

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

BY SENATORS ZHAROFF, Sturgulewski

Introduced: 3/22/91
 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 or a village, the approval of the other
 11 municipality or the village must be given by resolution. A municipality intending to exercise
 12 its authority under this subsection shall act by ordinance, and may adopt an ordinance
 13 under this subsection to

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

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

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

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

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

18 (13) contain, clean up, or prevent a release or threatened release of oil or a
19 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,
20 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
21 consistent with a regional master plan for the region in which the borough is located if a plan
22 has been prepared by the Department of 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 necessary to contain, clean
25 up, or prevent a release or threatened release of oil or a hazardous substance, and exercise a
26 power granted to a municipality under AS 46.04, AS 46.08, or AS 46.09, but the power
27 authorized by this subsection may be exercised only on a nonareawide basis. The borough shall
28 exercise its authority under this subsection in a manner that is consistent with a regional master
29 plan for the region in which the borough is located if a plan has been prepared by the
30 Department of Environmental Conservation under AS 46.04.210.

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

1 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL
2 IMPACT ASSISTANCE.

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

7 (b) The legislature concludes that it is in the best interest of the state and its citizens to
8 provide a readily available fund for the payment of the expenses incurred by municipalities and
9 villages to mitigate the social and economic effects that arise out of the release of oil or
10 hazardous substances and resultant cleanup activities.

11 (c) It is the intent of the legislature and declared to be the public policy of the state that
12 money to defray the cost of social and economic effects on municipalities and villages arising
13 from a release of oil or a hazardous substance and resultant cleanup activities and to pay for
14 efforts to abate that release will be immediately available upon the declaration by the governor
15 of a disaster emergency relating to the release.

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

23 (b) For each disaster emergency declared by the governor under AS 26.23.020, and
24 subject to agreement with the commissioner of environmental conservation as to the amount of
25 money in the fund that may be used by the department to make grants, the commissioner may
26 expend not more than \$10,000,000 of the unrestricted balance of the fund for grants authorized
27 under this section. If the commissioner and the commissioner of environmental conservation do
28 not agree on the amount of money in the fund that may be used by the department to make
29 grants under AS 29.60.500 - 29.60.599, the governor shall make the determination.

30 (c) Notwithstanding the limitation of AS 37.07.080(e) against the transfer of money
31 between appropriations, when the commissioner and the commissioner of environmental

1 conservation have agreed to the amount of money in the fund that may be used by the
2 department to make grants, or when that determination has been made by the governor, the
3 commissioner of environmental conservation shall promptly transfer that amount to the
4 department for use under AS 29.60.500 - 29.60.599.

5 Sec. 29.60.520. PURPOSES OF MUNICIPAL IMPACT GRANTS. A grant made under
6 AS 29.60.510 may be made only

7 (1) for a service, including all incidental administrative costs related to the
8 service, that is directly or indirectly affected by efforts associated with prevention, abatement,
9 containment, or removal of oil or a hazardous substance and that relates to

10 (A) subsistence resource protection to ensure the continued viability of
11 fish, wildlife, and other resources on which the residents of the municipality or village
12 rely for subsistence needs;

13 (B) alleviation or mitigation of adverse social or cultural effects;

14 (C) public health and welfare needs, including hospital, clinic, and
15 emergency medical services; alcohol, drug abuse, and mental health services; family
16 support services; and the operation of waste disposal systems and water quality
17 improvement systems;

18 (D) public safety needs, including police protection, search and rescue, and
19 fire protection;

20 (E) public utility needs, including the operation of electric generating
21 plants and distribution systems, water supply systems, telephone systems, and fuel
22 distribution systems;

23 (F) housing and office needs;

24 (G) transportation needs;

25 (H) public administration needs, including the value of the time of staff
26 and administrative personnel necessary to direct efforts to prevent, abate, contain, and
27 remove oil or a hazardous substance; and

28 (I) planning needs, including the value of the time of staff and
29 administrative personnel necessary to coordinate efforts with other governments to
30 prevent, abate, contain, and remove oil or a hazardous substance; and

31 (2) to compensate the municipality or village for

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

3 (B) the costs of projects or activities that are delayed or lost because of
4 the efforts of the municipality or village responding to the release or associated with the
5 containment or cleanup of oil or the hazardous substance.

6 Sec. 29.60.530. CRITERIA TO EVALUATE GRANT APPLICATIONS. (a) In
7 determining whether an expenditure or proposed expenditure by a municipality or village is
8 eligible for a grant under AS 29.60.510, the department shall consider

9 (1) the degree to which the effect on the municipality or village is directly caused
10 by the oil or hazardous substance release or the response to the release;

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

13 (3) the severity of the effect addressed in the grant application.

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

18 (c) The department shall adopt, by regulation, criteria by which to rank all or a portion
19 of applications for the purpose of establishing the priority order of awarding grants if money
20 requested by eligible municipalities and villages under this section exceeds the amount available.
21 The criteria must be based on the elements set out in (a) of this section. If the total amount of
22 money requested by eligible municipalities and villages under this section exceeds the amount
23 available, the department shall rank applications for the purpose of establishing the priority order
24 of awarding grants in accordance with the regulations.

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

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

31 Sec. 29.60.560. REPORT TO THE LEGISLATURE. The commissioner shall submit a

1 report to the legislature not later than the 10th day following the convening of each regular
2 session of the legislature. The report may include information considered significant by the
3 commissioner but must include

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

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

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

14 (1) using staff of the department;

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

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

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

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

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

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

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

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

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

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

1 (5) "service"

2 (A) means a function performed or service provided by a municipality
3 under a duty or power authorized by this title or by another provision of law authorizing
4 a municipality to perform functions or provide services, or a comparable function
5 performed or service provided by a village;

6 (B) includes functions not previously performed and services not
7 previously provided by the municipality or village;

8 (6) "village" means each of the following in the unorganized borough or within
9 a borough if the power, function, or service for which a grant application is submitted under
10 AS 29.60.500 - 29.60.599 is not exercised or provided by the borough on an areawide or
11 nonareawide basis at the time the grant application is submitted, if the village has irrevocably
12 waived, in a form approved by the Department of Law, any claim of sovereign immunity that
13 might arise in connection with the use of grant money under this chapter, and if the village has

14 (A) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian
15 Reorganization Act);

16 (B) a traditional village council recognized by the United States as eligible
17 for federal aid to Indians; or

18 (C) a council recognized by the commissioner under regulations adopted
19 by the department to determine and give official recognition of village entities under
20 AS 44.47.150(b).

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

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

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

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

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

31 (4) all incidental administrative costs.

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

2 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
3 set out in (b) of this section and the exception set out in (i) of this section, the following persons
4 are strictly liable, jointly and severally, for damages to persons or property, whether public or
5 private, including damage to the natural resources of the state, [OR] municipality, or a village,
6 [AND] for the costs of response, containment, removal, or remedial action incurred by the state,
7 [OR] a municipality, or a village, and for the additional costs of a function or service,
8 including administrative expenses for the incremental costs of providing the function or
9 service, that are incurred by the state, a municipality, or a village and the costs of projects
10 or activities that are delayed or lost because of the efforts of the state, the municipality, or
11 the village resulting from an unpermitted release of a hazardous substance or, with respect to
12 response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

1 of a hazardous substance.

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

3 (h) The state, [OR] a municipality, or a village is not liable under this section for costs
4 or damages as a result of actions taken in response to an emergency created by a release or
5 threatened release of a hazardous substance generated by or from a facility or vessel owned by
6 another person unless the actions taken by the state, the [OR] municipality, or the village
7 constitute gross negligence or 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 provided by the state or by
10 a municipality under a duty or power authorized by AS 29 or other provision of law authorizing
11 a municipality to perform functions or provide services, or a comparable function performed or
12 service provided by a village; "service" includes functions not previously performed and services
13 not previously provided;

14 (36) "village" means each of the following in the unorganized borough or within
15 a borough as to a power, function, or service that is not exercised or provided by the borough
16 on an areawide or nonareawide basis if the village has irrevocably waived, in a form approved
17 by the Department of Law, any claim of sovereign immunity that might arise under this chapter,
18 and if the village has

19 (A) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian
20 Reorganization Act);

21 (B) a traditional village council recognized by the United States as eligible
22 for federal aid to Indians; or

23 (C) a council recognized by the commissioner of community and regional
24 affairs under regulations adopted by the Department of Community and Regional Affairs
25 to determine and give official recognition of village entities under AS 44.47.150(b).

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

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

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

30 (5) "containment and cleanup" includes all direct and indirect efforts associated
31 with the prevention, abatement, containment, or removal of a pollutant, and the restoration of the

1 environment to its former state; when applied to expenses, the term includes the additional
2 costs of providing a reasonable and appropriate function or service incurred in response to
3 the discharge of a pollutant, including [, AND ALL INCIDENTAL] administrative expenses
4 for the incremental costs of providing the function or service;

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

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

8 (21) "village" means each of the following in the unorganized borough or with
9 a borough as to a power, function, or service that is not exercised or provided by the borough
10 on an areawide or nonareawide basis if the village has irrevocably waived, in a form approved
11 by the Department of Law, any claim of sovereign immunity that might arise under this chapter,
12 and if the village has

13 (A) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian
14 Reorganization Act);

15 (B) a traditional village council recognized by the United States as eligible
16 for federal aid to Indians; or

17 (C) a council recognized by the commissioner of community and regional
18 affairs under regulations adopted by the Department of Community and Regional Affairs
19 to determine and give official recognition of village entities under AS 44.47.150(b).

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

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

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

29 (2) pay all costs incurred to

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

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

1 AS 46.04.030;

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

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

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

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

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

19 (6) prepare, review, and revise

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

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

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

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

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

31 if

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

3 (2) the commissioner determines that

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

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

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

17 * Sec. 15. AS 46.08.900(3) is amended to read:

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

24 * Sec. 16. AS 46.08.900 is amended by adding new paragraphs to read:

25 (11) "service"

26 (A) means a function performed or service provided by a municipality
27 under a duty or power authorized by AS 29 or by another provision of law authorizing
28 a municipality to perform functions or provide services, or a comparable function
29 performed or service provided by a village;

30 (B) includes functions not previously performed and services not
31 previously provided by the municipality or village;

1 (12) "village" means each of the following in the unorganized borough or within
2 a borough if the power, function, or service for which a grant application under AS 29.60.510
3 is submitted is not exercised or provided by the borough on an areawide or nonareawide basis
4 at the time the grant application is submitted if the village has irrevocably waived, in a form
5 approved by the Department of Law, any claim of sovereign immunity that might arise in
6 connection with the use of grant money under this chapter, and if the village has

7 (A) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian
8 Reorganization Act);

9 (B) a traditional village council recognized by the United States as eligible
10 for federal aid to Indians; or

11 (C) a council recognized by the commissioner of community and regional
12 affairs under regulations adopted by the Department of Community and Regional Affairs
13 to determine and give official recognition of village entities under AS 44.47.150(b).

14 * Sec. 17. AS 46.09.060(b) is amended to read:

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

20 * Sec. 18. AS 46.09.900(2) is amended to read:

21 (2) "containment and cleanup" includes the direct and indirect efforts associated
22 with the prevention, abatement, containment, or removal of 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 hazardous substance, including [, AND INCIDENTAL] administrative
26 expenses for the incremental costs of providing the function or service;

27 * Sec. 19. AS 46.09.900 is amended by adding a new paragraph to read:

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

30 * Sec. 20. Sections 7 and 9 of this Act are retroactive to March 24, 1989.

31 * Sec. 21. This Act takes effect immediately under AS 01.10.070(c).