

Original sponsor(s): SEN. SZYMANSKI, Adams, Zharoff, Kerttula

1 IN THE SENATE BY THE RESOURCES COMMITTEE  
2 HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 359 (Resources)  
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; the ordinance adopted must be consis-  
3 tent with a regional master plan for the region in which the munici-  
4 pality is located if a plan has been prepared by the Department of  
5 Environmental Conservation under AS 46.04.210; in this paragraph,  
6 "natural resources" has the meaning given in AS 46.03.826.

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

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

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

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

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

24 (e) A third class borough may by ordinance exercise power  
25 necessary to contain, clean up, or prevent a release or threatened  
26 release of oil or a hazardous substance, and exercise a power granted  
27 to a municipality under AS 46.04, AS 46.08, or AS 46.09, but the power  
28 authorized by this subsection may be exercised only on a nonareawide  
29 basis. The borough shall exercise its authority under this subsection

1 in a manner that is consistent with a regional master plan for the  
2 region in which the borough is located if a plan has been prepared by  
3 the Department of Environmental Conservation under AS 46.04.210.

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

5 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL  
6 IMPACT ASSISTANCE.

7 Sec. 29.60.500. PURPOSE AND POLICY. (a) The legislature finds  
8 and declares that the release of oil or hazardous substances into the  
9 environment presents a real and substantial threat to the economy and  
10 public welfare of the municipalities and villages that are affected by  
11 the release.

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

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

25 Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) If a  
26 release of oil or a hazardous substance has been proclaimed a disaster  
27 emergency by the governor under AS 26.23.020, the commissioner may use  
28 money from the oil and hazardous release response fund to make grants  
29 to a municipality or village that is affected by the release or by the

1 response to the release and that demonstrates extraordinary expen-  
2 ditures that are beyond the reasonable capability of the municipality  
3 or village to meet from the municipality's or village's current reve-  
4 nue sources.

5 (b) For each disaster emergency declared by the governor under  
6 AS 26.23.020, and subject to consultation with the commissioner of  
7 environmental conservation as to the amount of money in the fund that  
8 may be used to make grants, the commissioner may expend not more than  
9 \$10,000,000 of the unrestricted balance of the fund as grants autho-  
10 rized under this section.

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

13 (1) only for

14 (A) provision of subsistence resources on which the  
15 residents of the municipality or village rely for subsistence  
16 needs;

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

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

26 (ii) public safety functions and services,  
27 including police protection, search and rescue, and fire  
28 protection;

29 (iii) public utility functions and services, in-

1 cluding the operation of electric generating plants and  
2 distribution systems, water supply systems, telephone sys-  
3 tems, and fuel distribution systems; and

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

8 (C) costs associated with leasing transportation  
9 facilities for use in activities associated with the containment  
10 or clean up;

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

16 (2) to compensate the municipality or village for

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

19 (B) the costs of projects or activities that are  
20 delayed or lost because of the efforts of the municipality or  
21 village associated with the containment or clean up.

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

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

25 (1) the degree to which the effect on the municipality or  
26 village is directly caused by the oil or hazardous substance  
27 discharge;

28 (2) the availability of money to the recipient from other  
29 sources that can meet the costs of providing the functions or ser-

1 vices;

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

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

8 (5) the severity of the effect addressed in the grant  
9 application; and

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

13 (b) The department may reject an application for a grant under  
14 AS 29.60.510 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 (a) of this section.

18 (c) The department shall adopt, by regulation, criteria by which  
19 to rank all or a portion of applications for the purpose of establish-  
20 ing the priority order of awarding grants if money requested by eligi-  
21 ble municipalities and villages under this section exceeds the amount  
22 available. The criteria shall be based on the elements set out in (a)  
23 of this section. If the total amount of money requested by eligible  
24 municipalities and villages under this section exceeds the amount  
25 available, the department shall rank applications for the purpose of  
26 establishing the priority order of awarding grants in accordance with  
27 the regulations. This subsection does not prevent the department from  
28 making a grant payment in an amount that is less than an amount re-  
29 quested by a municipality or village if the department determines that

1 payment of the amount requested is not warranted under (a) of this  
2 section.

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

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

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

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

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

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

28 (1) using staff of the department;

29 (2) contracting with a municipality or other entity for the

1 assessment; or

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

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

6 (c) The commissioner may pay the costs of the assessment from  
7 money in the fund that is available to the commissioner to expend  
8 under AS 29.60.510(b).

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

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

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

19 (1) "containment and cleanup" has the meaning given in  
20 AS 46.08.900;

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

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

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

27 (5) "village" means a community with a residential popula-  
28 tion of 25 or more not incorporated as a municipality under state law  
29 in the unorganized borough or within a borough if the power, function,

1 or service for which the grant application is submitted is not exer-  
2 cised or provided by the borough on an areawide or nonareawide basis  
3 at the time the grant application is submitted.

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

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

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

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

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

16 (4) all incidental administrative costs.

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

18 (a) Notwithstanding any other provision or rule of law and  
19 subject only to the defenses set out in (b) of this section and the  
20 exception set out in (i) of this section, the following persons are  
21 strictly liable, jointly and severally, for damages to persons or  
22 property, whether public or private, including damage to the natural  
23 resources of the state or a municipality, [AND] for the costs of re-  
24 sponse, containment, removal, or remedial action incurred by the  
25 state, [OR] a municipality, or a village, and for the additional costs  
26 of a function or service, including administrative expenses for the  
27 incremental costs of providing the function or service, that are  
28 incurred by the state, a municipality, or a village [,] resulting from  
29 an unpermitted release of a hazardous substance or, with respect to

1 response costs, the substantial threat of an unpermitted release of a  
2 hazardous substance:

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

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

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

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

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

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

28 (h) The state, [OR] a municipality, or a village is not liable  
29 under this section for costs or damages as a result of actions taken

1 in response to an emergency created by a release or threatened release  
2 of a hazardous substance generated by or from a facility or vessel  
3 owned by another person unless the actions taken by the state, the  
4 [OR] municipality, or the village constitute gross negligence or  
5 intentional misconduct.

6 \* Sec. 9. AS 46.03.900 is amended by adding new paragraphs to read:

7 (35) "service" means a function performed or service pro-  
8 vided by the state or by a municipality under a duty or power author-  
9 ized by AS 29 or other provision of law authorizing a municipality to  
10 perform functions or provide services or a comparable function per-  
11 formed or service provided by a village; "service" includes functions  
12 not previously performed and services not previously provided;

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

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

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

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

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

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

29 (18) "service" means a function performed or service

1 provided by the state, including functions not previously performed  
2 and services not previously provided by the state;

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

5 \* Sec. 13. AS 46.08.040 is amended to read:

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

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

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

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

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

28 (5) prepare, review, and revise

29 (A) the state's master oil and hazardous substance

1 discharge and prevention contingency plan required by AS 46.04.-  
2 200; and

3 (B) a regional master oil and hazardous substance  
4 discharge and prevention contingency plan required by AS 46.04.-  
5 210; and

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

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

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

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

18 (2) the commissioner determines that

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

24 (B) the municipality or village has demonstrated a  
25 need for financial assistance, and the money to be advanced is  
26 necessary to enable the municipality or village to carry out an  
27 emergency first response to a release or threatened release that,  
28 at the time of the release or threatened release, poses an immi-  
29 nent and substantial threat to the public health or welfare, or

1           to the environment; and

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

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

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

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

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

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

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

27           (12) "village" means a community with a residential popula-  
28           tion of 25 or more not incorporated as a municipality under state law  
29           in the unorganized borough or within a borough if the relevant power,

1 function, or service is not exercised or provided by the borough on an  
2 areawide or nonareawide basis at the time the request for the advance  
3 or reimbursement is submitted.

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

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

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

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

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

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

25 \* Sec. 21. Sections 7 and 9 of this Act are retroactive to March 24,  
26 1989.

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