

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 824

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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

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
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Court Plaza, Room 500  
Mail Stop 3101

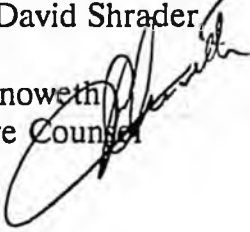
### MEMORANDUM

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

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

### 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

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

**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*

SB 25

**( ) USE COMMITTEE REPORT**

(11)

Date Referred: May 19, 1991

FURTHER REFERRALS:

Date of Committee Action: 5/21/91

The FINANCE Committee considered:

CSSSSB 25(CRA)

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

MUNICIPAL ASSISTANCE: OIL RESPONSE FUND

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

**RECOMMENDATIONS:**

be replaced with \_\_\_\_\_  the same title  
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

Dot law  
DEC 5/03/91  
DORA

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i> Brown	<input checked="" type="checkbox"/>	<i>Mark Boyer</i> Boyer		<input checked="" type="checkbox"/>	
<i>[Signature]</i> Koponen	<input checked="" type="checkbox"/>	<i>Best Sharp</i> Sharp		<input checked="" type="checkbox"/>	
<i>[Signature]</i> Jacko	<input checked="" type="checkbox"/>	<i>Robert E. Phillips</i> Phillips		<input checked="" type="checkbox"/>	
<i>[Signature]</i> Ummu	<input checked="" type="checkbox"/>	<i>Kimberly Hanson</i> Hanson		<input checked="" type="checkbox"/>	
		<i>Eileen P. McKeon</i> McKeon		<input checked="" type="checkbox"/>	
		<i>Kenneth Barnes</i> Barnes		<input checked="" type="checkbox"/>	
		<i>Mike Swane</i>		<input checked="" type="checkbox"/>	

*Mike Swane* *Eileen P. McKeon*  
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 03

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. 

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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/roel  
Charles E. Cole, Attorney General  
 Agency: Department of Law Date: February 25, 1991

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. 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 1 6

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
OPERATING						
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.  
*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, 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: \_\_\_\_\_

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 C. ERATING	-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	-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).

## 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 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 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 (c) 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  
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

## 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

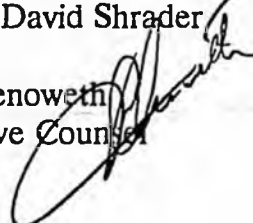
### MEMORANDUM

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

- SECTIONAL ANALYSIS -

Senator Fred Zharoff

May 9, 1991

Page 2

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.

Senator Fred Zharoff  
May 9, 1991  
Page 3

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



Senator Fred Zharoff  
May 9, 1991  
Page 4

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 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 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**

P. O. BOX 405, KODIAK, ALASKA 99815 (907) 486-5259

DURING SESSION:

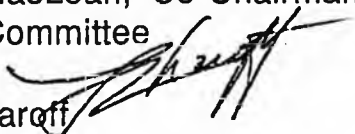
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DISTRICT N

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

**MEMORANDUM**

TO: Representative Navarre, Co-Chairman  
Representative MacLean, Co-Chairman  
House Finance Committee

FROM: Senator Fred Zharoff 

RE: CSSSSB 25 (CRA)

DATE: May 18, 1991

I am writing to request that you schedule CSSSSB 25 for a committee hearing as soon as possible.

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.

I hope you will hear CSSSSB 25 as expeditiously as possible, so that implementation of this much needed legislation will not be delayed for another year.

Thank you for your consideration.



## SENATOR FRED F. ZHAROFF

### ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99815 (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

### CSSSSB 25 SPONSOR STATEMENT

May 18, 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.

MEMORANDUM

TO: Senators Pat Pourchot and Jalmar Kerttula

FROM: *Bob Brodie for* Jerome Selby, President, Alaska Municipal League  
Mayor, Kodiak Island Borough  
Bob Brodie, Chairman, Alaska Conference of Mayors  
Bob Van Brocklin, Mayor, City of Cordova

RE: SB 25

DATE: May 14, 1991

Please pass CSSSSB 25 through Senate Finance this Thursday without revision, and help us to get it approved on the floor expeditiously. The bill enacts legislation to assist communities affected by toxic chemical and oil spills, and incorporates what we have learned from the Exxon Valdez Oil Spill.

The bill passed the Senate last year by a vote of 17-3, achieving broad, bipartisan support. We desperately need it to be in place as soon as possible. Thank you for your support.

- OILED MAYORS

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						
---------	--	--	--	--	--	--

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 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).

## 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.

**SB 26**

# SENATE FINANCE COMMITTEE REPORT

DATE: 3/14/91

FURTHER:

DATE TURNED INTO OFFICE: 5-13-91

The Finance Committee considered SENATE BILL NO. 26

"An Act relating to loans under the Commercial Fishing Loan Act and to limited entry permits pledged as security for those loans; and providing for an effective date."

and recommended:

replace with \_\_\_\_\_ CS SB26 (FW)  
 or adopt \_\_\_\_\_ CS \_\_\_\_\_

same title  
 new title  
 technical title change (HB only)

attached amendment(s)  
 \_\_\_\_\_ letter of intent adopted

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:  
Dept/Date:

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

Dec 2-7-91

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

*[Handwritten signatures]*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1. \_\_\_\_\_ 2. \_\_\_\_\_

Co-Chairs: Signatures and Recommendations

FISCAL NOTE

No. 1

Bill Version: SB 26

(S) Publish Date: 3/14/91

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Revision Date: 1/21/91 Department Affected: Commerce & Economic Dev.

Title: An Act relating to loans under the Commercial Fishing Loan Act BRU: Investments

Sponsor: Zharoff Component: \_\_\_\_\_

Requestor: Labor & Commerce COMPONENT SERIAL NO. 

--	--	--	--	--

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

Changes in SSB 26 (H.C.) have no fiscal impact. This fiscal note is appropriate.

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
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.)

Prepared By: Martin J. Richard, Director Phone: 465-2510

Division: Investments Date: 2/7/91

Approved by Commissioner: Glenn A. Olds

Agency: Department of Commerce & Economic Development Date: \_\_\_\_\_

Distribution (by preparer, Requestor, OMB, & Impacted Agency(ies).)

Rev 10/90  
GW/dg18863D/020791:

Changes in SSB 26 (H.C.) have no fiscal impact. This fiscal note is appropriate.

Page 1 of 1

5-13-91 WR  
date Comptroller (initials)

CS FOR SENATE BILL NO. 26 (FINANCE)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR ZHAROFF

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to loans under the Commercial Fishing Loan Act and to limited entry  
2 permits pledged as security for those loans; and providing for an effective date."

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

4 \* Section 1. AS 16.10.335(a) is amended to read:

5 (a) If the debtor defaults upon a note for which a limited entry permit has been pledged  
6 as security under AS 16.10.333 or 16.10.338, the commissioner shall provide the debtor, by both  
7 certified and first class mail sent to the debtor's last known address on file with the  
8 commissioner, with a notice of default that includes

9 (1) a description of the security given for the note including the number assigned  
10 to the pledged permit by the commission;

11 (2) the date upon which the default occurred;

12 (3) the amount of the debtor's outstanding principal and interest  
13 [ARREARAGES] as of the date of the default notice, the total amount remaining on the note  
14 less unearned interest, and the amount of daily interest;

1 (4) a statement that the debtor may, within 15 days after the postmark date of the  
2 notice, request a hearing to submit evidence showing the debtor has not defaulted;

3 (5) a statement that the note may be reinstated if it is brought current within 120  
4 [60] days after the postmark date of the notice;

5 (6) a statement that, under AS 16.10.310(a)(4), the debtor may reinstate the  
6 note by submitting to the commissioner a plan of repayment if the commissioner accepts  
7 the debtor's plan of repayment [NOTE MAY BE PAID IN FULL LESS UNEARNED  
8 INTEREST WITHIN 120 DAYS AFTER THE POSTMARK DATE OF THE NOTICE];

9 (7) the place where reinstatement of the note or payment in full may be made;  
10 and

11 (8) a notice in at least 10-point bold type stating: "IMPORTANT: YOUR  
12 FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED  
13 WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND THE  
14 POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

15 \* Sec. 2. AS 16.10.335(d) is repealed and reenacted to read:

16 (d) If requested by the debtor, the commissioner may waive any of the time limits in (a)  
17 of this section for a period not to exceed 60 days if

18 (1) the debtor demonstrates good cause for the waiver; and

19 (2) the commissioner sets out in writing the reasons for approving the waiver.

20 \* Sec. 3. AS 16.10.335(e) is amended to read:

21 (e) Except as otherwise provided in (c) and (d) of this section, if the debtor fails [UPON  
22 THE DEBTOR'S FAILURE] to reinstate or satisfy the note within the time specified in (a)(5)  
23 [(a)(6)] of this section, the debtor's interest in the permit is terminated by operation of law  
24 without further notice. [ANY ENTRY PERMIT CARDS ISSUED TO THE DEBTOR UNDER  
25 THE PERMIT MUST BE CANCELLED IMMEDIATELY UPON RECEIPT BY THE  
26 COMMISSION OF A CERTIFICATE OF TERMINATION CONTAINING A COPY OF THE  
27 NOTICE REQUIRED BY (a) OF THIS SECTION ISSUED BY THE COMMISSIONER.]

28 \* Sec. 4. AS 16.10.335 is amended by adding a new subsection to read:

29 (f) Notwithstanding (a) of this section, when a debtor files bankruptcy, the debtor's  
30 interest in the limited entry permit is terminated by operation of law without further notice as of  
31 the date that the automatic stay issued in the bankruptcy is no longer in effect, unless the debtor

1 has reaffirmed the debt.

2 \* Sec. 5. AS 16.10.338 is amended by adding a new subsection to read:

3 (b) If a limited entry permit is pledged for security for a loan made under  
4 AS 16.10.310(a)(1)(B) for the repair, restoration, upgrading, construction, or purchase of a vessel  
5 and the borrower thereafter fails to make a payment or defaults, the commissioner shall, in  
6 addition to the notice provided under AS 16.10.335(a), notify the borrower that subject to the  
7 commissioner's acceptance the borrower may sell the vessel, apply the sales proceeds to the debt,  
8 and renegotiate payment of the balance due on the loan to avoid the immediate loss of the limited  
9 entry permit that has been pledged for security for the loan.

10 \* Sec. 6. AS 16.10.350 is amended by adding a new subsection to read:

11 (b) The commissioner shall annually submit a report to the legislature detailing the  
12 number and nature of reinstatements authorized by AS 16.10.335(a)(5).

13 \* Sec. 7. AS 16.10 is amended by adding a new section to read:

14 Sec. 16.10.353. WAIVER OF CONFIDENTIALITY. (a) The commissioner may release  
15 information about a borrower's loan to any individual when release of the information has been  
16 authorized by the borrower.

17 (b) A person obtaining a loan under AS 16.10.300 - 16.10.370 after the effective date  
18 of this Act may, by signing a form prepared for the purpose, designate the names of persons and  
19 organizations to whom a copy of the notice required by AS 16.10.335 must be sent.

20 \* Sec. 8. AS 16.43.960 is amended by adding a new subsection to read:

21 (j) The commission shall immediately cancel a limited entry permit card issued to a  
22 debtor under a loan made under AS 16.10.300 - 16.10.370 when the commission receives a  
23 certificate of loan termination containing a copy of the

24 (1) notice required by AS 16.10.335(a); or

25 (2) notice that, if the debtor has filed bankruptcy, the automatic stay issued is no  
26 longer in effect and the debtor has not reaffirmed the debt.

27 \* Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

CSSB 26

Adopted  
5-13-91

7-LS0017D.1  
Chenoweth  
03/18/91

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 26(L&C)

Page 2, following line 14:

Insert a new bill section to read:

"\* Sec. 2. AS 16.10.335(d) is repealed and reenacted to read:

(d) If requested by the debtor, the commissioner may waive any of the time limits in (a) of this section for a period not to exceed 60 days if

- (1) the debtor demonstrates good cause for the waiver; and
- (2) the commissioner sets out in writing the reasons for approving the waiver."

Renumber the following bill sections accordingly.



## 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

#### MEMORANDUM

TO: Senator Pat Pourchot  
Co-Chairman  
Senate Finance Committee

FROM: Senator Fred F. Zharoff

DATE: April 26, 1991

RE: Proposed amendment for CSSB 26 (L&C).

I wish to request that the Senate Finance Committee amend CS for Senate Bill 26 (L&C), when it is brought up for consideration, to include the attached language.

The amendment would insert a new Section 2 to replace the Section 2 that was deleted by the Senate Labor and Commerce Committee.

The original Section 2 read as follows:

(d) If requested by the debtor, the commissioner may waive any of the time limits in (a) of this section if the debtor shows good cause.

The purpose of the section was to give the commissioner of commerce the power to extend the deadlines on the repayment of loans if good cause could be demonstrated.

The Labor and Commerce Committee felt this section gave the commissioner of commerce too much discretion and amended the bill to remove it.

I believe, however, the section is one of the key elements of the legislation. Without it, SB 26 falls far short of solving the problem it was introduced to solve.

The statutes governing the Commercial Fishing Loan Program contain specific deadlines. Our research indicated that one change in the program that would help greatly -- specifically, for debtors who fall behind on their payments and then are able to straighten out their financial affairs -- would be to give the borrowers the ability to take their case to the commissioner. The commissioner could then waive the deadlines the borrower missed if the borrower could convince the commissioner that he could now meet his obligations.

CSSB 26 amendment - page 2

After discussing the matter with the maker of the motion to delete the original Section 2 -- Senator Rick Halford -- we developed language that solves both of our concerns.

The proposed amendment gives the commissioner the power to waive the time limits, but restricts the waiver to no more than 60 days, requires the debtor to demonstrate good cause, and requires the commissioner to make findings in writing.

The amendment is supported by the Department of Commerce and Economic Development.

I respectfully request your favorable consideration of the proposed amendment.



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

SECTIONAL ANALYSIS

CS FOR SENATE BILL 26 (L&C)

"An Act relating to loans under the Commercial Fishing Loan Act and to limited entry permits pledged as security for those loans; and providing for an effective date."

SECTION 1

Amendment to 16.10.335(a).

(3) Clarifies existing language by changing "arrearages" to "the debtor's outstanding principal and interest".

(5) Provides debtors with the full 120 day period until repossession, rather than 60 days, to bring their loans current. Under current law, a debtor has 60 days to bring the loan current and 60 days to pay off the note in full before repossession proceedings against limited entry permits are initiated. The extension will help rural fishermen, in particular, who do not start trying to solve their loan problems until the 60 day time limit has passed.

(6) New paragraph. Provides the debtor with the option of submitting a new plan of repayment. The plan is subject to the commissioner's approval.

(7) Clarifies existing language.

SECTION 2

Amendment to 16.10.335(e).

Makes existing statute consistent with other amendments.

SECTION 3

Amendment to 16.10.335. New subsection (f).

(f) Eliminates the existing conflict between state statutes -- which require a demand to be issued in all cases -- and the superseding federal bankruptcy statutes which prohibit enforcement action -- such as issuing a demand -- after a debtor files bankruptcy.

SECTION 4

Amendment to 16.10.338. New subsection (b).

(b) In the case of a missed payment or default on a boat loan where a limited entry permit has been pledged as collateral, the commissioner of commerce shall notify the borrower that he has the option of selling the vessel and renegotiating the balance due. Selling the vessel is a possibility under present law, but official notification is needed in order to encourage people to do it. The department also does not now have the authority to renegotiate the remaining payments.

SECTION 5

Amendment to 16.10.350. New subsection (b).

(b) The commissioner is required to submit an annual report to the legislature about the number and nature of reinstatements authorized by this legislation.

SECTION 6

Amendment to 16.30. New section, 16.10.253. WAIVER OF CONFIDENTIALITY.

(a) Makes clear that information about a borrower's loan can be released at any time to any individual authorized by the borrower.

(b) Establishes a form on which the borrower can designate individuals (attorney, accountant, business consultant, trusted friend, etc.) and organizations (Native non-profit association, business development center, etc.) that will automatically receive copies of any default notice the Division of Investments mails out. This would enable individuals and organizations trusted by the borrower to find out when a loan is in trouble. They would then be able to assist the borrower in correcting the situation.

SECTION 7

Amendment to 16.43.960. New subsection (j).

Makes the Commercial Fisheries Entry Commission statutes in Title 16 consistent with the amendment in Section 4.

SECTION 8

Immediate effective date.



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

MEMORANDUM

TO: Senator Pat Pourchot  
Co-Chairman  
Senate Finance Committee

FROM: Senator Fred F. Zharoff 

DATE: April 26, 1991

RE: CS For Senate Bill 26 - "An Act relating to loans under the Commercial Fishing Loan Act and to limited entry permits pledged as security for those loans; and providing for an effective date."

I respectfully request that CSSB 26 be scheduled for a hearing before the Senate Finance Committee at the committee's earliest convenience.

CSSB 26 has a zero fiscal note. The bill amends the statutes for the state's Commercial Fishing Loan Program, which is managed by the Division of Investments in the Department of Commerce and Economic Development. It changes some of the procedures in the program without creating additional cost.

The purpose of CSSB 26 is to solve some of the problems commercial fishermen have experienced with the program by allowing the division to respond to problem loans on a more flexible, case by case basis.

CSSB 26 approaches the problem from two directions. It provides more notice to borrowers about problem situations and the options available, and it allows the division to respond with more flexibility when a borrower cooperates in putting his financial affairs back in order.

CSSB 26 was crafted to protect the state's interests and to safeguard the solvency of the loan program. The bill was written in close cooperation with the Department of Commerce. The Division of Legislative Audit recommended this legislation in its 1988 audit of "Commercial Fisheries Loan Programs' Procedures".

I wish to propose either an amendment or committee substitute for CSSB 26 in the Senate Finance Committee. This is discussed in a separate memo.

SB 26: "An Act relating to loans under the Commercial Fishing Loan Act and to limited entry permits pledged as security for those loans; and providing for an effective date."

SB 26 makes a number of changes to the Commercial Fishing loan program, most dealing with limited entry permits and the foreclosure process. The department recognizes the important role that limited entry permits play in the economies of communities throughout the state and supports legislative efforts to provide additional flexibility to work with delinquent borrowers. Below are the major changes that this bill will make to the Commercial Fishing loan program. The parenthetical notations at the end of each provision reference the appropriate sections of SB 26.

1. The time period during which a delinquent borrower can bring a loan current after the postmark date of the default notice is increased from 60 to 120 days (Section 1).

This change allows additional time for delinquent borrowers to respond. Existing statute requires that the loan be paid in full after the 60th day.

2. A provision is added that allows the department to waive the 120-day time limit under AS 16.10.335(a) if the debtor shows good cause (Section 2).

The department strongly supports this provision because it will provide additional flexibility to work with delinquent borrowers that show good cause even in cases where the 120-day time limit has not been met. For example, if a borrower fails to contact us prior to the 120th day and later requests an extension or finds someone to assume the loan, the department would be able to work with the borrower to resolve the delinquency. This is not possible under existing statute. The department already has the ability to negotiate beyond the expiration of a demand notice for vessels, real estate, and gear and strongly supports the ability to do so for permits as well.

A Legislative Budget and Audit Committee Report dated March 14, 1988, suggested that a change such as this be considered by the Legislature.

3. A provision is added that addresses the situation where a borrower has pledged a limited entry permit for a loan that was used toward a vessel (Section 5). Subject to the commissioner's acceptance, the borrower may sell the vessel and renegotiate payment of the balance due on the loan without loss of the pledged permit.

The department supports this provision because it provides more flexibility to deal with delinquent borrowers who find themselves in the position of wanting to sell a vessel that is worth less than the outstanding loan balance.

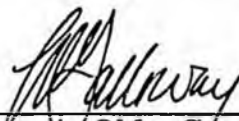
4. A provision is added to terminate a debtor's interest in a limited entry permit when a debtor has filed bankruptcy and the automatic stay is no longer in effect (Sections 4 and 8). This only applies in cases where the debtor has not reaffirmed the debt.

The department supports this provision as it eliminates the existing conflict between the state statutes which requires that a demand be issued in all cases and the superseding federal bankruptcy statutes which prohibit enforcement action, such as issuing a demand after a debtor has filed bankruptcy. Since the department appears before the bankruptcy court in numerous cases, it is advantageous to eliminate conflicts such as these whenever possible.

5. A provision is added which allows the department to release information about a borrower's loan when authorized by the borrower (Section 7). This section also allows a borrower to designate persons or organizations to whom a copy of any notice of default must be sent.

This provision codifies existing department policy.

In summary, the department recognizes the ripple effect that can take place when a limited entry permit is repossessed and has always considered repossession a last resort. The department, however, also has an obligation to protect the assets of the loan fund. The provisions contained in SB 26 will provide the department with additional flexibility in its collection efforts and will enable the department to strike a good balance between assisting borrowers who are experiencing difficulties while, at the same time, protecting the assets of the Commercial Fishing Revolving Loan Fund for future loans.

  
\_\_\_\_\_  
Glenn A. Olds, Commissioner

Date: 2/7/1991

BRISTOL BAY NATIVE CONVENTION  
Resolution 86-22

- WHEREAS: commercial fishing within the Bristol Bay watershed has had poor harvest records for some of the Bristol Bay Fishermen; and
- WHEREAS: the 1986 projected harvest forecast for Bristol Bay is also low; and
- WHEREAS: fishermen from Bristol Bay have no other alternative source of income; and
- WHEREAS: many fishermen have obtained from the State of Alaska loans to purchase new boats and permits to enhance their fishing efforts; and
- WHEREAS: many fishermen put up their commercial fishing entry permit as collateral to obtain their state loans; and
- WHEREAS: many of these commercial fishing entry permits are now at risk due to poor salmon harvests; and
- WHEREAS: the State set up the loan program to help local fishermen become more self sufficient, efficient and competitive and not to take boats and permits from the local residents.

NOW THEREFORE BE IT RESOLVED that the Bristol Bay Native Convention and delegates assembled requests the State Loan Program and Governor of the State of Alaska see and implement ways so that local fishermen do not lose their boats and permits.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the resolution adopted by the delegates to the 1986 Bristol Bay Native Convention, February 23, 24, 25, & 26, Dillingham, Alaska, at which a quorum was present.

WITNESS My hand and seal this 26th day of February, 1986.

*Phillip P. Johnson*  
\_\_\_\_\_  
Chairman, Bristol Bay Native Convention

WITNESSED:

*D. Dally Am. Ch.*  
\_\_\_\_\_  
Chairperson, Resolutions Committee

Excerpt from:

"A Special Report on the Dept. of Commerce and Economic Development  
Commercial Fisheries Loan Programs' Procedures", March 14, 1988.

5

PUBLIC POLICY CONSIDERATIONS

Though no conclusive evidence exists that correlates a reduction of permit flow out of rural areas with the degree of lenient lending practices, the Legislature may want to consider additional forms of subsidization specifically for those rural areas that have become economically distressed due to an outflow of fishing permits. Action such as HB 509 which increases the maximum loan terms on permit loans to 30 years should ease the debt service burden for those finding it difficult to afford purchasing a fishing permit.

It should be noted, however, that the inherent quality of state lending programs creates a two-edged sword. On the one hand, the fiduciary responsibility of protecting the public's assets must be maintained; while at the same time, the socioeconomic aspects of meeting the public need must be considered. Policy decisions are necessary to establish at what point an appropriate balance occurs. If legislative or executive policy is willing to accept a higher risk situation and deems that increased emphasis should be placed on the societal aspects, such direction needs to be expressed. As a result, however, increased delinquencies, foreclosures, and losses may occur.

Consideration may also be given to changing the Commercial Fishing Loan Act to require all repossessed permits be returned to CFEC, who in turn could make the permits available to persons who meet the standards for initial issuance (AS 16.43.250). Areas where commercial fishing provides the primary economic base which can be determined to be economically distressed could be so designated. Applicants residing within these areas who meet CFEC criteria could be chosen, perhaps on a lottery based system, to be given the right of first refusal on the purchase of an available limited entry permit. (Currently, the Commercial Fishing Loan Act requires CFRLP to offer CFEC a right of first refusal at a price equal to the amount outstanding on the foreclosed note plus any costs CFRLP directly incurred in administering the loan. This provision is related to the CFEC's inactive buy-back program under AS 16.43.310 which, in the opinion of the Attorney General, offends the constitutional prohibition against dedication of funds.)

\*

Consideration may be given to amending the Commercial Fishing Loan Act (AS 16.10.335) to provide more flexibility to CFRLP in allowing borrowers in default who have pledged permits as security, greater opportunities to bring their loans current. Presently, the law establishes a definite timetable in foreclosing on defaulted loans of this nature. DCED feels they have less workout capability in these cases in order to avoid repossession of the permits.

SB 27

# SENATE FINANCE COMMITTEE REPORT

DATE: 5/8/91

FURTHER:

DATE TURNED INTO OFFICE: 5-19-91

The Finance Committee considered SENATE BILL NO. 27

"An Act establishing a fisheries business tax credit; and providing for an effective date."

and recommended:

- replace with \_\_\_\_\_ CS
  - or adopt \_\_\_\_\_ CS SB 27 (LCC)
  - attached amendment(s)
  - Senate Finance 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):**

fiscal note(s) \_\_\_\_\_ Dept/Date: \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

appropriation-no fiscal note

**APPROVES PREVIOUS:**

fiscal note(s) ENR Dept/Date: \_\_\_\_\_

zero fiscal note(s) DF&G 5/18/91

**SIGNING DO PASS:**

[Signature]

**OTHER RECOMMENDATIONS:**

[Signature] - No Rec  
[Signature] - Do Not Pass  
[Signature] - No Rec  
[Signature] (No Rec)

1. [Signature] 2. [Signature]  
Co-Chairs: Signatures and Recommendations

CS For Senate Bill 27  
Letter of Intent  
Senate Finance Committee

It is the intent of the legislature that the Department of Revenue -- under the terms of this legislation -- only grant fisheries business tax credits for capital expenditures that are directly related to providing new equipment and processing facilities for seafood production. It is also the intent of the legislature that this tax credit be used to encourage the development and installation of new and innovative technology for processing seafood products in Alaskan shorebased plants.

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

No. 2

Bill Version: SB 27

(S) Publish Date: 5/8/91  
Fish and Game

Revision Date: 3/13/91

Department Affected: Fish and Game

Title: Fisheries Business Tax Credit

BRU: Commercial Fisheries

Component: Commercial Fisheries

Sponsor: Sen. Zharoff

Requestor: Governor

COMPONENT SERIAL NO.

4 5 9

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
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Changes in (S SB 2) (LHC)  
have no fiscal impact. This  
fiscal note is appropriate.

5-6-91 date RMS Comte Aide (initial)

Prepared By: Bob Clasby

Phone: 465-4210

Division: Commercial Fisheries

Date: 3/13/90

Approved by <sup>DEPUTY</sup> Commissioner: RON SOMERVILLE

Agency: ADF + G

Date: 3/18/91

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

FISCAL NOTE

No. 1

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BII Bill Version: SB 27

(S) Publish Date: 5/8/91

Revision Date: \_\_\_\_\_  
Title: Establishing a fisheries  
business tax credit  
Sponsor: Senator Zharoff  
Requestor: \_\_\_\_\_

Department Affected: Department of Revenue  
BRU: Revenue Operations  
Component: Income and Excise Audit

COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>REVENUE</b>	0.0	(13,617)	(13,617)	(13,617)	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	(13,617)	(13,617)	(13,617)	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0.0	(13,617)	(13,617)	(13,617)	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0.0

ANALYSIS: Attach a separate page for analysis.  
See Attached

Changes in CSB 27 (L+C)  
reflect NO FISCAL CHANGE from the original  
fiscal note. This fiscal note is appropriate.  
5-1-91 RLM  
date Comte Aide (initial)

Prepared By: Carl A. Meyer *Carl A. Meyer* Phone: (907) 465-2320  
Division: Income and Excise Audit Division Date: February 26, 1991

Approved by Commissioner: Lee E. Fisher *Lee E. Fisher*  
Agency: Department of Revenue Date: 2-1-91

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

February 26, 1991

SB 27  
FISCAL NOTE ANALYSIS  
DEPARTMENT OF REVENUE

SB 27 would reestablish the fisheries business tax credit program, similar to the current credit program as provided for under AS 43.75.032, which expires December 31, 1991. The fisheries tax credit program provided by this bill is essentially structured after the current program except for the following differences:

<u>CURRENT CREDIT PROGRAM</u> <u>AS 43.75.032</u>	<u>SB 27 CREDIT PROGRAM</u> <u>AS 43.75.037</u>
Effective July 1, 1986	Effective January 1, 1992
Expires December 31, 1991	Expires December 31, 1994
Credits may be claimed for 3 consecutive years from 1987 through 1989	Credits may be claimed for 2 consecutive years from 1992 or 1993
Last tax year in which a credit may be claimed is 1991 (FY92)	Last tax year in which a credit may be claimed is 1994 (FY 95)

Both of the programs allow for a maximum credit not to exceed 50% of the tax liability and credits may not be approved for more than 50% of qualifying expenditures. Also, both programs provide that credits may not be carried back to prior tax years and that no credits are allowed to taxpayers in arrears with the department in payment of a fisheries business tax under AS 43.75.015.

The revenue effect is estimated based on the average tax credit generated per year under the current credit program. (\$68,083,151 total credits divided by five years, or \$13,616,630)

A position paper is attached.

CS FOR SENATE BILL NO. 27(L&C)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 5/8/91  
Referred: Resources, Finance

Sponsor(s): SENATOR ZHAROFF

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing a fisheries business tax credit; and providing for an effective date."

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

3 \* Section 1. AS 43.75 is amended by adding new sections to read:

4       Sec. 43.75.037. FISHERIES BUSINESS TAX CREDIT. (a) A fisheries business is  
5 entitled to a credit of not more than 50 percent of the business tax liability under AS 43.75.015  
6 for capital expenditures made during the tax year if an application qualifying for the credit is  
7 approved by the department in advance of the capital expenditure and before January 1, 1994.  
8 A fisheries business may claim a credit under this subsection for a maximum period of two  
9 consecutive years and may claim the credit for capital expenditures only for the equipment and  
10 improvements that are placed in service by the fisheries business no later than the last day of the  
11 first tax year for which the credit is claimed. An applicant for the credit may elect to begin the  
12 two-year period with tax year 1992 or 1993. A tax credit under this subsection may not be  
13 approved for more than 50 percent of a capital expenditure, and the approval of the application  
14 for credit may be modified or revoked by the department at any time.

1 (b) For purposes of this section, a capital expenditure qualifies for a tax credit if the  
2 expenditure

3 (1) increases product diversity or production efficiency and capacity, or improves  
4 product quality, at a shore-based fisheries business facility in the state; or

5 (2) contributes to the development of a cooperative seafood industrial park in the  
6 state.

7 (c) The portion of a capital expenditure that is eligible for a credit under this section but  
8 is claimed during a single tax year may not be carried back to a prior tax year but is available  
9 for the computation as a credit under this section for a subsequent tax year within the two-year  
10 period elected under (a) of this section.

11 (d) A fisheries business is entitled to a credit of not more than five percent of the  
12 business tax liability under AS 43.75.015 for contributions to the A. W. "Winn" Brindle memorial  
13 scholarship account under AS 14.43.250 that are made during the tax year or during the period  
14 in which the taxpayer may file the return and pay the tax for the tax year under AS 43.75.030.  
15 A fisheries business may claim a credit under this subsection for the 1992 or 1993 tax years.  
16 A tax credit under this subsection may not be approved for more than 100 percent of a  
17 scholarship contribution.

18 (e) The total tax credits that may be claimed under this section for a tax year for capital  
19 expenditures and scholarship contributions combined may not exceed 50 percent of the taxpayer's  
20 business tax liability under AS 43.75.015 for the tax year.

21 (f) The department may not approve a tax credit under this section if

22 (1) the property for which the capital expenditure was made was the subject of  
23 a previous capital expenditure by another taxpayer for whom a corresponding tax credit under  
24 former AS 43.75.032 or this section has been approved;

25 (2) the property for which the capital expenditure was made was sold or  
26 transferred between fisheries businesses having substantial common ownership; or

27 (3) the fisheries business claiming the credit is in arrears in the payment of a  
28 seafood marketing assessment under AS 16.51.120 or a tax imposed by this title; for purposes  
29 of this paragraph, a taxpayer is not in arrears if the payment is under administrative or judicial  
30 appeal.

31 (g) The department shall prepare an application form for a credit under this section. A

1 fisheries business claiming the credit allowed by this section must submit an application for the  
2 credit on that form.

3 (h) The department shall approve or disapprove an application for a credit under this  
4 section not later than 60 days after receiving the application.

5 (i) In this section

6 (1) "cooperative" has the meaning given in AS 10.15.595;

7 (2) "seafood industrial park" means a seafood processing center with facilities to  
8 land, handle, and process or to ship or transship to any location all marketable species of seafood;  
9 a seafood industrial park may contain commercial facilities to support the activities of the park,  
10 and the labor force and vessels that operate at or from the park.

11 Sec. 43.75.039. TAX CREDIT REPORT. Not later than the 15th legislative day of each  
12 regular legislative session the Department of Revenue, in conjunction with the Department of  
13 Commerce and Economic Development, shall submit to the legislature a report on the fisheries  
14 business tax credit program under AS 43.75.037. The report must describe the expenditures for  
15 which a credit was approved during the previous tax year and, if possible, the increase in  
16 employment and processing capacity by the fisheries businesses for which the credit was  
17 approved.

18 \* Sec. 2. AS 43.75.037 is repealed and reenacted to read:

19 Sec. 43.75.037. TAX CREDIT FOR SCHOLARSHIP CONTRIBUTIONS. (a) A  
20 fisheries business is entitled to a credit of not more than five percent of the business tax liability  
21 under AS 47.75.015 for contributions to the A.W. "Winn" Brindle memorial scholarship account  
22 under AS 14.43.250 that are made during the tax year or during the period in which the taxpayer  
23 may file the return and pay the tax for the tax year under AS 43.75.030. A tax credit under this  
24 section may not be approved for more than 100 percent of a scholarship contribution, and the  
25 approval of the application for credit may be modified or revoked by the department at any time.

26 (b) The department may not approve a tax credit under this section if the fisheries  
27 business claiming the credit is in arrears in the payment of a seafood marketing assessment under  
28 AS 16.51.120 or a tax imposed by this title; for purposes of this subsection, a taxpayer is not in  
29 arrears if the payment is under administrative or judicial appeal.

30 (c) The department shall prepare an application form for a credit under this section. A  
31 fisheries business claiming the credit allowed by this section must submit an application for the

1 credit on that form.

2 (d) The department shall approve or disapprove an application for a credit under this  
3 section not later than 60 days after receiving the application.

4 \* Sec. 3. AS 43.75.130(b) is amended to read:

5 (b) For purposes of this section, tax revenue collected under AS 43.75.015 from a person  
6 entitled to a credit under former AS 43.75.032 or under AS 43.75.037 shall be calculated as if  
7 the person's tax had been collected without applying the credit.

8 \* Sec. 4. Section 7, ch. 79, SLA 1986, is amended to read:

9 Sec. 7. AS 43.75.130(c) is [AND 43.75.140(9) - (11) ARE] repealed January 1, 1992.

10 \* Sec. 5. AS 43.75.039, 43.75.140(1), 43.75.140(7), 43.75.140(8), and sec. 10, ch. 79, SLA 1986, are  
11 repealed.

12 \* Sec. 6. FISHERIES BUSINESS TAX CREDIT CLAIM IN TAX YEAR 1994. Notwithstanding  
13 the amendment of AS 43.75.037 by sec. 2 of this Act, a taxpayer who elects to begin the two-year period  
14 for the fisheries business tax credit under AS 43.75.037 and whose project was approved by the depart-  
15 ment under AS 43.75.037 before January 1, 1994, may claim the fisheries business tax credit for tax year  
16 1994 for capital expenditures made by the taxpayer during the 1993 tax year.

17 \* Sec. 7. Sections 2 and 5 of this Act take effect January 1, 1995.

18 \* Sec. 8. Except for secs. 2 and 5, this Act takes effect January 1, 1992.

AMENDMENT TO SB 27

P. 2, LINES 1 - 6: REPLACE WITH:

(b) For purposes of this section, a capital expenditure qualifies for a tax credit if the expenditure

(1) increases product diversity in secondary processing or improves product quality at a shore-based fisheries business facility in the state; or

(2) contributes to the development of a cooperative seafood industrial park in the state; or

(3) increases production efficiency and capacity of shore-based processing facilities with 50 employees or less.

Justification for amendment: It is estimated that 70 - 80% at a minimum of the ownership of onshore processing plants are foreign investors. It would apparently be legally difficult to limit this tax credit to Alaska-owned, or even U.S.-owned companies, since the mix of ownership patterns is fairly tangled.

However, a bigger question is why should we be giving a tax credit to encourage further capacity in large-scale salmon processing and groundfish processing plants? We are already at maximum capacity. Any further investment will merely force existing companies out of business or force a shortened processing season, which is not to the benefit of local communities.

Instead, we should be encouraging investment in small-scale, local processors and in improvements in quality control and in secondary processing.



# SENATOR FRED F. ZHAROFF

## ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 488-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

1

DISTRICT N

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

### SECTIONAL ANALYSIS

#### CS For Senate Bill No. 27 (L&C)

"An Act establishing a fisheries business tax credit; and providing for an effective date."

#### SECTION 1

- (a) Establishes a new fisheries business tax credit program to be in effect for the years 1992 and 1993. Amended to include a "placed in service" rule that requires the improvements or equipment to be in place by no later than the last day of the first year the credit is claimed. Also amended to give the Department of Revenue the power to modify or revoke its previous approval of credit applications.
- (b) Establishes qualifications for the tax credit. Same qualifications as the previous program.
- (c) Prohibition on carrying back tax credit to prior tax years, but credit allowed to be carried forward within the two years available. Same provision in the previous program.
- (d) Allows tax credit for contributions to the A.W. "Winn" Brindle memorial scholarship account. Same language as previous program, except for clarification on when the credit can be claimed.
- (e) Total tax credit that may be claimed is capped at fifty percent of the taxpayer's business tax liability. Same language as previous program.
- (f) Prohibitions on granting tax credits. Same language as previous program except for (3), which was amended to include being in arrears on seafood marketing assessments and salmon enhancement taxes.
- (g) Provides for an application form.
- (h) Provides for timely consideration of applications. Same language as previous program.
- (i) Definitions. Same language as previous program.

TAX CREDIT REPORT

Requires preparation of an annual report. Same language as previous program.

SECTION 2

Establishes tax credit for A.W. "Winn" Brindle memorial scholarship account, to take effect when the fisheries business tax credit program sunsets. Language in paragraphs (a) through (d) copied from previous section.

SECTION 3

(b) Allows municipalities to receive their 50 percent share of fisheries business taxes collected within municipal boundaries. Includes reference to the statute created by this bill.

SECTION 4

Technical amendment for consistency between previous tax credit program and program created in this bill.

SECTION 5

Repeals the requirements for the tax credit report (43.75.039), the definition of "capital expenditure" (43.75.140(1)), the definition of "product diversity" (43.75.140(7)), the definition of "product quality" (43.75.140(8)), and the effective date for Brindle scholarship contributions in the previous law (sec. 10, ch. 79, SLA 1986) upon the sunset date of the new tax credit program, January 1, 1995.

SECTION 6

FISHERIES BUSINESS TAX CREDIT CLAIM IN TAX YEAR 1994.

Makes clear that fisheries businesses that have applied and received approval for two year tax credit projects in 1993 may claim the tax credit in 1994.

SECTION 7

Implements the credit for Brindle Scholarship contributions in Section 2 and the repeal of unneeded statutes when the program sunsets in Section 5.

SECTION 8

Effective date of January 1, 1992 for remaining sections.



SENATOR FRED F. ZHAROFF  
ALASKA STATE LEGISLATURE

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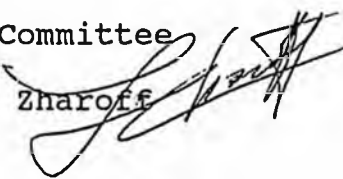
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MEMORANDUM

TO: Senator Pat Pourchot  
Co-Chairman  
Senate Finance Committee

FROM: Senator Fred F. Zharoff 

DATE: May 10, 1991

RE: CS For Senate Bill 27 (L&C) - "An Act establishing a fisheries business tax credit; and providing for an effective date."

I respectfully request that CSSB 27 (L&C) be scheduled for a hearing before the Senate Finance Committee at the earliest opportunity.

CSSB 27 establishes a new two-year Fisheries Business Tax Credit program, modeled after the credit program that was in existence from 1987 through 1989.

The original program was a tremendous success in encouraging increased investment in Alaska's shorebased seafood processing facilities. According to the Department of Commerce and Economic Development, over \$140 million was invested in Alaska seafood plants during the tax credit period. The credit gave many processors the opportunity to expand into groundfish and to make this resource a viable fishery for Alaskans.

CSSB 27 would reactivate the program for a limited time period, 1992 through 1993. Processors would be able to use up to fifty percent of their annual business tax liability for two consecutive years for capital expenditures that "increase product diversity, or production efficiency and capacity, or improve product quality".

The spinoff effects from the credit include:

- Economic development in Alaskan coastal communities.
- More year-round operation of seafood plants, which benefits resident Alaskan processing workers.
- More markets for Alaskan commercial fishermen.
- Greater diversity in species processed and products produced.

The credit is particularly crucial at this time due to the competitive threat Alaska's shorebased groundfish processors face from the Outside-based offshore factory trawler fleet.

CSSB 27 moved out of the Senate Labor and Commerce Committee on May 6 with three "do pass" recommendations and one "no recommendation". The L&C committee substitute addresses the concerns raised by the Department of Revenue. The bill moved out of the Senate Resources Committee on May 8 with three "do pass" recommendations and two "no recommendations".

The following backup information is attached:

1. Sectional analysis.
2. Fiscal note from the Department of Revenue.
3. Fiscal note from the Department of Fish and Game.
4. Letter from the Department of Revenue to Senate President Richard Eliason, containing the department's annual report on the program.
5. Letter from Mr. Barry Lester, chief executive officer of the Seafood Producers Cooperative.
6. Letter from Mr. William Dignon, president of Hoonah Cold Storage.
7. Letter from Mr. Alvin Burch, executive director of the Alaska Draggers Association.
8. Alaska Municipal League position paper.
9. Department of Commerce and Economic Development report on the impact of the tax credit, March, 1990.
10. Department of Commerce and Economic Development report estimating the increase in fish taxes that likely will be collected due to the tax credit, April, 1990.
11. Results of Fisheries Business Tax Credit survey.
12. Alaska Seafood Marketing Institute fact sheet about the seafood industry.
13. Fisheries Business Tax Credit statutes and regulations.

February 26, 1991

S B 27  
POSITION PAPER  
DEPARTMENT OF REVENUE

S B 27 would result in a significant and continuing reduction to the state share of fisheries business taxes. S B 27 is modeled after the current fisheries business credit program provided in AS 43.75.032. Under this current program, over \$68,000,000 in tax credits have been generated, Table I, and a large portion of these credits will be utilized to reduce taxes in 1990 and 1991. S B 27 would become effective for the 1992 tax year thereby essentially extending the credit program without interruption for another three years to 1994.

The Fisheries Business Tax Credit is structured in such a manner that revenues shared back to municipalities are not impacted. Specifically, Sec. 3 of the legislation provides that shared taxes are determined before application of the credit. Pursuant to AS 43.75.130, 50% of fisheries business taxes are shared with the cities and/or boroughs in whose jurisdictions the fisheries resources are processed. This 50% sharing comes off the top leaving a maximum of 50% to the state. Since SB 27 would allow a credit in any one tax year up to 50% of the fisheries business tax liability, the state would receive no fisheries business tax revenue where a taxpayer claims a full 50% credit. In that situation, the state merely collects the tax and remits that full amount to the municipality. If all taxpayers fell into that situation, the state would retain no fisheries business taxes.

For calendar tax year 1989, tax credits represented 35% of the fisheries business tax liabilities before credits. Shared revenues represented 39% of tax liabilities before credits. Fisheries business taxes generated for the general fund represented only 26% of the tax liabilities before credits. Table II.

Since AS 43.75.137 enacted in legislation last session extends revenue sharing to all floating tax liabilities, as opposed to only those floating tax liabilities where the processing activities occur within a city or borough, the tax base for revenue sharing will increase. That will have two effects. First, the amount of shared revenues will increase. Second, the amount of fisheries business taxes generated for the general fund will decrease. The combination of the credit program and the change in revenue sharing for floating tax liabilities will therefore significantly impact the fisheries business tax revenues going into the general fund.