

BY THE RESOURCES COMMITTEE

1 IN THE HOUSE

2

HOUSE BILL NO. 577

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act concerning the exercise of authority and
7 recovery of damages by the state and its municipal-
8 ities and villages in matters relating to environ-
9 mental conservation; relating to state assistance to
10 municipalities and villages for expenses for preven-
11 tion and abatement of environmental degradation;
12 establishing an oil and hazardous substance municipal
13 impact fund in the Department of Community and Re-
14 gional Affairs; and amending provisions applicable to
15 the suspension and reimposition of the oil and gas
16 production tax oil surcharge to provide money to that
17 fund; and providing for an effective date."

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

19 * Section 1. AS 29.35.020(b) is amended to read:

20 (b) A municipality may adopt an ordinance to exercise a power
21 authorized by this subsection [PROTECT ITS WATER SUPPLY AND WATER-
22 SHED,] and may enforce the ordinance outside its boundaries. Before a
23 [THIS] power authorized by this subsection may be exercised inside the
24 boundaries of another municipality, the approval of the other munic-
25 ipality must be given by ordinance. A municipality intending to
26 exercise its authority under this subsection shall act by ordinance,
27 and may adopt an ordinance under this subsection to

28 (1) protect its water supply and watershed; or

29 (2) contain, clean up, or prevent the release or threatened

1 release of oil or a hazardous substance that may pose an imminent or
2 substantial threat to persons, property, or natural resources within
3 the municipality's boundaries; in this paragraph, "natural resources"
4 has the meaning given in AS 46.03.826.

5 * Sec. 2. AS 29.35.210(a) is amended by adding a new paragraph to read:

6 (13) contain, clean up, or prevent a release or threatened
7 release of oil or a hazardous substance, and exercise a power granted
8 to a municipality under AS 46.04, AS 46.08, or AS 46.09.

9 * Sec. 3. AS 29.35.220 is amended by adding a new subsection to read:

10 (e) A third class borough may by ordinance exercise power neces-
11 sary to contain, clean up, or prevent a release or threatened release
12 of oil or a hazardous substance, and exercise a power granted to a
13 municipality under AS 46.04, AS 46.08, or AS 46.09, but the power
14 authorized by this subsection may be exercised only on a nonareawide
15 basis.

16 * Sec. 4. AS 29.60 is amended by adding new sections to read:

17 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL
18 IMPACT ASSISTANCE.

19 Sec. 29.60.500. PURPOSE AND POLICY. (a) The legislature finds
20 and declares that the release of oil or hazardous substances into the
21 environment presents a real and substantial threat to the economy and
22 public welfare of the municipalities and villages that are affected by
23 the release.

24 (b) The legislature concludes that it is in the best interest of
25 the state and its citizens to provide a readily available fund for the
26 payment of the expenses incurred by municipalities and villages to
27 mitigate the social and economic effects arising from the release of
28 oil or hazardous substances.

29 (c) It is the intent of the legislature and declared to be the

1 public policy of the state that money to defray the cost of social and
2 economic effects on municipalities and villages arising from a release
3 of oil or a hazardous substance and to pay for efforts to abate that
4 release will always be available.

5 Sec. 29.60.510. FUND ESTABLISHED. (a) There is established in
6 the state general fund the oil and hazardous substance municipal
7 impact fund. The fund shall be administered by the commissioner.

8 (b) Money from an appropriation made to the fund remaining in
9 the fund at the end of a fiscal year remains available for expenditure
10 by the department in successive fiscal years.

11 (c) The fund shall be used to make grants under AS 29.60.530 for
12 actual expenses incurred by municipalities and villages.

13 Sec. 29.60.520. FINANCING OF THE FUND. The legislature may
14 appropriate from the account established in AS 43.55.210 to the fund.

15 Sec. 29.60.530. ADMINISTRATION OF THE FUND. (a) The commis-
16 sioner may use money from the fund to make grants to a municipality or
17 village affected by a release of oil or a hazardous substance and
18 demonstrating extraordinary expenditures that are beyond the reason-
19 able capability of the municipality or village to meet from the
20 municipality's or village's current revenue sources.

21 (b) A grant made under this section may be made

22 (1) only for

23 (A) provision of subsistence resources on which the
24 residents of the municipality or village rely for subsistence
25 needs;

26 (B) the additional costs of a necessary and appropri-
27 ate function or service, including administrative expenses for
28 the incremental costs of providing the function or service,
29 limited to

1 (1) public health and welfare functions and
2 services, including hospital, clinic, and emergency medical
3 services; alcohol, drug abuse, and mental health services;
4 family support services; and the operation of waste disposal
5 systems and water quality improvement systems;

6 (ii) public safety functions and services, includ-
7 ing police protection, search and rescue, and fire protec-
8 tion;

9 (iii) public utility functions and services, in-
10 cluding the operation of electric generating plants and
11 distribution systems, water supply systems, telephone sys-
12 tems, and fuel distribution systems;

13 (iv) housing functions and services, limited to
14 leasing or making other arrangements for temporary housing
15 to be occupied by persons associated with containment or
16 clean up of the release;

17 (C) costs associated with leasing transportation
18 facilities for use in activities associated with the containment
19 or clean up;

20 (D) costs of repair or replacement of equipment or a
21 capital asset associated with a function or service set out in
22 (B) of this paragraph the useful life of which has been substan-
23 tially reduced by use associated with the containment or clean
24 up; and

25 (2) to compensate the municipality or village for

26 (A) the reduction of revenue attributable to the
27 discharge of the oil or hazardous substance; and

28 (B) the costs of projects or activities that are
29 delayed or lost because of the efforts of the municipality or

1 village associated with the containment or clean up.

2 (c) In determining whether an expenditure by a municipality or
3 village is eligible for a grant from the fund, the department shall
4 consider

5 (1) the availability of money to the recipient from other
6 sources that can be used to support the request;

7 (2) the degree to which the proposed expenditure in the
8 grant application alleviates or addresses an effect reasonably attrib-
9 utable to the oil or hazardous substance discharge;

10 (3) the ability of the municipality or village to accommo-
11 date or absorb the effect through existing programs; and

12 (4) other criteria the department considers appropriate.

13 (d) The department may reject an application for a grant under
14 this section or approve an application for a grant in an amount that
15 is less than the amount requested by a municipality or village if the
16 department determines that payment of the amount requested is not
17 warranted under this section.

18 (e) If the total amount of money requested by eligible munic-
19 ipalities and villages for projects exceeds the amount available in
20 the fund, the department shall rank all or a portion of the applica-
21 tions for the purpose of establishing the priority order of awarding
22 grants. In ranking an application under this subsection, the depart-
23 ment shall consider

24 (1) the severity of the effect addressed in the applica-
25 tion;

26 (2) the degree to which the effect on the municipality or
27 village is directly caused by the oil or hazardous substance dis-
28 charge; and

29 (3) whether the proposed project is part of a coordinated

1 program with other affected municipalities and villages.

2 (f) The provisions of (e) of this section do not prevent the
3 department from making a grant payment in an amount that is less than
4 an amount requested by a municipality or village if the department
5 determines that payment of the amount requested is not warranted under
6 this section.

7 (g) A grant made under (a) of this section may not be used di-
8 rectly or indirectly to reduce current municipal tax rates or to
9 retire existing bonded indebtedness of a municipality.

10 Sec. 29.60.540. RECORDS OF THE FUND. (a) The department shall
11 maintain accounting records showing the income and expenses of the
12 fund.

13 (b) The department shall develop procedures governing the expen-
14 diture of, and accounting for, money expended from the fund.

15 Sec. 29.60.550. REPORT TO THE LEGISLATURE. The commissioner
16 shall submit a report to the legislature not later than the 10th day
17 following the convening of each regular session of the legislature.
18 The report may include information considered significant by the
19 commissioner but must include:

20 (1) the amount of money expended under AS 29.60.530 during
21 the preceding fiscal year; and

22 (2) a detailed summary of department activities in adminis-
23 tering the fund during the preceding fiscal year.

24 Sec. 29.60.560. REGULATIONS. The commissioner may adopt regula-
25 tions that are necessary to implement the purposes of AS 29.60.500 -
26 29.60.590.

27 Sec. 29.60.590. DEFINITIONS. In AS 29.60.500 - 29.60.590

28 (1) "containment and clean up" has the meaning given in
29 AS 46.08.900;

1 (2) "fund" means the oil and hazardous substance municipal
2 impact fund;

3 (3) "hazardous substance," "oil," and "release" have the
4 meanings given in AS 46.08.900;

5 (4) "village" means a community or settlement not incor-
6 porated as a municipality under state law in the unorganized borough
7 or within a borough if the power, function, or service for which the
8 grant application is submitted is not exercised or provided by the
9 borough on an areawide or nonareawide basis at the time the grant
10 application is submitted, if the village council

11 (A) has irrevocably waived, in a form approved by the
12 Department of Law, any claims to sovereign immunity that might
13 arise in connection with the use of grant money under this
14 chapter; and

15 (B) is a

16 (i) council organized under sec. 16 of the Indian
17 Reorganization Act, 25 U.S.C. 476;

18 (ii) traditional village council recognized by the
19 United States as eligible for federal aid to Indians; or

20 (iii) council recognized by the commissioner under
21 regulations adopted by the department to determine and give
22 official recognition of village entities under AS 44.47.150(b).

23 * Sec. 5. AS 43.55.220 is amended to read:

24 Sec. 43.55.220. USE OF REVENUE DERIVED FROM SURCHARGE. The
25 legislature may appropriate the annual estimated balance of the ac-
26 count established under AS 43.55.210 to

27 (1) the oil and hazardous substance release response fund
28 established by AS 46.08.010; and

29 (2) the oil and hazardous substance municipal impact fund

1 established by AS 29.60.510.

2 * Sec. 6. AS 43.55.230(a) is amended to read:

3 (a) Not later than 30 days after the end of each calendar quar-
4 ter, the commissioner of administration shall determine the cumulative
5 total of money

6 (1) that has been deposited through that calendar quarter
7 into the general fund under AS 43.55.210;

8 (2) expended through that calendar quarter from

9 (A) the oil and hazardous substance release response
10 fund established in AS 46.08.010; and

11 (B) the oil and hazardous substance municipal impact
12 fund established in AS 29.60.510.

13 * Sec. 7. AS 43.55.230(c) is amended to read:

14 (c) If the commissioner of administration reports that the
15 difference determined under (b) of this section equals or exceeds
16 \$60,000,000 [\$50,000,000], the commissioner of revenue shall suspend
17 imposition and collection of the surcharge levied and collected under
18 AS 43.55.200. Suspension of the imposition and collection of the
19 surcharge begins on the first day of the calendar quarter next follow-
20 ing the commissioner's receipt of the commissioner of administration's
21 report under (b) of this section. Before the first day of a suspen-
22 sion authorized by this subsection, the commissioner shall make a
23 reasonable effort to notify all persons who are known to the depart-
24 ment to be paying the surcharge under AS 43.55.200 that the surcharge
25 will be suspended.

26 * Sec. 8. AS 43.55.230(d) is amended to read:

27 (d) Except as provided in AS 43.55.240, if the commissioner of
28 administration reports that the difference determined under (b) of
29 this section is less than \$60,000,000 [\$50,000,000], the commissioner

1 of revenue shall require imposition and collection of the surcharge
2 authorized under AS 43.55.200. Reimposition of the surcharge begins
3 on the first day of the calendar quarter next following the commis-
4 sioner's receipt of the commissioner of administration's report under
5 (b) of this section. Before the first day of reimposition of the
6 surcharge authorized by this subsection, the commissioner shall make a
7 reasonable effort to notify all persons who are known to the depart-
8 ment to be required to pay the surcharge under AS 43.55.200 that the
9 surcharge will be reimposed.

10 * Sec. 9. AS 43.55.240 is amended to read:

11 Sec. 43.55.240. SURCHARGE NOT IMPOSED. The surcharge authorized
12 by AS 43.55.200 is not levied during any fiscal year for which the
13 estimated revenue from the surcharge would be sufficient to restore
14 the combined balances [BALANCE] of the oil and hazardous substance
15 release response fund and the oil and hazardous substance municipal
16 impact fund on the first day of the fiscal year to at least
17 \$60,000,000 [\$50,000,000], and

18 (1) the legislature does not, during the regular legisla-
19 tive session preceding the first day of the fiscal year, appropriate
20 money from the general fund

21 (A) to the oil and hazardous substance release re-
22 sponse fund sufficient to restore the balance of that fund on the
23 first day of the fiscal year to at least \$50,000,000; and

24 (B) to the oil and hazardous substance municipal
25 impact fund sufficient to restore the balance of that fund on the
26 first day of the fiscal year to at least \$10,000,000; or

27 (2) the legislature, during the regular legislative session
28 preceding the first day of the fiscal year, appropriates money from
29 the general fund

1 (A) to the oil and hazardous substance release re-
2 ponse fund sufficient to restore the balance of that fund on the
3 first day of the fiscal year to at least \$50,000,000 and, because
4 of gubernatorial veto or reduction in the amount of the appropri-
5 ation, restoration of the balance of the fund to at least
6 \$50,000,000 does not become law; or

7 (B) to the oil and hazardous substance municipal
8 impact fund sufficient to restore the balance of that fund on the
9 first day of the fiscal year to at least \$10,000,000 and, because
10 of gubernatorial veto or reduction in the amount of the appro-
11 priation, restoration of the balance of the fund to at least
12 \$10,000,000 does not become law.

13 * Sec. 10. Section 3, ch. 112, SLA 1989 is amended to read:

14 Sec. 3. APPLICATION OF AS 43.55.240. (a) AS 43.55.240, added
15 by sec. 2 of this Act, does not apply to prevent the levy and collec-
16 tion of the surcharge imposed by AS 43.55.200 until the first day of
17 the fiscal year next following the day on which the combined balances
18 [BALANCE] of the oil and hazardous substance release response fund and
19 the oil and hazardous substance municipal impact fund first exceed
20 \$60,000,000 [EXCEEDS \$50,000,000].

21 (b) The commissioner of administration shall certify to the
22 commissioner of environmental conservation, the commissioner of reve-
23 nue, the commissioner of community and regional affairs, and the
24 division of legislative finance the date on which the combined bal-
25 ances [BALANCE] of the oil and hazardous substance release response
26 fund and the oil and hazardous substance municipal impact fund first
27 exceed \$60,000,000 [EXCEEDS \$50,000,000].

28 * Sec. 11. AS 46.03.822(a) is amended to read:

29 (a) Notwithstanding any other provision or rule of law and

1 subject only to the defenses set out in (b) of this section and the
2 exception set out in (i) of this section, the following persons are
3 strictly liable, jointly and severally, for damages to persons or
4 property, whether public or private, including damage to the natural
5 resources of the state, [OR] a municipality, or a village. [AND] for
6 the costs of response, containment, removal, or remedial action in-
7 curred by the state, [OR] a municipality, or a village, and for the
8 incremental costs of providing services and the costs of providing
9 additional services that are incurred by the state, a municipality, or
10 a village, resulting from an unpermitted release of a hazardous sub-
11 stance or, with respect to response costs, the substantial threat of
12 an unpermitted release of a hazardous substance:

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

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

19 (3) any person who at the time of disposal of any hazardous
20 substance owned or operated any facility or vessel at which the haz-
21 ardous substances were disposed of, from which there is a release, or
22 a threatened release that causes the incurrence of response costs, of
23 a hazardous substance;

24 (4) any person who by contract, agreement, or otherwise
25 arranged for disposal or treatment, or arranged with a transporter for
26 transport for disposal or treatment, of hazardous substances owned or
27 possessed by the person, other than domestic sewage, or by any other
28 party or entity, at any facility or vessel owned or operated by an-
29 other party or entity and containing hazardous substances, from which

1 there is a release, or a threatened release that causes the incurrence
2 of response costs, of a hazardous substance;

3 (5) any person who accepts or accepted any hazardous sub-
4 stances, other than refined oil, for transport to disposal or treat-
5 ment facilities, vessels or sites selected by the person, from which
6 there is a release, or a threatened release that causes the incurrence
7 of response costs, of a hazardous substance.

8 * Sec. 12. AS 46.03.900 is amended by adding new paragraphs to read:

9 (35) "service" means a function performed or service pro-
10 vided by the state or by a municipality under a duty or power au-
11 thorized by AS 29 or other provision of law authorizing a municipality
12 to perform functions or provide services, or a comparable function
13 performed or service provided by a village; "service" includes func-
14 tions not previously performed and services not previously provided by
15 the state, by the municipality, or by the village;

16 (36) "village" means a community or settlement not incor-
17 porated as a municipality under state law if the village council

18 (A) has irrevocably waived, in a form approved by the
19 Department of Law, any claims to sovereign immunity that might
20 arise in connection with a claim under AS 46.03.822; and

21 (B) is a

22 (i) council organized under sec. 16 of the Indian
23 Reorganization Act, 25 U.S.C. 476;

24 (ii) traditional village council recognized by the
25 United States as eligible for federal aid to Indians; or

26 (iii) council recognized by the commissioner of
27 community and regional affairs under regulations adopted by
28 the Department of Community and Regional Affairs to deter-
29 mine and give official recognition of village entities under

1 AS 44.47.150(b).

2 * Sec. 13. AS 46.04.020(e) is amended to read:

3 (e) The department shall enter into negotiations for memoranda
4 of understanding or cooperative agreements with the United States
5 Coast Guard, the United States Environmental Protection Agency, munic-
6 ipalities, villages, and other persons in order to

7 (1) facilitate coordinated and effective oil discharge
8 response in the state;

9 (2) provide for cooperative review of oil discharge contin-
10 gency plans submitted to the department under AS 46.04.030;

11 (3) provide for cooperative inspections of oil terminal
12 facilities by the department and the United States Coast Guard or
13 United States Environmental Protection Agency; and

14 (4) provide for cooperative oil discharge notification
15 procedures.

16 * Sec. 14. AS 46.04.030 is amended by adding a new subsection to read:

17 (h) Before approving an oil discharge contingency plan under
18 this section, the commissioner shall

19 (1) consult with municipal officials and with representa-
20 tives of affected regions and community organizations; and

21 (2) disseminate the draft plan to the public for review and
22 comment.

23 * Sec. 15. AS 46.04.900(5) is amended to read:

24 (5) "containment and cleanup" includes all direct and
25 indirect efforts associated with the prevention, abatement, contain-
26 ment, or removal of discharged oil or a pollutant, and the restoration
27 of the environment to its former state; when applied to expenses, the
28 term includes the incremental costs of providing public services
29 incurred in response to an actual discharge of oil or a pollutant and

1 the costs of providing additional services incurred in response to the
2 actual discharge of the oil or pollutant [, AND ALL INCIDENTAL ADMIN-
3 ISTRATIVE COSTS];

4 * Sec. 16. AS 46.04.900 is amended by adding new paragraphs to read:

5 (18) "service" means a function performed or service pro-
6 vided by the state, a municipality, or a village, including functions
7 not previously performed and services not previously provided by the
8 state, the municipality, or the village;

9 (19) "village" means a community or settlement not incor-
10 porated as a municipality under state law if the village council

11 (A) has irrevocably waived, in a form approved by the
12 Department of Law, any claims to sovereign immunity that might
13 arise in connection with an agreement entered into under this
14 chapter; and

15 (B) is a

16 (i) council organized under sec. 16 of the Indian
17 Reorganization Act, 25 U.S.C. 476;

18 (ii) traditional village council recognized by the
19 United States as eligible for federal aid to Indians; or

20 (iii) council recognized by the commissioner of
21 community and regional affairs under regulations adopted by
22 the Department of Community and Regional Affairs to deter-
23 mine and give official recognition of village entities under
24 AS 44.47.150(b).

25 * Sec. 17. AS 46.08.040 is amended to read:

26 Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use
27 money from the fund to

28 (1) investigate and evaluate the release or threatened
29 release of oil or a hazardous substance, and contain, clean up, and

1 take other necessary action, such as monitoring and assessing, to
2 address a release or threatened release of oil or a hazardous sub-
3 stance that poses an imminent and substantial threat to the public
4 health or welfare, or to the environment; an assessment made under
5 this paragraph may include an assessment of the social and economic
6 effects of the release or threatened release;

7 (2) pay all costs incurred to establish and maintain the
8 oil and hazardous substance response office and for the expenses of
9 the oil and hazardous substance response corps and the oil and hazard-
10 ous substance response depots established by that office;

11 (3) provide matching funds for participation in federal oil
12 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
13 hensive Environmental Response, Compensation, and Liability Act of
14 1980); [AND]

15 (4) recover the costs to the state, [OR TO] a municipality,
16 or a village of a containment and cleanup resulting from the release
17 or the threatened release of oil or a hazardous substance; [.]

18 (5) prepare, review, and revise

19 (A) the state's master oil and hazardous substance
20 discharge and prevention contingency plan required by AS 46.04.-
21 200; and

22 (B) a regional master oil and hazardous substance
23 discharge and prevention contingency plan required by AS 46.04.-
24 210; [AND]

25 (6) restore the environment by addressing the effects of an
26 oil or hazardous substance release; and

27 (7) make grants under AS 46.08.072.

28 * Sec. 18. AS 46.08.070(c) is amended to read:

29 (c) The department shall [MAY] reimburse a municipality or

1 village for actual expenses[, OTHER THAN NORMAL OPERATING EXPENSES,]
2 incurred in the abatement of a release or threatened release of oil or
3 a hazardous substance if

4 (1) the municipality or village has entered into an agree-
5 ment with the commissioner under AS 46.04.020(e) or AS 46.09.020(e);
6 and

7 (2) the commissioner determines that the expenses were an
8 appropriate [FOR A NECESSARY EMERGENCY FIRST] response to a release or
9 threatened release that, at the time of the release or threatened
10 release, posed an imminent and substantial threat to the public health
11 or welfare, or to the environment.

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

13 Sec. 46.08.072. GRANTS. (a) The department may make grants to
14 a municipality or a village to enable the municipality or village to
15 carry out an emergency first response to a release or threatened
16 release of oil or a hazardous substance that poses an imminent and
17 substantial threat to the public health or welfare or to the environ-
18 ment. A grant may be used by the grant recipient to pay costs in-
19 curred by the recipient for the direct efforts associated with the
20 containment and clean up of oil or a hazardous substance and related
21 incidental administrative costs.

22 (b) When an applicant submits an application for a grant under
23 this section, the department shall review and accept or reject the
24 grant application as promptly as possible to permit the municipality
25 or village to execute a proper response.

26 (c) After consultation with the Department of Community and
27 Regional Affairs, the department shall adopt regulations to carry out
28 this section. The regulations must establish

29 (1) eligibility requirements of applicants;

1 (2) procedures for review of applications submitted under
2 (a) of this section so that the department may make the decisions
3 under (b) of this section;

4 (3) standards for the evaluation of applications; and

5 (4) other conditions for the receipt of a grant.

6 (d) Regulations adopted under (c) of this section must include
7 as a factor the applicant's ability to provide an emergency first
8 response if the grant application is not approved.

9 (e) In reviewing and making a determination about the applica-
10 tion submitted under this section, the department may not consider
11 whether the amount to be expended as a grant is an expense recoverable
12 under AS 46.08.070.

13 * Sec. 20. AS 46.08.900(3) is amended to read:

14 (3) "containment and cleanup" includes the direct and
15 indirect efforts associated with the prevention, abatement, contain-
16 ment, or removal of oil or a hazardous substance, and the restoration
17 of the environment; when applied to expenses, the term includes the
18 incremental costs of providing services and the costs of providing
19 additional services incurred in response to the discharge of the oil
20 or hazardous substance [, AND INCIDENTAL ADMINISTRATIVE COSTS];

21 * Sec. 21. AS 46.08.900 is amended by adding new paragraphs to read:

22 (11) "service" means a function performed or service pro-
23 vided by the state, a municipality, or a village, including functions
24 not previously performed and services not previously provided by the
25 state, the municipality, or the village;

26 (12) "village" means a community or settlement not incor-
27 porated as a municipality under state law in the unorganized borough
28 or within a borough if the power, function, or service for which the
29 grant application is submitted is not exercised or provided by the

1 borough on an areawide or nonareawide basis at the time the grant
2 application or request for reimbursement is submitted, if the village
3 council

4 (A) has irrevocably waived, in a form approved by the
5 Department of Law, any claims to sovereign immunity that might
6 arise in connection with the use of the money under this chapter;
7 and

8 (B) is a

9 (i) council organized under sec. 16 of the Indian
10 Reorganization Act, 25 U.S.C. 476;

11 (ii) traditional village council recognized by the
12 United States as eligible for federal aid to Indians; or

13 (iii) council recognized by the commissioner of
14 community and regional affairs under regulations adopted by
15 the Department of Community and Regional Affairs to deter-
16 mine and give official recognition of village entities under
17 AS 44.47.150(b).

18 * Sec. 22. AS 46.09.060(b) is amended to read:

19 (b) Authority to contain, clean up, or prevent a release or
20 threatened release of oil or of a hazardous substance, and to exercise
21 other powers necessary to implement this chapter, AS 46.04, and
22 AS 46.08, are granted to municipalities that do not otherwise have
23 that authority. Except as provided in (a) of this section, a munic-
24 ipality may exercise its police power within the area of the munic-
25 ipality.

26 * Sec. 23. AS 46.09.900(2) is amended to read:

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

1 environment; when applied to expenses, the term includes the incre-
2 mental costs of providing services and the costs of providing addi-
3 tional services incurred in response to the discharge of the hazardous
4 substance [, AND INCIDENTAL ADMINISTRATIVE COSTS;

5 * Sec. 24. AS 46.09.900 is amended by adding a new paragraph to read:

6 (8) "service" means a function performed or service pro-
7 vided by the state, including functions not previously performed and
8 services not previously provided by the state.

9 * Sec. 25. This Act is retroactive to March 24, 1989.

10 * Sec. 26. This Act takes effect immediately under AS 01.10.070(c).