

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

6981 HOUSE JUDICIARY

2024

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 538

ANALYSIS:

HB 538 creates a new and very broad presumption that any form of heart or respiratory disease or cancer affecting an individual with more than five years of fire fighting exposure arises from their work experience. This presumption is further expanded to apply for an additional 20 years beyond the last date the individual was employed as a fire fighter.

The terms "heart disease, respiratory disease and cancer" are very broad and will be construed to extend this presumption such that any form of the many variations of these diseases will be deemed caused by work rather than personal exposures.

The fiscal impact for this bill is difficult to estimate as it will extend not only to the 175 regular full-time fire fighters employed by the State, but also to the 130 regular seasonal fire fighters engaged by the Department of Natural Resources (average of 5.3 months per year) and possibly to the 600-800 emergency fire fighting crews that are hired for anywhere between 3 weeks to 2 months a year.

Conservative cost estimates (medical and wage loss) range between \$240,000 and \$400,000 for each potential permanent disability claim. We project future claims to increase each year due to the very broad language and 20-year extension period. Even by very conservative estimates we anticipate several cases in the early years, with ever increasing obligations even beyond our five-year projection.

Since the Division of Risk Management claims funds are collected entirely through interagency receipts, if enacted premium allocations to the employing agencies would be increased to meet this additional exposure.

**COMMITTEE COPY**

FISCAL NOTE

No. 2

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO : B. 'ersion: CSHB 538(HES)  
(H) Publish Date: 4-6-92

Revision Date: \_\_\_\_\_  
Title: "An Act relating to workers' compensation ... for firefighters ..."  
Sponsor: Representative Eillis  
Requestor: House HES

Department Affected: Labor  
BRU: Workers' Compensation  
Component: \_\_\_\_\_  
Workers' Compensation  
COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Linda Rexwinkel, Director Phone: 465-2790  
Division: Workers' Compensation Date: 3/26/92  
Approved by Commissioner: C. W. Marten  
Agency: Department of Labor 3/26/92 Date: 3/26/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

COMMITTEE COPY

FN to Labor

**FISCAL NOTE**

**STATE OF ALASKA**  
**1992 LEGISLATIVE SESSION**

**BILL NO :** CSHB 538 (HES)

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to workers' compensation ... for firefighters ..."  
 Sponsor: Representative Eills  
 Requestor: House Labor & Commerce

Department Affected: Labor  
 BRU: Workers' Compensation  
 Component: Workers' Compensation  
**COMPONENT SERIAL NO.** 344

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

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>						
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<b>REVENUE FUND SOURCE:</b>						
-----------------------------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: John A. Abshire, Deputy Commissioner Phone: 465-2700  
 Division: Commissioners' Office Date: 4/7/92  
 Approved by Commissioner: C. W. Mahlen  
 Agency: Department of Labor Date: 4/7/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

**FISCAL NOTE**

**STATE OF ALASKA**  
**1992 LEGISLATIVE SESSION**

**BILL NO :** HB 538

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to workers' compensation ... for firefighters ..."  
 Sponsor: Representative Ellis  
 Requestor: House HES

Department Affected: Labor  
 BRU: Workers' Compensation  
 Component: Workers' Compensation  
 COMPONENT SERIAL NO. 344

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

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE FUND SOURCE:</b>						
-----------------------------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Linda Rexwinkel, Director *LR* Phone: 465-2790  
 Division: Workers' Compensation Date: 3/26/92  
 Approved by Commissioner: C. W. Mahlen *CW Mahlen*  
 Agency: Department of Labor 3/26/92 Date: 3/26/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 538

Revision Date: \_\_\_\_\_

Department Affected: Administration

Title: An Act relating to workers' compensation and occupational disability benefits for fire fighters

BRU: Risk Management

Sponsor: Ellis Donlev Finkelstein

Component: Risk Management

Requestor: \_\_\_\_\_

COMPONENT SERIAL NO. 0 1 0 1 7 1 1

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	300.0	500.0	700.0	900.0	1,200.0	1,500.0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	300.0	500.0	700.0	900.0	1,200.0	1,500.0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE: 1007	300.0	500.0	700.0	900.0	1,200.0	1,500.0
TOTAL	300.0	500.0	700.0	900.0	1,200.0	1,500.0

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)  
See Attached.

Prepared by: Don Hitchcock, Director  
Division: Risk Management

Phone: 465-2180  
Date: February 28, 1992

Approved by Commissioner: Nancy Bear Usery  
Agency: Administration

Date: 3/24/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

*FN 300.0 Administration*

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

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The fiscal impact for this bill is difficult to estimate as it will extend not only to the 175 regular full-time fire fighters employed by the State, but also to the 130 regular seasonal fire fighters engaged by the Department of Natural Resources (average of 5.3 months per year) and possibly to the 600-800 emergency fire fighting crews that are hired for anywhere between 3 weeks to 2 months a year.

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Since the Division of Risk Management claims funds are collected entirely through interagency receipts, if enacted premium allocations to the employing agencies would be increased to meet this additional exposure.

# ALASKA STATE HOUSE

3111 C STREET, SUITE 455  
ANCHORAGE, ALASKA 99503  
(907) 561-7828

WHILE IN SESSION  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3704



CHAIR  
RULES COMMITTEE

JUDICIARY

SPECIAL COMMITTEE ON INTERNATIONAL  
TRADE & TOURISM

LEGISLATIVE COUNCIL

REPRESENTATIVE JOHNNY ELLIS

## SPONSOR STATEMENT

### House Bill 538

Firefighters face occupational dangers that are unique to their work. They rush into uncontrolled environments where they are exposed to carcinogenic, poisonous or toxic smoke or fumes. They are also exposed to a growing list of hazardous chemicals, the effects of which are not fully known. The effects of exposure may not manifest itself until long after the exposure occurred.

House Bill 538 was introduced due to the unique hazards faced by firefighters. Under the state workers compensation program, this bill changes the burden of proof from the firefighter to the state, that any heart disease, respiratory disease, cancer or circulatory problems that the firefighter develops was not due to the firefighter's employment.

Alaska is one of the few states that has not established this presumption in regard to occupational diseases of firefighters. Forty-three other states have done so. House Bill 538 includes volunteer firefighters.



(7)

Date Referred: April 6, 1992

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 4-7-92

The LABOR AND COMMERCE Committee considered:

HB 538

HOUSE BILL NO. 538

DISABILITY/COMP BENEFITS: FIREFIGHTERS

"An Act relating to workers' compensation and occupational disability benefits for firefighters; and providing for an effective date."

RECOMMENDATIONS:  the same title  
be replaced with \_\_\_\_\_  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) Administration

zero fiscal note \_\_\_\_\_

zero fiscal note(s) Labor

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>		<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				

*[Signature]*  
CHAIRMAN'S SIGNATURE

# HOUSE COMMITTEE REPORT

(7)

Date Referred: February 18, 1992

FURTHER REFERRALS:

Labor & Commerce  
Judiciary

Date of Committee Action: 4/13/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 538

HOUSE BILL NO. 538

DISABILITY/COMP BENEFITS: FIREFIGHTERS

"An Act relating to workers' compensation and occupational disability benefits for firefighters; and providing for an effective date."

**RECOMMENDATIONS:**

be replaced with CS HB 538 (HES)  the same title  
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	<u>OTHER</u> RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i> Carney	<input checked="" type="checkbox"/>	Mary Miller		<input checked="" type="checkbox"/>	
		<i>[Signature]</i>		<input checked="" type="checkbox"/>	
		<i>[Signature]</i>		<input checked="" type="checkbox"/>	

*[Signature]* Carney  
CO-CHAIRMAN'S SIGNATURE

**BILL NO:** CS for House Bill No. 538(HES)

**DATE:** April 9, 1992

**TITLE:** Disability/Comp Benefits:  
Firefighters

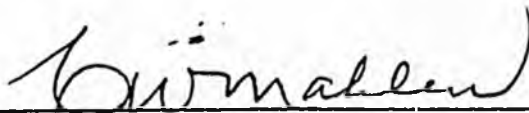
**CONTACT:** Arbe Williams  
465-2700

Committee Substitute for House Bill No. 538 (HES) amends the Alaska Workers' Compensation Act to include the presumption that heart disease, respiratory disease, or cancer suffered by a fire fighter is work-related if the disease occurs during employment as a fire fighter. This presumption is maintained for twenty years after termination of employment as a fire fighter if the fire fighter has been employed continuously as a fire fighter for five years before the onset of the disease.

It is not anticipated that this bill will affect the department's administration of the Alaska Workers' Compensation Act. However, the Act already creates a presumption, in the absence of substantial evidence to the contrary, that the injury or illness is work-related. It is additionally provided that there is no time limitation for filing a claim for workers' compensation coverage in the case of latent defects pertinent to and causing compensable disability.

The Department of Labor does not support CS for House Bill No. 538 (HES). In effect, this legislation would grant preferred status to a specific group of workers and would place an undue burden on certain employers. Workers are adequately protected by the presumption currently in law.

APPROVED:



---

C. W. Mahlen, Commissioner  
Department of Labor

**POSITION PAPER/Department of Labor**



# **ANCHORAGE FIRE FIGHTERS UNION**

LOCAL 1264  
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS  
AFL-CIO

1200 E. 76TH #1227  
ANCHORAGE, ALASKA 99518



February 13, 1992

To The Honorable Members of the Alaska Legislature:

Representative Ellis is sponsoring legislation that would provide Alaskan firefighters with a rebuttable presumption of causation between occupational hazards associated with firefighting and certain diseases prevalent among active and retired firefighters. Specifically, the diseases covered by the presumption include heart and respiratory disease and cancer.

The presumption is necessary in order to ensure that firefighters will qualify for medical cost reimbursement, disability payments and death benefits associated with such illnesses. Under existing Alaska law, firefighters bear the legal burden of proving that such illnesses are occupationally related.

It should be noted that Alaska is one of only a few states that have not established a presumption with regard to occupational diseases. According to information recently received from the International Association of Firefighters, approximately 43 states have statutes establishing a presumption with regard to occupational diseases. The scope of the presumption varies from state to state.

Recognizing that most communities in Alaska have volunteer fire departments, this legislation would extend the benefit of the presumption to any firefighter, volunteer or paid, with five or more years active service.

We look forward to working with the Seventeenth Legislature for passage of this critically important legislation and will be happy to meet with members individually or in committee to foster its advancement. This legislation is the Anchorage Firefighters Union's number one legislative priority.

We respectfully encourage all legislators to consider co-sponsorship and would be happy to provide you with additional information and answer any questions you or your staff may have.

Sincerely,

Tim Cornelius  
President

# RASMUSSEN'S MUSIC MART

LEO, ERNA, AMANDA & KRISTINA  
P. O. BOX 2-77 FEDERAL WAY  
NOME, ALASKA 99762-0002

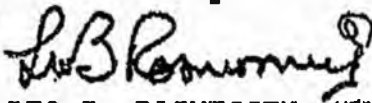
AK. BUS. LIC. 1037362  
NOTARY PUBLIC  
LEO

6 April 1992

Rep. Richard Foster  
FAX #465-3242  
JUNEAU, ALASKA

Dear Richard,

Noticed that House Bill No. 538 was due to be discussed in the near future and wanted you to know after having been on a Volunteer Fire Dept. here in Nome for 25 years, that I support the concept of protecting those that protect so many others. Workman's Compensation Benefits for the Volunteer Fireman has been a long time in coming. The Volunteer Fireman serves the public in no less form than does the Paid Fireman. They serve the public at full exposure to financial loss to their families for those diseases and dangers that effect all Firemen. Although I am inside as a Fireman, I suspect from my other backgrounds that Volunteer Departments would attract more Firemen towards Volunteering if they had the security afforded them thru Workman's Compensation.  
Thanks for your time.



LEO B. RASMUSSEN NVPD Lt. 1967-Pres.  
Mayor of Nome, 1977-1985

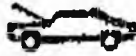
Appointed: "Alaska's Goodwill Ambassador to Chukotka"  
"Iditarod National Historic Trail Advisory Council"  
"Alaska Special Task Force on Governmental Roles"

Tely # (907) 443-2798 or -2919 FAX (907) 443-5777 or -2973

Rep. Ing: Northern Outfitters  
Best in the Arctic  
Rep. Ing: ACME PROVISIONERS  
Baysa Groceries  
WESTERN UNION  
& Transfer  
AGENTS FOR

ASORING: "THE GREAT BATHUB RACE"  
Noon Labor Day  
HOPE '91 & '92, 21 March  
"THE ARCTIC MOUNTAIN RUN"  
8am - 4th of July

(907) 443-2855



**NOME MACHINE WORKS**  
AUTO - TRUCK REPAIR

DOUGLAS A. DOYLE  
Owner

FIRST & METTLER  
P.O. BOX 861  
NOME, ALASKA 99702

FAX (907) 443-3125

DATE 4-7-92

TO REP FOSTER

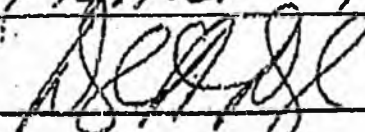
FROM Doug Doyle

PAGE 1 of 1

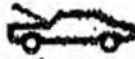
I encourage the passage of  
HB 538 - I cannot believe  
the position of the AML.

As far as fire fighters being  
compensated, I am paid about  
\$300<sup>00</sup> annually to put my life  
and health on the line for the  
people of the STATE OF ALASKA

21 YR VOLUNTEER FIRE  
Fighter - Nome

S/   
Douglas A. Doyle

(907) 443-2355



**NOME MACHINE WORKS**  
AUTO - TRUCK REPAIR

DOUGLAS R. DOYLE  
Owner

FIRST & METTLER  
P.O. BOX 881  
NOME, ALASKA 99762

FAX (907) 443-3125

DATE 4-7-92

To Rep Foster

FROM HOMER WHITE

PAGE 1 of 1

I am in favor of House Bill

538.

H. O. A.

HOMER G. WHITE

Fairbanks AK.



FIRE DEPARTMENT

210 LOWER MILL BAY ROAD, KODIAK, ALASKA 99615

TELEPHONE (907) 486-8040

FAX (907) 486-8000

April 9, 1992

Representative Richard Foster  
Alaska Legislature; House of Representatives  
Juneau, Alaska

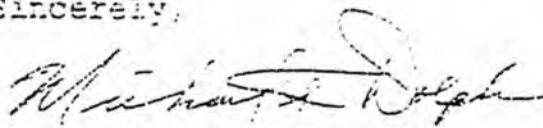
Dear Representative Foster,

This letter is intended to voice interest in the passage of House Bill No. 538. This bill, sponsored by Rep. Johnny Ellis of Anchorage, will pave the way for fire service personnel - paid or volunteer - who may become ill as a result of their role as fire fighters and the nature of their work.

This bill will offer a twenty year post-retirement window for the appearance of any disease of a presumed occupational nature. Such a provision will aid to reduce the amount of difficulty that normally comes with medical claims during this post-retirement time.

I appreciate your support of this valuable piece of legislation that will be of great benefit to the people of the fire service profession.

Sincerely,

  
Michael F. Dolph - Fire Chief  
Kodiak Fire Dept.



## FIRE DEPARTMENT

219 LOWER MILL BAY ROAD, KODIAK, ALASKA 99615

TELEPHONE (907) 486-8040

FAX (907) 486-8600

April 9, 1992

Representative Richard Foster  
Alaska Legislature; House of Representatives  
Juneau, Alaska

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Sincerely,

DeAnn R. Stefanski  
DEANN R. STEFANSKI  
KODIAK FIRE DEPARTMENT  
VOLUNTEER F/F / EMT I



## FIRE DEPARTMENT

219 LOWER MILL BAY ROAD, KODIAK, ALASKA 99615

TELEPHONE (907) 486-8640

FAX (907) 486-8600

April 9, 1992

Representative Richard Foster  
Alaska Legislature; House of Representatives  
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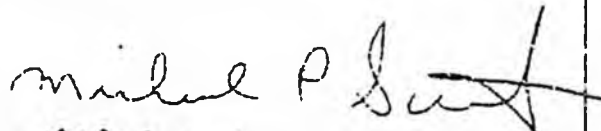
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Sincerely,

  
MICHAEL P SMITH  
KODIAK FIRE DEPT.



## FIRE DEPARTMENT

219 LOWER MILL BAY ROAD, KODIAK, ALASKA 99615

TELEPHONE (907) 486-8040

FAX (907) 486-8600

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Sincerely,

*Ken Gordon*

KEN GORDON, FIRE FIGHTER/EMT  
KODIAK FIRE DEPT.  
KODIAK, AK 99615



## FIRE DEPARTMENT

219 LOWER MILL BAY ROAD, KODIAK, ALASKA 99615

TELEPHONE (907) 486-8040

FAX (907) 486-8600

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Alaska Legislature; House of Representatives  
Juneau, Alaska

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Sincerely,

A handwritten signature in cursive script, appearing to read "Andy Nault".

Andy NAULT - Asst Fire Chief

Kodiak Fire Dept



## FIRE DEPARTMENT

219 LOWER MILL DAY ROAD, KODIAK, ALASKA 99615

TELEPHONE (907) 486-8040

FAX (907) 486-8600

April 9, 1992

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Alaska Legislature; House of Representatives  
Juneau, Alaska

Dear Representative Foster,

This letter is intended to voice interest in the passage of House Bill No. 538. This bill, sponsored by Rep. Johnny Ellis of Anchorage, will pave the way for fire service personnel - paid or volunteer - who may become ill as a result of their role as fire fighters and the nature of their work.

This bill will offer a twenty year post-retirement window for the appearance of any disease of a presumable occupational nature. Such a provision will aid to reduce the amount of difficulty that normally comes with medical claims during this post-retirement time.

I appreciate your support of this valuable piece of legislation that will be of great benefit to the people of the fire service profession.

Sincerely,

*Mark R. Johnson*

KODIAK FIRE DEPARTMENT

FIRE FIGHTER ASSISTANT



## FIRE DEPARTMENT

219 LOWER MILL BAY ROAD, KODIAK, ALASKA 99615

TELEPHONE (907) 486-8040

FAX (907) 486-8600

April 9, 1992

Representative Richard Foster  
Alaska Legislature; House of Representatives  
Juneau, Alaska

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Sincerely,

~~HEATHER PERRY~~  
Heather Perry  
Kodiak Fire Dept.



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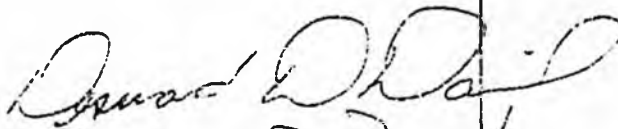
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Sincerely,

  
Desmond D. Daniel  
Kodiak Fire Department



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*James O. Hanson*  
James O. Hanson

Kodiak Fire Dept.



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Sincerely,

*Cheryl Daniel*  
*Cheryl Daniel*  
*Kodiak Fire Department*



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Sincerely,

*Rome W.K. KAMAI*  
P.O. Box 2167  
KODIAK, ALASKA 99615

*KODIAK FIRE DEPT*  
*Volunteer.*



## FIRE DEPARTMENT

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Sincerely,

*Aeresa D. Stone*  
EMS Specialist  
Aeresa D. Stone

911 - Emergency



## Bethel Fire Department

Mark R. Barker, Fire Chief  
P. O. Box 388, Bethel, Alaska 99559  
Phone: (907) 543-2131

Rep. Dave Donley,  
House Judiciary Chairman  
Alaska Legislature  
Juneau, Alaska 99811

April 9, 1992

Subject: Support of HB538

Dear Rep. Donley;

This letter, written on behalf of the paid and volunteer firefighters of my department and the Board of Directors and membership of the Alaska Fire Chiefs Association, urges your support and passage of House Bill #538, which will soon be heard by your committee.

As written, HB538 would present Alaskan firefighters with a twenty year post-retirement window for the appearance of any disease of a presumably occupational nature, during which time an afflicted member could apply for the workers compensation benefits to which he or she is entitled. This bill does not increase or decrease the benefit itself; rather, it simply smooths the path for deserving members who become ill because of their service as firefighters. Cost to the system is not really affected, as what is proposed merely eliminates the spectacle of sick people having to retain expensive counsel to receive fair treatment. This bill will shift the burden of proof from the afflicted individual to the compensation system.

As you are probably well aware, firefighters today face a growing threat in the tremendous proliferation of synthetic chemicals. As technology relies more on artificial substances in the quest to make our lives easier, the resultant rise in toxic smoke created when these things burn makes firefighter's lives more dangerous. What is ominous for firefighters is that their cancer death rate has more than doubled in the last 30 years, providing an parallel with the increase in synthetic substances.

HB538;Donley

**THE FOLLOWING PAGES MAY  
NOT FILM LEGIBLY BECAUSE OF  
THE POOR QUALITY OF THE ORIGINAL**

Board of Trade Inc.

P.O. BOX 967  
NOME, ALASKA 99762

4.7.92

Gen. Richard Lister  
Dunsmuir AK  
Fax # 465-3242

Dear R. Lister,

This Letter is in support of HB 538  
I hope that it will pass as it has  
served the Alaska Volunteer Fire Dept. for  
the past 10 years and I know that  
like / month members of the organization  
is a great concern. We receive annually  
money 250<sup>00</sup> / 300<sup>00</sup> which is not enough to  
to cover the expenses.

Attn: I support HB 538

Thomas J. ...  
J. W. ...  
...  
10 AK-NVFD Members

# **CORRECTION**

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



## Bethel Fire Department

Mark R. Barker, Fire Chief  
P. O. Box 388, Bethel, Alaska 99559  
Phone: (907) 543-2131

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House Judiciary Chairman  
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HB538;Donley

The insidious nature and long incubation periods of many of the illnesses covered under the bill, mandate the 20 year window and as written would provide the necessary protection for these caring and dedicated people.

Thank you for your support. If you have any questions please feel free to contact me or your local Fire Chief for more information.

Sincerely,



Mark R. Barker  
Fire Chief  
1st Vice President,  
Alaska Fire Chiefs Assn.

cc. Pres.; AFCA  
Bethel City Manager

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Dear R. Lister,

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I hope that is Bill will pass as it has  
served the Alaska Volunteer Fire Dept. for  
the past 10 years and I know that  
Lisa / Heather Anwar's is the recipient  
is a great concern. We require approximately  
\$250<sup>00</sup> / \$300<sup>00</sup> which is not enough to  
to cover the expenses.

Again in support HB 538

Thanks,  
J. W. T.  
J. W. T.  
10 Year - NUPD Member

Times 7-12-91

# Injured Soldotna firefighter now battles for air



ASSOCIATED PRESS

Lung damage from a Soldotna blaze keeps firefighter Rusty Grilley constantly on oxygen.

ASSOCIATED PRESS

**KENAI** — A brief breath of toxic smoke has brought Soldotna fireman Rusty Grilley face to face with a deadly lung disease. Now he's not fighting fires, he's fighting for his life.

Grilley, 33, injured his lungs during a fire in January at Alaska Fast Foto in Soldotna. With other firefighters from Central Emergency Services, he was outside the small store when an unexpected gust blew fumes containing photo processing chemicals into his face.

After two visits to a Denver hospital specializing in respiratory problems, Grilley was diagnosed with bronchiolitis obliterans, a disease in which white cells, fighting infection in the lungs, produce scar tissue that closes off the lungs' smallest airways.

In his case, Grilley's lungs admit only 40 percent of the needed oxygen into the blood stream. He is on oxygen 24 hours a day to avoid any organ or brain damage.

Since doctors have little experience combatting the relatively rare lung disease, the effectiveness of his treatment is something of an unknown.

"The problem is, there's no scientific data on this kind of treatment," Grilley said as he inhaled oxygen through a tube secured around his nose. "I'm waiting to be written up."

Grilley is taking steroids to fight the inflammation in his lungs, which constantly burn, he said. The steroids, however, increase the amount of white cells in the lungs which cause the scar tissue, so he must also take chemotherapy pills to counterbalance the increase.

Doctors will not know if the steroids and chemotherapy are working for another three to six months, Grilley said. And if they do work, it will require at least another year of treatment and the oxygen.

Unfortunately, his lungs feel like they are getting worse. Others who have had similar but more severe diseased lungs have died within six

weeks, he said.

Grilley is confined to a breathing cord connected to a machine that boosts his intake of oxygen. His daily, 15-minute walk outside with a portable oxygen tank tires him substantially.

The situation has also been hard on his family. His wife, Cherie, and his three sons, David, 8, Daniel, 13, and Stephen, 16, have had to pick up the slack on tasks he used to do around the house. He cannot work, but he will receive a full-time salary for up to a year from the date of the fire.

Fire Chief Greg Barclay said Grilley's injury in the line of duty is the most severe in his memory.

Since the fire, the fire department has revised its procedures for working around toxic smoke. Firefighters now have better breathing apparatuses, and use a detector that determines the concentration of carbon dioxide and other chemicals at a fire site.

HPB

540

File 1

(7)

E

# HOUSE COMMITTEE REPORT

Date Referred: April 21, 1992

FURTHER REFERRAL:

Date of Committee Action: 5/4/92

The JUDICIARY Committee considered:

SSHB 540

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 540

CIVIL LIABILITY FOR OIL SPILLS

"An Act limiting the liability of an oil spill response action contractor for an act or omission that is not contrary to a state or national oil spill contingency plan or, notwithstanding the state or national plan, that is not contrary to an order of an on-scene coordinator; repealing the requirements that liability is not limited in an action for damages to personal property not caused by oil and is only limited if the act or omission occurs within 15 days after the release of oil; repealing secs. 2, 5, 7, 10, and 12 of ch. 92, SLA 1991; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 540 (JUD)  the same title  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) DEC 3-11-92

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	Mike Milhee		<input checked="" type="checkbox"/>	
		Larry Maxter		<input checked="" type="checkbox"/>	
		John Ellis		<input checked="" type="checkbox"/>	
		Frank Red Pennell		<input checked="" type="checkbox"/>	
		David W. Donley			
		<del>_____</del>			
		<del>_____</del>			
		Forced hasty deliberations to benefit special interests			

*[Signature]*

CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1  
 Bill Version: CSSSHB 540(O&G)  
 (H) Publish Date: 3-11-92

STATE OF ALASKA  
 1992 LEGISLATIVE SESSION

Revision Date: 3/10/92  
 Title: Responder Immunity  
 Sponsor: Hudson  
 Requestor: (H) Oil and Gas

Department Affected: Environmental Conservation  
 BRU: Spill Prevention and Response  
 Component: Spill Prevention, Planning and Management

COMPONENT SERIAL NO. 1 | 4 | 3 | 0

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)  
 The committee substitute adopted by the House Oil + Gas Committee on 3/9/92 does not change this fiscal note. *Janice Adair*

Prepared by: Janice Adair  
 Division: Commissioner's Office

Phone: 465-5010  
 Date: 2/21/92

Approved by Commissioner: *Janice Adair*  
 Agency: Environmental Conservation

Date: 2/21/92

# Alaska State Legislature

REPRESENTATIVE BILL HUDSON

State Capitol  
Juneau, Alaska  
99801-1182  
(907)465-3744 or 4991

April 22, 1992

## COMMITTEES

CHAIR  
House Special Committee  
on Oil & Gas  
MEMBER  
Resources  
Transportation  
International Trade & Tourism

FINANCE SUBCOMMITTEE:  
Department of Transportation  
and Public Facilities

## MEMORANDUM

TO: Representative Dave Donley, Chair  
House Judiciary Committee

FROM: Representative Bill Hudson *Bill*

SUBJECT: CSSSHB 540(Res), Limited liability for  
response action contractors.

-----

You have asked for a narrative relating to HB 540.

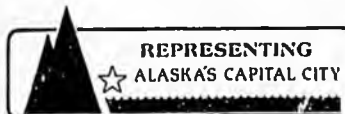
As you will recall, last year the legislature passed HB 196, Ch. 92, SLA 1991. That legislation limited liability for response action contractors (RAC's), and provided for a sunset of that liability. Hence, the introduction of HB 540 this session.

This legislation is necessary because under regulations recently adopted known as "567 regulations" shippers of crude and noncrude must have a contingency plan approved by the Alaska Department of Environmental Conservation before they can ship. By statute, ADEC must ascertain the shipper's financial responsibility and must also ascertain that a response action contractor has been contracted with to respond to a threatened or actual release of crude or noncrude.

In order for response action contractors to establish themselves for business in Alaska, we must foster a conducive business environment. No business person will willingly establish a business enterprise if he or she will be held liable for damages caused by another.

The response action contractor does not create a risk of a threatened or actual release of crude or noncrude.

The shipper, handler and owner of the crude or noncrude, in current statute, is held with strict liability for damages caused by a



release, and HB 540 does not change that strict liability.

If HB 540 is not passed this year, the limited liability for RAC's sunsets in June. The result will be that response action contracting businesses will not be willing to contract with contingency plan applicants.

I am fearful that without the availability of RAC's to contract with contingency plan holders, the ADEC will be called upon to either stop the shipment of crude and noncrude, with drastic results for the citizens of this state. Not only will the state's revenue be affected, but also heating fuel, aviation fuel, diesel generator fuels for electrical power, and other noncrude products will be unavailable to the residents of Alaska. The other alternative may be for the ADEC to, as they have been forced to do for financial responsibility for noncrude contingency plans, issue waivers. This is an erosion of the contingency plan process, and Alaska will be back to a severe lack of contingency planning as it was in March of 1989.

I believe it is imperative that this legislature make the necessary policy decisions to ensure the shippers, owners and handlers of crude and noncrude are held to those requirements under the 567 regs. The passage of HB 540 will ensure the contingency planning is an ongoing and useful process to protect the coastal and river systems of Alaska.

Attached is a analysis prepared by staff, describing the debate on several of the sections.

Again, a hearing time for CSSSHB 540(Res) at the earliest possible time will be very much appreciated.

My staff person, Landa Holtan, and I will be happy to meet with you or any of your staff should you have questions or if you need further information.

BH:lh

cc: All Members - House Judiciary Committee w/attachment

## CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 540 (O&amp;G)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Offered:

Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Navarre, G.Phillips, Taylor, Zawacki, Grussendorf, C.Davis, Carney, Parnell, Foster, Baker, Choquette, Gonzales, Hanley, Leman, Martin, M.A.Miller, M.W.Miller, R.Phillips, Sharp

## A BILL

## FOR AN ACT ENTITLED

1 "An Act limiting the liability of an oil spill response action contractor for release or  
2 threatened release of a hazardous substance and for an act or omission that is not  
3 contrary to a state or national oil spill contingency plan or, notwithstanding the state or  
4 national plan, that is not contrary to an order of an on-scene coordinator; repealing the  
5 requirements that liability is not limited in an action for damages to personal property  
6 not caused by oil and is only limited if the act or omission occurs within 15 days after  
7 the release of oil; repealing secs. 2, 5, 7, 10, and 12 of ch. 92, SLA 1991; and providing  
8 for an effective date."

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

10 \* Section 1. AS 46.03.822(a) is amended to read:

11 (a) Notwithstanding any other provision or rule of law and subject only to the defenses  
12 set out in (b) of this section, [AND] the exception set out in (i) of this section, and the

1 limitation on liability provided under AS 46.03.825, the following persons are strictly liable,  
2 jointly and severally, for damages, for the costs of response, containment, removal, or remedial  
3 action incurred by the state, a municipality, or a village, and for the additional costs of a function  
4 or service, including administrative expenses for the incremental costs of providing the function  
5 or service, that are incurred by the state, a municipality, or a village, and the costs of projects  
6 or activities that are delayed or lost because of the efforts of the state, the municipality, or the  
7 village, resulting from an unpermitted release of a hazardous substance or, with respect to  
8 response costs, the substantial threat of an unpermitted release of a hazardous substance:

9 (1) the owner of, and the person having control over, the hazardous substance at  
10 the time of the release or threatened release; this paragraph does not apply to a consumer product  
11 in consumer use;

12 (2) the owner and the operator of a vessel or facility, from which there is a  
13 release, or a threatened release that causes the incurrence of response costs, of a hazardous  
14 substance;

15 (3) any person who at the time of disposal of any hazardous substance owned or  
16 operated any facility or vessel at which the hazardous substances were disposed of, from which  
17 there is a release, or a threatened release that causes the incurrence of response costs, of a  
18 hazardous substance;

19 (4) any person who by contract, agreement, or otherwise arranged for disposal or  
20 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous  
21 substances owned or possessed by the person, other than domestic sewage, or by any other party  
22 or entity, at any facility or vessel owned or operated by another party or entity and containing  
23 hazardous substances, from which there is a release, or a threatened release that causes the  
24 incurrence of response costs, of a hazardous substance;

25 (5) any person who accepts or accepted any hazardous substances, other than  
26 refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person,  
27 from which there is a release, or a threatened release that causes the incurrence of response costs,  
28 of a hazardous substance.

29 \* Sec. 2. AS 46.03.825(a) is amended to read:

30 (a) A person who is a response action contractor with respect to a release or threatened  
31 release of oil [WHOSE ACT OR OMISSION IS NOT CONTRARY TO AN ORDER OF THE

1 FEDERAL OR STATE ON-SCENE COORDINATOR] is not civilly liable for injuries, costs,  
2 damages, expenses, or other liability that results from the release or threatened release, or from  
3 the response action contractor's act or omission in response to the release or threatened release,  
4 unless the person bringing a claim against the response action contractor proves by a  
5 preponderance of the evidence that

6 (1) the response action contractor would have been liable for the initial release  
7 or threatened release under AS 46.03.822 even if that contractor had not carried out a response  
8 action;

9 (2) the response action contractor acted with gross negligence or intentional  
10 misconduct; [OR]

11 (3) the act or omission of the response action contractor was contrary to an  
12 order of the federal on-scene coordinator, or to the extent that the federal on-scene  
13 coordinator has not otherwise ordered, to an order of the state on-scene coordinator; or

14 (4) the act or omission of the response action contractor

15 (A) was contrary in a material or substantial respect to the national  
16 contingency plan prepared under 33 U.S.C. 1321(d), or to the extent that the national  
17 contingency plan has not otherwise provided, to the state contingency plan prepared  
18 under AS 46.04.200 or 46.04.210; and

19 (B) did not result from an order of the federal on-scene coordinator,  
20 or to the extent that the federal on-scene coordinator has not otherwise ordered,  
21 from an order of the state on-scene coordinator [THE RESPONSE ACTION  
22 CONTRACTOR, WITHOUT APPROVAL BY THE FEDERAL OR STATE ON-SCENE  
23 COORDINATOR, SUBSTANTIALLY DEVIATED FROM AN OIL SPILL  
24 CONTINGENCY PLAN PREVIOUSLY APPROVED UNDER AS 46.04.030, AND THE  
25 PLAN WAS EITHER PREPARED BY THAT CONTRACTOR FOR A PARTY  
26 RESPONSIBLE FOR THE RELEASE UNDER AS 46.03.822 OR THAT CONTRACTOR  
27 PREVIOUSLY AGREED TO COMPLY WITH THE TERMS OF THAT PLAN UNDER  
28 A CONTRACT WITH PARTIES RESPONSIBLE FOR THE RELEASE UNDER  
29 AS 46.03.822].

30 \* Sec. 3. AS 46.03.825(b) is amended to read:

31 (b) The limitation on liability contained in (a) of this section does not apply to

- 1                            [(1)] an action for personal injury or death [;
- 2                            (2) AN ACTION FOR DAMAGES TO TANGIBLE PERSONAL PROPERTY
- 3                            NOT CAUSED BY OIL; OR
- 4                            (3) AN ACT OR OMISSION THAT OCCURS MORE THAN 15 DAYS AFTER
- 5                            THE RELEASE].

- 6 \* Sec. 4. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.
- 7 \* Sec. 5. If this Act takes effect after June 30, 1992, sec. 4 of this Act is retroactive to June 30, 1992.
- 8 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN

TO: CSSSHB 540(O&G)

Page 1, line 7, after "oil;":

Insert "relating to the duty of, and charges or financial responsibility requirements related to that duty imposed by, the common operating agent for the holders and lessees of the right-of-way agreement for the trans-Alaska pipeline system to control and contain oil discharges;"

Page 4, after line 5:

Insert a new bill section to read:

"\* Sec. 4. AS 46.04.020 is amended by adding new subsections to read:

(g) The common operating agent for the holders and lessees of the right-of-way agreement for the trans-Alaska pipeline shall immediately contain and clean up a discharge of crude oil transported by or due to the operation of the trans-Alaska pipeline system or due to related activities, including operation of a tank vessel while berthed at a marine terminal or while traveling within state waters to or from a marine terminal. A charge or financial responsibility requirement imposed by the common operating agent for holders and lessees of the right-of-way agreement for the trans-Alaska pipeline system on a tank vessel traveling on an intrastate voyage from a marine terminal for the purpose of containing and cleaning up a discharge of crude oil is subject to review by the Alaska Public Utilities Commission under AS 42.05.361 - 42.05.441. Review of a charge or financial responsibility requirement allowed under this subsection may occur at the request of a tank vessel owner, operator, or lessee, or as allowed by the Alaska Public Utilities Commission.

(h) The department may waive an oil discharge containment and cleanup requirement imposed under (a) or (g) of this section if

(1) the department determines, in consultation with the United States Coast Guard or the United States Environmental Protection Agency, as appropriate, that containment or cleanup is technically not feasible; or

(2) the cleanup or containment activities would result in greater environmental damage than the discharge itself."

Renumber the following bill sections accordingly.

Page 4, line 7:

Delete "sec. 4"

Insert "sec. 5"

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 540 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Navarre, G.Phillips, Taylor, Zawacki, Grussendorf, C.Davis, Carney, Parnell, Foster, Baker, Choquette, Gonzales, Hanley, Leman, Martin, M.A.Miller, M.W.Miller, R.Phillips, Sharp, Ivan, MacLean

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to registration of an oil spill response action contractor; limiting the  
2 liability of an oil spill response action contractor for release or threatened release of a  
3 hazardous substance and for an act or omission that is consistent with a state or national  
4 oil spill contingency plan or consistent with an order of an on-scene coordinator; amending  
5 certain exceptions to limited liability applicable to an oil spill response action contractor;  
6 repealing secs. 2, 5, 7, 10, and 12 of ch. 92, SLA 1991; and providing for an effective  
7 date."

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

9 \* Section 1. AS 46.03.822(a) is amended to read:

10 (a) Notwithstanding any other provision or rule of law and subject only to the defenses  
11 set out in (b) of this section, [AND] the exception set out in (i) of this section, and the  
12 limitation on liability provided under AS 46.03.825, the following persons are strictly liable,  
13 jointly and severally, for damages, for the costs of response, containment, removal, or remedial

1 action incurred by the state, a municipality, or a village, and for the additional costs of a function  
2 or service, including administrative expenses for the incremental costs of providing the function  
3 or service, that are incurred by the state, a municipality, or a village, and the costs of projects  
4 or activities that are delayed or lost because of the efforts of the state, the municipality, or the  
5 village, resulting from an unpermitted release of a hazardous substance or, with respect to  
6 response costs, the substantial threat of an unpermitted release of a hazardous substance:

7 (1) the owner of, and the person having control over, the hazardous substance at  
8 the time of the release or threatened release; this paragraph does not apply to a consumer product  
9 in consumer use;

10 (2) the owner and the operator of a vessel or facility, from which there is a  
11 release, or a threatened release that causes the incurrence of response costs, of a hazardous  
12 substance;

13 (3) any person who at the time of disposal of any hazardous substance owned or  
14 operated any facility or vessel at which the hazardous substances were disposed of, from which  
15 there is a release, or a threatened release that causes the incurrence of response costs, of a  
16 hazardous substance;

17 (4) any person who by contract, agreement, or otherwise arranged for disposal or  
18 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous  
19 substances owned or possessed by the person, other than domestic sewage, or by any other party  
20 or entity, at any facility or vessel owned or operated by another party or entity and containing  
21 hazardous substances, from which there is a release, or a threatened release that causes the  
22 incurrence of response costs, of a hazardous substance;

23 (5) any person who accepts or accepted any hazardous substances, other than  
24 refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person,  
25 from which there is a release, or a threatened release that causes the incurrence of response costs,  
26 of a hazardous substance.

27 \* Sec. 2. AS 46.03.825(a) is repealed and reenacted to read:

28 (a) A response action contractor who responds to a release or threatened release of oil  
29 is not civilly liable for removal costs or damages that result from an act or omission in the course  
30 of providing care, assistance, or advice

31 (1) consistent with a contingency plan prepared under AS 46.04.200, 46.04.210,

1 or 33 U.S.C. 1321(d); or

2 (2) as otherwise directed by the federal or state on-scene coordinator

3 \* Sec. 3. AS 46.03.825(b) is amended to read:

4 (b) The limitation on liability contained in (a) of this section does not apply to

5 (1) an action for personal injury or death; or

6 (2) a response action contractor who

7 (A) would otherwise have been liable for the release or threatened  
8 release under AS 46.03.822;

9 (B) acts with gross negligence or intentional misconduct; or

10 (C) is not registered with the department under AS 46.04.035, and  
11 who agrees in writing to be listed and who is listed as a response action contractor  
12 in a contingency plan approved under AS 46.04.030, that is being implemented to  
13 respond to a release or threatened release of oil [AN ACTION FOR DAMAGES TO  
14 TANGIBLE PERSONAL PROPERTY NOT CAUSED BY OIL; OR

15 (3) AN ACT OR OMISSION THAT OCCURS MORE THAN 15 DAYS AFTER  
16 THE RELEASE].

17 \* Sec. 4. AS 46.04 is amended by adding a new section to read:

18 Sec. 46.04.035. REGISTRATION OF OIL SPILL RESPONSE ACTION  
19 CONTRACTORS. (a) A person may register with the department as an oil spill response action  
20 contractor. The department shall require a person registering as an oil spill response action  
21 contractor under this section to verify the existence of resources, including personnel, equipment,  
22 services, and a deployment plan as required of that contractor in any contingency plan approved  
23 under AS 46.04.030 in which the contractor has agreed to be listed.

24 (b) The department shall develop and maintain a list of oil spill response action  
25 contractors registered under this section. The department shall provide the list on request to  
26 interested persons.

27 (c) In this section, "oil" and "response action contractor" have the meanings given in  
28 AS 46.03.826.

29 \* Sec. 5. Sections 2, 5, 7, 10, and 12 of ch. 92, SLA 1991, are repealed.

30 \* Sec. 6. If this Act takes effect after June 30, 1992, sec. 5 of this Act is retroactive to June 30, 1992.

31 \* Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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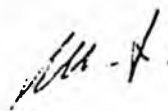
240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

**MEMORANDUM**

February 20, 1992

**SUBJECT:** Response action contractors - (SSHB 540)

**TO:** Representative Bill Hudson

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

The following is a section by section analysis of SSHB 540:

Section 1 - Provides that an oil spill response action contractor whose act or omission is not contrary to the state or national oil spill contingency plans, or if contrary, is not contrary to an order of the state or federal on-scene coordinator, receives protection from certain civil liability.

Section 2 - Repeals two current exceptions to the limited liability provisions of AS 46.03.825(a). The first being an action for damages to personal property not caused by oil, and the second being an action based on an act or omission that occurs more than 15 days after the release of oil.

Section 3 - Repeals the sunset provisions enacted in HB 196, that would repeal the limited liability of response actions contractors.

Section 4 - Retroactive clause for section 3.

Section 5 - Effective date.

MFF:pl  
92-116.plm

AN ACT

Limiting civil liability for acts or omissions of an oil spill response action contractor and establishing strict liability on responsible parties for certain acts or omissions of a response action contractor; amending the definitions of "response action" and "response action contractor"; relating to a report by the Citizens Oversight Council on Oil and Other Hazardous Substances; providing for the repeal on July 1, 1992, of changes made by this Act and providing for an effective date.

\* Section 1. AS 46.03.822(a) is amended to read:

46.03.822(a)

(a) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (d) of this section and the exceptions set out in (i) of this section, the following persons are strictly liable, jointly and severally, for damages (TO PERSONS OR PROPERTY, WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL RESOURCES OF THE STATE OR A MUNICIPALITY,) and for the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

(1) the owner of, and the person having control over, the hazardous substance at the time of the release or threatened release; this paragraph does not apply to a consumer product in consumer use;

(2) the owner, release, or a threatened release of a hazardous substance;

(3) any person who operated any facility or vessel from which there is a release, or a threatened release, of a hazardous substance;

(4) any person who treated, or arranged with another person to treat, any hazardous substance owned or possessed by that person, at any facility or vessel, from which there is a release, or a threatened release, of a hazardous substance, from which there is a release, or a threatened release, of a hazardous substance, from which there is a release, or a threatened release, of a hazardous substance, from which there is a release, or a threatened release, of a hazardous substance.

\* Sec. 2. AS 46.03.822(a) is re-

(a) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (d) of this section and the exceptions set out in (i) of this section, the following persons are strictly liable, jointly and severally, for damages (TO PERSONS OR PROPERTY, WHETHER PUBLIC OR PRIVATE, INCLUDING DAMAGE TO THE NATURAL RESOURCES OF THE STATE OR A MUNICIPALITY,) and for the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

(1) the owner of, and the person having control over, the hazardous substance at the time of the release or threatened release; this paragraph does not apply to a consumer product in consumer use;

(2) the owner, release, or a threatened release of a hazardous substance;

Chapter 92

1 (2) the owner and the operator of a vessel or facility, from which there is a  
2 release, or a threatened release that causes the incurrence of response costs, of a hazardous  
3 substance;

4 (3) any person who at the time of disposal of any hazardous substance owned or  
5 operated any facility or vessel at which the hazardous substances were disposed of, from which  
6 there is a release, or a threatened release that causes the incurrence of response costs, of a  
7 hazardous substance;

8 (4) any person who by contract, agreement, or otherwise arranged for disposal or  
9 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous  
10 substances owned or possessed by the person, other than domestic sewage, or by any other party  
11 or entity, at any facility or vessel owned or operated by another party or entity and containing  
12 hazardous substances, from which there is a release, or a threatened release that causes the  
13 incurrence of response costs, of a hazardous substance;

14 (5) any person who accepts or accepted any hazardous substances, other than  
15 refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person,  
16 from which there is a release, or a threatened release that causes the incurrence of response costs,  
17 of a hazardous substance.

18 • Sec. 7. AS 46.03.822(a) is repealed and reenacted to read:

46.03.822(a)

19 (a) Notwithstanding any other provision or rule of law and subject only to the defenses  
20 set out in (b) of this section and the exception set out in (1) of this section, the following persons  
21 are strictly liable, jointly and severally, for damages to persons or property, whether public or  
22 private, including damage to the natural resources of the state or a municipality, and for the costs  
23 of response, containment, removal, or remedial action incurred by the state or a municipality,  
24 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,  
25 the substantial threat of an unpermitted release of a hazardous substance:

26 (1) the owner of, and the person having control over, the hazardous substance at  
27 the time of the release or threatened release; this paragraph does not apply to a consumer product  
28 in consumer use;

29 (2) the owner and the operator of a vessel or facility, from which there is a  
30 release, or a threatened release that causes the incurrence of response costs, of a hazardous

Chapter 92

1 substance;

2 (3) any person who at the time of disposal of any hazardous substance owned or

3 operated any facility or vessel at which the hazardous substances were disposed of, from which

4 there is a release, or a threatened release that causes the incurrence of response costs, of a

5 hazardous substance;

6 (4) any person who by contract, agreement, or otherwise arranged for disposal or

7 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous

8 substances owned or possessed by the person, other than domestic sewage, or by any other party

9 or entity, at any facility or vessel owned or operated by another party or entity and containing

10 hazardous substances, from which there is a release, or a threatened release that causes the

11 incurrence of response costs, of a hazardous substance;

12 (5) any person who accepts or accepted any hazardous substances, other than

13 refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person,

14 from which there is a release, or a threatened release that causes the incurrence of response costs,

15 of a hazardous substance.

16 \* Sec. 3. AS 46.03.822 is amended by adding a new subsection to read:

17 (k) In this section, "damages" include damage to persons or to public or private property,

18 damage to the natural resources of the state or a municipality, and damage caused by acts or

19 omissions of a response action contractor for which the response action contractor is not liable

20 under AS 46.03.823 or 46.03.825.

21 \* Sec. 4. AS 46.03.823(a) is amended to read:

22 (a) A person who is a response action contractor with respect to a release or threatened

23 release of a hazardous substance other than oil whose acts or omissions are not contrary to a

24 response plan or order by a state or federal agency having jurisdiction over the release or

25 threatened release is not civilly liable for injuries, costs, damages, expenses, or other liability that

26 results from the release or threatened release unless the release or threatened release is caused

27 by an act or omission of the response action contractor that is negligent or grossly negligent or

28 constitutes intentional misconduct. To show negligence by a response action contractor, a

29 claimant must show that the acts or omissions of the contractor under the response action contract

30 were not in accordance with generally accepted professional standards and practices at the time

46.03.822(k)

46.03.823(a)

Chapter 92

1 the response action services were

2 \* Sec. 5. AS 46.03.823(a) is repealed

3 (a) A person who is a res

4 release of a hazardous substance

5 order by a state or federal agency

6 civilly liable for injuries, costs, d

7 or threatened release unless the r

8 the response action contractor t

9 misconduct. To show negligenc

10 acts or omissions of the contra

11 with generally accepted profes

12 services were performed.

13 \* Sec. 6. AS 46.03.823(g) is repea

14 (g) In this section, "

15 mitigation or cleanup of a res

16 including investigation, eval

17 design and construction, reme

18 \* Sec. 7. AS 46.03.823(g) is repe

19 (g) In this section,

20 (1) "response

21 cleanup of a hazardous subst

22 plan development, mapping

23 equipment provision;

24 (2) "respons

25 response action with respect

26 into by a person with

27 (A)

28 (B)

29 that provides for r

30 (C)

## Chapter 92

1 the response action services were performed.

2 • Sec. 5. AS 46.03.823(a) is repealed and reenacted to read:

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

46.03.823(a)

13 • Sec. 6. AS 46.03.823(g) is repealed and reenacted to read:

14 (g) In this section, "response action" means an action taken in connection with the  
15 mitigation or cleanup of a release or threatened release of a hazardous substance other than oil,  
16 including investigation, evaluation, plan development, mapping and surveying, engineering,  
17 design and construction, removal, and equipment provision.

46.03.823(g)

18 • Sec. 7. AS 46.03.823(g) is repealed and reenacted to read:

19 (g) In this section,

46.03.823(g)

20 (1) "response action" means an action taken in connection with the mitigation or  
21 cleanup of a hazardous substance release or threatened release, including investigation, evaluation,  
22 plan development, mapping and surveying, engineering, design and construction, removal, and  
23 equipment provision;

24 (2) "response action contract" means a written contract or agreement to provide  
25 response action with respect to a release or threatened release of a hazardous substance, entered  
26 into by a person with

27 (A) the department;

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

30 (C) a federal agency with jurisdiction over the release or threatened  
31

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1 release; or  
 2 (D) another person potentially liable for the release or threatened release  
 3 under state or federal law;  
 4 (3) "response action contractor" means  
 5 (A) a person who enters into a response action contract with respect to a  
 6 release or threatened release of a hazardous substance and who is carrying out the  
 7 contract, including a cooperative organization formed to maintain and supply response  
 8 equipment and services that enters into a response action contract relating to a release  
 9 or threatened release; and  
 10 (B) a person who is retained or hired by and is under the control of a  
 11 person described in (A) of this paragraph to provide services related to the response  
 12 action contract.

\* Sec. 8. AS 46.03 is amended by adding a new section to read:

46.03.825

14 Sec. 46.03.825. OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A person who  
 15 is a response action contractor with respect to a release or threatened release of oil whose act or  
 16 omission is not contrary to an order of the federal or state on-scene coordinator is not civilly  
 17 liable for injuries, costs, damages, expenses, or other liability that results from the release or  
 18 threatened release, or from the response action contractor's act or omission in response to the  
 19 release or threatened release, unless the person bringing a claim against the response action  
 20 contractor proves by a preponderance of the evidence that  
 21 (1) the response action contractor would have been liable for the initial release  
 22 or threatened release under AS 46.03.822 even if that contractor had not carried out a response  
 23 action;  
 24 (2) the response action contractor acted with gross negligence or intentional  
 25 misconduct; or  
 26 (3) the response action contractor, without approval by the federal or state on-  
 27 scene coordinator, substantially deviated from an oil spill contingency plan previously approved  
 28 under AS 46.04.030, and the plan was either prepared by that contractor for a party responsible  
 29 for the release under AS 46.03.822 or that contractor previously agreed to comply with the terms  
 30 of that plan under a contract with parties responsible for the release under AS 46.03.822.

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1 (b) The limitation on  
 2 (1) an action f  
 3 (2) an action f  
 4 (3) an act or o  
 5 (c) If the liability of a  
 6 section or if the provisions of  
 7 oil spill response action contr  
 8 other liability that results fro  
 9 a release or threatened releas  
 10 contractor is negligent, gross  
 11 does not apply to an oil sp  
 12 initial release or threatened  
 13 carried out a response action  
 14 (d) In this section,  
 15 threatened release of oil, inc  
 16 or threatened release of oil.  
 17 \* Sec. 9. AS 46.03.826 is ame  
 18 (14) "respor  
 19 response action with respect  
 20 into by a person with  
 21 (A)  
 22 (B)  
 23 that provides for re  
 24 (C)  
 25 release; or  
 26 (D)  
 27 under state or fede  
 28 (15) "resp  
 29 (A)  
 30 release or threate

## Chapter 92

1 (b) The limitation on liability contained in (a) of this section does not apply to

2 (1) an action for personal injury or death;

3 (2) an action for damages to tangible personal property not caused by oil; or

4 (3) an act or omission that occurs more than 15 days after the release.

5 (c) If the liability of an oil spill response action contractor is not limited under (a) of this  
6 section or if the provisions of (a) of this section do not apply because of (b) of this section, the  
7 oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses, or  
8 other liability that results from the response action contractor's act or omission with respect to  
9 a release or threatened release of oil unless the act or omission of the oil spill response action  
10 contractor is negligent, grossly negligent, or constitutes intentional misconduct. This subsection  
11 does not apply to an oil spill response action contractor who would have been liable for the  
12 initial release or threatened release of oil under AS 46.03.822 even if that contractor had not  
13 carried out a response action.

14 (d) In this section, "response action" means an action taken to respond to a release or  
15 threatened release of oil, including but not limited to mitigation, clean up, or removal of a release  
16 or threatened release of oil.

17 \* Sec. 9. AS 46.03.826 is amended by adding new paragraphs to read:

18 (14) "response action contract" means a written contract or agreement to provide  
19 response action with respect to a release or threatened release of a hazardous substance entered  
20 into by a person with

21 (A) the department;

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

24 (C) a federal agency with jurisdiction over the release or threatened  
25 release; or

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

28 (15) "response action contractor" means

29 (A) a person who enters into a response action contract with respect to a  
30 release or threatened release of a hazardous substance and who is carrying out the

46.03.826(14),  
(15)

Chapter 92

1 contract, including a cooperative organization formed to maintain and supply response  
2 equipment and materials that enters into a response action contract relating to a release  
3 or threatened release;

4 (B) a person who is retained or hired by and is under the control of a  
5 person described in (A) of this paragraph to provide services related to the response  
6 action contract; and

7 (C) a person who acts as a volunteer and is engaged in a response action.

8 \* Sec. 10. AS 46.03.822(3), 46.03.825, 46.03.826(14), and 46.03.826(15) are repealed.

9 \* Sec. 11. REPORT. The Citizens Oversight Council on Oil and Other Hazardous Substances  
10 (AS 24.20.600) shall review the entire subject of response action contractor civil liability and the status  
11 of oil spill contingency plan holders. The review of both subjects shall be completed and a report  
12 submitted to the legislature before January 15, 1992. The report must address whether further  
13 modifications are necessary in state laws on response action contractor civil liability, and include an  
14 analysis of whether the present state laws that require shippers and owners to hold contingency plans  
15 and that enable shippers and owners to contract with response action contractors to carry out contingency  
16 plans are adequate to protect the public in the event of an oil spill.

17 \* Sec. 12. Sections 2, 5, 7, and 10 of this Act take effect July 1, 1992.

18 \* Sec. 13. Sections 1, 3, 4, 6, 8, 9, and 11 of this Act take effect immediately under AS 01.10.070(c).

Repealer

Eff. §§ 2,  
5, 7, and  
10 take  
effect  
7/1/92;  
remainder  
of Act  
takes  
effect  
7/3/91

1 Relating to persons who

2

3

4

5 \* Section 1. LEGISLATIVE P

6 hardships endured by the member

7 their country during World War I

8 \* Sec. 2. AS 05.15.210(34) is

9 (34) "veter

10 the state, or a branch of a

11 pecuniary profit, the mer

12 armed services or forces

13 Guard.

14 \* Sec. 3. AS 16.05.341 is an

15 Sec. 16.05.341. F

16 a resident hunting and is

17 (1) tax b

18 (2) is el

19 (3) is c

20 a 50 percent or greater

21 (2) net

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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FAX (907) 465-2029  
Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

### MEMORANDUM

April 23, 1992

**SUBJECT:** Sectional analysis (CSSSHB 540(RES))

**TO:** Representative Bill *WMA*

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

The following is a section by section analysis of CSSSHB 540(RES).

Section 1 - Limits the liability of the state for certain registration, approval, and response activities related to oil spills.

Section 2 - Provides that the limitation on liability provided to oil spill response action contractors under AS 46.03.825 is an exception to the strict liability imposed under AS 46.03.822.

Section 3 - Provides that the actions of a response action contractor do not qualify as third party acts that would relieve liability imposed under AS 46.03.822(b)(1)(B).

Section 4 - Amends the definition of "damages" to include the meaning given in AS 46.03.824.

Section 5 - Provides limited liability for a response action contractor who responds to an oil spill and whose actions are consistent with a contingency plan or as otherwise directed by the federal or state on-scene coordinator.

Section 6 - Provides exceptions to the limited liability granted under AS 46.03.852(a).

Section 7 - Adds a definition of "primary response action contractor" and "registered".

Section 8 - Provides that a person liable under AS 46.03.822 may not use the defense provided in AS 46.03.822(b)(1)(B) for damages caused by a response action contractor. Provides that except as provided under subsection (e), AS 46.03.825 does not apply to the liability of a person other than a response action contractor.

Provides that a response action contractor who terminates a response action because of the expiration of limited liability is not civilly liable.

Section 9 - Technical amendment.

Section 10 - Imposes an oil spill containment and cleanup duty on the common operating agent of the Trans Alaska Pipeline. Provides for waiver of the duty in certain cases.

Section 11 - Prohibits approval of a contingency plan that relies on an oil spill response action contractor, unless the contractor is registered under AS 46.04.035.

Section 12 - Establishes a program to register oil spill primary response action contractors. Specifies certain regulations that must be adopted by the department.

Section 13 - Repeals certain sunset provision enacted by ch. 92, SLA 1991.

Section 14 - Transition section.

Section 15 - Retroactive effective date for section 11.

Section 16 - Applicability section.

Section 17 - Effective date.

Section 18 - Effective date.

MFF:pl  
92-281.plm



# Oil Reform Alliance



H.B. 540 Proposed Amendments  
5/1/92

Section 2. AS 46.03.822(a) is amended to read:

(6) a response action contractor who is registered with the department under AS 46.04.035 and who fails to respond to a release or threatened release of oil that the response action contractor was required to respond to under the contingency plan; this paragraph does not apply to a response action contractor if the failure to respond to a release or threatened release of oil results from a prior and on-going response under another contingency plan approved under AS 46.04.030 in which the response action contractor has the duty to respond and a significant portion of the response action contractor's assets are tied up.



# Oil Reform Alliance



H.B. 540 Proposed Amendments  
5/1/92

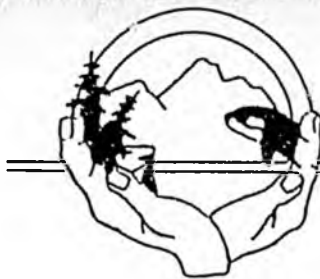
Add a new Section 4 and renumber other sections.

Section 4. AS 46.03.822(h) is amended by adding new language at end of the subsection to read:

AS.46.03.822(h): "The immunity granted under this section shall attach without limitation to the response efforts of:

(A) a person who acts as a volunteer and is engaged in a response action under the direction of the federal or state on-scene coordinator; and

(B) a vessel of opportunity engaged in a response action under the direction of the federal or state on-scene coordinator.

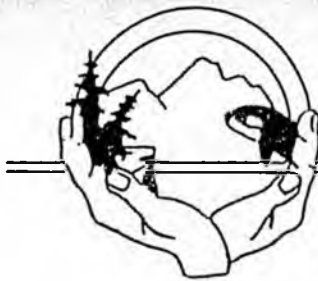


# Oil Reform Alliance



H.B. 540 Proposed Amendments  
5/1/92

Section 5. AS 46.03.825 is repealed.



# Oil Reform Alliance

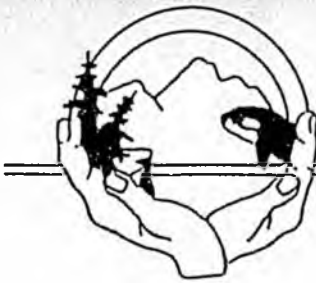
H.B. 540 Proposed Amendments  
5/1/92

Sec.1Q. AS 46.04.020 is amended by adding new subsections to read:

(g) (1) In addition to its existing obligations under state and federal law and the provisions of the state and federal Trans Alaska Pipeline System right-of-way agreements, the common operating agent for the holders and lessees of the right-of-way agreement for the trans-Alaska pipeline shall immediately [PROVIDE FOR THE INITIAL CONTAINMENT] contain and clean up [OF] a discharge of crude oil transported by or due to the operation of the trans-Alaska pipeline system or due to related activities, including operation of a tank vessel while berthed at a marine terminal or while traveling [WITHIN 72 TANKER LANE MILES] to or from a marine terminal located within the state if the discharge occurs within state waters, or if the state of federal on-scene coordinator has reasonable cause to believe that state waters will be impacted by the discharge.

(g) (2) A charge or financial responsibility requirement imposed by the common operating agent for holders and lessees of the right-of-way agreement for the trans-Alaska pipeline system on a tank vessel traveling on an intra-state voyage from a marine terminal for the purpose of containing and cleaning up a discharge of crude oil is subject to review by the Alaska Public Utilities Commission under AS 42.05.361 - 42.05.441. Review of a charge or financial responsibility requirement allowed under this subsection may occur at the request of a tank vessel owner, operator, or lessee, or as allowed by the Alaska Public Utilities Commission.

*Note: These two provisions are separated in order to remove concerns about the severability of the APUC requirement from Aleyaska's duty to respond which may be challenged.*



# Oil Reform Alliance



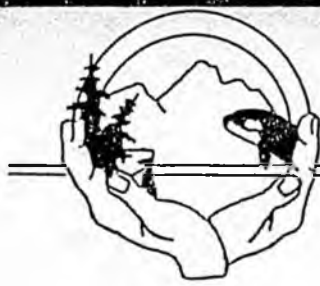
H.B. 540 Proposed Amendments  
5/1/92

Add another "Alyeska" amendment

Add a new Section 11 and renumber the remaining sections.

Section 13. Amend AS 46.04.030(a) to add in a new sentence of text at the end of the existing text as follows:

The oil discharge prevention and contingency plan submitted for the trans-Alaska pipeline system terminal facility shall include provisions for an oil discharge from a tank vessel while berthed at the terminal facility or while traveling to or from a marine terminal located within the state if the discharge occurs within state waters, or if the state or federal on-scene coordinator has reasonable cause to believe that state waters will be impacted by the discharge.



# Oil Reform Alliance

H.B. 540 Proposed Amendments  
5/1/92

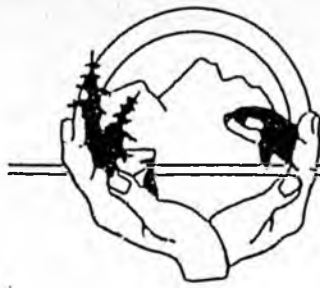
Section 12. AS 46.04 is amended by adding a new section to read:

Section 46.04.035(a). REGISTRATION OF OIL SPILL RESPONSE ACTION CONTRACTORS. (a) A response action contractor listed in an oil spill contingency plan approved under AS 46.04.030 and whose services are deemed necessary by the department for the approval of the contingency plan may apply to the department for registration as an oil spill response action contractor if the response action contractor:

(1) agrees in writing to be subject to the direction of the federal or state on-scene coordinator during implementation of the contingency plan under which the contractor is listed; and

(2) agrees in writing to respond under the direction of and reimbursement by the federal or state on-scene coordinator to spills in which the responsible party is unknown or insolvent unless the response action contractor is already engaged in a response to a prior release or threatened release and a significant portion of the response action contractor's assets are tied up.

The department shall adopt regulations governing the registration and approval of oil spill response action contractors listed in oil spill contingency plans approved under AS 46.04.030 and whose services are deemed necessary by the department for the approval of the contingency plans.



# Oil Reform Alliance

H.B. 540 Proposed Amendments  
5/1/92

Section 12. AS 46.04.035 (g) is amended to read:

Section 46.04.035(g) In this section,

- (1) "oil" has the meaning given in AS 46.03.826;
- (2) "response action" means an action taken to respond to a release or threatened release of oil, including but not limited to mitigation, clean up, or removal or a release or threatened release of oil;
- (3) "response action contractor" has the meaning given in AS 46.03.826 (11).

Add a New section

Amend AS 46.03.826(11) to read:

"response action contractor" means

(A) a person who voluntarily enters into a response action contract under AS 46.04.030 with respect to a release or threatened release of oil and who is carrying out the contract, including a cooperative organization formed to maintain and supply response equipment and materials that enters into a response action contract under AS 46.04.030 relating to a release or threatened release of oil; or

(B) a person who is retained or hired by and is under the control of a person described in (A) of this paragraph to provide services related to the response action contract.



# Oil Reform Alliance

3/17/92

A BRIEFING PAPER ON  
RESPONSE CONTRACTOR IMMUNITY (HB 540) & RELATED ISSUES

by Riki Ott

Response contractor immunity is no longer an issue which, as in 1991, can be considered in and of itself as HB 540 attempts to do. The Citizens' Oversight Council ("Council") report on oil spill response contractors to the legislature in 1992 opened everyone's eyes to all the issues at stake over immunity. The following attempts to identify, clarify and summarize these issues for those of you who do not have time to read the Council's excellent 133-page report.

Issue: Legislative History of Response Contractor Immunity

Last year, the legislature passed HB 196 which limited liability for response contractors for the first 15 days of a cleanup. The new law was effective for one year. The primary advocate in public for HB 196 was Tesoro, the primary advocate in private was Alyeska: in seeking to reduce its own exposure to spill cleanup liability, Alyeska required a \$1 billion direct action bond from Tesoro. The big oil companies loading in Valdez (Exxon, Arco, BP, and Amerada Hess) could pledge their assets, however the bond was more than Tesoro was worth and the requirement threatened to put the small independent out of business.

Faced with going out of business, or at a minimum a lawsuit with Alyeska, Tesoro asked the legislature to limit liability so Alyeska would reduce the bonding requirement. HB 196 was commonly known as the "Blackmail Bill." While public interest groups including the Oil Reform Alliance lobbied against HB 196 on the grounds that reducing the state's liability standard was bad public policy, the legislature felt compelled to do something for Tesoro. The legislature passed a compromise bill that limited liability for 15 days with a one year sunset clause and requested the Council to look into all the issues and report back to the legislature.

This year Tesoro is again taking a lead advocacy role (with Alyeska and its owner companies not far behind the scenes) for HB 540 which seeks to set the state's liability standard much lower

than the federal standard under the Oil Pollution Act of 1990 (OPA90). As many of you recall, Oil Reform Alliance member groups actively (and successfully) lobbied to preserve the right of states to set stricter standards than the federal government during the passage of OPA90. The oil industry lost this battle in Congress and has now lobbied in every coastal state to achieve "consistency with the federal legislation." Unfortunately, nineteen other coastal states have caved in to the oil industry's lobby and have provided immunity--with some noteworthy stipulations--for response contractors (p. 53-56). (Note: all citations are pages from the Council's report mentioned above.)

#### Issue: Negligence versus Gross Negligence

The basic negligence standard in law holds response contractors to a "duty to exercise reasonable care so as not to cause injury to another through the contractor's own actions. If the contractor does not exercise the level of reasonable care that a reasonable person would under the circumstances, and if the contractor's actions cause foreseeable injury, the contractor is liable for the damages it causes" (p. 24-25.)

HB 196 reduced the liability standard from "basic" to "gross" negligence for response contractors for the first 15 days of a cleanup; HB 540 would reduce it to gross negligence, period. The Council recommended a liability standard of gross negligence ONLY IF a complete package for improving response was adopted including their other recommendations discussed below (Rec. #1, p. 8).

#### Issue: Compensation for Damages

It is misleading for proponents of HB 540 to imply that the spiller will always be held liable for the contractor's negligent actions. In many instances, such as an act of God, war or simple negligence by the State of Alaska or the U.S. government, the liability of spill cleanup and compensation for acts of negligence by response contractors has been shifted to the public. Further, in the case of an orphan spill or an insolvent spiller, extending immunity to contractors will most likely result in private parties being unable to recover damages for harms caused by the contractors (p. 47).

Under Alaska law pre-dating passage of HB 196, the spiller and the response contractor were held "jointly liable" for damages caused by the response contractor. HB 540, by holding only the spiller liable, leaves the public nowhere to go for damages from response contractors in the cases mentioned above.

But the issue here is not simply a matter of compensating the public for damages. It is obvious the public doesn't care who pays for damages. It is vastly more important to prevent additional damages to natural resources from happening in the first place from no or poor response.

Removing the threat of liability provided by the basic negligence standard eliminates the strongest motivation for contractors to exercise reasonable care, that is, there will be no incentive for the contractor to take the precautions and the care that it normally would.

The Council recognized this problem and recommended that a certification program containing "minimum professional standards" for response contractors be implemented in conjunction with the reduced liability standard (Rec. # 3, p. 9). The Council expressed concern that if liability limits were granted without a corresponding certification program, damages to natural resources could increase (p. 10).

#### Issue: A Guaranteed Response

There is a problem with existing law in that the state currently has no way to order a contractor to respond to a spill. The law mandates contingency (c-) plan holders to respond and be subject to all orders of the state or federal on-scene coordinator. However, c-plan holders have become increasingly reliant upon response contractors to conduct the actual response. There is no way under the state's current approval process for c-plans to ensure that the contractors listed in the plans will actually respond.

Proponents of HB 540 argue that granting "immunity" (i.e., gross negligence) will ensure a "bold and decisive" response, because contractors, freed of worries from liability risks, will rush to respond to spills. Interestingly, several service contractors have testified this year that they will not respond unless they have immunity (gross negligence), yet DEC is approving c-plans which list these very same contractors as the responders. HB 540 does not set up a mechanism to clearly mandate in law that contractors listed in c-plans will indeed respond and will be subject to all orders of the on-scene coordinator. (HB 540 has been nicknamed the "Field of Dreams Bill": give them immunity and they will come.)

The Council recommended that the certification process include requirements for (1) a guaranteed response (duty to perform) including to orphan spills, and (2) language that subjects contractors to all orders of the on-scene coordinator (Rec. #2, #5, #6, p. 8-10).

#### Issue: Alternative Ways to Provide Immunity in Special Cases

The Council argues that providing immunity to contractors and requiring a response (as opposed to just requiring a response) is the only "fair" way to get contractors to respond to orphan spills.

There is an alternative approach not discussed in the Council report. The state could offer its responder immunity to a contractor it orders to cleanup a spill. For instance, the Coast Guard granted immunity to CISPRI when it ordered the contractor to respond to the Shumagin Islands barge spill cleanup.

Under existing law, if the spiller is unknown or not responding, the state assumes control of the cleanup and reimburses the contractors for reasonable expenses. However, also under existing law, the State of Alaska has immunity as a response contractor for itself, municipalities and villages. By providing case-specific indemnification through the state, liability relief would not have to be granted to all contractors as under HB 540.

This alternative approach would also gain immunity for the coastal community cooperative concept sponsored by the Regional Citizens' Advisory Council. The RCAC has requested funding for the co-op from the state's 470 Fund. It is possible that, should this be the funding source, the coastal co-op would receive immunity as a state-sanctioned contractor. (A letter requesting clarification on this point has been sent to the RCAC.)

#### Issue: Certification of Response Contractors

Proponents of HB 540 ignore the Council's recommendations and instead argue that the certification process should be left up to the Coast Guard who is in the midst of a negotiated rulemaking (reg neg) process to develop regulations for OPA90, including the certification issue.

The Oil Reform Alliance fought long and hard for Alaska's own contingency plan system (HB 567 in 1990). We need our own certification system to insure implementation of our own c-plan system. So far, the only people who advocate the Coast Guard position seem to be HB 540 sponsor (Hudson) and the oil industry including their service contractors.

The Regional Citizens' Advisory Council, which is participating actively in the Coast Guard reg neg process, reports the process is extremely biased in the oil industry's favour and strongly urges the state to develop its own certification process.

#### Issue: Categories of Response Contractors

HB 540 treats all response contractors equally and so distributes immunity (gross negligence) equally to all parties.

The Council, however, went to great lengths in its report to distinguish among types of response contractors such as volunteers, "paid volunteers" (like fishermen), service contractors (VECO), industry cooperatives (CISPRI), and lastly, industry operations (Alyeska). This distinction is important when making arguments which types of contractors should, or shouldn't, have liability limits.

These five types of contractors fall into two categories: primary and secondary. The primary contractors are those listed in contingency plans and who, therefore, are providing assurance to the state that they will respond. Primary contractors include only service contractors and industry cooperatives: these were the only types of contractors covered by the recommendations in the Council's report.

In a similar attempt to distinguish among types of contractors and their corresponding liability limits, "response contractor" was defined in California regulation as people who are regularly involved in oil spill cleanup; i.e., primary contractors. This eliminated liability concerns of fishermen and volunteers. Immunity for the latter two groups is covered by private contractual agreement and good Samaritan laws, respectively, in much the same way these groups were covered in Alaska prior to enactment of HB 196. (Under good Samaritan law in Alaska, "a person who responds at the request of the government to a declared emergency is immune from strict liability and negligence" p. 46).

Strong arguments can be made that response contractors who are in the business of oil spill cleanup like service contractors and industry cooperatives should be held responsible for their actions (basic negligence). It is unfortunate that proponents of HB 540 have tried to drag in all classes of potential contractors, such as volunteers, fishermen and even Alyeska, to argue the need for this bill when these classes are covered adequately by other laws.

#### Issue: Alyeska's Spill Response Operations

Although the case for volunteers and fishermen was discussed earlier, Alyeska is another issue entirely. The Council found Alyeska is bound by federal law (Trans-Alaska Pipeline Authorization Act) to respond to pollution caused by TAPS operations including tankers (Sec. V.D., VII. D., p. 48-49) and that Congress was clearly looking for a single entity to oversee pollution control. Since the Exxon Valdez spill, Alyeska is now claiming to be a "volunteer" responder to TAPS tanker spills and Alyeska has required individual contingency plans from nearly 30 companies.

Both of these actions by Alyeska compound matters for the state. Instead of one responder to tanker spills, there are dozens with dozens of contingency plans and multiple spill drills. Alyeska has created a management nightmare (p. 24). Further, the state is paying a 25% share of response costs with no legal assurance that Alyeska will respond to a TAPS tanker spill in Alaska waters (p. 33). This is bad business. The Council recommended that state legislation should mirror federal legislation in terms of requiring Alyeska to respond to all TAPS oil spills (Rec. #7 p. 11).

It is not clear whether the Council recommends immunizing Alyeska or not. We believe, arguably, that it does not because the Council states "that Alyeska has a duty to respond to and abate

pollution relating to the operation of the TAPS and, therefore, is not a response action contractor at all" (emphasis added p. 31). The Council recommends immunity (gross negligence) for response action contractors only (p. 8).

The Prince William Sound RCAC Legislative Committee seems to have interpreted that the Council does recommend immunizing Alyeska though, because the committee stated tentatively that "it would seem grossly premature to immunize Alyeska from liability as a response action contractor unless and until adequate legal assurances exist to protect the Sound and its residents from another Exxon Valdez" (p. 126). The RCAC is expected to take a formal position on response contractor immunity issues at the board meeting on March 19-21.

The more pressing concern, however, for both the RCAC and the Council is the issue of Alyeska as a "volunteer" responder to TAPS tanker spills. Both are clearly of the opinion that Alyeska has a duty to respond and that this should be reflected in state law. HB 540 makes no attempt to clarify the "volunteer" response issue.

For the time being, the ORA is resisting immunization for Alyeska under any legislative scenario out of concern that immunizing Alyeska from damages as response contractors may insulate Alyeska, its pipeline owner companies and, in turn, their owners, from tanker oil spill cleanup responsibilities (p. 49).

#### Issue: Tesoro's Bonding Requirement

Unfortunately, HB 540 does not solve the problem of Tesoro's bonding requirement. After the passage of HB 196 last session, Alyeska increased Tesoro's bond by 20% to \$1.2 billion instead of relieving Tesoro of the \$1 billion requirement as legislators had hoped. (Alyeska did allow Tesoro to meet the bond through an insurance combination instead of direct action which did provide marginal relief.)

The Council, however, found that the bonding requirement by Alyeska falls in the category of tariff costs which should be subject to review by either FERC (Federal Energy Regulatory Commission) (p. 51) or, as we found by further investigation, APUC (Alaska Public Utilities Commission) as being reasonably necessary and nondiscriminatory.

In other words, a simple request for such a review from the Legislature could resolve this critical issue for Tesoro as an alternative to HB 540.

#### Issue: Maximum Coastal Protection

The really major problem with HB 540 is that it gives response contractors immunity with nothing in return for the public. The Council recommended achieving maximum coastal protection for

Alaska in "trade" for immunity (Rec. #4 p.9) similar to the achievements in California.

In California, the promise of immunity in return for maximum coastal protection convinced the small private response contractors to work with the large co-ops; the four major cleanup co-ops to expand their scope of coverage; the co-ops to sign mutual aid agreements with each other and contracts with the state; the oil shippers to change some shipping routes to reduce the risk of spills in areas which do not have adequate levels of response capability; and the oil industry to adequately fund the co-ops (p. 103).

This creative and cooperative atmosphere in California sharply contrasts with the hostile working relations among contractors in Alaska. Alyeska has attempted to essentially blackmail Tesoro by an unreasonable bonding requirement; Tesoro funds over 50% of CISPRI, but not all operators in Cook Inlet are members of CISPRI because some "feel it is not in their best interest to join CISPRI" (pg. 99); CISPRI "pledged a \$1 million fund for orphan spills" that could presumably include spills from non-members, but Tesoro has reservations about responding to orphan spills because of risk of litigation over damages...Further, large regions of our coastline remain at risk from spills like Southeast and Unimak Pass. The oil industry, including contractors, should be encouraged to look beyond their own region of operation and work together with the state and public to address these areas.

As the ORA has repeatedly testified, the public interest groups and volunteer responders from California endorsed the concept of immunity for contractors ONLY as a trade for maximum coastal protection. (A letter to this effect is being prepared by the California legislator who spearheaded the California bill as proponents of HB 540 repeatedly fail to make this distinction).

Also, significantly, at present, "liability immunity has not yet been granted to any response contractor in California" because "no one gets immunity until they all work together to give the state maximum achievable protection" (emphasis added pg. 91, 103). Further, the California immunity is only for 60 days, with a possible extension of 30 more days as opposed to HB 540 which does not put a time limit on the immunity.

And the really remarkable thing is that California achieved all this without an 11 million gallon spill. Alaska deserves at least the same.

The Oil Reform Alliance's Recommendations

1) Response contractor immunity is no longer an issue which should be considered separately from other inter-related issues: HB 540 is not a realistic approach to improving response and solving issues addressed in the Citizens' Oversight Council ("Council") report.

EITHER

2) Draft new legislation that includes, as a package, all the Council's recommendations EXCEPT immunity for response contractors. Note: The Cook Inlet RCAC voted to oppose HB 540, let HB 196 sunset and pass away, and endorse a liability standard of simple negligence except for vessels of opportunity which do not have contractual indemnification, for a limited time only.

OR

3) Adopt the Council's recommendations as a legislative package as follows:

a) certification for maximum coastal protection must be achieved prior to immunity being granted as per California

b) a time limit is put on the immunity as per California (as opposed to unlimited immunity as the Council recommends)

c) a STATE certification process must be in place and implemented prior to immunity being granted, and

d) Alyeska is not granted immunity as a responder.



FROM THE DESK OF  
LISA PARKER

March 30, 1992

Sam,

Here is the information  
it said it would send  
to you. I'll keep you  
posted on any changes  
from the federal end. Let  
me know what you work  
out from the Senate side  
or if you need anything.  
Hello's to Marla, Sam  
and Jess!

Lisa Parker

**Amendments to H.R. 776**  
**As Ordered to be Reported by the**  
**Committee on Interior and Insular Affairs**

The amendments (stated in terms of the bill as reported by the Committee on Energy and Commerce) are as follows:

Page 2, after line 2, insert the following:

1       **PART 1—COMPREHENSIVE**  
2       **NATIONAL ENERGY POLICY ACT**

Strike titles VII, VIII, IX, X, XI, XIII, and XIX  
(and conform the table of contents accordingly).

At the end of the bill, add the following:

3       **PART 2—ENERGY DEVELOP-**  
4       **MENT AND ENVIRONMENTAL**  
5       **PROTECTION ACT**

6       **SEC. 2001. SHORT TITLE; TABLE OF CONTENTS.**

7       (a) **SHORT TITLE.**—This part may be cited as the  
8       “Energy Development and Environmental Protection  
9       Act”.

10      (b) **TABLE OF CONTENTS.**—

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H.L.C.

103

## 1 SEC. 2702. ALASKA OCS SUBSISTENCE REVIEW.

2 The Outer Continental Shelf Lands Act (43 U.S.C.  
3 1301 et seq.), as amended by section 2701 of this Act,  
4 is further amended by adding at the end thereof the fol-  
5 lowing:

## 6 "SEC. 32. ALASKA OCS SUBSISTENCE REVIEW.—

7 Prior to issuing any five-year program under section 18  
8 of this Act, conducting any lease sale, or approving any  
9 plan or permit for exploration, development, or production  
10 activities in the Alaska region authorized by this Act, the  
11 Secretary shall comply with section 810 of the Alaska Na-  
12 tional Interest Lands Conservation Act (16 U.S.C. 3120).  
13 In addition to other requirements, at the lease sale stage  
14 the Secretary shall fully consider the effects of exploration,  
15 development, and production upon subsistence uses."

16 **Subtitle B—Trans-Alaska Pipeline**

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

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

## 21 "RESPONSIBILITY OF RIGHT-OF-WAY HOLDER

22 "SEC. 208. In addition to the existing duties to re-  
23 spond to, contain, and clean up oil spills within the State  
24 of Alaska, including Prince William Sound, under section  
25 204(b) of this Act and other laws and requirements, the  
26 holder of the right-of-way shall file an Oil Spill Contin-

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H.L.C.

104

1 gency Plan for Prince William Sound with the Secretary  
2 of the Interior and other appropriate authorities."

3 SEC. 2712. EXXON VALDEZ SETTLEMENT FUND LAND AC-  
4 QUISSION.

5 Title II of the Trans-Alaska Pipeline Authorization  
6 Act (43 U.S.C. 1651 et seq.), as amended by section 2711  
7 of this Act, is amended by adding at the end thereof the  
8 following:

9 "PUBLIC LAND ACQUISITION

10 "SEC. 209. Notwithstanding any other provision of  
11 ~~any law~~ law, no less than 80 percent of any amounts received by  
12 the United States pursuant to section 207 of Public Law  
13 102-229 shall be utilized to acquire land and conservation  
14 easements, including timber rights, within the Chugach  
15 National Forest in the Prince William Sound region and  
16 in other Gulf of Alaska areas, including Kenai Fjords Na-  
17 tional Park, Afognak Island, and Kodiak National Wildlife  
18 Refuge."

19 SEC. 2713. SUBSISTENCE CLAIMS AGAINST TRANS-ALASKA  
20 PIPELINE LIABILITY FUND.

21 Section 204(c)(13) of the Trans-Alaska Pipeline Au-  
22 thorization Act (43 U.S.C. 1653(c)(13)) is amended—

23 (1) by striking out "and" at the end of sub-  
24 paragraph (A);

Section 711 Responsibility of the Right-of-Way Holder

This amendment requires that an Oil Spill Contingency Plan be filed with the Secretary of Interior in order to comply with existing law which requires that Alyeska Pipeline Service Company, as designated agent for the seven oil companies which possess the pipeline right-of-way, respond to and clean up TAPS related oil spills in Prince William Sound and elsewhere in Alaska. Three years after the Exxon Valdez disaster, Alyeska has adopted a revisionist position that it is merely a "voluntary" spill response contractor, thus providing no legal assurance that the entity with the most response equipment has a duty to or will in fact respond to oil spills. The amendment is consistent with the Justice Department and the State of Alaska's view of TAPS.

Section 204 (b) of the 1973 TAPS Act, as amended by section 8101 of the Oil Pollution Act of 1990 (P.L. 101-380):

"If any area in the State of Alaska within or without the right-of-way or permit area granted under the title is polluted by any activities related to the Trans-Alaska Pipeline System, including operation of the terminal, conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal or State officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder."

This statutory duty is mirrored in provisions of the U.S. Department of the Interior Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline with the holders.

Alyeska's current position is that it is merely a "voluntary response contractor" with no statutory obligation to respond to spills once oil is loaded on tankers at Valdez. In addition, Alyeska has requested that the Coast Guard establish procedures to "reimburse" them if they do voluntarily choose to respond. Alyeska's position is inconsistent with the TAPS Act, with OPA 1990, with the federal and state of Alaska right-of-way agreements, and with previously approved Alyeska contingency plans. In Alyeska's current position as a volunteer response action contractor, it no longer formally submits a Prince William Sound contingency plan for approval with Alyeska as the contingency plan holder. Today, as distinct from years prior to the Exxon Valdez spill, tanker owners or operators, rather than Alyeska, submit contingency plans relying upon Alyeska as the principal response action contractor to direct the field response for the first 72 hours.