

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

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HOUSE RESOURCES

301

HB

238

Version

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Drafted & proposed
 by Rep. Green
 (had no hearing or
 specific testimony in committee)

8-LS0676S
 Chenoweth
 2/3/94

CS FOR HOUSE BILL NO. 238()

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND 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; amending
 3 requirements relating to the revision of state and regional master prevention and
 4 contingency plans; altering requirements applicable to liens for recovery of state
 5 expenditures related to oil or hazardous substances; amending the authority to
 6 contract to provide personnel to respond to a release or threatened release of oil
 7 or a hazardous substance and to contract to conduct spill related research;
 8 modifying definitions of terms relating to the preceding provisions; terminating the
 9 nickel-per-barrel oil conservation surcharge; levying and collecting two new oil
 10 surcharges; providing for the suspension and reimposition of one of the new
 11 surcharges; and amending the definition of 'catastrophic oil discharge' and
 12 'catastrophic oil release' from a threshold of 100,000 barrels to a threshold of

1 10,000 barrels; and providing for an effective date."

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

3 * Section 1. 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 (1) in the event of an oil or hazardous substance release or
6 discharge, the governor shall have first recourse to the appropriate account within
7 the oil and hazardous substance release prevention and response fund, and
8 thereafter the governor may have second recourse to money regularly
9 appropriated to state and local agencies and third recourse to money available in
10 the disaster relief fund:

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

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

15 (B) the governor shall have further [. THE SECOND]
16 recourse [SHALL BE] to money available in the disaster relief fund [OR, FOR
17 OIL OR HAZARDOUS SUBSTANCES DISCHARGES, THE OIL AND
18 HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND, AS THE
19 GOVERNOR DETERMINES APPROPRIATE. IF MONEY AVAILABLE
20 FROM THESE SOURCES IS INSUFFICIENT, AND IF THE GOVERNOR
21 FINDS THAT OTHER SOURCES OF MONEY TO COPE WITH THE
22 DISASTER ARE NOT AVAILABLE OR ARE INSUFFICIENT, THE
23 GOVERNOR MAY, NOTWITHSTANDING THE LIMITATIONS IMPOSED
24 BY AS 37.07.080(e),

25 (1) TRANSFER AND SPEND MONEY APPROPRIATED FOR
26 OTHER PURPOSES; OR

27 (2) BORROW MONEY FOR A TERM NOT TO EXCEED TWO
28 YEARS].

29 * Sec. 2. AS 26.23.050 is amended by adding a new subsection to read:

30 (d) If money available from a source identified in (b) of this section is
31 insufficient, and if the governor finds that other sources of money to cope with the

1 disaster are not available or are insufficient, the governor may, notwithstanding the
2 limitations imposed by AS 37.07.080(e),

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

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

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

6 (b) For each disaster emergency declared by the governor under AS 26.23.020
7 that involves a catastrophic oil release or threatened catastrophic oil release, and
8 subject to agreement with the commissioner of environmental conservation as to the
9 amount of money in the fund that may be used by the department to make grants, the
10 commissioner may expend not more than \$10,000,000 [OF THE BALANCE OF THE
11 FUND THAT IS APPROPRIATED TO THE SPILL RESERVE OR] of the
12 unrestricted balance of the catastrophic oil release response account in the fund for
13 grants authorized under this section. For each disaster emergency declared by the
14 governor under AS 26.23.020 that involves a release or threatened release of a
15 hazardous substance, and for an oil release that is not declared a disaster
16 emergency, and subject to appropriation of money in the fund that may be used
17 by the department to make grants, the commissioner may expend not more than
18 the amount appropriated from the oil and hazardous substances release
19 contingency and abatement account in the fund for grants authorized under this
20 section. If the commissioner and the commissioner of environmental conservation do
21 not agree on the amount of money in the catastrophic oil release response account
22 in the fund that may be used by the department to make grants under AS 29.60.500
23 - 29.60.599 for a catastrophic oil release or threatened catastrophic oil release, the
24 governor shall make the determination. In this section, "catastrophic oil release"
25 has the meaning given to "catastrophic oil discharge" by AS 46.04.900.

26 * Sec. 4. AS 37.14.410 is amended to read:

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

1 established in AS 46.08.020 or 46.08.025.

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

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

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

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

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

16 (b) The surcharge imposed by (a) of this section is in addition to and shall be
17 paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150; and is in
18 addition to the surcharge imposed by AS 43.55.300 - 43.55.310.

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

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

22 Sec. 43.55.211. USE OF REVENUE DERIVED FROM SURCHARGE. The
23 legislature may appropriate the annual estimated balance of the account maintained
24 under AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge
25 levied under AS 43.55.201 to the catastrophic oil release response account in the oil
26 and hazardous substance release prevention and response fund established by
27 AS 46.08.010.

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

29 Sec. 43.55.221. SUSPENSION AND REIMPOSITION OF THE
30 SURCHARGE. (a) Not later than 30 days after the end of each calendar quarter, the
31 commissioner of administration shall determine, as of the end of that quarter,

1 (1) the unreserved and unobligated balance in the catastrophic oil
2 release response account of the oil and hazardous substance release prevention and
3 response fund established in AS 46.08.010; for purposes of this paragraph, the
4 "unreserved and unobligated balance in the catastrophic oil release response account"
5 means the cash balance of the account less the sum of

- 6 (A) reserves for outstanding appropriations from the account;
7 (B) encumbrances of money in the account; and
8 (C) other liabilities of the account;

9 (2) the balance of the account maintained under AS 37.05.142 that is
10 available for appropriation to the catastrophic oil release response account of the oil
11 and hazardous substance release prevention and response fund established in
12 AS 46.08.010;

13 (3) the balance of the catastrophic oil release response mitigation
14 account established by AS 46.08.025(b) that originated from the sources described in
15 AS 46.08.025(a)(2) and that is available for appropriation to the catastrophic oil release
16 response account of the fund established in AS 46.08.010;

17 (4) the total appropriations from the catastrophic oil release response
18 account of the oil and hazardous substance release prevention and response fund
19 established in AS 46.08.010; in calculating total appropriations under this paragraph,
20 the commissioner of administration may not consider money appropriated from the
21 catastrophic oil release response account for a purpose described in
22 AS 46.08.040(a)(1).

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

- 25 (1) add the amounts determined under (a)(1) - (3) of this section;
26 (2) determine the difference between the amount determined under (1)
27 of this subsection and the amount determined under (a)(4) of this section; and
28 (3) report the amount determined under (2) of this subsection to the
29 commissioner.

30 (c) In making the determination required by (a) of this section, the
31 commissioner of administration may not consider money described in (a) of this

1 section that is subject to a dedication imposed by law that restricts the use of the
2 money to a specific purpose for which the catastrophic oil release response account of
3 the oil and hazardous substance release prevention and response fund established in
4 AS 46.08.010 may not be lawfully expended.

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

14 (e) Except as provided in AS 43.55.231, if the commissioner of administration
15 reports that the difference determined under (b) of this section is less than
16 \$50,000,000, the commissioner of revenue shall require imposition and collection of
17 the surcharge authorized under AS 43.55.201. Reimposition of the surcharge begins
18 on the first day of the calendar quarter next following the commissioner's receipt of
19 the commissioner of administration's report under (b) of this section. Before the first
20 day of reimposition of the surcharge authorized by this subsection, the commissioner
21 shall make a reasonable effort to notify all persons who are known to the department
22 to be required to pay the surcharge under AS 43.55.201 that the surcharge will be
23 reimposed.

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

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

30 Sec. 43.55.231. SURCHARGE NOT IMPOSED. (a) The surcharge authorized
31 by AS 43.55.201 is not levied during any fiscal year for which

1 (1) the legislature does not, during the regular or a special legislative
2 session preceding the first day of the fiscal year, appropriate at least an amount equal
3 to the amount determined under (b) of this section from the general fund to the
4 catastrophic oil release response account in the oil and hazardous substance release
5 prevention and response fund; or

6 (2) the legislature, during the regular or a special legislative session
7 preceding the first day of the fiscal year, appropriates at least the amount of money
8 equal to the amount determined under (b) of this section from the general fund to the
9 catastrophic oil release response account in the oil and hazardous substance release
10 prevention and response fund and that appropriation is vetoed or reduced by the
11 governor.

12 (b) The amount of money required to be appropriated from the general fund
13 to the catastrophic oil release response account in the oil and hazardous substance
14 release prevention and response fund by (a) of this section is the amount, determined
15 for the last day of the preceding fiscal year, that is the sum of the actual or estimated
16 balance of

17 (1) the account maintained under AS 37.05.142 to account for all
18 proceeds of the surcharge that are deposited into the general fund; and

19 (2) the portion of the balance of the catastrophic oil release response
20 account paid into that account under AS 46.08.025(a)(2) and credited to the
21 catastrophic oil release response mitigation account that represents amounts recovered
22 from parties for which expenditures were originally made from

23 (A) the catastrophic oil release response account; or

24 (B) the former oil and hazardous substance release response
25 account if the expenditure was made for a release or threatened release of oil
26 or a hazardous substance before the effective date of this Act.

27 * Sec. 9. AS 43.55 is amended by adding new sections to read:

28 ARTICLE 2A. ADDITIONAL CONSERVATION SURCHARGE ON OIL.

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

1 (b) The surcharge imposed by (a) of this section is in addition to and shall be
2 paid in the same manner as the tax imposed by AS 43.55.011 - 43.55.150; and is in
3 addition to the surcharge imposed by AS 43.55.201 - 43.55.241.

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

6 Sec. 43.55.310. USE OF REVENUE DERIVED FROM SURCHARGE. The
7 legislature may appropriate the annual estimated balance of the account maintained
8 under AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge
9 levied under AS 43.55.300 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. 10. AS 43.55.900(3) is amended to read:

13 (3) "catastrophic oil discharge" means

14 (A) an oil discharge in excess of 10,000 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. 11. 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;

22 (B) when used in AS 43.55.300 - 43.55.310, the surcharge
23 levied by AS 43.55.300 [AS 43.55.200];

24 * Sec. 12. 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. If a contingency plan submitted

1 to the department for approval relies on the services of an oil spill primary response
 2 action contractor, the department may not approve the contingency plan unless the
 3 primary response action contractor is registered and approved under AS 46.04.035.
 4 The contingency plan must provide for the use by the applicant of the best technology
 5 that was available at the time the contingency plan was submitted or renewed. The
 6 department may require an applicant or holder of an approved contingency plan to take
 7 steps necessary to demonstrate its ability to carry out the contingency plan, including
 8 (1) periodic training;
 9 (2) response team exercises; and
 10 (3) verifying access to inventories of equipment, supplies, and
 11 personnel identified as available in the approved contingency plan.

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

13 (a) The department shall

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

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

18 (3) revise the statewide master oil and hazardous substance
 19 discharge prevention and contingency plan; the department shall revise the
 20 statewide master plan whenever, in the judgment of the commissioner, revision
 21 is necessary.

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

23 (c) In

24 (1) preparing [AND ANNUALLY REVIEWING] the initial state
 25 master plan, the commissioner shall

26 (A) [(1)] consult with municipal and community officials, and
 27 with representatives of affected regional organizations;

28 (B) [(2)] submit the draft plan to the public for review and
 29 comment;

30 (C) [(3)] submit the plan to the legislature for review, not later
 31 than the 10th day following the convening of a [EACH] regular session [, THE

1 PLAN AND ANY ANNUAL REVISION OF THE PLAN];

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

6 (E) [(5)] submit the plan [AND ANY ANNUAL REVISION]
7 to the Alaska State Emergency Response Commission for its review and
8 approval under AS 46.13.045; and

9 (2) annually reviewing the state master plan, the commissioner shall

10 (A) consult with municipal and community officials, and
11 with representatives of affected regional organizations; and

12 (B) require or schedule unannounced oil spill drills to test
13 the sufficiency of an oil discharge prevention and contingency plan
14 approved under AS 46.04.030 or of the cleanup plans of a party identified
15 under (b)(2) of this section.

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

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

19 (1) the draft plan to the

20 (A) public for review and comment; and

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

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

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

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

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

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

3 (3) revise the regional master oil and hazardous substance
4 discharge prevention and contingency plan; the commissioner shall revise a
5 regional master plan whenever, in the judgment of the commissioner, revision is
6 necessary.

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

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

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

11 (2) "catastrophic oil discharge" means

12 (A) an oil release or discharge in excess of 10,000 [100,000]
13 barrels; [,] or

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

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

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

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

1 catastrophic oil releases;

2 (2) the other account consists of money that the state may use
3 during a response to a release or threatened release of oil or a hazardous
4 substance, other than a catastrophic oil discharge, to pay the expenses of making
5 preparations for the possibility of a release or threatened release of oil or
6 hazardous substances, to reduce the amount, degree, or intensity of a release or
7 threatened release, and for other related purposes identified in law [OR
8 HAZARDOUS SUBSTANCES].

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

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

13 (1) the oil and hazardous substances release contingency and
14 abatement account;

15 (2) the catastrophic oil release response account.

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

17 (b) Money from an appropriation made to an account in the fund remaining
18 in that account [THE FUND] at the end of a fiscal year does not lapse and remains
19 available for expenditure in successive fiscal years.

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

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

25 * Sec. 23. AS 46.08.020 is amended to read:

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

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

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

4 (A) money recovered or otherwise received due to a
5 catastrophic oil discharge, to the extent that the money recovered or
6 otherwise received had not been paid out of the oil and hazardous
7 substances contingency and abatement account; and

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

11 (3) fines, penalties, or damages recovered under AS 46.08.005 -
12 46.08.080 or other law for costs incurred by the state as a result of the release or
13 threatened release of oil or a hazardous substance, but excluding fines, penalties, or
14 damages recovered or otherwise received due to a catastrophic oil discharge; and

15 (4) the interest earned on the balance of the account maintained
16 under AS 37.05.142 for deposits into the general fund of the proceeds of the
17 surcharge levied under AS 43.55.201.

18 (b) Money received by the state under (a)(2) and (a)(3) of this section shall
19 be deposited in the general fund and credited to a special account called the "oil and
20 hazardous substances [SUBSTANCE] release contingency and abatement mitigation
21 account." The legislature may annually appropriate to the oil and hazardous
22 substances release contingency and abatement account in the fund from the oil and
23 hazardous substances release contingency and abatement mitigation [THIS]
24 account a sum equal to the amount received under (a)(2) and (a)(3) of this section
25 during the calendar year preceding the legislative session in which the appropriations
26 are to be made.

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

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

31 (1) money received from federal, state, or other sources or from a

1 private donor;

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

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 a catastrophic oil
8 discharge.

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

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

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

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

22 (A) [(1)] investigate and evaluate a catastrophic oil [THE]
23 release or threatened catastrophic oil release [OF OIL OR A HAZARDOUS
24 SUBSTANCE], and [CONTAIN, CLEAN UP, AND] take containment and
25 cleanup and other necessary action, such as monitoring and assessing, to
26 address a catastrophic oil release or threatened catastrophic oil release [OF
27 OIL OR A HAZARDOUS SUBSTANCE] that poses an imminent and
28 substantial threat to the public health or welfare, or to the environment;

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

30 (A) ESTABLISH AND MAINTAIN THE OIL AND
31 HAZARDOUS SUBSTANCE RESPONSE OFFICE;

1 (B) REVIEW OIL DISCHARGE PREVENTION AND
2 CONTINGENCY PLANS SUBMITTED UNDER AS 46.04.030;

3 (C) CONDUCT TRAINING, RESPONSE EXERCISES,
4 INSPECTIONS, AND TESTS, IN ORDER TO VERIFY EQUIPMENT
5 INVENTORIES AND ABILITY TO PREVENT AND RESPOND TO OIL
6 AND HAZARDOUS SUBSTANCE RELEASE EMERGENCIES, AND TO
7 UNDERTAKE OTHER ACTIVITIES INTENDED TO VERIFY OR
8 ESTABLISH THE PREPAREDNESS OF THE STATE, A MUNICIPALITY,
9 OR A PARTY REQUIRED BY AS 46.04.030 TO HAVE AN APPROVED
10 CONTINGENCY PLAN TO ACT IN ACCORDANCE WITH THAT PLAN;
11 AND

12 (D) VERIFY OR ESTABLISH PROOF OF FINANCIAL
13 RESPONSIBILITY REQUIRED BY AS 46.04.040;

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

18 (C) [WHEN PRESENTED WITH APPROPRIATE
19 DOCUMENTATION BY THE DIVISION;

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

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

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

25 and

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

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

1 (A) investigate and evaluate the release or threatened release
2 of oil or a hazardous substance, except a catastrophic oil release, and
3 contain, clean up, and take other necessary action, such as monitoring and
4 assessing, to address a release or threatened release of oil or a hazardous
5 substance, except a catastrophic oil release, that poses an imminent and
6 substantial threat to the public health or welfare;

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

10 (C) pay all costs incurred to

11 (i) establish and maintain the oil and hazardous
12 substance response office;

13 (ii) review oil discharge prevention and contingency
14 plans submitted under AS 46.04.030;

15 (iii) conduct training, response exercises, inspections,
16 and tests, in order to verify equipment inventories and ability to
17 prevent and respond to oil and hazardous substance release
18 emergencies, and to undertake other activities intended to verify or
19 establish the preparedness of the state, a municipality, or a party
20 required by AS 46.04.030 to have an approved contingency plan to
21 act in accordance with that plan; and

22 (iv) verify or establish proof of financial
23 responsibility required by AS 46.04.040;

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

25 (i) the oil and hazardous substance response corps;
26 and

27 (ii) the oil and hazardous substance response ~~deposits~~,
28 except the expenses incurred by the department to obtain
29 equipment that is required for and placed in the response depots;

30 (E) provide matching funds in the event of the release of oil
31 or a hazardous substance, except a catastrophic oil release, for

1 participation

2 (i) in federal oil discharge cleanup activities; and
 3 (ii) under 42 U.S.C. 9601 - 9657 (Comprehensive
 4 Environmental Response, Compensation, and Liability Act of 1980);

5 and

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

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

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

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

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

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

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

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

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

26 (a) The commissioner shall submit a report to the legislature not later than the
 27 10th day following the convening of each regular session of the legislature. The report
 28 may include information considered significant by the commissioner but must include:

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

31 (2) the amount and source of money received and money recovered by

1 or on behalf of the department during the preceding fiscal year as specified in
2 AS 46.08.020 and 46.08.025;

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

5 (4) a detailed summary of department activities in responses paid for
6 [FUNDED] by the fund during the preceding fiscal year, including response
7 descriptions and statements outlining the nature of the threat; [IN THIS PARAGRAPH,
8 "DETAILED" INCLUDES INFORMATION DESCRIBING EACH PERSONAL
9 SERVICES POSITION AND TOTAL COMPENSATION FOR THAT POSITION,
10 EACH CONTRACT IN EXCESS OF \$20,000, AND EACH PURCHASE IN EXCESS
11 OF \$10,000;] and

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

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

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

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

28 (e) A person with an ownership interest in property against which a lien is
29 recorded may bring an action in a court of competent jurisdiction to require that the
30 lien be released. The lien may be released to the extent of that person's ownership
31 interest if the court finds that the person is not liable for the expenses incurred by the

1 state in connection with the costs of response, containment, removal, or remedial
2 action resulting from the [OIL OR HAZARDOUS SUBSTANCE] release or from the
3 threatened [THREAT OF] release, of oil or a hazardous substance.

4 * Sec. 31. AS 46.08.150 is amended to read:

5 Sec. 46.08.150. CONTRACTS. The office [OR THE DIVISION,
6 AS APPLICABLE,] may

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

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

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

14 (2) contract with persons to provide personnel, including members
15 of the emergency response corps, to assist them with a nongovernmental response
16 to a release or threatened release of oil or a hazardous substance [(3) CONDUCT
17 RESEARCH INTO OIL AND HAZARDOUS SUBSTANCES SPILL TECHNOLOGY;
18 THE OFFICE SHALL INCLUDE IN THE RESEARCH TOPICS FOR WHICH IT
19 CONDUCTS OR CONTRACTS FOR RESEARCH, THE RESEARCH TOPICS
20 RECOMMENDED TO IT BY THE HAZARDOUS SUBSTANCE SPILL
21 TECHNOLOGY REVIEW COUNCIL UNDER AS 46.13.120].

22 * Sec. 32. AS 46.08.900(11) is amended to read:

23 (11) "threatened release" means [AN IMMINENT DANGER] that a
24 release is imminent; a release is imminent if

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

26 (B) though not impending, in the judgment of the
27 commissioner

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

30 (ii) that actual release may reasonably be expected to
31 cause personal injury, other injury to life, or loss of or damage to

1 property, including the environment [WILL OCCUR];

2 * Sec. 33. AS 46.08.900 is amended by adding a new paragraph to read:

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

5 * Sec. 34. AS 46.09.900(8) is amended to read:

6 (8) "threatened release" means [AN IMMINENT DANGER] that a
7 release is imminent; a release is imminent if

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

9 (B) though not impending, in the judgment of the

10 commissioner

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

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

16 * Sec. 35. AS 26.23.195(b); AS 43.55.200, 43.55.210, 43.55.220, 43.55.230, 43.55.240; and
17 sec. 3, ch. 112, SLA 1989 are repealed.

18 * Sec. 36. REVISOR OF STATUTES TO REVISE REFERENCES. In each of the
19 following, the revisor of statutes shall delete references to "oil and hazardous substance release
20 response fund" and insert in place of each deletion a reference to "oil and hazardous substance
21 release prevention and response fund": AS 26.23.020(g)(11); AS 29.60.510(a),
22 29.60.560(e)(1), 29.60.599(4); AS 46.08.900(5).

23 * Sec. 37. TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR
24 PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by
25 this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b), the
26 reference to which is repealed by sec. 3 of this Act, is not an expenditure.

27 * Sec. 38. APPLICABILITY. The addition of the definition of "catastrophic oil discharge"
28 in AS 46.08.900 by sec. 33 of this Act, and amendment of the definition of "catastrophic oil
29 discharge" in AS 43.55.900(3) in sec. 10 of this Act and in AS 46.04.900 in sec. 18 of this
30 Act apply to discharges occurring after the effective date of this section.

31 * Sec. 39. TRANSITIONAL PROVISIONS APPLICABLE TO CONSERVATION

1 SURCHARGE ON OIL IMPOSED BY AS 43.55.200 AFTER JUNE 30, 1994, AND
2 BEFORE THE EFFECTIVE DATE OF THIS ACT. After June 30, 1994, and before the
3 effective date of this Act, a producer of oil who is required by AS 43.55.200 - 43.55.240,
4 repealed by this Act, to pay the oil conservation surcharge of \$.05 per barrel of oil shall pay
5 that levy. The provisions of AS 43.55.210 - 43.55.240, repealed by this Act, apply to the
6 amounts received by the state under AS 43.55.200 - 43.55.240, but as to the amounts received
7 after June 30, 1994, and before the effective date of this Act, if so appropriated by the
8 legislature and notwithstanding any other provision of law relating to the deposit of and
9 accounting for those receipts,

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

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

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

16 (2) the allocations made under (1) of this section are credited to the respective
17 accounts for purposes of determination of the suspension and reimposition of the surcharge
18 under AS 43.55.231 and 43.55.241, added by secs. 8 and 9 of this Act.

19 * Sec. 40. APPLICATION OF AS 43.55.231. (a) AS 43.55.231, added by sec. 8 of this
20 Act, does not apply to prevent the levy and collection of the surcharge imposed by
21 AS 43.55.201 until the first day of the fiscal year next following the day on which the balance
22 of the oil and hazardous substance release response fund first exceeds \$50,000,000.

23 (b) The commissioner of administration shall certify to the commissioner of
24 environmental conservation, the commissioner of revenue, the revisor of statutes, and the
25 division of legislative finance the date on which the balance of the oil and hazardous
26 substance release response fund first exceeds \$50,000,000.



Cordova District Fishermen United

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Cordova, Alaska 99574
(907) 424-3447 FAX (907) 424-3430

March 16, 1994

Representative Bill Williams
Chair, House Resources Committee
State Capitol
Juneau, AK 99801-1182

Dear Representative Williams:

On behalf of Cordova District Fishermen United (CDFU) I wish to express our opposition to the "S" version of HB 238. There is no compelling reason for this bill other than to provide a tax reduction to the oil industry.

There is a great deal of misinformation being spread about the 470 Fund. Most of the examples being used to show how the fund is being misused actually involve small amounts of money and were all approved by the legislature through the appropriations process. If changes need to be made they should be made when the DEC budget is reviewed by the finance committees.

The most important lesson we learned from the Exxon Valdez oil spill is that prevention is the best tool we have to protect public health and the environment from oil spills. By splitting the nickel, the legislature is in effect, reducing funding for critical prevention programs.

The "catastrophic oil release response account" which would receive 3 cents of the per barrel surcharge would only be available for the most extreme spill events, and only for "emergency first response." Since the likelihood of an oil spill of 100,000 barrels or more is quite small, we can anticipate this fund will remain dormant and collect dust while the state is left without the ability to deal with the serious acute and chronic affects of smaller spills. Any spill can be catastrophic. The size of a spill matters far less than where the spill occurs (i.e., a municipal drinking water system or an anadromous fish stream) or what the spilled substance consists of.

The remaining 2 cents would go into a the "oil and hazardous substances release contingency and abatement account" that would be woefully inadequate to fund the ongoing spill prevention and response programs presently being funded from the 470 Fund. There are several other problems with the "S" version of HB 238. Among other things, it would:

- cause detrimental reductions in spill prevention and response programs now and especially in the future, threatening public health and the environment;
- give a \$74 million reduction in the nickel-per-barrel tax that was intended to be ongoing;
- reduce DEC's ability to respond to hazardous substance spills and spills smaller than 100,000 barrels; and
- allow fines and penalties levied for illegal actions to be credited toward the suspension of the tax.

Apathy caused the Exxon Valdez Oil Spill. The state had virtually no spill prevention or response programs in place when it occurred. Nearly 5 years later, the legislature is threatening to return back to the same vulnerable position. What HB 238 "S" version removes much of the oversight that has been put in place since the 11 million gallon oil spill in Prince William Sound.

CDFU urges the House Resources Committee to oppose the "S" version of HB 238. If the Committee deems that a bill is necessary, we urge that the Committee pass the "Y" version of HB 238 that does not split the nickel. However, we oppose allowing fines and penalties to be used toward the \$50 million cap. These monies should be available to provide a buffer in future years when oil production declines and the nickel is not adequate to fund the spill prevention and response programs.

Sincerely,
CORDOVA DISTRICT FISHERMEN UNITED


John Bocci, Legislative Committee Chair

cc:

Governor Hickel
Senator Lincoln
Rep. Olberg
Rep. Barnes
Rep. Phillips
Rep. Finkelstein
Rep. Davies
Rep. Green
Rep. James
Rep. Hudson
Rep. Bunde
Rep. Mulder
Rep. Carney
Rep. Vezey
Rep. Larson
Rep. MacLean

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Version

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Chenoweth

2/22/94

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

BY THE HOUSE RESOURCES COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the oil and hazardous substance release response fund and
2 to its administration; amending the nickel-per-barrel oil conservation surcharge and
3 amending the oil and gas properties production tax to authorize a credit for
4 certain tax payments; amending requirements relating to the revision of state and
5 regional master prevention and contingency plans; and altering requirements
6 applicable to liens for recovery of state expenditures related to oil or hazardous
7 substances; and providing for an effective date."

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

9 * Section 1. AS 29.60.510(b) is amended to read:

10 (b) For each disaster emergency declared by the governor under AS 26.23.020,
11 and subject to agreement with the commissioner of environmental conservation as to
12 the amount of money in the fund that may be used by the department to make grants,
13 the commissioner may expend not more than \$10,000,000 [OF THE BALANCE OF

1 THE FUND THAT IS APPROPRIATED TO THE SPILL RESERVE OR] of the
2 unrestricted balance of the fund for grants authorized under this section. If the
3 commissioner and the commissioner of environmental conservation do not agree on the
4 amount of money in the fund that may be used by the department to make grants
5 under AS 29.60.500 - 29.60.599, the governor shall make the determination.

6 * Sec. 2. AS 43.55 is amended by adding a new section to read:

7 Sec. 43.55.022. EXCESS SURCHARGE PAYMENT CREDIT. (a) A
8 producer of oil is entitled to a credit against the tax due under AS 43.55.011 -
9 43.55.150 of an amount equal to the amount determined and reported by the
10 commissioner under AS 43.55.235 for that taxpayer.

11 (b) A taxpayer may apply the credit to which the taxpayer is entitled under (a)
12 of this section only during a tax year in which the credit is calculated and reported
13 under AS 43.55.231(d).

14 * Sec. 3. AS 43.55.220 is repealed and reenacted to read:

15 Sec. 43.55.220. USE OF REVENUE DERIVED FROM SURCHARGE. The
16 legislature may appropriate the annual estimated balance of the account maintained
17 under AS 37.05.142 for deposits into the general fund of the proceeds of the surcharge
18 levied under AS 43.55.200 to the oil and hazardous substance release prevention and
19 response fund established by AS 46.08.010.

20 * Sec. 4. AS 43.55 is amended by adding new sections to read:

21 Sec. 43.55.231. ADMINISTRATION OF THE SURCHARGE. (a) Not later
22 than 30 days after the end of each calendar quarter, the commissioner of administration
23 shall determine for that fiscal year, as of the end of that quarter,

24 (1) the unreserved and unobligated balance of the oil and hazardous
25 substance release prevention and response fund established in AS 46.08.010; for
26 purposes of this paragraph, the "unreserved and unobligated balance" means the cash
27 balance of the fund less the sum of

28 (A) reserves for outstanding appropriations from the fund;

29 (B) encumbrances of money in the fund; and

30 (C) other liabilities of the fund;

31 (2) the balance of the account maintained under AS 37.05.142 to

1 account for the proceeds of the surcharge that are deposited into the general fund;

2 (3) the balance of the oil and hazardous substance release mitigation
3 account established by AS 46.08.020(b) that originated from the sources described in
4 AS 46.08.020(a)(2) and that is available for appropriation to the oil and hazardous
5 substance release prevention and response fund established in AS 46.08.010;

6 (4) the total appropriations from the oil and hazardous substance release
7 prevention and response fund established in AS 46.08.010; in calculating total
8 appropriations under this paragraph, the commissioner of administration may not
9 consider money appropriated from the fund for a purpose described in
10 AS 46.08.040(a)(1).

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

13 (1) add the amounts determined under (a)(1) - (3) of this section;

14 (2) determine the difference between the amount determined under (1)
15 of this subsection and the amount determined under (a)(4) of this section; and

16 (3) report the amount determined under (2) of this subsection to the
17 commissioner.

18 (c) In making the determination required by (a) of this section, the
19 commissioner of administration may not consider money described in (a) of this
20 section that is subject to a dedication imposed by law that restricts the use of the
21 money to a specific purpose for which the fund established in AS 46.08.010 may not
22 be lawfully expended.

23 (d) When the commissioner of administration determines that the difference
24 determined under (b)(2) of this section equals or exceeds \$50,000,000, the
25 commissioner of administration shall calculate and report to the commissioner of
26 revenue the amount by which money collected from the surcharge levied and collected
27 under AS 43.55.200 exceeds \$50,000,000.

28 Sec. 43.55.235. CALCULATION OF OVERAGE AND ALLOCATION
29 AMONG TAXPAYERS. When, under AS 43.55.231(d), the commissioner of
30 administration calculates and reports that the amount of money collected from the
31 surcharge levied and collected under AS 43.55.200 exceeded the amount necessary to

1 maintain the calculation made under AS 43.55.231(b) and reported under
2 AS 43.55.231(b)(3) at \$50,000,000, the commissioner of revenue shall

3 (1) calculate, for each taxpayer that is subject to the tax levied and
4 collected under this chapter, the percentage of the payment in excess of \$50,000,000
5 contributed by the taxpayer; the calculation is made by multiplying the amount
6 calculated and reported under AS 43.55.231(d) by the percentage of the total revenue
7 derived from the surcharge levied and collected under AS 43.55.200 during the
8 calendar quarter for which the commissioner of administration issues the report
9 required by AS 43.55.231(d); and

10 (2) report the calculation to the taxpayer.

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

12 Sec. 43.55.241. SURCHARGE SUSPENDED AND REIMPOSED. (a) The
13 surcharge authorized by AS 43.55.200 is not levied during any fiscal year for which

14 (1) the legislature does not, during the regular or a special legislative
15 session preceding the first day of the fiscal year, appropriate at least an amount equal
16 to the amount determined under (b) of this section from the general fund to the oil and
17 hazardous substance release prevention and response fund; or

18 (2) the legislature, during the regular or a special legislative session
19 preceding the first day of the fiscal year, appropriates at least the amount of money
20 equal to the amount determined under (b) of this section from the general fund to the
21 oil and hazardous substance release prevention and response fund and that
22 appropriation is vetoed or reduced by the governor.

23 (b) The amount of money required to be appropriated from the general fund
24 to the oil and hazardous substance release prevention and response fund by (a) of this
25 section is the amount, determined for the last day of the preceding fiscal year, that is
26 the sum of the actual or estimated balance of

27 (1) the account maintained under AS 37.05.142 to account for all
28 proceeds of the surcharge that are deposited into the general fund; and

29 (2) the portion of the balance of the oil and hazardous substance release
30 mitigation account established by AS 46.08.020(b) that originated from sources
31 described in AS 46.08.020(a)(2) that represents amounts recovered for expenditures

1 originally made from

2 (A) the oil and hazardous substance release prevention and
3 response fund; or

4 (B) the former oil and hazardous substance release response
5 account if the expenditure was made for a release or threatened release of oil
6 or a hazardous substance before the effective date of this Act.

7 (c) If the commissioner of administration reports that the difference determined
8 under AS 43.55.231(b) is less than \$50,000,000, the commissioner of revenue shall
9 require imposition and collection of the surcharge authorized under AS 43.55.200.
10 Reimposition of the surcharge begins on the first day of the fiscal year next following
11 the commissioner's receipt of the commissioner of administration's report under
12 AS 43.55.231(b). Before the first day of reimposition of the surcharge authorized by
13 this subsection, the commissioner shall make a reasonable effort to notify all persons
14 who are known to the department to be required to pay the surcharge under
15 AS 43.55.200 that the surcharge will be reimposed.

16 * Sec. 6. AS 46.04.200(a) is amended to read:

17 (a) The department shall

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

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

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

26 * Sec. 7. AS 46.04.200(c) is amended to read:

27 (c) In

28 (1) preparing [AND ANNUALLY REVIEWING] the initial state
29 master plan, the commissioner shall

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

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

3 (C) [(3)] submit the plan to the legislature for review, not later
4 than the 10th day following the convening of a [EACH] regular session [, THE
5 PLAN AND ANY ANNUAL REVISION OF THE PLAN];

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

10 (E) [(5)] submit the plan [AND ANY ANNUAL REVISION]
11 to the Alaska State Emergency Response Commission for its review and
12 approval under AS 46.13.045; and

13 (2) annually reviewing the state master plan, the commissioner shall

14 (A) consult with municipal and community officials, and
15 with representatives of affected regional organizations; and

16 (B) require or schedule unannounced oil spill drills to test
17 the sufficiency of an oil discharge prevention and contingency plan
18 approved under AS 46.04.030 or of the cleanup plans of a party identified
19 under (b)(2) of this section.

20 * Sec. 8. AS 46.04.200 is amended by adding a new subsection to read:

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

23 (1) the draft plan to the

24 (A) public for review and comment; and

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

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

29 * Sec. 9. AS 46.04.210(a) is amended to read:

30 (a) For any region of the state, the boundaries of which are determined by the
31 commissioner by regulation, in which the department is required to review and approve

1 an oil discharge prevention and contingency plan submitted by a person under
2 AS 46.04.030, the department shall

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

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

7 (3) revise the regional master oil and hazardous substance
8 discharge prevention and contingency plan; the commissioner shall revise a
9 regional master plan whenever, in the judgment of the commissioner, revision is
10 necessary.

11 * Sec. 10. AS 46.04.210(b) is amended to read:

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

14 * Sec. 11. AS 46.08.010(a) is amended to read:

15 (a) There is established in the state general fund the oil and hazardous
16 substance release prevention and response fund. The fund shall be administered by
17 the commissioner.

18 * Sec. 12. AS 46.08.010(b) is amended to read:

19 (b) Money from an appropriation made to the fund remaining in the fund at
20 the end of a fiscal year does not lapse and remains available for expenditure in
21 successive fiscal years.

22 * Sec. 13. AS 46.08.020 is amended to read:

23 Sec. 46.08.020. FINANCING OF THE FUND. (a) The legislature may
24 appropriate from the following sources to the fund:

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

27 (2) money recovered or otherwise received from parties responsible for
28 the containment and cleanup of oil or a hazardous substance at a specific site for costs
29 incurred by the state, a municipality, or a village, but excluding

30 (A) money [FUNDS] from performance bonds and other forms
31 of financial responsibility held in escrow pending satisfactory performance of

1 a privately financed response action; and

2 (B) money recovered or otherwise received to the extent that
3 the money recovered or otherwise received had not been paid out of the
4 fund:

5 (3) fines, penalties, or damages recovered [UNDER AS 46.08.005 -
6 46.08.080 OR OTHER LAW FOR COSTS INCURRED] by the state as a result of the
7 release or threatened release of oil or a hazardous substance, but excluding money
8 described in (2) of this subsection:

9 (4) interest accrued on

10 (A) the balance of the fund:

11 (B) the account maintained under AS 37.05.142 for deposits
12 into the general fund from the proceeds of the surcharge levied under
13 AS 43.55.200; and

14 (C) the oil and hazardous substance release mitigation
15 account described in (b) of this section:

16 (5) fees for services collected under AS 44.46.025(a)(4) and (5):

17 (6) fees for services collected under AS 44.46.025(a)(8), to the extent
18 those fees involve certification of laboratories conducting environmental analyses
19 of oil or hazardous substances or other related analyses required by the
20 department; and

21 (7) fees collected by the department for the registration of oil spill
22 response action contractors under AS 46.04.035.

23 (b) Money received by the state under (a)(2) - (7) [(a)(2) AND (a)(3)] of this
24 section shall be deposited in the general fund and credited to a special account called
25 the "oil and hazardous substance release mitigation account." The legislature may
26 annually appropriate to the fund from this account a sum equal to the amount received
27 under (a)(2) - (7) [(a)(2) AND (a)(3)] of this section during the calendar year
28 preceding the legislative session in which the appropriations are to be made.

29 * Sec. 14. AS 46.08.050(b) is amended to read:

30 (b) A [THE] department that is appropriated or allocated money from the
31 fund, either directly or through a reimbursable service agreement with the

1 department, shall develop procedures governing the expenditure of, and accounting
2 for, money it expends [EXPENDED] from the fund. The department may not
3 transfer or pay money to another state agency for the agency's activities under
4 AS 46.08.040 unless the state agency provides to the department the information
5 necessary to complete the report required by AS 46.08.060 [, AND MAY NOT
6 DELAY IMPLEMENTATION OF THIS CHAPTER PENDING THE EFFECTIVE
7 DATE OF THE PROCEDURES].

8 * Sec. 15. 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 under

16 (A) AS 46.04.010 (reimbursement for expenses in cleaning
17 up or containing a discharge of oil);

18 (B) AS 46.08.020(a)(2) (money recovered from parties
19 responsible for oil or hazardous substance containment or cleanup); and

20 (C) AS 46.08.020(a)(3) (recovery of fines, penalties, and
21 damages) [AS SPECIFIED IN AS 46.08.020];

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

24 (4) [A DETAILED SUMMARY OF DEPARTMENT ACTIVITIES IN
25 RESPONSES FUNDED BY THE FUND DURING THE PRECEDING FISCAL
26 YEAR, INCLUDING RESPONSE DESCRIPTIONS AND STATEMENTS
27 OUTLINING THE NATURE OF THE THREAT; IN THIS PARAGRAPH,
28 "DETAILED" INCLUDES INFORMATION DESCRIBING EACH PERSONAL
29 SERVICES POSITION AND TOTAL COMPENSATION FOR THAT POSITION,
30 EACH CONTRACT IN EXCESS OF \$20,000, AND EACH PURCHASE IN EXCESS
31 OF \$10,000; AND

1 (5) the projected cost to the department for the next fiscal year of
2 monitoring, operating, and maintaining sites where response [HAS BEEN
3 COMPLETED OR] is expected to be continued during the fiscal year, to the extent
4 the costs of monitoring, operating, and maintaining these sites would be paid for
5 from the fund.

6 * Sec. 16. AS 46.08.060(b) is amended to read:

7 (b) As part of the department's on-going identification efforts associated with
8 oil spill, [OR] hazardous substance release, or waste sites, the commissioner shall
9 include in the report under this section

10 (1) the number [A SUMMARY] of [THE] sites identified by the
11 department that are included in the department's contaminated sites data base,
12 whether the site is active or closed; and

13 (2) a prioritized listing of those sites, both statewide and by
14 community, based on their [THE] immediate and long-term threats to the public
15 health or welfare or to the environment [POSED BY THESE SITES; AND

16 (3) THE APPROPRIATE ACTIONS NEEDED TO ABATE THESE
17 THREATS, AND THEIR ESTIMATED COST].

18 * Sec. 17. AS 46.08.070 is amended by adding a new subsection to read:

19 (d) The department shall adopt regulations to implement the requirements of
20 (a) and (b) of this section.

21 * Sec. 18. AS 46.08.075(a) is amended to read:

22 (a) The state has a lien for expenditures by the state from the oil and
23 hazardous substance release prevention and response fund, or from any other state
24 fund, for the costs of response, containment, removal, or remedial action resulting from
25 an oil or hazardous substance release [SPILL], or, with respect to response costs, for
26 the costs of response to a threatened [THE SUBSTANTIAL THREAT OF A] release
27 of oil or a hazardous substance, against all property owned by a person who is
28 determined by the commissioner to be liable for the expenditures under this chapter,
29 AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes
30 interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the
31 expenditures. The state may file an action in a court of competent jurisdiction in order

1 to foreclose on the lien.

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

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

10 * Sec. 20. AS 43.55.210, 43.55.230, 43.55.240; and sec. 3, ch. 112, SLA 1989 are
11 repealed.

12 * Sec. 21. REVISOR OF STATUTES TO REVISE REFERENCES. In each of the
13 following, the revisor of statutes shall delete references to "oil and hazardous substance release
14 response fund" and insert in place of each deletion a reference to "oil and hazardous substance
15 release prevention and response fund": AS 26.23.020(g)(11); AS 29.60.510(a),
16 29.60.560(e)(1), 29.60.599(4); AS 37.14.410(b)(1); AS 46.08.900(5).

17 * Sec. 22. TREATMENT OF APPROPRIATION TO FORMER SPILL RESERVE FOR
18 PURPOSES OF AS 43.55.230. For the purpose of former AS 43.55.230(a)(2), repealed by
19 this Act, an appropriation to the former spill reserve referred to in AS 29.60.510(b), the
20 reference to which is repealed by sec. 1 of this Act, is not an expenditure.

21 * Sec. 23. APPLICATION OF AS 43.55.241. (a) AS 43.55.241, added by sec. 5 of this
22 Act, does not apply to prevent the levy and collection of the surcharge imposed by
23 AS 43.55.200 until the first day of the fiscal year next following the day on which the balance
24 of the oil and hazardous substance release response fund first exceeds \$50,000,000.

25 (b) The commissioner of administration shall certify to the commissioner of
26 environmental conservation, the commissioner of revenue, the revisor of statutes, and the
27 division of legislative finance the date on which the balance of the oil and hazardous
28 substance release response fund first exceeds \$50,000,000.

29 * Sec. 24. This Act takes effect July 1, 1994.



Alaska State Legislature

HOUSE RESOURCES COMMITTEE

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3715

M E M O R A N D U M

TO: Members of the House Resources Committee

FROM: Rep. Bill Williams, Chairman *BKW*

DATE: Feb. 23, 1994

RE: Proposed committee substitute for House Bill 238, relating to the Oil and Hazardous Substance Release Response Fund (Work Draft Number 8-LS0676\Y)

As you will recall, our committee has met three times (last session and during the interim) and has taken many hours of testimony on House Bill 238. The Senate Resources Committee has also held a number of hearings on a similar measure, Senate Bill 215. Many draft versions of these two controversial bills have been written and circulated.

While I believe that there are indeed some concerns regarding the Oil and Hazardous Substance Release Response Fund ("470 Fund") which ought to be addressed, I am concerned that the various versions presented to date go beyond "fixing what is broken." These proposals may even further confuse and complicate the issues. Any erosion of Alaska's capability to address the risks of oil and hazardous substance spills not only endangers the environment, but also undermines public faith in government and relations between the public and the oil industry. Because of those concerns, I am proposing the attached draft committee substitute for the committee's consideration.

In proposing revisions to the 470 Fund I have tried to keep some general concepts in mind --- Alaska's statutes need to provide for a fair business atmosphere for the oil industry while also providing for adequate spill prevention, preparedness, and response. "Doing it right," is vital for ensuring the peace of mind of Alaskans, and securing the confidence, trust, and respect of the rest of the nation as we look forward to further oil development in Alaska in the future.

More specifically, the attached draft version of HB 238 (work draft number 8-LS0676\Y) is aimed at fulfilling the following goals:

- * Keep it as simple as possible.
- * Fix the "accounting" - The formula in current law for imposition and suspension of the nickel-a-barrel surcharge is confusing and misleading.
- * Quickly accumulate, and then maintain, the \$50 million spill reserve savings account.
- * Ensure continuation of adequate funding for Alaska's prevention, preparedness, and response programs.
- * Provide for a sound process for appropriation/ spending of funds , and flexibility to accommodate changing circumstances.
- * Provide equity for the crude oil industry, and reduce their costs when feasible

I am optimistic that the attached draft meets those goals without getting into other areas that are not in need of revision. I believe that the provisions in this draft can save the oil industry many millions of dollars while also protecting and maintaining both our "ounce of prevention" (prevention, preparedness, and response programs) AND our "pound of cure" (spill reserve savings account).

Since this draft differs significantly from previous versions of both HB 238 and SB 215, I wanted to circulate it in advance of a hearing for the review and consideration of the committee, industry, and the public. I plan to schedule a House Resources Committee hearing on HB 238 in the near future, and hope that this draft will be useful in our deliberations.

BRIEF EXPLANATION OF DRAFT VERSION 8-LS0675\Y OF CS HB 238 (RES)

By Rep. Bill Williams, Chairman
House Resources Committee

The formula for accumulating and maintaining the reserve is revised to work the way most of public has believed it was intended to work all along: it accumulates to \$50 million (by the second half of FY 95) and is then maintained at that level.

The single fund approach is maintained rather than splitting the "470 Fund" into two funds.

Although the nickel-per-barrel surcharge is kept intact (no "splitting of the nickel"), a significant portion of that surcharge is effectively "refunded" to the oil industry at the end of each year in the form of a tax credit. The total amount credited back to the industry will be the amount in excess of that needed to maintain the spill reserve at \$50 million, and fund the prevention, preparedness, and response programs at levels determined by the legislature through the appropriation process. The credit will be apportioned among those who have paid the surcharge, proportional to the amount each has paid. (Thus, unless a situation arises when funding above current levels is necessary, this provides a savings to industry approximately equivalent to reducing the nickel-per-barrel surcharge to less than 3 cents-per-barrel).

Provision is made for returning to the fund any costs incurred from the fund which are later recovered. This allows more of the "surcharge nickels" to be returned to industry.

The combination of a continued surcharge with the annual credit avoids having to impose and suspend the surcharge repeatedly, keeps the funding mechanism in place in case the full "nickel" is needed (for example due to a large spill), provides for enough flexibility among various uses of the money to meet changing circumstances, and allows for the savings to be returned to the oil industry.

History and logic behind drafting new proposal

Believed some changes to 470 Fund probably needed - primarily the formula for how the \$50 million fund was to fill and be maintained.

Watched progress and revisions in Senate -- bill got progressively more complex, controversial, and went far off the track of fixing what is really broken.

As coastal legislator, concerned about impacts of the underfunding of program side of 470 Fund.

Sought "win-win" approach that will save considerable money for oil industry without risking harm to critical prevention, preparedness and response programs, or harm to public image of Alaska and our oil industry.

Wanted to put version in front of House Resources that was more simple, straightforward, corrected main problems, and left the rest of the fund and programs alone.

At time decided to draft own version, DEC had just proposed their "whole nickel" approach. Seemed like best starting point for ours. Began by working from that, called in Sandor and his staff for technical assistance.

GOAL:

Use this simple version as the starting point for committee work. All discussion will be based on WHAT IS BROKEN, broken either with current law, or shortcomings of this draft version. If something can be clearly shown as a problem that must be addressed, then we will look at how to best address it. Don't want to just start amending current law willy-nilly at whim of industry, government, or public. (Could even mention that you've seen the draft audit of the 470 fund, and it does not reveal abuse of the fund) Amending law because someone guesses that something COULD be a problem is not wise.

POINTS:

While the Williams version saves the oil industry over \$100 million dollars over the next five years, it has a ZERO D.E.C. FISCAL NOTE. The Senate version has a \$21.5 MILLION DOLLAR D.E.C. fiscal note over the next five years.

Bill is GOOD for oil industry -- saves it millions of dollars, AND preserves better comfort level of public and better public relations and image for industry.

All oil producing states have similar surcharges - most are higher than nickel-per-barrel. Certainly not unreasonable that the state that has produced the biggest and most damaging spill should maintain responsible prevention and preparedness programs funded by a reasonable surcharge.

Good politically for legislature and administration -- fix what is broken without public outcry.

DEBATE OVER APPROACH AND DETAILS NOW BELONGS IN THE PUBLIC DELIBERATION PROCESS OF THE FULL HOUSE RESOURCES COMMITTEE.

HOUSE RESOURCES COMMITTEE MEETING -- MARCH 2, 1994
COMMENTS OF CHAIRMAN, REP. BILL WILLIAMS

Today, we will be taking up House Bill 238, relating to the Oil and Hazardous Substance Release Response Fund, better known as the 470 Fund.

This committee held two hearings on this bill last session, and a third hearing during the interim in November. Today is our fourth hearing on the bill, and our first this session.

The Senate has introduced and held a number of hearings on a similar measure, Senate Bill 215, which is also aimed at revisions to the 470 fund. Many draft versions of both bills have been proposed. Throughout this process, the public has actively expressed serious concerns about many of the provisions of the various versions. Many hours of testimony have been taken from municipal officials, fishermen, business people, the oil industry, and other Alaskans.

As chairman of the House Committee which currently has possession of House Bill 238, I have followed the various mutations of this legislation and have thought about how this committee might best proceed with it.

I do believe that there are problems with the 470 fund that deserve legislative action. But I am concerned that the changes that really ought to be made, have become entangled in other versions with a lot of other proposed changes that go beyond "fixing what is broken."

In seeking an approach to bring before the committee, I tried to focus on the question of "what is not working well?", and THEN, on finding the simplest and fairest way to fix those things.

The product of that effort is draft version "Y." I distributed this version one week ago to this committee, the oil industry, and the public so that everyone would have ample opportunity to look it over before I brought it before the committee for consideration.

Today, I AM bringing that draft before us.

First, this draft recognizes that the accounting mechanisms for the 470 fund, in current law, need revision. We NEED that fifty-million-dollar spill response fund to fill up quickly, and stay full. That savings account enables us to respond to the many small spills that occur every year in this state, and will enable us to respond, IF, God forbid, we are faced with another big spill in the future.

This bill also recognizes that the prevention and preparedness programs are AT LEAST as important to the well-being of this state, as the ability to respond and clean up if a spill does occur.

This bill acknowledges that the legislature, as the entity empowered by our state laws and constitution to write the state's budget, and make appropriations of state revenues, is the APPROPRIATE entity to decide what programs should be funded and at what levels.

This version of the bill does NOT provide for the constant starting and stopping of the nickel surcharge when the balance of the fund alternately reaches, and then drops below, the \$50 million dollar level.

INSTEAD, in rough general terms, what is proposed in draft version "Y" is this:

The nickel surcharge continues to be collected.

At the end of each tax year, a calculation will be made to determine what percentage of the total nickels collected were actually needed to accomplish the two main goals: 1) Keeping the response fund at the full 50-million-dollar level, and 2) Funding the prevention and preparedness programs at the legislatively appropriated level.

The amount of nickels collected above and beyond the amount required to cover those expenses will then be RETURNED to the oil industry in the form of a tax credit, proportional to the amount of surcharge paid by each company.

Several other "fine-tuning" provisions are also included in the bill. Among those are several items which I modeled after the statutory changes recommended in a draft legislative audit of the 470 fund, which I had the opportunity to preview.

I believe that the approach in draft version "Y" is a sound one. It is fair, uniform, and predictable for industry. While passage of this bill will save the oil industry SUBSTANTIAL amounts of money, it also leaves state revenue spending decisions where they belong, in the hands of the legislative and the administrative branches of government.

And that enables government to fulfill our responsibility to provide for the things that are absolutely basic to any oil-producing state: adequate programs for spill prevention, preparedness, and response. While I am not married to the specifics in this draft, I believe this version of the bill provides us with a win-win approach, for the state and the oil industry.

I would like to point out that there is further information in your committee packets, including a financial analysis of the bill, and a sectional analysis. There are also two draft amendments, Y-1 and Y-2, which I have prepared for consideration to address concerns which have been raised by the oil industry.

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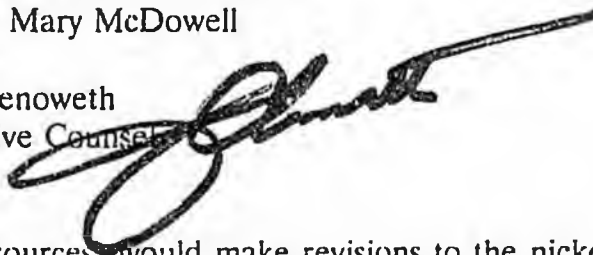
MEMORANDUM

March 1, 1994

SUBJECT: Draft CSHB 238 (Resources) -- Sectional analysis (Work Order No. 8-LS0676\Y)

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

FROM: Jack Chenoweth
Legislative Counsel



The draft of CSHB 238 (Resources) would make revisions to the nickel-per-barrel oil conservation surcharge to the severance tax and make a series of changes relating, generally, to programs and statutes that the surcharge supports.

I

Amendments related to the levy and collection of the nickel-per-barrel oil conservation surcharge:

Bill section 3: The change made by this section conforms the language of accounting for the surcharge's proceeds to language favored by the administration.

Bill section 4: Proposed AS 43.55.231 added in this bill section revises the manner of computation and reporting of the surcharge, shifting from a cumulative to a quarterly determination; amends the factors that bear on ascertaining whether amounts recovered from levy and collection of the surcharge meet or exceed the target \$50,000,000 statutory balance; and changes the description of the mechanics by which the commissioner of administration is to make and report the quarterly calculation. Proposed AS 43.55.235 sets out a mechanism by which, when the commissioner of administration reports an overage of payments above the \$50,000,000 target, the commissioner of revenue may determine, allocate, and report the overage on a per-taxpayer basis.

Representative Bill Williams

March 1, 1994

Page 2

Amounts allocated and reported as "overages" of surcharge payments under AS 43.55.235 may, under the language added by **bill section 2**, be claimed as credits against the severance tax.

Bill section 5 revises the conditions under which the severance tax surcharge may be suspended or reimposed, amending the factors that trigger levy and collection of the surcharge as it supports the oil and hazardous substance release prevention and response fund ("470 fund").

Existing oil conservation surcharge provisions of AS 43.55 that conflict with the changes made in the foregoing sections are repealed by **bill section 20**.

Bill section 22: The provision clarifies 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 the reference to "spill reserve" would be repealed, the provision is drafted as an uncodified, temporary law section with a limited applicability.)

Bill section 23 revises and extends a current provision to assure that levy and collection of the surcharge does not stop until the first \$50,000,000 is placed into the oil and hazardous substance release prevention and response fund.

II

Amendments generally related to the oil and hazardous substance release response ("470") fund, AS 46.08:

The change by **bill section 11** renames the original "470 Fund" as the "oil and hazardous substance release prevention and response fund".

Bill section 12: Consistent with the amendments to the surcharge imposed under AS 43.55, the amendment made in this section emphasizes that the fund does not lapse but remains available from one fiscal year to another.

Bill section 13 revises and expands the number of sources from which the fund may be financially supported.

Bill section 14: The language added to AS 46.08.050(b) imposes, as additional limitations on agencies seeking to tap the fund, the requirements applicable to accounting for the money received and expended, and the provision of information to the Department of Environmental Conservation to complete the preparation of the department's annual report addressing the use of the fund in the previous year.

Bill sections 15 and 16 modify the content of the Department of Environmental Conservation's annual report concerning the fund, omitting some information now required and adding other, more relevant information.

Bill section 17 permits the Department of Environmental Conservation to adopt regulations relating to the reimbursement or recovery of money expended from the fund for containment and cleanup.

Bill section 18 incorporates a reference to the fund as renamed and makes corrective or drafting changes.

Bill section 19 makes corrective or drafting changes.

With reference to grants that may be made available by the commissioner of community and regional affairs from the fund balance, **bill section 1** repeals the sole statutory reference to "spill reserve."

The bill renames the "oil and hazardous substance release response fund" as the "oil and hazardous substance release **prevention and** response fund." Rather than set out that change in each other place where it needs to be made in the body of statute law, **bill section 21** directs the revisor of statutes to make the change editorially in places where that change is appropriate.

III

Changes relating to other facets of related program operations, AS 46.04:

Bill section 6, amending AS 46.04.200(a), revises procedural requirements imposed on the Department of Environmental Conservation as they relate to preparation and revision of the statewide discharge prevention and contingency plan.

Bill section 7, amending AS 46.04.200(c), alters public comment and legislative oversight provisions applicable to that state master plan prepared in initial draft form, the content of it, and the subsequent revisions of it.

Bill section 8 carries forward from current law the requirements applicable to opportunity for public comment and legislative oversight provisions applicable to revisions of that state master plan.

Bill sections 9 and 10 make comparable changes applicable to preparation of regional discharge prevention and contingency plans.

Representative Bill Williams
March 1, 1994
Page 4

Bill section 24 gives the measure a July 1, 1994, effective date.

JBC:pl
94-170.plm

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
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MARCH 2, 1994 HOUSE RESOURCE COMMITTEE HEARING ON CS HB 238
RELATING TO THE OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND
STATEMENT - JOHN SANDOR, COMMISSIONER, DEPT. OF ENVIRON. CONS.

Mr. Chairman, thank you for the opportunity to testify on this proposed legislation. The Department appreciates your efforts to examine the Oil and Hazardous Substance Release Response Fund and determining what opportunities there are to amend and improve the process by which this fund is managed and administered. We appreciate your efforts to develop a consensus approach which is fair to industry, yet also assures a strong prevention program to reduce the risks of oil and hazardous substance spills, and a strong response program which will protect the environment, people and communities from the adverse impacts of such spills.

I want to emphasize the Administration's very positive record of improved management of the Response Fund. In 1991, I ordered an Internal Audit of this fund, and for the past three years have implemented a number of improvements in its management and administration. As a result we have been able to increase the fund balance of 6 million dollars in 1991 to 12 million in 1992, 24 million in 1993 and a projected balance of 37 million at the end of 1994. We are well on our way to achieving our objective of a 50 million dollar fund balance. A report of the Legislative Budget and Audit review of the response fund will soon be issued.

Mr. Chairman, I want to also emphasize the Administration's strong commitment to environmental protection. When Governor Hickel was Secretary of Interior, and the Santa Barbara off-shore spill occurred, he instituted very dramatic changes in governmental oversight to not only clean-up the spill, but to put in place, prevention and response requirements that were tough but reasonable. His liability and financial responsibility requirements prompted some from the oil industry to seek his dismissal. He did not waiver.

We cannot afford to be less vigilant. We cannot afford to forget the lessons of the Exxon-Valdez Oil Spill. We cannot afford to make further reductions in our oversight, prevention and response capabilities. We cannot afford to be satisfied with half-time environmental coverage on the North Slope. We cannot afford to diminish our technical staffs even as we are reviewing the audits of an aging pipeline. At the same time, we do want to continue to improve the management of the Response Fund, and are carefully analyzing various options to achieving that objective.

We continue to support the proposed improvements in the operation and management of the response fund that we presented to the Senate and House Natural Resource Committees. Although several amendments were adopted at the February 16, 1994 Senate Resource Committee Hearing which improved the proposed legislation, the Administration's proposal that the nickel be split on a 3 cent prevention/operations and 2 cent response split was not adopted at that time.

Mr. Chairman, a 2 1/2 Cent Prevention/Operations split is unwise from several standpoints: First, this level of 470 funding would not support the existing prevention/operations program in the future, and would require authorization of appropriated General Funds or new fee programs of \$550.0 in FY 95 and greater amounts in later years. Second, we have had a series of spills and incidents in the last 60 days which clearly show weaknesses in the State's and industry's spill prevention and response programs. Third, this level of funding would not assure adequate support for the combined Department of Military and Veterans Affairs (DMVA), Division of Emergency Services and DEC's emergency programs stemming from natural disasters.

For these and other reasons, the Administration does not support a 2 1/2 cent split of the nickel. The Administration is clearly on record favoring a 3 cent prevention/operations; 2 cent catastrophic fund split. If that is not acceptable, the Administration would favor utilizing a whole nickel approach to make further improvements in the fund.

Accompanying this statement is a Financial Comparison of Response Fund Restructuring Options. Mr. Bob Poe, Response Fund Manager, can provide a detailed briefing of this analysis. DEC's Fiscal Note for CS HB238 is 0.

Mr. Chairman, I made reference to a number of wake-up calls the last sixty days which should remind us of our vulnerability to accidents and natural disasters which will lead to oil and hazardous substance spills. These are some of the incidents which have recently occurred: On December 27-28, 1993 over 15,000 gallons of crude oil were spilled from a storage tank into secondary containment at the Drift River Terminal; on the morning of December 30, 1993 a break in a 6" pipeline in ARCO's North Slope operations was discovered by a workman who also discovered the automatic alarm and shut-off valve systems had been deactivated; On January 2nd, 1994, the Overseas Ohio tanker vessel hit an iceberg in Prince William Sound just 25 miles south of Valdez; And on February 17, 1994, the Overseas Washington tanker lost full power during its approach to the berth in Cook Inlet. The recent Los Angeles Earthquake which resulted in a major crude oil pipeline spill as well as hazardous substance releases, reminds us that we must also be prepared for natural disasters.

Even this past week-end, Saturday, February 26, 1994 a 500 gallon oil spill was reported at Pump Station 10 on the TAPS, when a residual oil tank overflowed - apparently as a result of an alarm system failure. Yesterday, the spill estimate was increased to from 2500 to 3000 gallons.

The Department believes improved prevention and preparedness programs will reduce the number of oil and hazardous substance spills. Because we believe that the State and industry can and should work together in this effort, I have written to the Presidents of ARCO Alaska, Inc., BP Exploration (Alaska) Inc. and the Alyeska Pipeline Service Company suggesting we jointly evaluate and strengthen our spill prevention and response programs and develop a strategy that will result in improvements in these programs.

The State of Alaska must have strong and well-coordinated prevention, response, clean-up and restoration programs to deal with such incidents. The DMVA, DEC and other units of State government are working together to achieve that objective.

Mr. Chairman, the Administration is prepared to work in partnership with the Alaska Legislature to not only improve the management of the response fund, but to also strengthen the State's prevention and response capability.

Thank you for the opportunity to participate in this hearing.

FILE:470FUND4

DRAFT AMENDMENTS FOR DRAFT VERSION "Y" OFCSHB238(RES)

- Y.1 Clarifies/emphasizes that all expenditures from the Fund must be for the purposes established in AS 46.08.040 (existing statute headed, "Purposes of the fund.")
- Y.2 Tightens up the "blackmail clause" to suspend surcharge if the legislature fails to appropriate it into the fund, EVEN if the balance of the reserve has not yet reached the \$50 million level.
- Y.4 Changes the credit to which the surcharge payor is entitled to a credit against the surcharge itself, rather than a credit against other tax liabilities. Thus, payment of any "nickels" in excess of those needed to maintain the reserve at \$50 million, and fund program appropriations, will be returned to the oil industry as a refund of "nickels."
- Y.6 Clarifies the calculation of the tax credit.

AMENDMENT # Y.1

OFFERED IN THE HOUSE

TO: CSHL 238(RES) "Y" Version

Page 3, line 7, after "AS 46.08.010":

Insert "for purposes for which use of money in the fund is authorized by
AS 46.08.040"

Sec. 46.08.040. Purposes of the fund. (a) The commissioner may use money from the fund to

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

(2) pay all costs incurred to

(A) establish and maintain the oil and hazardous substance response office;

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

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

(D) verify or establish proof of financial responsibility required by AS 46.04.040;

(3) pay the expenses incurred by the Alaska division of emergency services for the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division;

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

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

(6) prepare, review; and revise:

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

(B) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210; and

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

(b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c), the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency.

(c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(2)-(7) of this section unless funds are available from an appropriation made specifically for that purpose.

(d) Upon a request from the Alaska Legislative Council, the commissioner shall use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances, established under AS 24.20.600. (§ 1 ch 59 SLA 1986; am § 3 ch 90 SLA 1989; am § 2 ch 113 SLA 1989; am §§ 14, 15 ch 190 SLA 1990; am § 28 ch 191 SLA 1990; am § 3 ch 199 SLA 1990)

A M E N D M E N T

Y.2

OFFERED IN THE HOUSE
TO: CSHB 238(RES)

Page 5, line 7:

Delete "If"

Insert "Except during a fiscal year when levy and collection of the surcharge is suspended under (a) of this section, if"

Page 11, lines 21 - 28:

Delete all material.

Renumber the following bill section accordingly.

A M E N D M E N T

Y.4

OFFERED IN THE HOUSE

TO: CSHB 238(RES)

Page 1, lines 2 - 4:

Delete "and amending the oil and gas properties production tax to authorize a credit for certain tax payments"

Page 2, lines 6 - 13:

Delete all material.

Renumber the following bill sections accordingly.

Page 3, line 29, after "TAXPAYERS.":

Insert "(a)"

Page 4, following line 10:

Insert new subsections to read:

"(b) A producer of oil is entitled to a credit against the surcharge levied and collected under AS 43.55.200 of an amount equal to the amount determined and reported by the commissioner under (a) of this section for that taxpayer.

(c) A taxpayer may apply the credit to which the taxpayer is entitled under (b) of this section only during the state fiscal year in which the credit is calculated and reported under (a) of this section. The Department of Administration may, under AS 43.10.210, pay to the taxpayer the amount of an overpayment of surcharge if the amount of the credit exceeds the amount of the surcharge due."

Page 11, line 21:

Delete "sec. 5"

Insert "sec. 4"

A M E N D M E N T

Y.6

OFFERED IN THE HOUSE

TO: CSHB 238(RES)

Page 4, lines 6 - 9:

Delete "calculated and reported under AS 43.55.231(d) by the percentage of the total revenue derived from the surcharge levied and collected under AS 43.55.200 during the calendar quarter for which the commissioner of administration issues the report required by AS 43.55.231(d);"

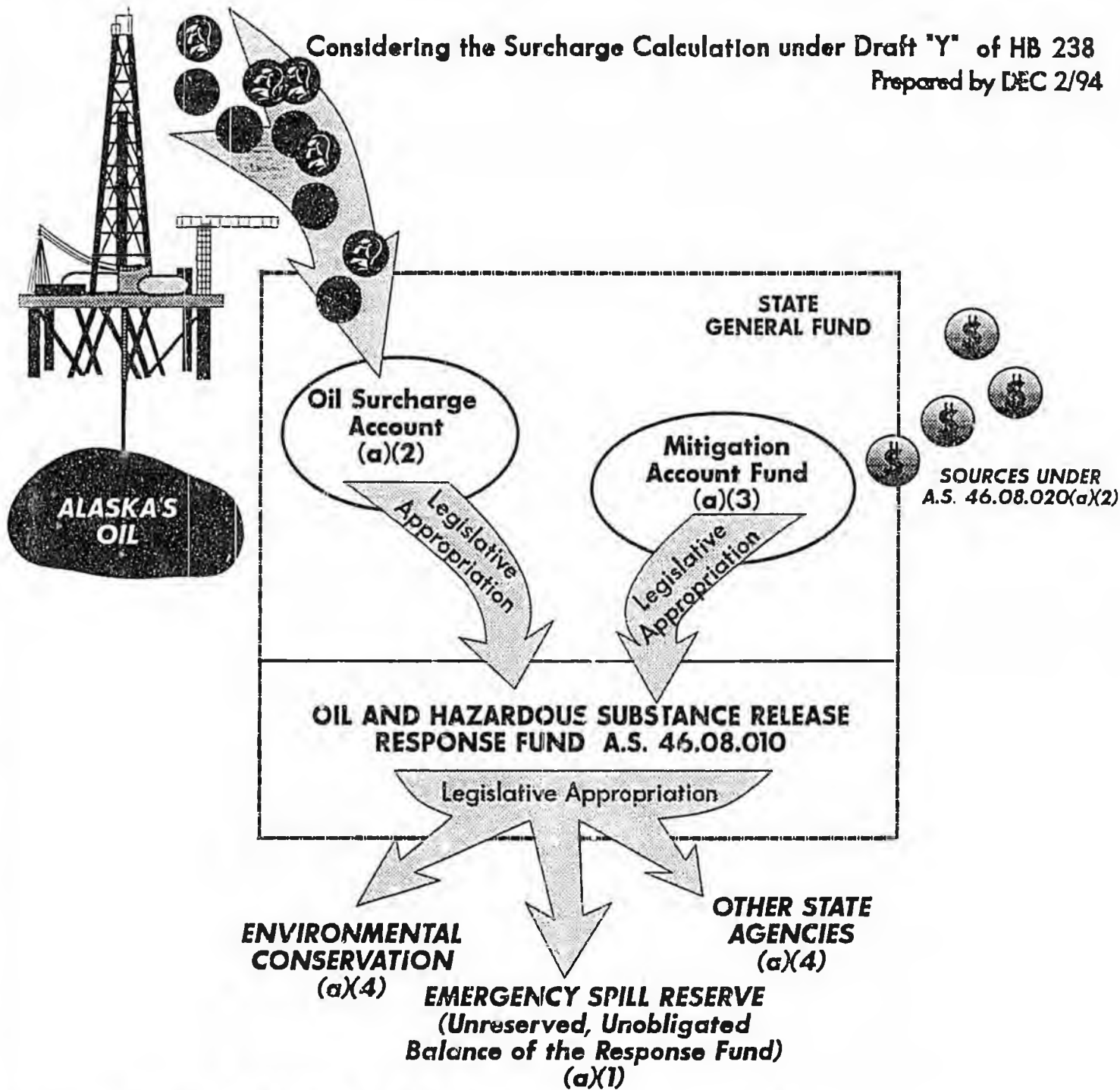
Insert "paid by the taxpayer during the preceding calendar quarter by a percentage, the numerator of which is the overage determined under AS 43.55.231(d) and the denominator of which is the total amount of surcharge paid by all taxpayers during the same calendar quarter;"

Response Fund Restructuring Options
Detailed Financial Comparison

	Option 1 No Change	Option 2 40/60 Split Nickel	Option 3 50/50 Split Nickel	Option 4 60/40 Split Nickel	Option 5 Williams CS Single Fund	Option 6 DEC Proposal Single Fund
Fiscal Year 1995						
Initial Benefit to Surcharge Payee	\$0.0	\$39.4	\$33.1	\$26.8	\$64.7	\$64.7
Beginning Balance of Response Fund	\$63.2				\$63.2	\$63.2
Beginning Balance of Spill Account		\$37.9	\$31.6	\$25.3		
Beginning Balance of Abatement Account		\$25.3	\$31.6	\$37.9		
Ending Balance of Response Fund	\$48.9				\$48.9	\$48.9
Ending Balance of Spill Account		\$37.9	\$31.6	\$24.5		
Ending Balance of Abatement Account		\$11.0	\$17.3	\$24.4		
Total Cost to Surcharge Payee	\$26.2	(\$13.5)	(\$7.2)	(\$0.9)	(\$50.4)	(\$45.1)
Suspension and Reimposition Calculation	NO	YES	NO	NO	YES	YES
Fiscal Year 1996						
Beginning Balance of Response Fund	\$75.1				\$63.5	\$68.8
Beginning Balance of Spill Account		\$53.9	\$45.0	\$35.3		
Beginning Balance of Abatement Account		\$21.5	\$30.4	\$40.1		
Ending Balance of Response Fund	\$60.7				\$48.8	\$54.1
Ending Balance of Spill Account		\$53.9	\$45.0	\$34.5		
Ending Balance of Abatement Account		\$6.8	\$15.7	\$26.2		
Total Cost to Surcharge Payee	\$25.3	\$9.8	\$18.7	\$25.0	\$14.5	\$12.4
Suspension and Reimposition Calculation	NO	YES	YES	NO	YES	YES
Fiscal Year 1997						
Beginning Balance of Response Fund	\$86.0				\$63.9	\$67.1
Beginning Balance of Spill Account		\$54.2	\$51.6	\$44.9		
Beginning Balance of Abatement Account		\$16.9	\$28.3	\$41.4		
Ending Balance of Response Fund	\$71.2				\$48.8	\$52.0
Ending Balance of Spill Account		\$54.2	\$51.6	\$44.1		
Ending Balance of Abatement Account		\$1.8	\$13.2	\$27.1		
Total Cost to Surcharge Payee	\$24.8	\$9.6	\$12.1	\$22.0	\$14.9	\$12.1
Suspension and Reimposition Calculation	NO	YES	YES	YES	YES	YES
Fiscal Year 1998						
Beginning Balance of Response Fund	\$96.0				\$64.3	\$64.7
Beginning Balance of Spill Account		\$54.5	\$51.9	\$51.8		
Beginning Balance of Abatement Account		\$11.7	\$25.6	\$42.0		
Ending Balance of Response Fund	\$80.7				\$48.8	\$49.1
Ending Balance of Spill Account		\$54.5	\$51.9	\$51.0		
Ending Balance of Abatement Account		(\$3.9)	\$10.1	\$27.2		
Total Cost to Surcharge Payee	\$23.8	\$9.2	\$11.6	\$14.0	\$15.4	\$19.0
Suspension and Reimposition Calculation	NO	YES	YES	YES	YES	YES

Response Fund Restructuring Options
Detailed Financial Comparison

	Option 1 No Change	Option 2 40/60 Split Nickel	Option 3 50/50 Split Nickel	Option 4 60/40 Split Nickel	Option 5 Williams CS Single Fund	Option 6 DEC Proposal Single Fund
Fiscal Year 1999						
Beginning Balance of Response Fund	\$104.5				\$64.8	\$68.7
Beginning Balance of Spill Account		\$54.8	\$52.2	\$51.3		
Beginning Balance of Abatement Account		\$5.6	\$22.0	\$41.5		
Ending Balance of Response Fund	\$88.9				\$48.8	13.752.7
Ending Balance of Spill Account		\$54.8	\$52.2	\$50.5		
Ending Balance of Abatement Account		(\$10.4)	\$6.0	\$26.3		
Total Cost to Surcharge Payee	\$22.4	\$8.7	\$10.9	\$13.1	\$15.8	\$13.4
Suspension and Reimposition Calculation	NO	YES	YES	YES	YES	YES
Total Net Cost - 5 Years (no discount)	\$122.5	\$23.8	\$46.1	\$73.2	\$10.2	\$11.8
Total Net Cost After Tax Effect (40% tax)	\$73.5	\$14.3	\$27.7	\$43.9	\$6.1	\$7.1



SURCHARGE CALCULATION (A.S. 43.55.231)

- (a)(1) Unreserved, Unobligated Balance of the Response Fund**
- + (a)(2) Balance of the Surcharge Account**
- + (a)(3) Balance of the Mitigation Account**
- TOTAL**
- (a)(4) Appropriations to State Agencies**
- CALCULATION DETERMINATOR**

← **WHEN THE CALCULATION DETERMINATOR EQUALS OR EXCEEDS \$50.0 million, A TAX CREDIT IS GIVEN**

Oil and Hazardous Substance Release Response Fund
Historical Expenditures and Funding
Actual Data

	FY87	FY88	FY89	FY90	FY91	FY92	FY93	FY94	TOTAL
Revenue to Response Fund									
General Fund Balance Forward									\$0.0
Mitigation Account Transfers In	\$302.7		\$136.5	\$197.6	\$1,696.1	\$30.1	\$1,823.3	\$661.2	\$4,847.5
General Fund Transfers In	\$380.7	\$976.2	\$10,500.0	\$32,600.0					\$44,456.9
General Fund Program Receipts Transfer In			\$9,469.0	\$15,596.7	\$2,976.9	(\$553.0)			\$27,489.6
Total General Fund Transfers In	\$683.4	\$976.2	\$20,105.5	\$48,394.3	\$4,673.0	(\$522.9)	\$1,823.3	\$661.2	\$76,794.0
.05 Surcharge Receipts Transfer In					\$27,000.0	\$28,500.0	\$27,000.0	\$26,700.0	\$109,200.0
TOTAL REVENUE	\$683.4	\$976.2	\$20,105.5	\$48,394.3	\$31,673.0	\$27,977.1	\$28,823.3	\$27,361.2	\$185,994.0
Expenditures From The Response Fund									
Statewide Programs	\$428.7	\$329.9		\$1,702.0	\$6,034.7	\$8,617.3	\$23,785.2	\$14,083.0	\$54,552.1
Exxon Valdez Oil Spill			\$6,271.6	\$31,775.6	\$24,912.1	\$15,702.8	\$297.0		\$78,959.1
Capital Budget					\$583.7	\$555.9	\$177.9	\$2,774.0	\$4,091.5
TOTAL EXPENDITURES	\$428.7	\$329.9	\$6,271.6	\$33,477.6	\$31,530.5	\$24,876.0	\$24,260.1	\$16,857.0	\$138,031.4
Analysis									
% General Funds For Fiscal Year	100.00%	100.00%	100.00%	100.00%	14.75%	-1.87%	6.33%	2.42%	41.29%
% Surcharge Funds For Fiscal Year	0.00%	0.00%	0.00%	0.00%	85.25%	101.87%	93.67%	97.58%	58.71%
Proportion Expended From General Funds	\$428.7	\$329.9	\$6,271.6	\$33,477.6	\$4,652.0	(\$464.9)	\$1,534.6	\$407.4	\$46,636.8
Proportion Expended From Surcharge Funds	\$0.0	\$0.0	\$0.0	\$0.0	\$26,878.5	\$25,340.9	\$22,725.5	\$16,449.6	\$91,394.6
Total Expenditures	\$428.7	\$329.9	\$6,271.6	\$33,477.6	\$31,530.5	\$24,876.0	\$24,260.1	\$16,857.0	\$138,031.4
Reconciliation									
Total Revenue									\$185,994.0
Less Total Expenditures									\$138,031.4
Subtotal									\$47,962.6
Less Reserve For Encumbrances									\$10,559.2
Spill Reserve Balance									\$37,403.4



Alaska State Legislature

HOUSE RESOURCES COMMITTEE

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3715

MEMORANDUM

TO: Commissioner John Sandor
Dept. of Environmental Conservation

FROM: Rep. Bill Williams, Chairman *BKW*
House Resources Committee

DATE: Feb. 25, 1994

RE: Request for fiscal note and analyses for CSHB 238 (RES)

On Wednesday, March 2, at 8:15 a.m., the House Resources Committee will be hearing House Bill 238. At that hearing the committee will be discussing draft House Resources Committee substitute version "Y" of the bill, a copy of which is attached.

I would very much appreciate your department providing my office with the following information as soon as possible:

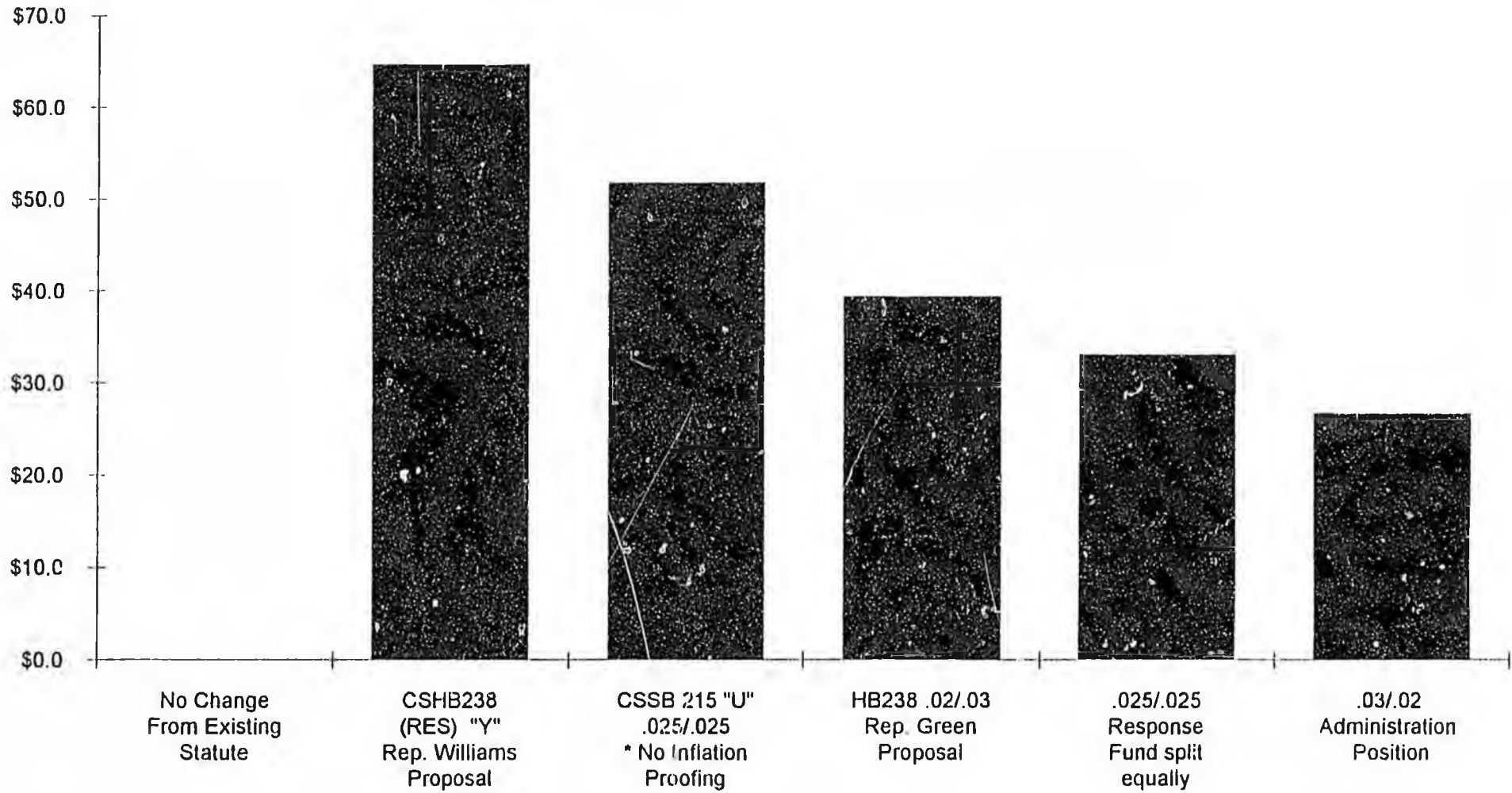
- 1) Fiscal notes addressing draft versions "Y" and "M" of CSHB 238
- 2) Financial analyses comparing the following approaches to amending the "470 Fund"-----
 - * Draft "Y" of CSHB 238(RES)
 - * CSSB 215(RES) passed by Senate Resources
 - * CSSB 215(RES) if amended to split the response fund evenly between the two new funds rather than beginning with the entire current balance going into the Catastrophic Account
 - * Draft version "M" of CSHB 238(), dated 4/20/93 which proposes a 2-cent/ 3-cent splitting of the nickel
 - * A 3-cent/2-cent variation on that version
 - * Passage of no bill

In addition, I would ask that you attend and testify at the hearing on Wednesday. I will be happy to include in the committee member packets, any departmental position paper or written testimony that you would care to submit in advance of the meeting.

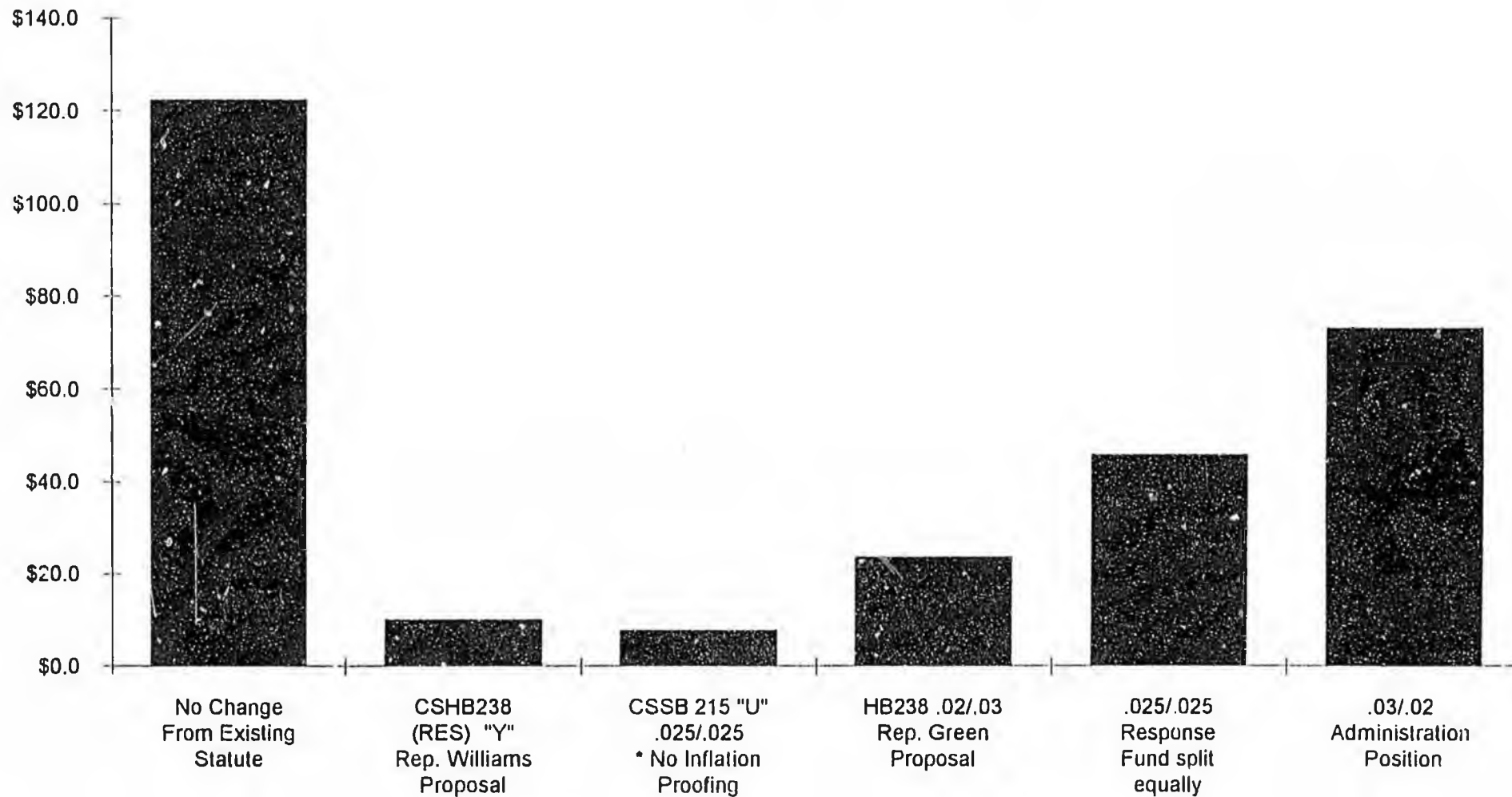
FINANCIAL ANALYSIS OF CSHB238 (RES) DRAFT "Y"
AND COMPARISON WITH OTHER PROPOSALS

PREPARED BY DEPT. OF ENVIRONMENTAL CONSERVATION
AT REQUEST OF HOUSE RESOURCES COMMITTEE

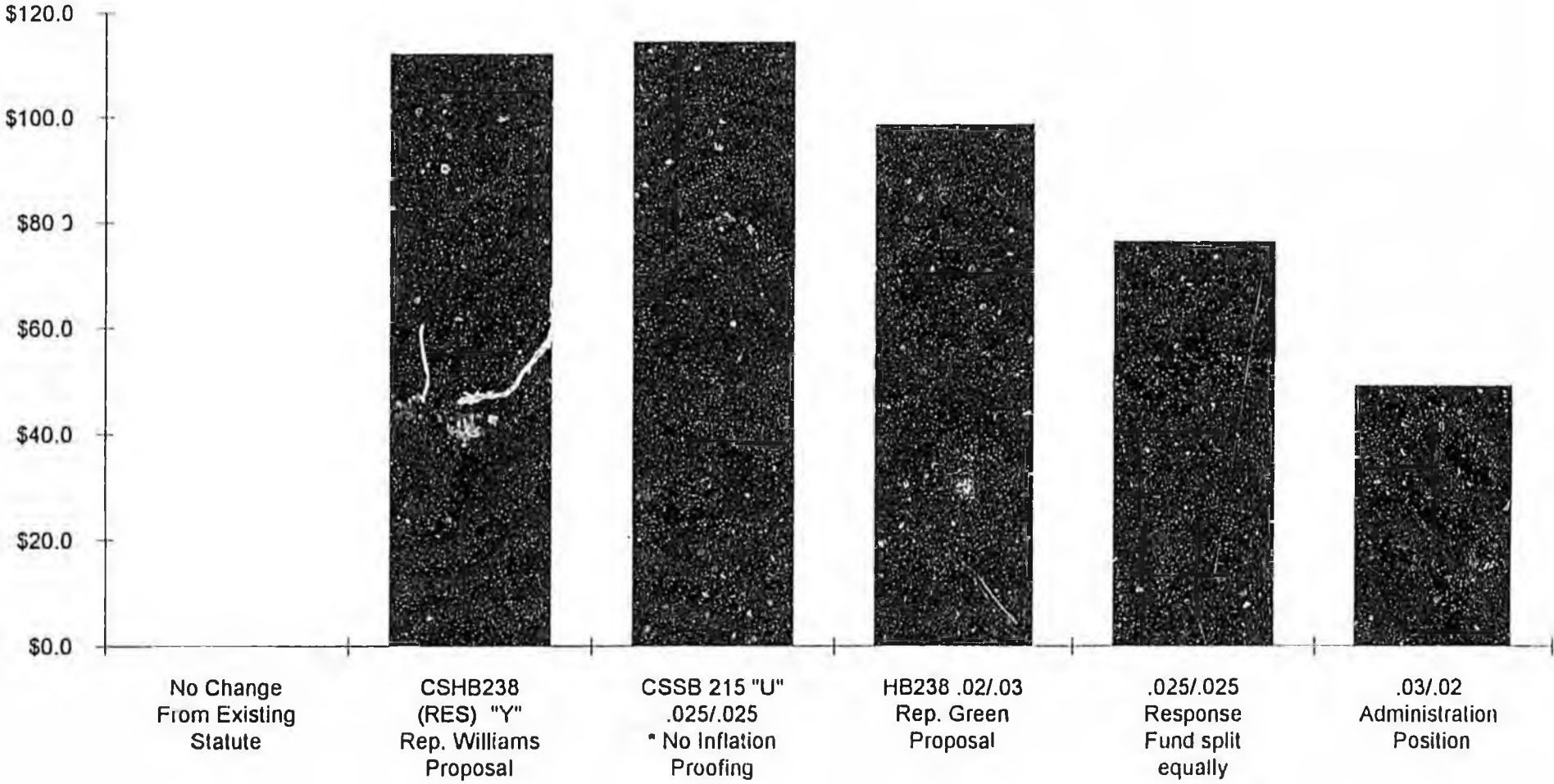
**Response Fund Restructuring Options
Initial Financial Benefit to Surcharge Payee**



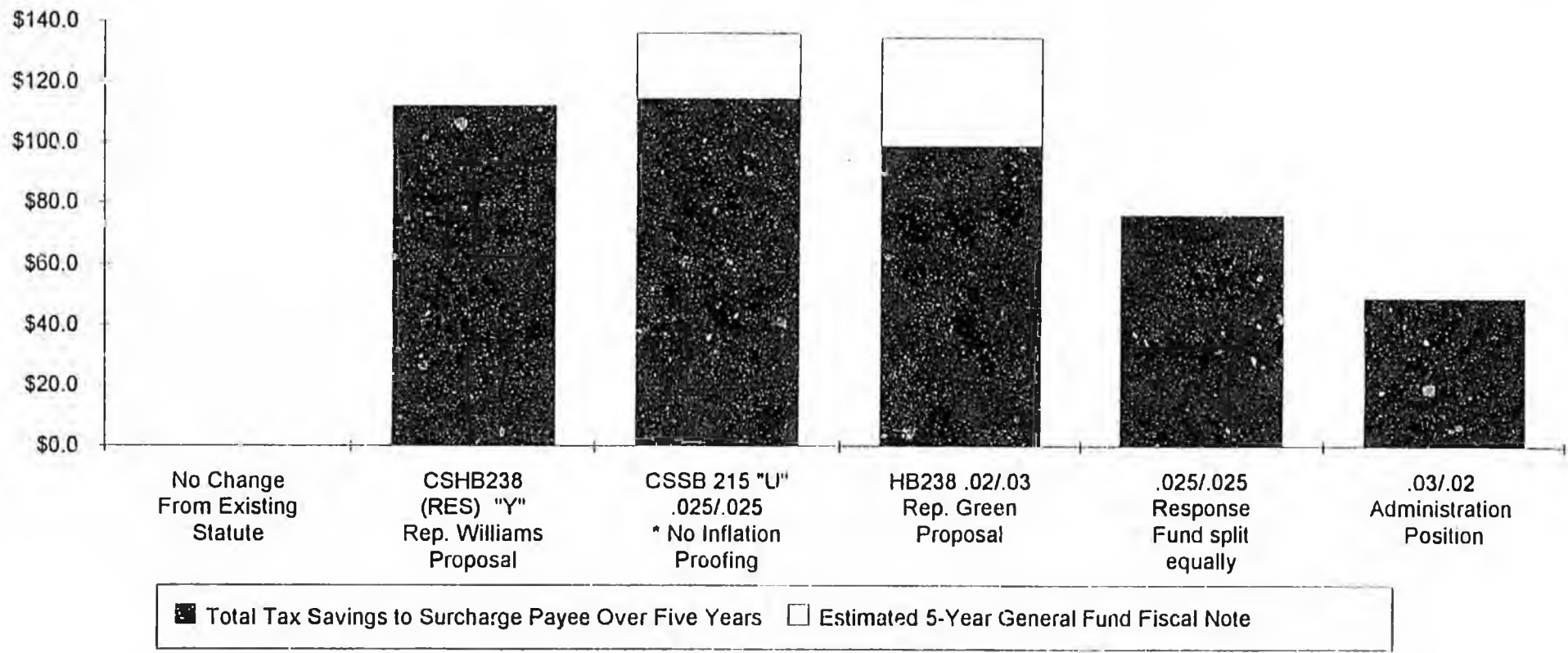
**Response Fund Restructuring Options
Total Net Cost to Surcharge Payees Over 5 Years**



**Response Fund Restructuring Options
Total Tax Savings to Surcharge Payee Over Five Years
When Compared to No Change to Existing Statute**



**Response Fund Restructuring Options
 Total Cost to the State of Alaska Over Five Years
 Total Tax Savings to Surcharge Payee
 Combined With Additional General Funds Required**



Response Fund Restructuring Options

	No Change From Existing Statute	CSHB238 (RES) Version "Y" Rep. Williams Proposal	SB 215 Version "U" 025/025 entire Response Fund to Catastrophic Acct. * No Inflation Proofing	Original HB238 .02- Abatement Acct./03- Catastrophic Acct. Rep. Green Proposal	.025- Abatement Acct./025- Catastrophic Acct. Response Fund split evenly	.03-Abatement Acct./02- Catastrophic Acct. Administration Position
Fiscal Year 1995						
Initial Benefit to Surcharge Payee	\$0.0	\$64.7	\$51.8	\$39.4	\$33.1	\$26.8
Beginning Balance of Response Fund	\$63.2	\$63.2				
Beginning Balance of Spill Account			\$50.3	\$37.9	\$31.6	\$25.3
Beginning Balance of Abatement Account			\$12.9	\$25.3	\$31.6	\$37.9
Total .05 Surcharge Collected in FY95	\$26.2	\$26.2				
Total Spill Surcharge Collected in FY95			\$0.0	\$15.7	\$13.1	\$10.5
Total Abatement Surcharge Collected in FY95			\$13.1	\$10.5	\$13.1	\$15.7
Prevention & Response Prgm. All Agencies	\$13.5	\$13.5	\$13.5	\$13.5	\$13.5	\$13.5
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Forward Funding for FY96 Program		\$13.5				
Surcharge Tax Credit		\$11.9				
Ending Balance of Response Fund	\$48.9	\$48.9				
Ending Balance of Spill Account			\$50.3	\$37.9	\$31.6	\$24.5
Ending Balance of Abatement Account			(\$1.4)	\$11.0	\$17.3	\$24.4
Total Cost to Surcharge Payee	\$26.2	(\$50.4)	(\$39.0)	(\$13.5)	(\$7.2)	(\$0.9)
Suspension and Reimposition Calculation	(\$6.1)	\$50.0	\$50.8	\$53.8	\$45.0	\$35.3
Fiscal Year 1996						
Beginning Balance of Response Fund	\$75.1	\$63.5				
Beginning Balance of Spill Account			\$50.6	\$53.9	\$45.0	\$35.3
Beginning Balance of Abatement Account			\$11.7	\$21.5	\$30.4	\$40.1
Total .05 Surcharge Collected in FY96	\$25.3	\$25.3				
Total Spill Surcharge Collected in FY96			\$0.0	\$0.0	\$6.3	\$10.1
Total Abatement Surcharge Collected in FY96			\$12.7	\$10.1	\$12.7	\$15.2
Prevention & Response Prgm. All Agencies	\$13.9	\$13.9	\$13.9	\$13.9	\$13.9	\$13.9
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Forward Funding for FY97 Program		\$13.9				
Surcharge Tax Credit		\$10.5				
Ending Balance of Response Fund	\$60.7	\$48.8				
Ending Balance of Spill Account			\$50.6	\$53.9	\$45.0	\$34.5
Ending Balance of Abatement Account			(\$3.0)	\$6.8	\$15.7	\$26.2
Total Cost to Surcharge Payee	\$25.3	\$14.5	\$12.4	\$9.8	\$18.7	\$25.0
Suspension and Reimposition Calculation	\$4.5	\$50.0	\$50.9	\$54.2	\$51.6	\$44.9

Response Fund Restructuring Options

	No Change From Existing Statute	CSHB238 (RES) Version "Y" Rep. Williams Proposal	SB 215 Version "U" .025/.025 entire Response Fund to Catastrophic Acct. * No Inflation Proofing	Original HB238 .02- Abatement Acct./ .03- Catastrophic Acct. Rep. Green Proposal	.025- Abatement Acct./ .025- Catastrophic Acct. Response Fund split evenly	.03- Abatement Acct./ .02- Catastrophic Acct. Administration Position
Fiscal Year 1997						
Beginning Balance of Response Fund	\$86.0	\$63.9				
Beginning Balance of Spill Account			\$50.9	\$54.2	\$51.6	\$44.9
Beginning Balance of Abatement Account			\$9.6	\$16.9	\$28.3	\$41.4
Total .05 Surcharge Collected in FY97	\$24.8	\$24.8				
Total Spill Surcharge Collected in FY97			\$0.0	\$0.0	\$0.0	\$7.4
Total Abatement Surcharge Collected in FY97			\$12.4	\$9.9	\$12.4	\$14.9
Prevention & Response Prgm. All Agencies	\$14.3	\$14.3	\$14.3	\$14.3	\$14.3	\$14.3
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Forward Funding for FY98 Program		\$14.3				
Surcharge Tax Credit		\$9.6				
Ending Balance of Response Fund	\$71.2	\$48.8				
Ending Balance of Spill Account			\$50.9	\$54.2	\$51.6	\$44.1
Ending Balance of Abatement Account			(\$5.5)	\$1.8	\$13.2	\$27.1
Total Cost to Surcharge Payee	\$24.8	\$14.9	\$12.1	\$9.6	\$12.1	\$22.0
Suspension and Reimposition Calculation	\$14.2	\$50.0	\$51.2	\$54.5	\$51.9	\$51.8
Fiscal Year 1998						
Beginning Balance of Response Fund	\$96.0	\$64.3				
Beginning Balance of Spill Account			\$51.2	\$54.5	\$51.9	\$51.8
Beginning Balance of Abatement Account			\$6.9	\$11.7	\$25.6	\$42.0
Total .05 Surcharge Collected in FY98	\$23.8	\$23.8				
Total Spill Surcharge Collected in FY98			\$0.0	\$0.0	\$0.0	\$0.0
Total Abatement Surcharge Collected in FY98			\$11.9	\$9.5	\$11.9	\$14.3
Prevention & Response Prgm. All Agencies	\$14.8	\$14.8	\$14.8	\$14.8	\$14.8	\$14.8
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Forward Funding for FY99 Program		\$14.8				
Surcharge Tax Credit		\$8.1				
Ending Balance of Response Fund	\$80.7	\$48.8				
Ending Balance of Spill Account			\$51.2	\$54.5	\$51.9	\$51.0
Ending Balance of Abatement Account			(\$8.6)	(\$3.9)	\$10.1	\$27.2
Total Cost to Surcharge Payee	\$23.8	\$15.4	\$11.6	\$9.2	\$11.6	\$14.0
Suspension and Reimposition Calculation	\$22.4	\$50.0	\$51.5	\$54.8	\$52.2	\$51.3

Response Fund Restructuring Options

	No Change From Existing Statute	CSHB238 (RES) Version "Y" Rep. Williams Proposal	SB 215 Version "U" .025/.025 entire Response Fund to Catastrophic Acct. * No Inflation Proofing	Original HB238 .02- Abatement Acct./ .03- Catastrophic Acct. Rep. Green Proposal	.025- Abatement Acct./ .025- Catastrophic Acct. Response Fund split evenly	.03- Abatement Acct./ .02- Catastrophic Acct. Administration Position
Fiscal Year 1999						
Beginning Balance of Response Fund	\$104.5	\$64.8				
Beginning Balance of Spill Account			\$51.5	\$54.8	\$52.2	\$51.3
Beginning Balance of Abatement Account			\$3.3	\$5.6	\$22.0	\$41.5
Total .05 Surcharge Collected in FY99	\$22.4	\$22.4				
Total Spill Surcharge Collected in FY99			\$0.0	\$0.0	\$0.0	\$0.0
Total Abatement Surcharge Collected in FY99			\$11.2	\$9.0	\$11.2	\$13.4
Prevention & Response Prgm. All Agencies	\$15.2	\$15.2	\$15.2	\$15.2	\$15.2	\$15.2
Estimated Spill Reserve Use	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8	\$0.8
Estimated Cost Recovery	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Forward Funding for FY00 Program:		\$15.2				
Surcharge Tax Credit		\$6.3				
Ending Balance of Response Fund	\$88.8	\$48.8				
Ending Balance of Spill Account			\$51.5	\$54.8	\$52.2	\$50.5
Ending Balance of Abatement Account			(\$12.7)	(\$10.4)	\$5.0	\$26.3
Total Cost to Surcharge Payee	\$22.4	\$15.8	\$10.9	\$8.7	\$10.9	\$13.1
Suspension and Reimposition Calculation	\$28.8	\$50.0	\$51.8	\$55.1	\$52.5	\$50.8
Total Net Cost - 5 Years (no discount)	\$122.5	\$10.3	\$8.0	\$23.8	\$46.1	\$73.3
Total Net Cost After Tax Effect (40% tax)	\$73.5	\$6.2	\$4.8	\$14.3	\$27.6	\$44.0
Total Tax Savings to Surcharge Payee Over Five Years	\$0.0	\$112.2	\$114.6	\$98.7	\$76.4	\$49.2
Estimated 5-Year General Fund Fiscal Note	\$0.0	\$0.0	\$21.5	\$35.8	\$0.0	\$0.0
Total Cost to State of Alaska Over 5 Years	\$0.0	\$112.2	\$136.1	\$134.5	\$76.4	\$19.2

FISCAL NOTE

(Draft Version Y)

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS HB238 (RES)

Revision Date: _____
Tide: Oil/Hazardous Substance Fund,
Tax, Plans
Sponsor: House Special Committee on Oil & Gas
Requestor: House Resources Committee

Department Affected: Environmental
Conservation
BRU: Spill Prevention and Response
Component: All SPAR Components, Response Fund
Admin. Component in Admin. BRU
COMPONENT SERIAL NO. All of the above.

Expenditures/Revenues: (Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
OPERATING EXPENDITURES						
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Bob Poe, Director
Division: Information & Administrative Services

Phone: 465-5010
Date: 3/1/94

Approved by Commissioner: Bob Poe, Director
Agency: Department of Environmental Conservation

Date: 3/1/94

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Oil and Hazardous Substance Release Response Fund
 Historical Expenditures and Funding
 Actual Data

	FY87	FY88	FY89	FY90	FY91	FY92	FY93	FY94	TOTAL
Revenue to Response Fund									
General Fund Balance Forward									\$0.0
Mitigation Account Transfers In	\$302.7		\$136.5	\$197.6	\$1,696.1	\$30.1	\$1,823.3	\$661.2	\$4,847.5
General Fund Transfers In	\$380.7	\$976.2	\$10,500.0	\$32,600.0					\$44,456.9
General Fund Program Receipts Transfer In			\$9,469.0	\$15,596.7	\$2,976.9	(\$553.0)			\$27,480.6
Total General Fund Transfers In	\$683.4	\$976.2	\$20,105.5	\$48,394.3	\$4,673.0	(\$522.9)	\$1,823.3	\$661.2	\$76,794.0
.05 Surcharge Receipts Transfer In					\$27,000.0	\$28,500.0	\$27,000.0	\$26,700.0	\$109,200.0
TOTAL REVENUE	\$683.4	\$976.2	\$20,105.5	\$48,394.3	\$31,673.0	\$27,977.1	\$28,823.3	\$27,361.2	\$185,994.0
Expenditures From The Response Fund									
Statewide Programs	\$428.7	\$329.9		\$1,702.0	\$6,034.7	\$8,617.3	\$23,785.2	\$14,083.0	\$54,552.1
Exxon Valdez Oil Spill			\$6,271.6	\$31,775.6	\$24,912.1	\$15,702.8	\$297.0		\$78,959.1
Capital Budget					\$583.7	\$555.9	\$177.9	\$2,774.0	\$4,091.5
TOTAL EXPENDITURES	\$428.7	\$329.9	\$6,271.6	\$33,477.6	\$31,530.5	\$24,876.0	\$24,260.1	\$16,857.0	\$138,031.4
Analysis									
% General Funds For Fiscal Year	100.00%	100.00%	100.00%	100.00%	14.75%	-1.87%	6.33%	2.42%	41.29%
% Surcharge Funds For Fiscal Year	0.00%	0.00%	0.00%	0.00%	85.25%	101.87%	93.67%	97.58%	58.71%
Proportion Expended From General Funds	\$428.7	\$329.9	\$6,271.6	\$33,477.6	\$4,652.0	(\$464.9)	\$1,534.6	\$407.4	\$46,636.8
Proportion Expended From Surcharge Funds	\$0.0	\$0.0	\$0.0	\$0.0	\$26,878.5	\$25,340.9	\$22,725.5	\$16,449.6	\$91,394.6
Total Expenditures	\$428.7	\$329.9	\$6,271.6	\$33,477.6	\$31,530.5	\$24,876.0	\$24,260.1	\$16,857.0	\$138,031.4
Reconciliation									
Total Revenue									\$185,994.0
Less Total Expenditures									\$138,031.4
Subtotal									\$47,962.6
Less Reserve For Encumbrances									\$10,559.2
Spill Reserve Balance									\$37,403.4

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January 19, 1994

The Honorable Mike Miller, Chairman
Senate Resources Committee
State Capitol, Room 423
Juneau, AK 99801-1182

The Honorable Bill Williams, Chairman
House Resources Committee
State Capitol, Room 128
Juneau, AK 99801-1182

Dear Senator Miller and Representative Williams:

After discussions with other agencies in the executive branch, I would like to state the Administration's current position on legislation both of your committees are considering to improve the Oil and Hazardous Substance Response Fund.

We believe there are features of the Fund, as it is delineated and administered under current law, which could be improved. They include:

1. Modify the process to suspend and reimpose the "nickel a barrel" crude oil surcharge so that the amount of surcharge collected is only the amount needed to have a fully-funded prevention and response program, as well as to replenish and maintain a \$50 million spill reserve.

As the legal formula is written now, it is difficult to reach the \$50 million difference between income and expenditures envisioned in the 1989 legislation, as the formula does not take into account other sources of revenue to the Fund. We are working to draft language to suggest amending this formula.

2. Provide for alternative sources of funding to supplement the revenues of the crude oil surcharge to prevent and respond to both crude and noncrude spills.

We propose to examine other potential sources to the Fund, including cost recoveries on expenditures made from the Fund to respond to pollution incidents or contaminated sites, fines and penalties on non-crude spills, fees on industry contingency plans, and financial responsibility filings, interest earned on the spill

reserve, or a general fund contribution to the Fund based on some sort of matching formula. We now collect fees for response action contractor filings. While we do not assert that all of the potential fund sources be used, each merits a full examination.

Once other necessary contributions to the Fund are decided upon, they would be included in a formula used to calculate the amount necessary to collect under the "nickel a barrel" surcharge.

The Fund balance now in the spill reserve is approximately \$37.5 million. This sum is derived from surcharge revenues, general fund deposits, cost recoveries, fines and penalties. As we establish a formula for imposition and suspension of the surcharge from this point forward, we believe surcharge revenues already in the spill reserve should be included in the calculation. Those surcharge revenues can be identified by prorating the surcharge revenues against other revenue sources to the Fund.

3. Eliminate legal authority for some Fund expenditures, and examine recommendations of ongoing audits to legislatively strengthen Fund management.

Ideas we support for further examination in this context include removing authority for the Citizens Oversight Council on Oil and Hazardous Substances, the Underground Storage Tank Assistance grants and program administration (if the program can be funded by other means, as the Administration has proposed through the motor fuel tax). We support proposals to limit annual planning requirements in the current drafts of legislation, and we also see it possible that SERC funding will gain other sources, besides the Response Fund, if the Legislature passes pending legislation to make the SERC responsibility all hazards, not just oil and hazardous substance emergencies. We do not support eliminating currently authorized restoration or research and development as eligible costs for the Fund. R&D expenditures, for example, are now geared to reduce costs and improve preparedness for many types of spills.

The department has tightened control on Fund expenditures in several different ways in recent years, with many improvements the result of audits conducted on the Fund. As the Legislative Auditor completes this year's audit, we believe we should examine recommendations to further strengthen management.

We will continue to work with all interested parties to fashion legislative improvements to the Response Fund if they meet these goals, discussed with your committees in the interim. Our work should:

- Maintain a strong state-led spill prevention and response program**
- Build and maintain a \$50 million spill reserve**
- Attempt to develop other revenue sources for the Fund.**

In this letter, the Administration also wants to address three major concerns we have with the legislation as it is now proposed in HB 238 and SB 215:

1. The Fund (including the spill reserve) must remain a vital part of Alaska's ability to prevent and respond to spills of all kinds of hazardous substances, not just crude oil.

Revenues from the surcharge must not be restricted to crude oil spills. Rather, funds from non-crude sources must be identified to supplement those revenues. If the use of the Fund is restricted to large crude spills or disasters, other funds would need to be identified, including some kind of emergency spill fund for orphan spills of all kinds and contaminated sites.

2. "Splitting the nickel" drastically reduces the level of environmental protection now enjoyed by Alaskans. The Fund should be kept whole, and other sources added to address equity concerns.

The proposed legislation restricts use of the spill reserve to very large spills or spills which are declared a disaster by the Governor. It also requires that 60 per cent of the tax now collected be used only for the spill reserve, and that it stop once the spill reserve reaches \$50 million.

Today, the spill reserve not only stands ready to respond to a large disaster, but it is used to respond to small spills which occur all over the state. It is also a "deterrent" force which encourages responsible parties to act quickly if they spill hazardous substances: people know that if they don't clean up a spill the state can --and will-- step in to do the job. If the currently proposed legislation passes, Alaska's ability to respond, or force a response to most of these spills or contaminated sites will be severely diminished.

The proposed requirement of a Governor's disaster declaration on use of the spill reserve does not work either, for many reasons. First, spills are a day-to-day occurrence, ranging from barrels left by the roadside to leaking tanks that are only discovered after long migration times to reach groundwater. Before the Fund grew, the state did not respond as well and we have many long-term sources of contamination to show for it -- affecting the value of property values, public and private, nearby. Also, a disaster declaration lasts but 30 days. To spend longer would require a special session of the legislature -- and we don't believe that is necessary. Yet most spills have remediation, investigation, enforcement, cost recovery, or other activities that last far longer than 30 days.

3. As the "nickel" is proposed to be split, not enough funds are left to maintain current spill prevention and response programs.

The state's spill prevention and response program today costs approximately \$18 million per year, and the Administration has proposed reducing this to almost \$14

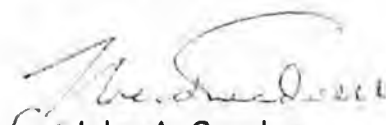
million for FY 95. The state's program is focused on prevention. There are many oil spills every year, but --because of the tough laws Alaska has adopted -- fewer large spills. In even a "small" spill, damages of \$14 million per year are easily reached. As the legislation is now proposed, less than \$10 million per year would be available to run the state's spill prevention and response program from the major source of revenue to the Response Fund. That amount diminishes with crude throughput, but the risks don't diminish in the same manner.

We believe the Fund has been spent responsibly, according to law. We must be cautious, however, in estimating a top limit to the size of the state's spill prevention and response program, given weaknesses that still exist in our overall spill prevention coverage. For example, resource agency coverage on the North Slope is limited (ADEC is there but 12-15 days per month), and the workload is much greater than we are now able to allocate. State coverage at Valdez has diminished in recent years; some has been made up by federal funds supplied by Alyeska directly through the dLM. We have yet to achieve the objective of a 24 hour statewide emergency operations center, joining several agencies, including the Departments of Military and Veterans Affairs and the Department of Public Safety. Spills from unregulated facilities, such as the pipeline in Indian, the Yorktown Clipper incident in Glacier Bay, and the Bethel/BIA fuel tank indicate a need to expand some prevention and oversight activities. Finally, there are many facilities with contingency plans which the state needs to test with organized drills. There is work left to do.

We hope the legislature can give our alternative approach serious consideration in both of your committees.

As always, we are ready, willing and able to work with the legislature to resolve concerns about Alaska's Response Fund and its spill programs. Thank you for your attention to this important matter.

Sincerely,


For John A. Sandor
Commissioner

/mt (CO-comm\470.ltr)

cc: The Honorable Rick Halford, President of the Senate
The Honorable Ramona Barnes, Speaker of the House
The Honorable Joe Green, Chairman, House Oil and Gas Committee
Pat Ryan, Chief of Staff, Office of the Governor
Raga Elim, Legislative Liaison, Office of the Governor
Shelby Stastny, Director, Office of Management and Budget

Sec. 46.08.040. Purposes of the fund. (a) The commissioner may use money from the fund to

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

(2) pay all costs incurred to

(A) establish and maintain the oil and hazardous substance response office;

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

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

(D) verify or establish proof of financial responsibility required by AS 46.04.040;

(3) pay the expenses incurred by the Alaska division of emergency services for the oil and hazardous substance response corps and the oil and hazardous substance response depots when presented with appropriate documentation by the division;

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

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

(6) prepare, review, and revise

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

(B) a regional master oil and hazardous substance discharge prevention and contingency plan required by AS 46.04.210; and

(7) restore the environment by addressing the effects of an oil or hazardous substance release;

(b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c), the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency.

(c) Notwithstanding other provisions of this section, money from the fund may not be used for a purpose specified in (a)(2)-(7) of this section unless funds are available from an appropriation made specifically for that purpose.

(d) Upon a request from the Alaska Legislative Council, the commissioner shall use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances, established under AS 24.20.600. (§ 1 ch 59 SLA 1986; am § 3 ch 90 SLA 1989; am § 2, ch 113 SLA 1989; am §§ 14, 15 ch 190 SLA 1990; am § 28 ch 191 SLA 1990; am § 3 ch 199 SLA 1990)

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
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March 18, 1994

The Honorable Jeannette James
Alaska State House of Representatives
Room 501, State Capitol Building
Juneau, AK 99801-1182

Dear Representative James:

Thank you for your interest in response fund issues and for taking the time to express your concerns and questions to me. My letter will provide information you have asked for concerning long-term plans for emergency response depots and volunteer corps and contaminated sites.

In State statutes, the responsibility for establishing and managing the depots and corps rests with the Department of Military and Veterans Affairs (DMVA). I encourage you to contact DMVA directly for their response to this issue. Since our Department has worked with DMVA on this project over the years because of our responsibility to lead the State's response efforts for oil and hazardous substance spills, we are providing the following information as our best estimate at this time.

For the last two years, the Department of Environmental Conservation (DEC) has been working on the "Nearshore Demonstration Project" which was created by the Legislature in our FY 93 budget to develop a prototype nearshore oil spill response equipment package. This project will culminate in the deployment of two different equipment packages -- one for open water, crude spills and the other for inside passage, non-crude spills -- during April and May of this year for testing and evaluation. We expect to have the evaluation completed with recommendations for additional kinds of units not long after the tests. Based on the information we have developed so far, I am providing you estimates for coastal oil spill response packages that could be strategically placed around the State.

One unit, designed for open water coastal areas, consists of a small barge (to receive the product collected), deflection boom, and a skimmer designed to be operated by fishing vessels of opportunity. The estimated unit purchase price for

one of these is \$500,000. Annual operations and maintenance cost will vary by location but can be estimated at \$150,000 each. We think that there could be as many as a dozen sites around the State -- not covered by government or industry, but where spill risk exists -- where this kind of unit could be located. This results in a total purchase price of \$6 million with an annual estimated cost of \$1.8 million.

The other unit we have been working on is a rapid response vessel capable of moving equipment to a spill site in protected waters (like Southeast Alaska). The purchase price of these would be about \$250,000 each with an annual operation and maintenance cost of \$100,000 each. These units could be deployed in about 10 locations in Southeast Alaska and several each in Bristol Bay, Norton Sound and Kotzebue Sound, as well as throughout the Yukon and Kuskokwim Rivers. If the Legislature were to support purchase of 20 of these items, that costs out to \$5 million purchase price and \$2 million annual operations and maintenance.

Through local response agreements, DEC will be entering into partnership with local communities for responding to the routine spills (DEC receives about 2,000 reports of spills annually -- typically, all are non-disaster emergencies.). We will supply local communities with a basic, "first aid" response equipment capability and use the Response Fund ("470 Fund") to pay for the community costs to respond to these kinds of spills. Currently, we have a \$400,000 capital budget request to start the program for FY 9 . We estimate that a total of \$1 million would cover this arrangement and we could seek cost recovery from spillers to maintain that capability in the future.

The Kenai Borough has put together an unsolicited request this year for a direct appropriation from the Response Fund to outfit a hazmat team for \$250,000. This amount does not include personnel costs, operations and maintenance, nor training. Their price tag for equipment seems reasonable, although we were not involved in developing the list. Once the statewide hazards analysis is completed, the State will have the specific information needed to identify the appropriate locations for these teams. My best guess at this time is these hazmat teams could be targeted for Fairbanks, Anchorage, Kenai, Juneau and Ketchikan. The total cost to establish these would be \$1.25 million. The annual training, operations and maintenance, and personnel costs are unknown, but these could be considered the local match.

You have also asked, "When are contaminated sites going to be cleaned up and what will it cost?" The following should answer your questions regarding the Department's role in cleaning up a contaminated site, the time it takes to cleanup a site, and the associated cost to the State.

What does the Department do with contaminated sites?

A contaminated site is a location where there has been a past improper discharge

or disposal of a hazardous substance that could threaten public health or the environment.

The Department oversees the investigation and cleanup of contaminated sites by the responsible party. By overseeing the responsible party's cleanup, the Department can assure Alaskans that the source of contamination has been removed, and that any remaining contamination is below levels that will harm the public or the environment. A strong oversight program conveys to the responsible parties their obligation under State law to clean up their contaminated site.

In addition to responsible party oversight, the Department directly cleans up sites where the responsible party cannot be found or is unwilling or incapable to do the cleanup directly. At these sites, the State hires and supervises term contractors who do the actual investigation and cleanup.

How long will it take to clean up contaminated sites?

The length of time needed to fully assess and clean up an average contaminated site ranges from three to five years. Very simple sites could take less time, while the most complex sites may take much longer. The number of contaminated sites is constantly changing. New sites are discovered and brought to the Department's attention and active sites are cleaned up. We estimate it would take 21 years to clean up the current inventory of 1051 sites and an additional 920 sites which we estimate will be discovered during that period and will need cleanup. Some sites are virtually impossible to clean up cost effectively or require only monitoring while Mother Nature does the job.

Sites that are expected to be added to the inventory in the future include:

- o The Department of Defense (DOD) has estimated it will spend \$1.1 billion to clean up the contaminated military sites in Alaska. To date, 350 sites have been discovered and we estimate an additional 90 sites will be discovered as a result of the high priority DOD has placed on the site discovery process over the next two years.
- o Discovery of approximately 500 contaminated sites is expected to result from the current initiative to bring rural bulk fuel tank facilities into compliance with federal and State spill prevention requirements.
- o Liability for contaminated properties will continue to cause buyers and sellers of real estate to practice due diligence and assess the property prior to completing a land transaction. These assessments are estimated to result in the discovery of 330 contaminated properties.

What will it cost the State to clean up contaminated sites?

Over the next 21 years at current staffing levels, cleanup standards, and technological abilities, we estimate it will cost the State approximately \$220 million to cleanup all the contaminated sites that have been discovered to date and sites which are expected to be discovered. The table below lists the number of sites, average cost per site, and total cost over the next twenty one years to cleanup each type of contaminated site. One of the reasons we support a strong Research and Development program is because we can continue to help reduce these costs with more effective technology.

Projected Contaminated Sites Cleanup Costs

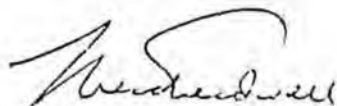
Type of Site	Number	Average State Cost/Site	21 Year Total Cost
RP	836	\$23,429	\$19,586,923
Federal	450	26,566	11,954,700
Orphan	88	644,450	56,711,600
Rural Bulk Orphan	100	644,450	64,154,998
RPs	398	23,429	9,329,561
State Owned	97	600,000	58,200,000
Total	1,969		\$219,937,781

The actual cost to the State differs by the type of contaminated site. The greatest cost to the State is for cleanup of sites where a responsible party is unable or unwilling to clean up or where the State is the responsible party. Where the Department oversees the cleanup of a site by the responsible party the cost to the State is much less. The Department's oversight of federal sites has the least cost to the State since the Department receives federal funds for this work under a cooperative agreement with DOD.

In addition to the contaminated sites situation described above, the Department also manages an underground storage tank program which is funded by the Storage Tank Assistance fund not the Response Fund. Revenue for the Fund comes from the Mitigation Account of the General Fund and collection of registration fees. It is used to make grants and loans available to owners and operators of underground storage tanks for tank testing, closure, upgrade, and cleanup activities. Currently there are 826 unfunded requests for \$43 million in financial assistance. The Administration is working with the Legislature to apply a 1 penny per gallon motor fuel tax for appropriation to the Storage Tank Assistance Fund to replace the mitigation account in the future.

We are sharing this letter with other members of the House Resources Committee.
Thank you for asking.

Sincerely,



Mead Treadwell
Deputy Commissioner

MAC/jsg (G:\SPRIM\MAC\REP.JIM)

cc: House Resources Committee Members

Representative Bill Williams, Chair
Representative Bill Hudson
Representative Con Bunde
Representative Joe Green
Representative Eldon Mulder
Representative David Finklestein
Representative Pat Carney
Representative John Davies
John A. Muldor, Commissioner, Department of Environmental Conservation
Major General Hugh L. Cox III, Commissioner, Department of Military and
Veterans Affairs

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