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1 IN THE SENATE BY THE FINANCE COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 359 (Finance)(title am)
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 authorizing the commissioner of community and
13 regional affairs to make grants from the oil and
14 hazardous substance release response fund to assist
15 in costs relating to a disaster emergency; and pro-
16 viding for an effective date."

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

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

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

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

28 (2) contain, clean up, or prevent the release or threatened
29 release of oil or a hazardous substance that may pose an imminent or

1 substantial threat to persons, property, or natural resources within
2 the municipality's boundaries; however, this paragraph does not
3 authorize a municipality to enforce an ordinance outside its bound-
4 aries to regulate exploration, development, or production of oil, gas,
5 or minerals in a manner inconsistent with the state's management of
6 those resources when the state is the owner of the land, tideland, or
7 submerged land; the ordinance adopted must be consistent with a
8 regional master plan for the region in which the municipality is
9 located if a plan has been prepared by the Department of Environmental
10 Conservation under AS 46.04.210; in this paragraph, "natural
11 resources" has the meaning given in AS 46.03.826.

12 * Sec. 2. AS 29.35.200 is amended by adding a new subsection to read:

13 (d) A first class borough that exercises power necessary to
14 contain, clean up, or prevent a release or threatened release of oil
15 or a hazardous substance, and exercise a power granted to a municipal-
16 ity under AS 46.04, AS 46.08, or AS 46.09 shall exercise its authority
17 in a manner that is consistent with a regional master plan for the
18 region in which the borough is located if a plan has been prepared by
19 the Department of Environmental Conservation under AS 46.04.210.

20 * Sec. 3. AS 29.35.210(a) is amended by adding a new paragraph to read:

21 (13) contain, clean up, or prevent a release or threatened
22 release of oil or a hazardous substance, and exercise a power granted
23 to a municipality under AS 46.04, AS 46.08, or AS 46.09; the borough
24 shall exercise its authority under this paragraph in a manner that is
25 consistent with a regional master plan for the region in which the
26 borough is located if a plan has been prepared by the Department of
27 Environmental Conservation under AS 46.04.210.

28 * Sec. 4. AS 29.35.220 is amended by adding a new subsection to read:

29 (e) A third class borough may by ordinance exercise power

1 necessary to contain, clean up, or prevent a release or threatened
2 release of oil or a hazardous substance, and exercise a power granted
3 to a municipality under AS 46.04, AS 46.08, or AS 46.09, but the power
4 authorized by this subsection may be exercised only on a nonareawide
5 basis. The borough shall exercise its authority under this subsection
6 in a manner that is consistent with a regional master plan for the
7 region in which the borough is located if a plan has been prepared by
8 the Department of Environmental Conservation under AS 46.04.210.

9 * Sec. 5. AS 29.60 is amended by adding new sections to read:

10 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL

11 IMPACT ASSISTANCE.

12 Sec. 29.60.500. PURPOSE AND POLICY. (a) The legislature finds
13 and declares that the release of oil or hazardous substances into the
14 environment presents a real and substantial threat to the economy and
15 public welfare of the municipalities and villages that are affected by
16 the release.

17 (b) The legislature concludes that, in the event of a release or
18 threatened release of oil or a hazardous substance that constitutes a
19 disaster emergency, it is in the best interest of the state and its
20 citizens to provide access to money in an available fund for the
21 payment of the expenses incurred by municipalities and villages to
22 mitigate the additional costs of reasonable and appropriate functions
23 and services that arise out of the release of oil or hazardous sub-
24 stances.

25 (c) It is the intent of the legislature and declared to be the
26 public policy of the state that money will be available to defray the
27 additional costs of reasonable and appropriate functions and services
28 by municipalities and villages arising from a release of oil or a haz-
29 ardous substance that constitutes a disaster emergency.

1 Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) If a
2 release of oil or a hazardous substance has been proclaimed a disaster
3 emergency by the governor under AS 26.23.020, the commissioner may use
4 money from the oil and hazardous release response fund to make grants
5 to a municipality or village that is affected by the release or by the
6 response to the release and that demonstrates extraordinary expen-
7 ditures that are beyond the reasonable capability of the municipality
8 or village to meet from the municipality's or village's current reve-
9 nue sources.

10 (b) For each disaster emergency declared by the governor under
11 AS 26.23.020, the commissioner may expend not more than \$10,000,000 of
12 the unrestricted balance of the fund as grants authorized under this
13 section.

14 Sec. 29.60.520. PURPOSES OF MUNICIPAL IMPACT GRANTS. A grant
15 made under AS 29.60.510 may be made

16 (1) only for

17 (A) provision of subsistence resources on which the
18 residents of the municipality or village rely for subsistence
19 needs;

20 (B) the additional costs of a reasonable and appropri-
21 ate function or service, including administrative expenses for
22 the incremental costs of providing the function or service,
23 limited to:

24 (i) public health and welfare functions and
25 services, including hospital, clinic, and emergency medical
26 services; alcohol, drug abuse, and mental health services;
27 family support services; and the operation of waste disposal
28 systems and water quality improvement systems;

29 (ii) public safety functions and services,

1 including police protection, search and rescue, and fire
2 protection;

3 (iii) public utility functions and services, in-
4 cluding the operation of electric generating plants and
5 distribution systems, water supply systems, telephone sys-
6 tems, and fuel distribution systems; and

7 (iv) housing functions and services, limited to
8 leasing or making other arrangements for temporary housing
9 to be occupied by persons associated with containment or
10 clean up of the release;

11 (C) costs associated with leasing transportation
12 facilities for use in activities associated with the containment
13 or clean up;

14 (D) costs of repair or replacement of equipment or a
15 capital asset associated with a function or service set out in
16 (B) of this paragraph the useful life of which has been substan-
17 tially reduced by use associated with the containment or clean
18 up; and

19 (2) to compensate the municipality or village for

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

22 (B) the costs of projects or activities that are
23 delayed or lost because of the efforts of the municipality or
24 village associated with the containment or clean up.

25 Sec. 29.60.530. CRITERIA TO EVALUATE GRANT APPLICATIONS. (a)

26 In determining whether an expenditure by a municipality or village is
27 eligible for a grant under AS 29.60.510, the department shall consider

28 (1) the degree to which the effect on the municipality or
29 village is directly caused by the oil or hazardous substance

1 discharge;

2 (2) the availability of money to the recipient from other
3 sources that can meet the costs of providing the functions or ser-
4 vices;

5 (3) the degree to which the proposed expenditure in the
6 grant application alleviates or addresses an effect reasonably attrib-
7 utable to the oil or hazardous substance release;

8 (4) the ability of the municipality or village to respond
9 to the oil or hazardous substance release and its effects from exist-
10 ing resources;

11 (5) the severity of the effect addressed in the grant
12 application; and

13 (6) whether the functions or services for which assistance
14 is sought are part of a coordinated program with other affected munic-
15 ipalities and villages.

16 (b) The department may reject an application for a grant under
17 AS 29.60.510 or approve an application for a grant in an amount that
18 is less than the amount requested by a municipality or village if the
19 department determines that payment of the amount requested is not
20 warranted under (a) of this section.

21 (c) The department shall adopt, by regulation, criteria by which
22 to rank all or a portion of applications for the purpose of establish-
23 ing the priority order of awarding grants if money requested by eligi-
24 ble municipalities and villages under this section exceeds the amount
25 available. The criteria shall be based on the elements set out in (a)
26 of this section. If the total amount of money requested by eligible
27 municipalities and villages under this section exceeds the amount
28 available, the department shall rank applications for the purpose of
29 establishing the priority order of awarding grants in accordance with

1 the regulations. This subsection does not prevent the department from
2 making a grant payment in an amount that is less than an amount re-
3 quested by a municipality or village if the department determines that
4 payment of the amount requested is not warranted under (a) of this
5 section.

6 Sec. 29.60.540. LIMITATIONS ON USES OF GRANTS BY MUNICIPALITIES.
7 A municipality may not use a grant made under AS 29.60.510 to reduce
8 current municipal tax rates or to retire its existing bonded indebted-
9 ness.

10 Sec. 29.60.550. RECORDS. The department shall maintain records
11 showing the income and expenses of grants made under AS 29.60.510, and
12 shall develop procedures governing the expenditure of, and accounting
13 for, money expended.

14 Sec. 29.60.560. REPORT TO THE LEGISLATURE. The commissioner
15 shall submit a report to the legislature not later than the 10th day
16 following the convening of each regular session of the legislature.
17 The report may include information considered significant by the
18 commissioner but must include

19 (1) the amount of money expended under AS 29.60.510 during
20 the preceding fiscal year; and

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

23 Sec. 29.60.570. IMPACT ASSESSMENT. (a) For each disaster
24 emergency declared by the governor under AS 26.23.020 based on a
25 release of oil or a hazardous substance, the commissioner shall, after
26 consulting with and securing the written approval of the attorney
27 general, make an assessment of the social and economic effects of the
28 release of the oil or hazardous substance on the municipalities, the
29 villages, and the region in which the discharge occurs. The

1 commissioner may make the assessment by

2 (1) using staff of the department;

3 (2) contracting with a municipality or other entity for the
4 assessment; or

5 (3) authorizing a municipality or other entity to make the
6 assessment and supporting that effort by a grant.

7 (b) Only one assessment may be completed under this section for
8 each declaration of a disaster emergency.

9 (c) The commissioner may pay the costs of the assessment from
10 money available in the fund.

11 Sec. 29.60.580. REGULATIONS. The commissioner may adopt regula-
12 tions that are necessary to implement the purposes of AS 29.60.500 -
13 29.60.599.

14 Sec. 29.60.590. RECOVERY OF CERTAIN GRANT EXPENDITURES AUTHOR-
15 IZED. The commissioner may recover from a municipality or village
16 amounts paid as impact assistance under AS 29.60.500 - 29.60.599 if
17 the commissioner determines that the municipality or village receiving
18 the grant is responsible for the violation that caused the oil or
19 hazardous substance release.

20 Sec. 29.60.599. DEFINITIONS. In AS 29.60.500 - 29.60.599

21 (1) "containment and cleanup" has the meaning given in
22 AS 46.08.900;

23 (2) "disaster emergency" means a disaster declared by the
24 governor under AS 26.23.020;

25 (3) "fund" means the oil and hazardous substance release
26 response fund established by AS 46.08.010;

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

29 (5) "village" means a community with a residential

1 population of 25 or more not incorporated as a municipality under
2 state law in the unorganized borough or within a borough if the power,
3 function, or service for which the grant application is submitted is
4 not exercised or provided by the borough on an areawide or nonareawide
5 basis at the time the grant application is submitted.

6 * Sec. 6. AS 46.03.760(e) is amended to read:

7 (e) In addition to liability under (a) - (d) of this section, a
8 person who violates or causes or permits to be violated a provision of
9 AS 46.03.740 - 46.03.750 is liable to the state, in a civil action
10 brought under AS 46.03.822, for the full amount of actual damages
11 caused to the state by the violation, including

12 (1) direct and indirect costs associated with the abate-
13 ment, containment, or removal of the pollutant;

14 (2) [,] restoration of the environment to its former state;

15 (3) amounts paid as grants under AS 29.60.510 - 29.60.599
16 and as emergency first response advances and reimbursements under
17 AS 46.08.070(c); [,] and

18 (4) all incidental administrative costs.

19 * Sec. 7. AS 46.03.822(a) is amended to read:

20 (a) Notwithstanding any other provision or rule of law and
21 subject only to the defenses set out in (b) of this section and the
22 exception set out in (i) of this section, the following persons are
23 strictly liable, jointly and severally, for damages to persons or
24 property, whether public or private, including damage to the natural
25 resources of the state or a municipality, or to the natural resources
26 that are owned by a village, [AND] for the costs of response, contain-
27 ment, removal, or remedial action incurred by the state, [OR] a munic-
28 ipality, or a village, and for the additional costs of a function or
29 service, including administrative expenses for the incremental costs

1 of providing the function or service, that are incurred by the state,
2 a municipality, or a village [,] resulting from an unpermitted release
3 of a hazardous substance or, with respect to response costs, the
4 substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

29 * Sec. 8. AS 46.03.822(h) is amended to read:

1 (h) The state, [OR] a municipality, or a village is not liable
2 under this section for costs or damages as a result of actions taken
3 in response to an emergency created by a release or threatened release
4 of a hazardous substance generated by or from a facility or vessel
5 owned by another person unless the actions taken by the state, the
6 [OR] municipality, or the village constitute gross negligence or
7 intentional misconduct.

8 * Sec. 9. 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 author-
11 ized by AS 29 or other provision of law authorizing a municipality to
12 perform functions or provide services or a comparable function per-
13 formed or service provided by a village; "service" includes functions
14 not previously performed and services not previously provided;

15 (36) "village" means a community with a residential popula-
16 tion of 25 or more not incorporated as a municipality under state law.

17 * Sec. 10. AS 46.04.020 is amended by adding a new subsection to read:

18 (f) In fulfilling its responsibilities under (e) of this sec-
19 tion, the department shall consult with the governing bodies of munic-
20 ipalities and villages.

21 * Sec. 11. AS 46.04.900(5) is amended to read:

22 (5) "containment and cleanup" includes all direct and
23 indirect efforts associated with the prevention, abatement, contain-
24 ment, or removal of a pollutant, and the restoration of the environ-
25 ment to its former state; when applied to expenses, the term includes
26 the additional costs of providing a reasonable and appropriate func-
27 tion or service incurred in response to the discharge of a pollutant,
28 including [, AND ALL INCIDENTAL] administrative expenses for the
29 incremental costs of providing the function or service;

1 * Sec. 12. AS 46.04.900 is amended by adding new paragraphs to read:

2 (18) "service" means a function performed or service pro-
3 vided by the state, including functions not previously performed and
4 services not previously provided by the state;

5 (19) "village" means a community with a residential popula-
6 tion of 25 or more not incorporated as a municipality under state law.

7 * Sec. 13. AS 46.08.040 is amended to read:

8 Sec. 46.08.040. PURPOSES OF THE FUND. In addition to money in
9 the fund that may be used by the commissioner of community and re-
10 gional affairs to make grants under AS 29.60.510 and to pay for impact
11 assessments under AS 29.60.570, the [THE] commissioner of environ-
12 mental conservation may use money from the fund to

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

19 (2) pay all costs incurred to establish and maintain the
20 oil and hazardous substance response office and for the expenses of
21 the oil and hazardous substance response corps and the oil and hazard-
22 ous substance response depots established by that office;

23 (3) provide matching funds for participation in federal oil
24 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
25 hensive Environmental Response, Compensation, and Liability Act of
26 1980); [AND]

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

- 1 (5) prepare, review, and revise
2 (A) the state's master oil and hazardous substance
3 discharge and prevention contingency plan required by AS 46.04.-
4 200; and
5 (B) a regional master oil and hazardous substance
6 discharge and prevention contingency plan required by AS 46.04.-
7 210; and
8 (6) restore the environment by addressing the effects of an
9 oil or hazardous substance release.

10 * Sec. 14. AS 46.08.070(c) is amended to read:

11 (c) The department shall [MAY] reimburse a municipality or
12 village for actual expenses [, OTHER THAN NORMAL OPERATING EXPENSES,]
13 incurred in the abatement of a release or threatened release and may
14 advance money to a municipality or village to carry out an emergency
15 first response to a release or threatened release of oil or a hazard-
16 ous substance if

17 (1) the municipality or village has entered into an agree-
18 ment with the commissioner under AS 46.04.020(e) or AS 46.09.020(e);
19 and

20 (2) the commissioner determines that

21 (A) the expenses to be reimbursed were for a necessary
22 emergency first response to a release or threatened release that,
23 at the time of the release or threatened release, posed an immi-
24 nent and substantial threat to the public health or welfare, or
25 to the environment;

26 (B) the municipality or village has demonstrated a
27 need for financial assistance, and the money to be advanced is
28 necessary to enable the municipality or village to carry out an
29 emergency first response to a release or threatened release that,

1 at the time of the release or threatened release, poses an immi-
2 nent and substantial threat to the public health or welfare, or
3 to the environment; and

4 (C) containment and cleanup efforts paid for in whole
5 or in part by a reimbursement or an advance made under this
6 section were consistent with the regional master plan for the
7 region in which the municipality or village is located if a plan
8 has been prepared by the department under AS 46.04.210.

9 * Sec. 15. AS 46.08.070 is amended by adding a new subsection to read:

10 (d) Notwithstanding (c) of this section, the commissioner may
11 recover from a municipality or village amounts advanced or reimbursed
12 under this section if the commissioner determines that the munic-
13 ipality or village is responsible for the violation that caused the
14 oil or hazardous substance release requiring containment and cleanup
15 assistance.

16 * Sec. 16. AS 46.08.900(3) is amended to read:

17 (3) "containment and cleanup" includes the direct and
18 indirect efforts associated with the prevention, abatement, contain-
19 ment, or removal of oil or a hazardous substance, and the restoration
20 of the environment; when applied to expenses, the term includes the
21 additional costs of providing a reasonable and appropriate function or
22 service incurred in response to the discharge of the oil or hazardous
23 substance, including [, AND INCIDENTAL] administrative expenses for
24 the incremental costs of providing the function or service;

25 * Sec. 17. AS 46.08.900 is amended by adding new paragraphs to read:

26 (11) "service" means a function performed or service pro-
27 vided by the state, a municipality, or a village, including functions
28 not previously performed and services not previously provided;

29 (12) "village" means a community with a residential

1 population of 25 or more not incorporated as a municipality under
2 state law in the unorganized borough or within a borough if the rele-
3 vant power, function, or service is not exercised or provided by the
4 borough on an areawide or nonareawide basis at the time the grant
5 application or request for reimbursement is submitted.

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

7 (b) Authority to contain, clean up, or prevent a release or
8 threatened release of oil or of a hazardous substance, and to exercise
9 other powers necessary to implement this chapter, AS 46.04, and
10 AS 46.08, are granted to municipalities that do not otherwise have
11 that authority. Except as provided in (a) of this section, a munic-
12 ipality may exercise its police power within the area of the munic-
13 ipality.

14 * Sec. 19. AS 46.09.900(2) is amended to read:

15 (2) "containment and cleanup" includes the direct and
16 indirect efforts associated with the prevention, abatement, contain-
17 ment, or removal of a hazardous substance, and the restoration of the
18 environment; when applied to expenses, the term includes the addi-
19 tional costs of providing a reasonable and appropriate function or
20 service incurred in response to the discharge of the hazardous sub-
21 stance, including [, AND INCIDENTAL] administrative expenses for the
22 incremental costs of providing the function or service;

23 * Sec. 20. AS 46.09.900 is amended by adding a new paragraph to read:

24 (8) "service" means a function performed or service provid-
25 ed by the state, including functions not previously performed and
26 services not previously provided by the state.

27 * Sec. 21. Sections 7 and 9 of this Act are retroactive to March 24,
28 1989.

29 * Sec. 22. This Act takes effect immediately under AS 01.10.070(c).