

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8034 HOUSE RESOURCES

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4/13/93

CS FOR HOUSE BILL NO. 238( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): HOUSE SPECIAL COMMITTEE ON OIL AND GAS

A BILL.

FOR AN ACT ENTITLED

1 "An Act relating to and redesignating the oil and hazardous substance release  
2 response fund, repealing the authority in law by which marine highway vessels  
3 may be designed and constructed to aid in oil and hazardous substance spill  
4 cleanup in state marine water using money in the oil and hazardous substance  
5 release response fund, amending requirements relating to the revision of state and  
6 regional master prevention and contingency plans, altering requirements applicable  
7 to liens for recovery of state expenditures related to oil or hazardous substances,  
8 amending the authority to contract to conduct spill related research, and  
9 modifying definitions of related terms; and terminating the nickel-per-barrel oil  
10 conservation surcharge, levying and collecting two new oil surcharges, and  
11 providing for the suspension and reimposition of one of the new surcharges."

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

1 \* Section 1. AS 26.23.020(g) is amended to read:

2 (g) In addition to any other powers conferred upon the governor by law, the  
3 governor may, under AS 26.23.010 - 26.23.220,

4 (1) suspend the provisions of any regulatory statute prescribing  
5 procedures for the conduct of state business, or the orders or regulations of any state  
6 agency, if compliance with the provisions of the statute, order, or regulation would  
7 prevent, or substantially impede or delay, action necessary to cope with the disaster  
8 emergency;

9 (2) use all available resources of the state government and of each  
10 political subdivision of the state as reasonably necessary to cope with the disaster  
11 emergency;

12 (3) transfer personnel or alter the functions of state departments and  
13 agencies or units of them for the purpose of performing or facilitating the performance  
14 of disaster emergency services;

15 (4) subject to any applicable requirements for compensation under  
16 AS 26.23.160, commandeer or utilize any private property, except for all news media  
17 other than as specifically provided for in AS 26.23.010 - 26.23.220, if the governor  
18 considers this necessary to cope with the disaster emergency;

19 (5) direct and compel the relocation of all or part of the population  
20 from any stricken or threatened area in the state, if the governor considers relocation  
21 necessary for the preservation of life or for other disaster mitigation purpose;

22 (6) prescribe routes, modes of transportation, and destinations in  
23 connection with necessary relocation;

24 (7) control ingress to and egress from a disaster area, the movement of  
25 persons within the area, and the occupancy of premises in it;

26 (8) suspend or limit the sale, dispensing, or transportation of alcoholic  
27 beverages, firearms, explosives, and combustibles;

28 (9) make provisions for the availability and use of temporary  
29 emergency housing;

30 (10) allocate or redistribute food, water, fuel, or clothing; and

31 (11) use money from the oil and hazardous substance release

1 prevention and response fund, established by AS 46.08.010, to respond to a declared  
2 disaster emergency related to an oil or hazardous substance discharge.

3 \* Sec. 2. AS 26.23.050(b) is amended to read:

4 (b) Whenever, and to the extent that, money is needed to cope with a disaster,  
5 the first recourse shall be to money regularly appropriated to state and local agencies.

6 The second recourse shall be to money available in the disaster relief fund or, for oil  
7 or hazardous substances discharges, the oil and hazardous substance release prevention  
8 and response fund, as the governor determines appropriate. If money available from  
9 these sources is insufficient, and if the governor finds that other sources of money to  
10 cope with the disaster are not available or are insufficient, the governor may,  
11 notwithstanding the limitations imposed by AS 37.07.080(e),

12 (1) transfer and spend money appropriated for other purposes; or

13 (2) borrow money for a term not to exceed two years.

14 \* Sec. 3. AS 29.60.510(b) is amended to read:

15 (b) For each disaster emergency declared by the governor under AS 26.23.020  
16 that involves a catastrophic oil release or threatened catastrophic oil release, and  
17 subject to agreement with the commissioner of environmental conservation as to the  
18 amount of money in the fund that may be used by the department to make grants, the  
19 commissioner may expend not more than \$10,000,000 [OF THE BALANCE OF THE  
20 FUND THAT IS APPROPRIATED TO THE SPILL RESERVE OR] of the  
21 unrestricted balance of the catastrophic oil release response account in the fund for  
22 grants authorized under this section. For each disaster emergency declared by the  
23 governor under AS 26.23.020 that involves a release or threatened release of oil  
24 or a hazardous substance, except a catastrophic oil release, and subject to  
25 appropriation of money in the fund that may be used by the department to make  
26 grants, the commissioner may expend not more than the amount appropriated  
27 from the oil and hazardous substances release contingency and abatement account  
28 in the fund for grants authorized under this section. If the commissioner and the  
29 commissioner of environmental conservation do not agree on the amount of money in  
30 the catastrophic oil release response account in the fund that may be used by the  
31 department to make grants under AS 29.60.500 - 29.60.599 for a catastrophic oil

1 release or threatened catastrophic oil release, the governor shall make the  
2 determination.

3 \* Sec. 4. AS 37.14.410 is amended to read:

4 Sec. 37.14.410. REIMBURSED EXPENDITURES. (a) Amounts received by  
5 the state as reimbursement for expenses related to the Exxon Valdez oil spill incurred  
6 by the state on or before December 31, 1992, shall be deposited in the general fund  
7 and, except as required under (b) of this section, may not be credited to the oil and  
8 hazardous substance release mitigation account under AS 46.04.010 or to an account  
9 established in AS 46.08.020 or 46.08.025.

10 (b) A percentage of each payment deposited in the general fund under (a) of  
11 this section shall be credited to the oil and hazardous substance release mitigation  
12 account under AS 46.04.010 or to an account established in AS 46.08.020 or  
13 46.08.025. That percentage is determined by dividing

14 (1) the amount of the expenses for which the state may be reimbursed  
15 under (a) of this section that were paid from the oil and hazardous substance release  
16 prevention and response fund established under AS 46.08.010, by

17 (2) the total amount of expenses for which the state may be reimbursed  
18 under (a) of this section.

19 \* Sec. 5. AS 43.55 is amended by adding a new section to read:

20 Sec. 43.55.201. SURCHARGE LEVIED. (a) Every producer of oil shall pay  
21 a surcharge of \$.03 per barrel of oil produced from each lease or property in the state,  
22 less any oil the ownership or right to which is exempt from taxation.

23 (b) The surcharge imposed by (a) of this section is in addition to

24 (1) and shall be paid in the same manner as the tax imposed by  
25 AS 43.55.011 - 43.55.150; and

26 (2) the surcharge imposed by AS 43.55.300 - 43.55.320.

27 (c) A producer of oil shall make reports of production in the same manner and  
28 under the same penalties as required under AS 43.55.011 - 43.55.150.

29 \* Sec. 6. AS 43.55 is amended by adding a new section to read:

30 Sec. 43.55.211. DISPOSITION OF PROCEEDS OF SURCHARGE. (a) The  
31 commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.201 into

1 the general fund.

2 (b) The commissioner of administration shall separately account for all  
3 proceeds of the surcharge that are deposited into the general fund.

4 \* Sec. 7. AS 43.55 is amended by adding a new section to read:

5 Sec. 43.55.221. USE OF REVENUE DERIVED FROM SURCHARGE. The  
6 legislature may appropriate the annual estimated balance of the account established  
7 under AS 43.55.211 to the catastrophic oil release response account in the oil and  
8 hazardous substance release prevention and response fund established by AS 46.08.010.

9 \* Sec. 8. AS 43.55 is amended by adding a new section to read:

10 Sec. 43.55.231. SUSPENSION AND REIMPOSITION OF THE  
11 SURCHARGE. (a) Except when a different time for making a determination is  
12 required under (e) of this section, not later than 30 days after the end of each calendar  
13 quarter, the commissioner of administration shall determine the cumulative total of  
14 money that has been

15 (1) deposited through that calendar quarter, or was received through  
16 that calendar quarter and is subject to deposit, into the catastrophic oil release response  
17 account of the oil and hazardous substance release prevention and response fund  
18 established by AS 46.08.010;

19 (2) deposited during the calendar quarter, or was received during the  
20 calendar quarter and is subject to deposit, into the catastrophic oil release response  
21 mitigation account under AS 46.08.025(b);

22 (3) expended through that calendar quarter from the catastrophic oil  
23 release response account of the oil and hazardous substance release prevention and  
24 response fund.

25 (b) Within 15 days after making the determinations required by (a) of this  
26 section, the commissioner of administration shall

27 (1) add the amounts determined under (a)(1) and (2) of this section;

28 (2) determine the difference between the amount determined under (1)  
29 of this subsection and the amount determined under (a)(3) of this section; and

30 (3) report the amount determined under (2) of this subsection to the  
31 commissioner.

1 (c) If the commissioner of administration reports that the difference determined  
2 under (b) of this section equals or exceeds \$50,000,000, the commissioner of revenue  
3 shall suspend imposition and collection of the surcharge levied and collected under  
4 AS 43.55.201. Suspension of the imposition and collection of the surcharge begins on  
5 the first day of the calendar quarter next following the commissioner's receipt of the  
6 commissioner of administration's report under (b) of this section. Before the first day  
7 of a suspension authorized by this subsection, the commissioner shall make a  
8 reasonable effort to notify all persons who are known to the department to be paying  
9 the surcharge under AS 43.55.201 that the surcharge will be suspended.

10 (d) Except as provided in AS 43.55.240, if the commissioner of administration  
11 reports that the difference determined under (b) of this section is less than  
12 \$50,000,000, the commissioner of revenue shall require imposition and collection of  
13 the surcharge authorized under AS 43.55.201. Reimposition of the surcharge begins  
14 on the first day of the calendar quarter next following the commissioner's receipt of  
15 the commissioner of administration's report under (b) of this section. Before the first  
16 day of reimposition of the surcharge authorized by this subsection, the commissioner  
17 shall make a reasonable effort to notify all persons who are known to the department  
18 to be required to pay the surcharge under AS 43.55.201 that the surcharge will be  
19 reimposed.

20 (e) Notwithstanding the requirement of (a) of this section that the cumulative  
21 determination of receipts and expenditures be made quarterly, when the amount  
22 determined under (b) of this section is \$45,000,000 or more, the commissioner of  
23 administration shall make the determinations required by this section not later than 30  
24 days before each calendar quarter and every 30 days thereafter.

25 \* Sec. 9. AS 43.55 is amended by adding a new section to read:

26 Sec. 43.55.241. SURCHARGE NOT IMPOSED. The surcharge authorized by  
27 AS 43.55.201 is not levied during any fiscal year for which the estimated revenue from  
28 the surcharge would be sufficient to restore the balance of the oil and hazardous  
29 substance release prevention and response fund on the first day of the fiscal year to  
30 at least \$50,000,000, and

31 (1) the legislature does not, during the regular legislative session

# **CORRECTION**

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

1 (c) If the commissioner of administration reports that the difference determined  
2 under (b) of this section equals or exceeds \$50,000,000, the commissioner of revenue  
3 shall suspend imposition and collection of the surcharge levied and collected under  
4 AS 43.55.201. Suspension of the imposition and collection of the surcharge begins on  
5 the first day of the calendar quarter next following the commissioner's receipt of the  
6 commissioner of administration's report under (b) of this section. Before the first day  
7 of a suspension authorized by this subsection, the commissioner shall make a  
8 reasonable effort to notify all persons who are known to the department to be paying  
9 the surcharge under AS 43.55.201 that the surcharge will be suspended.

10 (d) Except as provided in AS 43.55.240, if the commissioner of administration  
11 reports that the difference determined under (b) of this section is less than  
12 \$50,000,000, the commissioner of revenue shall require imposition and collection of  
13 the surcharge authorized under AS 43.55.201. Reimposition of the surcharge begins  
14 on the first day of the calendar quarter next following the commissioner's receipt of  
15 the commissioner of administration's report under (b) of this section. Before the first  
16 day of reimposition of the surcharge authorized by this subsection, the commissioner  
17 shall make a reasonable effort to notify all persons who are known to the department  
18 to be required to pay the surcharge under AS 43.55.201 that the surcharge will be  
19 reimposed.

20 (e) Notwithstanding the requirement of (a) of this section that the cumulative  
21 determination of receipts and expenditures be made quarterly, when the amount  
22 determined under (b) of this section is \$45,000,000 or more, the commissioner of  
23 administration shall make the determinations required by this section not later than 30  
24 days before each calendar quarter and every 30 days thereafter.

25 \* Sec. 9. AS 43.55 is amended by adding a new section to read:

26 Sec. 43.55.241. SURCHARGE NOT IMPOSED. The surcharge authorized by  
27 AS 43.55.201 is not levied during any fiscal year for which the estimated revenue from  
28 the surcharge would be sufficient to restore the balance of the oil and hazardous  
29 substance release prevention and response fund on the first day of the fiscal year to  
30 at least \$50,000,000, and

31 (1) the legislature does not, during the regular legislative session

1 preceding the first day of the fiscal year, appropriate money from the general fund to  
2 the catastrophic oil release response account in the oil and hazardous substance release  
3 prevention and response fund sufficient to restore the balance of that account on the  
4 first day of the fiscal year to at least \$50,000,000; or

5 (2) the legislature, during the regular legislative session preceding the  
6 first day of the fiscal year, appropriates money from the general fund to the  
7 catastrophic oil release response account in the oil and hazardous substance release  
8 prevention and response fund sufficient to restore the balance of that account on the  
9 first day of the fiscal year to at least \$50,000,000 and, because of gubernatorial veto  
10 or reduction in the amount of the appropriation, restoration of the balance of the fund  
11 to at least \$50,000,000 does not become law.

12 \* Sec. 10. AS 43.55 is amended by adding new sections to read:

13 ARTICLE 2A. ADDITIONAL CONSERVATION SURCHARGE ON OIL.

14 Sec. 43.55.300. SURCHARGE LEVIED. (a) Every producer of oil shall pay  
15 a surcharge of \$.02 per barrel of oil produced from each lease or property in the state,  
16 less any oil the ownership or right to which is exempt from taxation.

17 (b) The surcharge imposed by (a) of this section is in addition to

18 (1) and shall be paid in the same manner as the tax imposed by  
19 AS 43.55.011 - 43.55.150; and

20 (2) the surcharge imposed by AS 43.55.201 - 43.55.241.

21 (c) A producer of oil shall make reports of production in the same manner and  
22 under the same penalties as required under AS 43.55.011 - 43.55.150.

23 Sec. 43.55.310. DISPOSITION OF PROCEEDS OF SURCHARGE. (a) The  
24 commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.300 into  
25 the general fund.

26 (b) The commissioner of administration shall separately account for all  
27 proceeds of the surcharge levied by AS 43.55.300 that are deposited into the general  
28 fund.

29 Sec. 43.55.320. USE OF REVENUE DERIVED FROM SURCHARGE. The  
30 legislature may appropriate the annual estimated balance of the account established  
31 under AS 43.55.310 to the oil and hazardous substances release contingency and

1 abatement account in the oil and hazardous substance release prevention and response  
2 fund established by AS 46.08.010.

3 \* Sec. 11. AS 43.55.900(3) is amended to read:

4 (3) "catastrophic oil discharge" means an oil discharge in excess of  
5 100,000 barrels, or any other oil discharge which the governor determines  
6 presents a grave and substantial threat to the economy or environment [HAS THE  
7 MEANING GIVEN IN AS 46.04.900];

8 \* Sec. 12. AS 43.55.900(15) is amended to read:

9 (15) "surcharge" means

10 (A) when used in AS 43.55.201 - 43.55.241, the surcharge  
11 levied by AS 43.55.201 [AS 43.55.200];

12 (B) when used in AS 43.55.300 - 43.55.320, the surcharge  
13 levied by AS 43.55.300;

14 \* Sec. 13. AS 46.04.200(a) is amended to read:

15 (a) The department shall

16 (1) prepare [AND ANNUALLY REVIEW AND REVISE] a statewide  
17 master oil and hazardous substance discharge prevention and contingency plan;

18 (2) annually review the statewide master oil and hazardous  
19 substance discharge prevention and contingency plan; and

20 (3) revise the statewide master oil and hazardous substance  
21 discharge prevention and contingency plan; the department shall revise the  
22 statewide master plan whenever, in the judgment of the commissioner, revision  
23 is necessary, but a revision under this paragraph may not occur more often than  
24 once during each fiscal year.

25 \* Sec. 14. AS 46.04.200(c) is amended to read:

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

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

30 (2) [SUBMIT THE DRAFT PLAN TO THE PUBLIC FOR REVIEW  
31 AND COMMENT;

1 (3) SUBMIT TO THE LEGISLATURE FOR REVIEW, NOT LATER  
2 THAN THE 10TH DAY FOLLOWING THE CONVENING OF EACH REGULAR  
3 SESSION, THE PLAN AND ANY ANNUAL REVISION OF THE PLAN;

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

8 (5) SUBMIT THE PLAN AND ANY ANNUAL REVISION TO THE  
9 ALASKA STATE EMERGENCY RESPONSE COMMISSION FOR ITS REVIEW  
10 AND APPROVAL UNDER AS 46.13.045].

11 \* Sec. 15. AS 46.04.200 is amended by adding a new subsection to read:

12 (d) In preparing a revision of the statewide master plan, the commissioner shall  
13 submit

14 (1) the draft plan to the

15 (A) public for review and comment; and

16 (B) Alaska State Emergency Response Commission for its  
17 review and approval under AS 46.13.045; and

18 (2) the proposed revision of the plan to the legislature for review not  
19 later than the 10th day following the convening of each regular session.

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

21 (a) For any region of the state, the boundaries of which are determined by the  
22 commissioner by regulation, in which the department is required to review and approve  
23 an oil discharge prevention and contingency plan submitted by a person under  
24 AS 46.04.030, the department shall

25 (1) prepare [AND ANNUALLY REVIEW AND REVISE] a regional  
26 master oil and hazardous substance discharge prevention and contingency plan;

27 (2) annually review the regional master oil and hazardous substance  
28 discharge prevention and contingency plan; and

29 (3) revise the regional master oil and hazardous substance  
30 discharge prevention and contingency plan; the commissioner shall revise a  
31 regional master plan whenever, in the judgment of the commissioner, revision is

1 necessary, but a revision under this paragraph may not occur more often than  
2 once during each fiscal year.

3 \* Sec. 17. AS 46.04.210(b) is amended to read:

4 (b) The provisions of AS 46.04.200(b) - (d) [AS 46.04.200(b) AND (c)] apply  
5 to preparation and review of a regional master plan under this section.

6 \* Sec. 18. AS 46.04.900(2) is amended to read:

7 (2) "catastrophic oil discharge" means

8 (A) an oil release or discharge in excess of 100,000 barrels; [,]

9 or

10 (B) any other release or discharge that [WHICH] the governor  
11 determines presents a grave and substantial threat to the economy or  
12 environment and for which the governor has issued a proclamation  
13 declaring a condition of disaster emergency under AS 26.23.020(c) [OF  
14 THE STATE];

15 \* Sec. 19. AS 46.08.005 is amended to read:

16 Sec. 46.08.005. PURPOSE. The legislature finds and declares that the  
17 catastrophic release of oil or hazardous substances into the environment presents a  
18 real and substantial threat to the public health and welfare, to the environment, and to  
19 the economy of the state. The legislature therefore concludes that it is in the best  
20 interest of the state and its citizens to provide a [READILY AVAILABLE] fund  
21 containing two accounts. One account consists of money readily available to the  
22 commissioner for the payment of the expenses incurred by the Department of  
23 Environmental Conservation during an emergency first response to a catastrophic  
24 release or threatened [AND THE DEPARTMENT OF TRANSPORTATION AND  
25 PUBLIC FACILITIES IN THE PROTECTION OF THE ENVIRONMENT OF THE  
26 STATE FROM THE] release of oil [OR HAZARDOUS SUBSTANCES]. The other  
27 account consists of money that the state may use during a response to a release  
28 or threatened release of oil or a hazardous substance, other than a catastrophic  
29 oil discharge, to make preparations for the possibility of a release or threatened  
30 release of oil or hazardous substances, and to reduce the amount, degree, or  
31 intensity of a release or threatened release.

1 \* Sec. 20. AS 46.08.010(a) is amended to read:

2 (a) There is established in the state general fund the oil and hazardous  
3 substance release prevention and response fund. The fund shall be administered by  
4 the commissioner. The fund is composed of two accounts.

5 (1) the oil and hazardous substances release contingency and  
6 abatement account:

7 (2) the catastrophic oil release response account.

8 \* Sec. 21. AS 46.08.010(b) is amended to read:

9 (b) Money from an appropriation made to an account in the fund remaining  
10 in that account [THE FUND] at the end of a fiscal year remains available for  
11 expenditure in successive fiscal years.

12 \* Sec. 22. AS 46.08.010(c) is amended to read:

13 (c) The fund shall be used for actual expenses incurred under AS 46.08.040.  
14 The [EXCEPT AS PROVIDED IN AS 46.08.040(d)(2), THE] fund may not be used  
15 for capital improvements.

16 \* Sec. 23. AS 46.08.020 is amended to read:

17 Sec. 46.08.020. FINANCING OF THE OIL AND HAZARDOUS  
18 SUBSTANCES RELEASE CONTINGENCY AND ABATEMENT ACCOUNT

19 [FUND]. (a) The legislature may appropriate from the following sources to the oil  
20 and hazardous substances release contingency and abatement account in the fund:

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

23 (2) money recovered or otherwise received from parties responsible for  
24 the containment and cleanup of oil or a hazardous substance at a specific site, but  
25 excluding

26 (A) money recovered or otherwise received due to a  
27 catastrophic oil discharge: and

28 (B) money [FUNDS] from performance bonds and other forms  
29 of financial responsibility held in escrow pending satisfactory performance of  
30 a privately financed response action; and

31 (3) fines, penalties, or damages recovered under AS 46.08.005 -

1 46.08.080 or other law for costs incurred by the state as a result of the release or  
2 threatened release of oil or a hazardous substance, but excluding fines, penalties, or  
3 damages recovered or otherwise received due to a catastrophic oil discharge.

4 (b) Money received by the state under (a)(2) and (a)(3) of this section shall  
5 be deposited in the general fund and credited to a special account called the "oil and  
6 hazardous substances [SUBSTANCE] release contingency and abatement mitigation  
7 account." The legislature may annually appropriate to the oil and hazardous  
8 substances release contingency and abatement account in the fund from the oil and  
9 hazardous substances release contingency and abatement mitigation [THIS]  
10 account a sum equal to the amount received under (a)(2) and (a)(3) of this section  
11 during the calendar year preceding the legislative session in which the appropriations  
12 are to be made.

13 \* Sec. 24. AS 46.08 is amended by adding a new section to read:

14 Sec. 46.08.025. FINANCING OF THE CATASTROPHIC OIL RELEASE  
15 RESPONSE ACCOUNT. (a) The legislature may appropriate from the following  
16 sources to the catastrophic oil release response account in the fund:

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

19 (2) money recovered or otherwise received from parties responsible for  
20 the containment and cleanup of a catastrophic oil discharge, but excluding money from  
21 performance bonds and other forms of financial responsibility held in escrow pending  
22 satisfactory performance of a privately financed response action;

23 (3) fines, penalties, or damages recovered under AS 46.08.005 -  
24 46.08.080 or other law for costs incurred by the state as a result of a catastrophic oil  
25 discharge.

26 (b) Money received by the state under (a)(2) and (a)(3) of this section shall  
27 be deposited in the general fund and credited to a special account called the  
28 "catastrophic oil release response mitigation account." The legislature may annually  
29 appropriate to the catastrophic oil release response account in the fund from the  
30 catastrophic oil release response mitigation account a sum equal to the amount received  
31 under (a)(2) and (a)(3) of this section during the calendar year preceding the legislative

1 session in which the appropriations are to be made.

2 \* Sec. 25. AS 46.08.040(a) is amended to read:

3 (a) In addition to money in the fund that is transferred to the commissioner of  
4 community and regional affairs to make grants under AS 29.60.510 and to pay for  
5 impact assessments under AS 29.60.560, the commissioner of environmental  
6 conservation may use money

7 (1) from the catastrophic oil release response account in the fund to

8 (A) [(1)] investigate and evaluate a catastrophic oil [THE]  
9 release or threatened catastrophic oil release [OF OIL OR A HAZARDOUS  
10 SUBSTANCE], and contain, clean up, and take other necessary action, such as  
11 monitoring and assessing, to address a catastrophic oil release or threatened  
12 catastrophic oil release [OF OIL OR A HAZARDOUS SUBSTANCE] that  
13 poses an imminent and substantial threat to the public health or welfare, or to  
14 the environment;

15 (B) [(2)] PAY ALL COSTS INCURRED TO

16 (A) ESTABLISH AND MAINTAIN THE OIL AND  
17 HAZARDOUS SUBSTANCE RESPONSE OFFICE;

18 (B) REVIEW OIL DISCHARGE PREVENTION AND  
19 CONTINGENCY PLANS SUBMITTED UNDER AS 46.04.030,

20 (C) CONDUCT TRAINING, RESPONSE EXERCISES,  
21 INSPECTIONS, AND TESTS, IN ORDER TO VERIFY EQUIPMENT  
22 INVENTORIES AND ABILITY TO PREVENT AND RESPOND TO OIL  
23 AND HAZARDOUS SUBSTANCE RELEASE EMERGENCIES, AND TO  
24 UNDERTAKE OTHER ACTIVITIES INTENDED TO VERIFY OR  
25 ESTABLISH THE PREPAREDNESS OF THE STATE, A MUNICIPALITY,  
26 OR A PARTY REQUIRED BY AS 46.04.030 TO HAVE AN APPROVED  
27 CONTINGENCY PLAN TO ACT IN ACCORDANCE WITH THAT PLAN;  
28 AND

29 (D) VERIFY OR ESTABLISH PROOF OF FINANCIAL  
30 RESPONSIBILITY REQUIRED BY AS 46.04.040;

31 (3) PAY THE EXPENSES INCURRED BY THE ALASKA DIVISION

1 OF EMERGENCY SERVICES FOR THE OIL AND HAZARDOUS SUBSTANCE  
2 RESPONSE CORPS AND THE OIL AND HAZARDOUS SUBSTANCE RESPONSE  
3 DEPOTS WHEN PRESENTED WITH APPROPRIATE DOCUMENTATION BY  
4 THE DIVISION;

5 (4)] provide matching funds in the event of a catastrophic oil release  
6 for participation

7 (i) in federal oil discharge cleanup activities; and

8 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive  
9 Environmental Response, Compensation, and Liability Act of 1980);

10 and

11 (C) [(5)] recover the costs to the state, a municipality, or a  
12 village of a containment and cleanup resulting from the catastrophic oil release  
13 or the threatened catastrophic oil release [OF OIL OR A HAZARDOUS  
14 SUBSTANCE];

15 (2) from the oil and hazardous substances release contingency and  
16 abatement account in the fund to

17 (A) investigate and evaluate the release or threatened release  
18 of oil or a hazardous substance, except a catastrophic oil release, and  
19 contain, clean up, and take other necessary action, such as monitoring and  
20 assessing, to address a release or threatened release of oil or a hazardous  
21 substance, except a catastrophic oil release, that poses an imminent and  
22 substantial threat to the public health or welfare;

23 (B) recover the costs to the state, a municipality, or a village  
24 of a containment and cleanup resulting from the release or the threatened  
25 release of oil or a hazardous substance, except a catastrophic oil release;

26 (C) pay all costs incurred to

27 (i) establish and maintain the oil and hazardous  
28 substance response office;

29 (ii) review oil discharge prevention and contingency  
30 plans submitted under AS 46.04.030;

31 (iii) conduct training, response exercises, inspections,

1 and tests. in order to verify equipment inventories and ability to  
 2 prevent and respond to oil and hazardous substance release  
 3 emergencies. and to undertake other activities intended to verify or  
 4 establish the preparedness of the state, a municipality, or a party  
 5 required by AS 46.04.030 to have an approved contingency plan to  
 6 act in accordance with that plan: and

7 (iv) verify or establish proof of financial  
 8 responsibility required by AS 46.04.040:

9 (D) pay the expenses incurred by the Alaska division of  
 10 emergency services for the oil and hazardous substance response corps and  
 11 the oil and hazardous substance response depots when presented with  
 12 appropriate documentation by the division:

13 (E) provide matching funds in the event of the release of oil  
 14 or a hazardous substance, except a catastrophic oil release, for  
 15 participation

16 (i) in federal oil discharge cleanup activities: and

17 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive  
 18 Environmental Response, Compensation, and Liability Act of 1980):

19 and

20 (F) [(6)] prepare, review, and revise

21 (i) [(A)] the state's master oil and hazardous substance  
 22 discharge prevention and contingency plan required by AS 46.04.200;  
 23 and

24 (ii) [(B)] a regional master oil and hazardous substance  
 25 discharge prevention and contingency plan required by AS 46.04.210  
 26 ]; AND

27 (7) RESTORE THE ENVIRONMENT BY ADDRESSING THE  
 28 EFFECTS OF AN OIL OR HAZARDOUS SUBSTANCE RELEASE].

29 \* Sec. 26. AS 46.08.040(b) is amended to read:

30 (b) When the governor declares a disaster related to an oil or hazardous  
 31 substance discharge emergency under AS 26.23.020(c), the governor may, during the

1 effective period of the disaster emergency, use money from the catastrophic oil  
2 release response account in the fund to respond to the disaster emergency.

3 \* Sec. 27. AS 46.08.040(c) is amended to read:

4 (c) Notwithstanding other provisions of this section, money from the fund may  
5 not be used for a purpose specified in (a)(1)(B), (a)(1)(C), or (a)(2) [(a)(2) - (7) AND  
6 (d)(2)] of this section unless money is available from an appropriation made  
7 specifically for that purpose.

8 \* Sec. 28. AS 46.08.060(a) is amended to read:

9 (a) The commissioner shall submit a report to the legislature not later than the  
10 10th day following the convening of each regular session of the legislature. The report  
11 may include information considered significant by the commissioner but must include:

12 (1) the amount of money expended by the department under  
13 AS 46.08.040(a) during the preceding fiscal year;

14 (2) the amount and source of money received and money recovered by  
15 or on behalf of the department during the preceding fiscal year as specified in  
16 AS 46.08.020 and 46.08.025;

17 (3) a summary of municipal participation in the department's responses  
18 that were paid for [FUNDED] by the fund;

19 (4) a detailed summary of department activities in responses paid for  
20 [FUNDED] by the fund during the preceding fiscal year, including response  
21 descriptions and statements outlining the nature of the threat; in this paragraph,  
22 "detailed" includes information describing each personal services position and total  
23 compensation for that position, each contract in excess of \$20,000, and each purchase  
24 in excess of \$10,000; and

25 (5) the projected cost to the department for the next fiscal year of  
26 monitoring, operating, and maintaining sites where response has been completed or is  
27 expected to be continued during the fiscal year.

28 \* Sec. 29. AS 46.08.075(a) is amended to read:

29 (a) The state has a lien for expenditures by the state from the oil and  
30 hazardous substance release prevention and response fund, or from any other state  
31 fund, for the costs of response, containment, removal, or remedial action resulting from

1 an oil or hazardous substance release or spill, or, with respect to response costs, for  
2 the costs of response to a threatened [THE SUBSTANTIAL THREAT OF A] release  
3 of oil or a hazardous substance, against all property owned by a person who is  
4 determined by the commissioner to be liable for the expenditures under this chapter,  
5 AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes  
6 interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the  
7 expenditures. The state may file an action in a court of competent jurisdiction in order  
8 to foreclose on the lien.

9 \* Sec. 30. AS 46.08.075(e) is amended to read:

10 (e) A person with an ownership interest in property against which a lien is  
11 recorded may bring an action in a court of competent jurisdiction to require that the  
12 lien be released. The lien may be released to the extent of that person's ownership  
13 interest if the court finds that the person is not liable for the expenses incurred by the  
14 state in connection with the costs of response, containment, removal, or remedial  
15 action resulting from the [OIL OR HAZARDOUS SUBSTANCE] release or spill, or  
16 from the threatened [THREAT OF] release, of oil or a hazardous substance.

17 \* Sec. 31. AS 46.08.150 is amended to read:

18 Sec. 46.08.150. CONTRACTS. The office or the division, as applicable, may  
19 enter into agreements with agencies of the state and federal government, political  
20 subdivisions, the University of Alaska, or private persons or entities to

21 (1) provide the personnel, equipment, or other services or supplies  
22 necessary to establish and maintain regional oil and hazardous substances depots and  
23 as necessary for response readiness; and

24 (2) train members of response corps [; AND

25 (3) CONDUCT RESEARCH INTO OIL AND HAZARDOUS  
26 SUBSTANCES SPILL TECHNOLOGY; THE OFFICE SHALL INCLUDE IN THE  
27 RESEARCH TOPICS FOR WHICH IT CONDUCTS OR CONTRACTS FOR  
28 RESEARCH, THE RESEARCH TOPICS RECOMMENDED TO IT BY THE  
29 HAZARDOUS SUBSTANCE SPILL TECHNOLOGY REVIEW COUNCIL UNDER  
30 AS 46.13.120].

31 \* Sec. 32. AS 46.08.900(5) is amended to read:

1 (5) "fund" means the oil and hazardous substance release prevention  
2 and response fund;

3 \* Sec. 33. AS 46.08.900(9) is amended to read:

4 (9) "release"

5 (A) means any spilling, leaking, pumping, pouring, emitting,  
6 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into  
7 the environment;

8 (B) [, EXCEPT THAT "RELEASE"] does not include

9 (i) a permitted release; or

10 (ii) an act of nature;

11 \* Sec. 34. AS 46.08.900(11) is amended to read:

12 (11) "threatened release" means [AN IMMINENT DANGER] that a  
13 release is imminent: a release is imminent if

14 (A) it is impending, or on the point of happening; or

15 (B) though not impending, in the judgment of the  
16 commissioner

17 (i) the incident or occurrence may reasonably be  
18 expected to culminate in an actual release; and

19 (ii) that actual release may reasonably be expected to  
20 cause personal injury, other injury to life, or loss of or damage to  
21 property [WILL OCCUR];

22 \* Sec. 35. AS 46.08.900 is amended by adding a new paragraph to read:

23 (13) "catastrophic oil discharge" and "catastrophic oil release" have the  
24 meaning given the term "catastrophic oil discharge" in AS 46.04.900.

25 \* Sec. 36. AS 46.09.900(8) is amended to read:

26 (8) "threatened release" means [AN IMMINENT DANGER] that a  
27 release is imminent: a release is imminent if

28 (A) it is impending, or on the point of happening; or

29 (B) though not impending, in the judgment of the  
30 commissioner

31 (i) the incident or occurrence may reasonably be

1 expected to culminate in an actual release: and

2 (ii) that actual release may reasonably be expected to  
3 cause personal injury, other injury to life, or loss of or damage to  
4 property [WILL OCCUR].

5 \* Sec. 37. AS 19.65.025; AS 43.55.200, 43.55.210, 43.55.220, 43.55.230, 43.55.240;  
6 AS 44.46.025(a)(5), 44.46.025(a)(6); and AS 46.08.040(d) are repealed.

7 \* Sec. 38. TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR  
8 PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by  
9 this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b), the  
10 reference to which is repealed by sec. 3 of this Act, is not an expenditure.

11 \* Sec. 39. APPLICABILITY. The definition of "catastrophic oil discharge" in  
12 AS 46.08.900, added by sec. 35 of this Act, applies to discharges occurring after the effective  
13 date of the Act.

14 \* Sec. 40. TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION  
15 SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1993, AND  
16 BEFORE THE EFFECTIVE DATE OF THIS ACT. After June 30, 1993, and before the  
17 effective date of this Act, every producer of oil who is required by AS 43.55.200 - 43.55.240,  
18 repealed by this Act, to pay the oil conservation surcharge of \$.05 per barrel of oil shall pay  
19 that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply to the  
20 amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts received  
21 after June 30, 1993, and before the effective date of this Act, if so appropriated by the  
22 legislature and notwithstanding any other provision of law relating to the deposit of and  
23 accounting for those receipts,

24 (1) on the effective date of this Act, the commissioner of revenue shall allocate

25 (A) 60 percent of the amount received to the catastrophic oil release  
26 response account, established by the catastrophic oil release response account  
27 established by AS 46.08.010(a)(2), added by sec. 20 of this Act; and

28 (B) 40 percent of the amount received to the oil and hazardous  
29 substances release contingency and abatement account established by  
30 AS 46.08.010(a)(1), added by sec. 20 of this Act; and

31 (2) the allocations made under (1) of this section are credited to the respective

1 accounts for purposes of determination of the suspension and reimposition of the surcharge  
2 under AS 43.55.231 and 43.55.241, added by secs. 8 and 9 of this Act.

# Alaska House of Representatives



## Special Committee on Oil & Gas

Joe Green, Chairman

TO: Representative Joe Green, Chairman  
House Oil & Gas Committee

FR: Jeff Logan, Legislative Assistant  
House Oil & Gas Committee

RE: Amendments to proposed CS for HB 238

DATE: April 16, 1993

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Janice Adair, Assistant Commissioner of DEC, has suggested changes to the CS for HB 238 work draft. Craig Tillery, Assistant Attorney General, has also made some suggestions. Per your instructions I have begun to incorporate these changes into the work draft.

In this draft a catastrophic spill is defined as a spill of 100,000 barrels, which is current law, or a spill "for which the governor has issued a proclamation declaring a condition of disaster emergency under AS 26.23.020(c). Both Ms. Adair and Mr. Tillery have observed that this declaration puts into motion a whole series of actions and timelines required under law, but which may not be required to respond to a spill. As you have instructed, I will consult with the drafter to develop a standard which will allow the fund to be used for a spill of less than 100-thousand barrels, but which will require some action by the governor in order to do so.

Representative Joe Green  
April 16, 1993  
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Another suggestion - made by many with whom I have consulted on this draft, - is to add language to transfer the responsibility for oil and hazardous substance release response depots from the Division of Emergency Services in the Department of Military and Veterans Affairs to DEC. As you have instructed I have begun that process.

Other suggestions and observations are as follows, by draft section:

Sec. 4 Clarify that Exxon Valdez oil spill reimbursements must be deposited into the contingency and abatement account.

Sec. 8 In calculating the money that has been deposited into the catastrophic account to determine when the \$50-million cap has been reached, at the request of the Dept. of Law, we need to exclude money that is restricted to a certain use by the federal government. For example, awards for natural resource damages are required under the Clean Water Act to be used for restoration. For a catastrophic spill, those awards would be deposited into the catastrophic spill mitigation account, the balance of which is used as part of the calculation of when the \$50-million cap has been reached. Under this scenario, the balance of the catastrophic accounts could reach \$50-million, but not all of the \$50-million could be used for response.

Sec. 9 Technical amendment - Page 6, Line 10.  
"(d) Except as provided in AS 43.55.240 ..." should read AS 43.55.241

Sec. 11 We need to include discharges other than oil. This is done by simply deleting the word "oil" from line 5.

Sec.13 At the request of DEC we need to allow DEC to revise the plan more than once a year. This can be accomplished by inserting a period after "...is necessary..." on line 23.

Sec. 16 The same change as Sec. 13. Page 10, Line 1.  
Insert a period after "...necessary..."

Representative Joe Green

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Sec. 19 It is the feeling of Ms. Adair and Mr. Tillery that Sec. 25 of this draft expands the permitted use of the catastrophic account beyond what is spelled out in the purpose section - section 19. This concern can be addressed by adding to the purpose section those functions which are listed in Sec. 25.

Sec. 25 Under 46.08.900 (3) "containment and cleanup" is defined to include "restoration of the environment". In this section of the draft, restoration of the environment is not included as one of the functions of the catastrophic account and is deleted as one of the permitted uses of the contingency and abatement account.

On page 13, line 10 we list "...and contain, cleanup,..." as one of the functions of the fund, which may, under the definition in 46.08.900.(3), mean restoration. However, to express legislative intent as clearly as possible, Mr. Tillery suggests we insert the same language that appears in 46.08.900 (3).

Further, in Sec. 25, again responding to a suggestion made by many people, we need to add to the list of those things on which the commissioner may spend money from the catastrophic account a provision for the capital construction costs associated with installing and stocking the response depots.

Sec. 28 In an effort to reduce the cost of the annual report, Ms. Adair suggests deleting the requirement that the report include an accounting of the money appropriated to the fund for a specific purpose.

Sec. 34 Mr. Tillery suggests that this definition may not conform to federal law. As you have instructed me, I will continue to consult with the drafter and with Mr. Tillery to ensure that we do conform. Further, Mr. Tillery requests that on line 21, after "property" we insert the words "including the environment."

Sec. 37 AS 44.46.025(a)(5) and (a)(6) allow DEC to charge fees for oil discharge financial responsibility approvals and oil discharge contingency plan approvals. Their inclusion in this section is an oversight on my part.

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This list may not be totally inclusive of every suggestion or observation, but I can represent it as an honest attempt to address the concerns expressed to me by Ms. Adair and Mr. Tillery.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

April 14, 1993

**SUBJECT:** Draft CS for House Bill 238, amending the oil and hazardous substance release response fund ("470 Fund") and making additions and changes to related matters -- sectional analysis (Work Order No. 8-LS0676\D)

**TO:** Representative Bill Williams, Chair  
House Resources Committee  
Attn: Mary McDowell

**FROM:** Jack Chenoweth   
Legislative Counsel

This sectional analysis addresses the "D" draft of CSHB 238( ). The bill amends the purposes for which the oil and hazardous substance release response fund ("470 Fund") may be expended, replaces the nickel-per-barrel oil conservation surcharge with two new oil surcharges, and makes a series of related changes.

### I

#### Amendments related to the oil and hazardous substance release response fund:

As with the last previous draft, the bill would establish a series of funds and accounts:

-- the oil and hazardous substance release response fund [this is the original "470 Fund" renamed in this bill the oil and hazardous substance release **prevention and response** fund]; the measure does not change the fund's status in that it remains a fund within the general fund; the redesignated fund would have two components:

-- the oil and hazardous substances release contingency and abatement account (AS 46.08.010(a)(1) and 46.08.020), the first component;

-- the oil and hazardous substances release contingency and abatement mitigation account (AS 46.08.020), a holding account from which money is transferred in and out;

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-- the catastrophic oil release response account (AS 46.08.010(a)(2) and 46.08.025), the second component; and

-- the catastrophic oil release response mitigation account (AS 46.08.025), also a holding account from which money is transferred in and out.

Carried forward is the reference in current law to the "oil and hazardous substance release mitigation account" in AS 46.04.010, to which this measure makes no change and only a passing reference.

Bearing that in mind:

**Bill section 19** amends the statement of purpose underpinning the oil and hazardous substance release response fund chapter (AS 46.08) by restating the chapter's purpose in light of the amendments made to the chapter and to related provisions.

**Bill section 20** identifies the two accounts that constitute that fund.

**Bill section 21** makes a related substitution of a reference to "account" for fund.

The amendment made in **bill section 22** reflects the repeal of AS 46.08.040(d)--use of the fund as a source of money for construction of ferries--elsewhere in the bill.

**Bill section 23**, revising AS 46.08.020 spells out the manner in which the oil and hazardous substance release contingency and abatement account is to be financed.

**Bill section 24**, adding a parallel section, AS 46.08.025, sets out the manner in which the catastrophic oil release response account is to be financed.

**Bill section 25:** The amendments made by this section to AS 46.08.040(a) revise the objectives for which money in the oil and hazardous substance release response fund may be spent and allocate those objectives to the two accounts. All the purposes except activity directly related to a catastrophic oil release or threatened catastrophic oil release and use of the fund balance for related oil cleanup activity cost recovery purposes are to be addressed by money in the oil and hazardous substance release contingency and abatement account. Activities directly related to a catastrophic oil release or threatened catastrophic oil release and those involving related oil cleanup activity cost recovery purposes are to be met from the catastrophic oil release response account.

**Bill section 26** limits the governor to drawing disaster emergency money from the catastrophic oil release response account.

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**Bill section 27:** Under the bill section as amended, a specific appropriation from either account in the oil and hazardous substance release response fund would still be required before money could be used for any other purpose than the immediate response action authorized by AS 46.08.040(a)(1)(A) for catastrophic oil spills.

**Bill sections 3 and 28** make additional changes reflecting the division of the fund into two accounts.

As in the last previous version, the measure seeks to provide consistency of treatment in its use, in AS 46.08, of the terms "release" and "threatened release." **Bill section 33** provides a technically revised definition of "release" and **bill section 34** substantively amends the definition of "threatened release." Conforming changes that reflect the revised definitions are made by **bill sections 29 and 30**.

Under one of the repealer sections set out in **bill section 37**, the oil and hazardous substance release response fund would no longer be available to support ferry construction (authorization to use the fund to build one or more new ferries would be terminated by repeal of AS 19.65.025 and AS 46.08.040(d)).

As I earlier noted, the "oil and hazardous substance release response fund" is renamed the "oil and hazardous substance release **prevention and response fund**." You'll find those changes set out in **bill sections 1, 2, 4, and 32** of the bill and elsewhere as appropriate.

**Bill section 35** incorporates a definition of "catastrophic oil discharge" into AS 46.08, while **bill section 39** explains that definition's applicability.

## II

### Amendment related to the oil conservation surcharge

The bill eliminates the current nickel-per-barrel oil conservation surcharge, replacing it with a pair of new surcharges, one levied at 3 cents per barrel, the other imposed at a rate of 2 cents per barrel.

**Bill section 5:** This section imposes a new conservation surcharge at the rate of \$.03 per barrel.

**Bill sections 6 - 9** essentially carry forward the current provisions relating to levy and collection of the nickel-per-barrel oil conservation surcharge, but make them applicable to the new surcharge.

**Bill section 7** directs the deposit of the three cent per barrel surcharge to the catastrophic oil release response account in the fund.

**Bill section 8** Sets out the conditions under which the severance tax surcharge shall be suspended or reimposed. It alters one of the factors that triggers levy and collection of the surcharge. For purposes of determining whether the tax shall apply, the calculation of the income stream is amended to include amounts previously expended from the oil and hazardous substance release response fund that have been recovered and redeposited into the mitigation account. The amended provision also reflects the substitution of the catastrophic oil release response account. Under subsection (e), in lieu of quarterly determinations of the trigger mechanism, when the account balance exceeds 45 million dollars, the determinations are to be made more frequently.

**Bill section 9** amends the mechanism by which the surcharge on/surcharge off trigger shall be computed.

**Bill section 10** imposes a two cent per barrel surcharge and directs the deposit of the money received from it into the "oil and hazardous substance release contingency and abatement account".

**Bill section 11** maintains the definition of "catastrophic oil discharge" applicable to the oil conservation surcharges.

**Bill section 12** provides a revised definition for the term "surcharge".

A related provision of the bill, **bill section 38**, is inserted by way of clarification of how appropriations, if any, made to the spill reserve fund, mentioned within the text of former AS 29.60.510(b), are to be treated for purposes of determining whether they are to be treated as expenditures from the oil and hazardous substance release response fund in conjunction with the factors applicable to suspension or reimposition of the severance tax conservation surcharge. Since the statutory reference to "spill reserve" would be repealed, the provision is drafted as an uncodified, temporary law section with a limited applicability.

Another related provision, **bill section 40**, sets out a transition mechanism for amounts collected under the nickel-per-barrel surcharge after June 30, 1993, and until the effect date of this Act.

### III

#### Related matters:

**Bill section 13:** The amendment to AS 46.04.200(a) retains the requirement of annual review of the statewide prevention and contingency plan but removes from current law the requirement of annual revision of the plan and substitutes revision

at the discretion of the commissioner of environmental conservation but not more often than once a year.

**Bill section 14:** The section, amending AS 46.04.200(c), deletes from current law the explicit requirements that, as part of the annual review of the state master plan, the proposed draft revisions of the state master plan be offered for public review and comment, for legislative review, and for review by the state emergency response commission (AS 46.13.010).

**Bill section 15:** In line with the changes made in the preceding bill section, this bill section restates the requirements applicable to a plan revision, directing submission of the proposed revised master plan to the same three groups.

**Bill sections 16 and 17:** The changes and addition made by these two bill sections, applicable to regional prevention and contingency master plans, parallel those with respect to the state plan as set out in bill sections 13 and 14.

**Bill section 18** offers a revised definition of the term "catastrophic oil discharge," incorporating reference to declared disaster emergencies for discharges smaller than 100,000 barrels of oil.

#### IV

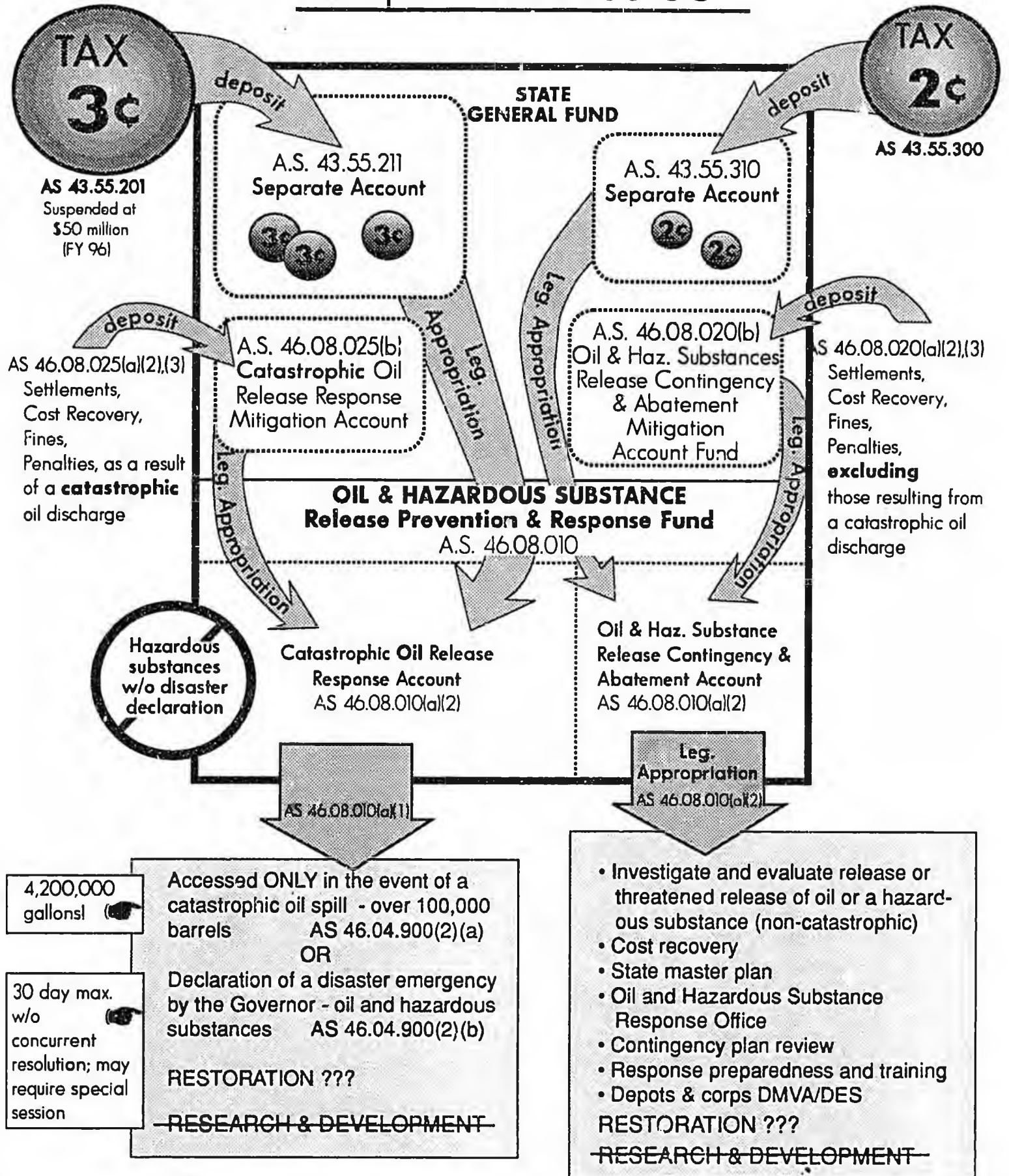
#### Other topics:

**Bill section 31** eliminates the ability of the Oil and Hazardous Substance Response Office to conduct certain spill technology research.

Modeled after the revision of the definition made in bill section 34 mentioned earlier, **bill section 36** revises the definition of the term "threatened release" applicable to AS 46.09.

JBC:pl  
93-297.plm

# Proposed HB 238 CS



## **Overview of Proposed CS for House Bill 238, Relating to and Redesigning the Oil and Hazardous Substance Release Response Fund**

This bill amends the purposes for which the oil and hazardous substance release response fund ("response fund" or "470 fund") may be expended and replaces the nickel-per-barrel oil conservation surcharge with two new surcharges. In addition, the oil and hazardous substance release response fund ("response fund" or "470 fund") is renamed in this bill the "oil and hazardous substance release prevention and response fund." The fund still remains a fund within the general fund.

Within the new fund is established a series of accounts:

- the so called "oil and hazardous substances release contingency and abatement account" which is the "operational" account that receives the new 2 cents surcharge;
- the "oil and hazardous substances release contingency and abatement mitigation account," which is a holding account from which money is transferred in (primarily from cost recovery from spills less than 4.2 million gallons) and out;
- the so called "catastrophic oil release response account" that receives the new 3 cent surcharge; and
- the "catastrophic oil release response mitigation account" which is also a holding account from which money is transferred in and out.

The proposed CS makes the following changes to the uses of the surcharge funds:

- The purpose of the new oil and hazardous substance release prevention and response fund is 1) for expenses incurred by DEC "as an emergency first response to a release or threatened release of oil or hazardous substances" of catastrophic oil spills (over 4.2 million gallons) using the catastrophic oil release response account, and 2) for state "use during a response to a release or threatened release of oil or hazardous substance, other than a catastrophic release."
- **Direct access to local impact grants is restricted to catastrophic oil releases.** If a spill is not defined as catastrophic, for a local impact grant, the governor must first declare a disaster emergency, and then the funds must be appropriated--significantly limiting access to local impact grant money.

## Regional Citizens' Advisory Council of Prince William Sound

- The proposal alters one of the factors that triggers levy and collection of the surcharge. For purposes of determining whether the tax shall apply, the calculation of the income stream is amended to include amounts previously expended from the oil and hazardous substance release response fund (the current 470 fund) that have been recovered and re deposited into the mitigation account--despite the possibility that **mitigation money may have restricted uses and not be usable for spill response**. It is also unclear how *Exxon Valdez* settlement, cost recovery, and fines money would be accounted for.
- **This proposal limits the response capability of DEC to initial response, even to catastrophic spills.** This change in the use of the fund undermines the state's ability to fully and effectively respond to spills. **Does this mean that for phantom spills or spills with an insolvent responsible party that the state would have to walk away after its "initial response?"**
- The proposal also restricts the state's use of either account for restoration.
- The proposed CS removes the requirement to annually review the state master oil and hazardous substance discharge prevention and contingency plan and limits revisions to once per year. This is the plan that was obsolete and ineffectual when the *Exxon Valdez* oil spill occurred. The inability to respond in a timely and efficient manner to the *Exxon Valdez* was directly related to the lack of a well reviewed and drilled master contingency plan. Leaving discretion for revision of the plan to the DEC commissioner, with limited funding for the process, could result in the plan never being revised again---or not until the next environmental disaster.
- Allows the public and SERC to be involved only if a revision is made to the state plan. Current statute allow for public input during the annual review and revision process. This section is misleading because it seems to allow for public comment, but in actuality it limits public input only to revisions of the plan.

**One of the most important sections of the bill is section 25 which transfers funding of the following programs to the oil and hazardous substances release contingency and abatement account:**

- municipal impact grants and assessments for spills under 4.2 million gallons. This would significantly reduce the ability of communities to assess impacts, respond to releases, recover response and cleanup costs, and participate in litigation;
- review of oil discharge prevention and response contingency plans;

## Regional Citizens' Advisory Council of Prince William Sound

- verification of financial responsibility;
- training, spill drill and response exercises, inspections, and verification of equipment inventories and response preparedness;
- response corps and depots and spill response office;
- preparation of the state's master plan and regional master plans; and
- restoration of the environment "by addressing the effects of an oil or hazardous substance release;"
- maintenance of the oil and hazardous substance response office.

**A financial analysis of this proposal reveals that the 2 cents surcharge is grossly insufficient to fund these spill prevention and response programs, let alone respond to "smaller" spills under 4.2 million gallons. It is insufficient now and with declining oil production and inflation, the situation will only grow worse.**

In addition, the bill:

- 1) reduces oversight by state agencies and the Citizens' Oversight Council,
- 2) reduces Alaska's ability to use its own fund to pay for restoration of damaged resources,
- 3) changes the definition of release and threatened release, and
- 4) eliminates the annual review of the state master and regional response plans.

April 15, 1993

**Sectional Analysis of the Proposed CS for House Bill 238,  
Relating to and Redesigning the Oil and Hazardous  
Substance Release Response Fund**

**Section 1.** This is a technical change amending the powers of the Governor to allow for use of money from the oil and hazardous substance release *prevention and* response fund, consistent with the renaming of the fund adding the words "prevention and."

**Section 2.** Similar to section 1 and again later in section 32, this is a technical change resulting from the renaming of the fund, adding the words "prevention and."

**Section 3.** Makes additional changes reflecting the division of the fund into two accounts. However, direct access to local impact grants are restricted to catastrophic oil releases. If a spill is not defined as catastrophic, for a local impact grant, the governor must first declare a disaster emergency, and then the funds must be appropriated--significantly limiting access to local impact grant money.

**Section 4.** Similar to sections 1 and 2, this is a technical change resulting from the renaming of the fund, adding the words "prevention and."

**Section 5.** This section imposes a new conservation surcharge of 3 cents per barrel used to fund the catastrophic oil release account.

**Section 6** carries forward the current provisions relating to the levy and collection of the oil conservation surcharge, but makes them applicable to the new surcharge.

**Section 7** directs the deposit of the 3 cents per barrel surcharge to the catastrophic oil release account in the fund.

**Section 8,** (modified old section 1). Requires the commissioner of administration to determine the balance of the catastrophic oil release account within 30 days after the end of each calendar year, for the purpose of computing the \$50 million account cap. Once the \$50 million cap is reached, the \$0.03 per barrel portion of severance tax conservation surcharge deposited into the general fund is suspended.

This section alters one of the factors that triggers levy and collection of the surcharge. For purposes of determining whether the tax shall apply, the calculation of the income stream is amended to include amounts previously expended from the oil and hazardous substance release response fund (the current 470 fund) that have been recovered and re deposited into the mitigation account--despite the possibility

## Regional Citizens' Advisory Council of Prince William Sound

that mitigation money may have restricted uses and not be usable for spill response. This is similar to the previous version of the bill. This amended provision also reflects the substitution of the catastrophic oil release account. Under subsection (e), in lieu of quarterly determination of the trigger mechanism, when the catastrophic oil release account reaches \$45 million, the determination are to be made more frequently.

This section relates also to section 38 (old section 26) of the bill, which clarifies how appropriations, if any, made to the spill reserve fund mentioned within the context of former AS 29.60.510(b), are to be treated for purposes of determining the suspension or re imposition of the surcharge. The section states that appropriations to the former spill reserve in AS 29.60.510(b), are not expenditures.

**Section 9** amends the mechanism by which the surcharge on/off trigger shall be computed.

**Section 10** imposes a 2 cents per barrel surcharge and directs the deposit of the money received from it into the "oil and hazardous substances release contingency and abatement account."

**Section 11** is a technical section that maintains the definition of "catastrophic oil discharge" applicable to the oil conservation surcharges.

**Section 12** provides a revised definition for the term "surcharge."

**Section 13** (old section 4) removes the requirement to annually review the state master oil and hazardous substance discharge prevention and contingency plan and limits revisions to once per year. This is the plan that was obsolete and ineffectual when the *Exxon Valdez* oil spill occurred. The inability to respond in a timely and efficient manner to the *Exxon Valdez* was directly related to the lack of a well reviewed and drilled master contingency plan. Leaving discretion for revision of the plan to the DEC commissioner, with limited funding for the process, could result in the plan never being revised again---or not until the next environmental disaster.

**Section 14** (old section 5) would eliminate the participation of the public and other agencies in the annual review of the state master plan. Federal, state, and Oil Spill Commission recommendations all identified the necessity of public input to eliminate complacency in spill prevention. This was the premise for the federal and state laws establishing citizens' advisory councils. Due to the diverse and unique coast line and communities potentially affected by oil and hazardous substance spills, site specific community input is essential in creating a workable

## **Regional Citizens' Advisory Council of Prince William Sound**

plan, as well as other agencies such as Alaska Departments of Fish and Game and Public Safety.

**Section 15** (old section 6) allows the public and SERC to be involved only if a revision is made to the state plan. Current statute allow for public input during the annual review and revision process. This section is misleading because it seems to allow for public comment, but in actuality it limits public input only to revisions of the plan. These changes could allow a plan to sit on the shelf unrevised and unpracticed for many years.

**Section 16** (old section 7) essentially does for regional plans what section 13 did to the state master plan.

**Section 17** (old section 8) is a technical amendment that incorporates the changes made in section 16 for master plans to regional plan changes in section 17.

**Section 19** (modified old section 10). Amends the statement of purpose of the oil and hazardous substance release response fund in light of the amendments made to the chapter and related provisions by this bill. Specifically, the purpose of the new oil and hazardous substance release **prevention and** response fund is 1) for expenses incurred by DEC "as an emergency first response to a release or threatened release of oil or hazardous substances" of catastrophic oil spills (over 4.2 million gallons) using the catastrophic oil release response account, and 2) for state "use during a response to a release or threatened release of oil or hazardous substance, other than a catastrophic release."

**Section 20** identifies the two accounts that constitute the fund.

**Section 21** makes a related substitution of a reference to "account" for fund.

**Section 22.** (old section 11) Reflects the repeal of AS 46.08.040(d)--construction of ferries--in section 24. This provision was passed in 1991 to allow construction of a state ferry with oil spill containment and response capabilities.

**Section 23** amends AS 46.08.020 and the financing of the Oil and Hazardous Substances Release Contingency and Abatement Account. It excludes money recovered or received due to a catastrophic oil discharge and money from performance bonds, and fines, penalties, and damages recovered by the state. These funds are to be deposited into the general fund and credited to the oil and hazardous substances release contingency and abatement mitigation account. Funds from the mitigation account can be appropriated annually to the oil and hazardous substances release contingency and abatement account.

## **Regional Citizens' Advisory Council of Prince William Sound**

**Section 24.** Similar to section 23 which requires non-catastrophic spill cost recovery to be credited to a mitigation account, with the exception of performance bonds, all fines, penalties, or damages recovered from catastrophic oil spills are credited to the catastrophic oil release response mitigation account and may be appropriated annually to the catastrophic oil release response account.

**Section 25.** Is a modified old section 12. It eliminates the authority to use funds in the catastrophic oil release response account for 1) maintenance of the oil and hazardous substance response office; 2) review oil discharge prevention and response plans; 3) conduct training, response exercises, inspections, and tests to verify equipment inventories and response preparedness; 4) verification of financial responsibility; and 5) pay for Alaska Division of Emergency Services response corps and depots. The latter functions, however, are more appropriately defined as an emergency service to be paid for with funds from the catastrophic oil release response account. These functions are to be funded by the oil and hazardous substances release contingency and abatement account.

Money from the catastrophic oil release response account can be used to 1) respond to catastrophic oil spills, 2) provide matching funds for federal oil discharge activities and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) in the event of a catastrophic oil release, and 3) for recovery of costs of containment and cleanup resulting from a release or threatened release to the state, a municipality, or a village from a catastrophic oil release.

**Funds may not be used from either account for restoration of the environment "by addressing the effects of an oil or hazardous substance release."**

**Section 26.** Technical section to be consistent with section 3.

**Section 27.** Requires specific appropriation for the following uses of the fund. Money for federal matching or cost recovery from the catastrophic oil release response account or *all* uses of the oil and hazardous substances release contingency and abatement account can not be used unless an appropriation has been made specifically for that purpose.

**Section 28.** Adds the requirement that the DEC commissioner report to the legislature on the uses of both accounts created by the division in this bill.

**Sections 29, 30, 33 and 34** (old sections 14, 15, 18, and 19). These sections attempt to provide consistency in the use of terms "release" and "threatened release" in AS 46.08. Section 33 provides a technically revised definition of "release" and section 34 substantially amends the definition of "threatened release."

## **Regional Citizens' Advisory Council of Prince William Sound**

In current statute, the definition of threatened release is "an imminent danger that a release will occur." The new definition would be narrowed to mean a release is imminent. A release is imminent if "it is impending, on the point of happening, or in the judgment of the commissioner, may reasonably be expected to culminate in an actual release, and that actual release may reasonably be expected to cause personal injury, other injury to life, or loss or damage to property." If "property" refers only to tangible personal property, this definition would exclude damage to environmental values (eg. spawning habitat). Sections 29 and 30 are conforming changes to these revised definitions. By narrowing this definition, DEC's ability to prevent spills is limited.

**Section 31** (old section 16). Eliminates the ability of the Oil and Hazardous Substance Response Office to conduct certain spill technology research.

**Section 35.** Technical cross reference section to add definitions of catastrophic oil discharge and catastrophic oil release.

**Section 36.** Modeled after the definition made in bill section 34 mentioned earlier, this section revises the definition of the term "threatened release" applicable to AS 46.09.

**Section 37** (modified old Section 24). Repeals a number of provisions in law regarding activities for which the fund can be used to support including:

- state ferry construction, AS 19.65.025 and AS 46.08.040(d);
- DEC authority to collect fees, AS 44.46.025(a)(5) and (a)(6); and
- the Citizens Oversight Council, AS 46.08.040(d)---these three are the same as the previous version, plus
- the repeal of the Conservation Surcharge on Oil replaced by this bill.

**Section 39** (old section 26). Explains the applicability of the new definition of "catastrophic oil discharge."

**Section 40** sets out a transition mechanism for amounts collected under the nickel-per-barrel surcharge after June 30, 1993, and until the effective date of this Act.

April 15, 1993



# Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

April 21, 1993

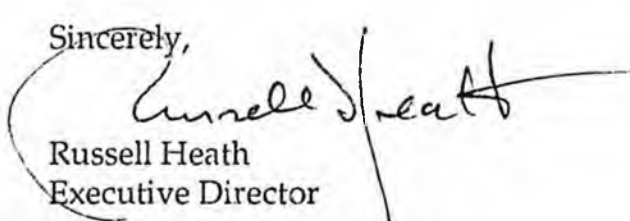
Rep. Bill Williams  
Chairman, House Resources Committee  
State Capitol, Rm 128  
Juneau, AK 99801

Dear Rep. Williams:

I would like to thank you for holding the hearing and statewide teleconference of HB 238 in the House Resources Committee Saturday, April 17. The issues presented in HB 238 are extremely important to the future of Alaska and its citizens, and we greatly appreciate the opportunity to communicate our concerns to the committee. I hope that the overwhelming opposition to the bill will be noted in any further considerations of this issue.

Again, thank you for your judicious handling of this controversial and complex issues.

Sincerely,

  
Russell Heath  
Executive Director



# Alaska State Legislature

130 Seward Street, Suite 218  
Juneau, Alaska 99801-2196

Phone: (907) 465-3991  
Fax: (907) 463-3351

Legislative Research Agency



May 5, 1993

## MEMORANDUM

TO: Senator Rick Halford

FROM: Gordon S. Harrison, Director *gsh*

RE: Letter from Janice Adair Regarding Legislative Research Agency Memorandum 93.062

For the record, I feel compelled to respond to the letter to you of April 30 from Janice Adair, assistant commissioner of the Department of Environmental Conservation (DEC), regarding Legislative Research Memorandum 93.062 dealing with the 470 fund.

We appreciate the response of Ms. Adair in April to the exact questions first put to DEC last December. Unfortunately, DEC's response to us five months ago was not so complete. Not only were DEC officials asked to respond to the questions on December 9, through repeated telephone conversations and several rounds of facsimiles, DEC officials were provided the opportunity to review the information Ms. Adair now chooses to comment upon.

Ms. Adair complains that it is misleading to project a fund balance of \$100,000 at the end of FY 93. This information came from DEC staff, and we made a special effort to have department staff review and verify the data in draft form before we sent our memorandum out.

Ms. Adair's letter suggests that our report contains other inaccuracies, but she does not identify them and we are not aware of any. If there are "perpetual misunderstandings that surround the Response Fund," the source, unfortunately, is the department.

cc: ✓ Representative Bill Williams  
Representative Joe Green  
Mike Conway, Director, Spill Prevention and Response  
Shelby Stastny, Director, Office of Management and Budget  
John Sandor, Commissioner, DEC  
Janice Adair, Assistant Commissioner, DEC

HB

238

Version

M

8-LS0676M  
Chenoweth  
4/20/93

CS FOR HOUSE BILL NO. 238( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): HOUSE SPECIAL COMMITTEE ON OIL AND GAS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to and redesignating the oil and hazardous substance release  
2 response fund and to its use in the event of a disaster emergency; repealing the  
3 authority in law by which marine highway vessels may be designed and  
4 constructed to aid in oil and hazardous substance spill cleanup in state marine  
5 water using money in the oil and hazardous substance release response fund;  
6 amending requirements relating to the revision of state and regional master  
7 prevention and contingency plans; altering requirements applicable to liens for  
8 recovery of state expenditures related to oil or hazardous substances; amending  
9 the authority to contract to provide personnel to respond to a release or  
10 threatened release of oil or a hazardous substance and to contract to conduct  
11 spill related research; reassigning responsibility for the oil and hazardous substance  
12 response corps and for the emergency response depots to the Department of

1 Environmental Conservation, and for the operation of the state emergency response  
2 commission and its attendant responsibilities for the local emergency planning  
3 commissions to the Department of Military and Veterans' Affairs; and modifying  
4 definitions of terms relating to the preceding provisions; terminating the nickel-per-  
5 barrel oil conservation surcharge; levying and collecting two new oil surcharges;  
6 and providing for the suspension and reimposition of one of the new surcharges;  
7 and providing for an effective date."

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

9 \* Section 1. AS 26.23.020(g) is amended to read:

10 (g) In addition to any other powers conferred upon the governor by law, the  
11 governor may, under AS 26.23.010 - 26.23.220,

12 (1) suspend the provisions of any regulatory statute prescribing  
13 procedures for the conduct of state business, or the orders or regulations of any state  
14 agency, if compliance with the provisions of the statute, order, or regulation would  
15 prevent, or substantially impede or delay, action necessary to cope with the disaster  
16 emergency;

17 (2) use all available resources of the state government and of each  
18 political subdivision of the state as reasonably necessary to cope with the disaster  
19 emergency;

20 (3) transfer personnel or alter the functions of state departments and  
21 agencies or units of them for the purpose of performing or facilitating the performance  
22 of disaster emergency services;

23 (4) subject to any applicable requirements for compensation under  
24 AS 26.23.160, commandeer or utilize any private property, except for all news media  
25 other than as specifically provided for in AS 26.23.010 - 26.23.220, if the governor  
26 considers this necessary to cope with the disaster emergency;

27 (5) direct and compel the relocation of all or part of the population  
28 from any stricken or threatened area in the state, if the governor considers relocation  
29 necessary for the preservation of life or for other disaster mitigation purpose;

1 (6) prescribe routes, modes of transportation, and destinations in  
2 connection with necessary relocation;

3 (7) control ingress to and egress from a disaster area, the movement of  
4 persons within the area, and the occupancy of premises in it;

5 (8) suspend or limit the sale, dispensing, or transportation of alcoholic  
6 beverages, firearms, explosives, and combustibles;

7 (9) make provisions for the availability and use of temporary  
8 emergency housing;

9 (10) allocate or redistribute food, water, fuel, or clothing; and

10 (11) use money from the oil and hazardous substance release  
11 prevention and response fund, established by AS 46.08.010, to respond to a declared  
12 disaster emergency related to an oil or hazardous substance discharge.

13 \* Sec. 2. AS 26.23.050(b) is amended to read:

14 (b) Whenever, and to the extent that, money is needed to cope with a disaster,

15 (1) in the event of an oil or hazardous substance release or  
16 discharge, the governor shall have first recourse to the appropriate account within  
17 the oil and hazardous substance release prevention and response fund, and  
18 thereafter the governor may have second recourse to money regularly  
19 appropriated to state and local agencies and third recourse to money available in  
20 the disaster relief fund:

21 (2) if the disaster does not involve an oil or hazardous substance  
22 release or discharge.

23 (A) the governor shall have first recourse [SHALL BE] to  
24 money regularly appropriated to state and local agencies; and

25 (B) the governor shall have further [ THE SECOND]  
26 recourse [SHALL BE] to money available in the disaster relief fund [OR, FOR  
27 OIL OR HAZARDOUS SUBSTANCES DISCHARGES, THE OIL AND  
28 HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND, AS THE  
29 GOVERNOR DETERMINES APPROPRIATE. IF MONEY AVAILABLE  
30 FROM THESE SOURCES IS INSUFFICIENT, AND IF THE GOVERNOR  
31 FINDS THAT OTHER SOURCES OF MONEY TO COPE WITH THE

1 DISASTER ARE NOT AVAILABLE OR ARE INSUFFICIENT, THE  
2 GOVERNOR MAY, NOTWITHSTANDING THE LIMITATIONS IMPOSED  
3 BY AS 37.07.080(e),

4 (1) TRANSFER AND SPEND MONEY APPROPRIATED FOR  
5 OTHER PURPOSES; OR

6 (2) BORROW MONEY FOR A TERM NOT TO EXCEED TWO  
7 YEARS].

8 \* Sec. 3. AS 26.23.050 is amended by adding a new subsection to read:

9 (d) If money available from a source identified in (b) of this section is  
10 insufficient, and if the governor finds that other sources of money to cope with the  
11 disaster are not available or are insufficient, the governor may, notwithstanding the  
12 limitations imposed by AS 37.07.080(e),

13 (1) transfer and spend money appropriated for other purposes; or

14 (2) borrow money for a term not to exceed two years.

15 \* Sec. 4. AS 29.60.510(a) is amended to read:

16 (a) The commissioner may use money from the oil and hazardous substance  
17 release prevention and response fund to make grants to a municipality or village that  
18 is affected by the release or by the response to the release and that demonstrates that  
19 the release or response to the release involves extraordinary expenditures that are  
20 beyond the reasonable capability of the municipality or village to meet from the  
21 current revenue sources of the municipality or village if

22 (1) the governor determines that a release of oil or a hazardous  
23 substance exceeds 2,500 barrels of oil, or exceeds an amount of a hazardous substance  
24 that, when released into the environment, presents a threat to the economy and public  
25 welfare of the municipalities and villages affected by it at least equivalent in effect to  
26 the effect of a release of oil in an amount defined by this paragraph;

27 (2) the release has been proclaimed a disaster emergency by the  
28 governor under AS 26.23.020; and

29 (3) the governor finds that

30 (A) the release of the oil or hazardous substance into the  
31 environment presents a real and substantial threat to the economy and public

1 welfare of the municipalities and villages that are affected by the release and  
2 by the resultant activities to contain and clean up the release; and

3 (B) it is in the best interest of the state to pay the expenses  
4 incurred by municipalities and villages to mitigate the social and economic  
5 effects that arise out of the release of the oil or the hazardous substance and  
6 the resultant cleanup activities.

7 \* Sec. 5. AS 29.60.510(b) is amended to read:

8 (b) For each disaster emergency declared by the governor under AS 26.23.020  
9 that involves a catastrophic oil release or threatened catastrophic oil release, and  
10 subject to agreement with the commissioner of environmental conservation as to the  
11 amount of money in the fund that may be used by the department to make grants, the  
12 commissioner may expend not more than \$10,000,000 [~~OF THE BALANCE OF THE~~  
13 ~~FUND THAT IS APPROPRIATED TO THE SPILL RESERVE OR~~] of the  
14 unrestricted balance of the catastrophic oil release response account in the fund for  
15 grants authorized under this section. For each disaster emergency declared by the  
16 governor under AS 26.23.020 that involves a release or threatened release of oil  
17 or a hazardous substance, except a catastrophic oil release, and subject to  
18 appropriation of money in the fund that may be used by the department to make  
19 grants, the commissioner may expend not more than the amount appropriated  
20 from the oil and hazardous substances release contingency and abatement account  
21 in the fund for grants authorized under this section. If the commissioner and the  
22 commissioner of environmental conservation do not agree on the amount of money in  
23 the catastrophic oil release response account in the fund that may be used by the  
24 department to make grants under AS 29.60.500 - 29.60.599 for a catastrophic oil  
25 release or threatened catastrophic oil release, the governor shall make the  
26 determination.

27 \* Sec. 6. AS 29.60.560(e) is amended to read:

28 (e) Expenditures made under this section may be made only from the amount  
29 transferred to the commissioner under AS 29.60.510(c), unless

30 (1) the commissioner and the commissioner of environmental  
31 conservation mutually agree that payment may be made from money in the oil and

1 hazardous substance release prevention and response fund not transferred under  
2 AS 29.60.510(c); or

3 (2) the commissioner pays them from another source.

4 \* Sec. 7. AS 29.60.599(4) is amended to read:

5 (4) "fund" means the oil and hazardous substance release prevention  
6 and response fund established by AS 46.08.010;

7 \* Sec. 8. AS 37.14.410 is amended to read:

8 Sec. 37.14.410. REIMBURSED EXPENDITURES. (a) Amounts received by  
9 the state as reimbursement for expenses related to the Exxon Valdez oil spill incurred  
10 by the state on or before December 31, 1992, shall be deposited in the general fund  
11 and, except as required under (b) of this section, may not be credited to the oil and  
12 hazardous substance release mitigation account under AS 46.04.010 or to an account  
13 established in AS 46.08.020 or 46.08.025.

14 (b) A percentage of each payment deposited in the general fund under (a) of  
15 this section shall be credited to the oil and hazardous substances release contingency  
16 and abatement account established in [OIL AND HAZARDOUS SUBSTANCE  
17 RELEASE MITIGATION ACCOUNT UNDER AS 46.04.010 OR] AS 46.08.020.  
18 That percentage is determined by dividing

19 (1) the amount of the expenses for which the state may be reimbursed  
20 under (a) of this section that were paid from the [OIL AND HAZARDOUS  
21 SUBSTANCE RELEASE RESPONSE] fund established under AS 46.08.010, by

22 (2) the total amount of expenses for which the state may be reimbursed  
23 under (a) of this section.

24 \* Sec. 9. AS 43.55 is amended by adding a new section to read:

25 Sec. 43.55.201. SURCHARGE LEVIED. (a) Every producer of oil shall pay  
26 a surcharge of \$.03 per barrel of oil produced from each lease or property in the state,  
27 less any oil the ownership or right to which is exempt from taxation.

28 (b) The surcharge imposed by (a) of this section is in addition to

29 (1) and shall be paid in the same manner as the tax imposed by  
30 AS 43.55.011 - 43.55.150; and

31 (2) the surcharge imposed by AS 43.55.300 - 43.55.320.

1 (c) A producer of oil shall make reports of production in the same manner and  
2 under the same penalties as required under AS 43.55.011 - 43.55.150.

3 \* Sec. 10. AS 43.55 is amended by adding a new section to read:

4 Sec. 43.55.211. DISPOSITION OF PROCEEDS OF SURCHARGE. (a) The  
5 commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.201 into  
6 the general fund.

7 (b) The commissioner of administration shall separately account for all  
8 proceeds of the surcharge that are deposited into the general fund.

9 \* Sec. 11. AS 43.55 is amended by adding a new section to read:

10 Sec. 43.55.221. USE OF REVENUE DERIVED FROM SURCHARGE. The  
11 legislature may appropriate the annual estimated balance of the account established  
12 under AS 43.55.211 to the catastrophic oil release response account in the oil and  
13 hazardous substance release prevention and response fund established by AS 46.08.010.

14 \* Sec. 12. AS 43.55 is amended by adding a new section to read:

15 Sec. 43.55.231. SUSPENSION AND REIMPOSITION OF THE  
16 SURCHARGE. (a) Except when a different time for making a determination is  
17 required under (f) of this section, not later than 30 days after the end of each calendar  
18 quarter, the commissioner of administration shall determine the cumulative total of  
19 money that has been

20 (1) deposited through that calendar quarter, or was received through  
21 that calendar quarter and is subject to deposit, into the catastrophic oil release response  
22 account of the oil and hazardous substance release prevention and response fund  
23 established by AS 46.08.010;

24 (2) deposited during the calendar quarter, or was received during the  
25 calendar quarter and is subject to deposit, into the catastrophic oil release response  
26 mitigation account under AS 46.08.025(b);

27 (3) expended through that calendar quarter from the catastrophic oil  
28 release response account of the oil and hazardous substance release prevention and  
29 response fund.

30 (b) Within 15 days after making the determinations required by (a) of this  
31 section, the commissioner of administration shall

1 (1) add the amounts determined under (a)(1) and (2) of this section;  
2 (2) determine the difference between the amount determined under (1)  
3 of this subsection and the amount determined under (a)(3) of this section; and  
4 (3) report the amount determined under (2) of this subsection to the  
5 commissioner.

6 (c) In making the determination required by (b) of this section, the  
7 commissioner of administration may not consider within the calculation money  
8 described in (a) of this section that was received subject to a dedication imposed by  
9 the federal government that restricts the use of the money to a specific purpose.

10 (d) If the commissioner of administration reports that the difference determined  
11 under (b) of this section equals or exceeds \$50,000,000, the commissioner of revenue  
12 shall suspend imposition and collection of the surcharge levied and collected under  
13 AS 43.55.201. Suspension of the imposition and collection of the surcharge begins on  
14 the first day of the calendar quarter next following the commissioner's receipt of the  
15 commissioner of administration's report under (b) of this section. Before the first day  
16 of a suspension authorized by this subsection, the commissioner shall make a  
17 reasonable effort to notify all persons who are known to the department to be paying  
18 the surcharge under AS 43.55.201 that the surcharge will be suspended.

19 (e) Except as provided in AS 43.55.241, if the commissioner of administration  
20 reports that the difference determined under (b) of this section is less than  
21 \$50,000,000, the commissioner of revenue shall require imposition and collection of  
22 the surcharge authorized under AS 43.55.201. Reimposition of the surcharge begins  
23 on the first day of the calendar quarter next following the commissioner's receipt of  
24 the commissioner of administration's report under (b) of this section. Before the first  
25 day of reimposition of the surcharge authorized by this subsection, the commissioner  
26 shall make a reasonable effort to notify all persons who are known to the department  
27 to be required to pay the surcharge under AS 43.55.201 that the surcharge will be  
28 reimposed.

29 (f) Notwithstanding the requirement of (a) of this section that the cumulative  
30 determination of receipts and expenditures be made quarterly, when the amount  
31 determined under (b) of this section is \$45,000,000 or more, the commissioner of

1 administration shall make the determinations required by this section not later than 30  
2 days before each calendar quarter and every 30 days thereafter.

3 \* Sec. 13. AS 43.55 is amended by adding a new section to read:

4 Sec. 43.55.241. SURCHARGE NOT IMPOSED. The surcharge authorized by  
5 AS 43.55.201 is not levied during any fiscal year for which the estimated revenue from  
6 the surcharge would be sufficient to restore the balance of the oil and hazardous  
7 substance release prevention and response fund on the first day of the fiscal year to  
8 at least \$50,000,000, and

9 (1) the legislature does not, during the regular legislative session  
10 preceding the first day of the fiscal year, appropriate money from the general fund to  
11 the catastrophic oil release response account in the oil and hazardous substance release  
12 prevention and response fund sufficient to restore the balance of that account on the  
13 first day of the fiscal year to at least \$50,000,000; or

14 (2) the legislature, during the regular legislative session preceding the  
15 first day of the fiscal year, appropriates money from the general fund to the  
16 catastrophic oil release response account in the oil and hazardous substance release  
17 prevention and response fund sufficient to restore the balance of that account on the  
18 first day of the fiscal year to at least \$50,000,000 and, because of gubernatorial veto  
19 or reduction in the amount of the appropriation, restoration of the balance of the fund  
20 to at least \$50,000,000 does not become law.

21 \* Sec. 14. AS 43.55 is amended by adding new sections to read:

22 ARTICLE 2A. ADDITIONAL CONSERVATION SURCHARGE ON OIL.

23 Sec. 43.55.300. SURCHARGE LEVIED. (a) Every producer of oil shall pay  
24 a surcharge of \$.02 per barrel of oil produced from each lease or property in the state,  
25 less any oil the ownership or right to which is exempt from taxation.

26 (b) The surcharge imposed by (a) of this section is in addition to

27 (1) and shall be paid in the same manner as the tax imposed by  
28 AS 43.55.011 - 43.55.150; and

29 (2) the surcharge imposed by AS 43.55.201 - 43.55.241.

30 (c) A producer of oil shall make reports of production in the same manner and  
31 under the same penalties as required under AS 43.55.011 - 43.55.150.

1           Sec. 43.55.310. DISPOSITION OF PROCEEDS OF SURCHARGE. (a) The  
2 commissioner shall deposit the proceeds of the surcharge levied by AS 43.55.300 into  
3 the general fund.

4           (b) The commissioner of administration shall separately account for all  
5 proceeds of the surcharge levied by AS 43.55.300 that are deposited into the general  
6 fund.

7           Sec. 43.55.320. USE OF REVENUE DERIVED FROM SURCHARGE. The  
8 legislature may appropriate the annual estimated balance of the account established  
9 under AS 43.55.310 to the oil and hazardous substances release contingency and  
10 abatement account in the oil and hazardous substance release prevention and response  
11 fund established by AS 46.08.010.

12 \* Sec. 15. AS 43.55.900(3) is amended to read:

13           (3) "catastrophic oil discharge" means

14                     (A) an oil discharge in excess of 100,000 barrels; or

15                     (B) any other discharge that the governor determines  
16 presents a grave and substantial threat to the economy or environment  
17 [HAS THE MEANING GIVEN IN AS 46.04.900];

18 \* Sec. 16. AS 43.55.900(15) is amended to read:

19           (15) "surcharge" means

20                     (A) when used in AS 43.55.201 - 43.55.241, the surcharge  
21 levied by AS 43.55.201 [AS 43.55.200];

22                     (B) when used in AS 43.55.300 - 43.55.320, the surcharge  
23 levied by AS 43.55.300;

24 \* Sec. 17. AS 46.04.030(e) is amended to read:

25           (e) The department may attach reasonable terms and conditions to its approval  
26 or modification of a contingency plan that the department determines are necessary to  
27 ensure that the applicant for a contingency plan has access to sufficient resources to  
28 protect environmentally sensitive areas, [AND] to take containment and cleanup and  
29 other necessary action to [CONTAIN, CLEAN UP, AND] mitigate potential oil  
30 discharges from the facility or vessel as provided in (k) of this section, and to ensure  
31 that the applicant complies with the contingency plan. The contingency plan must

1 provide for the use by the applicant of the best technology that was available at the  
2 time the contingency plan was submitted or renewed. The department may require an  
3 applicant or holder of an approved contingency plan to take steps necessary to  
4 demonstrate its ability to carry out the contingency plan, including

5 (1) periodic training;

6 (2) response team exercises; and

7 (3) verifying access to inventories of equipment, supplies, and  
8 personnel identified as available in the approved contingency plan.

9 \* Sec. 18. AS 46.04.030(e) as amended by sec. 11, ch. 83, SLA 1992, is amended to read:

10 (e) The department may attach reasonable terms and conditions to its approval  
11 or modification of a contingency plan that the department determines are necessary to  
12 ensure that the applicant for a contingency plan has access to sufficient resources to  
13 protect environmentally sensitive areas, [AND] to take containment and cleanup and  
14 other necessary action to [CONTAIN, CLEAN UP, AND] mitigate potential oil  
15 discharges from the facility or vessel as provided in (k) of this section, and to ensure  
16 that the applicant complies with the contingency plan. If a contingency plan submitted  
17 to the department for approval relies on the services of an oil spill primary response  
18 action contractor, the department may not approve the contingency plan unless the  
19 primary response action contractor is registered and approved under AS 46.04.035.  
20 The contingency plan must provide for the use by the applicant of the best technology  
21 that was available at the time the contingency plan was submitted or renewed. The  
22 department may require an applicant or holder of an approved contingency plan to take  
23 steps necessary to demonstrate its ability to carry out the contingency plan, including

24 (1) periodic training;

25 (2) response team exercises; and

26 (3) verifying access to inventories of equipment, supplies, and  
27 personnel identified as available in the approved contingency plan.

28 \* Sec. 19. AS 46.08.040(b) is amended to read:

29 (b) The [WHEN THE GOVERNOR DECLARES A DISASTER RELATED  
30 TO AN OIL OR HAZARDOUS SUBSTANCE DISCHARGE EMERGENCY UNDER  
31 AS 26.23.020(c), THE] governor may [, DURING THE EFFECTIVE PERIOD OF

1 THE DISASTER EMERGENCY,] use money from the fund to respond to a [THE]  
2 disaster emergency based upon a release or discharge of oil or a hazardous  
3 substance

4 (1) in circumstances when the actual or imminent occurrence of a  
5 catastrophic oil discharge constitutes a condition of disaster emergency, as  
6 authorized by AS 46.04.080(a); or

7 (2) when the governor has declared a condition of disaster  
8 emergency under AS 26.23.020(c).

9 \* Sec. 20. AS 46.08.040(b) is amended to read:

10 (b) The [WHEN THE GOVERNOR DECLARES A DISASTER RELATED  
11 TO AN OIL OR HAZARDOUS SUBSTANCE DISCHARGE EMERGENCY UNDER  
12 AS 26.23.020(c), THE] governor may [, DURING THE EFFECTIVE PERIOD OF  
13 THE DISASTER EMERGENCY,] use money from the fund to respond to a [THE]  
14 disaster emergency based upon a release or discharge of oil or a hazardous  
15 substance when the governor has declared a condition of disaster emergency  
16 under AS 26.23.020(c).

17 \* Sec. 21. AS 46.04.200(a) is amended to read:

18 (a) The department shall

19 (1) prepare [AND ANNUALLY REVIEW AND REVISE] a statewide  
20 master oil and hazardous substance discharge prevention and contingency plan;

21 (2) annually review the statewide master oil and hazardous  
22 substance discharge prevention and contingency plan; and

23 (3) revise the statewide master oil and hazardous substance  
24 discharge prevention and contingency plan; the department shall revise the  
25 statewide master plan whenever, in the judgment of the commissioner, revision  
26 is necessary.

27 \* Sec. 22. AS 46.04.200(c) is amended to read:

28 (c) In preparing and annually reviewing the state master plan, the  
29 commissioner shall

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

1 (2) [SUBMIT THE DRAFT PLAN TO THE PUBLIC FOR REVIEW  
2 AND COMMENT;

3 (3) SUBMIT TO THE LEGISLATURE FOR REVIEW, NOT LATER  
4 THAN THE 10TH DAY FOLLOWING THE CONVENING OF EACH REGULAR  
5 SESSION, THE PLAN AND ANY ANNUAL REVISION OF THE PLAN;

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

10 (5) SUBMIT THE PLAN AND ANY ANNUAL REVISION TO THE  
11 ALASKA STATE EMERGENCY RESPONSE COMMISSION FOR ITS REVIEW  
12 AND APPROVAL UNDER AS 46.13.045].

13 \* Sec. 23. AS 46.04.200 is amended by adding a new subsection to read:

14 (d) In preparing a revision of the statewide master plan, the commissioner shall  
15 submit

16 (1) the draft plan to the

17 (A) public for review and comment; and

18 (B) Alaska State Emergency Response Commission for its  
19 review and approval under AS 46.13.045; and

20 (2) the proposed revision of the plan to the legislature for review not  
21 later than the 10th day following the convening of each regular session.

22 \* Sec. 24. AS 46.04.210(a) is amended to read:

23 (a) For any region of the state, the boundaries of which are determined by the  
24 commissioner by regulation, in which the department is required to review and approve  
25 an oil discharge prevention and contingency plan submitted by a person under  
26 AS 46.04.030, the department shall

27 (1) prepare [AND ANNUALLY REVIEW AND REVISE] a regional  
28 master oil and hazardous substance discharge prevention and contingency plan;

29 (2) annually review the regional master oil and hazardous substance  
30 discharge prevention and contingency plan; and

31 (3) revise the regional master oil and hazardous substance

1 discharge prevention and contingency plan: the commissioner shall revise a  
2 regional master plan whenever, in the judgment of the commissioner, revision is  
3 necessary.

4 \* Sec. 25. AS 46.04.210(b) is amended to read:

5 (b) The provisions of AS 46.04.200(b) - (d) [AS 46.04.200(b) AND (c)] apply  
6 to preparation and review of a regional master plan under this section.

7 \* Sec. 26. AS 46.04.900(2) is amended to read:

8 (2) "catastrophic oil discharge" means

9 (A) an oil release or discharge in excess of 100,000 barrels; [,]

10 or

11 (B) any other release or discharge that [WHICH] the governor  
12 determines presents a grave and substantial threat to the economy or  
13 environment and for which the governor has issued a proclamation  
14 declaring a condition of disaster emergency under AS 26.23.020(c) [OF  
15 THE STATE];

16 \* Sec. 27. AS 46.08.005 is amended to read:

17 Sec. 46.08.005. PURPOSE. The legislature finds and declares that the  
18 catastrophic release of oil or hazardous substances into the environment presents a  
19 real and substantial threat to the public health and welfare, to the environment, and to  
20 the economy of the state. The legislature therefore concludes that it is in the best  
21 interest of the state and its citizens to provide a [READILY AVAILABLE] fund  
22 containing two accounts. Within the fund.

23 (1) one account consists of money readily available to the  
24 commissioner for the payment of the expenses incurred by the Department of  
25 Environmental Conservation during an emergency first response to a catastrophic  
26 release or threatened [AND THE DEPARTMENT OF TRANSPORTATION AND  
27 PUBLIC FACILITIES IN THE PROTECTION OF THE ENVIRONMENT OF THE  
28 STATE FROM THE] release of oil and for related purposes intended to address  
29 catastrophic oil releases:

30 (2) the other account consists of money that the state may use  
31 during a response to a release or threatened release of oil or a hazardous

1 substance, other than a catastrophic oil discharge, to pay the expenses of making  
2 preparations for the possibility of a release or threatened release of oil or  
3 hazardous substances, to reduce the amount, degree, or intensity of a release or  
4 threatened release, and for other related purposes identified in law [OR  
5 HAZARDOUS SUBSTANCES].

6 \* Sec. 28. AS 46.08.010(a) is amended to read:

7 (a) There is established in the state general fund the oil and hazardous  
8 substance release prevention and response fund. The fund shall be administered by  
9 the commissioner. The fund is composed of two accounts.

10 (1) the oil and hazardous substances release contingency and  
11 abatement account:

12 (2) the catastrophic oil release response account.

13 \* Sec. 29. AS 46.08.010(b) is amended to read:

14 (b) Money from an appropriation made to an account in the fund remaining  
15 in that account [THE FUND] at the end of a fiscal year remains available for  
16 expenditure in successive fiscal years.

17 \* Sec. 30. AS 46.08.010(c) is amended to read:

18 (c) The fund shall be used for actual expenses incurred under AS 46.08.040.  
19 Except as provided in AS 46.08.040(a)(1)(B) for the equipment that is required for  
20 and placed in the oil and hazardous substance response depots  
21 [AS 46.08.040(d)(2)], the fund may not be used for capital improvements.

22 \* Sec. 31. AS 46.08.020 is amended to read:

23 Sec. 46.08.020. FINANCING OF THE OIL AND HAZARDOUS  
24 SUBSTANCES RELEASE CONTINGENCY AND ABATEMENT ACCOUNT  
25 [FUND]. (a) The legislature may appropriate from the following sources to the oil  
26 and hazardous substances release contingency and abatement account in the fund:

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

29 (2) money recovered or otherwise received from parties responsible for  
30 the containment and cleanup of oil or a hazardous substance at a specific site, but  
31 excluding

1                    (A) money recovered or otherwise received due to a  
 2                    catastrophic oil discharge; and

3                    (B) money [FUNDS] from performance bonds and other forms  
 4                    of financial responsibility held in escrow pending satisfactory performance of  
 5                    a privately financed response action; and

6                    (3) fines, penalties, or damages recovered under AS 46.08.005 -  
 7                    46.08.080 or other law for costs incurred by the state as a result of the release or  
 8                    threatened release of oil or a hazardous substance. but excluding fines, penalties, or  
 9                    damages recovered or otherwise received due to a catastrophic oil discharge.

10                    (b) Money received by the state under (a)(2) and (a)(3) of this section shall  
 11                    be deposited in the general fund and credited to a special account called the "oil and  
 12                    hazardous substances [SUBSTANCE] release contingency and abatement mitigation  
 13                    account." The legislature may annually appropriate to the oil and hazardous  
 14                    substances release contingency and abatement account in the fund from the oil and  
 15                    hazardous substances release contingency and abatement mitigation [THIS]  
 16                    account a sum equal to the amount received under (a)(2) and (a)(3) of this section  
 17                    during the calendar year preceding the legislative session in which the appropriations  
 18                    are to be made.

19                    \* Sec. 32. AS 46.08 is amended by adding a new section to read:

20                    Sec. 46.08.025. FINANCING OF THE CATASTROPHIC OIL RELEASE  
 21                    RESPONSE ACCOUNT. (a) The legislature may appropriate from the following  
 22                    sources to the catastrophic oil release response account in the fund:

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

25                    (2) money recovered or otherwise received from parties responsible for  
 26                    the containment and cleanup of a catastrophic oil discharge, but excluding money from  
 27                    performance bonds and other forms of financial responsibility held in escrow pending  
 28                    satisfactory performance of a privately financed response action;

29                    (3) fines, penalties, or damages recovered under AS 46.08.005 -  
 30                    46.08.080 or other law for costs incurred by the state as a result of a catastrophic oil  
 31                    discharge.

1 (b) Money received by the state under (a)(2) and (a)(3) of this section shall  
2 be deposited in the general fund and credited to a special account called the  
3 "catastrophic oil release response mitigation account." The legislature may annually  
4 appropriate to the catastrophic oil release response account in the fund from the  
5 catastrophic oil release response mitigation account a sum equal to the amount received  
6 under (a)(2) and (a)(3) of this section during the calendar year preceding the legislative  
7 session in which the appropriations are to be made.

8 \* Sec. 33. AS 46.08.040(a) is amended to read:

9 (a) In addition to money in the fund that is transferred to the commissioner of  
10 community and regional affairs to make grants under AS 29.60.510 and to pay for  
11 impact assessments under AS 29.60.560, the commissioner of environmental  
12 conservation may use money

13 (1) from the catastrophic oil release response account in the fund to

14 (A) [(1)] investigate and evaluate a catastrophic oil [THE]  
15 release or threatened catastrophic oil release [OF OIL OR A HAZARDOUS  
16 SUBSTANCE], and [CONTAIN, CLEAN UP, AND] take containment and  
17 cleanup and other necessary action, such as monitoring and assessing, to  
18 address a catastrophic oil release or threatened catastrophic oil release [OF  
19 OIL OR A HAZARDOUS SUBSTANCE] that poses an imminent and  
20 substantial threat to the public health or welfare, or to the environment;

21 (B) [(2)] PAY ALL COSTS INCURRED TO

22 (A) ESTABLISH AND MAINTAIN THE OIL AND  
23 HAZARDOUS SUBSTANCE RESPONSE OFFICE;

24 (B) REVIEW OIL DISCHARGE PREVENTION AND  
25 CONTINGENCY PLANS SUBMITTED UNDER AS 46.04.030;

26 (C) CONDUCT TRAINING, RESPONSE EXERCISES,  
27 INSPECTIONS, AND TESTS, IN ORDER TO VERIFY EQUIPMENT  
28 INVENTORIES AND ABILITY TO PREVENT AND RESPOND TO OIL  
29 AND HAZARDOUS SUBSTANCE RELEASE EMERGENCIES, AND TO  
30 UNDERTAKE OTHER ACTIVITIES INTENDED TO VERIFY OR  
31 ESTABLISH THE PREPAREDNESS OF THE STATE, A MUNICIPALITY,

1 OR A PARTY REQUIRED BY AS 46.04.030 TO HAVE AN APPROVED  
2 CONTINGENCY PLAN TO ACT IN ACCORDANCE WITH THAT PLAN;  
3 AND

4 (D) VERIFY OR ESTABLISH PROOF OF FINANCIAL  
5 RESPONSIBILITY REQUIRED BY AS 46.04.040;

6 (3) pay the expenses incurred by the department to obtain  
7 equipment required for and placed in [ALASKA DIVISION OF EMERGENCY  
8 SERVICES FOR THE OIL AND HAZARDOUS SUBSTANCE RESPONSE CORPS  
9 AND] the oil and hazardous substance response depots;

10 (C) [WHEN PRESENTED WITH APPROPRIATE  
11 DOCUMENTATION BY THE DIVISION;

12 (4) provide matching funds in the event of a catastrophic oil release  
13 for participation

14 (i) in federal oil discharge cleanup activities; and

15 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive  
16 Environmental Response, Compensation, and Liability Act of 1980);  
17 and

18 (D) [(5)] recover the costs to the state, a municipality, or a  
19 village of a containment and cleanup resulting from the catastrophic oil release  
20 or the threatened catastrophic oil release [OF OIL OR A HAZARDOUS  
21 SUBSTANCE];

22 (2) from the oil and hazardous substances release contingency and  
23 abatement account in the fund to

24 (A) investigate and evaluate the release or threatened release  
25 of oil or a hazardous substance, except a catastrophic oil release, and  
26 contain, clean up, and take other necessary action, such as monitoring and  
27 assessing, to address a release or threatened release of oil or a hazardous  
28 substance, except a catastrophic oil release, that poses an imminent and  
29 substantial threat to the public health or welfare;

30 (B) recover the costs to the state, a municipality, or a village  
31 of a containment and cleanup resulting from the release or the threatened

1 release of oil or a hazardous substance, except a catastrophic oil release:

2 (C) pay all costs incurred to

3 (i) establish and maintain the oil and hazardous  
4 substance response office:

5 (ii) review oil discharge prevention and contingency  
6 plans submitted under AS 46.04.030:

7 (iii) conduct training, response exercises, inspections,  
8 and tests, in order to verify equipment inventories and ability to  
9 prevent and respond to oil and hazardous substance release  
10 emergencies, and to undertake other activities intended to verify or  
11 establish the preparedness of the state, a municipality, or a party  
12 required by AS 46.04.030 to have an approved contingency plan to  
13 act in accordance with that plan; and

14 (iv) verify or establish proof of financial  
15 responsibility required by AS 46.04.040:

16 (D) pay the expenses incurred by the department for

17 (i) the oil and hazardous substance response corps:

18 and

19 (ii) the oil and hazardous substance response depots,  
20 except the expenses incurred by the department to obtain  
21 equipment that is required for and placed in the response depots:

22 (E) provide matching funds in the event of the release of oil  
23 or a hazardous substance, except a catastrophic oil release, for  
24 participation

25 (i) in federal oil discharge cleanup activities; and

26 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive  
27 Environmental Response, Compensation, and Liability Act of 1980):

28 and

29 (F) [(6)] prepare, review, and revise

30 (i) [(A)] the state's master oil and hazardous substance  
31 discharge prevention and contingency plan required by AS 46.04.200;

1 and

2 (ii) [(B)] a regional master oil and hazardous substance  
3 discharge prevention and contingency plan required by AS 46.04.210  
4 [; AND

5 (7) RESTORE THE ENVIRONMENT BY ADDRESSING THE  
6 EFFECTS OF AN OIL OR HAZARDOUS SUBSTANCE RELEASE].

7 \* Sec. 34. AS 46.08.040(b) is amended to read:

8 (b) When the governor declares a disaster related to an oil or hazardous  
9 substance discharge emergency under AS 26.23.020(c), the governor may, during the  
10 effective period of the disaster emergency, use money from the catastrophic oil  
11 release response account in the fund to respond to the disaster emergency.

12 \* Sec. 35. AS 46.08.040(c) is amended to read:

13 (c) Notwithstanding other provisions of this section, money from the fund may  
14 not be used for a purpose specified in (a)(1)(B) - (D) or (a)(2) [(a)(2) - (7) AND  
15 (d)(2)] of this section unless money is available from an appropriation made  
16 specifically for that purpose.

17 \* Sec. 36. AS 46.08.060(a) is amended to read:

18 (a) The commissioner shall submit a report to the legislature not later than the  
19 10th day following the convening of each regular session of the legislature. The report  
20 may include information considered significant by the commissioner but must include:

21 (1) the amount of money expended by the department under  
22 AS 46.08.040(a) during the preceding fiscal year,

23 (2) the amount and source of money received and money recovered by  
24 or on behalf of the department during the preceding fiscal year as specified in  
25 AS 46.08.020 and 46.08.025;

26 (3) a summary of municipal participation in the department's responses  
27 that were paid for [FUNDED] by the fund;

28 (4) a detailed summary of department activities in responses paid for  
29 [FUNDED] by the fund during the preceding fiscal year, including response  
30 descriptions and statements outlining the nature of the threat; [IN THIS PARAGRAPH,  
31 "DETAILED" INCLUDES INFORMATION DESCRIBING EACH PERSONAL

1 SERVICES POSITION AND TOTAL COMPENSATION FOR THAT POSITION,  
2 EACH CONTRACT IN EXCESS OF \$20,000, AND EACH PURCHASE IN EXCESS  
3 OF \$10,000;] and

4 (5) the projected cost to the department for the next fiscal year of  
5 monitoring, operating, and maintaining sites where response has been completed or is  
6 expected to be continued during the fiscal year.

7 \* Sec. 37. AS 46.08.075(a) is amended to read:

8 (a) The state has a lien for expenditures by the state from the oil and  
9 hazardous substance release prevention and response fund, or from any other state  
10 fund, for the costs of response, containment, removal, or remedial action resulting from  
11 an oil or hazardous substance release or spill, or, with respect to response costs, for  
12 the costs of response to a threatened [THE SUBSTANTIAL THREAT OF A] release  
13 of oil or a hazardous substance, against all property owned by a person who is  
14 determined by the commissioner to be liable for the expenditures under this chapter,  
15 AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes  
16 interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the  
17 expenditures. The state may file an action in a court of competent jurisdiction in order  
18 to foreclose on the lien.

19 \* Sec. 38. AS 46.08.075(e) is amended to read:

20 (e) A person with an ownership interest in property against which a lien is  
21 recorded may bring an action in a court of competent jurisdiction to require that the  
22 lien be released. The lien may be released to the extent of that person's ownership  
23 interest if the court finds that the person is not liable for the expenses incurred by the  
24 state in connection with the costs of response, containment, removal, or remedial  
25 action resulting from the [OIL OR HAZARDOUS SUBSTANCE] release or spill, or  
26 from the threatened [THREAT OF] release, of oil or a hazardous substance.

27 \* Sec. 39. AS 46.08.110 is amended to read:

28 Sec. 46.08.110. RESPONSE CORPS. (a) The department [DIVISION OF  
29 EMERGENCY SERVICES, DEPARTMENT OF MILITARY AND VETERANS'  
30 AFFAIRS,] shall establish an oil and hazardous substance response corps.

31 (b) The corps consists of volunteers who register with the department

1 [DIVISION] and agree to be trained by the division in techniques for containment and  
2 cleanup and to be available on short notice to assist in containment and cleanup  
3 consistent with the responsibilities assigned to the corps under an applicable incident  
4 command system.

5 (c) Members of the corps are entitled to per diem and expenses as determined  
6 by the department [DIVISION] for training and for days spent in service to the state  
7 in containment and cleanup actions.

8 \* Sec. 40. AS 46.08.120 is amended to read:

9 Sec. 46.08.120. RESPONSE DEPOTS. The department [DIVISION] shall  
10 maintain emergency response depots in areas of the state determined in the plans  
11 prepared under AS 46.04.200 - 46.04.210 to be potential sites of releases or threatened  
12 releases of oil or hazardous substances. The depots shall be equipped and staffed in  
13 a manner that ensures prompt response when containment and cleanup actions are  
14 necessary.

15 \* Sec. 41. AS 46.08.150 is amended to read:

16 Sec. 46.08.150. CONTRACTS. The office [OR THE DIVISION, AS  
17 APPLICABLE,] may

18 (1) enter into agreements with agencies of the state and federal  
19 government, political subdivisions, the University of Alaska, or private persons or  
20 entities to

21 (A) [(1)] provide the personnel, equipment, or other services or  
22 supplies necessary to establish and maintain regional oil and hazardous  
23 substances depots and as necessary for response readiness; and

24 (B) [(2)] train members of response corps; and

25 (2) contract with persons to provide personnel, including members  
26 of the emergency response corps, to assist them with a nongovernmental response  
27 to a release or threatened release of oil or a hazardous substance [(3) CONDUCT  
28 RESEARCH INTO OIL AND HAZARDOUS SUBSTANCES SPILL TECHNOLOGY;  
29 THE OFFICE SHALL INCLUDE IN THE RESEARCH TOPICS FOR WHICH IT  
30 CONDUCTS OR CONTRACTS FOR RESEARCH, THE RESEARCH TOPICS  
31 RECOMMENDED TO IT BY THE HAZARDOUS SUBSTANCE SPILL

## 1 TECHNOLOGY REVIEW COUNCIL UNDER AS 46.13.120].

2 \* Sec. 42. AS 46.08.900(5) is amended to read:

3 (5) "fund" means the oil and hazardous substance release prevention  
4 and response fund;

5 \* Sec. 43. AS 46.08.900(9) is amended to read:

6 (9) "release"

7 (A) means any spilling, leaking, pumping, pouring, emitting,  
8 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into  
9 the environment;

10 (B) [, EXCEPT THAT "RELEASE"] does not include

11 (i) a permitted release; or

12 (ii) an act of nature;

13 \* Sec. 44. AS 46.08.900(11) is amended to read:

14 (11) "threatened release" means [AN IMMINENT DANGER] that a  
15 release is imminent: a release is imminent if16 (A) it is impending, or on the point of happening; or17 (B) though not impending, in the judgment of the  
18 commissioner19 (i) the incident or occurrence may reasonably be  
20 expected to culminate in an actual release; and21 (ii) that actual release may reasonably be expected to  
22 cause personal injury, other injury to life, or loss of or damage to  
23 property, including the environment [WILL OCCUR];

24 \* Sec. 45. AS 46.08.900 is amended by adding a new paragraph to read:

25 (13) "catastrophic oil discharge" and "catastrophic oil release" have the  
26 meaning given the term "catastrophic oil discharge" in AS 46.04.900.

27 \* Sec. 46. AS 46.09.900(8) is amended to read:

28 (8) "threatened release" means [AN IMMINENT DANGER] that a  
29 release is imminent: a release is imminent if30 (A) it is impending, or on the point of happening; or31 (B) though not impending, in the judgment of the

1 commissioner

2 (i) the incident or occurrence may reasonably be  
3 expected to culminate in an actual release; and

4 (ii) that actual release may reasonably be expected to  
5 cause personal injury, other injury to life, or loss of or damage to  
6 property, including the environment [WILL OCCUR].

7 \* Sec. 47. AS 46.13.010(a) is amended to read:

8 (a) There is established in the Department of Military and Veterans' Affairs  
9 [ENVIRONMENTAL CONSERVATION] the Alaska State Emergency Response  
10 Commission.

11 \* Sec. 48. AS 19.65.025; AS 26.23.195(b); AS 43.55.200, 43.55.210, 43.55.220, 43.55.230,  
12 43.55.240; AS 46.08.040(d), and 46.08.190(3) are repealed.

13 \* Sec. 49. TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR  
14 PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by  
15 this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b), the  
16 reference to which is repealed by sec. 5 of this Act, is not an expenditure.

17 \* Sec. 50. APPLICABILITY. The definition of "catastrophic oil discharge" in  
18 AS 46.08.900, added by sec. 45 of this Act, applies to discharges occurring after the effective  
19 date of this section.

20 \* Sec. 51. TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION  
21 SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1993, AND  
22 BEFORE THE EFFECTIVE DATE OF THIS ACT. After June 30, 1993, and before the  
23 effective date of this section, every producer of oil who is required by AS 43.55.200 -  
24 43.55.240, repealed by this Act, to pay the oil conservation surcharge of \$.05 per barrel of oil  
25 shall pay that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply  
26 to the amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts  
27 received after June 30, 1993, and before the effective date of this section, if so appropriated  
28 by the legislature and notwithstanding any other provision of law relating to the deposit of and  
29 accounting for those receipts,

30 (1) on the effective date of this section, the commissioner of revenue shall  
31 allocate

1 (A) 60 percent of the amount received to the catastrophic oil release  
2 response account established by AS 46.08.010(a)(2), added by sec. 28 of this Act; and

3 (B) 40 percent of the amount received to the oil and hazardous  
4 substances release contingency and abatement account established by  
5 AS 46.08.010(a)(1), added by sec. 28 of this Act; and

6 (2) the allocations made under (1) of this section are credited to the respective  
7 accounts for purposes of determination of the suspension and reimposition of the surcharge  
8 under AS 43.55.231 and 43.55.241, added by secs. 12 and 13 of this Act.

9 \* Sec. 52. TERMS OF MEMBERS OF ALASKA STATE EMERGENCY RESPONSE  
10 COMMISSION NOT AFFECTED. The transfer of the Alaska State Emergency Response  
11 Commission from the Department of Environmental Conservation to the Department of  
12 Military and Veterans' Affairs made by sec. 47 of this Act does not affect the term of office  
13 of a person serving as a member of the commission on the effective date of this section.

14 \* Sec. 53. Section 20 of this Act takes effect only if Senate Bill 90 am H becomes law.

15 \* Sec. 54. If sec. 20 of this Act takes effect, sec. 19 of this Act does not take effect.

16 \* Sec. 55. Section 18 of this Act takes effect January 1, 1994.

**DIVISION OF LEGAL SERVICES**

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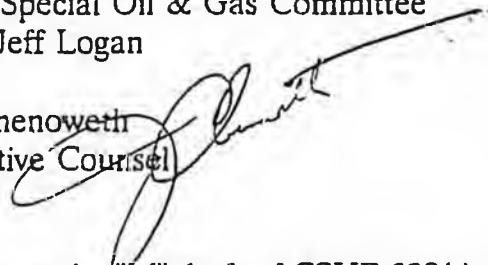
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Juneau, Alaska 99801-2105

MEMORANDUM

April 27, 1993

**SUBJECT:** Draft CS for House Bill 238, amending the oil and hazardous substance release response fund ("470 Fund") and making additions and changes to related matters -- sectional analysis (Work Order No. 8-LS0676\M, draft, 4/20/93)

**TO:** Representative Joe Green, Chair  
House Special Oil & Gas Committee  
Attn: Jeff Logan

**FROM:** Jack Chenoweth  
Legislative Counsel 

This sectional analysis addresses the "M" draft of CSHB 238( ). The bill amends the purposes for which the oil and hazardous substance release response fund ("470 Fund") may be expended, replaces the nickel-per-barrel oil conservation surcharge with two new oil surcharges, reassigns responsibilities for the oil and hazardous substance response corps, depots, and Emergency Response Commission, and makes a series of related changes.

I

Amendments related to the oil and hazardous substance release response fund:

The bill establishes a series of funds and accounts:

-- the oil and hazardous substance release response fund [this is the original "470 Fund" renamed in this bill the oil and hazardous substance release **prevention and response** fund]; the measure does not change the fund's status in that it remains a fund within the general fund; the redesignated fund would have two components:

-- the oil and hazardous substances release contingency and abatement account (AS 46.08.010(a)(1) and 46.08.020), the first component;

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-- the oil and hazardous substances release contingency and abatement mitigation account (AS 46.08.020), a holding account from which money is transferred in and out;

-- the catastrophic oil release response account (AS 46.08.010(a)(2) and 46.08.025), the second component; and

-- the catastrophic oil release response mitigation account (AS 46.08.025), also a holding account from which money is transferred in and out.

In addition, carried forward in AS 46.04.010 is the reference in current law to the "oil and hazardous substance release mitigation account," to which this measure makes no change and only a passing reference.

With reference to this collection of funds and accounts:

**Bill section 27** amends the statement of purpose underpinning the oil and hazardous substance release response fund chapter (AS 46.08) by restating the chapter's purpose in light of the amendments made to the chapter and to related provisions.

**Bill section 28** identifies the two accounts that constitute that fund.

**Bill section 29** makes a related substitution of a reference to "account" for fund.

The deletion made in **bill section 30** reflects the repeal of AS 46.08.040(d)--use of the fund as a source of money for construction of ferries--elsewhere in the bill.

**Bill section 31**, revising AS 46.08.020, spells out the manner in which the oil and hazardous substance release contingency and abatement account is to be financed.

**Bill section 32**, adding a parallel section, AS 46.08.025, sets out the manner in which the catastrophic oil release response account is to be financed.

**Bill section 33:** The amendments made by this section to AS 46.08.040(a) revise the objectives for which money in the oil and hazardous substance release response fund may be spent and allocate those objectives to the two accounts. All the purposes except activity directly related to a catastrophic oil release or threatened catastrophic oil release and use of the fund balance for related oil cleanup activity cost recovery purposes are to be addressed by money in the oil and hazardous substance release contingency and abatement account. Activities directly related to a catastrophic oil release or threatened catastrophic oil release and those involving related oil cleanup activity cost recovery purposes are to be met from the catastrophic oil release response account. New in this version is the directive that the catastrophic oil release response account be used to acquire the equipment for the response depots.

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**Bill section 34** limits the governor to drawing disaster emergency money from the catastrophic oil release response account.

**Bill section 35:** Under the bill section as amended, a specific appropriation from either account in the oil and hazardous substance release response fund would still be required before money could be used for any other purpose than the immediate response action authorized by AS 46.08.040(a)(1)(A) for catastrophic oil spills.

**Bill sections 8 and 36** make additional changes reflecting the division of the fund into two accounts. **Bill section 36** removes a requirement relating to the contents of the commissioner of environmental conservation's annual report.

As in the last previous version, the measure seeks to provide consistency of treatment in its use, in AS 46.08, of the terms "release" and "threatened release." **Bill section 43** provides a technically revised definition of "release" and **bill section 44** substantively amends the definition of "threatened release." Conforming changes that reflect the revised definitions are made by **bill sections 37 and 38**.

Under one of the repealer sections set out in **bill section 48**, the oil and hazardous substance release response fund would no longer be available to support ferry construction (authorization to use the fund to build one or more new ferries would be terminated by repeal of AS 19.65.025 and AS 46.08.040(d)).

As I earlier noted, the "oil and hazardous substance release response fund" is renamed the "oil and hazardous substance release prevention and response fund." You'll find those changes set out in **bill sections 1, 4, 6, 7, and 42** of the bill, and elsewhere as appropriate.

**Bill section 5** differentiates between the two accounts for the purpose of making disaster emergency grants to municipalities.

**Bill section 45** provides a definition of "catastrophic oil discharge" into AS 46.08, while **bill section 50** explains that definition's applicability.

## II

### Amendments related to the oil conservation surcharge:

The bill eliminates the current nickel-per-barrel oil conservation surcharge, replacing it with a pair of new surcharges, one levied at 3 cents per barrel, the other imposed at a rate of 2 cents per barrel.

**Bill section 9:** This section imposes a new conservation surcharge at the rate of \$.03 per barrel.

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**Bill sections 10 - 13** essentially carry forward the current provisions relating to levy and collection of the nickel-per-barrel oil conservation surcharge, but make them applicable to the new surcharge.

**Bill section 11** directs the deposit of the three cent per barrel surcharge to the catastrophic oil release response account in the fund.

**Bill section 12** sets out the conditions under which the severance tax surcharge shall be suspended or reimposed. It alters one of the factors that triggers levy and collection of the surcharge. For purposes of determining whether the tax shall apply, the calculation of the income stream is amended to include amounts previously expended from the oil and hazardous substance release response fund that have been recovered and redeposited into the mitigation account. The amended provision also reflects the substitution of the catastrophic oil release response account. Under subsection (e), in lieu of quarterly determinations of the trigger mechanism, when the account balance exceeds 45 million dollars, the determinations are to be made more frequently.

**Bill section 13** amends the mechanism by which the surcharge on/surcharge off trigger shall be computed.

**Bill section 14** imposes a two cent per barrel surcharge and directs the deposit of the money received from it into the "oil and hazardous substance release contingency and abatement account".

**Bill section 15** maintains the current definition of "catastrophic oil discharge" and makes it applicable to both oil conservation surcharges.

**Bill section 16** provides a revised definition for the term "surcharge."

A related provision of the bill, **bill section 49**, is inserted by way of clarification of how appropriations, if any, made to the spill reserve fund, mentioned within the text of AS 29.60.510(b), are to be treated for purposes of determining whether they are to be treated as expenditures from the oil and hazardous substance release response fund in conjunction with the factors applicable to suspension or reimposition of the severance tax conservation surcharge. Since, in **bill section 5**, the statutory reference to "spill reserve" would be repealed, the provision is drafted as an uncodified, temporary law section with a limited applicability.

Another related provision, **bill section 51**, sets out a transition mechanism for amounts collected under the nickel-per-barrel surcharge after June 30, 1993, and until the effective date of this Act.

### III

**Amendments related to reassignments of agency responsibilities:**

**Bill section 39** reassigns the oil and hazardous substance response corps to the Department of Environmental Conservation.

**Bill section 40** transfers the responsibility for maintaining the emergency response depots to that department.

**Bill section 47** moves the Alaska State Emergency Response Commission from that department to the Department of Military and Veterans' Affairs.

**Bill section 52** protects or "holds harmless" the terms of members of the response commission despite the transfer of the commission by bill section 47.

### IV

**Related matters:**

The measure proposes a series of changes related to the governor's authority to declare disaster emergencies.

**Bill section 2:** The changes revise the priority order in which the governor may have access to money to respond to a disaster.

**Bill section 3** makes a drafting change related to the handling of the current material in the immediately preceding bill section.

**Bill sections 19 and 20** make changes that relate to the governor's use of money in the oil and hazardous substance release prevention and response fund in the face of a disaster emergency. The sections are alternatives to each other, with appropriate related contingent provisions set out in bill sections 53 and 54.

**Bill sections 17 and 18** conform language of AS 46.04.030(e) to the definition of the phrase "containment and cleanup" already provided for that chapter. AS 46.04.030(a) is amended, effective January 1, 1994. **Bill section 55** reflects that amendment.

\*

**Bill section 21:** The amendment to AS 46.04.200(a) retains the requirement of annual review of the statewide prevention and contingency plan but removes from current law the requirement of annual revision of the plan and substitutes revision at the discretion of the commissioner of environmental conservation.

**Bill section 22:** The section, amending AS 46.04.200(c), deletes from current law the explicit requirements that, as part of the annual review of the state master plan, the proposed draft revisions of the state master plan be offered for public review and comment, for legislative review, and for review by the state emergency response commission (AS 46.13.010).

**Bill section 23:** In line with the changes made in the preceding bill section, this bill section restates the requirements applicable to a plan revision, directing submission of the proposed revised master plan to the same three groups.

**Bill sections 24 and 25:** The changes and addition made by these two bill sections, applicable to regional prevention and contingency master plans, parallel those with respect to the state plan as set out in bill sections 13 and 14.

**Bill section 26** offers a revised definition of the term "catastrophic oil discharge," incorporating reference to declared disaster emergencies for discharges smaller than 100,000 barrels of oil.

V

Other topics:

**Bill section 41** eliminates the ability of the Oil and Hazardous Substance Response Office to conduct certain spill technology research, and assigns the office authority to contract to provide personnel for certain release-related work.

Modeled after the revision of the definition made in bill section 44 mentioned earlier, **bill section 46** revises the definition of the term "threatened release" applicable to AS 46.09.

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## Overview of the Proposed House Resources Committee Substitute for HB 238 (4/20/93, "M" draft)

In its basic mission of restricting the use of the response fund and replacing the fund with a new fund composed of two accounts, the 4/20/93 "M" draft differs only slightly from the 4/13/93 "D" draft. Specifically, the 2 cent, 3 cent division is maintained. According to Alaska Department of Environmental Conservation (DEC) analysis, the 2 cent account is insufficient to fund the department's core prevention and response programs. This analysis was conducted using the FY 94 budget reductions. According to DEC, inverting the accounts to provide 3 cents for core programs is still insufficient.

This overview identifies the most significant changes between the proposed committee substitutes. The accompanying sectional analysis for the 4/20/93 "M" draft provides more detail and identifies new sections and changes to old sections.

**Response Corps and Depots.** The most significant difference in the "M" is the transfer of the response corps and depots from the Alaska Department of Military and Veteran Affairs (DMVA), Division of Emergency Services (DES) to the Alaska Department of Environmental Conservation (DEC) and the transfer of the state emergency response commission and the local emergency planning commissions from DEC to DMVA. In addition to transferring the response depots authority to DEC, the "M" draft provides for the purchasing of response depot equipment from the catastrophic oil release response account.

**Contingency Plan Review.** An important change in the "M" draft is contained in Section 17, a new section that **modifies the Alaska Department of Environmental Conservation's (DEC) authority when reviewing and approving contingency plans.** Specifically, rather than requiring the applicant to have sufficient resources to **contain, clean up and mitigate** potential oil discharges, the applicant must have sufficient resources to **take containment and cleanup and other necessary action to** mitigate potential oil discharges. This may be a weakening of DEC's authority because any action that reduces impacts can be argued to mitigate impacts and meet this requirement. However, according to Jack Chenoweth, attorney, Legislative Affairs Agency, Division of Legal Services, he was directed to make this change to provide consistency with definitions in AS 46.08.900(3), the definition of "containment and cleanup."

**State and Regional Plan Review and Revision.** Both drafts remove the requirement to annually review the state master oil and hazardous substance discharge prevention and contingency plan. The bill as introduced and the "D" draft limited revision to once per year. This is the plan that was obsolete and ineffectual when the *Exxon Valdez* oil spill occurred. The inability to respond in a timely and efficient manner to the *Exxon Valdez* was directly related to the lack of a well reviewed and drilled master contingency plan. The "M" draft still leaves revision to the discretion of the DEC commissioner rather than requiring revision, which given the limited funding to DEC resulting from the divided fund, could result in the plan receiving inadequate review and revision.

**Purposes of the Fund.** Under both proposals, the purpose of the new oil and hazardous substance release prevention and response fund is 1) for expenses incurred by DEC "as an emergency first response to a release or threatened release of oil or hazardous substances" of catastrophic oil spills (over 4.2 million gallons) using the catastrophic oil release response account, and 2) for state "use during a response to a release or threatened release of oil or hazardous substance, other than a catastrophic release."

The "M" draft also allows for use of the fund "to pay for expenses of making preparations for the possibility of a release or threatened release of oil or hazardous substances, to reduce the amount, degree, or intensity of a release or threatened release, and for other related purposes identified in law." This addition addresses the ambiguity of the "D" draft regarding DEC response costs.

**Restricted Mitigation Funds.** For purposes of determining whether the tax shall apply, the calculation of the income stream is amended to include amounts previously expended from the oil and hazardous substance release response fund (the current 470 fund) that have been recovered and re deposited into the mitigation account. In the "D" draft, mitigation money that may have restricted uses and not be usable for spill response was not segregated. This is similar to the bill as introduced. This problem is remedied in the "M" draft.

**Definition of Threatened Release.** In current statute, the definition of threatened release is "an imminent danger that a release will occur." In both proposals, the new definition would be narrowed to mean a release is imminent. A release is imminent if "it is impending, on the point of happening, or in the judgment of the commissioner, may reasonably be expected to culminate in an actual release, and that actual release may reasonably be expected to cause personal injury, other injury to life, or loss or damage to property."

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In the "D" draft, if "property" referred only to tangible personal property, this definition would exclude damage to environmental values (e.g. spawning habitat). In the "M" draft, **section 44** specifically includes "including the environment" to address this concern. However, despite the change adding environmental damages, the narrowing of this definition limits DEC's ability to prevent spills.

**Restoration.** Under both proposals, **funds may not be used from either account for restoration of the environment** "by addressing the effects of an oil or hazardous substance release."



Regional Citizens' Advisory Council / 601 West Fifth Avenue, Suite 500 / Anchorage, Alaska 99501-2254 / (907) 277-7222 / FAX (907) 277-4523

## **Sectional Analysis of the Proposed CS for House Bill 238, Relating to and Redesigning the Oil and Hazardous Substance Release Response Fund (4/20/93, "M" draft)**

**Section 1** ("D" draft section 1). This is a technical change amending the powers of the Governor to allow for use of money from the oil and hazardous substance release *prevention and* response fund, consistent with the renaming of the fund adding the words "prevention and." Similar renaming occurs in sections 4, 6, 7, and 42.

**Section 2** (revised "D" draft section 2). In this version, the changes revise the priority order in which the governor may have access to money to respond to a disaster. In the event of an oil or hazardous substance release or discharge, the governor shall have first recourse to the appropriate account within the oil and hazardous substance prevention and response fund, then money regularly appropriated to state and local agencies and the disaster release fund.

**Section 3** (new). This new section makes a drafting change relating to section 2 in order to address circumstances in which there may be insufficient money available for response. It authorizes the governor to spend money appropriated for other purposes or to borrow money for a term not to exceed two years.

**Section 4** (new). Similar to section 1, this is a technical change resulting from the renaming of the fund, adding the words "prevention and."

**Section 5** ("D" draft section 3). Makes additional changes reflecting the division of the fund into two accounts. However, direct access to local impact grants are restricted to catastrophic oil releases. If a spill is not defined as catastrophic, for a local impact grant, the governor must first declare a disaster emergency, and then the funds must be appropriated--significantly limiting access to local impact grant money.

**Sections 6 and 7** are new sections, again providing technical changes resulting from the renaming of the fund, adding the words "prevention and."

**Section 8** is a slightly modified "D" draft section 4. It is consistent with the renaming of the accounts within the funds.

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**Section 9** ("D" draft section 5). This section imposes a new conservation surcharge of 3 cents per barrel used to fund the catastrophic oil release account.

**Section 10** (section 6, "D" draft) carries forward the current provisions relating to the levy and collection of the oil conservation surcharge, but makes them applicable to the new surcharge.

**Section 11** (section 7, "D" draft) directs the deposit of the 3 cents per barrel surcharge to the catastrophic oil release account in the fund.

**Section 12**, (modified "D" draft section 8, HB 238 section 1). Requires the commissioner of administration to determine the balance of the catastrophic oil release account within 30 days after the end of each calendar year, for the purpose of computing the \$50 million account cap. Once the \$50 million cap is reached, the \$0.03 per barrel portion of severance tax conservation surcharge deposited into the general fund is suspended.

Similar to the "D" draft, this section alters one of the factors that triggers levy and collection of the surcharge. For purposes of determining whether the tax shall apply, the calculation of the income stream is amended to include amounts previously expended from the oil and hazardous substance release response fund (the current 470 fund) that have been recovered and re deposited into the mitigation account. In the "D" draft, mitigation money that may have restricted uses and not be usable for spill response was not segregated. This is similar to the bill as introduced. This problem is remedied in the "M" draft.

This amended provision to calculating the fund balance also reflects the substitution of the catastrophic oil release account. Under subsection (e), in lieu of quarterly determination of the trigger mechanism, when the catastrophic oil release account reaches \$45 million, the determination are to be made more frequently.

This section relates also to **section 49** ("D" draft section 38, introduced section 26) of the bill, which clarifies how appropriations, if any, made to the spill reserve fund mentioned within the context of former AS 29.60.510(b), are to be treated for purposes of determining the suspension or re imposition of the surcharge. The section states that appropriations to the former spill reserve in AS 29.60.510(b), are not expenditures.

**Section 13** ("D" draft section 9) amends the mechanism by which the surcharge on/off trigger shall be computed.

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**Section 14** ("D" draft section 10) imposes a 2 cents per barrel surcharge and directs the deposit of the money received from it into the "oil and hazardous substances release contingency and abatement account."

**Section 15**, slightly modified "D" draft section 11 is a technical section that maintains the definition of "catastrophic oil discharge" applicable to the oil conservation surcharges. The redrafting of this version tends to emphasize that a catastrophic spill can be less than 4.2 million gallons if "the governor determines it presents a grave and substantial threat to the economy or environment."

**Section 16** ("D" draft section 12) provides a revised definition for the term "surcharge."

**Section 17** is a new section that modifies the Alaska Department of Environmental Conservation's (DEC) authority when reviewing and approving contingency plans. Specifically, rather than requiring the applicant to have sufficient resources to **contain, clean up and** mitigate potential oil discharges, the applicant must have sufficient resources to **take containment and cleanup and other necessary action to** mitigate potential oil discharges. This may be a weakening of DEC's authority because **action that reduces impacts can be argued to mitigate impacts and meet** requirement. However, according to Jack Chenoweth, attorney, Legislative Affairs Agency, Division of Legal Services, he was directed to make this change to provide consistency with definitions in AS 46.08.900(3), the definition of "containment and cleanup."

**Section 18** is a new section consistent with section 17 and addresses the review and approval of contingency plans when a response action contractor is identified in a contingency plan for the provision of containment and clean up services.

**Sections 19 and 20** are new and make changes that relate to the governor's use of money in the oil and hazardous substance release prevention and response fund in the face of a disaster emergency. The sections are alternatives to each other, with appropriate related contingency provisions set out in **bill sections 53 and 54**, relating to whether Senate Bill 90 is passed. As SB 90 was passed, section 20 would be effective and section 19 would not be.

**Section 21** ("D" draft section 13, HB 238 section 4) removes the requirement to annually review the state master oil and hazardous substance discharge prevention and contingency plan. The bill as introduced and the "D" draft limited revisions to once per year. This is the plan that was obsolete and ineffectual when the *Exxon Valdez* oil spill occurred. The inability to respond in a timely and efficient manner to the *Exxon Valdez* was directly related to the lack of a well reviewed and drilled master contingency plan. The "M" draft still leaves revision to the discretion of the

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DEC commissioner rather than requiring revision, which given the limited funding to DEC resulting from the divided fund, could result in the plan receiving inadequate review and revision.

**Section 22** ("D" draft section 14, HB 238 section 5) would eliminate the participation of the public and other agencies in the annual review of the state master plan. Federal, state, and Oil Spill Commission recommendations all identified the necessity of public input to eliminate complacency in spill prevention. This was the premise for the federal and state laws establishing citizens' advisory councils. Due to the diverse and unique coast line and communities potentially affected by oil and hazardous substance spills, site specific community input is essential in creating a workable plan, as well as other agencies such as Alaska Departments of Fish and Game and Public Safety.

**Section 23** ("D" draft section 15, HB 238 section 6) allows the public and SERC to be involved only if a revision is made to the state plan. Current statute allow for public input during the annual review and revision process. This section is misleading because it seems to allow for public comment, but in actuality it limits public input only to revisions of the plan. These changes could allow a plan to sit on the shelf unrevised and unpracticed for many years.

**Section 24** ("D" draft section 16, HB 238 section 7) essentially does for regional plans what section 21 did to the state master plan. Again, in the "M" draft, plan revision is not limited to once per year but at the discretion of the commissioner of DEC.

**Section 25** ("D" draft section 17, HB 238 section 8) is a technical amendment that incorporates the changes made in section 24 for master plans to the regional plan changes in section 25.

**Section 26** ("D" draft section 18) offers a revised definition of the term "catastrophic oil discharge," incorporating reference to declared disaster emergencies for discharges smaller than 4.2 million gallons of oil.

**Section 27** (modified "D" draft section 19, HB 238 section 10). Amends the statement of purpose of the oil and hazardous substance release response fund in light of the amendments made to the chapter and related provisions by this bill. Specifically, the purpose of the new oil and hazardous substance release **prevention and** response fund is 1) for expenses incurred by DEC "as an emergency first response to a release or threatened release of oil or hazardous substances" of catastrophic oil spills (over 4.2 million gallons) using the catastrophic oil release response account, and 2) for state "use during a response to

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a release or threatened release of oil or hazardous substance, other than a catastrophic release."

The "M" draft also allows for use of the fund "to pay for expenses of making preparations for the possibility of a release or threatened release of oil or hazardous substances, to reduce the amount, degree, or intensity of a release or threatened release, and for other related purposes identified in law." This addition addresses the ambiguity of the "D" draft regarding DEC response costs.

**Section 28** (modified "D" draft section 20) identifies the two accounts that constitute the fund.

**Section 29** (modified "D" draft section 21) makes a related substitution of a reference to "account" for fund.

**Section 30** (modified "D" draft section 22, HB 238 section 11). Reflects the repeal of AS 46.08.040(d)--construction of ferries--in section 32. This provision was passed in 1991 to allow construction of a state ferry with oil spill containment and response capabilities. However, this section is modified in the "M" draft to allow the fund to be used for the purchase of equipment to be placed in the oil and hazardous substance response depots.

**Section 31** ("D" draft section 23) amends AS 46.08.020 and the financing of the Oil and Hazardous Substances Release Contingency and Abatement Account. It excludes money recovered or received due to a catastrophic oil discharge and money from performance bonds, and fines, penalties, and damages recovered by the state. These funds are to be deposited into the general fund and credited to the oil and hazardous substances release contingency and abatement mitigation account. Funds from the mitigation account can be appropriated annually to the oil and hazardous substances release contingency and abatement account.

**Section 32** ("D" draft section 23). Similar to section 31 which requires non-catastrophic spill cost recovery to be credited to a mitigation account, with the exception of performance bonds, all fines, penalties, or damages recovered from catastrophic oil spills are credited to the catastrophic oil release response mitigation account and may be appropriated annually to the catastrophic oil release response account.

**Section 33** (modified "D" draft section 25, HB 238 section 12). This section eliminates the authority to use funds in the catastrophic oil release response account for 1) maintenance of the oil and hazardous substance response office; 2) review oil discharge prevention and response plans; 3) conduct training, response exercises, inspections, and tests to verify equipment inventories and response

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preparedness; and 4) verification of financial responsibility. These functions are to be funded by the oil and hazardous substances release contingency and abatement account.

Money from the catastrophic oil release response account can be used to 1) respond to catastrophic oil spills, 2) provide matching funds for federal oil discharge activities and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) in the event of a catastrophic oil release, 3) for recovery of costs of containment and cleanup resulting from a release or threatened release to the state, a municipality, or a village from a catastrophic oil release, and 4) purchase of equipment for response depots.

As mentioned in 4 above, this "M" draft expands the use of the account for the purchase of equipment for the response depots and reflects the transfer of this function from the Department of Military and Veteran Affairs (DMVA), Division of Emergency Services (DES) to DEC.

**Funds may not be used from either account for restoration of the environment "by addressing the effects of an oil or hazardous substance release."**

**Section 34** ("D" draft section 26). Limits the governor to drawing disaster emergency money from the catastrophic oil release response account.

**Section 35** ("D" draft section 27). Requires specific appropriation for the following uses of the fund. Money for federal matching or cost recovery from the catastrophic oil release response account or *all* uses of the oil and hazardous substances release contingency and abatement account can not be used unless an appropriation has been made specifically for that purpose.

**Section 36** (modified "D" draft section 28). Adds the requirement that the DEC commissioner report to the legislature on the uses of both accounts created by the division in this bill. The "M" draft reduces the DEC auditing requirements for uses of the fund.

**Sections 37, 38, 43 and 44** ("D" draft sections 29, 30, 33, and 34; HB 238 sections 14, 15, 18, and 19). These sections attempt to provide consistency in the use of terms "release" and "threatened release" in AS 46.08. Section 43 provides a technically revised definition of "release" and section 44 substantially amends the definition of "threatened release." In current statute, the definition of threatened release is "an imminent danger that a release will occur." The new definition would be narrowed to mean a release is imminent.