td></td> <td></td> <td></td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total Cost</td> <td></td> <td></td> <td></td> <td>56.8</td> </tr> </tbody> </table>			Type of Expenditure	1	2	Annual	3	Salary		32.1			Benefits		9.2			Provision Pay					Other					Total Personnel Services				41.3	Travel				5.0	Contractual				5.0	Commodities				3.5	Equipment				2.0	Other					Total Cost				56.8	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.				
Type of Expenditure	1	2	Annual	3																																																															
Salary		32.1																																																																	
Benefits		9.2																																																																	
Provision Pay																																																																			
Other																																																																			
Total Personnel Services				41.3																																																															
Travel				5.0																																																															
Contractual				5.0																																																															
Commodities				3.5																																																															
Equipment				2.0																																																															
Other																																																																			
Total Cost				56.8																																																															
<table border="1"> <thead> <tr> <th>Receipt Code</th> <th>Funding Source</th> <th></th> </tr> </thead> <tbody> <tr> <td></td> <td>Federal Receipts 1602</td> <td></td> </tr> <tr> <td></td> <td>O. P. Match 1603</td> <td></td> </tr> <tr> <td></td> <td>General Funds 1604</td> <td>56.8</td> </tr> <tr> <td></td> <td>I-A Receipts 1605</td> <td></td> </tr> <tr> <td></td> <td>Program Receipts 1628</td> <td></td> </tr> <tr> <td></td> <td>OSP Receipts 1631</td> <td></td> </tr> <tr> <td></td> <td>Other</td> <td></td> </tr> </tbody> </table>			Receipt Code	Funding Source			Federal Receipts 1602			O. P. Match 1603			General Funds 1604	56.8		I-A Receipts 1605			Program Receipts 1628			OSP Receipts 1631			Other		We expect to fill this position on October 1, 1987. Funding for nine months has been requested for FY 87.																																								
Receipt Code	Funding Source																																																																		
	Federal Receipts 1602																																																																		
	O. P. Match 1603																																																																		
	General Funds 1604	56.8																																																																	
	I-A Receipts 1605																																																																		
	Program Receipts 1628																																																																		
	OSP Receipts 1631																																																																		
	Other																																																																		
For BAA Use Only Key Number _____																																																																			

**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Northern Region

Page 8 of 8
Revised Date _____

FY 87

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill Resolution No. : HB 470
Title : An Act Relating to the Release of Oil and Hazardous Substances
Sponsor : DAVIS, Koponen, etc.
Requestor : House Resources
Date of Request : 1/14/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Occupational Safety and Health
Components : Occupational Safety and Health

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL		5.0				
CONTRACTUAL						
SUPPLIES		5.0				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	10.0	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		10.0				
TOTAL	-0-	10.0	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS : Attach a separate page if necessary

Prepared by : Bob Jacobas, Director Phone : 465-4370
 Division : Labor Standards and Safety Date : 1/21/86
 Approved by Commissioner : Jim Robison Date : 1/21/86
 Agency : Labor

- Distribution (by Agency preparing fiscal note):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impact Statement

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. 470

The Department of Environmental Conservation, as the administrator of the "Oil and Hazardous Substance Release Response Fund" will transfer funding by Reimbursable Services Agreement to the Department of Labor. This will allow the Department of Labor to meet its responsibilities under the proposed Section 46.08.040(3).

The \$5000 travel monies will be used to send two industrial health consultants to the Environmental Protection Agency's (EPA's) Hazardous Materials Incidence Operations training course. It is estimated that it will cost \$2,500 each. The course is held at EPA's New Jersey training facility. This will assure that the Department's Occupational Safety and Health Consultation Section will have persons with knowledge to assist employers set up training programs.

The \$5000 in commodities will be used to purchase books and other written materials and films or video tapes recommended by EPA that can be loaned out to employers who need audio visual materials for their training classes.

This fiscal note assumes, though the bill has an "immediate effective date", the funding for the above will not be available until FY 87.

CAPITALIZATION OF OIL SPILL AND HAZARDOUS SUBSTANCE RELEASE
RESPONSE FUND, HB 470

AS INTRODUCED:

- \$1 million original capitalization from Rainy Day Fund
- Automatic annual transfers from Rainy Day Fund to maintain \$1 million balance

PROPOSED CS TO HB 470 (FIN) FUND CAPITALIZATION:

- \$1 million capitalization (outlined below)
- No automatic transfers from Rainy Day Fund
- Balances in future years maintained through annual capital budget appropriations

Existing Oil Spill Fund balance	\$ 300,000 ¹
Obligated monies FY 86	<u>- 100,000²</u>
	SUBTOTAL 200,000
Proposed FY 87 Capital Budget Approp.	300,000 ³
Oil Spill Mitigation Account Balance (receipts from responsible party reimbursements)	19,000 ⁴
Additional Mitigation Account Deposits by 6/86	<u>300,000⁵</u>
	TOTAL 819,000
One-time Transfer from Rainy Day Fund	<u>181,000⁶</u>
	FUND GRAND TOTAL \$1,000,000


¹ This requires that language be placed in HB 574, an Act making operating appropriations and transfers of operating appropriations, or other appropriate legislation to transfer the balance of the fund to the newly established fund.

² These monies are currently obligated and expected to be paid out in FY 86 by the Department to pursue responsible parties in oil spills.

³ The Governor has proposed a \$300,000 appropriation to the oil spill fund in HB 500 (budget bill). This appropriation would also be transferred to the newly established fund.

- 4 The Oil Spill Mitigation Account is an account within the general fund to which reimbursements, fines, penalties and damages are credited. Currently, these funds remain available for reappropriation by the Legislature for oil spill related projects through the end of each calendar year.
- 5 The Department of Environmental Conservation is currently pursuing several actions against responsible parties. The Commissioner's office has indicated that by June 30, it is expected that at least \$300,000 will accrue to the Account as a result of their enforcement actions.
- 6 Section 19 provides for a one-time transfer from the Rainy Day Fund. While the exact figure is unknown, the Governor may only transfer an amount not to exceed \$1 million when added to the total of the above referenced transfers and appropriations.

Offered: 2/10/86
Referred: Finance

gms w/ 

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 * *mitigation*
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
21 oil or a hazardous substance;

22 (2) undertake plans, inspections, sampling, tests, inves-
23 *collapse* } 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 emergency
28 response employers in developing safety education programs under AS
29 18.60 for employees who may be called upon to respond to a release of

1 oil or a hazardous 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) "capital improvement" includes construction,
19 renovation, repair of, and improvement to, a building, but does not
20 include other improvements to real property, such as construction of a
21 dike or retaining wall;

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

24 (3) "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 (4) "department" means the Department of Environmental
29 Conservation;

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

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

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

8 (8) "hazardous substance" means

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

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

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

23 (10) "release" means an intentional or unintentional release
24 into the environment of the state.

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

26 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

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

28 Except as provided in (b) of this section, a person in charge of a
29 vehicle, vessel or container from which, or a place at which, a

1 hazardous substance is released shall report the release to the
2 department and appropriate public safety agencies promptly after
3 learning of the release.

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

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

12 (1) after consulting the Environmental Protection Agency or
13 appropriate public safety agencies, that containment or cleanup is
14 technically infeasible;

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

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

19 (b) The commissioner shall develop guidelines prescribing
20 general procedures and methods to be used in the containment and
21 cleanup of a hazardous substance.

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

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

1 and cleanup of the release unless the commissioner determines

2 (1) after consulting the Environmental Protection Agency or
3 appropriate public safety agencies, that containment or cleanup is
4 technically infeasible;

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

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

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

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

14 (2) provide for cooperative hazardous substance release
15 notification procedures; or

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

18 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
19 request the governor to determine that an actual or imminent release
20 of a hazardous substance constitutes a disaster emergency under
21 AS 26.23. If the governor declares a disaster emergency under AS 26.-
22 23, the commissioner may assist the adjutant general in the relief of
23 the emergency.

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

1 equipment, and supplies necessary to carry out the requirements of
2 this chapter.

3 Sec. 46.09.050. PEACE OFFICERS. Employees of the department
4 designated by the commissioner as enforcement officers in the imple-
5 mentation of this chapter are peace officers of the state.

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

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

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

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

24 Sec. 46.09.900. DEFINITIONS. In this chapter

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

27 (2) "containment and cleanup" includes the direct and
28 indirect efforts associated with the prevention, abatement, contain-
29 ment, or removal of a hazardous substance, the restoration of the

1 environment to its former state, and incidental administrative costs;

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

4 (4) "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 (5) "release" means an intentional or unintentional release
15 into the environment of the state.

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

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

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

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

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

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

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

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

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

29 (a) When the department finds that an actual or imminent

1 discharge of oil, a hazardous substance, or low level radioactive
2 materials to the air, water, land or subsurface land of the state
3 poses an immediate threat to the public health or welfare, or the
4 environment of the state, it may issue an order declaring an emergency
5 and directing a person or persons to take action the department
6 believes necessary to meet the emergency, and protect the public
7 health, welfare, or environment.

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

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

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

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

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

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

1 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-
2 tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09
3 or of a regulation, a lawful order of the department, or permit,
4 approval, or acceptance, or term or condition of a permit, approval,
5 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.
6 In actions brought under this section, temporary or preliminary relief
7 may be obtained upon a showing of an imminent threat of continued
8 violation, and probable success on the merits, without the necessity
9 of demonstrating physical irreparable harm. The balance of equities
10 in actions under this section may affect the timing of compliance, but
11 not the necessity of compliance within a reasonable period of time.

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

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

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

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

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

29 (b) Except as provided in (d) - (f) of this section, a person

1 who knowingly violates a provision of this chapter, [OR] AS 46.04, or
2 AS 46.09, or of a regulation, lawful order of the department, or
3 permit, approval, or acceptance, or term or condition of a permit,
4 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
5 AS 46.09 is guilty of a class A misdemeanor.

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

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

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

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

24 * Sec. 15. Not later than January 1, 1987, the commissioner of
25 environmental conservation shall develop guidelines under AS 46.09.020,
26 added by sec. 2 of this Act.

27 * Sec. 16. Not later than October 1, 1987, the commissioner of
28 environmental conservation shall adopt regulations under AS 46.09.080,
29 added by sec. 2 of this Act.

1 * Sec. 17. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 3/12/86

REQUEST

Bill/Resolution No. : CSSB 375 (Res)
 Title : An Act Relating to the Release of Oil and Hazardous Substances
 Sponsor : Senate Resources Committee
 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	0	100.8	132.2	132.2	132.2	132.2
TRAVEL	0	13.0	15.0	15.0	15.0	15.0
CONTRACTUAL	0	21.0	21.0	21.0	21.0	21.0
SUPPLIES	0	8.5	10.0	10.0	10.0	10.0
EQUIPMENT	0	6.0	2.0	2.0	2.0	2.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	149.3	180.2	180.2	180.2	180.2

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	149.3	180.2	180.2	180.2	180.2
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS : *3.0 PFT

FULL-TIME	0	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : DEPARTMENT OF ENVIRONMENTAL CONSERVATION Phone : 465-2600
 Division : _____ Date : 3/12/86
 Approved by Commissioner Scott Collins Date : 3/13/86
 Agency : CHAIRMAN - SENATE RESOURCES COMMITTEE

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. CSSB 375 (Res)

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

100.8

A. Program Management

1. An administrative assistant to prepare guidelines and contracts, help initiate appropriate cost-recovery actions, coordinate training, maintain records and prepare reports to the legislature.

Response Capability

2. Two 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 position in Anchorage for the Southcentral Region; and 2) one position in Fairbanks for the Northern Region.

B. Support Costs

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

13.0

2. Contractual funds of about 7.0 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.

21.0

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.

8.5

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

6.0

149.3

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 Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Org. Unit (N/A)	Gov.	Appov.	Disapp.
Time Status Full Time	Shift Months 12	Job Number	Location Fairbanks	Section District		Exp.		
Type of Expenditure			Justification					
1	2	3	<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>					
Salary	32.1							
Benefits	9.2							
Premium Pay								
Other								
Total Personal Services		41.3						
Travel		5.0						
Car rental		5.0						
Con. utilities		3.5						
Equip.		2.0						
Other								
Total Cost		56.8						
Receipt Code	Position Receipt							
	Federal Receipt	1002						
	G. P. Match	1003						
	General Funds	1004	56.8					
	I-A Receipts	1005						
	Program Receipts	1020						
	CIP Receipts	1061						
	Other							
For DDM Use Only								
Key Number								

**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Northern Region

Page 8.7 of 85
 Revised Date

FY 87

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Org. Unit GGU	Gov. 149	Approv.	Disapp.
Time Status Full Time	Start Month 12	RP Number	Location Anchorage		Section District			
Type of Expenditure			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.					
Annual			We expect to fill this position on October 1, 1986.					
			Funding for nine months has been requested for FY 87.					
Type of Expenditure			Total Personnel Services					
1			2					
3			36.4					
Salary			5.0					
Benefits			5.0					
Premium Pay			3.5					
Other			2.0					
Total Cost			51.9					
Travel								
Contractual								
Commodities								
Equipment								
Other								
Receipt Code			Funding Source					
			Federal Receipts 1002					
			O. P. Match 1003					
			General Funds 1004					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
			51.9					
Per BAM Use Only								
Key Number								

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southcentral Region

FY 87

Page 4 of 5
 Revised Date

Position Title Administrative Assistant II			No. of Positions One	Range/Step 14 A	Barg. Unit GGU	Gov. U.S.	Approv.	Disapp.																																				
Time Status Full Time	Staff Months 12	RP Number	Location Juneau	Election District																																								
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>2</th> <th>Amount</th> </tr> <tr> <th>1</th> <th></th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>21.2</td> <td rowspan="4"></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></td> <td>28.0</td> </tr> <tr> <td>Travel</td> <td></td> <td>3.0</td> </tr> <tr> <td>Contractual</td> <td></td> <td>11.0</td> </tr> <tr> <td>Commodities</td> <td></td> <td>1.5</td> </tr> <tr> <td>Equipment</td> <td></td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td>Total Cost</td> <td></td> <td>45.5</td> </tr> </tbody> </table>			Type of Expenditure	2	Amount	1		3	Salary	21.2		Benefits	6.8	Premium Pay		Other		Total Personal Services		28.0	Travel		3.0	Contractual		11.0	Commodities		1.5	Equipment		2.0	Other			Total Cost		45.5	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	2	Amount																																										
1		3																																										
Salary	21.2																																											
Benefits	6.8																																											
Premium Pay																																												
Other																																												
Total Personal Services		28.0																																										
Travel		3.0																																										
Contractual		11.0																																										
Commodities		1.5																																										
Equipment		2.0																																										
Other																																												
Total Cost		45.5																																										
<table border="1"> <thead> <tr> <th>Receipt Code</th> <th>Funding Source</th> <th></th> </tr> </thead> <tbody> <tr> <td></td> <td>Federal Receipts 1002</td> <td></td> </tr> <tr> <td></td> <td>G. F. Match 1003</td> <td></td> </tr> <tr> <td></td> <td>General Funds 1004</td> <td>45.5</td> </tr> <tr> <td></td> <td>I-A Receipts 1005</td> <td></td> </tr> <tr> <td></td> <td>Program Receipts 1028</td> <td></td> </tr> <tr> <td></td> <td>CIP Receipts 1061</td> <td></td> </tr> <tr> <td></td> <td>Other</td> <td></td> </tr> </tbody> </table>			Receipt Code	Funding Source			Federal Receipts 1002			G. F. Match 1003			General Funds 1004	45.5		I-A Receipts 1005			Program Receipts 1028			CIP Receipts 1061			Other																			
Receipt Code	Funding Source																																											
	Federal Receipts 1002																																											
	G. F. Match 1003																																											
	General Funds 1004	45.5																																										
	I-A Receipts 1005																																											
	Program Receipts 1028																																											
	CIP Receipts 1061																																											
	Other																																											
For B&M Use Only Key Number _____																																												

**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Water Quality Management

Page 5 of 5
Revised Date

FY 87

CAPITALIZATION OF OIL SPILL AND HAZARDOUS SUBSTANCE RELEASE
RESPONSE FUND, HB 470

AS INTRODUCED:

- \$1 million original capitalization from Rainy Day Fund
- Automatic annual transfers from Rainy Day Fund to maintain \$1 million balance

PROPOSED CS TO HB 470 (FIN) FUND CAPITALIZATION:

- \$1 million capitalization (outlined below)
- No automatic transfers from Rainy Day Fund
- Balances in future years maintained through annual capital budget appropriations

Existing Oil Spill Fund balance	\$ 300,000 ¹
Obligated monies FY 86	<u>- 100,000²</u>
	SUBTOTAL 200,000
Proposed FY 87 Capital Budget Approp.	300,000 ³
Oil Spill Mitigation Account Balance (receipts from responsible party reimbursements)	19,000 ⁴
Additional Mitigation Account Deposits by 6/86	<u>300,000⁵</u>
	TOTAL 819,000
One-time Transfer from Rainy Day Fund	<u>181,000⁶</u>
	FUND GRAND TOTAL \$1,000,000

¹ This requires that language be placed in HB 574, an Act making operating appropriations and transfers of operating appropriations, or other appropriate legislation to transfer the balance of the fund to the newly established fund.

² These monies are currently obligated and expected to be paid out in FY 86 by the Department to pursue responsible parties in oil spills.

³ The Governor has proposed a \$300,000 appropriation to the oil spill fund in HB 500 (budget bill). This appropriation would also be transferred to the newly established fund.

CAPITALIZATION OF OIL SPILL AND HAZARDOUS SUBSTANCE RELEASE
RESPONSE FUND, HB 470

AS INTRODUCED:

- \$1 million original capitalization from Rainy Day Fund
- Automatic annual transfers from Rainy Day Fund to maintain \$1 million balance

PROPOSED CS TO HB 470 (FIN) FUND CAPITALIZATION:

- \$1 million capitalization (outlined below)
- No automatic transfers from Rainy Day Fund
- Balances in future years maintained through annual capital budget appropriations

Existing Oil Spill Fund balance	\$ 300,000 ¹
Obligated monies FY 86	<u>- 100,000²</u>
	SUBTOTAL 200,000
Proposed FY 87 Capital Budget Approp.	300,000 ³
Oil Spill Mitigation Account Balance (receipts from responsible party reimbursements)	19,000 ⁴
Additional Mitigation Account Deposits by 6/86	<u>300,000⁵</u>
	TOTAL 819,000
One-time Transfer from Rainy Day Fund	<u>181,000⁶</u>
	FUND GRAND TOTAL \$1,000,000

¹ This requires that language be placed in HB 574, an Act making operating appropriations and transfers of operating appropriations, or other appropriate legislation to transfer the balance of the fund to the newly established fund.

² These monies are currently obligated and expected to be paid out in FY 86 by the Department to pursue responsible parties in oil spills.

³ The Governor has proposed a \$300,000 appropriation to the oil spill fund in HB 500 (budget bill). This appropriation would also be transferred to the newly established fund.

- 4 The Oil Spill Mitigation Account is an account within the general fund to which reimbursements, fines, penalties and damages are credited. Currently, these funds remain available for reappropriation by the Legislature for oil spill related projects through the end of each calendar year.
- 5 The Department of Environmental Conservation is currently pursuing several actions against responsible parties. The Commissioner's office has indicated that by June 30, it is expected that at least \$300,000 will accrue to the Account as a result of their enforcement actions.
- 6 Section 19 provides for a one-time transfer from the Rainy Day Fund. While the exact figure is unknown, the Governor may only transfer an amount not to exceed \$1 million when added to the total of the above referenced transfers and appropriations.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

March 12, 1986

COMMITTEE ON RESOURCES LETTER OF INTENT FOR CSSB 375 (Resources)

To encourage responsible, experienced Alaskan companies to enter the oil and hazardous substance cleanup business and to facilitate the goals of cleaning up these substances, it is the intent of the Legislature to clarify the definition of "construction contracts" in AS 45.45.900. The provision in CSSB 375 (Resources) addresses an ambiguity in the current statute which prohibits indemnification agreements in construction contracts by specifically exempting hazardous waste cleanup contracts from this definition.

The provision does not require any entity, public or private, to enter into an indemnification agreement. It is not intended to hold any party harmless or exempt parties from liability for mishandling of oil or hazardous substances. The intent is to provide a mechanism for the allocation of liability among parties by allowing them to enter into contracts which provide protections and clear lines of responsibility.

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

CSHB 470 (FIN)
Highlights of Subcommittee Charge

The charge to the subcommittee:

- 1) Look at the proposed funding mechanism for the fund;
- 2) Look at the fiscal note;
- 3) Look at the possible federal funds available for hazardous waste cleanup.

The response:

The Finance Committee Substitute

- 1) Eliminates the automatic yearly transfer from the Rainy Day Fund;
- 2) Limits the use of the fund to emergency responses and investigations of sites which pose an imminent and substantial threat to human health or welfare or to the environment;
- 3) Provides for a detailed report to the Legislature on the use of the fund;
- 4) Calls for a yearly list of sites which require further action and their associated costs;
- 5) Provides direction and criteria for Department on reimbursements made from the fund to municipalities; and
- 6) Tightens the definition of "hazardous substance" to mean those substances contained in the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, while maintaining the commissioner's flexibility in responding to elements which pose an imminent and substantial threat.

The fiscal note. The new fiscal note reflects the minimum level of staffing required to implement the new program. It reduces the original request by almost \$150,000 and reduces the required positions from five to three.

Fund capitalization. Under the Finance CS transfers from the Rainy Day Account to the Response Fund for initial capitalization would be minimized. Instead of the \$1 million initial transfer originally proposed, the CS proposes to utilize existing oil spill fund and mitigation account balances and capital appropriations for most of the initial capitalization. A maximum of \$200,000 is estimated to be needed as a one-time transfer from the Rainy Day Account.

Federal monies. The Department of Defense has been spending approximately \$25 million yearly in hazardous waste cleanup activities throughout the state. The positions authorized in the fiscal note will coordinate with DOD to assure the optimum use of the federal funds. Additionally, should the federal "Superfund" (C.E.R.C.L.A.) be reauthorized and funded, the fund could be used to match federal receipts.

The following represents the subcommittee's changes to the Resources' CSHB 470:

pg. 1, line 7 - title change to include repeal of oil spill mitigation account

pg. 1, line 24 - removes reference to Commissioner of Revenue as custodian of the fund.

This is consistent with subcommittee action regarding the funding mechanism.

pg. 2, lines 14-20 - establishes a new oil spill and hazardous substance release mitigation account within the general fund and authorizes the deposit of monies recovered from responsible parties in oil spills or hazardous substance releases, fines, penalties or damages to be deposited in the general fund but credited to the new mitigation account.

This language mirrors the existing oil spill mitigation account which this bill repeals.

pg. 2, line 25 - removes language requiring approval of the governor.

pg. 2, line 27 - pg. 3, line 2 - under Purposes of the Fund, authorizes commissioner to take necessary actions to protect the public health, welfare or the environment from imminent or substantial threats from the release or threatened release of oil or hazardous substances.

Removes safety education programs for emergency response employers by Department of Labor as a use of the fund.

pg. 3, lines 13-16 - removes requirement that commissioner of DEC adopt regulations governing accounting of fund. Instead, requires that the department develop guidelines.

Removes reference to state disbursement officer. This section was no longer required because the Rainy Day Fund is no longer used as an annual funding source for the new fund.

pg. 3, line 18 - removes requirement that the commissioner report to the governor.

pg. 3, line 27 - pg. 4, line 14 - under Report to the Legislature, adds to the report requirements:

- summary of municipal participation in responses funded by the fund;

- summary and description of the responses funded from the fund;
- summary of hazardous waste sites identified by the department which require action but which pose no imminent or substantial threat and a breakdown of the proposed departmental action and the estimated cost.

pg. 4, line 24 - pg. 5, line 5 - under Reimbursement for Containment and Cleanup, establishes parameters under which municipalities may be reimbursed for actual expenses, above and beyond normal operating expenses for abatement activities.

Requires an agreement between DEC and municipalities and the commissioner must determine that the expenses were necessary due to the emergency nature of the municipality's response.

pg. 5, line 6 - changes shall to may, adopt regulations as necessary.

pg. 5, line 17 - adds oil to definition of "containment and cleanup" (technical).

pg. 6, lines 1-3 - under Definitions, removes section which would have defined hazardous substance as any substance so defined in any federal or state act or regulation and more narrowly defines it to conform to the federal definition contained in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

pg. 8 - removes section designating DEC enforcement officers as "peace officers."

pg. 9, lines 23-25 - under Definitions, conforms language to definition of hazardous substance.

pg. 14, lines 22 and 23 - changes language to make deposit language consistent with language elsewhere in bill.

Requires that when the department is reimbursed for cleanup expenses, the monies are deposited to the general fund and credited to the newly created oil and hazardous substance release mitigation account.

pg. 14, lines 25-27 - amends current statute which provides that DEC inspection and enforcement employees are peace officers to include Chapter 9 hazardous substance release control enforcement employees.

pg. 15, lines 5-11 - provides the mechanism whereby the governor is authorized to transfer amounts that when added to amount appropriated, reappropriated or transferred to the response fund from the Rainy Day Fund do not exceed \$1 million for FY 87 only.

pg. 15, line 12 - repeals current oil spill mitigation account.

pg. 15, lines 13 and 14 - makes all sections effective
immediately except the provision for the Rainy Day Fund
transfer.

pg. 15, line 15 - makes the Rainy Day Fund transfer section
effective July 1, 1986.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 485-4907

Senate Committee on Resources

TO: Senate Resource Committee Members March 12, 1986
FROM: Senate Resource Committee Staff *MB*
RE: SB 375 "An Act relating to the release of oil and hazardous substances; and providing for an effective date."

This bill is the Senate companion legislation to HB 470. HB 470 is currently in the House Finance committee. In this packet is a proposed committee substitute which is identical to the House Finance Committee Substitute. A subcommittee of the House Finance Committee has done extensive work on the bill and there know seems to be general concurrence in the House.

The memo in this packet from Mark Boyer details the changes between this CS and the version that the committee considered before. Also included in this packet is an updated packet of information relevant to the CS before the committee. A table of contents for that packet is on the first page of that packet.

Oil spill fund
200,000

MARKED TO
SHOW AMENDMENTS

Offered: 2/10/86
Referred: Finance

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
substances; and providing for an effective date."

7

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 emergency
28 response employers in developing safety education programs under AS
29 18.60 for employees who may be called upon to respond to a release of

1 oil or a hazardous 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) "capital improvement" includes construction,
19 renovation, repair of, and improvement to, a building, but does not
20 include other improvements to real property, such as construction of a
21 dike or retaining wall;

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

24 (3) "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 (4) "department" means the Department of Environmental
29 Conservation;

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

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

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

8 (8) "hazardous substance" means

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

14 or

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

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

23 (10) "release" means an intentional or unintentional release
24 into the environment of the state.

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

26 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

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

28 Except as provided in (b) of this section, a person in charge of a
29 vehicle, vessel or container from which, or a place at which, a

1 hazardous substance is released shall report the release to the
2 department and appropriate public safety agencies promptly after
3 learning of the release.

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

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

12 (1) after consulting the Environmental Protection Agency or
13 appropriate public safety agencies, that containment or cleanup is
14 technically infeasible;

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

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

19 (b) The commissioner shall develop guidelines prescribing
20 general procedures and methods to be used in the containment and
21 cleanup of a hazardous substance.

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

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

1 and cleanup of the release unless the commissioner determines

2 (1) after consulting the Environmental Protection Agency or
3 appropriate public safety agencies, that containment or cleanup is
4 technically infeasible;

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

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

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

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

14 (2) provide for cooperative hazardous substance release
15 notification procedures; or

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

18 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
19 request the governor to determine that an actual or imminent release
20 of a hazardous substance constitutes a disaster emergency under
21 AS 26.23. If the governor declares a disaster emergency under AS 26.-
22 23, the commissioner may assist the adjutant general in the relief of
23 the emergency.

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

1 equipment, and supplies necessary to carry out the requirements of
2 this chapter.

3 Sec. 46.09.050. PEACE OFFICERS. Employees of the department
4 designated by the commissioner as enforcement officers in the imple-
5 mentation of this chapter are peace officers of the state.

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

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

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

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

24 Sec. 46.09.900. DEFINITIONS. In this chapter

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

27 (2) "containment and cleanup" includes the direct and
28 indirect efforts associated with the prevention, abatement, contain-
29 ment, or removal of a hazardous substance, the restoration of the

1 environment to its former state, and incidental administrative costs;

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

4 (4) "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 (5) "release" means an intentional or unintentional release
15 into the environment of the state.

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

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

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

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

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

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

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

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

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

29 (a) When the department finds that an actual or imminent

1 discharge of oil, a hazardous substance, or low level radioactive
2 materials to the air, water, land or subsurface land of the state
3 poses an immediate threat to the public health or welfare, or the
4 environment of the state, it may issue an order declaring an emergency
5 and directing a person or persons to take action the department
6 believes necessary to meet the emergency, and protect the public
7 health, welfare, or environment.

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

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

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

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

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

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

1 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-
2 tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09
3 or of a regulation, a lawful order of the department, or permit,
4 approval, or acceptance, or term or condition of a permit, approval,
5 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.
6 In actions brought under this section, temporary or preliminary relief
7 may be obtained upon a showing of an imminent threat of continued
8 violation, and probable success on the merits, without the necessity
9 of demonstrating physical irreparable harm. The balance of equities
10 in actions under this section may affect the timing of compliance, but
11 not the necessity of compliance within a reasonable period of time.

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

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

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

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

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

29 (b) Except as provided in (d) - (f) of this section, a person

1 who knowingly violates a provision of this chapter, [OR] AS 46.04, or
2 AS 46.09, or of a regulation, lawful order of the department, or
3 permit, approval, or acceptance, or term or condition of a permit,
4 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
5 AS 46.09 is guilty of a class A misdemeanor.

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

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

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

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

24 * Sec. 15. Not later than January 1, 1987, the commissioner of
25 environmental conservation shall develop guidelines under AS 46.09.020,
26 added by sec. 2 of this Act.

27 * Sec. 16. Not later than October 1, 1987, the commissioner of
28 environmental conservation shall adopt regulations under AS 46.09.080,
29 added by sec. 2 of this Act.

- 1 * Sec. 17. This Act takes effect immediately in accordance with AS 01.-
- 2 10.070(c).