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359

HOUSE COMMITTEE REPORT

(9)

Date Referred: April 27, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 5/2/90

The RESOURCES Committee considered: CSSSSB 359(FIN)(title am)
CS SSSB 359 (Fin)(title am) MUNICIPAL ASSISTANCE: OIL RESPONSE FUND
 "An Act concerning the exercise of authority and recovery of damages by the state and its municipalities and villages in matters relating to environmental conservation; relating to state assistance to municipalities and villages for expenses for prevention and abatement of environmental degradation; authorizing the commissioner of community and regional affairs to make grants from the oil and hazardous substance release response fund to assist in costs relating to a disaster emergency; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CSSSSB 359(FIN)(title am) [the same title
 [] a new title
- [] have attached amendment(s)
- [] do pass
- [] do not pass
- [] no recommendation
- individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): _____ APPROVES PREVIOUS: _____
 (Dept) (Date/Dept)

- [] fiscal impact _____ [] fiscal note(s) _____
- [] zero fiscal note _____ [] zero fiscal note(s) 4/23/90 Dept. of Admin
- [] zero with analysis _____ [] zero fn/analysis _____

SIGNING DO PASS:

 (MEMARI)

 DAVIDSON

 JACKO

SIGNING:
 (Check appropr. column)

	Do Not Pass	No Rec	Amend
_____ DAVIS			
_____ WARREN			
_____ SHARP	X		
_____ HUDSON		X	

 Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An Act concerning authority by BRU: Central Administration
State and its municipalities related to * Administrative Services
 Sponsor: Szymanski, Adams Components: Municipal Grants
 Requestor: _____

* environmental conservation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

There currently exists a fund used in making grants to municipalities and village councils for those costs attributed to oil and hazardous substance release response. The fund is administered solely by the Department of Community and Regional Affairs. This bill would create an additional fund, the same in all respects except that its use would be for oil and hazardous substance municipal impact. The new fund would also be administered only by the Department of Community and Regional Affairs. There is not anticipated to be any involvement by the Department of

Administration Municipal Grants Program

Prepared by: Mike Maher *Mike Maher* Phone: 465-2277
 Division: Administrative Services Date: 01/17/90

Approved by Commissioner: Frank S. Baxter *Frank S. Baxter* Date: 1/14/90
 Agency: Department of Administration

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Changes in SSSB 359 (Fin)
 have no fiscal impact.
 This fiscal note is
 appropriate. 4/23/90 *mm*

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSSSB 359 (Finance) (title am)

Page 2, line 2, after "boundaries;":

Delete "however, this paragraph does not authorize a municipality to enforce an ordinance outside its boundaries to regulate exploration, development, or production of oil, gas, or minerals in a manner inconsistent with the state's management of those resources when the state is the owner of the land, tideland, or submerged land;"

Amendment to CSSSSB 359 (Finance)(title am)

By the Resources Committee

Page 4, Line 11, after "AS 26.23.020,"

Insert "and subject to consultation with commissioner of environmental conservation as to the amount of money in the fund that may be used to make grants,"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSSSB 359 (Finance) (title am)

Page 8, line 10:

After "money":

Insert "in the fund that is"

After "available":

Delete "in the fund"

Insert "to the commissioner to expend under AS 29.60.510(b)"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSSSB 359 (Finance) (title am)

Page 9, lines 25 - 26:

Delete ", or to the natural resources that are owned by a village"



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SECTIONAL ANALYSIS CSSSSB 359 (FINANCE)(TITLE AM)

(For purposes of simplicity, reference is made to this bill as the oil spill municipal impact legislation)

SECTIONS 1 - 4

These sections extend the authority of municipalities to exercise containment and clean-up authority. The municipalities may thus enforce ordinances relating to containment and clean-up to be exercised outside their boundaries. Requires that the exercise of this authority must be consistent with directives in regional master plans if these plans have been prepared and are in place.

SECTION 5

Establishes an oil and hazardous substance municipal impact assistance program. Sets out a statement of purpose and policy. Provides that assistance is to be provided for municipalities and villages affected by a release of oil or hazardous substances that "demonstrate [to the Department of Community and Regional Affairs] extraordinary expenditures that are beyond the reasonable capability of the municipality or village to meet from the municipality's or village's current revenue sources..

Impact assistance is limited to not more than \$10 million of the unrestricted balance of the oil and hazardous substance release response fund, and is available only when the governor has first declared a disaster emergency under AS 26.23. Impact assistance is available only for the functions, services, and purposes enumerated in AS 29.60.520.

Proposed AS 29.60.530 sets out criteria by which the Department of Community and Regional Affairs is to evaluate requests for assistance;

the legislation makes clear that the Department need not accept a request as submitted but may reduce or eliminate elements of the application. The section also directs the department to adopt regulations by which to rank applications when amounts of impact assistance requested exceed amounts available to the department from the fund.

"Boilerplate" provisions appear in AS 29.60.540 ("limitations on grant uses"), AS 29.60.550("records"), AS 29.60.560(annual report), and AS 29.60.580 (adoption of implementing regulations). AS 29.60.570 separately requires the Commissioner of Community and Regional Affairs to complete an impact assessment whenever the governor issues a disaster emergency declaration based on a discharge of oil or a hazardous substance. This assessment may be accomplished by contracting with a municipality or other entity for the assessment, or by making a grant to a municipality or other entity; however, only ONE assessment may be completed for each declaration of a disaster emergency.

AS 29.60.590 authorizes recovery of grant money paid under AS 29.60.500-AS 29.60.599 if the commissioner determines that the municipality or village receiving the grant is responsible for the underlying spill. This was added by the Senate Oil and Gas Committee to address the committee's concern that a municipality or village not benefit from an impact assistance grant if the discharge is eventually shown to be the recipient's responsibility.

AS 29.60.599 sets out definitions of terms used in the establishment of this grant process.

SECTION 6

The amendment made by this section is intended to make clear that a person who violates AS 46.03 in causing a spill is liable to the state for those amounts expended. This was included because of questions raised regarding the specific authority of the state to recover amounts expended in this area.

SECTION 7

Amends the strict liability section, AS 46.03.822, to clarify the expenditures and the parties that are intended to be covered by this

section. Clarifies that "damages" includes the "additional costs of a function or service, including administrative expenses for the incremental costs of providing the function or service, that are incurred by the state, a municipality or a village with regard to the release of oil or a hazardous substance.

SECTION 8

Adds "village" to the list of entities who, under AS 46.03.822(h), are not generally liable for containment and clean-up actions taken unless done as a result of gross negligence or intentional misconduct.

SECTION 9

Provides definitions for the terms "service" and "village" that are introduced into amendments made to AS 46.03 by Bill Sections 6-8.

SECTIONS 10 - 12 make amendments to AS 46.04.

SECTION 10

Directs that, in fulfilling responsibilities under AS 46.04.020(e), relating to preparation of memoranda of understanding and cooperative agreements, and obligations incurred under those documents, the Department of Environmental Conservation shall first "consult with the governing bodies of municipalities and villages."

SECTION 11

Amends the term "containment and cleanup" applicable to the chapter to clarify the kinds of qualifying expenses relating to containment and cleanup within the phrase.

SECTION 12

Provides definitions for the terms "service" and "village" that are introduced in amendments made to AS 46.04 by bill sections 10 and 11.

SECTIONS 13 - 17 make amendments to AS 46.08.

SECTION 13

The additional language inserted in AS 46.08.040 by this section authorizes the Commissioner of Community and Regional Affairs to draw from the oil and hazardous release response fund to make grants under the impact assistance program (AS 29.60.500-AS 29.60.599) and for completing impact assessments required by AS 29.60.570. The amendment to paragraph (4) clarifies that state impact assistance payable to villages is allowable as recoverable cost for which the balance of the fund may be used by the commissioner of Environmental Conservation.

SECTION 14

Under AS 46.08.070(c), provides for a system of cash advances to municipalities and villages to support emergency first response initiatives. This was to enable the communities to have funding readily available for emergency first response expenditures.

SECTION 15

Parallels provisions in AS29.60.590 in Section 5 . Authorizes the recovery of the advancements or reimbursement if the Commissioner determines that the municipality or village receiving the funds is responsible for the spill.

SECTION 16 and SECTION 17 parallel those changes made to AS 46.04 by bill SECTIONS 11 and 12 and are included for substantially similar reasons.

SECTIONS 18 - 20 make amendments to AS 46.09.

SECTION 18

The amendment extends the authority of a municipality to act under all pertinent environmental-related chapters within AS 46 that are exercisable within the municipality's boundaries.

SECTION 19 and SECTION 20 parallel those made to AS 46.04 by bill Sections 11 and 12 and are included for substantially similar reasons.

SECTION 21.

Makes Sections 7 and 9, the strict liability provisions retroactive to March 24, 1989.

SECTION 22

All other sections are given an immediate effective date.

Alaska State Legislature

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SPONSOR STATEMENT

CSSSSB 359 (Finance), Municipal Impact Legislation

This legislation was drafted in response to the concerns expressed by the "oiled mayors" of the communities affected by the March 24 Exxon Valdez oil spill. Funds were provided by the State Department of Environmental Conservation to the communities for their emergency first response expenses, such as the purchase of boom material, etc.

However, these communities also experienced far-ranging social and economic impacts as a result of the spill; there was an increased need for health services, an increase in public safety services, public utility services, housing services and an increased usage of public facilities, such as harbors. Communities that rely on subsistence foods found themselves unable to harvest the fish and game because of the danger of toxicity.

These increased services placed an incredible burden on the communities, and there was no state fund or mechanism in place to assist the communities with the costs of these additional and incremental services which had been incurred. Additionally, there is also going to be a loss of revenue, such as that generated by the raw fish tax, inasmuch as so much fishing time was lost. True, Exxon did reimburse the communities for some of their costs but not all of the costs were covered and the need still exists.

Of major consideration is the question, "What if it had not been Exxon?" What if the spill had been caused by a company with far fewer resources? What if there had been no claims process in place?

The Oil Spill Commission recognized this "gap" and addressed the need for local service impact funding in Recommendations 53 and 54 of the Commission Report; specifically, the Commission recommended that a separate fund be created to help local governments with the unreimbursable costs caused by an oil or hazardous substance release.

CSSSSB 359 (Finance) addresses the above concerns and needs by:

- 1) broadening the powers of municipalities and villages under AS 29 and under AS 46 to enable them to more effectively deal with the release or threatened release of oil or a hazardous substance;
- 2) Establishes a system of municipal grants under the Department

Senate District E

of Community and Regional Affairs which are to be triggered by a declaration of a disaster emergency by the Governor. The legislation establishes criteria for evaluating whether a grant is to be made to a municipality or village. These grants are not for emergency first response but rather for the additional and incremental costs of functions and services which arise out of the release of oil or a hazardous substance:

From the \$50 million fund which was established last year from the \$.05 per barrel surcharge (part of the 470 Fund), up to \$10 million would be available for these municipal impact grants.

3) Under Title 46, the legislation authorizes the Department of Environmental Conservation to "advance" money to a municipality or village for emergency first response. This is in addition to the Department's existing authorization to reimburse a municipality for these same expenditures.