

SB 25

SENATE FINANCE COMMITTEE REPORT

DATE: 5/3/91

FURTHER:

DATE TURNED INTO OFFICE: 5-17-91

The Finance Committee considered SSSB 25

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

and recommended:

- replace with _____ CS
 - or adopt _____ ~~CS SSB 25 (LRA)~~
 - attached amendment(s)
 - _____ letter of intent adopted
- same title
 - new title
 - technical title change (HB only)

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

ATTACHES NEW FISCAL NOTE(S): Dept/Date:

- fiscal note(s) _____
- zero fiscal note(s) _____
- appropriation-no fiscal note

APPROVES PREVIOUS:

- fiscal note(s) _____ Dept/Date:
- zero fiscal note(s) ~~NO ACTION 5/22/91~~
- ~~NO ACTION 4/10/91~~
- ~~NO ACTION 3/18/91~~

SIGNING DO PASS:

Lynn Hoffman

Al Adams

 1. *[Signature]*

OTHER RECOMMENDATIONS:

Don Stutz Do Not Pass

Kirk Kelly ~~Do Not Pass~~

 2. *Jay Kostick Do pass*

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.

FISCAL NOTE

No. 2

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version: 555B 25

(S) Publish Date: 5/3/91

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						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: NONE

ANALYSIS: (Attach a separate page if necessary.)

Under normal operating situations, DEC should need no additional resources to implement the legislation. However, should a significant oil spill occur, approximately 2 additional positions may be necessary.

The sponsor substitute does not change this fiscal note. 4/16/91

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, Requ

Changes in 55 5B 25 (CRA) have no fiscal impact. This fiscal note is appropriate

5/2/91 / date Rick Solie / Comte Aide (initial)

FISCAL NOTE

No. 3

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version: SSSB 25

(S) Publish Date: 5/3/91

Revision Date: _____
Title: "An Act..recovery of damages.."

Department Affected: Community & Regional Affairs
BRU: _____

Sponsor: Sen Zharoff & Sturgulewski

Component: _____

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 Blotchford *Edgar Blotchford*

Agency: Community & Regional Affairs

Distribution (by preparer): Legislative Finance, Legislative Sponso

Rev 10/90

Date: 4/9/91
changes in SSSB 25 (CRA)
have no fiscal impact. This
fiscal note is appropriate.
5/2/91 Rick Solie
date Comte Aide (initial)

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: 5/3/91
Referred: Finance

Sponsor(s): SENATORS ZIAROFF, 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 reduce
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
6 municipality, 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 determined 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;

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(2) pay all costs incurred to

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

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

(C) conduct training, response exercises, inspections, and tests, in order to verify equipment inventories and ability to prevent and respond to oil and hazardous substance release emergencies, and to undertake other activities intended to verify or establish the preparedness 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 appropriate 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 costs [COST] to the state, [OR TO] a municipality, or a village 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 prevention and contingency plan required by AS 46.04.200; and

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

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

(c) The department shall [MAY] reimburse a municipality or village for actual expenses, 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).

DIVISION OF LEGAL SERVICES

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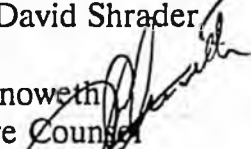
MEMORANDUM

May 9, 1991

SUBJECT: CSSSSB 25 (C&RA): 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 Committee Substitute for Sponsor Substitute for Senate Bill 25 (C&RA).

As with the measure's previous versions, 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.

*

Bill section 1, an uncodified provisions, offers a statement of legislative intent for the municipal impact grant provision added by bill section 7.

Sections 2 - 5, 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 2 (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.

Bill section 3 adds a definition of "village."

Bill section 4 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 5 makes the same amendment in the context of second class boroughs.

Bill section 6 makes the same amendment in the context of third class boroughs.

*

Bill section 7 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.

In the event of a disaster emergency declaration and the meeting of other conditions set out in paragraphs (a)(1) and (3) following a release of oil or a hazardous substance, proposed AS 29.60.510 authorizes 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). 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. Provision is made for recovery and redeposit into the grant fund of any unexpended transferred amounts.

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 previous sponsor substitute.

Proposed AS 29.60.530 sets out criteria that the commissioner of community and regional affairs is to consider in evaluating impact assistance grant requests. The concluding sentence of the section directs payment of grants based on priority ranking rather than by pro ration of payments.

Proposed AS 29.60.540 prohibits a municipality's use of impact assistance grant money to reduce local tax levies or for a capital improvement.

Proposed AS 29.60.550 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.

For each disaster emergency declaration prompted by a spill, proposed AS 29.60.560 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, and to prepare plans to mitigate the effects of the spill and to recover expenditures.

Proposed AS 29.60.590 authorizes the commissioner to adopt program regulations.

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, while the definition of "hazardous substance" modifies the current provision.

*

The provisions of bill sections 8 - 11 amend the state laws generally treating with environmental concerns (AS 46.03), including environmental cleanup and recovery of damages:

Bill section 8 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 9 revise and extend the strict liability standard to (1) add "village containment and cleanup" efforts to the permissible recoverable costs, and (2) 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.

In the same statutory section, current AS 46.03.822(h) precludes the state or a municipality from liability for clean up 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 10 would extend the same exemption and exception(s) to actions taken by villages.

Bill section 11 provides definitions of the terms "service" and "village" for purposes of AS 46.03.

*

Bill sections 12 - 14 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 12 directs the department to consult with municipalities and villages for the preparation of memoranda and cooperative agreements.

Bill section 13 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 14 provides definitions of the terms "service" and "village" for purposes of AS 46.04.

*

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," 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 15 - 18 amend provisions of that chapter:

The first change to AS 46.08.040(a) made by bill section 15 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 13, line 19, 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 16 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 17 amends the definition of the term "containment and cleanup" in the manner described for bill section 13.

Bill section 18 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.

*

AS 46.09 addresses procedures relating to or applicable following release of a hazardous substance. The amendments proposed by bill sections 19 - 21 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 19 is by way of the addition of reference to "AS 46.04" (oil pollution control) as another 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 20 amends the definition of the term "containment and cleanup" in the manner described for bill section 13.

Senator Fred Zharoff
May 9, 1991
Page 6

Bill section 21 adds a definition for the term "service."

*

Bill section 22 makes bill section 9, the bill section expanding the strict liability standard for civil damage recovery to municipalities and villages, and bill section 11, adding related definitions of the terms "service" and "village," retroactive to March 24, 1989, the date of the Exxon Valdez grounding.

Bill section 23 is included to assure that release-related cleanup activities before the measure's effective date may not be financially supported from state municipal impact or other assistance authorized by this Act.

Bill section 24 gives this measure an immediate effective date.

JBC:mi:plm:mi
91-091.mai



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

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DURING SESSION:

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DISTRICT N

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

CSSSSB 25 SPONSOR STATEMENT

May 7, 1991

This legislation is intended as a follow-through of the efforts begun during the Sixteenth Legislature to address the needs of communities which must respond to a major spill of oil or a hazardous substance into the environment. CSSSSB 25 is based on SB 359, which passed the Senate last year and died in the House in the final days of the session.

The Exxon Valdez oil spill of March 24, 1989, made the scope and magnitude of the impacts of such spills on communities in Alaska painfully obvious. Municipalities and villages may suffer severely from a wide range of direct and indirect social and economic impacts as a result of being called upon to provide assistance to the state in responding to a major oil or hazardous substance spill. The costs of the containment and cleanup itself, and of the associated increased demands on a community's facilities and services, to the environment, and to individuals can be extraordinary.

It is clear that such spills do present a real and substantial threat to the environment 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.

CSSSSB 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 for reductions in revenue, and the costs of projects or activities that are delayed or lost, because of the spill. This grant program is triggered by a declaration of a disaster emergency by the governor, which must be based on certain findings and threshold criteria.
- 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 affected 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 a spill. 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.

A handwritten signature in cursive script, appearing to read "F. Zharoff".



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

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

MEMORANDUM

TO: Senator Pourchot, Co-Chairman
Senate Finance Committee

FROM: Senator Fred Zharoff 

RE: CSSSSB 25

DATE: May 6, 1991

I am writing to request that you schedule CSSSSB 25 for a committee hearing at your earliest convenience.

CSSSSB 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."

CSSSSB 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 last year.

Backup information is included.

DOCUMENTS WHICH HAVE NOT BEEN
FILMED BUT ARE AVAILABLE IN THE
ORIGINAL FILE INCLUDE:

Letters in Support from:

DC&RA & DEC (Jointly) 5/8/91
City of Kodiak - Resolution 4/16/91
Alaska Municipal League