

SENATE BILL NO. 25
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR ZHAROFF

Introduced: 1/21/91

Referred: C&RA and Finance

A BILL
 FOR AN ACT ENTITLED

1 "An Act concerning the exercise of authority and recovery of damages by the state and
 2 its municipalities and villages in matters relating to environmental conservation, and relating
 3 to state assistance to municipalities and villages for expenses for prevention and abatement
 4 of environmental degradation; and providing for an effective date."

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

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

7 (b) A municipality may adopt an ordinance to exercise a power authorized by this
 8 subsection [PROTECT ITS WATER SUPPLY AND WATERSHED,] and may enforce the
 9 ordinance outside its boundaries. Before a [THIS] power authorized by this subsection may
 10 be exercised inside the boundaries of another municipality, the approval of the other municipality
 11 must be given by ordinance. A municipality intending to exercise its authority under this
 12 subsection shall act by ordinance, and may adopt an ordinance under this subsection to

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

14 (2) contain, clean up, or prevent the release or threatened release of oil or

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

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

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

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

17 (13) contain, clean up, or prevent a release or threatened release of oil or a
18 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,
19 or AS 46.09; the borough 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 borough is located if a plan
21 has been prepared by the Department of Environmental Conservation under AS 46.04.210.

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

23 (e) A third class borough may by ordinance exercise power necessary to contain, clean
24 up, or prevent a release or threatened release of oil or a hazardous substance, and exercise a
25 power granted to a municipality under AS 46.04, AS 46.08, or AS 46.09, but the power
26 authorized by this subsection may be exercised only on a nonareawide basis. The borough shall
27 exercise its authority under this subsection in a manner that is consistent with a regional master
28 plan for the region in which the borough is located if a plan has been prepared by the Depart-
29 ment of Environmental Conservation under AS 46.04.210.

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

31 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL

1 IMPACT ASSISTANCE.

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

6 (b) The legislature concludes that, in the event of a release of oil or a hazardous
7 substance that constitutes a disaster emergency, it is in the best interest of the state and its
8 citizens to provide access to money in an available fund for the payment of the expenses incurred
9 by municipalities and villages to mitigate the additional costs of reasonable and appropriate
10 functions and services that arise out of the release of oil or hazardous substances.

11 (c) It is the intent of the legislature and declared to be the public policy of the state that
12 money will be available to defray the additional costs of reasonable and appropriate functions and
13 services by municipalities and villages arising from a release of oil or a hazardous substance that
14 constitutes a disaster emergency.

15 Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) If a release of
16 oil or a hazardous substance has been proclaimed a disaster emergency by the governor under
17 AS 26.23.020, the commissioner may use money from the oil and hazardous release response
18 fund to make grants to a municipality or village that is affected by the release or by the response
19 to the release and that demonstrates that the release or response to the release involves extraordi-
20 nary expenditures that are beyond the reasonable capability of the municipality or village to meet
21 from the municipality's or village's current revenue sources.

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

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

27 (1) only for

28 (A) provision of subsistence resources on which the residents of the
29 municipality or village rely for subsistence needs;

30 (B) the additional costs of a reasonable and appropriate function or
31 service, including administrative expenses for the incremental costs of providing the

1 function or service, limited to:

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

6 (ii) public safety functions and services, including police
7 protection, search and rescue, and fire protection;

8 (iii) public utility functions and services, including the
9 operation of electric generating plants and distribution systems, water supply
10 systems, telephone systems, and fuel distribution systems; and

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

14 (C) costs associated with leasing transportation facilities for use in
15 activities associated with the containment or clean up;

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

20 (2) to compensate the municipality or village for

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

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

25 Sec. 29.60.530. CRITERIA TO EVALUATE GRANT APPLICATIONS. (a) In
26 determining whether an expenditure or proposed 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 village is directly caused
29 by the oil or hazardous substance release;

30 (2) the availability of money to the recipient from other sources that can meet the
31 costs of providing the functions or services;

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

4 (4) the ability of the municipality or village to respond to the oil or hazardous
5 substance release and its effects from existing resources;

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

7 (6) whether a function or service for which assistance is sought is part of a
8 coordinated program with other affected municipalities and villages.

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

13 (c) The department shall adopt, by regulation, criteria by which to rank all or a portion
14 of applications for the purpose of establishing the priority order of awarding grants if money
15 requested by eligible municipalities and villages under this section exceeds the amount available.
16 The criteria must be based on the elements set out in (a) of this section. If the total amount of
17 money requested by eligible municipalities and villages under this section exceeds the amount
18 available, the department shall rank applications for the purpose of establishing the priority order
19 of awarding grants in accordance with the regulations. This subsection does not prevent the
20 department from making a grant payment in an amount that is less than an amount requested by
21 a municipality or village if the department determines that payment of the amount requested is
22 not warranted under (a) of this section.

23 Sec. 29.60.540. LIMITATIONS ON USES OF GRANTS BY MUNICIPALITIES. A
24 municipality may not use a grant made under AS 29.60.510 to reduce current municipal tax rates
25 or to retire its existing bonded indebtedness.

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

29 Sec. 29.60.560. REPORT TO THE LEGISLATURE. The commissioner shall submit a
30 report to the legislature not later than the 10th day following the convening of each regular
31 session of the legislature. The report may include information considered significant by the

1 commissioner but must include

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

4 (2) a detailed summary of department activities in administering the grant program
5 during the preceding fiscal year.

6 Sec. 29.60.570. IMPACT ASSESSMENT. (a) For each disaster emergency declared by
7 the governor under AS 26.23.020 based on a release of oil or a hazardous substance, the
8 commissioner shall, after consulting with and securing the written approval of the attorney
9 general, make an assessment of the social and economic effects of the release of the oil or
10 hazardous substance on the municipalities, the villages, and the region in which the discharge
11 occurs. The commissioner may make the assessment by

12 (1) using staff of the department;

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

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

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

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

20 Sec. 29.60.580. REGULATIONS. The commissioner may adopt regulations that are
21 necessary to implement the purposes of AS 29.60.500 - 29.60.599.

22 Sec. 29.60.590. RECOVERY OF CERTAIN GRANT EXPENDITURES AUTHORIZED.
23 The commissioner may recover from a municipality or village amounts paid as impact assistance
24 under AS 29.60.500 - 29.60.599 if the commissioner determines that the municipality or village
25 receiving the grant is responsible for the violation that caused the oil or hazardous substance
26 release.

27 Sec. 29.60.599. DEFINITIONS. In AS 29.60.500 - 29.60.599,

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

29 (2) "disaster emergency" means a disaster declared by the governor under AS 26.-
30 23.020;

31 (3) "fund" means the oil and hazardous substance release response fund

1 established by AS 46.08.010;

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

4 (5) "village" means a community with a residential population of 25 or more not
5 incorporated as a municipality under state law in the unorganized borough or within a borough
6 if the power, function, or service for which the grant application is submitted is not exercised or
7 provided by the borough on an areawide or nonareawide basis at the time the grant application
8 is submitted.

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

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

14 (1) direct and indirect costs associated with the abatement, containment, or
15 removal of the pollutant;

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

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

19 (4) all incidental administrative costs.

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

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

31 (1) the owner of, and the person having control over, the hazardous substance at

1 the time of the release or threatened release; this paragraph does not apply to a consumer product
2 in consumer use;

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

6 (3) any person who at the time of disposal of any hazardous substance owned or
7 operated any facility or vessel at which the hazardous substances were disposed of, from which
8 there is a release, or a threatened release that causes the incurrence of response costs, of a
9 hazardous substance;

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

16 (5) any person who accepts or accepted any hazardous substances, other than
17 refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person,
18 from which there is a release, or a threatened release that causes the incurrence of response costs,
19 of a hazardous substance.

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

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

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

27 (35) "service" means a function performed or service provided by the state or by
28 a municipality under a duty or power authorized by AS 29 or other provision of law authorizing
29 a municipality to perform functions or provide services, or a comparable function performed or
30 service provided by a village; "service" includes functions not previously performed and services
31 not previously provided;

1 (36) "village" means a community with a residential population of 25 or more not
2 incorporated as a municipality under state law.

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

4 (f) In fulfilling its responsibilities under (e) of this section, the department shall consult
5 with the governing bodies of municipalities and villages.

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

7 (5) "containment and cleanup" includes all direct and indirect efforts associated
8 with the prevention, abatement, containment, or removal of a pollutant, and the restoration of the
9 environment to its former state; when applied to expenses, the term includes the additional
10 costs of providing a reasonable and appropriate function or service incurred in response to
11 the discharge of a pollutant, including [, AND ALL INCIDENTAL] administrative expenses
12 for the incremental costs of providing the function or service;

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

14 (20) "service" means a function performed or service provided by the state,
15 including functions not previously performed and services not previously provided by the state;

16 (21) "village" means a community with a residential population of 25 or more not
17 incorporated as a municipality under state law.

18 * Sec. 13. AS 46.08.040(a) is amended to read:

19 (a) In addition to money in the fund that may be used by the commissioner of
20 community and regional affairs to make grants under AS 29.60.510 and to pay for impact
21 assessments under AS 29.60.570, the [THE] commissioner of environmental conservation may
22 use money from the fund to

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

27 (2) pay all costs incurred to

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

29 (B) review oil discharge prevention and contingency plans submitted under

30 AS 46.04.030;

31 (C) conduct training, response exercises, inspections, and tests, in order

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

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

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

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

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

17 (6) prepare, review, and revise

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

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

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

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

25 (c) The department shall [MAY] reimburse a municipality or village for actual expenses
26 [, OTHER THAN NORMAL OPERATING EXPENSES,] incurred in the abatement of a release
27 or threatened release and may advance money to a municipality or village to carry out an
28 emergency first response to a release or threatened release of oil or a hazardous substance
29 if

30 (1) the municipality or village has entered into an agreement with the
31 commissioner under AS 46.04.020(e) or AS 46.09.020(e); and

1 (2) the commissioner determines that

2 (A) the expenses to be reimbursed were for a necessary emergency first
3 response to a release or threatened release that, at the time of the release or threatened
4 release, posed an imminent and substantial threat to the public health or welfare, or to
5 the environment;

6 (B) the municipality or village has demonstrated a need for financial
7 assistance, and the money to be advanced is necessary to enable the municipality or
8 village to carry out an emergency first response to a release or threatened release
9 that, at the time of the release or threatened release, poses an imminent and substan-
10 tial threat to the public health or welfare, or to the environment; and

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

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

16 (d) Notwithstanding (c) of this section, the commissioner may recover from a
17 municipality or village amounts advanced or reimbursed under this section if the commissioner
18 determines that the municipality or village is responsible for the violation that caused the oil or
19 hazardous substance release requiring containment and cleanup assistance.

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

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

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

28 (11) "service" means a function performed or service provided by the state, a
29 municipality, or a village, including functions not previously performed and services not previ-
30 ously provided;

31 (12) "village" means a community with a residential population of 25 or more not

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

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

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

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

12 (2) "containment and cleanup" includes the direct and indirect efforts associated
13 with the prevention, abatement, containment, or removal of a hazardous substance, **and** the
14 restoration of the environment; **when applied to expenses, the term includes the additional**
15 **costs of providing a reasonable and appropriate function or service incurred in response to**
16 **the release of the hazardous substance, including [, AND INCIDENTAL] administrative**
17 **expenses for the incremental costs of providing the function or service;**

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

19 (8) "service" means a function performed or service provided by the state,
20 including functions not previously performed and services not previously provided by the state.

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

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