

HB

275

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 12, 1991

FURTHER REFERRALS:

Resources
Finance

Date of Committee Action: 4-25-91

The COMMUNITY AND REGIONAL AFFAIRS Committee considered:

HB 275

HOUSE BILL NO. 275

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, and relating to state assistance to municipalities and villages for expenses for prevention and abatement of environmental degradation; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 275 (CRA) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Gail Phillips</i>	X				
<i>Betty D. Jones</i>	-				
<i>Cheri Davis</i>	-				
<i>J. K. [Signature] ^{Gonzales}</i>	✓				
<i>[Signature] ^{Mackie}</i>	✓				
<i>[Signature] ^{BAKER}</i>	-				

[Signature] ^{Mackie}
 CHAIRMAN'S SIGNATURE

7-LS1200G
Chenoweth
4/25/91

CS FOR HOUSE BILL NO. 275 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES DAVIDSON, Kubina

A BILL

FOR AN ACT ENTITLED

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

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

8 * Section 1. INTENT. The provisions of AS 29.60.500 - 29.60.599, added by sec. 7 of this Act, are
9 not intended by the legislature to confirm long-term benefits on municipalities receiving financial
10 assistance under those provisions.

11 * Sec. 2. AS 29.35.020(b) is amended to read:

12 (b) A municipality may adopt an ordinance to exercise a power authorized by this
13 subsection [PROTECT ITS WATER SUPPLY AND WATERSHED,] and may enforce the

1 ordinance outside its boundaries. Before a [THIS] power authorized by this subsection may
 2 be exercised inside the boundaries of another municipality, the approval of the other municipality
 3 must be given by ordinance, and before a power authorized by this subsection may be
 4 exercised inside a village, as that term is defined by AS 46.08.900, the approval of the
 5 village must be given by resolution. A municipality intending to exercise its authority under
 6 this subsection shall act by ordinance, and may adopt an ordinance under this subsection
 7 to

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

9 (2) contain, clean up, or prevent the release or threatened release of oil or
 10 a hazardous substance that may pose an imminent or substantial threat to persons,
 11 property, or natural resources within the municipality's boundaries; however, this
 12 paragraph does not authorize a municipality to enforce an ordinance outside its boundaries
 13 to regulate exploration, development, production, or transportation of oil, gas, or minerals
 14 in a manner inconsistent with the state's management of those resources, and enforcement
 15 of the ordinance must be consistent with a regional master plan prepared by the
 16 Department of Environmental Conservation under AS 46.04.210; in this paragraph,
 17 "natural resources" has the meaning given in AS 46.03.826.

18 * Sec. 3. AS 29.35.020 is amended by adding a new subsection to read:

19 (e) In this section, "village"

20 (A) means the area within a five-mile radius of the village post office or,
 21 if there is no post office, another site designated by the commissioner;

22 (B) does not include an area described in (A) of this paragraph that is
 23 within a city or another village.

24 * Sec. 4. AS 29.35.200 is amended by adding a new subsection to read:

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

30 * Sec. 5. AS 29.35.210(a) is amended by adding a new paragraph to read:

31 (13) contain, clean up, or prevent a release or threatened release of oil or a

1 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,
2 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
3 consistent with a regional master plan for the region in which the borough is located if a plan
4 has been prepared by the Department of Environmental Conservation under AS 46.04.210.

5 * Sec. 6. AS 29.35.220 is amended by adding a new subsection to read:

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

13 * Sec. 7. AS 29.60 is amended by adding new sections to read:

14 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL
15 IMPACT ASSISTANCE.

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

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

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

29 Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) If a release of
30 oil or a hazardous substance has been proclaimed a disaster emergency by the governor under
31 AS 26.23.020, the commissioner may use money from the oil and hazardous substance release

1 response fund to make grants to a municipality or village that is affected by the release or by the
 2 response to the release and that demonstrates that the release or response to the release involves
 3 extraordinary expenditures that are beyond the reasonable capability of the municipality or village
 4 to meet from the current revenue sources of the municipality or village.

5 (b) For each disaster emergency declared by the governor under AS 26.23.020, and
 6 subject to agreement with the commissioner of environmental conservation as to the amount of
 7 money in the fund that may be used by the department to make grants, the commissioner may
 8 expend not more than \$10,000,000 of the balance of the fund that is appropriated to the spill
 9 reserve or of the unrestricted balance of the fund for grants authorized under this section. If the
 10 commissioner and the commissioner of environmental conservation do not agree on the amount
 11 of money in the fund that may be used by the department to make grants under AS 29.60.500 -
 12 29.60.599, the governor shall make the determination.

13 (c) Notwithstanding the limitation of AS 37.07.080(e) against the transfer of money
 14 between appropriations, when the commissioner and the commissioner of environmental
 15 conservation have agreed to the amount of money in the fund that may be used by the
 16 department to make grants, or when that determination has been made by the governor, the
 17 commissioner of environmental conservation shall promptly transfer that amount to the
 18 department for use under AS 29.60.500 - 29.60.599.

19 (d) For money that has been transferred under (c) of this section, if within any one-year
 20 period thereafter the commissioner does not use the money to make a grant under AS 29.60.500 -
 21 29.60.599, the commissioner shall, at the direction of the governor or the request of the
 22 commissioner of environmental conservation, return the unexpended amount transferred under
 23 (c) of this section to the fund.

24 Sec. 29.60.520. PURPOSES OF MUNICIPAL IMPACT GRANTS. (a) A grant made
 25 under AS 29.60.510 may be made only

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

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

- 1 (B) alleviation or mitigation of adverse social or cultural effects;
- 2 (C) public health and welfare needs, including hospital, clinic, and
3 emergency medical services; alcohol, drug abuse, and mental health services; family
4 support services; and the operation of waste disposal systems and water quality
5 improvement systems;
- 6 (D) public safety needs, including police protection, search and rescue, and
7 fire protection;
- 8 (E) public utility needs, including the operation of electric generating
9 plants and distribution systems, water supply systems, telephone systems, and fuel
10 distribution systems;
- 11 (F) housing and office needs;
- 12 (G) transportation needs;
- 13 (H) public administration needs, including the value of the time of staff
14 and administrative personnel necessary to direct efforts to prevent, abate, contain, and
15 remove oil or a hazardous substance; and
- 16 (I) planning needs, including the value of the time of staff and
17 administrative personnel necessary to coordinate efforts with other governments to
18 prevent, abate, contain, and remove oil or a hazardous substance; and
- 19 (2) to compensate the municipality or village for
- 20 (A) the reduction of revenue attributable to the release of the oil or
21 hazardous substance; and
- 22 (B) the costs of projects or activities that are delayed or lost because of
23 the efforts of the municipality or village responding to the release or associated with the
24 containment or cleanup of oil or the hazardous substance.
- 25 (b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may
26 not be used for
- 27 (1) a capital improvement, as that term is defined by AS 46.08.900(1); or
- 28 (2) a capital expenditure, unless the capital expenditure is necessary for a spill
29 response; if money is used for a capital expenditure under this paragraph, the commissioner may
30 require the municipality or village that acquired the item as a capital expenditure to transfer it
31 to the state at the end of the period during which the item is actually used for spill response if

1 the commissioner finds that retention of the item would confer an inappropriate benefit on the
2 municipality or village.

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

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

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

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

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

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

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

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

28 Sec. 29.60.560. IMPACT ASSESSMENT AND REMEDIAL PLANS. (a) For each
29 disaster emergency declared by the governor under AS 26.23.020 based on a release of oil or a
30 hazardous substance, the commissioner, after consulting with and securing the written approval
31 of the attorney general and after consulting with other state agencies, shall

1 (1) make an assessment of the social and economic effects of the release of the
2 oil or hazardous substance;

3 (2) develop a plan to

4 (A) recover the cost of release-related expenditures; and

5 (B) mitigate the social and economic effects of the release of the oil or
6 hazardous substance on the municipalities, the villages, and the region in which the
7 discharge occurs;

8 (b) The commissioner may make the assessment and plans required by (a) of this section
9 by

10 (1) using staff of the department;

11 (2) contracting with a municipality or other entity; or

12 (3) authorizing a municipality or other entity to perform that work and supporting
13 that effort by a grant.

14 (c) Only one assessment and one plan may be completed under this section for each
15 declaration of a disaster emergency.

16 (d) The commissioner may pay the costs of the assessment, the plan, and the recovery
17 of the cost of release-related expenditures from money available in the fund.

18 (e) Expenditures made under this section may be made only from the amount transferred
19 to the commissioner under AS 29.60.510(c), unless

20 (1) the commissioner and the commissioner of environmental conservation
21 mutually agree that payment may be made from money in the oil and hazardous substance release
22 response fund not transferred under AS 29.60.510(c); or

23 (2) the commissioner pays them from another source.

24 Sec. 29.60.590. REGULATIONS. The commissioner and the commissioner of
25 environmental conservation shall jointly develop and adopt regulations that are necessary to
26 implement the purposes of AS 29.60.500 - 29.60.599.

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
30 AS 26.23.020;

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) "service"

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

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

11 (6) "village" means a place within the unorganized borough or within a borough
12 if the power, function, or service for which a grant application is submitted under AS 29.60.500 -
13 29.60.599 is not exercised or provided by the borough on an areawide or nonareawide basis at
14 the time the grant application is submitted, that

15 (A) has irrevocably waived, in a form approved by the Department of
16 Law, any claim of sovereign immunity that might arise in connection with the use of
17 grant money under this chapter; and

18 (B) has

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

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

23 (iii) a council recognized by the commissioner under regulations
24 adopted by the department to determine and give official recognition of village
25 entities under AS 44.47.150(b).

26 * Sec. 8. AS 46.03.760(e) is amended to read:

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

31 (1) direct and indirect costs associated with the abatement, containment, or

1 removal of the pollutant;

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

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

5 (4) all incidental administrative costs.

6 * Sec. 9. AS 46.03.822(a) is amended to read:

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

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

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

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

28 (4) any person who by contract, agreement, or otherwise arranged for disposal or
29 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous
30 substances owned or possessed by the person, other than domestic sewage, or by any other party
31 or entity, at any facility or vessel owned or operated by another party or entity and containing

1 hazardous substances, from which there is a release, or a threatened release that causes the
2 incurrence of response costs, of a hazardous substance;

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

7 * Sec. 10. AS 46.03.822(h) is amended to read:

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

13 * Sec. 11. AS 46.03.900 is amended by adding new paragraphs to read:

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

19 (36) "village" means a place within the unorganized borough or within a borough
20 as to a power, function, or service that is not exercised or provided by the borough on an
21 areawide or nonareawide basis that

22 (A) has irrevocably waived, in a form approved by the Department of
23 Law, any claim of sovereign immunity that might arise under this chapter; and

24 (B) has

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

27 (ii) a traditional village council recognized by the United States as
28 eligible for federal aid to Indians; or

29 (iii) a council recognized by the commissioner of community and
30 regional affairs under regulations adopted by the Department of Community and
31 Regional Affairs to determine and give official recognition of village entities

1 under AS 44.47.150(b).

2 * Sec. 12. AS 46.04.020 is amended by adding a new subsection to read:

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

5 * Sec. 13. AS 46.04.900(5) is amended to read:

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

12 * Sec. 14. AS 46.04.900 is amended by adding new paragraphs to read:

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

15 (21) "village" means a place within the unorganized borough or within a borough
16 as to a power, function, or service that is not exercised or provided by the borough on an
17 areawide or nonareawide basis that

18 (A) has irrevocably waived, in a form approved by the Department of
19 Law, any claim of sovereign immunity that might arise under this chapter; and

20 (B) has

21 (i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian
22 Reorganization Act);

23 (ii) a traditional village council recognized by the United States as
24 eligible for federal aid to Indians; or

25 (iii) a council recognized by the commissioner of community and
26 regional affairs under regulations adopted by the Department of Community and
27 Regional Affairs to determined and give official recognition of village entities
28 under AS 44.47.150(b).

29 * Sec. 15. AS 46.08.040(a) is amended to read:

30 (a) In addition to money in the fund that is transferred to the commissioner of
31 community and regional affairs to make grants under AS 29.60.510 and to pay for impact

1 assessments under AS 29.60.560, the [THE] commissioner of environmental conservation may
2 use money from the fund to

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

7 (2) pay all costs incurred to

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

9 (B) review oil discharge prevention and contingency plans submitted under
10 AS 46.04.030;

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

17 (D) verify or establish proof of financial responsibility required by
18 AS 46.04.040;

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

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

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

28 (6) prepare, review, and revise

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

31 (B) a regional master oil and hazardous substance discharge prevention

1 and contingency plan required by AS 46.04.210; and

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

4 * Sec. 16. AS 46.08.070(c) is amended to read:

5 (c) The department shall [MAY] reimburse a municipality or village for actual expenses,
6 other than normal operating expenses, incurred in the abatement of a release or threatened release
7 and may advance money to a municipality or village to carry out an emergency first
8 response to a release or threatened release of oil or a hazardous substance if

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

11 (2) the commissioner determines that

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

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

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

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

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

1 * Sec. 18. AS 46.08.900 is amended by adding new paragraphs to read:

2 (11) "service"

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

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

9 (12) "village" means a place within the unorganized borough or within a borough
10 if the power, function, or service for which a grant application under AS 29.60.510 is submitted
11 is not exercised or provided by the borough on an areawide or nonareawide basis at the time the
12 grant application is submitted that

13 (A) has irrevocably waived, in a form approved by the Department of
14 Law, any claim of sovereign immunity that might arise in connection with the use of
15 grant money under this chapter; and

16 (B) has

17 (i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian
18 Reorganization Act);

19 (ii) a traditional village council recognized by the United States as
20 eligible for federal aid to Indians; or

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

25 * Sec. 19. AS 46.09.060(b) is amended to read:

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

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

1 (2) "containment and cleanup" includes the direct and indirect efforts associated
2 with the prevention, abatement, containment, or removal of a hazardous substance, and the
3 restoration of the environment; when applied to expenses, the term includes the additional
4 costs of providing a reasonable and appropriate function or service incurred in response to
5 the release of the hazardous substance, including [, AND INCIDENTAL] administrative
6 expenses for the incremental costs of providing the function or service:

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

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

10 * Sec. 22. Sections 9 and 11 of this Act are retroactive to March 24, 1989.

11 * Sec. 23. APPLICABILITY. The amendments made by secs. 7, 8, 15, and 16 of this Act do not
12 apply to a release of oil or a hazardous substance and resultant cleanup activities or to efforts to respond
13 to or abate that release if the release occurred before the effective date of this Act.

14 * Sec. 24. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA
House of Representatives
District 27

Representative Cliff Davidson
Chairman
House Resources Committee



Box V, Juneau, AK 99811
(907) 465-2487
Box 746, Kodiak, AK 99615
(907) 486-8250

TO: Representative Jerry Mackie, Chair
House Community and Regional Affairs Committee

FROM: Representative Cliff Davidson

DATE: 17 April 1991

SUBJECT: Scheduling HB 275 - Municipal Assistance for Oil Spills

House Bill 275 was recently referred to your committee. I would like to request a hearing at your earliest convenience.

After the Exxon Valdez oil spill, the affected communities faced massive social and economic problems with limited financial resources. Legislation was introduced in the 16th Alaska Legislature to allow access to emergency funds through the "Oil Spill Response Fund," (the 470 Fund). That bill failed to advance to 3rd reading on the last night of the session in 1990.

House Bill 275 is very similar to last year's legislation. Again, I would appreciate an early hearing.

STATE OF ALASKA
House of Representatives
District 27

Representative Cliff Davidson
Chairman
House Resources Committee



Box V, Juneau, AK 99811
(907) 465-2487
Box 746, Kodiak, AK 99615
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TO: Representative Jerry Mackie, Chair
House Community & Regional Affairs Committee

FROM: Representative Cliff Davidson

DATE: 24 April 1991

SUBJECT: House Bill 275 - Municipal Reimbursement for Cleanup of
Oil Spill and Other Hazardous Substances Discharges

Although most spills are not as dramatic as that of the Exxon Valdez, our municipal governments are increasingly being required to respond to accidents involving oil and other hazardous substances. Municipal governments are willing and able to respond to these environmental disasters, but frequently lack the financial resources to absorb the increased costs.

Under Alaska law, the spiller ultimately pays the costs associated with oil and hazardous substance discharges. Until they do, those costs are borne by local (as well as the state) governments. HB 275 will allow municipal governments access to the Oil and Hazardous Substance Response Release Fund (470 Fund) to help offset the immediate and increased costs of spill response.

Legislation similar to House Bill 275 was introduced in the 16th Legislature but died before a final vote could be taken. The current bill is very similar to that legislation.

This legislation was originally proposed by the communities that were impacted by the spill of the Exxon Valdez, but I believe that all municipalities will benefit from this legislation.

House Bill 275 will give municipalities the statutory tools and financial resources to respond rapidly and effectively to discharges of oil and other hazardous substances. This legislation will benefit the health and welfare of Alaskan citizens as well as the environment.

I thank you for your favorable consideration.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 275

Revision Date: _____ Department Affected: DEC
 Title: Recovery of damages... state BRU: Environmental Quality
assistance..for prevention & abatement of environmental degradation
 Sponsor: Representative Davidson Component: EQ Projects
 Requestor: _____

COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: NONE

ANALYSIS: (Attach a separate page if necessary.)
 Under normal operating situations, DEC should need no additional resources to implement the legislation.
 However, should a significant oil spill occur, approximately 2 additional positions may be necessary.

Prepared by: Janice Adair
 Division: Commissioner's Office

Phone: 465-2600
 Date: 4/15/91

Approved by Commissioner: *David R. Lesh*
 Agency: Department of Environmental Conservation

Date: 4/16/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



In Support of HB 275

The Alaska Municipal League seeks passage of legislation to establish a program to reimburse municipalities for cleanup of oil spills and discharges of other hazardous substances.

The *Exxon Valdez* oil spill, discharges of chemicals from railroad cars, trucks, and cruise ships, and a variety of other recent incidents involving the release of hazardous substances have emphasized the need for a quick response to cut down on the risk of extensive environmental damage. Municipalities near the release site often have the best chance to respond quickly and thus minimize the spread of the spill, the environmental damage done by it, and the ultimate cost to the state. However, local governments usually are not responsible or liable for such cleanups, nor do they have the budgets or resources to pay for them.

During the 1990 session, legislators considered and nearly passed SB 359, which would have given municipalities authority to undertake cleanups of hazardous substance spills within and near their jurisdictions and established a fund to reimburse them for the cost of such cleanups. The need for legislation that would guarantee full reimbursement for costs of municipal responses to oil and other hazardous materials spills and to authorize the state to advance money to a municipality to carry out an emergency first response has not lessened, and the Alaska Municipal League seeks passage of such a bill during 1991.

A number of changes in the statutes relating to oil spills and other hazardous substance discharges and to municipal powers will be required to reach the League's objective. These changes would:

- extend the authority of municipalities to exercise containment and cleanup of spilled oil and other hazardous substances if the spill occurs outside municipal boundaries. Unified, home rule, and first class boroughs already have such power, but all municipalities need it.
- establish a fund that could be readily accessible by municipalities and villages in the event of a hazardous spill. Grants could be made to meet extraordinary expenditures that are beyond the reasonable capability of the municipality or village to meet given their current revenue sources.

- clarify existing law that permits state reimbursement of municipal expenditures to make it clear that the full costs of the discharge of oil or another hazardous substance can be reimbursed.
- permit the state to advance money to municipalities and villages to carry out an emergency first response.
- permit assessments of the social and economic effects of the release of oil or other hazardous substances on municipalities, villages, and affected regions of the state.
- make it clear that villages as well as the state and municipalities may recover against an entity responsible for a spill for the damage to their natural resources.
- modify existing legislation regarding the strict liability of a spiller to make it clear that all additional costs of services, and all losses of revenue, to a municipality or village brought about by such a spill are recoverable.
- make the recommended changes to the strict liability statute retroactive to March 23, 1989.

4/22/91