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SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

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DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 485-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

SSSB 25

SPONSOR STATEMENT

March 25, 1991

A handwritten signature in black ink, appearing to read "Fred F. Zharoff".

This legislation is intended as a follow-through of the worthy efforts begun during the Sixteenth Legislature to address the needs of communities to effectively respond to and mitigate the extraordinary social and economic costs associated with the containment and cleanup of oil or hazardous substances into the environment, upon the declaration by the governor of a disaster emergency. The broad scope and magnitude of the impacts of such spills became apparent with the occurrence of the March 24, 1989 Exxon Valdez oil spill. It is clear that such spills do present a real and substantial threat to the environment and to the economy and public welfare of affected municipalities and villages, and that a mechanism for the state to provide timely and substantial assistance is both appropriate and necessary.

SSSB 25 addresses the above concerns by:

- 1) Setting up a program to provide municipalities and villages access through DCRA to up to \$10,000,000 in funding, with the agreement of DEC, from the Oil and Hazardous Substance Response Fund ("470 Fund"). These funds are to provide "grants to a municipality or village that...demonstrates that the release or response to the release involves extraordinary expenditures..." for services whose costs are directly or indirectly affected by the spill, and to compensate the municipality or village for reductions in revenue, and the costs of projects or activities that are delayed or lost, because of the spill.
- 2) Providing and defining a mechanism for the transfer of these funds between DEC and DCRA. Community needs are presented to the commissioner of DCRA, who then requests 470 Funds from the commissioner of DEC. If the two commissioners agree on the amount and circumstances, the funds are transferred to DCRA for distribution as grants to the effected communities. Any disagreement between the two commissioners will be resolved by the governor.
- 3) Broadening the powers of municipalities and villages under AS 29 and under AS 46 to more effectively respond to the release or threatened release of oil or a hazardous substance. This grant of power is not intended to preempt state powers, but as a means to facilitate the response to a disaster by municipalities and villages on behalf of the state.
- 4) Authorizing and providing a mechanism for DEC to provide emergency "first response" funds to municipalities and villages to respond to and clean up oil and hazardous substance spills on behalf of the state.

or (B) at crude oil production facilities by crude oil or wastewater treatment process before custody transfer of the crude oil;

(34) "waters" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state. (§ 3 ch 120 SLA 1971; am §§ 16, 17 ch 220 SLA 1976; am § 2 ch 26 SLA 1977; am § 2 ch 129 SLA 1977; am §§ 7, 12 ch 172 SLA 1978; am § 5 ch 163 SLA 1980; am §§ 7, 14 ch 93 SLA 1981; am §§ 115, 116 ch 59 SLA 1982; am § 9 ch 77 SLA 1984; am § 4 ch 97 SLA 1989)

Revisor's notes. — Paragraph (10) was enacted as (34). Renumbered in 1989, at which time the remaining paragraphs were renumbered accordingly.

Effect of amendments. — The 1989 amendment, effective July 1, 1989, added paragraph (10).

Chapter 04. Oil and Hazardous Substance Pollution Control.

Article

1. Oil Pollution Control (§§ 46.04.020, 46.04.030 — 46.04.060, 46.04.080, 46.04.090, 46.04.120)
2. Oil and Hazardous Substance Discharge and Prevention Contingency Plans (§§ 46.04.200, 46.04.210)
3. General Provisions (§ 46.04.900)

Article 1. Oil Pollution Control.

Section

20. Removal of oil discharges
30. Oil discharge prevention and contingency plans
40. Proof of financial responsibility
45. Adjustment of dollar amounts
50. Exemptions

Section

60. Inspections
80. Catastrophic oil discharges
90. Oil discharge cleanup personnel, equipment, expenses
120. {Renumbered}

Sec. 46.04.020. Removal of oil discharges. (a) A person causing or permitting the discharge of oil shall immediately contain and clean up the discharge. The department may waive this requirement

(1) if it determines, in consultation with the United States Coast Guard or the United States Environmental Protection Agency, as appropriate, that containment or cleanup is technically not feasible; or

(2) if the cleanup or containment activities would result in greater environmental damage than the discharge itself.

(b) The containment and cleanup of discharged oil must be carried out in a manner approved by the department. Waste generated as a result of containment or cleanup activities shall be disposed of in a

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manner approved by the department. The requirement of this subsection for approval of containment and cleanup activities does not apply to the United States Coast Guard or United States Environmental Protection Agency acting under the authority of § 311(c) or (d) of the Clean Water Act.

(c) If the department determines that containment or cleanup activities are not adequate, it may direct the person engaged in the activities to cease and may undertake the activities itself through contract or its own resources, or both. The department may not direct the cessation of containment or cleanup activities undertaken by the United States Coast Guard or United States Environmental Protection Agency under § 311 of the Clean Water Act. However, the department may undertake, direct, or authorize supplemental cleanup or containment efforts.

(d) The department shall provide for the immediate containment or cleanup of an oil discharge of unexplained origin unless

(1) the department determines, in consultation with the United States Coast Guard or the United States Environmental Protection Agency that containment or cleanup of the oil discharge is technically not feasible; or

(2) the containment or cleanup activities would result in greater environmental damage than the discharge itself.

(e) The department shall enter into negotiations for memoranda of understanding or cooperative agreements with the United States Coast Guard, the United States Environmental Protection Agency, and other persons in order to

(1) facilitate coordinated and effective oil discharge prevention and response in the state, including agreements relating to development and enforcement of vessel traffic control and monitoring systems for tank vessels and oil barges operating in or near the waters of the state;

(2) provide for cooperative review of oil discharge prevention and contingency plans submitted to the department under AS 46.04.030;

(3) provide for cooperative inspections of oil terminal facilities by the department and the United States Coast Guard or United States Environmental Protection Agency; and

(4) provide for cooperative oil discharge notification procedures. (§ 2 ch 116 SLA 1980; am § 8 ch 191 SLA 1990)

Effect of amendments. — The 1990 amendment, effective June 27, 1990, substituted all of the present language of paragraph (e)(1) following "discharge" for "response in the state", and inserted "prevention and" in paragraph (e)(2).

Sec. 46.04.030. Oil discharge prevention and contingency plans. (a) A person may not cause or permit the operation of an oil terminal facility in the state unless an oil discharge prevention and contingency plan for the facility has been approved by the department and the person is in compliance with the plan.

(b) A person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless an oil discharge prevention and contingency plan for the pipeline or facility has been approved by the department and the person is in compliance with the plan.

(c) Except as provided in (n) of this section, a person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or an oil barge, unless an oil discharge prevention and contingency plan for the tank vessel or oil barge has been approved by the department and the person is in compliance with the plan.

(d) Upon approval of a contingency plan, the department shall issue to the plan holder a certificate stating that the contingency plan has been approved by the department. The certificate must include the name of the facility, pipeline, tank vessel, or oil barge for which it is issued, the effective date of the contingency plan, and the date by which the contingency plan must be submitted for renewal. A contingency plan must be submitted for renewal every three years.

(e) The department may attach reasonable terms and conditions to its approval or modification of a contingency plan that the department determines are necessary to ensure that the applicant for a contingency plan has access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel as provided in (k) of this section, and to ensure that the applicant complies with the contingency plan. The contingency plan must provide for the use by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

- (1) periodic training;
- (2) response team exercises; and
- (3) verifying access to inventories of equipment, supplies, and personnel identified as available in the approved contingency plan.

(f) Upon request of a plan holder or on the department's own initiative, the department, after notice and opportunity for hearing, may modify its approval of a contingency plan if the department determines that a change has occurred in the operation of a facility or vessel necessitating an amended or supplemented plan, or the operator's discharge experience demonstrates a necessity for modification.

The department, after notice and opportunity for hearing, may revoke its approval of a contingency plan if the department determines that

- (1) approval was obtained by fraud or misrepresentation;
- (2) the operator does not have access to the quality or quantity of resources identified in the plan;
- (3) a term or condition of approval or modification has been violated; or
- (4) the person is not in compliance with the contingency plan and the deficiency materially affects the plan holder's response capability.

(g) Failure of a holder of an approved or modified contingency plan to comply with the plan, or to have access to the quality or quantity of resources identified in the plan or to respond with those resources within the shortest possible time in the event of a spill is a violation of this chapter for purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applicable law. If the holder of an approved or modified contingency plan fails to respond to and conduct cleanup operations of an unpermitted discharge of crude oil with the quality and quantity of resources identified in the plan and in a manner required under the plan, the holder is strictly liable, jointly and severally, for the civil penalty assessed under AS 46.03.758, 46.03.759, or 46.03.760 against any other person for that discharge.

(h) The department is the only state agency that has the power to approve, modify, or revoke a contingency plan for the purposes of this section. The department shall exercise its power under this section in a timely manner. Except for prosecutions under AS 46.03.790(b) and except as provided in (i) of this section, it is not a defense to an action brought for a violation of (a) — (c) of this section that the person charged believed that a current contingency plan had been approved by the department.

(i) It is a defense to an action brought for a violation of (a) — (c) of this section that the person charged relied on a certificate of approval issued by the department under (d) of this section unless the person knew or had reason to know at the time of the alleged violation that approval of the plan had been revoked or that the holder of the plan was not capable of carrying out the plan.

(j) Before the department approves or modifies a contingency plan under this section, the department shall provide a copy of the contingency plan to the Department of Fish and Game and to the Department of Natural Resources for their review. The department shall by regulation establish the procedures and time limits applicable to agency review of contingency plans.

(k) Except as provided in (m) and (o) of this section, the holder of an approved contingency plan required under this section shall maintain, or have available under contract, in its region of operation or in another region of operation approved by the department, singly or in conjunction with other operators, sufficient oil discharge containment,

storage, transfer, and cleanup equipment, personnel, and resources to meet the following response planning standards:

(1) for a discharge from an oil terminal facility, the plan holder shall plan to be able to contain or control, and clean up a discharge equal to the capacity of the largest oil storage tank at the facility within 72 hours, except that if the department determines that the facility is located in an area of high risk because of natural or man-made conditions outside of the facility, it may increase the volume requirement under this paragraph so that the contingency plan must be designed for a response that is greater in amount than the capacity of the largest oil storage tank at the facility;

(2) for a discharge from an exploration or production facility or a pipeline, the plan holder shall plan to be able to contain or control, and clean up the realistic maximum oil discharge within 72 hours;

(3) for a discharge of crude oil from a tank vessel or oil barge, the plan holder shall plan to be able to contain or control, and clean up a realistic maximum oil discharge as provided in (A), (B), and (C) of this paragraph:

(A) for tank vessels and oil barges having a cargo volume of less than 500,000 barrels, the plan holder shall maintain at a minimum in the region of operation, equipment, personnel, and other resources sufficient to contain or control, and clean up a 50,000 barrel discharge within 72 hours;

(B) for tank vessels and oil barges having a cargo volume of 500,000 barrels or more, the plan holder shall maintain at a minimum in its region of operation, equipment, personnel, and other resources sufficient to contain or control, and clean up a 300,000 barrel discharge within 72 hours;

(C) in addition to the minimum equipment, personnel, and other resources required to be maintained within the region of operation by (A) or (B) of this paragraph, a plan holder shall maintain, either within or outside of the plan holder's region of operation, additional equipment, personnel, and other resources sufficient to contain or control, and clean up a realistic maximum discharge within the shortest possible time; the plan holder must demonstrate that the equipment, personnel, and other resources maintained outside the plan holder's region of operation are accessible to the plan holder and will be deployed and operating at the discharge site within 72 hours;

(4) for a discharge from a tank vessel or oil barge carrying noncrude oil in bulk as cargo, the plan holder shall plan to be able to contain or control 15 percent of the maximum capacity of the vessel or barge or the realistic maximum oil discharge, whichever is greater, within 48 hours and clean up the discharge within the shortest possible time consistent with minimizing damage to the environment;

(5) for a discharge subject to the provisions of (1) — (3) of this subsection that enters a receiving environment other than open

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water, the time requirement for clean up of the portion of the discharge that enters the receiving environment may, in the department's discretion, be within the shortest possible time consistent with minimizing damage to the environment.

(l) The provisions of (k) of this section do not constitute cleanup standards that must be met by the holder of a contingency plan. Notwithstanding (k) of this section, failure to remove a discharge within the time periods set out in (k) of this section does not constitute failure to comply with a contingency plan for purposes of (g) of this section or for the purpose of imposing administrative, civil, or criminal penalties under any other law.

(m) When considering whether to approve or modify a contingency plan, the department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems, or enhanced crew or staffing levels have been implemented, and, in its discretion, may make exceptions to the requirements of (k) of this section to reflect the reduced risk of oil discharges from the facility, pipeline, vessel, or barge for which the plan is submitted or being modified.

(n) A tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of (c) of this section if the tank vessel or oil barge has received prior approval of the department. The department may approve exemptions under this subsection upon application and presentation of information required by the department.

(o) A holder of an approved contingency plan does not violate the terms of the contingency plan by furnishing to another plan holder, with the approval of the department, equipment, materials, or personnel to assist the other plan holder in a response to an oil discharge. The plan holder shall replace or return the transferred equipment, materials, and personnel as soon as feasible. The department shall by regulation determine the maximum amount of equipment, materials, or personnel and the maximum amount of time for which it will approve a transfer.

(p) The department shall approve or disapprove a proposed contingency plan within 65 days after it receives a complete application for approval under this section.

(q) In this section,

(1) "contingency plan" means an oil discharge prevention and contingency plan required under this section;

(2) "in compliance with the plan" means, with respect to a contingency plan, to

(A) establish and carry out procedures identified in the plan as being the responsibility of the holder of the plan;

(B) have access to and have on hand the quantity and quality of equipment, personnel, and other resources identified as being accessible or on hand in the plan;

(C) fulfill the assurances espoused in the plan in the manner described in the plan;

(D) comply with terms and conditions attached to the plan by the department under the authority of (e) of this section; and

(E) successfully demonstrate the ability to carry out the plan when required by the department under (e) of this section;

(3) "realistic maximum oil discharge" means the maximum and most damaging oil discharge that the department estimates could occur during the lifetime of the tank vessel, oil barge, facility, or pipeline based on the size, location, and capacity of the tank vessel, oil barge, facility, or pipeline; on the department's knowledge and experience with the tank vessel, oil barge, facility, or pipeline or with similar tank vessels, oil barges, facilities, or pipelines; and on the department's analysis of possible mishaps to the tank vessel or oil barge or at the facility or pipeline or to similar tank vessels or oil barges or at similar facilities or pipelines;

(4) "region of operation," with respect to the holder of a contingency plan, means the area where the operations of the holder that require a contingency plan are located, the boundaries of which correspond to the regional boundaries established by the commissioner for regional master planning purposes under AS 46.04.210. (§ 2 ch 116 SLA 1980; am §§ 1, 2 ch 140 SLA 1988; am § 6 ch 41 SLA 1989; am §§ 9, 10 ch 191 SLA 1990)

Cross references. — For required study relating to noncrude oil tankers and barges, see § 31, ch. 191, SLA 1990 in the Temporary and Special Acts.

Effect of amendments. — The 1988 amendment, in subsection (e), added paragraphs (1)-(3) and substituted "or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including" for "to undertake discharge exercises" in the last sentence in the introductory paragraph; and added subsection (g).

The 1989 amendment, effective August 10, 1989, added the second sentence in subsection (g).

The 1990 amendment, effective June 27, 1990, rewrote subsections (a)-(g) and added subsections (h)-(q).

Editor's notes. — Section 32(a), ch. 191, SLA 1990 provides that (k)-(m) of this section "do not apply to oil discharge prevention and contingency plans until June 1, 1991. On and after June 1, 1991, a contingency plan must comply with AS 46.04.030(k)-(m), regardless of whether the contingency plan is due for renewal under AS 46.04.030(d), as amended by § 9, ch. 191, SLA 1990."

AS 46.03.790(b), referred to in subsection (h), was repealed by § 5, ch. 141, SLA 1990, effective September 19, 1990.

Sec. 46.04.040. Proof of financial responsibility. (a) A person may not cause or permit the operation of an oil terminal facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for a crude oil terminal

is \$50,000,000 per incident. Proof of financial responsibility required for a noncrude oil terminal is \$25, per incident, for each barrel of total noncrude oil storage capacity at the terminal or \$1,000,000, whichever is greater, subject to a maximum of \$50,000,000. For purposes of this subsection, an oil terminal facility that stores both crude oil and noncrude oil is subject to the financial responsibility requirements applicable to the type of facility that corresponds to the type of oil storage that predominates at the facility. However, if the facility stores more noncrude oil than crude oil, the \$25 per incident, per barrel requirement of this subsection applies to each barrel of oil storage capacity at the facility.

(b) A person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for a pipeline or an offshore exploration or production facility is \$50,000,000 per incident. Proof of financial responsibility required for an onshore production facility is \$20,000,000 per incident. Proof of financial responsibility required for an onshore exploration facility is \$5,000,000 per incident.

(c) Except as provided in (m) of this section, a person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or an oil barge, unless the person operating the tank vessel or oil barge has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required under this subsection is

(1) \$300, per incident, for each barrel of storage capacity or \$100,000,000, whichever is greater, for a tank vessel or barge carrying crude oil;

(2) \$100, per incident, for each barrel of storage capacity or \$1,000,000, whichever is greater, subject to a maximum of \$35,000,000, for a tank vessel or barge carrying noncrude oil.

(d) Except for prosecutions under AS 46.03.790(b) and except as provided in (k) of this section, it is not a defense to an action brought for violation of (a) — (c) of this section that the person charged believed in good faith that proof of financial ability to respond in damages had been furnished to, and approved by, the department.

(e) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3) surety, (4) guarantee, (5) letter of credit approved by the department, or (6) other proof of financial responsibility approved by the department, including proof of financial responsibility provided by a group of insureds who have agreed to cover pollution risks of members of the group under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) may be brought in a state court

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directly against the insurer, the group, or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent for service of process in the state. For purposes of this subsection, an insurer, other than a group of insureds whose agreement has been approved by the department, must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state.

(f) Acceptance of proof of financial responsibility expires

(1) one year from its issuance for self-insurance;

(2) on the effective date of a change in the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility; or

(3) on the expiration or cancellation of the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility.

(g) The person whose proof of financial responsibility is accepted by the department under this section shall notify the department at least 30 days before the effective date of a change, expiration or cancellation in the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility. Application for renewal of acceptance of proof of financial responsibility under this section must be filed at least 30 days before the date of expiration.

(h) The department, after notice and hearing, may revoke acceptance of proof of financial responsibility if it determines that

(1) acceptance was procured by fraud or misrepresentation; or

(2) a change of circumstance has occurred other than a change specified in (f)(1) — (3) of this section, which would have warranted denial of the application.

(i) Financial responsibility under this section extends to a loss compensable under AS 46.03.760(e) or 46.03.822 and an assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or AS 46.04.030(g).

(j) Upon acceptance and approval of proof of financial responsibility under this section, the department shall issue to the applicant a certificate stating that the state's financial responsibility requirements have been satisfied. The certificate must include the name of the facility, pipeline, tank vessel, or oil barge for which it is issued and the expiration date of the certificate.

(k) It is a defense to an action brought for violation of (a) — (c) of this section that the person charged relied on a certificate of approval issued under (j) of this section unless the person knew or had reason to know at the time of the alleged violation that the approval had been revoked or was expired.

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(D) Notwithstanding the requirements of (e) of this section, the applicant may provide evidence of financial responsibility provided by an insurer or other person who does not agree to be subject to direct action in state courts or to appoint an agent for service of process if

(1) the department is satisfied that the insurance or other form of financial responsibility covers judgments under the statutes listed in (e) of this section;

(2) the applicant provides proof of \$50,000,000, or the amount required by (a) — (c) of this section, whichever is less, in insurance or other form of financial responsibility that meets the requirements of (e) of this section; and

(3) the applicant provides a sworn statement or affidavit that insurance or other form of financial responsibility that meets the requirements of (e) of this section is not available in greater amounts.

(m) A tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of (c) of this section if the tank vessel or oil barge has received prior approval of the department. The department may approve an exemption under this subsection upon application and presentation of information required by the department. (§ 2 ch 116 SLA 1980; §§ 117, 118 ch 59 SLA 1982; am §§ 7, 8 ch 41 SLA 1989; am §§ 11 — 18 ch 191 SLA 1990)

Effect of amendments. — The 1989 amendments, effective August 10, 1989, inserted "or AS 46.04.030(g) or to collect penalties imposed under AS 46.03.759" in the second sentence in subsection (e) and inserted the references to "46.03.759" and "46.04.030(g)" in subsection (i).

The 1990 amendment, effective June 27, 1990, rewrote subsections (a)-(f); in subsection (g) substituted all of the present language of the first sentence following "guarantee" for "or insurance agreement"; and added subsections (j)-(m).

Editor's notes. — Section 32(b), ch. 191, SLA 1990 provides that the amend-

ments to this section made by §§ 11 — 18, ch. 191, SLA 1990, "do not apply to persons required to show proof of financial responsibility until June 1, 1991. On and after June 1, 1991, proof of financial responsibility must comply with AS 46.04.040, as amended by §§ 11 — 18, ch. 191, regardless of whether acceptance of proof of financial responsibility has expired under AS 46.04.040(f), as amended by § 16, ch. 191."

AS 46.03.790(b), referred to in subsection (b), was repealed by § 5, ch. 141, SLA 1990, effective September 19, 1990.

Sec. 46.04.045. Adjustment of dollar amounts. (a) The dollar amounts in AS 46.04.040 change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all urban consumers for the Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January 1990 is the reference base index.

(b) The dollar amounts change on October 1 of each third year according to the percentage change between the index for January of that year and the most recent index used to determine whether to change the dollar amounts. After calculation of the new amounts, the resulting amounts shall be rounded to the nearest cent.

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The department shall adopt a regulation announcing

(1) on or before June 30 of each third year, the changes in dollar amounts required by (b) of this section; and

(2) promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(e) The department shall also provide notification of a change in dollar amounts required under (b) of this section to the clerks of court in each judicial district of the state. (§ 19 ch 191 SLA 1990)

Effective dates. — Section 33, ch. 191, June 27, 1990, in accordance with AS SLA 1990 makes this section effective 01.10.070(c).

Sec. 46.04.050. Exemptions. The provisions of AS 46.04.030, 46.04.040, and 46.04.060 do not apply to an oil terminal facility that has an effective storage capacity of less than 5,000 barrels of crude oil or less than 10,000 barrels of noncrude oil. (§ 2 ch 116 SLA 1980; am § 20 ch 191 SLA 1990)

Cross references. — For required survey of noncrude oil terminal facilities with an effective storage capacity of 5,000 to 10,000 barrels, see § 30, ch. 191, SLA 1990 in the Temporary and Special Acts.

Effect of amendments. — The 1990 amendment, effective June 27, 1990, rewrote this section.

Sec. 46.04.060. Inspections. (a) In addition to other rights of access or inspection conferred upon the department by law or otherwise, the department may at reasonable times and in a safe manner enter and inspect oil terminal facilities, pipelines, exploration and production facilities, tank vessels, and oil barges in order to

(1) ensure compliance with the provisions of this chapter; or

(2) participate in an examination of the structural integrity and the operating and mechanical systems of those vessels, barges, pipelines, and facilities by federal and state agencies with jurisdiction.

(b) When the department determines that no federal or state agencies with jurisdiction are performing timely and adequate inspections of an oil terminal facility, pipeline, exploration or production facility, tank vessel, or oil barge, it may perform its own inspection of the

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structural integrity and operating and mechanical systems of a facility, pipeline, tank vessel, or oil barge by using personnel with qualifications in the areas being inspected. (§ 2 ch 116 SLA 1980; am §§ 21, 22 ch 191 SLA 1990)

Effect of amendments. — The 1990 amendment, effective June 27, 1990, re-

Sec. 46.04.080. Catastrophic oil discharges. (a) The actual or imminent occurrence of a catastrophic oil discharge constitutes a disaster emergency under AS 26.23 without a declaration of disaster by the governor under AS 26.23.020. The department and the Alaska division of emergency services, Department of Military and Veterans' Affairs, shall coordinate their duties under AS 26.23.040 and AS 46.08.100 — 46.08.190 as they apply to catastrophic oil discharges, consistent with the responsibilities assigned to them under applicable incident command systems.

(b) The department shall promptly, under AS 46.04.010, seek reimbursement of oil discharge cleanup or containment expenses incurred as a result of an actual or imminent catastrophic oil discharge under AS 26.23.050. (§ 2 ch 116 SLA 1980; am § 10 ch 190 SLA 1990)

Effect of amendments. — The 1990 amendment rewrote subsection (a).

Sec. 46.04.090. Oil discharge cleanup personnel, equipment, expenses. (a) The department, when feasible, shall enter into contracts with persons or private organizations to provide the personnel, equipment, or other services or supplies that may be required to carry out this chapter. Contracts under this section are governed by AS 36.30 (State Procurement Code). When private contracting is not feasible, the department may establish and maintain at ports, harbors, or other locations in the state, the cleanup personnel, equipment, and supplies that, in its judgment, are necessary to carry out this chapter. When exercising its authority under this subsection, the department shall coordinate with the Department of Military and Veterans' Affairs to avoid duplication of efforts.

(b) Inspection and enforcement employees of the department designated by the commissioner are peace officers in the performance of their duties under this chapter, AS 46.03, and AS 46.09. (§ 2 ch 116 SLA 1980; am § 16 ch 59 SLA 1986; am § 54 ch 106 SLA 1986; am § 11 ch 190 SLA 1990)

Effect of amendments. — The 1990 amendment added the last sentence in

Sec. 46.04.120. [Renumbered as AS 46.04.900.]

Article 2. Oil and Hazardous Substance Discharge and Prevention Contingency Plans.

Section

200. State master plan

210. Regional master plan

Cross references. — For legislative findings and purpose in connection with the enactment of AS 46.04.200 — 46.04.210, see § 1, ch. 90, SLA 1989 in the Temporary and Special Acts; for deadlines for initial master plans under AS 46.04.200 and 46.04.210, see § 4, ch. 90, SLA 1989 in the Temporary and Special Acts.

Editor's notes. — Section 5, ch. 90,

SLA 1989 provides that chapter 90, which enacted AS 46.04.200 — 46.04.210, "does not relieve a person responsible for an oil terminal facility, offshore exploration or production facility, or a vessel that transports crude oil, or a person who has control of a hazardous substance, from the responsibility for containing and cleaning up a discharge of oil or the hazardous substance as required by law."

Sec. 46.04.200. State master plan. (a) The department shall prepare and annually review and revise a statewide master oil and hazardous substance discharge prevention and contingency plan.

(b) The state master plan prepared under this section must

(1) take into consideration the elements of an oil discharge prevention and contingency plan approved or submitted for approval under AS 46.04.030;

(2) include incident command systems that clarify and specify the respective responsibilities of each of the following in the assessment, containment, and cleanup of various types and sizes of discharges of oil or a hazardous substance into the environment of the state:

(A) the Department of Environmental Conservation, the division of emergency services in the Department of Military and Veterans' Affairs, and other agencies of the state; responsibilities assigned to each agency must be consistent with its statutory authority;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

(E) private parties whose land and other property may be affected by the oil or hazardous substance discharge; and

(F) other parties identified by the commission as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance discharge;

(3) include incident command systems that specify the respective responsibilities of parties identified in (2) of this subsection in an emergency response under AS 26.23, AS 46.03.865, or AS 46.04.080;

responsibilities assigned to each state agency must be consistent with its statutory authority;

(4) identify actions necessary to reduce the likelihood of catastrophic oil discharges and significant discharges of hazardous substances; and

(5) designate the locations where oil and hazardous substance emergency response depots should be established in the state and where emergency response corps personnel should be available.

(c) In preparing and annually reviewing the state master plan, the commissioner shall

(1) consult with municipal and community officials, and with representatives of affected regional organizations;

(2) submit the draft plan to the public for review and comment;

(3) submit to the legislature for review, not later than the 10th day following the convening of each regular session, the plan and any annual revision of the plan;

(4) require or schedule unannounced oil spill drills to test the sufficiency of an oil discharge prevention and contingency plan approved under AS 46.04.030 or of the cleanup plans of a party identified under (b)(2) of this section; and

(5) submit the plan and any annual revision to the Alaska State Emergency Response Commission for its review and approval under AS 46.13.045. (§ 2 ch 90 SLA 1989; am §§ 12, 13 ch 190 SLA 1990; am § 23 ch 191 SLA 1990)

Effect of amendments. — The first 1990 amendment rewrote subsection (b) and, in subsection (c), added paragraph (5).

The second 1990 amendment, effective

June 27, 1990, transposed the words "prevention" and "and" in subsection (a) and inserted "prevention and" in paragraphs (b)(1) and (c)(4).

Sec. 46.04.210. Regional master plan. (a) For any region of the state, the boundaries of which are determined by the commissioner by regulation, in which the department is required to review and approve an oil discharge prevention and contingency plan submitted by a person under AS 46.04.030, the department shall prepare and annually review and revise a regional master oil and hazardous substance discharge prevention and contingency plan.

(b) The provisions of AS 46.04.200(b) and (c) apply to preparation and review of a regional master plan under this section. (§ 2 ch 90 SLA 1989; am § 24 ch 191 SLA 1990)

Effect of amendments. — The 1990 amendment, effective June 27, 1990, inserted "prevention and" near the middle

of subsection (a) and transposed the words "prevention" and "and" near the end of that subsection.

Article 3. General Provisions.**Section**
900. Definitions

Sec. 46.04.900. Definitions. In this chapter, unless the context requires otherwise,

(1) "barrel" is a measure of capacity equal to the space occupied by 42 U.S. gallons at 60 degrees Fahrenheit;

(2) "catastrophic oil discharge" means an oil discharge in excess of 100,000 barrels, or any other discharge which the governor determines presents a grave and substantial threat to the economy or environment of the state;

(3) "Clean Water Act" means the Federal Water Pollution Control Act of 1972 (P.L. 92-500), as amended by the Clean Water Act of 1977 (P.L. 95-217), as amended (33 U.S.C. 1251 — 1376);

(4) "commissioner" means the commissioner of environmental conservation;

(5) "containment and cleanup" includes all direct and indirect efforts associated with the prevention, abatement, containment or removal of a pollutant, the restoration of the environment to its former state, and all incidental administrative costs;

(6) "department" means the Department of Environmental Conservation;

(7) "discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(8) "exploration facility" means a platform, vessel, or other facility used to explore for hydrocarbons in or on the waters of the state or in or on land in the state; the term does not include platforms or vessels used for stratigraphic drilling or other operations that are not authorized or intended to drill to a producing formation;

(9) "oil" means oil of any kind and in any form, whether crude, refined, or a petroleum by-product, including but not limited to petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquefied natural gas, propane, butane, or other liquid hydrocarbons regardless of specific gravity;

(10) "oil barge" means a vessel which is not self-propelled and which is constructed or converted to carry oil as cargo in bulk;

(11) "oil terminal facility" means an onshore or offshore facility of any kind, and related appurtenances, including but not limited to a deepwater port, bulk storage facility or marina, located in, on, or under the surface of the land or waters of the state, including tide and submerged land, which is used for the purpose of transferring, processing, refining, or storing oil; a vessel is considered an oil terminal facility only when it is used to make a ship-to-ship transfer of oil, and

when it is traveling between the place of the ship-to-ship transfer of oil and an oil terminal facility;

(12) "operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(13) "person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, partnership, association, firm, trust, estate, or any other entity;

(14) "pipeline" means the facilities, including piping, compressors, pump stations, and storage tanks, used to transport crude oil and associated hydrocarbons between production facilities or from one or more production facilities to marine vessels;

(15) "production facility" means a drilling rig, drill site, flow station, gathering center, pump station, storage tank, well, and related appurtenances on other facilities to produce, gather, clean, dehydrate, condition, or store crude oil and associated hydrocarbons in or on the water of the state or on land in the state, and gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility.

(16) "self-propelled" means propelled either by machinery aboard the vessel, or by a tug or other vessel secured into the cargo-carrying vessel through special hull design;

(17) "tank vessel" means a self-propelled waterborne vessel that is constructed or converted to carry liquid bulk cargo in tanks and includes tankers, tankships, and combination carriers when carrying oil; the term does not include vessels carrying oil in drums, barrels, or other packages, or vessels carrying oil as fuel or stores for that vessel;

(18) "vessel" includes tank vessels and oil barges;

(19) "waters of the state" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state. (§ 2 ch 116 SLA 1980; am §§ 25 — 27 ch 191 SLA 1990)

Revisor's notes. — Formerly AS 46.04.120. Renumbered in 1989. Paragraphs (14) and (15) were enacted as (18) and (19) respectively. Renumbered in 1990, at which time former paragraphs (14)-(17) were renumbered accordingly.

Effect of amendments. — The 1990 amendment, effective June 27, 1990, rewrote paragraph (8), added present paragraphs (14) and (15), and inserted "waterborne" near the beginning of present paragraph (17).

Chapter 08. Oil and Hazardous Substance Releases.

Article

1. Release Response Fund (§§ 46.08.020, 46.08.040, 46.08.060 — 46.08.080)
2. Oil and Hazardous Substance Response Office (§§ 46.08.100 — 46.08.190)

Article 1. Release Response Fund.

Section

- 20. Financing of the fund
- 40. Purposes of the fund
- 60. Report to the legislature
- 70. Reimbursement for containment and cleanup

Section

- 75. Liens against property as security for state expenditures
- 80. Regulations

Sec. 46.08.020. Financing of the fund. (a) The legislature may appropriate from the following sources to the fund:

(1) money received from federal, state, or other sources or from a private donor;

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site, but excluding funds from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action;

(3) fines, penalties, or damages recovered under AS 46.08.005 — 46.08.080 or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance.

(b) Money received by the state under (a)(2) and (a)(3) of this section shall be deposited in the general fund and credited to a special account called the "oil and hazardous substance release mitigation account." The legislature may annually appropriate to the fund from this account a sum equal to the amount received under (a)(2) and (a)(3) of this section during the calendar year preceding the legislative session in which the appropriations are to be made. (§ 1 ch 59 SLA 1986)

Revisor's notes. — A reference to "AS 46.08.005 — 46.08.080" was substituted for "this chapter" in (a)(3) of this section in 1989 to reflect the enactment of AS 46.08.100 — 46.08.190.

Sec. 46.08.040. Purposes of the fund. (a) The commissioner may use money from the fund to

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

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nent danger, or to the

(2) pay all costs incurred to

(A) establish and maintain the oil and hazardous substance re-
sponse office;

(B) review oil discharge prevention and contingency plans submit-
ted under AS 46.04.030;

(C) conduct training, response exercises, inspections, and tests, in
order to verify equipment inventories and ability to prevent and re-
spond to oil and hazardous substance release emergencies, and to un-
dertake other activities intended to verify or establish the prepared-
ness of the state, a municipality, or a party required by AS 46.04.030
to have an approved contingency plan to act in accordance with that
plan; and

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

(3) pay the expenses incurred by the Alaska division of emergency
services for the oil and hazardous substance response corps and the oil
and hazardous substance response depots when presented with appro-
priate documentation by the division;

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

(5) recover the cost to the state or to a municipality of a
containment and cleanup resulting from the release or the threatened
release of oil or a hazardous substance;

(6) prepare, review, and revise

(A) the state's master oil and hazardous substance discharge pre-
vention and contingency plan required by AS 46.04.200; and

(B) a regional master oil and hazardous substance discharge pre-
vention and contingency plan required by AS 46.04.210; and

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

(b) When the governor declares a disaster related to an oil or haz-
ardous substance discharge emergency under AS 26.23.020(c), the
governor may, during the effective period of the disaster emergency,
use money from the fund to respond to the disaster emergency.

(c) Notwithstanding other provisions of this section, money from
the fund may not be used for a purpose specified in (a)(2)-(7) of this
section unless funds are available from an appropriation made specifi-
cally for that purpose.

(d) Upon a request from the Alaska Legislative Council, the com-
missioner shall use money from the fund to reimburse the Alaska
Legislative Council for expenditures that it makes for the operation of
the Citizens' Oversight Council on Oil and Other Hazardous Sub-
stances, established under AS 24.20.600. (§ 1 ch 59 SLA 1986; am § 3
ch 90 SLA 1989; am § 2 ch 113 SLA 1989; am §§ 14, 15 ch 190 SLA
1990; am § 28 ch 191 SLA 1990; am § 3 ch 199 SLA 1990)

Revisor's notes. — Paragraphs (5) and (6) were enacted as (4) and (5) respectively. Renumbered in 1989.

Subsection (d) was enacted as (b). Relettered in 1990.

Effect of amendments. — The first 1989 amendment, effective June 3, 1989, in paragraph (1), added "investigate and evaluate the release or threatened release of oil or a hazardous substance, and" at the beginning and substituted "and assessing, to address a release" for "assessing, investigating, and evaluating the release"; and added paragraphs (5) and (6).

The second 1989 amendment, effective June 16, 1989, added present paragraph (2) and designated former paragraphs (2) and (3) as paragraphs (3) and (4).

The first 1990 amendment, effective September 24, 1990, rewrote subsection (a) and added subsections (b) and (c).

The second 1990 amendment, effective June 27, 1990, also rewrote subsection (a).

The third 1990 amendment, effective September 25, 1990, added subsection (d).

The 1990 amendments were harmonized by the revisor.

Editor's notes. — Section 5, ch. 90, SLA 1989 provides that the amendments to this section by that chapter do "not relieve a person responsible for an oil terminal facility, offshore exploration or production facility, or a vessel that transports crude oil, or a person who has control of a hazardous substance, from the responsibility for containing and cleaning up a discharge of oil or the hazardous substance as required by law."

For essentially similar language in connection with the amendments to this section by ch. 113, SLA 1989, see § 4, ch. 113, SLA 1989 in the Temporary and Special Acts.

Sec. 46.08.060. Report to the legislature. (a) The commissioner shall submit a report to the legislature not later than the 10th day following the convening of each regular session of the legislature. The report may include information considered significant by the commissioner but must include:

(1) the amount of money expended by the department under AS 46.08.040(a) during the preceding fiscal year;

(2) the amount and source of money received and money recovered by or on behalf of the department during the preceding fiscal year as specified in AS 46.08.020;

(3) a summary of municipal participation in the department's responses that were funded by the fund;

(4) a detailed summary of department activities in responses funded by the fund during the preceding fiscal year, including response descriptions and statements outlining the nature of the threat; in this paragraph, "detailed" includes information describing each personal services position and total compensation for that position, each contract in excess of \$20,000, and each purchase in excess of \$10,000; and

(5) the projected cost to the department for the next fiscal year of monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the fiscal year.

(b) As part of the department's on-going identification efforts associated with oil spill or hazardous waste sites, the commissioner shall include in the report under this section

(1) a summary of the sites identified by the department;

(2) the immediate and long-term threats to the public health or welfare or to the environment posed by these sites; and

(3) the appropriate actions needed to abate these threats, and their estimated cost.

(c) In addition to the department's report required under (a) of this section, the governor shall submit a report about use of the fund during the previous fiscal year to the legislature not later than the 10th day following the convening of each regular session of the legislature. In the report, the governor shall describe in detail the governor's use of money from the fund, with separate explanations, by agency, of the activities that were funded under the authority of AS 46.08.040(b). (§ 1 ch 59 SLA 1986; am §§ 16, 17 ch 190 SLA 1990; am § 29 ch 191 SLA 1990)

Effect of amendments. — The first 1990 amendment, effective September 24, 1990, inserted references to the department throughout subsection (a), made an internal reference change, and added subsection (c).

The second 1990 amendment, effective June 27, 1990, added all of the language of paragraph (a)(4) following "threat."

Sec. 46.08.070. Reimbursement for containment and cleanup.

(a) The commissioner shall seek reimbursement promptly under this section, AS 46.03.760(e), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

(b) The attorney general, at the request of the commissioner, shall immediately seek to recover money expended by the department under AS 46.08.005 — 46.08.080 or other law to contain and clean up oil or a hazardous substance that has been released or to control the threatened release of oil or a hazardous substance.

(c) The department may reimburse a municipality for actual expenses, other than normal operating expenses, incurred in the abatement of a release or threatened release of oil or a hazardous substance if

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

(2) the commissioner determines that the expenses were for a necessary emergency first response to a release or threatened release that posed an imminent and substantial threat to the public health or welfare, or to the environment. (§ 1 ch 59 SLA 1986; am §§ 1, 2 ch 29 SLA 1989)

Revisor's notes. — A reference to "AS 46.08.005 — 46.08.080" was substituted for "this chapter" in (b) of this section in 1989 to reflect the enactment of AS 46.08.100 — 46.08.190.

"may seek" near the beginning of subsection (b) and deleted "before incurring the expenses for which reimbursement is sought" at the end of paragraph (c)(1).

Editor's notes. — Section 3, ch. 29, SLA 1989 provides that this section is retroactive to March 24, 1989.

Effect of amendments. — The 1989 amendment, effective May 12, 1989, substituted "shall immediately seek" for

Sec. 46.08.075. Liens against property as security for state expenditures. (a) The state has a lien for expenditures by the state from the oil and hazardous substance release response fund or from any other state fund, for the costs of response, containment, removal, or remedial action resulting from an oil or hazardous substance spill, or, with respect to response costs, the substantial threat of a release of oil or a hazardous substance against all property owned by a person who is determined by the commissioner to be liable for the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of competent jurisdiction in order to foreclose on the lien.

(b) A lien established under this section against real property is not effective until

(1) a certificate of lien is recorded in the district recorder's office for the district in which the property is located, describing the property and stating the amount of the lien, the name of the owner as grantor, and, if known, the name of the person causing the oil or hazardous substance release; and

(2) the commissioner sends a copy of the certificate of lien by certified mail return receipt requested, or actually delivers a copy of the certificate of lien, to the persons described in (1) of this subsection and to all other persons of record holding an interest in the property.

(c) When any amount with respect to which a lien has been recorded under this section has been paid or reduced, the commissioner shall, upon request of the property owner, issue a certificate discharging or partially releasing the lien. That certificate may be recorded in the office in which the certificate of lien was recorded.

(d) The commissioner may, in the commissioner's discretion, reduce, discharge or partially release a lien under this section if a bond, or other security, in a form and an amount satisfactory to the commissioner is posted. The bond or other security must include an amount sufficient to cover the cost of execution, collection, or foreclosure, including attorney fees. A reduction, discharge, or partial release may not be granted under this subsection if it would be contrary to the public interest. When a lien is reduced, discharged, or partially released under this subsection, the commissioner shall, at the request of the property owner, issue a certificate to that effect.

(e) A person with an ownership interest in property against which a lien is recorded may bring an action in a court of competent jurisdiction to require that the lien be released. The lien may be released to the extent of that person's ownership interest if the court finds that the person is not liable for the expenses incurred by the state in connection with the costs of response, containment, removal, or remedial

action resulting from the oil or hazardous substance release or threat of release of oil or a hazardous substance. (§ 7 ch 39 SLA 1989)

Sec. 46.08.080. Regulations. The commissioner shall periodically review the minimum quantities of hazardous substances established under federal law and may adopt regulations establishing minimum quantities of substances for all of any portion of the substances to which AS 46.08.005 — 46.08.080 otherwise apply. The commissioner may otherwise adopt only those regulations that are expressly required to implement the specific purposes of AS 46.08.005 — 46.08.080. (§ 1 ch 59 SLA 1986)

Revisor's notes. — References to "AS 46.08.005 — 46.08.080" were substituted for "this chapter" in this section, with a corresponding minor word change, in 1989 to reflect the enactment of AS 46.08.100 — 46.08.190.

Article 2. Oil and Hazardous Substance Response Office.

Section	Section
100. Office established	140. Emergency powers
110. Response corps	150. Contracts
120. Response depots	160. Limitation of liability
130. Duties of the office	190. Definitions

Cross references. — For legislative findings and purpose in connection with the enactment of AS 46.08.100 — 46.08.190, see § 1, ch. 113, SLA 1989 in the Temporary and Special Acts.

Editor's notes. — In ch. 113, SLA 1989, which enacted AS 46.08.100 — 46.08.190, Sec. 4 provides: "APPLICABILITY OF ACT. (a) This Act does not relieve a person responsible for an oil terminal facility, offshore exploration or production facility, or a vessel that transports crude oil, or a person who has control of a haz-

ardous substance from the responsibility for containing and cleaning up a discharge of oil or the hazardous substance as required by law.

"(b) This Act does not add to or detract from the authority under law of a municipality to impose taxes on oil and gas property or other properties for the purpose of establishing or maintaining services and facilities to minimize the risk of or respond to a release of oil or a hazardous substance."

Sec. 46.08.100. Office established. There is established in the department the oil and hazardous substance response office. The office shall include a director and employees who are specially trained in programs and technologies related to the containment and cleanup of releases or threatened releases of oil and hazardous substances. (§ 3 ch 113 SLA 1989)

Sec. 46.08.110. Response corps. (a) The division of emergency services, Department of Military and Veterans' Affairs, shall establish an oil and hazardous substance response corps.

(b) The corps consists of volunteers who register with the division and agree to be trained by the division in techniques for containment and cleanup and to be available on short notice to assist in containment and cleanup consistent with the responsibilities assigned to the corps under an applicable incident command system.

(c) Members of the corps are entitled to per diem and expenses as determined by the division for training and for days spent in service to the state in containment and cleanup actions. (§ 3 ch 113 SLA 1989; am § 18 ch 190 SLA 1990)

Effect of amendments. — The 1990 amendment substituted all of the present language of subsection (a) preceding "shall" for "The office", added all of the language following "cleanup" in subsec-

tion (b) while substituting "division" for "office" throughout that subsection, and substituted "division" for "commissioner" in subsection (c).

Sec. 46.08.120. Response depots. The division shall maintain emergency response depots in areas of the state determined in the plans prepared under AS 46.04.200 — 46.04.210 to be potential sites of releases or threatened releases of oil or hazardous substances. The depots shall be equipped and staffed in a manner that ensures prompt response when containment and cleanup actions are necessary. (§ 3 ch 113 SLA 1989; am § 19 ch 190 SLA 1990)

Effect of amendments. — The 1990 amendment rewrote the first sentence.

Sec. 46.08.130. Duties of the office. (a) The office shall be prepared to respond promptly to a discharge of oil or a hazardous substance.

(b) The office may respond under (a) of this section to an oil or hazardous substance discharge only if:

(1) the oil discharge is a catastrophic oil discharge that constitutes an emergency under AS 46.04.080(a);

(2) the discharge of oil or a hazardous substance is declared to be an emergency under AS 46.03.065;

(3) the governor declares the discharge an emergency under AS 26.23;

(4) the commissioner reasonably believes that there has been a discharge of oil or a hazardous substance, or that there is a potential discharge of oil or a hazardous substance, and the discharge may qualify under (1) — (3) of this subsection; or

(5) the commissioner reasonably believes that the discharge or potential discharge poses an imminent and substantial threat to public health or welfare or to the environment.

§ 46.08.130

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(c) When the office or corps responds to an oil or hazardous substance discharge under this section, its activities shall be guided by the relevant provisions of the incident command system applicable to the type of discharge to which it is responding. (§ 3 ch 113 SLA 1989; am § 20 ch 190 SLA 1990)

Effect of amendments. — The 1990 amendment added subsection (c).

Sec. 46.08.140. Emergency powers. (a) When the office has reasonable grounds to believe that a release of oil or a hazardous substance has occurred or is threatened to occur which, in the judgment of its director, presents an imminent or present danger to the health or welfare of the people of the state or would result in or is likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interest of the people of the state to delay action until an opportunity for a hearing can be provided, state employees or members of the corps may, with permission of the director and without prior hearing, enter private property for the purpose of containment or cleanup.

(b) The property owner affected by a response action taken under (a) of this section has the right to be heard as soon as practicable and to present proof to the office that the containment or cleanup action is unnecessary or that it is not necessary to enter the person's property for the containment or cleanup action. (§ 3 ch 113 SLA 1989)

Sec. 46.08.150. Contracts. The office or the division, as applicable, may enter into agreements with agencies of the state and federal government, political subdivisions, the University of Alaska, or private persons or entities to

(1) provide the personnel, equipment, or other services or supplies necessary to establish and maintain regional oil and hazardous substances depots and as necessary for response readiness;

(2) train members of response corps; and

(3) conduct research into oil and hazardous substances spill technology; the office shall include in the research topics for which it conducts or contracts for research, the research topics recommended to it by the Hazardous Substance Spill Technology Review Council under AS 46.13.120. (§ 3 ch 113 SLA 1989; am § 21 ch 190 SLA 1990)

Effect of amendments. — The 1990 amendment rewrote this section.

Sec. 46.08.160. Limitation of liability. The state, an employee of the state, and a member of the corps are not liable for costs or damages as a result of actions taken under AS 46.08.100 — 46.08.190 in response to a release or threatened release unless the actions taken by the state, the employee, or the member of the corps constitute gross negligence or intentional misconduct. (§ 3 ch 113 SLA 1989)

Sec. 46.08.190. Definitions. In AS 46.08.100 — 46.08.190

(1) "corps" means the oil and hazardous substance response corps;

(2) "depots" means the oil and hazardous substance supply and equipment storage depots;

(3) "division" means the division of emergency services, Department of Military and Veterans' Affairs;

(4) "office" means the oil and hazardous substance response office. (§ 3 ch 113 SLA 1989; am § 22 ch 190 SLA 1990)

Revisor's notes. — Paragraph (3) was enacted as (4). Renumbered in 1990.

Effect of amendments. — The 1990 amendment added paragraph (3).

Chapter 09. Hazardous Substance Release Control.

Section

20. Containment and cleanup of a released hazardous substance

Section

30. Disaster emergencies

Sec. 46.09.020. Containment and cleanup of a released hazardous substance. (a) A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release, unless the commissioner determines

(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is technically infeasible;

(2) that containment or cleanup would cause greater environmental damage than if the release were not contained or cleaned up; or

(3) that containment or cleanup would pose a greater threat to human life or health than if the release were not contained or cleaned up.

(b) The commissioner shall develop guidelines prescribing general procedures and methods to be used in the containment and cleanup of a hazardous substance. The guidelines shall be consistent with the national contingency plan revised and republished under 42 U.S.C. 9605.

(c) If the commissioner determines that the containment or cleanup of a hazardous substance undertaken is inadequate, the commissioner may direct the person undertaking the containment or cleanup to

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cease and may undertake the containment or cleanup directly or by contract.

(d) If it appears to the commissioner that the cause or responsibility for the release of a hazardous substance is unclear or unexplained, the commissioner may immediately undertake the containment and cleanup of the release unless the commissioner determines

(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is technically infeasible;

(2) that containment or cleanup would cause greater environmental damage than if the release were not contained or cleaned up; or

(3) that containment or cleanup would pose a greater threat to human life or health than if the release were not contained or cleaned up.

(e) The commissioner shall enter into agreement with the Environmental Protection Agency, and may enter into agreements with other persons and municipalities, in order to

(1) facilitate a coordinated and effective hazardous substance release response in the state;

(2) provide for cooperative hazardous substance release notification procedures; or

(3) provide for cooperative review of hazardous substance release response contingency plans submitted to the department. (§ 2 ch 59 SLA 1986)

Editor's notes. — This section is set out above to correct a typographical error in the main pamphlet.

Sec. 46.09.030. Disaster emergencies. The commissioner of environmental conservation or the director of the division of emergency services, Department of Military and Veterans' Affairs, may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency under AS 26.23, the commissioner and the division of emergency services, Department of Military and Veterans' Affairs, shall respond appropriately in the relief of the emergency, in accordance with the relevant provisions of the applicable incident command system. (§ 2 ch 59 SLA 1986; am § 23 ch 190 SLA 1990)

Effect of amendments. — The 1990 amendment rewrote this section.

Chapter 20. Civil Defense.

Section

40. Emergency powers of the governor

Sec. 26.20.040. Emergency powers of the governor. In the event of actual enemy attack against the state the governor may declare that a state of emergency exists, and, during the period of time that the state of emergency exists or continues, the governor has and may exercise the additional emergency power

(1) to enforce all laws and regulations relating to civil defense and assume direct operational control of all civil defense forces and helpers in the state;

(2) to seize, take, or condemn property for the protection of the public or at the request of the president, the armed forces or the civil defense agency of the United States, including

(A) all means of transportation and communication, except newspapers and news services;

(B) all stocks of fuel of whatever nature;

(C) food, clothing, equipment, materials, medicines, and supplies; and

(D) facilities including buildings and plants;

(3) to sell, lend, give, or distribute the fuel, food, clothing, medicines, and supplies among the inhabitants of the state and account to the commissioner of revenue for funds received for the property;

(4) to make compensation for the property seized, taken, or condemned on the basis described in AS 26.20.045;

(5) to perform and exercise other functions, powers, and duties that are considered necessary to promote and secure the safety and protection of the civilian population. (§ 7 ch 131 SLA 1951)

Revisor's notes. — The term "commissioner of revenue" was substituted for "state treasurer" in (3) of this section in 1990 because the office of state treasurer does not exist.

Chapter 23. Disasters.

Article

1. Alaska Disaster Act (§§ 26.23.020, 26.23.025, 26.23.040 — 26.23.060, 26.23.080, 26.23.090, 26.23.110, 26.23.190, 26.23.195, 26.23.210, 26.23.215, 26.23.230)
2. Disaster Relief Fund (§ 26.23.300)
3. Fuel Emergency (§ 26.23.400)
4. General Provisions (§ 26.23.900)

Article 1. Alaska Disaster Act.

Section

- 20. The governor and disaster emergencies
- 25. The legislature and disaster emergencies
- 40. Duties of the Alaska division of emergency services
- 50. Financing
- 60. Local and interjurisdictional disaster agencies and services
- 80. Disaster loans

Section

- 90. Grants to disaster victims
- 110. Debris and wreckage removal in disaster emergency or major disaster
- 190. Emergency powers
- 195. Discharge response actions
- 210. Relationship to civil defense laws
- 215. Relationship to other planning statutes
- 230. [Renumbered]

Sec. 26.23.020. The governor and disaster emergencies.

(a) The governor is responsible for meeting the dangers presented by disasters to the state and its people.

(b) The governor may issue orders, proclamations, and regulations necessary to carry out the purposes of this chapter, and amend or rescind them. These orders, proclamations, and regulations have the force of law.

(c) A condition of disaster emergency shall be declared by proclamation of the governor if the governor finds that a disaster has occurred or that such an occurrence is imminent or threatened. If the legislature is not in session when a proclamation is issued, concurrently with the issuance of the proclamation, a call shall be issued by the governor to convene a special session of the legislature to consider ratification of actions taken under this chapter. A call for a special session under this section may be cancelled by the unanimous agreement of the presiding officers of the senate, house of representatives and the governor before the actual convening of the special session. If a special session is held, actions taken by the governor under this chapter that are not ratified by the legislature within 15 days of its convening are void. The disaster emergency so declared remains in effect until the governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and the governor terminates the disaster emergency by proclamation; but a proclamation of disaster emergency does not remain in effect for longer than 30 days unless renewed by the legislature. The legislature, by concurrent resolution, may terminate a disaster emergency at any time. All proclamations issued under this subsection must indicate the nature of the disaster, the area or areas threatened or affected, and the conditions that have brought it about or which make possible the termination of the disaster emergency.

(d) An order or proclamation issued under this chapter shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless prevented or impeded by circumstances attendant upon the disaster, promptly filed with the

governor. In the event the governor may determine the period of time the governor has and

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Alaska division of emergency services, the lieutenant governor, and the municipal clerk in the area to which it applies.

(e) A proclamation of a disaster emergency activates the disaster response and recovery aspects of the state, local and interjurisdictional disaster emergency plans applicable to the political subdivisions or areas in question, and constitutes authority for the deployment and use of any force to which the plan or plans apply and for use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available under this chapter or any other provision of law relating to disaster emergency response.

(f) During the effective period of a disaster emergency, the governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty. The governor may delegate or assign command authority by appropriate orders or regulations.

(g) In addition to any other powers conferred upon the governor by law, the governor may, under this chapter,

(1) suspend the provisions of any regulatory statute prescribing procedures for the conduct of state business, or the orders or regulations of any state agency, if compliance with the provisions of the statute, order, or regulation would prevent, or substantially impede or delay, action necessary to cope with the disaster emergency;

(2) use all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the disaster emergency;

(3) transfer personnel or alter the functions of state departments and agencies or units of them for the purpose of performing or facilitating the performance of disaster emergency services;

(4) subject to any applicable requirements for compensation under AS 26.23.160, commandeer or utilize any private property, except for all news media other than as specifically provided for in this chapter, if the governor considers this necessary to cope with the disaster emergency;

(5) direct and compel the relocation of all or part of the population from any stricken or threatened area in the state, if the governor considers relocation necessary for the preservation of life or for other disaster mitigation purpose;

(6) prescribe routes, modes of transportation, and destinations in connection with necessary relocation;

(7) control ingress to and egress from a disaster area, the movement of persons within the area, and the occupancy of premises in it;

(8) suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles;

(9) make provisions for the availability and use of temporary emergency housing;

- (10) allocate or redistribute food, water, fuel, or clothing; and
- (11) use money from the oil and hazardous substance release response fund, established by AS 46.08.010, to respond to a declared disaster emergency related to an oil or hazardous substance discharge. (§ 3 ch 104 SLA 1977; am § 1 ch 190 SLA 1990)

Effect of amendments. — The 1990 amendment added paragraph (g)(11).

Sec. 26.23.025. The legislature and disaster emergencies.

(a) The provisions of this section apply when the governor declares a condition of disaster emergency under AS 26.23.020(c) and in response to the disaster the governor proposes to expend

- (1) more than \$1,000,000 of the assets of the disaster relief fund under AS 26.23.300(b);
- (2) more than \$500,000 of the assets of the disaster relief fund under AS 26.23.300(c); or
- (3) an amount from the disaster relief fund that exceeds the unallocated balance of the fund.

(b) When the governor declares a condition of disaster emergency while the legislature is in session, concurrently with the issuance of the proclamation the governor shall prepare and deliver to the presiding officers of the legislature and to the persons who chair the finance committees in each house of the legislature

- (1) a financing plan relating to the source or sources of money available from sources identified in AS 26.23.050(b) that the governor proposes to use to cope with the disaster; or
- (2) a supplemental appropriation to provide money necessary to cope with the disaster.

(c) When the governor declares a condition of disaster emergency while the legislature is not in session, concurrently with the issuance of the disaster emergency proclamation the governor shall

- (1) convene a special session of the legislature under this subsection within five days unless the presiding officers of both the house of representatives and the senate agree that a special session should not be convened and so advise the governor in writing; and
- (2) prepare and deliver to the presiding officers of the legislature and to the persons who chair the finance committees in each house of the legislature

(A) a financing plan relating to the source or sources of money available from sources identified in AS 26.23.050(b) that the governor proposes to use to cope with the disaster; or

- (B) a supplemental appropriation to provide money necessary to cope with the disaster.

(d) If the declaration of a disaster emergency occurs while the legislature is in session, or if a special session is held, actions taken by the

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governor under this chapter that are not ratified by a concurrent resolution adopted during that session are void.

(e) If the legislature does not convene in special session under (c)(1) of this section, the governor may act under this chapter in a manner that is consistent with the financing plan submitted.

(f) The legislature, by concurrent resolution, may terminate a disaster emergency at any time. (§ 2 ch 178 SLA 1990)

Effective dates. — Section 2, ch. 178, SLA 1990, which enacted this section took effect on September 19, 1990.

Sec. 26.23.040. Duties of the Alaska division of emergency services. (a) The Alaska division of emergency services shall prepare and maintain a state emergency plan and keep it current. The plan may include provisions for

(1) prevention and minimization of injury and damage caused by disasters;

(2) prompt and effective response to disasters;

(3) emergency relief;

(4) identification of geographical areas, municipalities, cities or villages especially vulnerable to a disaster;

(5) recommendations for

(A) zoning, building, and other land use controls;

(B) safety measures for securing mobile homes or other nonpermanent or semi-permanent structures; and

(C) other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(6) assistance to local officials in designing local emergency action plans;

(7) authorization and procedures for the construction of temporary works designed to protect against or mitigate danger, damage, or loss from a disaster;

(8) organization of manpower and chains of command;

(9) coordination of federal, state, and local disaster activities;

(10) coordination of the state emergency plan with the disaster plans of the federal government; and

(11) other matters necessary to carry out the purposes of this chapter.

(b) The Alaska division of emergency services shall play an integral part in the development and revision of local and interjurisdictional disaster plans prepared under AS 26.23.060. To this end, it may employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, their disaster agencies, and interjurisdictional planning and disaster agencies. These personnel shall consult with political subdivi-

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sions and agencies on a regular basis and shall make field examina-
tions of the areas, circumstances, and conditions to which particular
local and interjurisdictional disaster plans are intended to apply and
may suggest or require revisions.

(c) In preparing and maintaining the state emergency plan, the
Alaska division of emergency services shall seek the advice and assist-
ance of local government, business, labor, industry, agriculture, civic
and volunteer organizations and community leaders. In advising local
and interjurisdictional agencies, the office shall encourage them also
to seek advice from these sources.

(d) The state emergency plan or any part of it may be incorporated
in regulations or orders of the Alaska division of emergency services.
Regulations and orders of the Alaska division of emergency services
have the force and effect of law.

(e) The Alaska division of emergency services shall

(1) determine requirements of the state and its political subdivi-
sions for food, clothing, and other necessities in the event of a disaster
emergency;

(2) procure and pre-position supplies, medicines, materials, and
equipment;

(3) adopt standards and requirements for local and interjurisdic-
tional disaster plans;

(4) periodically review local and interjurisdictional disaster plans;

(5) establish and operate, or assist political subdivisions, their di-
saster agencies, and interjurisdictional disaster agencies to establish
and operate, training programs;

(6) plan and make arrangements for the availability and use of any
private facilities, services, and property and, if necessary and if in fact
used, provide for payment for use under terms and conditions agreed
upon by the parties;

(7) establish a register of persons with types of training and skills
important in disaster prevention, preparedness, response, and recov-
ery;

(8) prepare, for issuance by the governor, orders, proclamations,
and regulations as necessary or appropriate in coping with disasters;

(9) cooperate with the federal government and any public or private
agency or entity in achieving any purpose of this chapter and in im-
plementing programs for disaster prevention, preparedness, response
and recovery;

(10) develop and carry out procedures and policies to effectively
employ disaster relief funds made available by the governor's author-
ity or by special legislative action; these procedures shall include ap-
plication and documentation by disaster victims or applicants, review,
verification and funding approval, and processing of appeals;

(11) do other things necessary or proper for the implementation of
this chapter. (§ 3 ch 104 SLA 1977; am §§ 3, 4 ch 178 SLA 1990)

Effect of amendments. -- The 1990 amendment, in subsection (a), made stylistic changes in paragraph (5), deleted former paragraph (8) relating to preparation and distribution of catalogs or extracts listing assistance programs, and redesignated former paragraphs (9) through (12) as present paragraphs (8) through (11); and in subsection (e), deleted former paragraph (5) relating to provision for mo-

bile support units, deleted former paragraph (7) relating to surveys, deleted former paragraph (10) relating to registration of certain equipment and housing, redesignated former paragraphs (6), (8), (9), and (11) through (14) as present paragraphs (5) through (11), and deleted "and public information" following "training" in present paragraph (5).

Sec. 26.23.050. Financing. (a) It is the intent of the legislature, and declared to be the policy of the state, that funds to meet disaster emergencies will always be available.

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to money regularly appropriated to state and local agencies. The second recourse shall be to money available in the disaster relief fund or, for oil or hazardous substances discharges, the oil and hazardous substance release response fund, as the governor determines appropriate. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding the limitations imposed by AS 37.07.080(e),

- (1) transfer and spend money appropriated for other purposes; or
- (2) borrow money for a term not to exceed two years.

(c) Nothing in this section limits the governor's authority to apply for, receive, administer, and spend grants, gifts, or payments from any source, to aid in disaster prevention, preparedness, response, or recovery. (§ 3 ch 104 SLA 1977; am § 3 ch 59 SLA 1986; am § 5 ch 178 SLA 1990; am § 2 ch 190 SLA 1990)

Effect of amendments. -- The first 1990 amendment, in subsection (b), substituted "money" for "funds" in the first and second sentences and substituted the language beginning "the limitations imposed" for "any limitation imposed by AS 37.07.080(e), transfer and spend money appropriated for other purposes or, in situations involving natural disasters, borrow

from the United States government or other public or private sources for a term not to exceed two years" at the end of the third sentence.

The second 1990 amendment, in the second sentence of subsection (b), inserted ", for oil or hazardous substances discharges," and "the governor determines".

Sec. 26.23.060. Local and interjurisdictional disaster agencies and services. (a) Each political subdivision in the state is within the jurisdiction of, and shall be served by, the Alaska division of emergency services. A municipality also may be served by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

(b) Each borough may maintain a disaster agency, or participate in a local or interjurisdictional disaster agency which, except as other-

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wise provided in this chapter, has jurisdiction over and serves the entire borough.

(c) Each political subdivision that does not have a disaster agency and has not made arrangements to secure or participate in the services of a disaster agency shall designate a liaison officer to facilitate the cooperation and protection of that political subdivision in the work of disaster prevention, preparedness, response, and recovery.

(d) The principal executive officer of each political subdivision in the state shall notify the Alaska division of emergency services of the manner in which the political subdivision is providing or securing disaster planning; and intends to provide or secure emergency services, identify the person who heads the agency from which the services are or will be obtained, and furnish additional information relating to the services as the Alaska division of emergency services requires.

(e) Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional disaster emergency plan for its area.

(f) The local or interjurisdictional disaster agency, as the case may be, shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the emergency responsibilities of all local agencies and officials. (§ 3 ch 104 SLA 1977; am §§ 6, 7 ch 178 SLA 1990)

Effect of amendments. — The 1990 amendment substituted "A municipality" for "An incorporated municipality" at the beginning of the second sentence of subsection (a) and substituted "political subdivision" for "city" in subsection (c).

Sec. 26.23.080. Disaster loans. Whenever, at the request of the governor, the President has declared a major disaster to exist in this state, the governor may

(1) upon the governor's determination that a political subdivision of the state will suffer a substantial loss of tax and other revenue from the disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the political subdivision, for a loan; the governor may receive and disburse the proceeds of any approved loan to any applicant political subdivision;

(2) determine the amount needed by any applicant political subdivision to restore or resume its governmental functions, and to certify the amount to the federal government;

(3) recommend to the federal government, based upon review by the governor, the cancellation of all or any part of repayment when, for the first three full fiscal years following the major disaster, the revenue of the political subdivision is insufficient to meet its operating expenses, including additional disaster-related expenses of a municipi-

pal operation character. (§ 3 ch 104 SLA 1977; am § 8 ch 178 SLA 1990)

Effect of amendments. — The 1990 amendment substituted "political subdivision" for "local government" throughout the section and deleted a provision at the end of paragraph (2) limiting the application amount.

Sec. 26.23.090. Grants to disaster victims. (a) Whenever the President, at the request of the governor, has declared a major disaster to exist in this state, the governor may

(1) upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund that financial assistance, subject to the terms and conditions that may be imposed upon the grant;

(2) enter into an agreement with the federal government, or any officer or agency of it, pledging the state to participate in the funding of the financial assistance authorized in (1) of this subsection, in an amount not to exceed 25 per cent of the assistance and, if state funds are not otherwise available to the governor, to accept an advance of the state's share from the federal government to be repaid when the state is able to do so.

(b) The governor is authorized to make financial grants to an individual or family to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by the disaster that cannot otherwise adequately be met from other means of assistance. The governor may make a grant to an individual and family under this subsection as follows:

(1) when the President declares a major disaster, the governor may make a grant of an amount whose total of federal and state shares does not exceed the maximum amount authorized by 42 U.S.C. 5178(f) for grants payable to individuals and families;

(2) when the President does not declare a major disaster but the governor declares a disaster emergency, the governor may make a grant of an amount not to exceed \$5,000.

(c) [*Repealed, § 18 ch 178 SLA 1990.*] (§ 3 ch 104 SLA 1977; am §§ 9, 18 ch 178 SLA 1990)

Effect of amendments. — The 1990 amendment deleted "the total of federal and state shares not to exceed \$5,000" following "financial grants" and "in any single major disaster declared by the president" following "individual or family" and substituted "the disaster" for "a major di-

saster" in the first sentence of subsection (b); added the second sentence of subsection (b); and repealed subsection (c), which penalized fraudulent or wilful misstatements of fact in connection with financial assistance applications.

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Sec. 26.23.110. Debris and wreckage removal in disaster emergency or major disaster. (a) When the governor has declared a disaster emergency, or the President, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor may

(1) through the use of state agencies, clear from publicly or privately owned land or water, debris and wreckage that may threaten public health, safety, or property;

(2) apply for and accept funds from the federal government and use those funds to make grants to a political subdivision for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(b) Authority under (a)(1) of this section may not be exercised unless the affected political subdivision, corporation, organization, or individual unconditionally authorizes the removal of the debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, first agrees to indemnify the state government against claims arising from the removal. (§ 3 ch 104 SLA 1977; am §§ 10, 11 ch 178 SLA 1990)

Effect of amendments. — The 1990 paragraph (a)(2) and "political subdivision" substituted "a political subdivision" for "local government" in subsection (b).

Sec. 26.23.190. Emergency powers. (a) If entry is reasonably necessary to actually alleviate or prevent the disaster, all persons authorized to carry out emergency measures directed under the provisions of AS 26.23.010 — 26.23.220 shall be accorded free access to all public and private land and public buildings within the areas specified, and are authorized to enter them and to perform work and take measures that are appropriate without the consent of the owners of the land or buildings.

(b) When performing responsibilities assigned to it under an incident command system established under this chapter, AS 46.04.200 — 46.04.210, or AS 46.13, the Alaska division of emergency services may, in a situation involving an actual or imminent discharge of oil or a hazardous substance, issue an order directing persons and governmental agencies to take action the division believes necessary to carry out its assigned responsibilities. (§ 3 ch 104 SLA 1977; am § 3 ch 190 SLA 1990)

Revisor's notes. — In 1990, in this section a reference to AS 26.23.010 — 26.23.220 was substituted for "this chapter" to reflect the enactment of Articles 2 and 3 by ch. 178, SLA 1990.

Effect of amendments. — The 1990 amendment added subsection (b).

Sec. 26.23.195. Discharge response actions. (a) The Alaska division of emergency services shall perform the responsibilities assigned to it under an incident command system established under this chapter, AS 46.04.200 — 46.04.210, or AS 46.13 in a state response to a release or threatened release of oil or a hazardous substance.

(b) The Alaska division of emergency services may contract with persons to provide personnel, including members of the emergency response corps, to assist them with a nongovernmental response to a release or threatened release of oil or a hazardous substance.

(c) Within the limit of appropriations made specifically for the purpose, the Alaska division of emergency services may assist persons with mobilization of personnel and resources, communications, transportation planning, and other logistics involved in a nongovernmental response to a release or threatened release of oil or a hazardous substance when to do so would be consistent with the duties assigned to it under an incident command system established under this chapter, AS 46.04.200 — 46.04.210, or AS 46.13. (§ 4 ch 190 SLA 1990)

Effective dates. — Section 4, ch. 190, SLA 1990, which enacted this section, took effect on September 24, 1990.

Sec. 26.23.210. Relationship to civil defense laws. (a) AS 26.20 (civil defense) applies to preparedness, response, and recovery from disasters caused by enemy attack and other hostile military or paramilitary action.

(b) The provisions of this chapter, other than AS 26.23.130, apply to preparedness, response, and recovery in cases of natural and man-made disasters other than disasters listed in (a) of this section. (§ 3 ch 104 SLA 1977; am § 12 ch 178 SLA 1990)

Effect of amendments. — The 1990 amendment divided the section into subsections; made a stylistic change at the beginning of subsection (a); and in subsection (b), deleted "nonmilitary" before "manmade" and added "other than disasters listed in (a) of this section" at the end.

Sec. 26.23.215. Relationship to other planning statutes. To the extent that the state emergency plan, interjurisdictional plans, and local plans prepared under this chapter relate to action required to avert damage from a release of oil or a hazardous substance, the plans must be substantially equivalent in relevant respects to the local emergency plans prepared under AS 46.13 and the state and regional master plans prepared by the Department of Environmental Conservation under AS 46.04.200 — 46.04.210, use the same incident command systems used in those plans, and be approved by the Alaska State Emergency Response Commission under AS 46.13.045. (§ 5 ch 190 SLA 1990)

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Effective dates. — Section 5, ch. 190,
SLA 1990, which enacted this section,
took effect on September 24, 1990.

Sec. 26.23.230. [Renumbered as AS 26.23.900.]

Article 2. Disaster Relief Fund.

Section
300. Disaster relief fund

Sec. 26.23.300. Disaster relief fund. (a) There is in the Office of the Governor a disaster relief fund. The Department of Revenue is custodian of the fund.

(b) Subject to the restrictions of (d) of this section, the governor may, without additional legislative authorization, expend not more than \$1,000,000 of the assets of the disaster relief fund for the following purposes:

(1) to implement provisions of law relating to disaster relief in the case of a disaster;

(2) to alleviate the effects of a disaster by making grants or loans to persons or political subdivisions on terms the governor considers appropriate or by other means the governor considers appropriate.

(c) Subject to the restrictions of (d) of this section, the governor may, without additional legislative authorization, expend during a fiscal year not more than \$500,000 of the assets of the disaster relief fund to prevent or minimize the effects of an event that occurs in the state and that, in the determination of the governor, poses a direct and imminent threat of a disaster of sufficient magnitude and severity to justify state action.

(d) The governor shall present to the legislature an annual accounting of money expended from the disaster relief fund.

(e) The governor shall adopt regulations to carry out the provisions of this section. (§ 17 ch 178 SLA 1990)

Effective dates. — Section 17, ch. 178,
SLA 1990, which enacted this section,
took effect on September 19, 1990.

Article 3. Fuel Emergency.

Section
400. Fuel emergency fund

Sec. 26.23.400. Fuel emergency fund. There is established in the Office of the Governor the fuel emergency fund. When the governor determines that a shortage of fuel is sufficiently severe to justify state assistance, the governor may make a grant from the fuel emergency fund to a political subdivision to purchase emergency supplies of fuel. (§ 17 ch 178 SLA 1990)

Effective dates. — Section 17, ch. 178, SLA 1990, which enacted this section, took effect on September 19, 1990.

Article 4. General Provisions.

Section 900. Definitions

Sec. 26.23.900. Definitions. In this chapter

(1) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, including

(A) fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, or shortage of food, water, fuel, or clothing;

(B) the release of oil or a hazardous substance, if the release requires prompt action to avert environmental danger or damage; and

(C) equipment failure, if the failure is not a predictably frequent or recurring event or preventable by adequate equipment maintenance or operation;

(2) "disaster emergency" means the condition declared by proclamation of the governor or declared by the principal executive officer of a political subdivision to designate the imminence or occurrence of a disaster;

(3) "emergency" has the meaning given in 42 U.S.C. 5122;

(4) "major disaster" has the meaning given in 42 U.S.C. 5122;

(5) "political subdivision" means

(A) a municipality;

(B) an unincorporated village; or

(C) another unit of local government;

(6) "temporary housing" has the meaning given in the federal Disaster Relief Act as amended;

(7) "unorganized militia" means all persons comprising that component of the militia of the state, as described in AS 26.05.010. (§ 3 ch 104 SLA 1977; am § 49 ch 74 SLA 1985; am § 4 ch 59 SLA 1986; am § 2 ch 5 SLA 1987; am §§ 13 — 16 ch 178 SLA 1990)

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 25 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): SENATORS ZHAROFF, Sturgulewski

A BILL

FOR AN ACT ENTITLED

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

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

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

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

1 with the village council concerning the proposed exercise of the power. A municipality
 2 intending to exercise its authority under this subsection shall act by ordinance, and may
 3 adopt an ordinance under this subsection to

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

15 * Sec. 2. AS 29.35.020 is amended by adding a new subsection to read:

- 16 (e) In this section, "village"
 17 (A) means the area within a five-mile radius of the village post office or,
 18 if there is no post office, another site designated by the commissioner;
 19 (B) does not include an area described in (A) of this paragraph that is
 20 within a city or another village.

21 * Sec. 3. AS 29.35.200 is amended by adding a new subsection to read:

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

27 * Sec. 4. AS 29.35.210(a) is amended by adding a new paragraph to read:

- 28 (13) contain, clean up, or prevent a release or threatened release of oil or a
 29 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,
 30 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
 31 consistent with a regional master plan for the region in which the borough is located if a plan

1 has been prepared by the Department of Environmental Conservation under AS 46.04.210.

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

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

10 * Sec. 6. AS 29.60 is amended by adding new sections to read:

11 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL
12 IMPACT ASSISTANCE.

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

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

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

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

It is the general policy of the state that a community or village as a result of the release

1 to meet from the municipality's or village's current revenue sources.

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

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

16 (d) For money that has been transferred under (c) of this section, if within any one-year
17 period thereafter the commissioner does not use the money to make a grant under AS 29.60.500 -
18 29.60.599, the commissioner shall, at the direction of the governor or the request of the
19 commissioner of environmental conservation, return the unexpended amount transferred under
20 (c) of this section to the fund.

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

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

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

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

30 (C) public health and welfare needs, including hospital, clinic, and
31 emergency medical services; alcohol, drug abuse, and mental health services; family

1 support services; and the operation of waste disposal systems and water quality
2 improvement systems;

3 (D) public safety needs, including police protection, search and rescue, and
4 fire protection;

5 (E) public utility needs, including the operation of electric generating
6 plants and distribution systems, water supply systems, telephone systems, and fuel
7 distribution systems;

8 (F) housing and office needs;

9 (G) transportation needs;

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

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

16 (2) to compensate the municipality or village for

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

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

22 (b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may
23 not be used for a capital improvement, as that term is defined by AS 46.08.900(1). *unless essential -*
owning revenue

24 Sec. 29.60.530. CRITERIA TO EVALUATE GRANT APPLICATIONS. (a) *to state* In
25 determining whether an expenditure or proposed expenditure by a municipality or village is
26 eligible for a grant under AS 29.60.510, the department shall consider

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

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

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

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

5 (c) The department shall adopt, by regulation, criteria by which to rank all or a portion
 6 of applications for the purpose of establishing the priority order of awarding grants if money
 7 requested by eligible municipalities and villages under this section exceeds the amount available.
 8 The criteria must be based on the elements set out in (a) of this section. If the total amount of
 9 money requested by eligible municipalities and villages under this section exceeds the amount
 10 available, the department shall rank applications for the purpose of establishing the priority order
 11 of awarding grants in accordance with the regulations.

12 Sec. 29.60.540. LIMITATIONS ON USES OF GRANTS BY MUNICIPALITIES. A
 13 municipality may not use a grant made under AS 29.60.510 to reduce current municipal tax rates
 14 or to retire its existing bonded indebtedness. *DA [unclear] [unclear]*

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

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

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

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

26 Sec. 29.60.570. IMPACT ASSESSMENT AND REMEDIAL PLANS. (a) For each
 27 disaster emergency declared by the governor under AS 26.23.020 based on a release of oil or a
 28 hazardous substance, the commissioner *in consultation w/ the other agencies* after consulting with and securing the written approval
 29 of the attorney general, shall

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

- 1 (2) develop a plan to
- 2 (A) recover the cost of release-related expenditures; and
- 3 (B) mitigate the social and economic effects of the release of the oil or
- 4 hazardous substance on the municipalities, the villages, and the region in which the
- 5 discharge occurs;

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

- 8 (1) using staff of the department;
- 9 (2) contracting with a municipality or other entity; or
- 10 (3) authorizing a municipality or other entity to perform that work and supporting
- 11 that effort by a grant.

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

14 (d) The commissioner may pay the costs of the assessment ^{and plan} from money
15 available in the fund., *29.60.516(c) or by separate agreement w/ town of Dec*

16 Sec. 29.60.580. REGULATIONS. The commissioner and the commissioner of
17 environmental conservation shall jointly develop and adopt regulations that are necessary to
18 implement the purposes of AS 29.60.500 - 29.60.599.

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

- 20 (1) "containment and cleanup" has the meaning given in AS 46.08.900;
- 21 (2) "disaster emergency" means a disaster declared by the governor under
- 22 AS 26.23.020;
- 23 (3) "fund" means the oil and hazardous substance release response fund
- 24 established by AS 46.08.010;
- 25 (4) "hazardous substance," "oil," and "release" have the meanings given in
- 26 AS 46.08.900;
- 27 (5) "service"

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

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

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

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

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

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

16 * Sec. 7. AS 46.03.760(e) is amended to read:

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

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

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

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

26 (4) all incidental administrative costs.

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

28 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
29 set out in (b) of this section and the exception set out in (i) of this section, the following persons
30 are strictly liable, jointly and severally, for damages to persons or property, whether public or
31 private, including damage to the natural resources of the state or municipality, [AND] for the

1 costs of response, containment, removal, or remedial action incurred by the state, [OR] a munic-
2 ipality, or a village, and for the additional costs of a function or service, including
3 administrative expenses for the incremental costs of providing the function or service, that
4 are incurred by the state, a municipality, or a village, and the costs of projects or activities
5 that are delayed or lost because of the efforts of the state, the municipality, or the village,
6 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,
7 the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

28 * Sec. 9. AS 46.03.822(h) is amended to read:

29 (h) The state, [OR] a municipality, or a village is not liable under this section for costs
30 or damages as a result of actions taken in response to an emergency created by a release or
31 threatened release of a hazardous substance generated by or from a facility or vessel owned by

1 another person unless the actions taken by the state, the [OR] municipality, or the village
2 constitute gross negligence or intentional misconduct.

3 * Sec. 10. AS 46.03.900 is amended by adding new paragraphs to read:

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

9 (36) "village" means each of the following in the unorganized borough or within
10 a borough as to a power, function, or service that is not exercised or provided by the borough
11 on an areawide or nonareawide basis if the village has irrevocably waived, in a form approved
12 by the Department of Law, any claim of sovereign immunity that might arise under this chapter,
13 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 of community and regional
19 affairs under regulations adopted by the Department of Community and Regional Affairs
20 to determine and give official recognition of village entities under AS 44.47.150(b).

21 * Sec. 11. AS 46.04.020 is amended by adding a new subsection to read:

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

24 * Sec. 12. AS 46.04.900(5) is amended to read:

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

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

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

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

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

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

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

15 * Sec. 14. AS 46.08.040(a) is amended to read:

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

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

24 (2) pay all costs incurred to

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

26 (B) review oil discharge prevention and contingency plans submitted under
27 AS 46.04.030;

28 (C) conduct training, response exercises, inspections, and tests, in order
29 to verify equipment inventories and ability to prevent and respond to oil and hazardous
30 substance release emergencies, and to undertake other activities intended to verify or
31 establish the preparedness of the state, a municipality, or a party required by

1 AS 46.04.030 to have an approved contingency plan to act in accordance with that plan;
2 and

3 (D) verify or establish proof of financial responsibility required by
4 AS 46.04.040;

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

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

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

14 (6) prepare, review, and revise

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

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

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

21 * Sec. 15. AS 46.08.070(c) is amended to read:

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

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

28 (2) the commissioner determines that

29 (A) the expenses to be reimbursed were for a necessary emergency first
30 response to a release or threatened release that, at the time of the release or threatened
31 release, posed an imminent and substantial threat to the public health or welfare, or to

1 the environment;

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

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

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

12 (3) "containment and cleanup" includes the direct and indirect efforts associated
13 with the prevention, abatement, containment, or removal of oil or a hazardous substance, and
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 oil or hazardous substance, including [, AND INCIDENTAL] administrative
17 expenses for the incremental costs of providing the function or service;

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

19 (11) "service"

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

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

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

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

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

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

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

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

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

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

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

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

24 * Sec. 21. Sections 8 and 10 of this Act are retroactive to March 24, 1989.

25 * Sec. 22. APPLICABILITY. The amendments made by secs. 6, 7, 14, and 15 of this Act do not
26 apply to a release of oil or a hazardous substance and resultant cleanup activities or to efforts to respond
27 to or abate that release if the release occurred before the effective date of this Act.

28 * Sec. 23. This Act takes effect immediately under AS 01.10.070(c).

Solicitor
General

Don't need Chenoweth
amend # 6

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 ^{by the state and its municipalities} ~~and~~ ^{in matters relating to environmental conservation and} recovery of damages by the state and ^{to the}
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~~ ^{ordinance and before a power authorized by} must be given by resolution. ^{this} A municipality intending to exercise
12 its authority under this subsection shall act by ordinance, and may adopt an ordinance ^{may be}
13 under this subsection to ^{exercised}

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

inside a village, the governing body of the municipality shall notify + consult with the village council concerning SSB 25 the proposed exercise of the power

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 transportation} 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 → a new section defining village
* 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:
for the region in which the borough is located.

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:
for the region in which the borough is located.

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. for the region in
31 which the borough is located.

* 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 ^{major} 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 ^{major} 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 ^{major} release of oil or a hazardous substance and resultant cleanup activities and to pay for
14 efforts to abate that ^{major} 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 ^{substance} 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 ^{balance of the fund that is appropriated to the spill response or the}
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 → *add new subsection / see Chenoweth lang. (d)*
6 Sec. 29.60.520. PURPOSES OF MUNICIPAL IMPACT GRANTS (A) A grant made under
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 *(b) May not be used for capital improvements.*
7 Sec. 29.60.530. CRITERIA TO EVALUATE GRANT APPLICATIONS. (a) In
8 determining whether an expenditure or proposed expenditure by a municipality or village is
9 eligible for a grant under AS 29.60.510, the department shall consider

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

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

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

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

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

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

29 Sec. 29.60.550. RECORDS. The department shall maintain records showing the income
30 and expenses of grants made under AS 29.60.510, and shall develop procedures governing the
31 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 *and develop a plan for cost recovery of release related expenditures*

Impact assessment: (a) For each disaster emergency declared by the governor under AS 26.23.020 based on a release of oil or a hazardous substance, the commissioner (DCRA), after consulting with and securing the written approval of the attorney general, shall

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

(2) develop a plan for cost recovery of release related expenditures with; and

(3) develop a plan for the mitigation of the social and economic effects

relating to the municipalities, the villages and the region in which the release occurs.

(b) The commissioner may make the assessment and plans by

(1) using department staff;

(2) contracting with an independent third party'

(3) authorizing the municipality or other entity to make the assessment and supporting that effort by a grant under AS 29.60.520.

(c) Only one joint assessment and plans referred to in (a) above shall be authorized for each declaration of a disaster emergency.

(d) The commissioner may pay the costs of the assessment and plans from money available in the fund.

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(e) 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 ^{leave} 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).

SB0025b Add "Applicability" language (Chenaweth)

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

1 IN THE SENATE BY THE FINANCE COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 359 (Finance)(title am)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act concerning the exercise of authority and
7 recovery of damages by the state and its municipal-
8 ities and villages in matters relating to environ-
9 mental conservation; relating to state assistance to
10 municipalities and villages for expenses for preven-
11 tion and abatement of environmental degradation;
12 authorizing the commissioner of community and
13 regional affairs to make grants from the oil and
14 hazardous substance release response fund to assist
15 in costs relating to a disaster emergency; and pro-
16 viding for an effective date."

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

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

19 (b) A municipality may adopt an ordinance to exercise a power
20 authorized by this subsection [PROTECT ITS WATER SUPPLY AND WATER-
21 SHED,] and may enforce the ordinance outside its boundaries. Before a
22 [THIS] power authorized by this subsection may be exercised inside the
23 boundaries of another municipality, the approval of the other munic-
24 ipality must be given by ordinance. A municipality intending to
25 exercise its authority under this subsection shall act by ordinance,
26 and may adopt an ordinance under this subsection to

27 (1) protect its water supply and watershed; or
28 (2) contain, clean up, or prevent the release or threatened
29 release of oil or a hazardous substance that may pose an imminent or

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

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

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

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

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

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

29 (e) A third class borough may by ordinance exercise power

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

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

10 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL
11 IMPACT ASSISTANCE.

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

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

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

1 ✓ Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) If a
2 release of oil or a hazardous substance has been proclaimed a disaster
3 emergency by the governor under AS 26.23.020, the commissioner may use
4 money from the oil and hazardous release response fund to make grants
5 to a municipality or village that is affected by the release or by the
6 response to the release and that demonstrates extraordinary expen-
7 ditures that are beyond the reasonable capability of the municipality
8 or village to meet from the municipality's or village's current reve-
9 nue sources.

10 ✓ (b) For each disaster emergency declared by the governor under
11 AS 26.23.020, the commissioner may expend not more than \$10,000,000 of
12 the unrestricted balance of the fund as grants authorized under this
13 section.

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

16 (1) only for

17 ✓(A) provision of subsistence resources on which the
18 residents of the municipality or village rely for subsistence
19 needs;

20 ✓(B) the additional costs of a reasonable and appropri-
21 ate function or service, including administrative expenses for
22 the incremental costs of providing the function or service,
23 limited to:

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

29 ✓(ii) public safety functions and services,

1 including police protection, search and rescue, and fire
2 protection;

3 ✓ (iii) public utility functions and services, in-
4 cluding the operation of electric generating plants and
5 distribution systems, water supply systems, telephone sys-
6 tems, and fuel distribution systems; and

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

11 ✓ (C) costs associated with leasing transportation
12 facilities for use in activities associated with the containment
13 or clean up;

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

19 ✓ (2) to compensate the municipality or village for
20 ✓ (A) the reduction of revenue attributable to the
21 discharge of the oil or hazardous substance; and

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

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

26 In determining whether an 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
29 village is directly caused by the oil or hazardous substance

1 discharge;

2 ✓(2) the availability of money to the recipient from other
3 sources that can meet the costs of providing the functions or ser-
4 vices;

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

8 ✓(4) the ability of the municipality or village to respond
9 to the oil or hazardous substance release and its effects from exist-
10 ing resources;

11 ✓(5) the severity of the effect addressed in the grant
12 application; and

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

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

21 ✓(c) The department shall adopt, by regulation, criteria by which
22 to rank all or a portion of applications for the purpose of establish-
23 ing the priority order of awarding grants if money requested by eligi-
24 ble municipalities and villages under this section exceeds the amount
25 available. The criteria shall be based on the elements set out in (a)
26 of this section. If the total amount of money requested by eligible
27 municipalities and villages under this section exceeds the amount
28 available, the department shall rank applications for the purpose of
29 establishing the priority order of awarding grants in accordance with

1 the regulations. This subsection does not prevent the department from
2 making a grant payment in an amount that is less than an amount re-
3 quired by a municipality or village if the department determines that
4 payment of the amount requested is not warranted under (a) of this
5 section.

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

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

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

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

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

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

1 commissioner may make the assessment by

2 (1) using staff of the department;

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

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

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

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

11 Sec. 29.60.580. REGULATIONS. The commissioner may adopt regula-
12 tions that are necessary to implement the purposes of AS 29.60.500 -
13 29.60.599.

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

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

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

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

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

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

29 (5) "village" means a community with a residential

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1 population of 25 or more not incorporated as a municipality under
2 state law in the unorganized borough or within a borough if the power,
3 function, or service for which the grant application is submitted is
4 not exercised or provided by the borough on an areawide or nonareawide
5 basis at the time the grant application is submitted.

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

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

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

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

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

18 (4) all incidental administrative costs.

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

20 (a) Notwithstanding any other provision or rule of law and
21 subject only to the defenses set out in (b) of this section and the
22 exception set out in (i) of this section, the following persons are
23 strictly liable, jointly and severally, for damages to persons or
24 property, whether public or private, including damage to the natural
25 resources of the state or a municipality, or to the natural resources
26 that are owned by a village, [AND] for the costs of response, contain-
27 ment, removal, or remedial action incurred by the state, [OR] a munic-
28 ipality, or a village, and for the additional costs of a function or
29 service, including administrative expenses for the incremental costs

1 of providing the function or service, that are incurred by the state,
2 a municipality, or a village [,] resulting from an unpermitted release
3 of a hazardous substance or, with respect to response costs, the
4 substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

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

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

8 * S.c. 9. AS 46.03.900 is amended by adding new paragraphs to read:

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

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

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

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

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

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

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

2 ~~(18)~~ "service" means a function performed or service pro-
3 vided by the state, including functions not previously performed and
4 services not previously provided by the state;

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

7 * Sec. 13. AS 46.08.040 is amended to read:

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

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

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

23 ~~(3)~~ provide matching funds for participation in federal oil
24 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
25 hensive Environmental Response, Compensation, and Liability Act of
26 1980); [AND]

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

1 (5) prepare, review, and revise
2 ~~(A)~~ the state's master oil and hazardous substance
3 discharge and prevention contingency plan required by AS 46.04.-
4 200; and

5 ~~(B)~~ a regional master oil and hazardous substance
6 discharge and prevention contingency plan required by AS 46.04.-
7 210; and

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

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

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

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

20 (2) the commissioner determines that

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

26 ~~(B)~~ the municipality or village has demonstrated a
27 need for financial assistance, and the money to be advanced is
28 necessary to enable the municipality or village to carry out an
29 emergency first response to a release or threatened release that,

1 at the time of the release or threatened release, poses an immi-
2 nent and substantial threat to the public health or welfare, or
3 to the environment; and

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

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

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

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

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

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

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

29 (12) "village" means a community with a residential

1 population of 25 or more not incorporated as a municipality under
2 state law in the unorganized borough or within a borough if the rele-
3 vant power, function, or service is not exercised or provided by the
4 borough on an areawide or nonareawide basis at the time the grant
5 application or request for reimbursement is submitted.

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

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

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

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

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

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

27 * Sec. 21. Sections 7 and 9 of this Act are retroactive to March 24,
28 1989.

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

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 25 (CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATORS ZHAROFF, Sturgulewski

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 prepared by the Department of Environmental
29 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 prepared by the Department of Environmental
4 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 prepared by the Department of Environmental Conservation under AS 46.04.210.

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

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

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

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

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

27 (1) a determination by the governor that the release exceeds 10,000 barrels of oil
28 [or 550,000 gallons of a hazardous substance];

29 (2) the declaration by the governor of a disaster emergency relating to the release;

30 and

31 (3) a finding by the governor that

1 (A) the release of the oil or hazardous substance into the environment
2 presents a real and substantial threat to the economy and public welfare of the
3 municipalities and villages that are affected by the release and by the resultant activities
4 to contain and clean up the release; and

5 (B) it is in the best interest of the state to pay the expenses incurred by
6 municipalities and villages to mitigate the social and economic effects that arise out of
7 the release of the oil or the hazardous substance and the resultant cleanup activities.

8 Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) The commis-
9 sioner may use money from the oil and hazardous substance release response fund to make grants
10 to a municipality or village that is affected by the release or by the response to the release and
11 that demonstrates that the release or response to the release involves extraordinary expenditures
12 that are beyond the reasonable capability of the municipality or village to meet from the current
13 revenue sources of the municipality or village if

14 (1) the governor determines that a release of oil or a hazardous substance exceeds
15 10,000 barrels of oil [or 550,000 gallons of a hazardous substance;]

16 (2) the release has been proclaimed a disaster emergency by the governor under
17 AS 26.23.020; and

18 (3) the governor finds that

19 (A) the release of the oil or hazardous substance into the environment
20 presents a real and substantial threat to the economy and public welfare of the
21 municipalities and villages that are affected by the release and by the resultant activities
22 to contain and clean up the release; and

23 (B) it is in the best interest of the state to pay the expenses incurred by
24 municipalities and villages to mitigate the social and economic effects that arise out of
25 the release of the oil or the hazardous substance and the resultant cleanup activities.

26 (b) For each disaster emergency declared by the governor under AS 26.23.020, and
27 subject to agreement with the commissioner of environmental conservation as to the amount of
28 money in the fund that may be used by the department to make grants, the commissioner may
29 expend not more than \$10,000,000 of the balance of the fund that is appropriated to the spill
30 reserve or of the unrestricted balance of the fund for grants authorized under this section. If the
31 commissioner and the commissioner of environmental conservation do not agree on the amount

1 of money in the fund that may be used by the department to make grants under AS 29.60.500 -
2 29.60.599, the governor shall make the determination.

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

9 (d) For money that has been transferred under (c) of this section, if within any one-year
10 period thereafter the commissioner does not use the money to make a grant under AS 29.60.500 -
11 29.60.599, the commissioner shall, at the direction of the governor or the request of the
12 commissioner of environmental conservation, return the unexpended amount transferred under
13 (c) of this section to the fund.

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

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

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

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

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

27 (D) public safety needs, including police protection, search and rescue, and
28 fire protection;

29 (E) public utility needs, including the operation of electric generating
30 plants and distribution systems, water supply systems, telephone systems, and fuel
31 distribution systems;

1 (F) housing and office needs;
2 (G) transportation needs;
3 (H) public administration needs, including the value of the time of staff
4 and administrative personnel necessary to direct efforts to prevent, abate, contain, and
5 remove oil or a hazardous substance; and

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

9 (2) to compensate the municipality or village for

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

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

15 (b) If money received under this section is used for a capital expenditure the
16 commissioner may require the municipality or village that acquired the item as a capital
17 expenditure to transfer it to the state at the end of the period during which the item is actually
18 used for spill response if the commissioner finds that retention of the item would confer an
19 inappropriate benefit on the municipality or village.

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

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

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

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

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

1 (c) The department shall adopt, by regulation, criteria by which to rank all or a portion
2 of applications for the purpose of establishing the priority order of awarding grants if money
3 requested by eligible municipalities and villages under this section exceeds the amount available.
4 The criteria must be based on the elements set out in (a) of this section. If the total amount of
5 money requested by eligible municipalities and villages under this section exceeds the amount
6 available, the department shall rank applications for the purpose of establishing the priority order
7 of awarding grants in accordance with the regulations.

8 Sec. 29.60.540. LIMITATIONS ON USES OF GRANTS BY MUNICIPALITIES AND
9 VILLAGES. (a) A municipality may not use a grant made under AS 29.60.510 to reduce
10 current municipal tax rates or to retire its existing bonded indebtedness.

11 (b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may
12 not be used for a capital improvement, as that term is defined by AS 46.08.900(1); or

13 Sec. 29.50.550. RECORDS. The department shall maintain records showing the income
14 and expenses of grants made under AS 29.60.510, and shall develop procedures governing the
15 expenditure of, and accounting for, money expended.

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

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

22 (2) develop a plan to

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

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

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

28 by

29 (1) using staff of the department;

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

31 (3) authorizing a municipality or other entity to perform that work and supporting

1 that effort by a grant.

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

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

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

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

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

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

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

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

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

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

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

23 (5) "service"

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

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

30 (6) "village" means a place within the unorganized borough or within a borough
31 if the power, function, or service for which a grant application is submitted under AS 29.60.500 -

1 29.60.599 is not exercised or provided by the borough on an areawide or nonareawide basis at
2 the time the grant application is submitted, that

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

6 (B) has

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

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

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

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

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

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

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

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

24 (4) all incidental administrative costs.

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

26 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
27 set out in (b) of this section and the exception set out in (i) of this section, the following persons
28 are strictly liable, jointly and severally, for damages to persons or property, whether public or
29 private, including damage to the natural resources of the state or municipality, [AND] for the
30 costs of response, containment, removal, or remedial action incurred by the state, [OR] a munic-
31 ipality, or a village, and for the additional costs of a function or service, including

1 administrative expenses for the incremental costs of providing the function or service, that
2 are incurred by the state, a municipality, or a village, and the costs of projects or activities
3 that are delayed or lost because of the efforts of the state, the municipality, or the village,
4 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,
5 the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

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

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

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

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

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

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

12 (B) has

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

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

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

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

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

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

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

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

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

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

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

8 (B) has

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

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

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

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

18 (a) In addition to money in the fund that is transferred to the commissioner of
19 community and regional affairs to make grants under AS 29.60.510 and to pay for impact
20 assessments under AS 29.60.560, the [THE] commissioner of environmental conservation may
21 use money from the fund to

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

26 (2) pay all costs incurred to

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

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

29 AS 46.04.030;

30 (C) conduct training, response exercises, inspections, and tests, in order
31 to verify equipment inventories and ability to prevent and respond to oil and hazardous

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

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

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

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

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

16 (6) prepare, review, and revise

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

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

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

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

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

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

30 (2) the commissioner determines that

31 (A) the expenses to be reimbursed were for a necessary emergency first

1 response to a release or threatened release that, at the time of the release or threatened
2 release, posed an imminent and substantial threat to the public health or welfare, or to
3 the environment;

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

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

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

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

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

21 (11) "service"

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

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

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

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

4 (B) has

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

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

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

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

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

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

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

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

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

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

30 * Sec. 23. APPLICABILITY. The amendments made by secs. 7, 8, 15, and 16 of this Act do not
31 apply to a release of oil or a hazardous substance and resultant cleanup activities or to efforts to respond

1 to or abate that release if the release occurred before the effective date of this Act.

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

CS FOR **HOUSE** **275**
FOR BILL NO. ()

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS ZHAROFF, Sturgulewski

A BILL

FOR AN ACT ENTITLED

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

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

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

8 (b) A municipality may adopt an ordinance to exercise a power authorized by this
9 subsection [PROTECT ITS WATER SUPPLY AND WATERSHED,] and may enforce the
10 ordinance outside its boundaries. Before a [THIS] power authorized by this subsection may
11 be exercised inside the boundaries of another municipality, the approval of the other municipality
12 must be given by ordinance, ~~and before a power authorized by this subsection may be~~
13 ~~exercised inside a village, the governing body of the municipality shall notify and consult~~

SEE ATTACHMENT A.

1 with the village council concerning the proposed exercise of the power. A municipality
 2 intending to exercise its authority under this subsection shall act by ordinance, and may
 3 adopt an ordinance under this subsection to

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

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

15 * Sec. 2. AS 29.35.020 is amended by adding a new subsection to read:

16 (e) In this section, "village"

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

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

21 * Sec. 3. AS 29.35.200 is amended by adding a new subsection to read:

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

27 * Sec. 4. AS 29.35.210(a) is amended by adding a new paragraph to read:

28 (13) contain, clean up, or prevent a release or threatened release of oil or a
 29 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,
 30 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
 31 consistent with a regional master plan for the region in which the borough is located if a plan

1 has been prepared by the Department of Environmental Conservation under AS 46.04.210.

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

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

10 * Sec. 6. AS 29.60 is amended by adding new sections to read:

11 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL
12 IMPACT ASSISTANCE.

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

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

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

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

1 to meet from the municipality's or village's current revenue sources.

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

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

16 (d) For money that has been transferred under (c) of this section, if within any one-year
17 period thereafter the commissioner does not use the money to make a grant under AS 29.60.500 -
18 29.60.599, the commissioner shall, at the direction of the governor or the request of the
19 commissioner of environmental conservation, return the unexpended amount transferred under
20 (c) of this section to the fund.

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

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

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

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

30 (C) public health and welfare needs, including hospital, clinic, and
31 emergency medical services; alcohol, drug abuse, and mental health services; family

1 support services; and the operation of waste disposal systems and water quality
2 improvement systems;

3 (D) public safety needs, including police protection, search and rescue, and
4 fire protection;

5 (E) public utility needs, including the operation of electric generating
6 plants and distribution systems, water supply systems, telephone systems, and fuel
7 distribution systems;

8 (F) housing and office needs;

9 (G) transportation needs;

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

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

16 (2) to compensate the municipality or village for

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

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

22 (b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may
23 not be used for a capital improvement, as that term is defined by AS 46.08.900(1). *

* SEE ATTACHMENT B

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

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

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

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

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

5 (c) The department shall adopt, by regulation, criteria by which to rank all or a portion
 6 of applications for the purpose of establishing the priority order of awarding grants if money
 7 requested by eligible municipalities and villages under this section exceeds the amount available.
 8 The criteria must be based on the elements set out in (a) of this section. If the total amount of
 9 money requested by eligible municipalities and villages under this section exceeds the amount
 10 available, the department shall rank applications for the purpose of establishing the priority order
 11 of awarding grants in accordance with the regulations.

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

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

18 ~~Sec. 29.60.560. REPORT TO THE LEGISLATURE. The commissioner shall submit a~~
 19 ~~report to the legislature not later than the 10th day following the convening of each regular~~
 20 ~~session of the legislature. The report may include information considered significant by the~~
 21 ~~commissioner but must include~~

22 ~~(1) the amount of money expended under AS 29.60.510 during the preceding~~
 23 ~~fiscal year; and~~

24 ~~(2) a detailed summary of department activities in administering the grant program~~
 25 ~~during the preceding fiscal year.~~

26 Sec. 29.60.570. IMPACT ASSESSMENT AND REMEDIAL PLANS. (a) For each
 27 disaster emergency declared by the governor under AS 26.23.020 based on a release of oil or a
 28 hazardous substance, the commissioner, after consulting with and securing the written approval
 29 of the attorney general, ^{and consulting with other agencies,} shall

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

1 (2) develop a plan to
 2 (A) recover the cost of release-related expenditures; and
 3 (B) mitigate the social and economic effects of the release of the oil or
 4 hazardous substance on the municipalities, the villages, and the region in which the
 5 discharge occurs;

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

8 (1) using staff of the department;
 9 (2) contracting with a municipality or other entity; or
 10 (3) authorizing a municipality or other entity to perform that work and supporting
 11 that effort by a grant.

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

14 (d) ~~The commissioner may pay the costs of the assessment and plan from money~~
 15 ~~available in the fund.~~ ATTACHMENT C.

16 Sec. 29.60.580. REGULATIONS. The commissioner and the commissioner of
 17 environmental conservation shall jointly develop and adopt regulations that are necessary to
 18 implement the purposes of AS 29.60.500 - 29.60.599.

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

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

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

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

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

27 (5) "service"

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

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

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

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

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

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

16 * Sec. 7. AS 46.03.760(e) is amended to read:

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

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

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

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

26 (4) all incidental administrative costs.

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

28 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
29 set out in (b) of this section and the exception set out in (i) of this section, the following persons
30 are strictly liable, jointly and severally, for damages to persons or property, whether public or
31 private, including damage to the natural resources of the state or municipality, [AND] for the

1 costs of response, containment, removal, or remedial action incurred by the state, [OR] a munic-
2 ipality, or a village, and for the additional costs of a function or service, including
3 administrative expenses for the incremental costs of providing the function or service, that
4 are incurred by the state, a municipality, or a village, and the costs of projects or activities
5 that are delayed or lost because of the efforts of the state, the municipality, or the village,
6 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,
7 the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

28 * Sec. 9. AS 46.03.822(h) is amended to read:

29 (h) The state, [OR] a municipality, or a village is not liable under this section for costs
30 or damages as a result of actions taken in response to an emergency created by a release or
31 threatened release of a hazardous substance generated by or from a facility or vessel owned by

1 another person unless the actions taken by the state, the [OR] municipality, or the village
2 constitute gross negligence or intentional misconduct.

3 * Sec. 10. AS 46.03.900 is amended by adding new paragraphs to read:

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

9 (36) "village" means each of the following in the unorganized borough or within
10 a borough as to a power, function, or service that is not exercised or provided by the borough
11 on an areawide or nonareawide basis if the village has irrevocably waived, in a form approved
12 by the Department of Law, any claim of sovereign immunity that might arise under this chapter,
13 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 of community and regional
19 affairs under regulations adopted by the Department of Community and Regional Affairs
20 to determine and give official recognition of village entities under AS 44.47.150(b).

21 * Sec. 11. AS 46.04.020 is amended by adding a new subsection to read:

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

24 * Sec. 12. AS 46.04.900(5) is amended to read:

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

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

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

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

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

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

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

15 * Sec. 14. AS 46.08.040(a) is amended to read:

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

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

24 (2) pay all costs incurred to

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

26 (B) review oil discharge prevention and contingency plans submitted under
27 AS 46.04.030;

28 (C) conduct training, response exercises, inspections, and tests, in order
29 to verify equipment inventories and ability to prevent and respond to oil and hazardous
30 substance release emergencies, and to undertake other activities intended to verify or
31 establish the preparedness of the state, a municipality, or a party required by

1 AS 46.04.030 to have an approved contingency plan to act in accordance with that plan;
2 and

3 (D) verify or establish proof of financial responsibility required by
4 AS 46.04.040;

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

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

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

14 (6) prepare, review, and revise

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

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

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

21 * Sec. 15. AS 46.08.070(c) is amended to read:

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

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

28 (2) the commissioner determines that

29 (A) the expenses to be reimbursed were for a necessary emergency first
30 response to a release or threatened release that, at the time of the release or threatened
31 release, posed an imminent and substantial threat to the public health or welfare, or to

1 the environment;

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

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

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

12 (3) "containment and cleanup" includes the direct and indirect efforts associated
 13 with the prevention, abatement, containment, or removal of oil or 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 oil or hazardous substance, including [, AND INCIDENTAL] administrative
 17 expenses for the incremental costs of providing the function or service;

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

19 (11) "service"

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

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

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

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

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

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

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

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

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

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

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

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

24 * Sec. 21. Sections 8 and 10 of this Act are retroactive to March 24, 1989.

25 * Sec. 22. APPLICABILITY. The amendments made by secs. 6, 7, 14, and 15 of this Act do not
26 apply to a release of oil or a hazardous substance and resultant cleanup activities or to efforts to respond
27 to or abate that release if the release occurred before the effective date of this Act.

28 * Sec. 23. This Act takes effect immediately under AS 01.10.070(c).

Attachments to CS for House Bill No. 275

Attachment A

Before a power authorized by this subsection may be exercised inside the boundaries of another municipality, the approval of the other municipality must be given by ordinance. Before a power authorized by this subsection may be exercised within a village as defined under AS 46.08.900 (12), the approval of the village must be given by resolution.

Attachment B

To the extent money is received by a community under this section for capital expenditures, such as vehicles, the commissioner may, at the end of the period for which there has been demonstrated special need, require the community to return the purchased item to the State if the commissioner determines that an inappropriate benefit would otherwise be conferred on the community.

Attachment C

The commissioner may pay the costs of the assessment plan and cost recovery plan from money available in the fund under AS 29.60.510(b) or by separate agreement with the commissioner of the Department of Environmental Conservation, or by other means.

7-LS0012P
Chenoweth
4/25/91

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 25 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): SENATORS ZHAROFF, Sturgulewski

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 prepared by the Department of Environmental
 29 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 prepared by the Department of Environmental
4 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 prepared by the Department of Environmental Conservation under AS 46.04.210.

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

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

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

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

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

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

1 response to the release and that demonstrates that the release or response to the release involves
2 extraordinary expenditures that are beyond the reasonable capability of the municipality or village
3 to meet from the current revenue sources of the municipality or village.

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

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

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

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

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

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

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

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

5 (D) public safety needs, including police protection, search and rescue, and
 6 fire protection;

7 (E) public utility needs, including the operation of electric generating
 8 plants and distribution systems, water supply systems, telephone systems, and fuel
 9 distribution systems;

10 (F) housing and office needs;

11 (G) transportation needs;

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

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

18 (2) to compensate the municipality or village for

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

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

24 (b) If money received under this section is used for a capital expenditure, the
 25 commissioner may require the municipality or village that acquired the item as a capital
 26 expenditure to transfer it to the state at the end of the period during which the item is actually
 27 used for spill response if the commissioner finds that retention of the item would confer an
 28 inappropriate benefit on the municipality or village.

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

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

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

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

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

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

17 Sec. 29.60.540. LIMITATIONS ON USES OF GRANTS BY MUNICIPALITIES AND
18 VILLAGES. (a) A municipality may not use a grant made under AS 29.60.510 to reduce
19 current municipal tax rates or to retire its existing bonded indebtedness.

20 (b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may
21 not be used for a capital improvement, as that term is defined by AS 46.08.900(1).

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

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

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

31 (2) develop a plan to

1 (A) recover the cost of release-related expenditures; and
2 (B) mitigate the social and economic effects of the release of the oil or
3 hazardous substance on the municipalities, the villages, and the region in which the
4 discharge occurs;

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

7 (1) using staff of the department;
8 (2) contracting with a municipality or other entity; or
9 (3) authorizing a municipality or other entity to perform that work and supporting
10 that effort by a grant.

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

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

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

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

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

21 Sec. 29.60.590. REGULATIONS. The commissioner and the commissioner of
22 environmental conservation shall jointly develop and adopt regulations that are necessary to
23 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;

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(5) "service"

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

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

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

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

(B) has

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

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

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

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

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

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

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

(3) amounts paid as grants under AS 29.60.510 - 29.60.599 and as emergency

1 first response advances and reimbursements under AS 46.08.070(c): [,] and

2 (4) all incidental administrative costs.

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

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

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

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

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

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

31 (5) any person who accepts or accepted any hazardous substances, other than

1 refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person,
2 from which there is a release, or a threatened release that causes the incurrence of response costs,
3 of a hazardous substance.

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

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

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

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

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

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

21 (B) has

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

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

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

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

31 (f) In fulfilling its responsibilities under (e) of this section, the department shall consult

1 with the governing bodies of municipalities and villages.

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

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

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

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

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

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

17 (B) has

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

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

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

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

27 (a) In addition to money in the fund that is transferred to the commissioner of
28 community and regional affairs to make grants under AS 29.60.510 and to pay for impact
29 assessments under AS 29.60.560, the [THE] commissioner of environmental conservation may
30 use money from the fund to

31 (1) investigate and evaluate the release or threatened release of oil or a hazardous

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

4 (2) pay all costs incurred to

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

6 (B) review oil discharge prevention and contingency plans submitted under
7 AS 46.04.030;

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

14 (D) verify or establish proof of financial responsibility required by
15 AS 46.04.040;

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

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

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

25 (6) prepare, review, and revise

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

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

30 (7) restore the environment by addressing the effects of an oil or hazardous
31 substance release. •←

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

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

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

8 (2) the commissioner determines that

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

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

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

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

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

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

30 (11) "service"

31 (A) means a function performed or service provided by a municipality

1 under a duty or power authorized by AS 29 or by another provision of law authorizing
2 a municipality to perform functions or provide services, or a comparable function
3 performed or service provided by a village;

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

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

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

13 (B) has

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

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

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

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

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

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

29 (2) "containment and cleanup" includes the direct and indirect efforts associated
30 with the prevention, abatement, containment, or removal of a hazardous substance, and the
31 restoration of the environment; when applied to expenses, the term includes the additional

1 costs of providing a reasonable and appropriate function or service incurred in response to
2 the release of the hazardous substance, including [, AND INCIDENTAL] administrative
3 expenses for the incremental costs of providing the function or service;

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

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

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

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

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

7-LS0012J ✓
Chenoweth
4/10/91

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 25 (CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS ZHAROFF, Sturgulewski

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, relating to
3 state assistance to municipalities and villages for expenses for prevention and abatement
4 of environmental degradation, and adding to the governor's responsibilities after declaration
5 of a disaster emergency for the discharge of oil or a hazardous substance; and providing
6 for an effective date."

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

8 * Section 1. AS 26.23 is amended by adding a new section to read:

9 Sec. 26.23.027. IMPACT ASSESSMENT. (a) For each disaster emergency declared by
10 the governor under AS 26.23.020 based on a release of oil or a hazardous substance, the governor
11 shall make an assessment of the social and economic effects of the release of the oil or hazardous
12 substance on the municipalities, the villages, and the region in which the discharge occurs. The
13 governor may make the assessment by

- 1 (1) using staff of one or more of the departments of state government;
2 (2) contracting with a municipality or other entity for the assessment; or
3 (3) authorizing a municipality or other entity to make the assessment and
4 supporting that effort by the payment of a grant.

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

7 (c) The governor may pay the costs of the assessment from money available in the oil
8 and hazardous substance release response fund established by AS 46.08.010.

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

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

17 (1) protect its water supply and watershed; or
18 (2) contain, clean up, or prevent the release or threatened release of oil or
19 a hazardous substance that may pose an imminent or substantial threat to persons,
20 property, or natural resources within the municipality's boundaries; however, this
21 paragraph does not authorize a municipality to enforce an ordinance outside its boundaries
22 to regulate exploration, development, or production of oil, gas, or minerals in a manner
23 inconsistent with the state's management of those resources when the state is the owner of
24 the land, tideland, or submerged land; the ordinance adopted must be consistent with a
25 regional master plan for the region in which the municipality is located if a plan has been
26 prepared by the Department of Environmental Conservation under AS 46.04.210; in this
27 paragraph, "natural resources" has the meaning given in AS 46.03.826 [ORDINANCE].

28 * Sec. 3. AS 29.35.200 is amended by adding a new subsection to read:

29 (d) A first class borough that exercises power necessary to contain, clean up, or prevent
30 a release or threatened release of oil or a hazardous substance, and exercise a power granted to
31 a municipality under AS 46.04, AS 46.08, or AS 46.09 shall exercise its authority in a manner

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

3 * Sec. 4. AS 29.35.210(a) is amended by adding a new paragraph to read:

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

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

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

17 * Sec. 6. AS 29.60 is amended by adding new sections to read:

18 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL
19 IMPACT ASSISTANCE.

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

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

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

1 of a disaster emergency relating to the release.

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

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

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

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

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

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

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

31 (C) public health and welfare needs, including hospital, clinic, and

1 emergency medical services; alcohol, drug abuse, and mental health services; family
2 support services; and the operation of waste disposal systems and water quality
3 improvement systems;

4 (D) public safety needs, including police protection, search and rescue, and
5 fire protection;

6 (E) public utility needs, including the operation of electric generating
7 plants and distribution systems, water supply systems, telephone systems, and fuel
8 distribution systems;

9 (F) housing and office needs;

10 (G) transportation needs;

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

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

17 (2) to compensate the municipality or village for

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

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

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

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

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

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

31 (b) The department may reject an application for a grant under AS 29.60.510 or approve

1 an application for a grant in an amount that is less than the amount requested by a municipality
2 or village if the department determines that payment of the amount requested is not warranted
3 under (a) of this section.

4 (c) The department shall adopt, by regulation, criteria by which to rank all or a portion
5 of applications for the purpose of establishing the priority order of awarding grants if money
6 requested by eligible municipalities and villages under this section exceeds the amount available.
7 The criteria must be based on the elements set out in (a) of this section. If the total amount of
8 money requested by eligible municipalities and villages under this section exceeds the amount
9 available, the department shall rank applications for the purpose of establishing the priority order
10 of awarding grants in accordance with the regulations.

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

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

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

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

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

25 Sec. 29.60.570. REGULATIONS. The commissioner may adopt regulations that are
26 necessary to 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 each of the following in the unorganized borough or within
12 a borough if the power, function, or service for which a grant application is submitted under
13 AS 29.60.500 - 29.60.599 is not exercised or provided by the borough on an areawide or
14 nonareawide basis at the time the grant application is submitted, if the village has irrevocably
15 waived, in a form approved by the Department of Law, any claim of sovereign immunity that
16 might arise in connection with the use of grant money under this chapter, and if the village has

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

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

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

24 * Sec. 7. AS 46.03.760(e) is amended to read:

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

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

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

1 (3) amounts transferred to the Office of the Governor to pay for impact
2 assessments under AS 26.23.027, and amounts paid as grants under AS 29.60.510 - 29.60.599
3 and as emergency first response advances and reimbursements under AS 46.08.070(c); [,]
4 and

5 (4) all incidental administrative costs.

6 * Sec. 8. 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, or a village,
11 [AND] for the costs of response, containment, removal, or remedial action incurred by the state,
12 [OR] a municipality, or a village, and for the additional costs of a function or service,
13 including administrative expenses for the incremental costs of providing the function or
14 service, that are incurred by the state, a municipality, or a village and the costs of projects
15 or activities that are delayed or lost because of the efforts of the state, the municipality, or
16 the village resulting from an unpermitted release of a hazardous substance or, with respect to
17 response costs, 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. 9. 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. 10. 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 each of the following in the unorganized borough or within
20 a borough as to a power, function, or service that is not exercised or provided by the borough
21 on an areawide or nonareawide basis if the village has irrevocably waived, in a form approved
22 by the Department of Law, any claim of sovereign immunity that might arise under this chapter,
23 and if the village has

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

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

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

31 * Sec. 11. AS 46.04.020 is amended by adding a new subsection to read:

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

3 * Sec. 12. AS 46.04.900(5) is amended to read:

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

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

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

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

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

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

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

25 * Sec. 14. AS 46.08.040(a) is amended to read:

26 (a) In addition to money in the fund that is transferred to the Office of the
27 Governor to pay for impact assessments under AS 26.23.027 and to the commissioner of
28 community and regional affairs to make grants under AS 29.60.510, the [THE] commissioner
29 of environmental conservation may use money from the fund to

30 (1) investigate and evaluate the release or threatened release of oil or a hazardous
31 substance, and contain, clean up, and take other necessary action, such as monitoring and

1 assessing, to address a release or threatened release of oil or a hazardous substance that poses
2 an imminent and substantial threat to the public health or welfare, or to the environment;

3 (2) pay all costs incurred to

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

5 (B) review oil discharge prevention and contingency plans submitted under
6 AS 46.04.030;

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

13 (D) verify or establish proof of financial responsibility required by
14 AS 46.04.040;

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

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

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

24 (6) prepare, review, and revise

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

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

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

31 * Sec. 15. AS 46.08.070(c) is amended to read:

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

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

8 (2) the commissioner determines that

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

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

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

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

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

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

30 (11) "service"

31 (A) means a function performed or service provided by a municipality

1 under a duty or power authorized by AS 29 or by another provision of law authorizing
2 a municipality to perform functions or provide services, or a comparable function
3 performed or service provided by a village;

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

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

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

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

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

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

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

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

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

- 1 * Sec. 20. AS 46.09.900 is amended by adding a new paragraph to read:
- 2 (8) "service" means a function performed or service provided by the state,
- 3 including functions not previously performed and services not previously provided by the state.
- 4 * Sec. 21. Sections 8 and 10 of this Act are retroactive to March 24, 1989.
- 5 * Sec. 22. This Act takes effect immediately under AS 01.10.070(c).

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 25 (CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): **SENATORS ZHAROFF, Sturgulewski**

A BILL

FOR AN ACT ENTITLED

Title 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 ^{new} 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 prepared by the Department of Environmental
 29 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 prepared by the Department of Environmental
 4 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 prepared by the Department of Environmental Conservation under AS 46.04.210.

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

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

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

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

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

27 (1) a determination by the governor that the release exceeds 10,000 barrels of oil
 28 [or 550,000 gallons of a hazardous substance]

29 (2) the declaration by the governor of a disaster emergency relating to the release;

30 and

31 (3) a finding by the governor that

1 (A) the release of the oil or hazardous substance into the environment
 2 presents a real and substantial threat to the economy and public welfare of the
 3 municipalities and villages that are affected by the release and by the resultant activities
 4 to contain and clean up the release; and

5 (B) it is in the best interest of the state to pay the expenses incurred by
 6 municipalities and villages to mitigate the social and economic effects that arise out of
 7 the release of the oil or the hazardous substance and the resultant cleanup activities.

8 Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) The commis-
 9 sioner may use money from the oil and hazardous substance release response fund to make grants
 10 to a municipality or village that is affected by the release or by the response to the release and
 11 that demonstrates that the release or response to the release involves extraordinary expenditures
 12 that are beyond the reasonable capability of the municipality or village to meet from the current
 13 revenue sources of the municipality or village if

14 (1) the governor determines that a release of oil or a hazardous substance exceeds
 15 10,000 barrels of oil [or 550,000 gallons of a hazardous substance;]

16 (2) the release has been proclaimed a disaster emergency by the governor under
 17 AS 26.23.020; and

18 (3) the governor finds that

19 (A) the release of the oil or hazardous substance into the environment
 20 presents a real and substantial threat to the economy and public welfare of the
 21 municipalities and villages that are affected by the release and by the resultant activities
 22 to contain and clean up the release; and

23 (B) it is in the best interest of the state to pay the expenses incurred by
 24 municipalities and villages to mitigate the social and economic effects that arise out of
 25 the release of the oil or the hazardous substance and the resultant cleanup activities.

26 (b) For each disaster emergency declared by the governor under AS 26.23.020, and
 27 subject to agreement with the commissioner of environmental conservation as to the amount of
 28 money in the fund that may be used by the department to make grants, the commissioner may
 29 expend not more than \$10,000,000 of the balance of the fund that is appropriated to the spill
 30 reserve or of the unrestricted balance of the fund for grants authorized under this section. ~~If the~~
 31 ~~commissioner and the commissioner of environmental conservation do not agree on the amount~~

1 of money in the fund that may be used by the department to make grants under AS 29.60.500 -
 2 29.60.599, the ~~governor~~ shall make the determination.

3 ~~Notwithstanding~~ the limitation of AS 37.07.080(e) against the transfer of money
 4 between appropriations, when the commissioner and the commissioner of environmental
 5 conservation have agreed to the amount of money in the fund that may be used by the
 6 department to make grants, or when that determination has been made by the governor, the
 7 commissioner of environmental conservation shall promptly transfer that amount to the
 8 department for use under AS 29.60.500 - 29.60.599.

9 ~~(d)~~ For money that has been transferred under (c) of this section, if within any one-year
 10 period thereafter the commissioner does not use the money to make a grant under AS 29.60.500 -
 11 29.60.599, the commissioner shall, at the direction of the governor or the request of the
 12 commissioner of environmental conservation, return the unexpended amount transferred under
 13 (c) of this section to the fund.

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

16 ~~(b)~~ for a service, including all incidental administrative costs related to the
 17 service, that is directly or indirectly affected by efforts associated with prevention, abatement,
 18 containment, or removal of oil or a hazardous substance and that relates to

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

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

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

27 ~~(D)~~ public safety needs, including police protection, search and rescue, and
 28 fire protection;

29 ~~(E)~~ public utility needs, including the operation of electric generating
 30 plants and distribution systems, water supply systems, telephone systems, and fuel
 31 distribution systems;

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- ~~(F)~~ housing and office needs;
- ~~(G)~~ transportation needs;
- ~~(H)~~ public administration needs, including the value of the time of staff and administrative personnel necessary to direct efforts to prevent, abate, contain, and remove oil or a hazardous substance; and
- ~~(I)~~ planning needs, including the value of the time of staff and administrative personnel necessary to coordinate efforts with other governments to prevent, abate, contain, and remove oil or a hazardous substance; and
- ✓(2) to compensate the municipality or village for
- ✓(A) the reduction of revenue attributable to the release of the oil or hazardous substance; and
- ✓(B) the costs of projects or activities that are delayed or lost because of the efforts of the municipality or village responding to the release or associated with the containment or cleanup of oil or the hazardous substance.

~~(3)~~ If money received under this section is used for a capital expenditure the commissioner may require the municipality or village that acquired the item as a capital expenditure to transfer it to the state at the end of the period during which the item is actually used for spill response if the commissioner finds that retention of the item would confer an inappropriate benefit on the municipality or village.

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

- (1) the degree to which the effect on the municipality or village is directly caused by the oil or hazardous substance release or the response to the release;
- (2) the availability of money to the recipient from other sources that can meet the costs of providing the functions or services; and
- (3) the severity of the effect addressed in the grant application.

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

1 (c) The department shall adopt, by regulation, criteria by which to rank all or a portion
2 of applications for the purpose of establishing the priority order of awarding grants if money
3 requested by eligible municipalities and villages under this section exceeds the amount available.
4 The criteria must be based on the elements set out in (a) of this section. If the total amount of
5 money requested by eligible municipalities and villages under this section exceeds the amount
6 available, the department shall rank applications for the purpose of establishing the priority order
7 of awarding grants in accordance with the regulations.

8 Sec. 29.60.540. LIMITATIONS ON USES OF GRANTS BY MUNICIPALITIES AND
9 VILLAGES. (a) A municipality may not use a grant made under AS 29.60.510 to reduce
10 current municipal tax rates or to retire its existing bonded indebtedness.

11 (b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may
12 not be used for a capital improvement, as that term is defined by AS 46.08.900(1); or

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

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

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

22 (2) develop a plan to

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

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

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

28 by

29 (1) using staff of the department;

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

31 (3) authorizing a municipality or other entity to perform that work and supporting

1 that effort by a grant.

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

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

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

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

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

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

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

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

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

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

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

23 (5) "service"

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

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

30 (6) "village" means a place within the unorganized borough or within a borough
31 if the power, function, or service for which a grant application is submitted under AS 29.60.500 -

1 29.60.599 is not exercised or provided by the borough on an areawide or nonareawide basis at
2 the time the grant application is submitted, that

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

6 (B) has

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

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

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

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

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

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

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

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

24 (4) all incidental administrative costs.

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

26 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
27 set out in (b) of this section and the exception set out in (i) of this section, the following persons
28 are strictly liable, jointly and severally, for damages to persons or property, whether public or
29 private, including damage to the natural resources of the state or municipality, [AND] for the
30 costs of response, containment, removal, or remedial action incurred by the state, [OR] a munic-
31 ipality, or a village, and for the additional costs of a function or service, including

1 administrative expenses for the incremental costs of providing the function or service, that
2 are incurred by the state, a municipality, or a village, and the costs of projects or activities
3 that are delayed or lost because of the efforts of the state, the municipality, or the village,
4 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,
5 the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

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

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

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

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

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

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

12 (B) has

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

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

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

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

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

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

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

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

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

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

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

8 (B) has

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

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

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

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

18 (a) In addition to money in the fund that is transferred to the commissioner of
19 community and regional affairs to make grants under AS 29.60.510 and to pay for impact
20 assessments under AS 29.60.560, the [THE] commissioner of environmental conservation may
21 use money from the fund to

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

26 (2) pay all costs incurred to

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

28 (B) review oil discharge prevention and contingency plans submitted under
29 AS 46.04.030;

30 (C) conduct training, response exercises, inspections, and tests, in order
31 to verify equipment inventories and ability to prevent and respond to oil and hazardous

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

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

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

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

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

16 (6) prepare, review, and revise

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

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

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

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

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

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

30 (2) the commissioner determines that

31 (A) the expenses to be reimbursed were for a necessary emergency first

1 response to a release or threatened release that, at the time of the release or threatened
2 release, posed an imminent and substantial threat to the public health or welfare, or to
3 the environment;

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

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

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

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

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

21 (11) "service"

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

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

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

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

4 (B) has

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

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

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

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

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

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

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

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

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

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

30 * Sec. 23. APPLICABILITY. The amendments made by secs. 7, 8, 15, and 16 of this Act do not
31 apply to a release of oil or a hazardous substance and resultant cleanup activities or to efforts to respond

1 to or abate that release if the release occurred before the effective date of this Act.

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

7-LS0012NY ✓
Chenoweth
5/2/91

Adopted 5/2/91

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 25 (CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): **SENATORS ZHAROFF, Sturgulewski**

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; relating to the liability of villages for environmental response
4 actions and to state assistance to municipalities and villages for expenses for prevention
5 and abatement of environmental degradation; and providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

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

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

11 (b) A municipality may adopt an ordinance to exercise a power authorized by this
12 subsection [PROTECT ITS WATER SUPPLY AND WATERSHED.] and may enforce the
13 ordinance outside its boundaries. Before a [THIS] power authorized by this subsection may

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

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

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

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

18 (e) In this section, "village"

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

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

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

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

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

30 (13) contain, clean up, or prevent a release or threatened release of oil or a
31 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,

1 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
2 consistent with a regional master plan prepared by the Department of Environmental
3 Conservation under AS 46.04.210.

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

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

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

12 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL
13 IMPACT ASSISTANCE.

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

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

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

26 (1) a determination by the governor that the release exceeds 2,500 barrels of oil,
27 or exceeds an amount of a hazardous substance that when released into the environment presents
28 a real and substantial threat to the economy and public welfare of the municipalities or villages
29 affected by it;

30 (2) the declaration by the governor of a disaster emergency relating to the release:

31 and

1 (3) a finding by the governor that

2 (A) the release of the oil or hazardous substance into the environment
3 presents a real and substantial threat to the economy and public welfare of the
4 municipalities and villages that are affected by the release and by the resultant activities
5 to contain and clean up the release; and

6 (B) it is in the best interest of the state to pay the expenses incurred by
7 municipalities and villages to mitigate the social and economic effects that arise out of
8 the release of the oil or the hazardous substance and the resultant cleanup activities.

9 Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) The
10 commissioner may use money from the oil and hazardous substance release response fund to
11 make grants to a municipality or village that is affected by the release or by the response to the
12 release and that demonstrates that the release or response to the release involves extraordinary
13 expenditures that are beyond the reasonable capability of the municipality or village to meet from
14 the current revenue sources of the municipality or village if

15 (1) the governor determines that a release of oil or a hazardous substance exceeds
16 2,500 barrels of oil, or exceeds an amount of a hazardous substance that, when released into the
17 environment, presents a threat to the economy and public welfare of the municipalities and
18 villages affected by it at least equivalent in effect to the effect of a release of oil in an amount
19 defined by this paragraph;

20 (2) the release has been proclaimed a disaster emergency by the governor under
21 AS 26.23.020; and

22 (3) the governor finds that

23 (A) the release of the oil or hazardous substance into the environment
24 presents a real and substantial threat to the economy and public welfare of the
25 municipalities and villages that are affected by the release and by the resultant activities
26 to contain and clean up the release; and

27 (B) it is in the best interest of the state to pay the expenses incurred by
28 municipalities and villages to mitigate the social and economic effects that arise out of
29 the release of the oil or the hazardous substance and the resultant cleanup activities.

30 (b) For each disaster emergency declared by the governor under AS 26.23.020, and
31 subject to agreement with the commissioner of environmental conservation as to the amount of

1 money in the fund that may be used by the department to make grants. the commissioner may
2 expend not more than \$10,000,000 of the balance of the fund that is appropriated to the spill
3 reserve or of the unrestricted balance of the fund for grants authorized under this section. If the
4 commissioner and the commissioner of environmental conservation do not agree on the amount
5 of money in the fund that may be used by the department to make grants under AS 29.60.500 -
6 29.60.599, the governor shall make the determination.

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

13 (d) For money that has been transferred under (c) of this section, if within any one-year
14 period thereafter the commissioner does not use the money to make a grant under AS 29.60.500 -
15 29.60.599, the commissioner shall, at the direction of the governor or the request of the
16 commissioner of environmental conservation, return the unexpended amount transferred under
17 (c) of this section to the fund.

18 Sec. 29.60.520. PURPOSES OF MUNICIPAL IMPACT GRANTS. (a) A grant made
19 under AS 29.60.510 may be made

20 (1) only for

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

23 (B) the additional costs of a reasonable and appropriate function or
24 service, including administrative expenses for the incremental costs of providing the
25 function or service, limited to:

26 (i) public health and welfare functions and services, including
27 hospital, clinic, and emergency medical services; alcohol, drug abuse, and mental
28 health services; family support services; and the operation of waste disposal
29 systems and water quality improvement systems;

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

1 (iii) public utility functions and services, including the operation
2 of electric generating plants and distribution systems, water supply systems,
3 telephone systems, and fuel distribution systems; and

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

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

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

13 (2) to compensate the municipality or village for

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

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

19 (b) If money received under this section is used for a capital expenditure the
20 commissioner may require the municipality or village that acquired the item as a capital
21 expenditure to transfer it to the state at the end of the period during which the item is actually
22 used for spill response if the commissioner finds that retention of the item would confer an
23 inappropriate benefit on the municipality or village.

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

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

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

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

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

5 (c) The department shall adopt, by regulation, criteria by which to rank all or a portion
6 of applications for the purpose of establishing the priority order of awarding grants if money
7 requested by eligible municipalities and villages under this section exceeds the amount available.
8 The criteria must be based on the elements set out in (a) of this section. If the total amount of
9 money requested by eligible municipalities and villages under this section exceeds the amount
10 available, the department shall rank applications for the purpose of establishing the priority order
11 of awarding grants in accordance with the regulations.

12 Sec. 29.60.540. LIMITATIONS ON USES OF GRANTS BY MUNICIPALITIES AND
13 VILLAGES. (a) A municipality may not use a grant made under AS 29.60.510 to raise
14 current municipal tax rates or to retire its existing bonded indebtedness.

15 (b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may
16 not be used for a capital improvement, as that term is defined by AS 46.08.900(1).

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

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

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

26 (2) develop a plan to

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

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

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

1 by

2 (1) using staff of the department;

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

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

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

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

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

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

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

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

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

20 (1) "barrel" when used with reference to oil has the meaning given by
21 AS 43.20.072;

22 (2) "containment and cleanup" has the meaning given in AS 46.08.900;

23 (3) "disaster emergency" means a disaster declared by the governor under
24 AS 26.23.020;

25 (4) "fund" means the oil and hazardous substance release response fund
26 established by AS 46.08.010;

27 (5) "hazardous substance" has the meaning given in AS 46.09.900;

28 (6) "oil" and "release" have the meanings given in AS 46.08.900;

29 (7) "service"

30 (A) means a function performed or service provided by a municipality
31 under a duty or power authorized by this title or by another provision of law authorizing

1 a municipality to perform functions or provide services, or a comparable function
2 performed or service provided by a village;

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

5 (8) "village" means a place within the unorganized borough or within a borough
6 if the power, function, or service for which a grant application is submitted under AS 29.60.500 -
7 29.60.599 is not exercised or provided by the borough on an areawide or nonareawide basis at
8 the time the grant application is submitted, that

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

12 (B) has

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

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

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

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

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

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

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

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

30 (4) all incidental administrative costs.

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

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

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

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

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

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

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

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

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

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

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

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

16 (A) has irrevocably waived, in a form approved by the Department of
17 Law, any claim of sovereign immunity that might arise 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 of community and
24 regional affairs under regulations adopted by the Department of Community and
25 Regional Affairs to determine and give official recognition of village entities
26 under AS 44.47.150(b).

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

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

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

31 (5) "containment and cleanup" includes all direct and indirect efforts associated

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

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

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

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

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

14 (B) has

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

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

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

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

24 (a) In addition to money in the fund that is transferred to the commissioner of
25 community and regional affairs to make grants under AS 29.60.510 and to pay for impact
26 assessments under AS 29.60.560, the [THE] commissioner of environmental conservation may
27 use money from the fund to

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

- 1 (2) pay all costs incurred to
2 (A) establish and maintain the oil and hazardous substance response office;
3 (B) review oil discharge prevention and contingency plans submitted under
4 AS 46.04.030;
5 (C) conduct training, response exercises, inspections, and tests, in order
6 to verify equipment inventories and ability to prevent and respond to oil and hazardous
7 substance release emergencies, and to undertake other activities intended to verify or
8 establish the preparedness of the state, a municipality, or a party required by
9 AS 46.04.030 to have an approved contingency plan to act in accordance with that plan;
10 and
11 (D) verify or establish proof of financial responsibility required by
12 AS 46.04.040;
- 13 (3) pay the expenses incurred by the Alaska division of emergency services for
14 the oil and hazardous substance response corps and the oil and hazardous substance response
15 depots when presented with appropriate documentation by the division;
- 16 (4) provide matching funds for participation in federal oil discharge cleanup
17 activities and under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,
18 Compensation, and Liability Act of 1980);
- 19 (5) recover the costs [COST] to the state, [OR TO] a municipality, or a village
20 of a containment and cleanup resulting from the release or the threatened release of oil or a
21 hazardous substance;
- 22 (6) prepare, review, and revise
23 (A) the state's master oil and hazardous substance discharge prevention
24 and contingency plan required by AS 46.04.200; and
25 (B) a regional master oil and hazardous substance discharge prevention
26 and contingency plan required by AS 46.04.210; and
27 (7) restore the environment by addressing the effects of an oil or hazardous
28 substance release.

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

30 (c) The department shall [MAY] reimburse a municipality or village for actual expenses,
31 other than normal operating expenses, incurred in the abatement of a release or threatened release

1 and may advance money to a municipality or village to carry out an emergency first
2 response to a release or threatened release of oil or a hazardous substance if

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

5 (2) the commissioner determines that

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

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

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

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

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

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

27 (11) "service"

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

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

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

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

10 (B) has

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

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

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

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

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

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

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

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

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

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

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

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

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

April 9, 1991

POSITION PAPER

RE: Sponsor Substitute for Senate Bill 25

SPONSOR: Senator's Zharoff and Sturgulewski

Program Effects of the Bill

The Sponsor Substitute for this bill contains a number of language refinements that clarify the scope and purpose of the Impact Assistance Grants portion of the legislation. The Department's analysis indicates that all of the changes are consistent with our original perception and understanding of the purposes of the Impact Assistance program.

This Sponsor Substitute also amends the authority of a municipality regarding watershed regulation. Specifically, it allows a municipality to delegate authority to regulate watersheds to another municipality by adoption of a resolution instead of an ordinance. The amendment continues by requiring that a municipality exercising extraterritorial powers of watershed regulation obtain the approval of any village whose boundaries are in the watershed.

Comments

As noted the Department considers the grant program amendments to be consistent with its perception of the purpose of the grant program. However, the amendments dealing with watershed regulation pose potential difficulties in implementation.

With respect to the resolution versus ordinance process the Department is inclined to support an ordinance process. Resolutions are used largely to state opinions and make declarations. They do not require public hearings and may be introduced and adopted at the same meeting. Conversely, ordinance's are adopted as local law and must have a public hearing. Additionally, there is a minimum seven day waiting period between the point of introduction and that of adoption. We believe allowing another municipality to exercise authority within your municipality is a significant act and should be subject to the more deliberative process associated with ordinances.

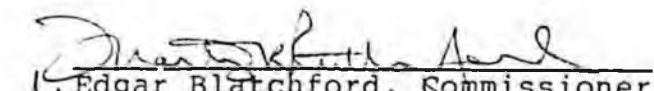
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Position Paper - SS SB 25
April 9, 1991
Page two

With respect to the issue of requiring village approval of watershed management within its boundaries, the matter is clouded by the fact that villages have no defined boundaries. And in fact, the concept of what land area constitutes the village often revolves around the function that is being discussed. For example, the village could be the core area where people reside the majority of the time, it could be that area and all the land holdings of the village corporation, or it could be it's traditional hunting and gathering area. Moreover, Title 29 does not presently contain a definition of the term "village".

Staff of the Department are not aware of any instances where there has been conflict between an unincorporated village and a municipality trying to exercise jurisdiction over its watershed. If there have not been any significant number of such instances occurring, it may be better simply to leave matters as they now are. For while the amendment may resolve some potential problems it threatens to create additional ones through ambiguities associated with its jurisdictional application. If the amendment is retained we believe that a definition of "village", consistent with the remainder of SB 25 should be added to AS 29.71.800.

As stated in our previous position paper, the Department of Community and Regional Affairs supports this bill. Our experience with the Exxon Valdez oil spill showed that municipalities and villages are heavily impacted by such occurrences and end up incurring major expenses regardless of whether or not they have direct responsibility for responding. This bill would make clear a municipality's authority to be involved in oil and other hazardous spill response and would provide funds so that the brunt of the cost would not have to be borne locally.


Edgar Blatchford, Commissioner

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

417 Cap

DATE: 1/21/91

FURTHER: Finance

Date of 5-Day Notice: 4/4/91
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: _____

C&RA Committee considered SSSB 25

Exercise of authority and recovery of damages by the state, 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; efd.

and recommended:

- replace with _____ CS SS SB 25 (CRA) same title new title
- attached amendment(s)
- _____ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

ATTACHES NEW FISCAL NOTE(S):

- | | |
|--|---|
| <p>Department(s)/Date:</p> <p><input type="checkbox"/> fiscal note(s) _____</p> <p>_____</p> <p>_____</p> <p><input type="checkbox"/> appropriation-no fiscal note</p> | <p>Department(s)/Date:</p> <p><input checked="" type="checkbox"/> zero fiscal note(s) <u>SAVES ALL 3</u></p> <p><u>Dept. Law - 3/27/91</u></p> <p><u>Dept. Env. Cons. - 3/18/91</u></p> <p><u>Dept. C+RA - 4/9/91</u></p> <p><input type="checkbox"/> Governor's bill w/fiscal note</p> |
|--|---|

SIGNING DO PASS:

Celine Stussman

Paul H. Ziegler

OTHER RECOMMENDATIONS:

Steve Seal Do Pass

Chair: Signature and Recommendation

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSSB 25

The sponsor substitute for SB 25 adopts new language in Section 5, proposed AS 29.60.599(6), to provide that villages irrevocably waive any claims to sovereign immunity that might arise in connection with the use of grant monies under the impact assistance grant program. The addition of the waiver provision will help insure that any future dispute that might arise involving grants to villages, unincorporated under state law, can be resolved in state courts. This is a change suggested in the Department of Law's original fiscal note, dated February 25, 1991. Otherwise, the department's original fiscal note comments remain unchanged.



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907) 586-1325, Fax (907) 463-5480

In Support of Sponsor Substitute for SB 25

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.

3/25/91

FISCAL NOTE

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

BILL NO. SB 25

Revision Date: _____
 Title: Exercise of authority and
recovery of damages...
 Sponsor: Senator Fred Zharoff
 Requestor: _____

Department Affected: DEC
 BRU: Environmental Quality
 Component: EQ Projects

COMPONENT SERIAL NO.

1	1	0	1	1	6
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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						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

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: _____

Approved by Commissioner: *M. J. ...*
 Agency: Department of Environmental Conservation

Date: 3/18/71

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



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

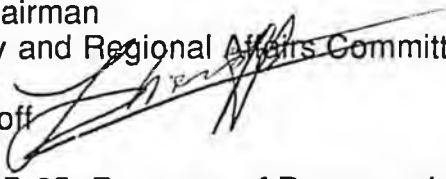
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DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Frank, Chairman
Senate Community and Regional Affairs Committee

FROM: Senator Fred Zharoff 

RE: Scheduling of SSSB 25, Recovery of Damages by the State
and Municipalities in Matters Relating to Environmental Conservation

DATE: March 26, 1991

I am writing to request that you schedule SSSB 25 for a committee hearing at your earliest convenience.

SSSB 25 sets up a program to provide municipalities and villages access through DCRA to up to \$10,000,000 in funding from the DEC-managed Oil and Hazardous Substance Spill Response Fund ("470 Fund"), and provides a mechanism for the transfer of those funds between these departments. These funds would be made available to municipalities and villages as impact grants to pay for costs "associated with prevention, abatement, containment, or removal of oil or a hazardous substance."

SSSB 25 also authorizes and provides a mechanism for DEC to provide "first response" funds to municipalities and villages to respond to and clean up oil and hazardous substance spills on behalf of the state.

This bill is a redraft of SSSB 359 from the Sixteenth Legislature, which passed the Senate and died in the House Finance Committee last year.

To address certain concerns expressed to me by officials in the Department of Environmental Conservation. I am including a proposed Letter of Intent for the committee's consideration.

Backup information is included.

C&RA COMMITTEE CHECK LIST

Bill:

SB 25

Sponsor:

Zharoff

Date In:

3-22-91

Schedule Memo:

1) Agency Position Papers:

2) Fiscal Notes:

3) Sectional Analysis:

4) Other Backup:



Alaska State Legislature

Senate

Office of the Secretary

P.O. BOX V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

OFFICIAL BUSINESS

FOR YOUR IMMEDIATE ATTENTION

TO SENATE COMMITTEE: C&RA

Senator Frank

FROM: Office of the Senate Secretary

DATE: March 22, 1991

A Sponsor Substitute has been introduced on the following bill/resolution that is pending in your Committee.

SENATE BILL NO. 25

Damages by the state and its municipalities and villages in matters relating to environmental conservation, etc.; efd.

Please pull this bill/blue back from your files and give to the page delivering this message. The bill/resolution will be returned to you with the Sponsor Substitute. Thank you.

SIGNATURE OF PERSON RECEIVING THIS MESSAGE

S.B 25

Resolution of the Alaska Municipal League

Resolution No. 91-2

**A RESOLUTION SUPPORTING LEGISLATION TO ASSURE
REIMBURSEMENT TO MUNICIPALITIES THAT RESPOND TO AND ADDRESS
THE RELEASE OF OIL AND OTHER HAZARDOUS MATERIALS**

WHEREAS, recent spills involving the transportation of oil and other hazardous materials demonstrate the need for prompt response, and

WHEREAS, municipalities near the site of the hazardous material release may have the best chance to minimize the spread of the spill and the environmental damage done by the incident, and

WHEREAS, local governments usually are not responsible for nor have liability for spills within or near their jurisdictions, and

WHEREAS, the cost of municipal responses to address a private, state, or national problem should not be borne by a local government and its taxpayers, and

WHEREAS, legislation to ensure reimbursement to local governments responding to hazardous material spills, in the form of SB 359, came within a day of being enacted when the 16th Alaska Legislature adjourned, and

WHEREAS, this legislation is still very necessary to protect the Alaskan environment and assure municipalities that respond to hazardous material spills that they will be fully reimbursed;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the 17th Alaskan Legislature to introduce and pass legislation providing for full reimbursement for costs of municipal responses to oil and other hazardous material spills.

BE IT FURTHER RESOLVED that an adequate mechanism be established to fund the full reimbursement of local responses to oil and other hazardous material spills.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

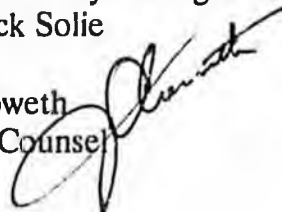
MEMORANDUM

April 8, 1991

SUBJECT: Extension of use of the Oil and Hazardous Substance Release Response Fund to municipalities and villages (SSSB 25)

TO: Senator Steve Frank, Chair
Senate Community & Regional Affairs Committee
ATTN: Rick Solie

FROM: Jack Chenoweth
Legislative Counsel



To isolate the new language, I've prepared the material relating to the governor's preparation of an impact assessment in the form of an amendment.

*

In conjunction with the request, you inquired as to the availability of the Oil and Hazardous Substance Release Response Fund for containment and cleanup purposes.

Although its use has been principally discussed in conjunction with the Exxon Valdez cleanup, the Fund, established by AS 46.08, is not limited to serving as a source of money for containment and cleanup of significant marine-related disasters, nor is it exclusively to serve as a source of containment and cleanup of disasters in which oil or a hazardous substance is released into water of the state. The test, set out at AS 46.08.040(a)(1), authorizes use of the fund balance, subject to other provisions of law, to

investigate and evaluate the release or threatened release of oil or a hazardous substance, and contain, cleanup, and take other necessary action, such as monitoring or assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment;

Senator Steve Frank
April 8, 1991
Page 2

A separate provision, AS 46.08.040(b), declares

(b) When the governor declares a disaster related to an oil or hazardous substance discharge emergency under AS 26.23.020(c), the governor may, during the effective period of the disaster emergency, use money from the fund to respond to the disaster emergency.

Under AS 26.23, a condition of disaster emergency includes a series of incidents and circumstances set out in AS 26.23.900(1), not necessarily related to discharges into water.

Thus, if a condition of disaster has been declared, the governor enjoys clear authority to draw from the Fund to support the state's response. If the incident or circumstance involves an unpermitted release of a small quantity of oil or a hazardous substance that does not result in the governor's declaration of a disaster but the spill or discharge is still found to pose an environmental threat, the commissioner of environmental conservation may draw from the Fund to support the containment and cleanup initiatives noted above.

JC:gc
91-191.glc

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

PROPOSED LETTER OF INTENT

SSSB25

It is the intent of the Legislature to broaden the powers of municipalities and villages under AS 29 and AS 46 to more effectively respond to the release or threatened release of oil or a hazardous substance. The Legislature does not intend this grant of authority to municipalities under these specific circumstances and statues as a preemption of the state's powers, but as a means to facilitate the response to a disaster by municipalities and villages on behalf of the state.



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

SSSB 25

SPONSOR STATEMENT

March 25, 1991

A handwritten signature in cursive script, likely belonging to Senator Fred F. Zharoff.

This legislation is intended as a follow-through of the worthy efforts begun during the Sixteenth Legislature to address the needs of communities to effectively respond to and mitigate the extraordinary social and economic costs associated with the containment and cleanup of oil or hazardous substances into the environment, upon the declaration by the governor of a disaster emergency. The broad scope and magnitude of the impacts of such spills became apparent with the occurrence of the March 24, 1989 Exxon Valdez oil spill. It is clear that such spills do present a real and substantial threat to the environment and to the economy and public welfare of affected municipalities and villages, and that a mechanism for the state to provide timely and substantial assistance is both appropriate and necessary.

SSSB 25 addresses the above concerns by:

- 1) Setting up a program to provide municipalities and villages access through DCRA to up to \$10,000,000 in funding, with the agreement of DEC, from the Oil and Hazardous Substance Response Fund ("470 Fund"). These funds are to provide "grants to a municipality or village that...demonstrates that the release or response to the release involves extraordinary expenditures..." for services whose costs are directly or indirectly affected by the spill, and to compensate the municipality or village for reductions in revenue, and the costs of projects or activities that are delayed or lost, because of the spill.
- 2) Providing and defining a mechanism for the transfer of these funds between DEC and DCRA. Community needs are presented to the commissioner of DCRA, who then requests 470 Funds from the commissioner of DEC. If the two commissioners agree on the amount and circumstances, the funds are transferred to DCRA for distribution as grants to the effected communities. Any disagreement between the two commissioners will be resolved by the governor.
- 3) Broadening the powers of municipalities and villages under AS 29 and under AS 46 to more effectively respond to the release or threatened release of oil or a hazardous substance. This grant of power is not intended to preempt state powers, but as a means to facilitate the response to a disaster by municipalities and villages on behalf of the state.
- 4) Authorizing and providing a mechanism for DEC to provide emergency "first response" funds to municipalities and villages to respond to and clean up oil and hazardous substance spills on behalf of the state.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

MATT JAMIN

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(o) 486-6024

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(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 25, 1991

Arrive
FRIDAY
4/26

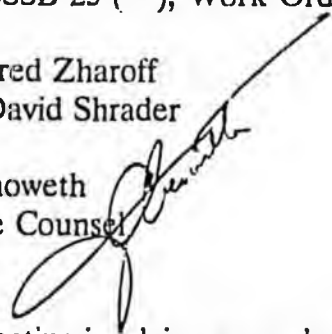
278-6100

(h+o)

SUBJECT: Draft CSSSSB 25 (), Work Order No. 7-LS0012P, 4/25/91

TO: Senator Fred Zharoff
ATTN: David Shrader

FROM: Jack Chenoweth
Legislative Counsel



This measure derives from a meeting involving several participants--I was not among them--yesterday.

Some comments to the draft:

In proposed AS 29.60.520(b)(2)--included based on language set out in an attachment prepared following that meeting--since there is a possibility that the state may require a transfer of title to it of something acquired by a municipality (or village) as a capital expenditure, there comes to my mind the question as to when and whether a municipal (or village) expenditure for a capital purpose--whatever that is--is ever really a municipal (or village) expenditure. And, how long after the spill response period may the commissioner act to require title transfer?

That same attachment indicated new language, brought into this draft as proposed AS 29.60.560(e) (page 7, lines 18 - 23), that raises a question. I have changed the language suggested in the attachment to substitute for the phrase "payment 'by other means'" to one that speaks of "payment 'from another source'", though I can't honestly say that I have any sense of what the author of the language in the attachment had contemplated.

Finally, please review carefully my editorial redrafting of the definition of "village" (" . . . means a place . . . ") every place the definition appears. I found that what we had in the earlier version didn't read right.

JBC:pl
91-307.plm

Enclosure

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 25 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): SENATORS ZHAROFF, Sturgulewski

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 ~~ART. 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

(2) to compensate the municipality or village for

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

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

(b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may not be used for

^{Period}
[(1)] a capital improvement, as that term is defined by AS 46.08.900(1); or

^(C) [(2)] a capital expenditure, unless the capital expenditure is necessary for a spill response; If money is used for a capital expenditure under this paragraph, the commissioner may require the municipality or village that acquired the item as a capital expenditure to transfer it 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 determine 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

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
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February 27, 1991

POSITION PAPER

RE: Senate Bill 25

SPONSOR: Senator Zharoff


Program Effects of the Bill

The bill authorizes municipalities to "contain, clean up, or prevent the release or threatened release of oil or other hazardous substances" that may pose an imminent threat to municipal residents or property. Exercise of the power must be in accord with any State DEC regional master plan, if one exists. The bill grants this authority to municipalities on an extra-territorial basis as well. Consistent with existing law, extra-territorial jurisdiction may be exercised within another municipality only with the approval of that municipality.

The bill also establishes a grant program in the Department of Community and Regional Affairs to help mitigate damages caused by a hazardous substance related State declared emergency (AS 26.23.020). Reimbursement for expenses incurred by a municipality or village in responding to a hazardous substance State declared emergency would also be possible from the grant fund. Both municipalities and unincorporated villages are eligible for grants from the fund.

Comments

The Department of Community and Regional Affairs supports this bill. Our experience with the Exxon Valdez oil spill showed that municipalities and villages are heavily impacted by such occurrences and end up incurring major expenses regardless of whether or not they have direct responsibility for responding. This bill would make clear a municipality's authority to be involved in oil and other hazardous spill response and would provide funds so that the brunt of the cost would not have to be borne locally.


Edgar Blatchford, Commissioner

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 25

Revision Date: _____ Department Affected: Community & Regional Affairs

Title: "An Act, recovery of damages.." BRU: _____

Component: _____

Sponsor: Senator Zharoff

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						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

There is no immediate fiscal impact. However, there will be a big fiscal impact if there is a spill.

Prepared By: Remond Henderson, Director *Remond Henderson* Phone: 465-4708

Division: Administrative Services Date: 2/27/91

Approved by Commissioner: _____

Agency: Community & Regional Affairs Date: 2/27/91

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

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

RECEIVED APR 13 1991

April 18, 1991

REPLY TO:

1031 W 4th AVENUE SUITE 200
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FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
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P.O. BOX K— STATE CAPITOL
JUNEAU, ALASKA 99811-0300
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FAX: (907) 463-5295

Honorable Fred Zharoff
Alaska State Senator
P. O. Box V
Juneau, Alaska 99811

Re: SSSB 25 amendments

Dear Senator Zharoff:

Set out below is an amendment to SSSB 25 that I believe will solve the Native sovereignty issue I discussed with your aide David Shrader on April 17, 1991:

Page 1 line 10: delete "or a village"

line 11: after "municipality" delete "or a village"
after "resolution," insert the following new

material to read:

"Before a power authorized by this subsection may be exercised inside a village, the governing body of the municipality shall notify and consult with the village council concerning the proposed exercise of power."

In addition to the amendment set out above, another section should be amended to satisfy our Native sovereignty concerns about this bill. Section 7, beginning on page 8 of the bill, would enact new material in AS 46.03.822(a) that may have serious implications. The amendment set out between lines 7 and 11 implies that a village is a trustee of natural resources within its area of influence. I understand that an amendment will be added to the bill describing this area of influence as extending from the center of the village out in a three-mile radius. This presents two legal problems. For a village located within an organized municipality, the provision will create potentially conflicting trusteeships for the same resources. Additionally, the implied trust relationship adds an attribute of governmental status to villages that they do not already possess. For these reasons, the

Hon. Fred Zharoff, Alaska State Senator
Re: Native Sovereignty

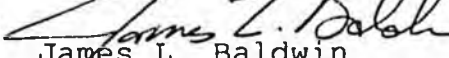
April 18, 1991
Page 2

words "or a village" should be deleted on lines 7, 10, and 11.

Thank you for the opportunity to comment on this bill.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
James L. Baldwin
Assistant Attorney General

JLB:cl

CC: Janice Adair, DEC

stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (J) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307(b) or (c) of the Clean Water Act [33 USCS § 1317(b) or (c)] and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act [33 USCS § 1342], and (K) any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954 [42 USCS §§ 2011 et seq.], in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954 [42 USCS §§ 2011 et seq.].

(11) The term "Fund" or "Trust Fund" means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986 [26 USCS § 9507].

(12) The term "ground water" means water in a saturated zone or stratum beneath the surface of land or water.

(13) The term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act.

(14) The term "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 USCS § 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act [42 USCS § 9602], (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 USCS § 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 USCS § 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 USCS § 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 USCS § 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(15) The term "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas.

Regulation providing for grant of variance from 1977 effluent limitations applicable to discharge of heat from steam electric generating plant, which regulation provides that only technical and engineering factors, exclusive of cost, may be considered in granting or denying variance, is unduly restrictive and would be set aside; 1977 standards and subsequent new source limitations were not intended to be applied any flexibly than 1983 requirements thus, upon reconsideration, EPA should come forward with meaningful variance clause applicable to existing as well as new sources, taking into consideration at least statutory factors set out in 33 USCS §§ 1311(c), 1314(b)(1)(B) and 1316(b)(1)(B). *Appalachian Power Co. v Train* (1976, CA4) 545 F2d 1351.

14. Grace period

It is not clear whether Congress intended to equate "effluent limitations" as used in 33 USCS § 1311 and defined in 33 USCS § 1362, with "standard of performance" as defined in 33 USCS § 1316, nor is it clear intent of Congress with reference to applicability of grace period to plants construction of which began after passage of Act in 1972 and before promulgation of regulations in 1974, however, except for such situations as are later determined to be within 33 USCS § 1316 grace period, plants which go on line between passage of Act and 1983 are subject to 1983 limitations. *E. I. Du Pont de Nemours & Co. v Train* (1976, CA4) 541 F2d 1018, affd in part and revd in part on other grounds 430 US 112, 51 L Ed 2d 204, 97 S Ct 965.

It is inferable from Congress' special treatment of new sources that it determined to afford protection of limited kind to new sources, under 33 USCS § 1316 provisions permitting standards of performance for new point sources to be

revised from time to time, but providing more stringent standard of performance may not be imposed on individual source for 10 years after completion of construction or until facility is fully depreciated or amortized, but not to extend same protection to existing sources or to restrict effectiveness of 33 USCS § 1317 standards even upon new sources. *Inland Steel Co. v Environmental Protection Agency* (1978, CA7) 574 F2d 367.

33 USCS § 1316 provision providing that new sources meeting all applicable standards of performance at time of construction do not have to meet any more stringent standard of performance during specific period of time does not shield qualifying sources from more stringent performance standards set by state which is assumed administration of National Pollutant Discharge Elimination System program under 33 USCS § 1342. *USEPA GCO 76-22*.

15. Violations by new source

Variances for individual plants are not permitted under 33 USCS § 1316, which authorizes Administrator of Environmental Protection Agency to promulgate regulations establishing standards for control of discharge of pollutants by new sources of water polluting discharges. *E. I. Du Pont de Nemours & Co. v Train* (1977) 430 US 112, 51 L Ed 2d 204, 97 S Ct 965.

Since regulations entitled "Ocean Dumping" were explicitly issued pursuant to 33 USCS § 1311 et seq. and 33 USCS § 1343, and not under 33 USCS § 1316(e) allegations that regulations have been violated do not allege violation of any portion of § 1316 so as to fall within 33 USCS § 1365's waiver of 60-day notice requirement. *Save Our Sound Fisheries Asso. v Callaway* (1977, DC RI) 429 F Supp 1136.

§ 1317. Toxic and pretreatment effluent standards

(a) Toxic pollutant list; revision; hearing; promulgation of standards; effective date; consultation. (1) On and after the date of enactment of the Clean Water Act of 1977 [enacted Dec. 27, 1977], the list of toxic pollutants or combination of pollutants subject to this Act shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator shall publish, not later than the thirtieth day after the date of enactment of the Clean Water Act of 1977 [enacted Dec. 27, 1977], that list. From time to time thereafter, the Administrator may revise such list and the Administrator is authorized to add to or remove from such list any pollutant. The Administrator in publishing any revised list, including the addition or removal of any pollutant from such list, shall take into account toxicity

of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms. A determination of the Administrator under this paragraph shall be final except that if, on judicial review, such determination was based on arbitrary and capricious action of the Administrator, the Administrator shall make a redetermination.

(2) Each toxic pollutant listed in accordance with paragraph (1) of this subsection shall be subject to effluent limitations resulting from the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 301(b)(2)(A) and 304(b)(2) of this Act [33 USCS §§ 1311(b)(2)(A), 1314(b)(2)]. The Administrator, in his discretion, may publish in the Federal Register a proposed effluent standard (which may include a prohibition) establishing requirements for a toxic pollutant which, if an effluent limitation is applicable to a class or category of point sources, shall be applicable to such category or class only if such standard imposes more stringent requirements. Such published effluent standard (or prohibition) shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and the extent to which effective control is being or may be achieved under other regulatory authority. The Administrator shall allow a period of not less than sixty days following publication of any such proposed effluent standard (or prohibition) for written comment by interested persons on such proposed standard. In addition, if within thirty days of publication of any such proposed effluent standard (or prohibition) any interested person so requests, the Administrator shall hold a public hearing in connection therewith. Such a public hearing shall provide an opportunity for oral and written presentations, such cross-examination as the Administrator determines is appropriate on disputed issues of material fact, and the transcription of a verbatim record which shall be available to the public. After consideration of such comments and any information and material presented at any public hearing held on such proposed standard or prohibition, the Administrator shall promulgate such standard (or prohibition) with such modification as the Administrator finds are justified. Such promulgation by the Administrator shall be made within two hundred and seventy days after publication of proposed standard (or prohibition). Such standard (or prohibition) shall be final except that if, on judicial review, such standard was not based on substantial evidence, the Administrator shall promulgate a revised standard. Effluent limitations shall be established in accordance with sections 301(b)(2)(A) and 304(b)(2) [33 USCS §§ 1311(b)(2)(A), 1314(b)(2)] for every toxic pollutant referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives as soon as

practicable after the date of enactment of the Clean Water Act of 1977 [enacted Dec. 27, 1977], but no later than July 1, 1980. Such effluent limitations or effluent standards (or prohibitions) shall be established for every other toxic pollutant listed under paragraph (1) of this subsection as soon as practicable after it is so listed.

(3) Each such effluent standard (or prohibition) shall be reviewed and, if appropriate, revised at least every three years.

(4) Any effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.

(5) When proposing or promulgating any effluent standard (or prohibition) under this section, the Administrator shall designate the category or categories of sources to which the effluent standard (or prohibition) shall apply. Any disposal of dredged material may be included in such a category of sources after consultation with the Secretary of the Army.

(6) Any effluent standard (or prohibition) established pursuant to this section shall take effect on such date or dates as specified in the order promulgating such standard, but in no case, more than one year from the date of such promulgation. If the Administrator determines that compliance within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for such category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.

(7) Prior to publishing any regulations pursuant to this section the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, States, independent experts, and Federal departments and agencies.

- (b) Pretreatment standards; hearing; promulgation; compliance period; revision; application to State and local laws. (1) The Administrator shall, within one hundred and eighty days after the date of enactment of this title [enacted Oct. 18, 1972] and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 212 of this Act [33 USCS § 1292]) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 212 of this Act [33 USCS § 1292]) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incom-

owned treatment works require the application of the best available technology economically achievable which will result in reasonable further progress toward the goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(2) of the Act.

Section 304(b) of the Act requires the Administrator to publish regulations providing guidelines for effluent standards setting forth the degree of effluent reduction attainable through the application of the best available technology currently available for the degree of effluent reduction through the application of control measures and procedures, including treatment processes, process and procedures, operating methods, and alternatives.

Section 304(c) of the Act requires the Administrator, after consultation with appropriate Federal and State agencies and other interested persons, to obtain information on the processes, or operating methods, or other measures, which result in the elimination or reduction of the discharge of pollutants to meet the performance standards of performance set forth in section 306 of the Act.

Section 306(b)(1)(B) of the Act requires the Administrator, after consultation with the sources which are included in a category pursuant to section 306(A) of the Act, to propose regulations establishing Federal standards of performance for new sources in each such category. Standards of performance are to provide for the greatest degree of effluent reduction which the Administrator determines to be achievable through the application of the best available technology, including treatment processes, operating methods, or other measures, including where practicable, a standard permitting no discharge of pollutants.

Section 307(b) provides that the Administrator shall establish pretreatment standards which shall prevent the discharge of any pollutant into navigable waters which would interfere with, pass

through untreated, or otherwise is incompatible with such works.

(g) Section 307(c) of the Act provides that the Administrator shall promulgate pretreatment standards for new sources which would be "new sources" under section 306 (if they were to discharge pollutants directly to navigable waters) at the same time standards of performance for the equivalent category of new sources are promulgated.

(h) Section 316(b) of the Act provides that any standard established pursuant to section 301 or section 306 of the Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(i) Section 402(a)(1) of the Act provides that the Administrator may issue permits for the discharge of any pollutant upon condition that such discharge will meet all applicable requirements under sections 301, 302, 306, 307, 308 and 403 of this Act. In addition, section 402(b)(1)(A) of the Act requires that permits issued by States under the National Pollutant Discharge Elimination System (NPDES) established by the Act must apply, and insure compliance with any applicable requirements of sections 301, 302, 306, 307 and 403 of the Act.

§ 401.13 Test procedures for measurement.

The test procedures for measurement which are prescribed at part 136 of this chapter shall apply to expressions of pollutant amounts, characteristics or properties in effluent limitations guidelines and standards of performance and pretreatment standards as set forth at parts 402 through 699 of this subchapter, unless otherwise specifically noted or defined in said parts.

§ 401.14 Cooling water intake structures.

The location, design, construction and capacity of cooling water intake structures of any point source for which a standard is established pursuant to section 301 or 306 of the Act shall reflect the best technology available for minimizing adverse environmental impact, in accordance with the provisions of part 402 of this chapter.

(Sec. 501(a) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1320(b) and 1201(a))

141 FR 17389, Apr. 26, 1976]

§ 401.15 Toxic pollutants.

The following comprise the list of toxic pollutants designated pursuant to section 307(a)(1) of the Act:

1. Acenaphthene
2. Acrolein
3. Acrylonitrile
4. Aldrin/Dieldrin¹
5. Antimony and compounds²
6. Arsenic and compounds
7. Asbestos
8. Benzene
9. Benzidine¹
10. Beryllium and compounds
11. Cadmium and compounds
12. Carbon tetrachloride
13. Chlordane (technical mixture and metabolites)
14. Chlorinated benzenes (other than dichlorobenzenes)
15. Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
16. Chloroalkyl ethers (chloroethyl and mixed ethers)
17. Chlorinated naphthalene
18. Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
19. Chloroform
20. 2-chlorophenol
21. Chromium and compounds
22. Copper and compounds
23. Cyanides
24. DDT and metabolites¹
25. Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
26. Dichlorobenzidine
27. Dichloroethylenes (1,1-, and 1,2-dichloroethylene)
28. 2,4-dichlorophenol
29. Dichloropropane and dichloropropene
30. 2,4-dimethylphenol
31. Dinitrotoluene
32. Diphenylhydrazine
33. Endosulfan and metabolites
34. Endrin and metabolites¹
35. Ethylbenzene
36. Fluoranthene

¹ Effluent standard promulgated (40 CFR part 129).

² The term "compounds" shall include organic and inorganic compounds.

- 37. Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis-(chloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
- 38. Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane)
- 39. Heptachlor and metabolites
- 40. Hexachlorobutadiene
- 41. Hexachlorocyclohexane
- 42. Hexachlorocyclopentadiene
- 43. Isophorone
- 44. Lead and compounds
- 45. Mercury and compounds
- 46. Naphthalene
- 47. Nickel and compounds
- 48. Nitrobenzene
- 49. Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
- 50. Nitrosamines
- 51. Pentachlorophenol
- 52. Phenol
- 53. Phthalate esters
- 54. Polychlorinated biphenyls (PCBs)¹
- 55. Polynuclear aromatic hydrocarbons (including benzantracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
- 56. Selenium and compounds
- 57. Silver and compounds
- 58. 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)
- 59. Tetrachloroethylene
- 60. Thallium and compounds
- 61. Toluene
- 62. Toxaphene¹
- 63. Trichloroethylene
- 64. Vinyl chloride
- 65. Zinc and compounds

[44 FR 44502, July 30, 1979, as amended at 46 FR 2266, Jan. 8, 1981; 46 FR 10724, Feb. 4, 1981]

§ 401.16 Conventional pollutants.

The following comprise the list of conventional pollutants designated pursuant to section 304(a)(4) of the Act:

- 1. Biochemical oxygen demand (BOD)
- 2. Total suspended solids (nonfilterable) (TSS)
- 3. pH
- 4. Fecal coliform
- 5. Oil and grease

[44 FR 44503, July 30, 1979; 44 FR 52685, Sept. 10, 1979]

§ 401.17 pH Effluent limitations under continuous monitoring.

(a) Where a permittee continuously measures the pH of wastewater pursu-

ant to a requirement or option in a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to section 402 of the Act, the permittee shall maintain the pH of such wastewater within the range set forth in the applicable effluent limitations guidelines, except excursions from the range are permitted subject to the following limitations:

(1) The total time during which the pH values are outside the required range of pH values shall not exceed 7 hours and 26 minutes in any calendar month; and

(2) No individual excursion from the range of pH values shall exceed 60 minutes.

(b) The Director, as defined in § 122.3 of this chapter, may adjust the requirements set forth in paragraph (a) of this section with respect to the length of individual excursions from the range of pH values, if a different period of time is appropriate based upon the treatment system, plant configuration or other technical factors.

(c) For purposes of this section, an "excursion" is an unintentional and temporary incident in which the pH value of discharge wastewater exceeds the range set forth in the applicable effluent limitations guidelines.

(Secs. 301, 304, 306 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et. seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217))

[47 FR 24537, June 4, 1982]

PART 402—[RESERVED]

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

- Sec.
- 403.1 Purpose and applicability.
- 403.2 Objective of general pretreatment regulations.
- 403.3 Definitions.
- 403.4 State or local law.
- 403.5 National pretreatment standards: Prohibited discharges.
- 403.6 National pretreatment standards: Categorical standards.
- 403.7 Removal credits.
- 403.8 POTW pretreatment programs: Development by POTW.

- 403.9 POTW pretreatment program authorization to revise pretreatment standards: Submission for approval
- 403.10 Development and submission of NPDES State pretreatment program
- 403.11 Approval procedures for POTW pretreatment programs and POTW removal credits.
- 403.12 Reporting requirements for POTW's and industrial users.
- 403.13 Variances from categorical pretreatment standards for fundamental factors.
- 403.14 Confidentiality.
- 403.15 Net/Gross calculation.
- 403.16 Upset provision.
- 403.17 Bypass.
- 403.18 Modification of POTW pretreatment programs.
- APPENDIX A—PROGRAM GUIDANCE
- APPENDIX B—65 TOXIC POLLUTANTS
- APPENDIX C—INDUSTRIAL CATEGORIES SUBJECT TO NATIONAL CATEGORICAL EFFLUENT STANDARDS
- APPENDIX D—SELECTED INDUSTRIAL CATEGORIES EXEMPTED FROM REGULATIONS PURSUANT TO PARAGRAPH 8 OF THE COSTLY CONSENT DECREE
- APPENDIX E—SAMPLING PROCEDURE
- AUTHORITY: Sec. 54(c)(2) of the Water Act of 1977, (Pub. L. 95-217) 304(b)(1)(C), 208(b)(2), 301(b)(1)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2)(C), 307, 308, 309, 402(b), 405 of the Federal Water Pollution Control Act of 1977 and the Water Act of 1987 (Pub. L. 100-4).
- SOURCE: 46 FR 9439, Jan. 28, 1981, otherwise noted.
- EDITORIAL NOTE: Nomenclature part 403 appears at 51 FR 2043, 1986.

§ 403.1 Purpose and applicability.
 (a) This part implements 204(b)(1)(C), 208(b)(2), 301(b)(1)(A)(ii), 301(b)(2)(C), 301(h)(5) and 301(i)(2), 304 (307, 308, 309, 402(b), 405, and the Federal Water Pollution Act as amended by the Clean Water Act of 1977 (Pub. L. 95-217) "Act". It establishes responsive Federal, State, and local government industry and the public to National Pretreatment Standards control pollutants which pass or interfere with treatment in Publicly Owned Treatment

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR FRANK

TO: SSSB 25

Page 1, line 2, after "conservation,":

Delete "and"

Page 1, line 4, after "degradation":

Insert ", and adding to the governor's responsibilities after declaration of a disaster emergency for the discharge of oil or a hazardous substance"

Page 1, following line 5:

Insert a new bill section to read:

"* Section 1. AS 26.23 is amended by adding a new section to read:

Sec. 26.23.027. IMPACT ASSESSMENT. (a) For each disaster emergency declared by the governor under AS 26.23.020 based on a release of oil or a hazardous substance, the governor shall make an assessment of the social and economic effects of the release of the oil or hazardous substance on the municipalities, the villages, and the region in which the discharge occurs. The governor may make the assessment by

(1) using staff of one or more of the departments of state government;
(2) contracting with a municipality or other entity for the assessment; or
(3) authorizing a municipality or other entity to make the assessment and supporting that effort by the payment of a grant.

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

(c) The governor may pay the costs of the assessment from money available in the oil and hazardous substance release response fund established by AS 46.08.010."

Page 1, line 6:

• Delete "Section 1."

Insert "Sec. 2."

Renumber following bill sections accordingly.

Page 6, lines 8 - 21:

Delete all material.

Page 6, line 22:

Delete "AS 29.60.580"

Insert "AS 29.60.570"

Page 7, line 29, after "amounts":

Insert "transferred to the Office of the Governor to pay for impact assessments under AS 26.23.027, and amounts"

Page 10, line 21, after "transferred":

Insert "to the Office of the Governor to pay for impact assessments under AS 26.23.027 and"

Page 10, line 22, after "AS 29.60.510":

Delete "and to pay for impact assessments under AS 29.60.570"

Page 13, line 30:

Delete "Sections 7 and 9"

Insert "Sections 8 and 10"

A M E N D M E N T

OFFERED IN THE SENATE
TO: C S S S S B 25 (CRA)

Page 3, line 28:

Delete "or"

Insert ", or exceeds"

Page 3, line ²⁷28, after "[substance]":

Insert "unless the governor finds that the release involves ^{10,000.} [550,000] or fewer ^{barrels hazardous} [gallons] of a ^{hazardous} [toxic] substance and the effect of the [toxic] substance released into the environment is one that presents a real and substantial threat to the economy and public welfare of the municipalities or villages affected by it"

Page 4, line 15:

Delete "or"

Insert ", or exceeds"

Page 4, line 15, after "[substance]":

Insert "unless the governor determines that the release involves ^{10,000.} [550,000] or fewer ^{barrels} [gallons] of a ^{hazardous} [toxic] substance and that the effect of the ^{hazardous} [toxic] substance released into the environment presents a threat to the economy and public welfare of the municipalities and villages affected by it that is at least equivalent in effect to the effect of a release of oil or a hazardous substance otherwise required by this paragraph"

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 19, 1991

SUBJECT: Amendment to SSSB 25 (Work Order No. 7-LS0012/G.3)

TO: Senator Fred Zharoff
ATTN: Dave Shrader

FROM: Jack Chenoweth *JBC/lmb*
Legislative Counsel

This amendment is a revision of yesterday's effort.

Under part I, I have revised the language with respect to villages based on Assistant Attorney General Jim Baldwin's comments.

The material set out in parts VIII and IX is new. Part VIII deletes the references to "village" that appear in AS 46.03.822(a), added by bill section 7. Part IX's amendment directs joint development of program regulations.

JBC:lmb
91-132.lmb

Enclosure

A M E N D M E N T

OFFERED IN THE SENATE

TO: SSSB 25

I

Page 1, line 1, following "authority":

Delete "and"

Insert "by the state and its municipalities in matters relating to environmental conservation and to the"

Page 1, lines 9 - 11:

Delete "Before a [THIS] power authorized by this subsection may be exercised inside the boundaries of another municipality or a village, the approval of the other municipality or the village must be given by resolution."

Insert "Before a [THIS] power authorized by this subsection may be exercised inside the boundaries of another municipality, the approval of the other municipality must be given by ordinance, and before a power authorized by this subsection may be exercised inside a village, the governing body of the municipality shall notify and consult with the village council concerning the proposed exercise of the power."

Page 2, after line 10:

Insert a new bill section to read:

"* Sec. 2. AS 29.35.020 is amended by adding a new subsection to read:

(e) In this section, "village"

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

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

Renumber the following bill sections accordingly.

Page 13, line 30:

Delete "Sections 7 and 9"

Insert "Sections 8 and 10"

II

Page 3, line 18, after "hazardous":

Insert "substance"

III

Page 3, line 26, after "\$10,000,000 of the":

Insert "balance of the fund that is appropriated to the spill reserve or of the"

IV

Page 4, following line 4:

Insert a new subsection to read:

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

V

Page 4, line 5, after "GRANTS.":

Insert "(a)"

Page 5, following line 5:

Insert a new subsection to read:

"(b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may not be used for capital improvements."

VI

Page 6, line 22, following "REGULATIONS.", through line 23:

Delete all material.

Insert "The commissioner

(1) shall adopt regulations

(A) setting time limits on the use of grants made under AS 29.60.500 - 29.60.599 by municipalities and villages that receive the grants;

(B) defining procedures by which the state may recover from a municipality or village receiving a grant under AS 29.60.500 - 29.60.599 the amount of money used in violation of AS 29.60.540 or used in a manner that is inconsistent with the terms and conditions of the grant award;

(2) may adopt other regulations that are necessary to implement the purposes of AS 29.60.500 - 29.60.599."

VII

Page 13, following line 30:

Insert a new bill section to read:

"* **Sec. 21. APPLICABILITY.** The amendments made by secs. 6, 7, 14, and 15 of this Act do not apply to a release of oil or a hazardous substance and resultant cleanup activities or to efforts to respond to or abate that release if the release occurred before the effective date of this Act."

Renumber the following bill sections accordingly.

VIII

• • •

Page 1, line 1:

Delete "and recovery of damages"

Page 1, line 2, following "conservation":

Delete ", and"

Insert "and the recovery of damages by the state and its municipalities in matters relating to environmental conservation; relating to the liability of villages for environmental response actions;"

Page 8, line 5:

Delete "of the state, [OR] municipality, or a village"

Insert "of the state or municipality"

Page 8, lines 6 - 7:

Delete ", [OR] a municipality, or a village,"

Insert "or a municipality,"

Page 8, line 9:

Delete "state, a municipality, or a village"

Insert "state or a municipality"

Page 8, lines 10 - 11:

Delete "the state, the municipality, or the village"

Insert "the state or the municipality"

IX

Page 6, line 22:

Delete "may"

Insert "and the commissioner of environmental conservation shall jointly develop and"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSSSB 25 (CRA)

Page 3, line 28:

Delete "or"

Insert ", or exceeds"

Page 3, line 28, after "substance":

Insert "unless the governor finds that the release involves ^{10,000 or barrels} ~~550,000~~ or fewer gallons of a toxic substance and the effect of the ^{na.2} ~~toxic~~ substance released into the environment is one that presents a real and substantial threat to the economy and public welfare of the municipalities or villages affected by it"

Page 4, line 15:

Delete "or"

Insert ", or exceeds"

Page 4, line 15, after "substance":

Insert "unless the governor determines that the release involves ^{10,000 barrels} ~~550,000~~ or fewer gallons of a toxic substance and that the effect of the ^{hazardous} ~~toxic~~ substance released into the environment presents a threat to the economy and public welfare of the municipalities and villages affected by it that is at least equivalent in effect to the effect of a release of oil or a hazardous substance otherwise required by this paragraph"

A M E N D M E N T

OFFERED IN THE SENATE

TO: SSSB 25

I

Page 1, lines 9 - 11:

Delete "Before a [THIS] power authorized by this subsection may be exercised inside the boundaries of another municipality or a village, the approval of the other municipality or the village must be given by resolution."

Insert "Before a [THIS] power authorized by this subsection may be exercised inside the boundaries of another municipality, the approval of the other municipality must be given by ordinance, and before the power may be exercised within a village, the approval of the village must be given by resolution."

Page 2, line 10:

Delete "[ORDINANCE]"

Page 2, after line 10:

Insert a new bill section to read:

"* Sec. 2. AS 29.35.020 is amended by adding a new subsection to read:

(e) In this section, "village"

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

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

Renumber the following bill sections accordingly.

Page 13, line 30:

Delete "Sections 7 and 9"

Insert "Sections 8 and 10"

II

Page 3, line 18, after "hazardous":

Insert "substance"

III

Page 3, line 26, after "\$10,000,000 of the":

Insert "balance of the fund that is appropriated to the spill reserve or of the"

IV

Page 4, following line 4:

Insert a new subsection to read:

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

V

Page 4, line 5, after "GRANTS.":

Insert "(a)"

Page 5, following line 5:

Insert a new subsection to read:

"(b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may not be used for capital improvements."

VI

Page 6, line 22, following "REGULATIONS.", through line 23:

Delete all material.

Insert "The commissioner

(1) shall adopt regulations

(A) setting time limits on the use of grants made under AS 29.60.500 - 29.60.599 by municipalities and villages that receive the grants;

(B) defining procedures by which the state may recover from a municipality or village receiving a grant under AS 29.60.500 - 29.60.599 the amount of money used in violation of AS 29.60.540 or used in a manner that is inconsistent with the terms and conditions of the grant award;

(2) may adopt other regulations that are necessary to implement the purposes of AS 29.60.500 - 29.60.599."

VII

Page 13, following line 29:

Insert a new bill section to read:

"* **Sec. 21. APPLICABILITY.** The provisions of sections 6, 7, 14, and 15 of this Act do not apply to a release of oil or a hazardous substance and resultant cleanup activities or to efforts to respond to or abate that release if the release occurred before the effective date of this Act."

Renumber the following bill sections accordingly.

Post-It™ brand fax transmittal memo 7671		# of pages 2
To MIKE WORLEY	From DAN BOCKHORST	
Co.	Co.	
Dept.	Phone #	
Fax #	Fax #	

MR. CHAIRMAN, MEMBERS OF THE COMMI

MY NAME IS DAN BOCKHORST, I AM A LOCAL GOVERNMENT SPECIALIST WITH THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS. I AM TESTIFYING ON BEHALF OF THE DEPARTMENT.

THE DEPARTMENT CONCEPTUALLY SUPPORTS SPONSOR SUBSTITUTE FOR SENATE BILL NO 25.

FURTHER, THE DEPARTMENT DOES NOT WANT TO IMPEDE THE CONSIDERATION OF THIS MEASURE BY THE LEGISLATURE IN ANY FASHION.

THE DEPARTMENT'S APRIL 9th POSITION PAPER AND BILL ANALYSIS RAISES TWO RATHER MINOR ISSUES:

1). WE FEEL THAT IT IS BEST TO RETAIN THE PROVISION CURRENTLY IN LAW WHICH REQUIRES A MUNICIPAL GOVERNMENT TO GRANT BY ORDINANCE AUTHORITY FOR ANOTHER MUNICIPALITY TO EXERCISE EXTRATERRITORIAL POWERS WITHIN THAT MUNICIPAL GOVERNMENT'S BOUNDARIES.

2). WE NOTED THAT VILLAGES HAVE NO BOUNDARIES.

AFTER GIVING THE MATTER SOME ADDITIONAL THOUGHT, WE BELIEVE THESE TWO POINTS COULD BE RESOLVED WITH SOME RATHER SIMPLE AMENDMENTS.

WITH RESPECT TO THE FIRST ISSUE, WE UNDERSTAND THAT THE LANGUAGE WAS DRAFTED TO PROVIDE FOR USE OF RESOLUTIONS BECAUSE THE BILL ADDS A REQUIREMENT FOR AUTHORIZATION OF THE RELEVANT EXTRATERRITORIAL POWERS BY VILLAGES, AND VILLAGES CANNOT ADOPT ORDINANCES. FURTHER, THERE WAS A CONCERN OVER TIME REQUIREMENTS FOR THE ADOPTION OF AN ORDINANCE IN THE FACE OF AN EMERGENCY.

WITH RESPECT TO THE ISSUE OF TIMING, I WISH TO NOTE THAT STATE LAW (AS 29.25.030) AUTHORIZES A MUNICIPAL GOVERNMENT TO INTRODUCE, ADOPT AND PUT INTO EFFECT AT THE SAME MEETING, AN EMERGENCY ORDINANCE. THUS, RETAINING THE REQUIREMENT FOR MUNICIPAL ACTION BY ORDINANCE WILL NOT HINDER A MUNICIPAL GOVERNMENT'S ABILITY TO RESPOND TO AN EMERGENCY.

ACCORDINGLY, THE DEPARTMENT SUGGESTS MODIFYING THE LANGUAGE ON PAGE 1, LINE 9, OF THE BILL, BEGINNING WITH THE SENTENCE "BEFORE A POWER . . . TO READ AS FOLLOWS:

Before a power authorized by this subsection may be exercised inside the boundaries of another municipality, the approval of the other municipality must be given by ordinance. Before a power authorized by this subsection may be exercised within a village as defined under AS 46.08.090(12), the approval of the village must be given by resolution.

(THEN CONTINUE WITH THE LANGUAGE IN THE BILL . . .

WITH RESPECT TO THE ISSUE OF THE BOUNDARIES OF AN UNINCORPORATED VILLAGE, THE DEPARTMENT SUGGESTS THE ADAPTATION OF LANGUAGE SIMILAR TO THAT USED BY THE ALCOHOLIC BEVERAGE CONTROL BOARD UNDER 15 AAC 104.645(j).

SPECIFICALLY, THE DEPARTMENT SUGGESTS THAT THE COMMITTEE CONSIDER INCLUDING IN THE DEFINITION OF VILLAGE ON PAGE 13, OF THE BILL, BEGINNING AT THE END OF LINE 13, LANGUAGE TO THE EFFECT OF:

For purposes of this definition, a village encompasses the area within a five mile radius of the village post office station, or if there is no post office station, another site reasonably designated by the commissioner, but excludes any area within a city or within another village.

MR. CHAIRMAN, THAT CONCLUDES MY COMMENTS.

See remarks below.

DNR Comments
(Draft)

Re:
HB 275
SB 25

ANALYSIS OF BILL/PROGRAM EFFECTS

The bill has two problems as written.

1. **Municipal Regulation of Oil and Gas Transportation.** As currently written, Section 1 of the bill would allow municipal regulation of oil and gas transportation systems outside the territorial boundaries. The bill appears to give powers to municipalities that currently reside within DNR, DEC, DF&G, DOT/PF, the Coast Guard, EPA, and the Corps of Engineers to regulate handling oil and gas throughout the state. This overlapping state and municipal jurisdiction is likely to create significant confusion, conflicting requirements, and duplicate staffing and enforcement efforts.

Statewide transportation systems must be subject to statewide regulation. To do otherwise would invite confusion, inconsistent requirements and would slow construction without appreciably affecting safety. For example, construction and operation of the TAPS and TAGS line would be extremely difficult if each municipality near the line exerted different and inconsistent regulations concerning the type of construction, safety requirements, etc. To avoid that confusion, that jurisdiction is rightfully lodged in the state agencies. Section 1 of the bill would change this.

2. **Defining Limits of Extraterritorial Jurisdiction.** The original statute was written to allow municipalities to protect the integrity of their water supply watersheds. A water-supply watershed is easily located; it is the watershed from which a municipality gets its water.

SB 25 would allow extra-territorial regulation to "contain, clean up, or prevent the release or threatened release of oil or a hazardous substance that may pose an imminent or substantial threat to property or natural resources within the municipality's boundaries." The Exxon Valdez spill showed that a substantial oil spill will affect natural resources over a large area. Thus, are all municipalities that may be affected able to regulate the transportation system? Since the TAPS line crosses the Yukon River, are all of the downstream municipalities each able to independently regulate the TAPS crossing? Without further definition in the bill, the result will be important and significant ambiguity, overlap and confusion.

PROPOSED AMENDMENTS

Amendment 1. To eliminate duplication of regulation concerning state-wide transportation of oil and gas, recommend changing Section 1 of the bill (page 2, lines 4 through 6) as follows:

"...to regulate exploration, development, ~~or~~ production, or transportation of oil, gas, or minerals in a manner that is inconsistent with the state's management of those resources ~~when the state is the owner of the land, tideland, or submerged land;~~ the ordinance

Analysis Continued - SB 25

adopted.."

This amendment is necessary to ensure that state-wide transportation are subject to state-wide regulation, not to infinitely varying local control.

Amendment 2 Sections 2, 3, and 4 of the bill attempt to eliminate inconsistent application of authorities by requiring municipalities to be consistent with DEC regional master plans for the region in which a borough or municipality is located. AS 46.04.210 requires DEC to prepare such plans and to set regional boundaries for the plan. The consistency requirement in the bill will go part way to assuring that inconsistent requirements do not exist. However, the language in the bill inadvertently implies that regional plans are not required. ("...if a plan has been prepared by DEC..."). For that reason, Section 2, 3, and 4 of SB 25 should be amended as follows (page 2, lines 14-15; 20-21; and 27-29):

"...a municipality under AS 46.04, AS 46.08, or AS 46.09 shall exercise its authority in a manner that is consistent with a regional master plan prepared by the Department of Environmental Conservation under AS 46.04.210 for the region in which the borough is located ~~if a plan has been prepared by the Department of Environmental Conservation under AS 46.04.210.~~"

Amendment 3 To eliminate confusion about the extent of extraterritorial jurisdiction, recommending adding language that restricts jurisdiction to areas nearby and integral to the municipality. This is most easily accomplished by allowing jurisdiction to extend only to the areas where a regional plan has been prepared by DEC under AS 46.04.210. This amendment would eliminate conflicting interpretations of appropriate extraterritorial jurisdiction by state agencies and different municipalities.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 25

Revision Date: _____ Department Affected: Department of Law
 Title: "...Recovery of damages by the state and its municipalities and villages..." BRU: Legal Services
 Component: Operations
 Sponsor: Senator Zharoff
 Requestor: Senator Zharoff COMPONENT SERIAL NO.

		9	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 25, 1991
 Approved by Commissioner: Richard I. Pegues/RL
 Agency: Department of Law Date: February 25, 1991
 Approved by Attorney General: Charles E. Cole

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 25

Senate Bill No. 25 amends Title 29 to establish an oil or hazardous substances impact assistance grant program. Under the program, state impact grants would be available to defray the additional costs of reasonable and appropriate functions and services provided by municipalities and villages arising from a release of oil or a hazardous substance that constitute a disaster emergency. The commissioner of community and regional affairs would be authorized to use money from the oil and hazardous release response fund to make grants to an affected municipality or village that demonstrates that the release or response to the release involves extraordinary expenditures that are beyond the reasonable capability of the municipality or village to meet using existing revenue sources.

The bill would also require that for each oil or hazardous substance release disaster emergency declared under AS 26.23.020 the commissioner of community and regional affairs shall make an assessment of the social and economic effects of the release on the municipalities, villages, and the region in which the discharge occurs. These impact assessments would be made after consulting with and securing the written approval of the attorney general. The cost of making an assessment would be paid from the oil and hazardous substance release response fund. Consequently, Department of Law participation in the impact assessment process for municipalities and villages would not require fiscal note funds.

The bill defines village to mean a community with a residential population of twenty-five or more not incorporated as a municipality under state law in the unorganized borough or within a borough if the power, function, or service for which the grant application is submitted is not exercised or provided by the borough or an areawide or nonareawide basis at the time the grant application is submitted. The bill would also amend Title 46 to include the impact assistance grant program and to include village as defined in the bill, as an entity under the state's oil and hazardous substance pollution laws.

Previous versions of this bill, in the second session of the sixteenth legislature, (SB 359) provided where applicable that villages irrevocably waive any claims to sovereign immunity that might arise in connection with the use of grant monies under the impact assistance grant program. Such a waiver would help insure that future disputes involving these grants, with villages unincorporated under state law, could be resolved in state courts.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SS SB 25

Revision Date: _____ Department Affected: Community & Regional Affairs
Title: "An Act..recovery of damages.." BRU: _____

Component: _____

Sponsor: Sen Zharoff & Sturgulewski

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						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

There is no immediate fiscal impact. However, there will be a big fiscal impact if there is a spill.

Prepared By: Remond Henderson, Director *Remond Henderson* Phone: 465-4708

Division: Administrative Services Date: 4/10/91

Approved by Commissioner: Edgar Blatchford *Edgar Blatchford*

Agency: Community & Regional Affairs Date: 4/9/91

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSSB 25

The sponsor substitute for SB 25 adopts new language in Section 5, proposed AS 29.60.599(6), to provide that villages irrevocably waive any claims to sovereign immunity that might arise in connection with the use of grant monies under the impact assistance grant program. The addition of the waiver provision will help insure that any future dispute that might arise involving grants to villages, unincorporated under state law, can be resolved in state courts. This is a change suggested in the Department of Law's original fiscal note, dated February 25, 1991. Otherwise, the department's original fiscal note comments remain unchanged.

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

April 9, 1991

POSITION PAPER

RE: Sponsor Substitute for Senate Bill 25

SPONSOR: Senator's Zharoff and Sturgulewski

Program Effects of the Bill

The Sponsor Substitute for this bill contains a number of language refinements that clarify the scope and purpose of the Impact Assistance Grants portion of the legislation. The Department's analysis indicates that all of the changes are consistent with our original perception and understanding of the purposes of the Impact Assistance program.

This Sponsor Substitute also amends the authority of a municipality regarding watershed regulation. Specifically, it allows a municipality to delegate authority to regulate watersheds to another municipality by adoption of a resolution instead of an ordinance. The amendment continues by requiring that a municipality exercising extraterritorial powers of watershed regulation obtain the approval of any village whose boundaries are in the watershed.

Comments

As noted the Department considers the grant program amendments to be consistent with its perception of the purpose of the grant program. However, the amendments dealing with watershed regulation pose potential difficulties in implementation.

With respect to the resolution versus ordinance process the Department is inclined to support an ordinance process. Resolutions are used largely to state opinions and make declarations. They do not require public hearings and may be introduced and adopted at the same meeting. Conversely, ordinance's are adopted as local law and must have a public hearing. Additionally, there is a minimum seven day waiting period between the point of introduction and that of adoption. We believe allowing another municipality to exercise authority within your municipality is a significant act and should be subject to the more deliberative process associated with ordinances.

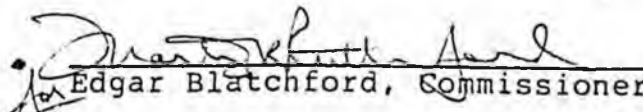
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Position Paper - SS SB 25
April 9, 1991
Page two

With respect to the issue of requiring village approval of watershed management within its boundaries, the matter is clouded by the fact that villages have no defined boundaries. And in fact, the concept of what land area constitutes the village often revolves around the function that is being discussed. For example, the village could be the core area where people reside the majority of the time, it could be that area and all the land holdings of the village corporation, or it could be it's traditional hunting and gathering area. Moreover, Title 29 does not presently contain a definition of the term "village".

Staff of the Department are not aware of any instances where there has been conflict between an unincorporated village and a municipality trying to exercise jurisdiction over its watershed. If there have not been any significant number of such instances occurring, it may be better simply to leave matters as they now are. For while the amendment may resolve some potential problems it threatens to create additional ones through ambiguities associated with its jurisdictional application. If the amendment is retained we believe that a definition of "village", consistent with the remainder of SB 25 should be added to AS 29.71.800.

As stated in our previous position paper, the Department of Community and Regional Affairs supports this bill. Our experience with the Exxon Valdez oil spill showed that municipalities and villages are heavily impacted by such occurrences and end up incurring major expenses regardless of whether or not they have direct responsibility for responding. This bill would make clear a municipality's authority to be involved in oil and other hazardous spill response and would provide funds so that the brunt of the cost would not have to be borne locally.


Edgar Blatchford, Commissioner

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SSSB 25

Revision Date: _____
 Title: Exercise of authority and
recovery of damages...
 Sponsor: Senator Fred Zharoff
 Requestor: _____

Department Affected: DEC
 BRU: Environmental Quality
 Component: EQ Projects

COMPONENT SERIAL NO. 1 | 1 | 0 | 1 | 6

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						
---------	--	--	--	--	--	--

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.

The sponsor substitute does not change this fiscal note. 4/10/91

Prepared by: Janice Adair
 Division: Commissioner's Office

Phone: 465-2600
 Date: _____

Approved by Commissioner: *[Signature]*
 Agency: Department of Environmental Conservation

Date: 3/18/91

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SSSB 25

Revision Date: March 27, 1991 Department Affected: Department of Law
Title: "..recovery of damages by the state and its municipalities and villages.." BRU: Legal Services
Component: Operations

Sponsor: _____
Requestor: _____ COMPONENT SERIAL NO.

		9	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see attached for analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 27, 1991
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law Date: March 27, 1991

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

DIVISION OF LEGAL SERVICES

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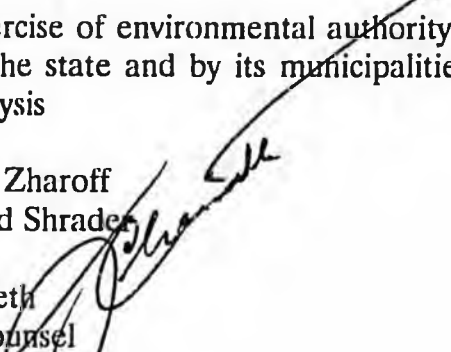
MEMORANDUM

March 26, 1991

SUBJECT: SSSB 25: Exercise of environmental authority and recovery of damages by the state and by its municipalities and villages -- sectional analysis

TO: Senator Fred Zharoff
ATTN: David Shrader

FROM: Jack Chenoweth
Legislative Counsel



The following briefly summarizes the content of the Sponsor Substitute for Senate Bill 25, noting changes between the sponsor substitute and the measure it replaces, Senate Bill 25 (or "the original bill"). The measure is based on last session's SB 359.

The common thread of the bill is its relationship to the powers and duties of the state's municipalities and villages that may be called upon to respond to discharge of oil and hazardous substances in amounts sufficient to constitute disasters, its authorization of financial assistance to municipalities and villages who act in response to those discharges, and its concern for the liability of the state, its municipalities, and its villages when an environmental protection response is required.

*

The first four sections, amending provisions of AS 29.35, relate to the exercise of municipal authority outside the municipality's boundaries:

Current law authorizes municipalities to exercise extra-territorial jurisdiction to protect its water supply and watershed. If that exercise of authority intrudes upon an area within an adjacent municipality, the adjacent municipality must first give its approval by ordinance. Amendments made by bill section 1 (1) extend that authority to include containment, clean up, or prevention of release or threatened releases of hazardous substances, within specific limitations and consistent with any applicable

regional master cleanup plan, (2) condition the exercise of extra-territorial authority within an adjacent village only with the consent of the village, and (3) change the manner of a municipality's giving permission from ordinance to resolution. The provisions applicable to villages and changing the manner of consent from ordinances to resolutions are the additions to the original bill made by the sponsor substitute.

Bill section 2, unchanged in the sponsor substitute from the original bill, conditions exercise of the authority of a first class borough to contain, clean up, or prevent a release or threatened release of oil or a hazardous substance on compliance with the applicable regional master clean up plan if one has been prepared.

Bill section 3, unchanged in the sponsor substitute from the original bill, makes the same amendment in the context of second class boroughs.

Bill section 4, unchanged in the sponsor substitute from the original bill, makes the same amendment in the context of third class boroughs.

*

Bill section 5 sets out a grant authorization program by which the state may pay municipal impact assistance to municipalities and villages. Within the bill section --

Proposed AS 29.60.500 enunciates a statement of purpose and policy; the statement is revised substantially from the original bill.

Proposed AS 29.60.510 authorizes, in the event of a disaster emergency declaration following a release of oil or a hazardous substance, the commissioner of community and regional affairs to make grants, not to exceed \$10,000,000 for each declared disaster emergency, from the balance of the oil and hazardous substance release response fund (AS 46.08) to support the award of grants. In provisions that are new in this sponsor substitute from the original bill, the commissioner and the commissioner of environmental conservation must agree as to the amount available for grants--if they cannot, the matter is referred to the governor for a decision--and the amount agreed to is to be promptly transferred out of the fund to the Department of Community and Regional Affairs to support the grants.

Proposed AS 29.60.520 enumerates the purposes for which grants to municipalities and villages may be made from the impact assistance fund; the list is a substantial revision of the similar list set out in the same section of the original bill.

Proposed AS 29.60.530, a revision of a like provision in the original bill, sets out criteria that the commissioner of community and regional affairs is to consider in evaluating impact assistance grant requests. The number of criteria is less than had been specified in the original measure. The concluding sentence of the section

Senator Fred Zharoff

March 26, 1991

Page 3

directs payment of grants based on priority ranking rather than by pro ration of payments.

Proposed AS 29.60.540, unchanged from the original bill, prohibits a municipality's use of impact assistance grant money to reduce local tax levies.

Proposed AS 29.60.550, unchanged from the original bill, directs the department to maintain pertinent records relating to the grants and to develop procedures by which recipients are to account for impact assistance money received.

Proposed AS 29.60.560, unchanged from the original bill, requires the commissioner of community and regional affairs to prepare and submit to the legislature a report of grant program-related activities.

For each disaster emergency declaration prompted by a spill, proposed AS 29.60.570 directs the commissioner of community and regional affairs to prepare an assessment of the social and economic effects of the spill on the local governments, villages, and affected region. The provision is unchanged from the original bill.

Proposed AS 29.60.580, unchanged from the original bill, authorizes the commissioner to adopt program regulations.

The sponsor substitute drops as unnecessary language appearing as AS 29.60.590 of the original explicitly authorizing the commissioner to recover impact assistance paid to a municipality or village if the commissioner later determines that the municipality or village was responsible for the spill release.

Proposed AS 29.60.599 sets out pertinent definitions: the definitions of the terms "service" and "village" did not appear in the original bill and are new in this sponsor substitute.

*

The provisions of bill sections 6 - 9 amend the state laws generally treating with environmental concerns (AS 46.03), including cleanup and recovery of damages:

Bill section 6, unchanged from the language of the original bill, adds to the list of items that may be recovered by the state in a civil action for damages caused by pollution any amounts that have been expended by the Department of Community and Regional Affairs as municipal impact assistance grants and as emergency first response advances and reimbursements authorized by AS 46.08.070(c).

AS 46.03.822 sets out in current law a strict liability standard. With exceptions, the standard holds a person having custody or control of a hazardous substance (including oil) strictly liable for damages caused by the release or entry of the hazardous substance into the environment. That liability extends, under current law, to damages to natural resources of the state and municipalities, and to costs of containment, clean up, and recovery. The amendments made by bill section 7 revise and extend the strict liability standard to (1) add damage to "village resources" within the scope of the section's coverage, (2) add "village containment and cleanup" efforts to the permissible recoverable costs, and (3) include as damages recoverable under the standard the function or service dislocations, the additional costs of functions and services that are undertaken by the state, its municipalities, and its villages in response to hazardous substance release, and the costs associated with projects delayed or lost due to the hazardous substance release. This bill section is revised from the language of the comparable provision of the original bill by the addition of the "projects delayed or lost" language.

In the same statutory section, current AS 46.03.822(h) precludes the state or a municipality from liability for cleanup actions taken in response to an emergency caused by a release or threatened release of a hazardous substance unless the action of the state or municipality constitutes gross negligence or intentional misconduct. The amendment proposed by bill section 8 would extend the same exemption and exception(s) to actions taken by villages.

Bill section 9 provides definitions of the terms "service" and "village" for purposes of AS 46.03. The definition of village is altered from the definition appearing in the original bill.

*

Bill sections 10 - 12 amend the chapter of state law (AS 46.04) specifically addressing oil and hazardous substance pollution control, with particular emphasis on costs associated with containment and cleanup:

AS 46.04.020 of current law sets out a directive that the Department of Environmental Conservation respond to an oil or hazardous substance discharge. Subsection (e) of the section authorizes use of memoranda of understanding and cooperative agreements with specified federal agencies and with unspecified "other persons" in order to facilitate cooperative efforts. The addition made by bill section 10, unchanged from the language of the original bill, directs the department to consult with municipalities and villages for the preparation of memoranda and cooperative agreements.

Bill section 11, unchanged from the language of the original bill, amends the definition of the term "containment and cleanup" by adding as an element of the

containment, abatement, and restoration efforts the costs of providing "a reasonable and appropriate function or service incurred in response to the discharge of a pollutant," including any associated incremental administrative costs.

Bill section 12 provides definitions of the terms "service" and "village" for purposes of AS 46.04. The definition of village is altered from the definition appearing in the original bill.

*

AS 46.08 generally treats with the state's oil and hazardous substance release response fund, AS 46.08.010 (the so-called "470 fund" named after the number of the House bill that originally established it), intended to serve as the principal source of financial support for prompt containment and cleanup activities following oil and hazardous substance releases. The changes made by bill sections 13 - 16 amend provisions of that chapter:

The first change to AS 46.08.040(a) made by bill section 13, substantively unchanged from the language of the comparable section of the original bill, recognizes that money in the oil and hazardous substance release response fund may be shifted to the commissioner of community and regional affairs for payment of impact assistance grants and for completion of impact assessments. The second change, made at page 11, line 16, adds recovery of the containment and cleanup costs incurred by a "village" as an objective for which money in the oil and hazardous substance release response fund may be used.

Bill section 14 expands the uses authorized for the oil and hazardous substance release response fund. The section (1) adds "villages" as authorized recipients of assistance payable from the fund under this section, (2) directs rather than authorizes the commissioner of environmental conservation to pay reimbursement for abatement efforts, (3) adds "villages" to the list of entities with which the commissioner may enter into containment and cleanup agreements, (4) authorizes advancement of money from the fund to assist recipient municipalities and villages to take emergency first response efforts, and (5) sets standards for the making of reimbursement payments and advancements.

Bill section 15, unchanged from the original, amends the definition of the term "containment and cleanup" in the manner described for bill section 11.

Bill section 16 provides definitions for the terms "service" and "village" for purposes of AS 46.08. The definitions of the terms are substantially different than as set out in the original of the bill.

Senator Fred Zharoff

March 26, 1991

Page 6

The sponsor substitute deletes a bill section of the original explicitly authorizing the commissioner of environmental conservation to recover a reimbursement payment or advance paid to a municipality or village if the commissioner later determines that the municipality or village caused the oil or hazardous substance release that necessitated the containment or cleanup.

*

AS 46.09 addresses procedures relating to or applicable following release of a hazardous substance. The amendments proposed by bill sections 17, 18, and 19-- unchanged in the sponsor substitute from comparable provisions of the original measure--alter various provisions of AS 46.09:

AS 46.09.060(b) is a statement of the general grant of authority given to the state's local governments to act in response to a release or threatened release of oil or a hazardous substance. The amendment made by bill section 17 is by way of the addition of reference to "AS 46.04" (oil pollution control) as a source of powers that municipalities are authorized to exercise in response to a release or threatened release.

With reference to AS 46.09--

Bill section 18 amends the definition of the term "containment and cleanup" in the manner described for bill section 11.

Bill section 19 adds a definition for the term "service."

*

Bill section 20 makes section 7, the bill section expanding the strict liability standard for civil damage recovery to municipalities and villages, and bill section 9, adding related definitions of the terms "service" and "village," retroactive to March 24, 1989, the date of the Exxon Valdez grounding.

Bill section 21 gives this measure an immediate effective date.

JBC:pl

91-208.plm

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Alaska State Legislature

MEMBER



Senate

Post-It™ brand fax transmittal memo 7671		# of pages ▶	
To	Connie	From	Rick Soble
Co.	BP	Co.	Sen. Frank
Dept.		Phone #	465-3709
Fax #	463-5023	Fax #	465-4714

ALASKA COMMITTEE

MAJOR CHANGES TO CS SS SB 25 (CRA):

- 1) Cap of 2,500 (105,000) barrels of oil in order to initiate grant provisions (p. 3 line 26 & p. 4 line 15)
- 2) Allows for spills less than 2,500 barrels of a "hazardous substance" as defined in 46.09.900 to be declared a disaster & grant provisions of this bill used (p 3. line 26 & p.4. line 15)
- 3) Adopted SB 359 passed version for Purposes of Municipal Impact Grants which more narrowly and clearly defines the purpose(p. 5, .line 18)
- 4) Requires the Governor to make findings that the release presents a real & substantial threat ... and it is in the states best interest to pay (from the purpose and policy section already in the bill (a & b P.3. l 7 and p. 4, line 15)
- 5) Limited use of grants for Capital Expenditures so that a municipality could be required to return them & prohibition on use for Capital Improvement, although it would allow the "rug" to be replaced (p 6.line 19 & p. 7. line 15)
- 6) Includes prohibition to "betterment" intent language (p. 1 line 7)
- 7) Adopted Dept of Law Amendments jurisdictions and definitions of villages, was in Oil & Gas version of SB 359 last year (pps, 9, 11, & 12)
- 8) Adopted the ABC Board's definition of village p.2 line 18 for the purposes of conducting a cleanup)
- 9) Limited grant funds use to events after effective date of act so it is clear that municipalities couldn't apply for grants for effects of the Exxon Valdez Oil Spill

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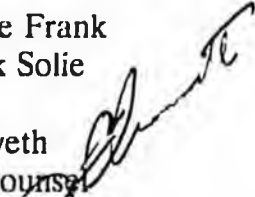
MEMORANDUM

May 1, 1991

SUBJECT: Use of "470 fund" money (CSSSSB 25 (C&RA))

TO: Senator Steve Frank
ATTN: Rick Solie

FROM: Jack Chenoweth
Legislative Counsel



You have asked whether AS 46.08.010(c), prohibiting use of the proceeds of the "470 fund"--the oil and hazardous substance release response fund, AS 46.08.010--for capital improvements, precludes use of the fund as a source of revenue to replace carpeting in a public airport. It has been asserted that the carpet's useful life has been substantially reduced by the recent increased volume of passenger traffic through the airport of personnel who have been involved in the general response to the environmental problems following the Exxon Valdez grounding. It is contended that replacement of the airport carpet is something other than a normal operating expense of the entity responsible for the operation of the airport and, further, that the diminishment of the anticipated useful life of the carpet is attributable principally to the use of the airport building by passengers who were flown in to the community in order to help in the containment and clean-up of the release of oil from the Exxon Valdez.

AS 46.08.010(c) places the money in the oil and hazardous substance release response fund off-limits for capital improvements. The term "capital improvements" is defined to mean "construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property . . ."

While there is an argument to be made that replacement of the airport carpet may constitute a "repair of" or an "improvement to" the airport building, in the context in which the term is used and the definition appears, I have the sense that the prohibition of AS 46.08.010(c) is one that prevents the commissioner from using the money in the fund as a source of money to erect, maintain, or improve a permanent structure. By its terms, AS 46.08.010(c) speaks only to the improvement made to real property. The carpet is, of course, in the nature of a fixture--an item of personal property permanently attached to the airport building and intended for normal use

Senator Steve Frank
May 1, 1991
Page 2

on those premises. Had the legislature intended to extend the bar to carpeting and similar fixtures, it might have extended the definition specifically to identify these or used another term intended to convey that same meaning. Since the definition does not, I would have to conclude that it reflects a legislative decision that, all other qualifications and conditions relating to use of the fund being met, money in the fund may be used for building-related purposes other than construction, repair, or improvement. Under that reasoning, the commissioner could determine that the money in the "470 fund" may be expended for the carpet-replacement purpose.

Of course, under this line of reasoning, the owners of the airport could probably get away with claiming that money in the fund may be used to replace overused commodes . . .

The draft of CESSB 25 (C&RA) does not now establish additional limits or restrictions on the use of the fund balance that would change this conclusion.

JC:pl
91-323.pl

***GARZINI and ASSOCIATES
OF ALASKA***

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