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The Exxon Valdez Oil Spill - A Community's Perspective

by John Devens, Ph.D.

*Dr. Devens is President of Prince William Sound
Community College and former Mayor of Valdez.*

In the aftermath of the Exxon Valdez oil spill and other recent spills which have occurred since March 1989 in Morocco and Long Island, many people throughout the world are concerned about the environmental effects of oil spills. They question the immediate and long-term ecological impact. An area that is seldom addressed, however, is the effect that a major oil spill has upon the involved communities.

Since the Exxon Valdez spill, I had an opportunity to visit the Brittany coast and talk to the mayors of those communities devastated by seven oil spills in the last twenty years. The consistency in problems experienced by communities in both Alaska and France was evident, and I suspect this is the case with other areas of the world. As mayor of the community closest to the Exxon Valdez oil spill, I spent a considerable amount of time coping with the problems associated with this oil spill from March 1989 through October 1989.

First, I would like to give you a brief overview of Valdez. Valdez is unlike many other Alaskan communities in that our major tax revenue comes from the oil industry. Valdez is a very pro-development community with a long history of boom-and-bust economic activity. In 1972 we were in one of our bust phases when several of our business leaders met with the builders of the Trans Alaska Pipeline (TAPS) and offered to provide up to two billion dollars of taxfree revenue bonds to build the terminal in Valdez. Based on the offer of the City of Valdez, a decision was made to build TAPS to Valdez and place the terminal in our community.

Placing the terminal of the TransAlaskan pipeline in our community resulted in another boom phase, with additional population and an outstanding tax base. Shortly after the completion of TAPS, the community leaders of Valdez recognized the finite nature of the oil industry and the importance of using the new tax base to diversify our economy and provide for our future. At that time, we invested some of the tax revenues in developing our fisheries industry, promoting tourism, building our transportation infrastructure, and further developing our human service industries. At the same time, we decided to begin to diversify our industrial base while recognizing the need to protect these new industries from the problems caused by oil spills. Eight years ago, the mayor and city council considered building a major oil spill depot and having available the equipment and supplies that would be needed in a major oil spill.

The city's concerns regarding the potential of having a major oil spill came from comments made by individuals in our community, many who had worked in the oil industry.

Unfortunately, the city leaders' plan to build a warehouse and stock it with needed oil spill response materials was never completed due to assurances expressed by the oil industry. Despite the promises made by the oil industry regarding their readiness in dealing with a major oil spill, many citizens of our community were not convinced of their capability in dealing with a major spill. Three years ago, the city imposed an additional three mills of tax to provide additional services to the oil industry, including the building and maintenance of an oil spill response program. Unfortunately, the state of Alaska challenged the city's authority to impose a differential tax on the oil industry. Approximately six months before the oil spill, the city council of Valdez appointed an ad hoc committee to investigate the impact the oil industry was having on other industries in our community. Four hours before the Exxon Valdez oil spill, the ad hoc committee listened to a teleconference in which a toxicologist told us it was not a matter of "if" we had a major oil spill but of "when" the oil spill would occur.

As mayor of Valdez, my initial reaction to the Exxon Valdez oil spill was to offer the city's help in dealing with the problems confronting the Exxon corporation. During the days following the spill, I made numerous calls to Exxon and Alyeska offering the city's help and cooperation in dealing with the critical situation. At the same time, I also requested that our city attorneys contact other cities that had similar oil spills. Our intention was to acquire information regarding the problems other communities had experienced. In general, other communities warned us that the oil industry had a reputation of not treating the local communities and affected businesses in a responsible manner. We were warned to be ready for litigation, to document everything that occurred regarding the oil spill, and to warn our business community of their potential losses.

Although the city of Valdez never had oil on its beaches, we were the most affected community in regard to "people pressure". Within hours of the oil spill, we were faced with a wave of people coming to Valdez, including the press, agency people, Exxon, and other industry people and individuals seeking employment. Our community which normally has about 3,500 people living on a permanent basis suddenly grew to over 10,000. Our local resources including housing were stretched beyond their capacity. Sometime during the first week of the oil spill, I became quite concerned about how Exxon would respond to both the community's needs and those of our businesses. At that time, I attempted to get a federal declaration of disaster for our area to assure that our businesses and the affected communities would receive financial aid. I believe many of my concerns were due to lack of information between the decision makers in the Exxon corporation, federal and state government representatives, and the city of Valdez. The federal government did provide some small business

administration loans to the people affected by the spill. However, a declaration of disaster was never given by the President of the U.S.

As I look back on it now, it appears that Exxon responded in a more responsible manner than predicted. A recent article in the Alaska Resource Development Council publication indicates that Exxon spent more than one billion dollars in the summer of 1989 on the oil spill. Of that money, more than two hundred million dollars was spent for chartering fishing boats and seventy-five million was paid to settle claims, especially to the commercial fishing industry. The article indicates that approximately sixty-one miles of booming material was purchased, eleven thousand, five-hundred people were hired, thirteen hundred barge and other floating hotel accommodations were provided, more than one hundred aircraft were chartered, and forty-four million pounds of equipment were placed on the beaches to clean the spilled oil. In retrospect, I believe most communities received more reimbursement than anticipated. However, it should be pointed out that Exxon did not reimburse communities for all of their costs.

Considering the amount of money spent on this cleanup, the number of individuals hired, and the number of fishermen and fishing boats used in the cleanup effort, I am certain there are Exxon officials who are quite confused with the reaction of the majority of affected Alaskans. There are probably groups of Exxon executives who have talked about the lack of appreciation and gratitude on the part of the affected communities.

However, I believe that Exxon does not fully grasp some of the perceptions and some of the problems associated with this summer's oil spill. From the beginning, many of the mayors and village leaders of the affected communities tried to tell Exxon that they wished to be kept within the information and decision-making loop. We felt we were losing control of our communities. This loss of control ranged from the attitudes of people placing temporary structures in our communities to the granting procedures used by Exxon. Although Exxon was frequently generous in providing grants to communities or pay for needed services, it was always at their discretion which services should be purchased and there were some needed services that the communities were never able to purchase with Exxon grants.

Many of the communities received what would appear to be an economic boom from money spent in the clean-up. It is important to note, however, that there was an unequal distribution of both benefits and losses within communities. While some people who either owned restaurants or hotels or had boats for lease may have had an unexpected profit this summer, there were other individuals in all communities who suffered from lack of work, lack of tourists, lack of services, and general economic problems on our communities.

One thing that Exxon could have avoided was in raising expectations in the minds of the people living in Alaska.

Our experience with oil spills was relatively limited and when we were told by Exxon that our beaches would be clean by the end of September, many Alaskans felt that the beaches would be returned to their natural state. As the summer wore on, we realized that Exxon had changed their terminology from "cleaned" to "treated" and finally used the expression "environmentally stable". Those individuals who anticipated having cleaned beaches by the end of the summer were obviously disappointed when they found out their beaches were only "treated" with oil residues still remaining.

A major problem was caused by some of the early communications from Exxon officials related to the amount of financial responsibility that Exxon would accept. Early in the spill, Exxon representatives indicated at press conferences that they took full financial responsibility for the oil spill and would pay any reasonable claim. Later, the claims were divided into primary, secondary and tertiary, with the primary claims being fishermen and the tertiary claims being individuals having businesses that were indirectly affected by the oil spill. Exxon did not seem generally well disposed toward paying any of the businesses that fell in the tertiary area, and many of the individuals that fell in the primary and secondary areas found it very frustrating to deal with the clerks hired to settle the claims. Associated with this frustration was the added difficulty in dealing with various individuals who were rotated about every three weeks. While the Exxon executive staff who made the promises in public meetings appeared to be honest and reasonable, the company representatives who the communities and the businesses dealt with often did not have public relations or, for that matter, the best interests of the business or community in mind.

Due to the problems that some of the communities were facing and a growing concern on the part of some communities that Exxon may not treat all of them consistently, a group was formed which later became known as the "oiled mayors of Alaska". This group was made up of representatives from twenty-nine communities, and met nearly every week to discuss common problems and communicate information that would help particularly the smaller communities. One of the initial goals of the "oiled mayors" was to develop an agreement between the Exxon corporation and all the affected communities that would guarantee a consistent treatment of all communities. After many efforts and numerous meetings, the "oiled mayors of Alaska" gave up their attempt to reach agreement with Exxon.

Each community faced its own particular set of problems. As I mentioned earlier, the city of Valdez never had oil on its beaches. However, we had a serious problem handling the numbers of people moving to Valdez to assist in the oil spill cleanup. Other communities were faced with oil on their beaches and the total disruption of their economies, and in some instances, a disruption of their traditional cultures. Many of the villages in the affected region had few permanent jobs or economic activities in their communities. The inhabitants have a subsistence lifestyle which requires using the summer months to gather much of their food from the sea and the tidelands that they consume.

during the winter months. Recent articles in Alaskan newspapers warn native communities not to eat oil-tainted shellfish that have been a major part of their diet for centuries. The influx of people and new sources of revenue caused a major disruption of the culture of these villages. Early in the oil spill, the village food supply was said to be safe if you could neither see nor smell crude oil in the fish or shellfish. More recently, native villages have been warned that the sight or smell test is not adequate and they should be extremely careful in consuming shellfish in oil contaminated areas.

The larger communities of Valdez, Cordova and Kodiak were faced with problems of waste disposal, sewer and water problems, competition for harbor space, child care, housing, sanitary conditions and other community services. In Valdez, we observed the use of our airport to increase from about twenty to four hundred takeoffs and landings per day. We saw a great increase in crime and mental health problems and were constantly faced with a shortage of labor since many of the potential workers were used in the oil spill cleanup. Many of the same communities were faced with a loss of revenue from their fish tax, and some of us found that projects which we had been developing for years were cancelled because of unreasonable fear of what the oil spill was going to do to our communities. For instance, we had a prospective brewery cancelled because of investors' fear of the public's attitude towards Valdez and Prince William Sound. We also lost several projects with a Japanese corporation to import glacier ice and mineral water from Valdez.

It is important to recognize that the Alaskan fisheries industry is market-driven. The state of Alaska is concerned with the reputation of Alaskan seafood and placed a zero tolerance regulation on our seafood as it relates to oil contamination. What this means is that any fish or shellfish that had as much as one tar ball in the catch would be destroyed. That resulted in the closure of many fisheries and the loss of considerable fishing revenue for the Prince William Sound, Kodiak and Kenai areas. If Alaska had not adopted the zero tolerance regulation, it was feared that the entire market price for Alaskan fish and seafood would have been reduced.

The final problem which I will discuss relates to the affected communities trying to obtain reimbursement for many of the additional costs resulting from the oil spill. I mentioned earlier that Exxon paid many, but not all claims. Exxon, for example, would not pay claims associated with attorney fees and other items associated with litigation. They also seemed to be particularly reticent about paying for any programs related to social problems resulting from the oil spill. Requests for funding additional mental health counselors were generally refused. Another area that was not consistently funded was research related to social and economic problems resulting from the spill. Although Exxon did pay for some public relations activities to help with the overall image of the state of Alaska, little funding has been made available to improve the damaged public image of Prince William Sound, Kodiak and Kenai - communities whose economies are based upon the tourism

industry. Finally, it is important to realize that Exxon had its own set of priorities which may not have been and, in many cases, were not consistent with the communities' priorities. If one watches the briefing program Exxon provided during the summer months, it can be seen that Exxon lists its highest priority as lightering the Exxon Valdez. I believe everyone will admit that Exxon did an outstanding job of removing the oil and saving the ship. Their second priority was protection of the hatcheries in Prince William Sound. Most Alaskans will recall that the initial protection provided the hatcheries was that of fishermen from communities such as Cordova and Homer. However, Exxon did provide booming material to help protect these hatcheries. Exxon's third priority was to protect the workers, and when one considers that Exxon had very little loss of life and injury it is reasonable to assume a good job was done with regard to the third priority. Removing the oil from the water was Exxon's fourth priority.

I cannot help wondering if we had another agency that would have placed removing the oil from the water as their highest priority, would not some of the damage to the beaches been avoided? It is possible that we are requesting the oil companies to respond to an emergency at a level of responsibility we would not ask of any other industry? As we have an opportunity to evaluate the Exxon Valdez spill, I am certain we will develop plans and procedures that will better protect us from similar catastrophes. Even though the spill took place in my community, there was nothing unique about the circumstances or the Alaskan environment which could explain the events of March 24, 1989 as an "Alaskan phenomenon". Human error, loose industry practices, and lack of state and federal oversight produced the most devastating environmental catastrophe in the history of the United States. For these same reasons, however, the Exxon Valdez oil spill could have occurred off the coast of Washington, Oregon, Maine, California, Massachusetts, Florida, Texas, or any state with tanker traffic off its coast or on its inland waterways. Prevention is clearly our only answer in dealing with future spills - i.e. double hulled tankers, escort vessels, tested contingency plans, better monitoring and tracking by the Coast Guard, a quasi-governmental agency for spill clean up, and stockpiles of materials and equipment near major shipping lanes. As a group of Prince William Sound citizens was told four hours before the spill, "it is not a matter of 'if' an oil spill occurs, but 'when' it will occur." It is imperative that the oil industry and the nation pick up the pieces from this disaster and proceed constructively in developing safeguards to protect against future calamities.

REPORT TO THE VALDEZ CITY COUNCIL
1 9 8 9 A N N U A L R E P O R T

Pursuant to Section 2-4(c) of the Valdez City Code which states, in part, that the City Manager shall "once a year present a detailed statement of what he has done during the year covered by the report." I have interpreted this to mean a report on what the City has done under the direction of the City Manager. The following is this detailed report for 1989:

SUMMARY:

The City of Valdez thought that the highlight of the year would be the violent wind and cold storm we experienced in January which froze a lot of water pipes and did damage mainly to the library (it would have been more extensive had it not been for a quick response from City and contractor personnel).

That potential assessment of the year all changed on March 24 with the grounding of the EXXON VALDEZ and the subsequent oil spill; media feeding frenzy; wildlife cleaning; invasion of all fashion of laborer, vendor, bureaucrat, scientist, dignitary, fast-buck artist, social scientist, EXXON/VECO/NORCON executive, etc. The City was in the middle of a world class "Chinese fire drill" which placed incredible and almost indescribable burdens on City services. The maintenance of basic sanitation, safety, and health was the immediate problem during April, and as the oil spill response evolved with a population peaking at an estimated 11,000 the demands on the City changed. The City of Valdez staff performed exceedingly well in meeting the dynamic situation that occurred.

The oil spill prevented the City from addressing many other planned activities for 1989. However, even in the year of the spill many of the priorities identified for 1989 were successfully handled. The highlights of these other accomplishments include:

- . Local taxing stability through the City's efforts to work effectively with the Senate Select Advisory Committee on Municipal Taxation of Oil and Gas properties which produced recommendations highly favorable to the City.
- . More efficient performance due to the installation of MENTOR software and training for Finance Department staff to effectively use this standardized software to replace a high maintenance customized system. Similarly new CHIEF software allows the Buildings and Grounds Department to more effectively track and account for maintenance work orders.
- . Improved public safety service due to the successful reorganization of the Department of Emergency Services as requested by City Council. The separate Police and Fire Departments are functioning well under the leadership of their new respective chiefs.
- . Improved quality of life due to successful paving of hospital parking lot, bus turnaround area, and several streets and pav-

-ing overlays of other critical areas.

The priorities identified for 1989 where the City did not perform as hoped include:

- . Preparation of the Comprehensive Development Plan.
- . Review of salaries and personnel ordinances and regulations.
- . Preparation of a comprehensive flood mitigation program.
- . Completion of municipal land selection entitlements.

After consultation with the City Council, these unmet priorities will be included, as directed, in the 1990 Work Plan.

In order to provide a simplified presentation of accomplishments for 1989, several departments have been merged into one of seven categories.

ADMINISTRATION/CITY CLERK/FINANCE

The oil spill responsibilities placed considerable demands on the City Manager's office to address the operational, governmental liaison, media, negotiation, and managerial demands of a seven-month crisis. The City Clerk's office was also affected by the need to provide support to the Mayor and City Council in working with the media, hosting dignitaries, sponsoring events, and responding to the mail and calls that poured into the City (including setting up a mechanism to accept donations).

The Finance Department drafted new purchasing and property control procedures which were formally adopted by the City in May 1989. Oil spill responsibilities it assumed included setting up a reimbursement program from Exxon for additional City services, increased billings for City services, and payroll for temporary hires to service oil spill demands. Exxon has been billed \$1,393,202 for local government services and has reimbursed the City to the tune of \$1,379,056. Additional funding of \$842,149 in capital projects for the City have also been added by Exxon.

Besides successfully addressing oil spill demands, Administration and Finance (with a great deal of technical/legal support from our attorneys and logistical help from Parks and Recreation Director Nancy Peterson) were able to successfully address the State Assessor's attempt to limit the amount of oil and gas property available for local taxation.

PUBLIC SAFETY

The major accomplishments of the Police and Fire/EMS Departments were the separation and reorganization of the former Department of Emergency Services back into more traditional public safety departments. Acting DES Chief Joe Michaud, Police Chief Bert Cottle, and Bob Preston, who held together the fire service side, deserve a lot of credit for making this reorganization successful. I be-

lieve the separation of the public safety service has accomplished what the City Council wanted: improved morale, increased technical expertise through greater specialization, increased emphasis on fire protection/prevention, growth and improved training of volunteer firefighters. The addition of Fire Chief Charlie Lundfelt provided renewed focus in the area of fire protection for the City.

The Police and Fire Departments were both impacted a great deal by the oil spill response activities. Overtime (reimbursed by Exxon) was required of the personnel to keep up with the demand. The statistical comparison between 1976 (peak of pipeline days), 1988, and 1989 graphically demonstrates the increased activity.

POLICE DEPARTMENT

	<u>1976</u>	<u>1988</u>	<u>1989</u>
Assaults	96	34	58
Accidents	469	112	298
Bar Disturbances	205	56	130
Disturbances	54	149	359
Driving While Intoxicated .	unavailable	76	153
Man-Days in Jail	520	1,845	2,660
Traffic Tickets	1,079	200	456
Arrests	346	301	673
Officer Responses	4,762	4,111	6,734

FIRE/EMS DEPARTMENT

	<u>1988</u>	<u>1989</u>
Ambulance Callouts	151	325
Fire Callouts	63	95
Fire Alarm Callouts	60	113

Animal Control operations experienced an estimated increase of 20% in demands for service. Direct and peripheral support to oil spill cleanup participants levied an especially heavy burden during June, July, and August. Animal Control capital resources were severely strained; the pathological incinerator, used to dispose of oil spill carcasses, was heavily damaged and will need replacement.

ANIMAL CONTROL

	<u>1988</u>	<u>1989</u>
License Fees	\$3,652	\$5,326
Impound Fees	\$4,410	\$9,408
Dogs/Cats Impounded	333/222	457/136
Dogs/Cats Adopted	45/77	52/33
Citations	36	34
Medical Assists	87	104
Agency Assists (Burns)	48	118
Misc. Animals (Deer, Birds, Ducks, etc.)	38	123

LIBRARY/MUSEUM

1989 was a year of destruction for the Valdez Library and construction for the Valdez Museum. The Library suffered the worst damage of any City operation from the "big blow" in late January. The freezing of fire suppression sprinkler pipes flooded the Library and damaged some equipment. Speedy response aided in keeping permanent damage to a minimum. The Library was closed for 7 days but reopened almost as good as new. The Library later set records due to the rapidly growing population of Valdez in response to the oil spill. 1,488 new library cards were issued, nearly doubling the old record of 795 in 1981. The gate count of 54,168 patrons topped the old count record (we have only had a gate since 1987) of 49,206 by 10%. The down side of oil spill is a higher than normal loss rate of Library materials. At year end 223 items valued at \$2,208 were overdue. The Library staff is in the process of reviewing policies regarding library card eligibility requirements and circulation.

The Valdez Museum saw the successful completion of the Egan Commons. This new addition provides much needed exhibit space for some of our more valuable larger pieces, like our vintage fire apparatus, and also gives the Museum a more conspicuous entry into our facility. Museum operations were somewhat hampered by the construction, but in most respects it was a normal year. Patron counts were down significantly, only 24,183 in 1989, compared to 37,693 in 1988. Donated revenue also declined by about \$6,700. This can be attributed to a reduced number of summer visitors, by some estimates tourist traffic in Valdez was down 40%, and construction disruptions. Buses from the tour ships did not let visitors off in front of the Museum as they had in the past.

ENGINEERING/COMMUNITY DEVELOPMENT/UTILITIES

The Engineering Department was drastically impacted by oil spill demands in the areas of building code enforcement, mobile home installation, building permit requests, sewer treatment plant operations, water demand, and supervision of City "force account" workers. In spite of the oil spill chaos, the major projects on the capital improvement projects agenda - Phase II of the Commercial Fisherman's Dock, Egan Commons, and various asphalt paving projects - were successfully completed. Some projects, like major maintenance at the Valdez Container Terminal, were delayed due to conflicts with oil spill activity. The biggest disappointment proved to be the picnic shelter. Its costs were underestimated and it could not be completed this year due to labor problems. Building also boomed. 217 commercial and residential construction permits were issued compared to 104 for 1988. The value of this construction is estimated to be at least \$5 million compared to \$3.6 million in 1988. The Department had the City Engineer and engineering secretary resign in June, and a new City Engineer has not yet been successfully recruited. Carol Smith

stepped in to cover the secretarial needs for both departments until a new secretary could be hired. Charlotte Burrill deserves much credit for keeping the operation on an even keel. Temporary staff was added to handle the increased activity, and Vern Ellwein remains as the building official.

The Community Development Department was also hammered by oil spill activity. New businesses, itinerant merchants, zoning questions, temporary structures, land leases, land use permits, myriad issues presented by a rapidly growing population, and the need to coordinate with State and Federal agencies on various subjects greatly hampered work on the Comprehensive Development Plan and the Air Service Study. These demands also made it impossible to service many requests for assistance from Valdez residents. Some additional contractual help was hired and a summer intern was hired to assist with population counts so we could keep track of our dynamic town. As a result of the work of the Community Development Department in this area, the Department of Community and Regional Affairs certified a population of 7,193 for 1989, about double our normal population. While this does not mean our State Revenue Sharing and Municipal Assistance payments, which totalled just over \$1 million in 1989, will double in 1990, they should increase significantly; the City is conservatively budgeting a 45% increase or \$450,000 more from these State aid programs. The inability to make further progress on the Comprehensive Development Plan was the biggest disappointment of the year. We also did not make as much progress as earlier projected on the flood mitigation plan for the City and municipal land selections. Even if staff time had been available for these projects, it is unlikely we would have received the community input and participation necessary to make these planning programs meaningful. People were simply too busy with the events surrounding the oil spill. The business survey and preliminary data gathering were accomplished for the Comprehensive Plan. Through the assistance of several consultants, work was begun on high priority projects such as Valdez Air Service Study, Gravel Management Plan, Municipal Land Selection, and the next phase of the Comprehensive Plan; and some work has begun on the other projects as well.

Gary Hennigh, the Community Development Director, resigned in November to pursue new opportunities after only a year in the position. Pamela Ulvestad was called upon throughout the summer and fall to carry much of the load of the Community Development office while Mr. Hennigh assisted with special oil spill projects and during the interim between directors. The City was able to recruit a highly qualified replacement in Mr. Dave Dengel. Dave started work on January 29, 1990.

1989 proved to be a test for some of the City's infrastructure. Both water and sewer capacities were stretched to the limits and many times almost overloaded. Under normal circumstances, the in-town system's water demands during the second and third quarters

are mainly affected by the local seafood processing activity. During 1989, these demands were compounded by the oil spill activity and showed an average increase of .5 million gallons per day (MGD). Listed below are the average demands and the peak flows the systems experienced this summer:

Potable Water Usage

1989 Peak Flow: 3.6 MGD
Previous Peak Flow: 2.5 MGD

Average 2nd and 3rd Quarter demands:

1988: 1.6 MGD
1989: 2.1 MGD

The sewage treatment plant began showing signs of overloading around the end of May due to oil spill impact. It did not return to satisfactory operation until the middle of August. The plant could have possibly handled the 1989 loading better if it had not been for the sludge build-up in the first lagoon.

	Hydraulic Loading million gallons per day		Solids Loading pounds per day	
	1988	1989	1988	1989
April	.550	.810	367	980
May	.670	.830	525	1,322
June	.490	.750	417	1,532
July	.490	.690	699	1,266
August	.600	.600	676	1,006
September	.610	.900	930	1,208

PARKS AND RECREATION

The Parks and Recreation Department played an important role in the oil spill response. The Department continued to provide extensive recreation opportunities for the residents, visitors, and transients of Valdez, but over and above its normal activities the Department made other contributions. The Department played a leading role, in concert with the Public Works, Engineering, and Community Development Departments, in establishing temporary campgrounds with showers and toilets. The Parks and Recreation Department also provided an extended activity period under its Summer Fun program so that older children, whose parents were probably involved in oil spill cleanup jobs, could receive additional supervision.

The Civic Center was also the focus of much activity related to the oil spill. Early on it hosted press conferences for media from all over the world and later it entertained a congressional hearing. There were meetings held at the facility every day related to scientific examination of the effects of the oil spill on wildlife and the environment. The Civic Center policies and procedures, includ

ing a return to an exclusive catering contract, were revised and adopted by the City Council. These will greatly assist in the management of the facility.

The Parks and Recreation Department had a successful season running the Glacier Campground as receipts from the camping fees collected paid for the operation of the facility. This Department provided much of the assistance in the production of a newsletter for Valdez residents. It also sponsored cleanup days and the City beautification program.

Parks And Recreation Year-End Participant Totals

	<u>1988</u>	<u>1989</u>
Black Gold Rec. Hall	18,988	17,854*
Teen Center	16,802	20,152
Gym Activities	11,578	15,929
Senior High Pool	20,560	15,850**
Hydro Pool	3,643	4,630
Special Events	3,656	2,913
Summer Programs	<u>2,169</u>	<u>2,474</u>
TOTALS	77,396	79,802

*Rec. Hall Statistics	<u>1988</u>	<u>1989</u>
for May and June:	May	2,210
	June	2,095

**High School Pool was closed for 1-1/2 months.

		Civic Center				
	<u>#Events</u>	<u>Attendance</u>	<u>Rental Revenues</u>	<u>Catering Revenues</u>	<u>Movie Revenues</u>	<u>TOTAL REVENUES</u>
1988	398	26,699	\$14,227	\$ 8,855	\$ 0	\$23,082
1989	725	47,804	54,134	10,050	8,340	72,524

COUNSELING CENTER/HOSPITAL

The Counseling Center underwent significant changes this year as a result of the EXXON VALDEZ oil spill. Increased state grants were obtained to hire an additional counselor and a secretary to address the increased caseloads that started appearing at the Counseling Center. The Counseling Center also initiated a project to survey a statistically valid sample of residents from Valdez and Cordova for measuring psychological impacts of the tanker grounding and the subsequent oil spill cleanup activity. This project is approximately two-thirds complete and should provide some useful information on how people are affected by this type of event.

Valdez Counseling Center New Clients

	<u>1987</u>	<u>1988</u>	<u>1989</u>
New Clients	64	82	149
New ASAP Cases	105	0*	263
Average New Clients/Mo. ...	5.33	6.83	12.42
Average New ASAP Cases/Mo..	8.75	0.00*	21.90

*No Alcohol Safety Action Program during 1988.

The Valdez Community Hospital, managed under contract by Lutheran Health Services, also was dramatically impacted by oil spill activities.

	1988	1989
Outpatient Procedures	5,000	10,000
Emergency Room Visits	1,505	3,371
Revenues	\$ 871,635	\$1,279,194 est.
Expenses	\$1,381,727	\$1,799,040 est.
Percent of Occupancy	21.53%	23.90% est.

The Hospital carries over into 1990 a large accounts receivable balance that needs to continue to be worked. This large balance is attributable in large part, either directly or indirectly, to the oil spill.

On the positive side, the Hospital received more donations than ever before:

Exxon:	. 3 hand-held radios
	. computer upgrade system
	. hypothermia blanket system
	. 1/2 the cost of the Laboratory equipment for processing CBC's
Fairbanks Memorial Hospital:	. Ultrasound Machine
United Way:	. TV's for patient rooms

PUBLIC WORKS

The Public Works Department contributed in numerous ways to oil spill response. The Department assisted in providing services for temporary campgrounds, kept the water and sewer functioning under unprecedented demand, managed the collection and disposal of solid waste four to five times the normal volume, and provided support for the wide range of services provided by the City. There was some turnover in staff which can be attributed to oil spill related opportunities, but the Department has largely been successful in finding qualified replacement personnel.

The installation and use of the CHIEF software system has greatly assisted in keeping track of work orders by the Buildings and Grounds section of the Department.

The Department was criticized for its oversight of the lawn maintenance contract. The criticism was proven unwarranted by a horticultural expert, but the vociferousness of the criticism continued unabated. This responsibility will be transferred to the Parks and Recreation Department for oversight so it can be managed in concert with the City beautification program. The Parks and Recreation Commission will also provide an additional level of appeal to address complaints.

The very wet December of 1989 proved to be quite a test for the snow removal forces of the Department. The crews were challenged and a few rough edges were smoothed, but on the whole the snow crew responded well.

Initial work was begun to bring the City's sanitary landfill into compliance with Department of Environmental Conservation standards. Improvements in landfill operations, including controlled access, increased attendant coverage, and improved litter control have also been instituted. Analysis of the existing landfill site, focusing primarily on problems attributable to a high water table, was conducted by the environmental engineering firm of Hart Crowser.

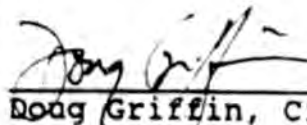
PORTS/HARBOR

No area of City operations was more severely impacted by the oil spill response than our ports, docks, harbor, and airport. The Valdez Container Terminal was a valuable asset shared with Exxon and its subcontractors. It provided staging area, storage space, and flexible dock facilities to support the armada of barges, ships, flotels, and boats used to clean up oil and support the effort. The Old City Dock also was used in various ways to service vessels and provide moorage for the Hotel Ship Prince George, along with its normal function of servicing some fishing boats and providing moorage for Alaska state ferries and a tour ship.

The boat harbor also served as a nerve center for oil spill cleanup operations. Cleanup vessels and crew boats were dispatched from the harbor and the facilities operated at full capacity all summer long. The harbor operated extended hours and generated enough revenue to pay for its operation this year.

The airport was incredibly busy this year in supporting aircraft activity and providing office space in the terminal. Normal flight operations of 12 per day rose to an average exceeding 300 operations per day. A portion of the airport roof was torn off by high winds on day four of the oil spill. This required immediate repair. Other, long overdue, maintenance and repair were needed as our building received some use.

This report of activities by the City Valdez and its dedicated employees is, hereby, respectfully submitted.

 1-30-90
Doug Griffin, City Manager

W. Monte Taylor, Community Liaison Manager

Wednesday, February 7, 1990

The intent of my testimony today is to clarify the actions taken by Exxon since last spring to assist the municipal and village governmental entities that may have been impacted by the Exxon Valdez oil spill. I have been in charge of Community Liaison activities since April 2, 1989, and I would be glad to answer any questions you have on this subject, either during, or after my remarks this morning.

Within a few days of the spill, we recognized the emergency situation created for the municipalities that would be impacted by the advancing oil. We also recognized that the impact on each community would be different, depending on the location of that community and the status and diversity of the local economy, so that our approach to helping each community would be different and should be responsive to the community's unique circumstances.

Our objective then was straight forward and easily stated. It was to help the individual communities by working with their leadership in determining their immediate and longer term concerns and then to seek appropriate and realistic solutions.

In order to address these problems in a responsible manner, we rapidly mobilized a community liaison group to be located in the major affected communities and to be, in effect, the ombudsman for the community. We established community liaison presence in all of the major affected communities within a few days and had established full time representatives in Cordova, Valdez, Seward, Homer and

Kodiak, within three weeks. We also hired a native consultant to help us with the small native communities. During those first few weeks, we spent most of our time helping the communities minimize the impacts by protecting their critical resources, assisting in the prioritizing of their needs and helping them prepare for the influx of people and equipment.

On about May 15th, we heard about the formation of the so called "Oiled Mayors Subcommittee" of the Alaska Conference of Mayors. We first heard about this organization when they presented us with a proposed expense reimbursement agreement in which they wanted us to advance them money based on their estimate of eligible expenses, to be spent for any purpose that "would not have been incurred but for the oil spill." Early in April, we had entered into Memoranda of Agreement with both the Kenai Peninsula Borough and the Kodiak Island Borough to reimburse expenditures for spill response activities, including boom deployment, spill tracking and reconnaissance, beach surveillance and baseline information. Therefore, the concept of advances or of entering into reimbursement agreements was not a new or objectionable approach to us.

After we analyzed the proposed agreement, however, we concluded the wording was too general and lacked a reasonable and fair role for Exxon. In essence, it called for us to advance funds without having any input or knowledge about the types of expenses that might be involved. We, therefore, counter-proposed an agreement and attempted to enter into negotiations to come up with an acceptable compromise. I won't go into the details of our negotiations but the Mayor's group had three major issues that they considered critical to the negotiations. They were: 1) a definition of the type of expenses that Exxon is willing to reimburse, 2) acceptance by Exxon of the concept of advance funding and, 3) the reimbursement of straight-time pay for the portion of regular employees time that is spent on the oil spill.

As agreed, the agreement was to have the Mayor's Subcommittee insist that we would not advance funds to a community under some format which allowed us to discuss and agree with that community, before the advance on the types of expenses we were being asked to underwrite. We thought it would be to our mutual advantage to come to agreement, before the advance, that the activity was appropriate for us to be paying for rather than leaving that to a later determination. On the other hand, the Mayor's Subcommittee wanted advance funding with at least the initial determination of justifiable expenditures of those funds to be under their absolute control. This disagreement on the procedure to be used for advances turned out to be the irreconcilable difference that terminated our negotiations with the Subcommittee, even though we had reached a general consensus on the major issues.

The net result was that on June 14th, we wrote each of the mayors and village council presidents, offering to reimburse or advance funds under the criteria that had been set forth in our latest proposal to the Subcommittee. I have attached copies of that letter and proposal to my written testimony for your information. You will see that we addressed the three major issues both in the letter and in the agreement.

Both prior to and since that time, we have attempted to advance or reimburse funds to the affected communities for all reasonable and necessary incremental expenses created by the oil spill. In fact, for expenses incurred prior to June 14th, while the guidelines were being defined in our negotiations, we reimbursed the communities for any reasonable expense they submitted, even if it was in one of the categories that we specifically excluded in our June 14th letter. We

that it is important to work with the community to address their unique needs as important and appropriate, given the emergency situation in these early days after the spill.

The net result is that we spent over \$12M on our various community assistance programs during 1989. This includes advances of over \$4M, reimbursements of another \$6M, about \$1M spent on our Community Employment Assistance Program, provision of conventional food and fuel to two of the villages (Tatitlek and Chenega) and assistance in the collection and transportation of over 100 thousand pounds of subsistence food to 10 native villages. We also spent over \$1M on a winter monitoring and discretionary clean-up program which allowed each of 16 communities to determine, for themselves, whether any clean-up of their local shorelines was warranted this winter and to do what they felt necessary.

As I understand it, one of the specific items your Committee wanted to know is what we did and did not reimburse under our guidelines.

The agreement I have attached is, as I mentioned, the basic guideline we have used to evaluate whether it was appropriate, or not appropriate, to reimburse. Paragraph 2 of that proposed agreement summarizes this. It defines reimbursable costs as those costs either:

1. "incremental to normal local government operations such as overtime, temporary personnel, office equipment, office supplies, travel expenses, or other out-of-pocket expenditures which were directly related to the oil spill and,
2. straight-time pay for the portion of any regular employee's time that can be specifically shown to result in incremental costs directly related to the oil spill."

Another section of this same paragraph 2 of the agreement discusses those items of expense which we for the most part have not considered it appropriate to reimburse. The costs outlined in that section are:

1. "Costs for services that merely duplicate the activities of Exxon or its contractors.
2. Costs for environmental, socioeconomic, mental health, or other broad studies of a similar nature.
3. Costs for advertising or public relations programs.
4. Costs for attorneys."

I should note that Exxon gave \$4M to the Alaska Visitors Association and \$1.2M to the Alaska Seafood Marketing Association, neither of which are included in any of my numbers. This was the main reason we did not think it appropriate to reimburse costs of advertising or public relations to the individual communities. One other cost I should mention is damage assessment expenses. Although it was not covered in paragraph 2 of the proposed agreement, paragraph 1 makes it clear that damage assessment expenses also would not be reimbursed, since those expenses would be covered by the NRDA Trustees Fund to which we are providing \$15M.

The emergency situation which we faced last year is now behind us. We will be reviewing and working with the communities to assess whatever residual impacts may still exist and the appropriate responses. However, the situation is such that the needs are anticipated to be considerably less than last year.

I would be glad to answer any questions you have regarding our community assistance activities.

EXXON COMPANY, U.S.A.

POST OFFICE BOX 870 • VALDEZ, ALASKA 99686-0870

June 14, 1989

Dear Mayor _____:

At the meeting on June 12, 1989 with the representatives of the Oil Spill Subcommittee of the Alaska Conference of Mayors, Exxon presented a proposal for consideration. After a thorough review of Exxon's proposal, it was decided by the Mayor's representatives that there were still areas of difference that made it unlikely that an agreement that would be acceptable to all Mayors was close at hand.

Exxon stated at the meeting that we were willing to operate under the general guidelines of our proposal in the absence of a formal agreement. Our proposal addressed the three major issues that the Mayor's considered critical to the negotiations, namely:

- 1) A definition of the type of expenses that Exxon is willing to reimburse,
- 2 acceptance by Exxon of the concept of advance funding, and
- 3) the reimbursement of straight time pay for the portion of regular employee's time that is incremental to the oil spill.

To follow up on those commitments, we are attaching a copy of our proposed agreement so that you understand our criteria for advance funding and reimbursement. We will accept invoices either through our local Community Liaison representative _____ or _____ at the Exxon Command Center at _____

_____ or directly to me at my Valdez address. Advance funding will also be considered based on appropriate justification as more fully described below and in the agreement.

The essential operating elements are summarized below with references to the appropriate paragraph of the attached Expense Reimbursement Agreement:

- o The local Government may submit invoices to Exxon for incremental costs to normal Local Government operations along with appropriate documentation. Exxon reserves the right to limit payment of any invoice.

REFERRALS TO ATTACHED AGREEMENT:

- + Para. 1, page 1 excludes "damage assessment expenses".
 - + Para. 2, page 1, second paragraph describes specifically defined "reimbursable costs"
 - + Para. 2, page 2, second paragraph starting with "Although" describes expenses Exxon does not presently contemplate reimbursing.
 - + Para. 3, page 2, first paragraph describes how Exxon will respond to invoices submitted.
- o It should be understood that any invoice we pay will not be included in any future claim and that any equipment paid for by Exxon will become Exxon's property.

REFER TO:

- + Para. 5, page 3, last three lines.
 - + Para 3, page 2, last four lines.
- o If a Local Government is prepared to provide appropriate justification, we will attempt to reach agreement to describe the services and amounts involved in some written form, and make advances on the agreed amounts.

REFER TO:

- + Para. 4, page 2 and 3.

As stated above, we are willing to work with the various Local Governments to reimburse documented incremental costs directly related to the spill and make appropriate advances where justified. We are prepared to be responsive to your needs and mitigate cash flow problems caused by the spill. We need your help to provide appropriately detailed documentation so that we can accomplish that objective.

Sincerely,

Monte Taylor

Monte Taylor
Community Liaison Manager
c/o Exxon Command Center
P. O. Box 670
Valdez, Alaska 99686

**LOCAL GOVERNMENTS-EXXON SHIPPING COMPANY
EXPENSE REIMBURSEMENT AGREEMENT**

THIS AGREEMENT is between Exxon Company U.S.A. (a division of Exxon Corporation) as contractor for Exxon Shipping Company (hereinafter referred to collectively as "Exxon"), and the following local governments and village entities:

City of Cordova, Alaska
City of Homer, Alaska
City of Kenai, Alaska
City of Kodiak, Alaska
Larsen Bay Tribal Council, Alaska
Port Graham, Alaska
City of Sand Point, Alaska
City of Seldovia, Alaska
City of Seward, Alaska
City of Valdez, Alaska
City of Whittier, Alaska
Aleutians East Borough, Alaska
Kenai Peninsula Borough, Alaska
Kodiak Island Borough, Alaska
Lake & Peninsula Borough, Alaska

1. Any local government or village entity which is signatory to this agreement (hereinafter referred to as "Local Government" or collectively as "Local Governments") may submit invoices to Exxon as the Local Government incurs expenses, debts, or obligations of any type, except damage assessment expenses (collectively "invoices") due to the oil spill from the M/V EXXON VALDEZ.

2. Each Local Government may submit invoices to Exxon for direct reimbursement. Subject to the terms of this agreement, invoices will be reimbursable as defined in the next paragraph.

"Reimbursable costs" are specifically defined as those costs (1) incremental to normal Local Government operations such as overtime, temporary personnel, office equipment, office supplies, travel expenses, or other out of pocket expenditures which were directly related to the oil spill and (2) straight time pay for the portion of any regular employees time that can be specifically shown to result in incremental costs directly related to the oil spill.

Other costs will be advanced or reimbursed pursuant to paragraph four of the Agreement.

Although the parties have agreed to discuss any item of expense, Exxon does not presently contemplate reimbursing Local Governments for the following types of expenses: 1) costs for services that merely duplicate the activities of Exxon or its contractors, 2) costs for environmental, socioeconomic, mental health or other broad studies of a similar nature, 3) costs for advertising or public relations programs, or 4) costs of attorneys.

The Local Governments use a variety of accounting systems and this Agreement is not intended to impose or require changes to those systems. If the Local Government is currently using an accounting system that provides for the charging of local government payroll, and other expenses to capital or grant projects (for example, State of Alaska capital improvement grant projects), the Local Government may use that system for record keeping. Each Local Government shall provide Exxon monthly, along with its invoice(s), documentation (including but not limited to) summaries of expenses for which reimbursement is sought plus copies of payroll summary sheets backed up by time records, and invoices for third party services and supplies. Each Local government and Exxon will attempt to agree on any further supporting documentation needed to substantiate expenses submitted by a Local Government.

3. Exxon agrees that it will within thirty (30) days from the date Exxon receives an invoice from the Local Government, either: a) reimburse the Local Government or b) notify the Local Government that Exxon will not pay the invoice in whole or in part. Each Local Government reserves the right to assert a claim against Exxon for any portion of an invoice that Exxon declines to pay. Any equipment, supplies, or other assets paid for by Exxon, directly or by way of reimbursement, shall unless consumed in the operation be turned over to Exxon upon the termination of this Agreement.

4. At such time as a Local Government is prepared to provide justification on the need, scope, and amount of expenses and services (hereinafter collectively referred to as Services), Exxon and such Local Government will then attempt to reach agreement on such Services and if successful will incorporate an initial list of the agreed upon Services along with the agreed upon maximum monthly amount (limit) for each as Attachment "A" to this Agreement. Attachment "A" may also contain the cost of agreed upon Services already incurred by each Local Government. Should a Local Government and Exxon subsequently agree upon a new list of Services, they will execute a revised Attachment "A" to be

incorporated into this Agreement. Once a Local Government and Exxon have reached such an agreement and incorporated an Attachment "A" to this Agreement, Exxon agrees that, upon written request, it will advance funds to such Local Government for the agreed upon estimated cost of anticipated Services for the upcoming month subject to refund as specified below. Each Local Government shall account monthly for all advance funding by providing specific invoices and documentation. Any advance funds not used for agreed upon Services and only to the extent of the agreed Attachment "A" limit for each such Service shall be credited to the following month's advance funding, or, to the extent such surplus funding exceeds the amount necessary for the following month's advance funding for each such Service, shall be repaid to Exxon.

5. By entering into this agreement, the Local Governments do not waive, release or acknowledge satisfaction of any claim or cause of action they may have against Exxon or any other party for damages or costs attributable to the oil spill from the M/V EXXON VALDEZ. The Local Governments specifically reserve the right to bring any action they may have against Exxon or other party. The Local Governments agree that they will not include any invoice paid by Exxon under this agreement as part of any future claim or demand on Exxon.

6. By entering into this agreement, Exxon does not admit any violation of law nor does it admit liability for any penalties, civil assessments, damages or costs attributable to the M/V EXXON VALDEZ oil spill or obligate itself to pay any invoices submitted by the Local Governments. However, Exxon is obligating itself to process all such invoices submitted by each Local Government hereunder in accordance with this Agreement.

7. Each Local Government agrees that Exxon may audit the Local Government's contracts, records and other documentation (including the Local Government's vendors' records and documentation) associated with any expense or invoice which Exxon reimburses the Local Government. Each Local Government agrees to reimburse Exxon for any overpayment made to such Local Government. Exxon and each Local Government agree to expend their best efforts to resolve by mutual agreement any overpayments made to reimburse the Local Government's expenses that may be revealed by audits conducted pursuant to this paragraph.

8. In the event that a court or other judicial or administrative body should determine that Exxon was not liable for any penalties, civil assessments, damages, or costs attributable to the M/V EXXON VALDEZ oil spill, Exxon's right to recover from

a Local Government funds paid pursuant to this agreement shall be limited to that specified in paragraph 7 above.

9. This Agreement shall cover Services not already reimbursed by Exxon that were incurred between March 24, 1989 and September 30, 1989, and thereafter on a monthly basis (term of this Agreement), provided the parties mutually agree such an extension is necessary. This Agreement will be interpreted under the laws of the State of Alaska. Exclusive venue for any claims or disputes arising under this Agreement shall be at Anchorage, Alaska.

This Agreement replaces prior agreements between the parties with respect to submittal and payment of expenses that are the subject of this Agreement, except to the extent a final accounting has not been made under any such agreement. In the event a final accounting has not been made under any such existing agreement, this Agreement shall only become effective as to such Local Government once a final accounting and settlement under such existing agreement has occurred.

This agreement may be executed in counterparts, each of which shall be an original, but all of which, when taken together, shall constitute one and the same instrument. This Agreement shall be effective as a separate agreement between Exxon and each Local Government that executes it even if all the listed Local Governments and village entities do not ultimately approve it. However, this Agreement is not intended to benefit or create any rights in any person or entity not a signatory hereto.

Dated: _____

EXXON COMPANY U.S.A. (a division of
Exxon Corporation) as a contractor
for EXXON SHIPPING COMPANY

INTRODUCED BY: ALASKA CONFERENCE OF MAYORS
DATED: NOVEMBER 15, 1989

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

RESOLUTION SERIAL NO. 89-_____

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE SUPPORTING
FUNDING OF RESPONSE SERVICES AND IMPACT ASSESSMENT STUDIES FOR
ALASKA COMMUNITIES IMPACTED BY THE EXXON VALDEZ OIL SPILL DISASTER

WHEREAS, on March 24, 1989 the oil tanker Exxon Valdez ran aground in Prince William Sound spilling 11 million barrels of crude oil onto the waters and shores of the State of Alaska; and

WHEREAS, the Exxon Valdez oil spill caused severe physical, social and economic damage to the people living in the many small communities of coastal southcentral and southwestern Alaska; and

WHEREAS, the impacted communities have been forced to respond to the oil spill by providing extraordinary services and programs which require reimbursement and future funding; and

WHEREAS, the impacted communities need long-term studies of the damage and assessment of the physical, social and economic implications of the oil spill over the next five to six years; and

WHEREAS, under the auspices of the Alaska Conference of Mayors, the impacted communities have worked diligently with the parties responsible for the spill, the State of Alaska and the United States of America to develop reasonable remedies and legislative initiatives to pay for local response services and long-term damage and assessment studies; and

WHEREAS, the efforts of the impacted communities to address the natural and human consequences of the spill are of significant interest and importance to all Alaska communities which may be at risk of suffering an environmental catastrophe;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League supports the efforts of the Alaska communities impacted by the Exxon Valdez oil spill to obtain reimbursement and continued funding for response services and funding of long-term damage and assessment studies on the effect of the spill in those communities.

This resolution was approved for submittal to the Alaska Municipal League membership by the Alaska Conference of Mayors oiled mayors committee on November 15, 1989.

**ALASKA MUNICIPAL LEAGUE
BOARD OF DIRECTORS**

**A RESOLUTION RELATING TO THE NEED FOR ADDITIONAL
LEGISLATION ON THE EFFECTS OF DISCHARGES OF
HAZARDOUS SUBSTANCES ON LOCAL GOVERNMENT**

WHEREAS, the Alaska Municipal League Board of Directors is aware of the devastating effects of the *Exxon Valdez* Oil Spill on the communities of Prince William Sound, the Kenai Peninsula, the Kodiak Island Archipelago, and the Alaska Peninsula, and

WHEREAS, similar disasters could occur both on land and at sea in other parts of the state with similar effects, and

WHEREAS, legislation is being considered during the 1990 session of the Alaska Legislature to deal with some of the problems which the experience of local governments affected by the *Exxon Valdez* Oil Spill has demonstrated arise in such situations,

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League Board of Directors supports the immediate enactment of legislation with the following goals:

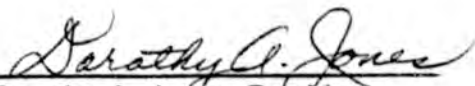
(1) extend to all communities in the state broad powers, within and outside of their boundaries, to cleanup and otherwise mitigate the effects of a hazardous substance discharge;

(2) increase the cap on the oil and gas "properties production tax" to \$75,000,000 to create a \$25,000,000 fund to be administered by the Department of Community and Regional Affairs and distributed to local governments for incremental impacts related to such discharges, such as increased mental health services, or increased police protection services;

(3) clarify the state hazardous substance strict liability statutes to make sure the full range of municipal damages can be addressed;

(4) provide a structure for quick access by the communities to state money available for response to the discharges.

Adopted this 1st day of February 1990.


Dorothy A. Jones, President

ATTEST:


Scott A. Burgess
Executive Director

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 359

PUBLISH DATE: 1/8/90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act Concerning Municipal
assistance/oil spill fund
Sponsor: Senator Szymanski
Requestor: Senate Oil & Gas Committee

Agency Affected: Environmental Conservation
BRU: Environmental Quality
Components: Environmental Quality

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	144.0	144.0	144.0	144.0	144.0	144.0
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	95.5	95.5	95.5	95.5	95.5	95.5
SUPPLIES	3.0	3.0	3.0	3.0	3.0	3.0
EQUIPMENT	15.0	15.0	15.0	15.0	15.0	15.0
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	267.5	267.5	267.5	267.5	267.5	267.5

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	267.5	267.5	267.5	267.5	267.5	267.5
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	267.5	267.5	267.5	267.5	267.5	267.5

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

The impact for Fy 90 is unclear and would depend on when the legislation is effective and what portions needed to be enacted immediately. Further analysis is attached.

Prepared by: Lynn Kent
Division: Environmental Quality

Phone: 465-2630
Date: 1/26/90

Approved by Commissioner: [Signature]
Agency: Environmental Conservation

Date: 1/31/90

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Sections 1-12

Sections 1-12 will not require additional resources for the Department of Environmental Conservation.

Section 14 and 19

Section 14 does not substantially add additional authority for the Department to enter into agreements with local governments. This section would increase the emphasis on local agreements. To expedite the development of these agreements, the Department would enter into agreements with many municipalities and village councils. Two additional FTE (\$153.4) will be necessary to develop, maintain, execute, and account for the agreements. The department does not support a mandated 48 hour deadline for review of agreements in catastrophic events, but would intend to establish agreements in advance.

The Department will require one clerk typist (\$42.6) to support the additional staff.

<u>Position</u>	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
Ecologist III	57.7	5.0	8.0	1.0	5.0	\$76.7
Ecologist III	57.7	5.0	8.0	1.0	5.0	\$76.7
Clerk Typist III	28.6		8.0	1.0	5.0	\$42.6
TOTALS	144.0	10.0	24.0	3.0	15.0	\$196.0

Section 15

Section 15 of the bill requires that the Department carry out a public review process of all contingency plans. There are approximately 270 contingency plans that must be reviewed by the Department a minimum of every three years. This equates to about 90 full contingency plan reviews annually.

In order to provide for a public review process for all contingency plans -- as opposed to only the major plans -- contractual funding in the amount of \$71.5 will be required for copying, advertising, mailing, and public meeting rooms.

<u>Position</u>	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
(Contractual)			71.5			\$71.5
TOTALS			71.5			\$71.5

Position Title Ecologist III		No. of Positions 2	Range/Step 20A	Barg. Unit GGU																																						
Time Status PFT	Staff Months 12	Location Juneau		Election District 04																																						
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>Amount</th> </tr> <tr> <th>1</th> <th>2</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>86.2</td> </tr> <tr> <td>Benefits</td> <td>29.2</td> </tr> <tr> <td>Premium Pay</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td>115.4</td> </tr> <tr> <td>Travel</td> <td>10.0</td> </tr> <tr> <td>Contracted</td> <td>16.0</td> </tr> <tr> <td>Commodities</td> <td>2.0</td> </tr> <tr> <td>Equipment</td> <td>10.0</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Cost</td> <td>153.4</td> </tr> <tr> <td colspan="2">Funding Source for Total Cost</td> </tr> <tr> <td>Federal Receipts 1002</td> <td></td> </tr> <tr> <td>G. P. Match 1003</td> <td></td> </tr> <tr> <td>General Fund 1004</td> <td>153.4</td> </tr> <tr> <td>GF Program Receipts 1005</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> </tbody> </table>		Type of Expenditure	Amount	1	2	Salary	86.2	Benefits	29.2	Premium Pay		Other		Total Personal Services	115.4	Travel	10.0	Contracted	16.0	Commodities	2.0	Equipment	10.0	Other		Total Cost	153.4	Funding Source for Total Cost		Federal Receipts 1002		G. P. Match 1003		General Fund 1004	153.4	GF Program Receipts 1005		Other		Justification The department currently has authority to enter into negotiations for memoranda of understanding or cooperative agreements with various agencies and persons to facilitate oil discharge responses, provide for review of oil discharge contingency plans and inspect oil terminal facilities. This legislation adds that we must enter into agreements with municipalities and village councils as well. In order to develop, maintain, execute and account for the many additional agreements that this will entail, these two new positions will be needed to handle the extra workload.		
Type of Expenditure	Amount																																									
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**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Oil and Hazardous Substance Spill
 Response

Page 3 of 4

Revised Date

FY 91

Position Title Clerk Typist III			No. of Positions 1	Range/Step 8A	Borg. Unit GGH																																				
Time Status PFT	Staff Months 12		Location Juneau		Election District 04																																				
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th colspan="2">Amount</th> </tr> <tr> <th>1</th> <th>2</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>19.6</td> <td rowspan="4"></td> </tr> <tr> <td>Benefits</td> <td>9.0</td> </tr> <tr> <td>Premium Pay</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td colspan="2">Total Personal Services</td> <td>28.6 \$</td> </tr> <tr> <td colspan="2">Travel</td> <td>0</td> </tr> <tr> <td colspan="2">Contractual</td> <td>8.0</td> </tr> <tr> <td colspan="2">Commodities</td> <td>1.0</td> </tr> <tr> <td colspan="2">Equipment</td> <td>5.0</td> </tr> <tr> <td colspan="2">Other</td> <td></td> </tr> <tr> <td colspan="2">Total Cost</td> <td>42.6 \$</td> </tr> </tbody> </table>			Type of Expenditure	Amount		1	2	3	Salary	19.6		Benefits	9.0	Premium Pay		Other		Total Personal Services		28.6 \$	Travel		0	Contractual		8.0	Commodities		1.0	Equipment		5.0	Other			Total Cost		42.6 \$	Justification To carry out the requirements of this legislation, it will take two new positions. This position would provide support to the additional staff.		
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**Request For
New Position**

Agency Department of Environmental Conservation
 BRU Environmental Quality
 Component Oil and Hazardous Substance Spill

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 Revised Date _____

FY 91

Response

The EPA has no significant presence in Alaska capable of responding to a major spill on the uplands, notwithstanding that the response planning assumes the EPA will be in charge. In Alaska, this responsibility has been transferred by contract to the Bureau of Land Management.

A declaration of emergency should trigger the ability of the governor or other appropriate officials to release funds collected from state oil revenues to cover all impact costs, including economic maintenance programs and local impacts which become an extra burden on local services, whether provided by state or local government.

Recommendation 53
Local service impact funding

Indirect government service costs can be as important as direct spill expenditures in meeting a spill emergency. Local governments in particular were hard hit by lack of funding for increased burdens which hit everything from phone service to mental health during the crisis following the *Exxon Valdez* spill.

Exxon released some funds to communities for service needs, which it was not obliged to do. But the availability of such funds should not depend on the policy of the spiller.

As a prevention incentive, existing regulations should be broadened to insure that in future spills the state can recapture all expenses directly or indirectly incurred by the state, its subdivisions and private parties to whom the state owes reimbursement or who have benefited under the state's oil spill disaster economic-maintenance program.

Recommendation 54
Full-cost reimbursement

Disagreement on reimbursable costs that resulted in an economic loss to the state resulted in the cancellation of a contract by which, on the pipeline route, DEC exercised EPA authority over spills, all to the detriment of environmental protection.

Reimbursability became a criteria for state response in the *Exxon Valdez* spill, to the detriment of the environment and people injured by the spill.

A fund should be created in state government to help local governments cover public spill costs caused by oil and hazardous substance releases that cannot be charged back to responsible parties.

Sec. 26.23.210. Relationship to civil defense statute. The Alaska civil defense statute (AS 26.20), applies to preparedness, response, and recovery from disasters caused by enemy attack and other hostile military or paramilitary action. The provisions of this chapter, other than AS 26.23.130, apply to preparedness, response, and recovery in cases of natural and nonmilitary manmade disasters. (§ 3 ch 104 SLA 1977)

Sec. 26.23.220. Administration. This chapter shall be administered by the Department of Military and Veterans' Affairs, which is responsible to, and which may receive delegations of authority from, the governor. (§ 3 ch 104 SLA 1977; am E.O. No. 58, § 17 (1984))

Effect of amendments. — The 1984 amendment inserted "and Veterans'."

Sec. 26.23.230. Definitions. In this chapter

(1) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or nonmilitary man-made cause including, but not limited to, fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, equipment failure, or shortage of food, water, fuel, or clothing, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage;

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

(3) "emergency" has the meaning given in 42 U.S.C. 5122 (Disaster Relief Act of 1974);

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

(5) "political subdivision" means a home rule or general law borough or city including a unified municipality, an unincorporated village, or other unit of local government;

(6) "temporary housing" has the meaning given in the federal Disaster Relief Act of 1974 (P.L. 93-288, 88 Stat. 143);

(7) "unorganized militia" means all able-bodied persons between the ages of 17 and 59 years, inclusive, who reside in the state. (§ 3 ch 104 SLA 1977; am § 49 ch 74 SLA 1985; am § 4 ch 59 SLA 1986)

Revisor's notes. — With regard to (6) of this section, provisions related to temporary housing assistance can be found at 42 U.S.C. 5174 and in 44 C.F.R. 205.52 implementing that section.

Effect of amendments. — The 1985 amendment rewrote paragraph (5).

The 1986 amendment, in paragraph (1), deleted "oil spill or other water contami-

avert danger or damage" preceding "volcanic activity" and added the language be-

Chapter 25. National Guard Mutual Compact.

Section
10. Entry into Compact
20. Terms and provisions of Compact

Section
30. Rights and be

Sec. 26.25.010. Entry into Compact. The National Assistance Compact is enacted into law and entered the State of Alaska with all other states and joining in it in a form substantially as contained in AS ch 77 SLA 1968)

Sec. 26.25.020. Terms and provisions of Compact. The terms and provisions of the Compact referred to in AS follows:

ARTICLE I. PURPOSES.

The purposes of this Compact are to:

- (1) provide for mutual aid among the party states of the National Guard to cope with emergencies;
- (2) permit and encourage a high degree of deployment of National Guard forces in the interest of the party states;
- (3) maximize the effectiveness of the National Guard in situations that call for its utilization under this Compact;
- (4) provide protection for the rights of National Guard members when serving in other states on emergency duty.

ARTICLE II. ENTRY INTO FORCE AND WITHDRAWAL.

(a) This Compact shall enter into force when enacted by any two states. Thereafter, this Compact becomes effective in any other state upon its enactment in that state.

(b) A party state may withdraw from this Compact by statute repealing it, but the withdrawal does not take effect until one year after the governor of the withdrawing state has written of the withdrawal to the governors of all other party states.

ARTICLE III. MUTUAL AID.

(a) In this Article:

- (1) "emergency" means an occurrence or condition of a serious nature, in which police and other public safety officers are required to be on duty.

Emergency Management Agency, see sections 4-201 and 4-203 of Ex.Ord. No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 2251 of Title 50, Appendix, War and National Defense.

References to Disaster Relief Act of 1970. Section 602(m) of Pub.L. 93-288 provided that: "Whenever reference is made in any provision of law (other than this Act [the Disaster Relief Act of 1974, see Short Title note

above]), regulation, rule, record, or document of the United States to provisions of the Disaster Relief Act of 1970 (84 Stat. 1744) repealed by this Act such reference shall be deemed to be a reference to the appropriate provision of this Act."

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

EXECUTIVE ORDER NO. 11749

Ex.Ord. No. 11749, Dec. 10, 1973, 38 F.R. 34177, which related to the consolidation of functions assigned to the Secretary of Housing and Urban Development, was revoked by

Ex.Ord. No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 2251 of the Appendix to Title 50, War and National Defense.

EXECUTIVE ORDER NO. 11795

Ex.Ord. No. 11795, July 11, 1974, 39 F.R. 25939, as amended, which related to the delegation of certain functions of the President of the United States, was revoked by Ex.Ord.

No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 2251 of the Appendix to Title 50, War and National Defense.

Library References

United States 82(5).

C.J.S. United States § 122.

§ 5122. Definitions

As used in this chapter—

(1) "Emergency" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a disaster.

(2) "Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(3) "United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands.

(4) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, or the Trust Territory of the Pacific Islands.

(5) "Governor" means the chief executive of any State.

(6) "Local government, or other political organization" includes any rural community public entity for which political subdivision there

(7) "Federal agency" means government corporation, Federal Government, include the American

Pub.L. 93-288, Title I, § 1

References in Text. This chapter in text, in the original meaning Pub.L. 93-288, May 1974, 143. For complete classification to the Code, see Short Title under section 5121 of this title.

For definition of Canal Zone, see (3) and (4), see section 3-22, Foreign Relations and Int

Major disaster as defined in the Disaster housing mortgage, Dollar or percentage limit, National Housing Act, Local educational agency, section 646 of Title, Local educational agency, section 241-1 of T

1. Emergency

Definition of "emergency" did not support the application to Cuban and Haitian refugees; the definition encom

SUBCHAPTER

§ 5131. Federal

(a) Title

The President is authorized that utilizes service Civil Preparedness Agency

(1) preparation, emergency operations

property in the service area remains subject to taxation to pay the bonded indebtedness. (§ 14 ch 74 SLA 1985)

Chapter 48. Powers Applicable to All Municipalities.

[Repealed, § 88 ch 74 SLA 1985.]

Chapter 53. Municipal Assessment and Taxation.

[Repealed, § 88 ch 74 SLA 1985.]

Chapter 55. Municipal Programs.

Section	Section
10. Creation of local historical district commissions	20. Establishment of historical districts

Cross references. — For historic preservation generally, see AS 41.3b, for historic district revolving loan fund, see AS 45.98.

Sec. 29.55.010. Creation of local historical district commissions. The governing body of a municipality may establish a local historical district commission or designate the planning commission or itself to serve as the historical district commission. (§ 15 ch 74 SLA 1985)

Sec. 29.55.020. Establishment of historical districts. (a) In addition to existing municipal authority providing for the preservation, protection, and maintenance of historic sites, the local historical district commission, in consultation with the Historic Sites Advisory Committee in the Department of Natural Resources, may establish historical districts within the boundaries of the municipality.

(b) A historical district shall be a reasonably compact area of historical significance in which two or more structures important in state or national history, and related by physical proximity or historical association, are located. For purposes of this section, "structures important in state or national history" means properties recommended by historical district commissions that are listed in the National Register of Historic Places or are characteristic of the Russian-American period before October 18, 1867, the early territorial period before 1930, or early Native heritage, reflecting the indigenous characteristics of Native culture in Alaska. On recommendation of the governing body of a municipality and the Historic Sites Advisory Committee, the Department of Natural Resources may by regulation formulate additional

criteria for the establishment of historical districts not inconsistent with this subsection.

(c) The establishment of a historical district under this section shall be consistent with any applicable comprehensive plan for the municipality. (§ 15 ch 74 SLA 1985)

Chapter 58. Municipal Debt.

[Repealed, § 88 ch 74 SLA 1985.]

Chapter 59. Obligations Issued on Behalf of Municipalities.

[Repealed, § 25 ch 83 SLA 1979.]

Chapter 60. State Programs.

Article

1. Municipal Tax Resource Equalization (§§ 29.60.010 — 29.60.080)
2. State Aid for Miscellaneous Purposes (§§ 29.60.100 — 29.60.180)
3. Administration of State Aid Programs (§§ 29.60.280 — 29.60.300)
4. Municipal Assistance (§§ 29.60.350 — 29.60.375)
5. Community Facilities Grants (§§ 29.60.400 — 29.60.440)

Article 1. Municipal Tax Resource Equalization.

Section	Section
10. State equalization of tax resources for municipal services	50. Limitation on computation and use of payments
20. Determination of population	60. Tax equalization account
30. Determination of millage rate equivalent	70. Administration
40. Reports	80. Definitions

Sec. 29.60.010. State equalization of tax resources for municipal services. (a) During each fiscal year the department shall compute an equalization entitlement for municipal services provided by a taxing unit.

(b) The equalization entitlement computed for a taxing unit is based on the population, relative ability to generate revenue, and local tax burden of the taxing unit and is determined by the application of the formula

$$\text{Entitlement} = P \times R$$

where P = population, and

R = millage rate equivalent, determined by dividing the sum of the locally generated revenue of the taxing unit by one-tenth of one percent of the full and true value of assessed property of the

taxing unit determined under AS 29.60.030(d); however, the per capita property value used under this subsection may not be less than 15 percent of the statewide average per capita full and true assessed property value.

(c) For purposes of this section, locally generated revenue

(1) includes

(A) the actual revenue derived from the levy and collection of local taxes in the taxing unit for municipal services during the preceding fiscal year of the taxing unit;

(B) motor vehicle payments received by the municipality during the preceding fiscal year under AS 28.10.431;

(C) revenue from fees, rentals, leases, penalties, licenses or permits received during the preceding fiscal year by the municipality for a function or service over which it has control, including revenues derived from parks and recreation services, mass transit, offstreet parking, and garbage and solid waste disposal services;

(D) special assessments received during the preceding fiscal year; and

(E) payments received by a municipality from a utility that are in place of taxes levied and collected by the municipality;

(2) excludes

(A) revenue derived from the levy and collection of municipal taxes and appropriated for the operating expenses and debt service of utilities;

(B) revenue from interest earned on investments and from the sale and lease of land or equipment; and

(C) all other revenue from whatever service derived. (§ 16 ch 74 SLA 1985)

Sec. 29.60.020. Determination of population. For purposes of AS 29.60.010 — 29.60.080, the population of a taxing unit shall be determined annually by the latest figures of the United States Bureau of the Census or other population data that in the judgment of the department is reliable. (§ 16 ch 74 SLA 1985)

Sec. 29.60.030. Determination of millage rate equivalent. (a) The department may require a municipality to return a certification, signed by the municipal treasurer or manager and the mayor, that provides an estimate of the locally generated revenue received by the municipality during the preceding fiscal year.

(b) By October 15 of each year, the department shall make an initial determination of the millage rate equivalent of each taxing unit to be used for computing and distributing equalization entitlements for the current fiscal year under AS 29.60.010 — 29.60.080. The de-

partment shall base the initial determination on the estimates in the certification returned by a municipality under (a) of this section.

(c) As early as possible, but not later than December 15 of each year, the department shall make a final determination of the millage rate equivalent of each taxing unit to use to compute and distribute equalization entitlements under AS 29.60.010 — 29.60.080. The department shall base the determination on audits, financial statements and other financial reports prepared and submitted by a municipality. The department shall adjust the locally generated revenue reported by a municipality to exclude the municipal revenue claimed that does not qualify for inclusion in or recognition as locally generated revenue for municipal purposes under AS 29.60.010(c)(1). The adjustment shall be made by deducting from total revenue claimed by the municipality the amount of the department's estimate of revenue that is not recognized for municipal purposes.

(d) The full and true assessed property value shall be determined by the department in the manner provided for the computation of state aid to education under AS 14.17.140. When the determination of locally generated revenue includes revenue of a utility received under AS 29.60.010(c)(1)(E), the full and true assessed property value shall include the computed assessed value of the utility, determined by dividing the amount of the payment in place of taxes made by the utility by the millage rate that would apply to the utility if the utility were subject to levy and collection of taxes under AS 29.45.

(e) In addition to the computation for municipalities that levy and collect a property tax, the department shall determine an estimated full and true assessed property value under (d) of this section for

(1) each municipality that is a school district and that does not levy and collect a property tax;

(2) each second class city with a population of 750 or more persons; however, a computation is not required under this paragraph more often than once during a period of three successive calendar years; and

(3) all other second class cities, by determining the average per capita full and true assessed property value of all cities having a population of less than 750 persons in which an assessment has been completed by a municipality or for which a determination is not made under (1) or (2) of this subsection.

(f) The department shall annually compute a statewide average per capita full and true assessed property value. (§ 16 ch 74 SLA 1985)

Sec. 29.60.040. Reports. A payment of an equalization entitlement may not be made to a municipality under AS 29.60.010 — 29.60.080 until the municipality has submitted its certificate of estimated revenue and its financial report to the department for the fiscal year preceding the year for which the equalization entitlement is sought, together with a budget for the municipality's current fiscal year. The financial report shall include a listing of general revenue collected from taxes levied and assessed and any other revenue that, in the opinion of the municipal officials, is eligible for inclusion in computations of the locally generated revenue of the taxing unit. (§ 16 ch 74 SLA 1985)

Sec. 29.60.050. Limitation on computation and use of payments. (a) An equalization entitlement generated by the tax levy of a taxing unit may be used only for authorized expenditures of that taxing unit, but up to 15 percent of the payment of an equalization entitlement generated by areawide revenue of a municipality may be used by the municipality for areawide or nonareawide purposes at the discretion of its governing body. This subsection applies to home rule and general law municipalities.

(b) An equalization entitlement determined with reference to revenue other than revenue obtained from the levy and collection of taxes may be used for areawide or nonareawide purposes, at the discretion of the governing body. (§ 16 ch 74 SLA 1985)

Sec. 29.60.060. Tax equalization account. The tax equalization account is established. Money to carry out the provisions of AS 29.60.010 — 29.60.080 shall be allocated by the department to the account. The amount allocated to the account shall be fully distributed by the department as payments to municipalities to fulfill each share authorized under AS 29.60.010. The amount allocated to the account shall be distributed by the department pro rata among eligible municipalities. (§ 16 ch 74 SLA 1985)

Sec. 29.60.070. Administration. (a) The department may adopt regulations necessary to implement AS 29.60.010 — 29.60.080. The regulations shall include, among other provisions,

- (1) procedures and filing dates for submitting certification and financial reports;
- (2) procedures for obtaining information required to compute and determine the municipality's millage rate equivalent; and
- (3) procedures by which the department shall notify a municipality in writing of the reasons for a proposed disallowance or adjustment of any factor bearing upon the determination of the municipality's entitlement and by which the municipality will be provided reasonable

time in which to respond or to challenge the department's determination.

(b) The department shall make reasonable efforts to advise and assist municipalities in collecting information and completing reports necessary for the determination of entitlements under AS 29.60.010 — 29.60.080.

(c) The department shall, by regulation, classify for inclusion or exclusion as a component of a municipality's millage rate equivalent under AS 29.60.010 any tax revenue appropriated for a utility not included in the definition set out in AS 29.60.080(2). (§ 16 ch 74 SLA 1985)

Sec. 29.60.080. Definitions. In AS 29.60.010 — 29.60.080

(1) "taxing unit" means a municipality and

(A) in a borough or unified municipality, a service area or the entire area outside cities;

(B) in a city, a differential tax zone;

(2) "utility" means electric, water, sewer, gas, heat, telephone, or refuse and garbage collection service. (§ 16 ch 74 SLA 1985)

Article 2. State Aid for Miscellaneous Purposes.

Section

- 100. Revenue sharing payable
- 110. State aid to municipalities for roads
- 120. State aid to municipalities and other eligible recipients for health facilities and hospitals
- 130. State aid to volunteer fire departments not in organized municipality

Section

- 140. State aid to unincorporated communities
- 150. Population determination
- 160. Area cost-of-living differential
- 170. Miscellaneous services account
- 180. Regulations

Sec. 29.60.100. Revenue sharing payable. In addition to the equalization entitlements paid under AS 29.60.010 — 29.60.080, during each fiscal year the department shall pay aid

(1) to a municipality or other eligible recipient that has the power to provide the services described in AS 29.60.110 — 29.60.130 and exercises the power in the manner required by AS 29.60.100 — 29.60.180;

(2) to an unincorporated community under AS 29.60.140. (§ 16 ch 74 SLA 1985)

Sec. 29.60.110. State aid to municipalities for roads. (a) The department shall pay to a municipality that has power to provide for road maintenance and exercises that power, \$2,500 a mile for each mile of road, street, or highway maintained by the municipality, excluding (1) the official state highway system, (2) roads, streets, or

highways not dedicated to public use, (3) roads, streets, or highways maintained under the local service road program (AS 19.30.111 — 19.30.251), and (4) alleyways, in accordance with regulations adopted by the Department of Transportation and Public Facilities. A payment may not be made under this subsection for maintenance of a road that is not used by automotive equipment.

(b) A frozen waterway and a connection from an inhabited area to a waterway that may be safely used for public transportation by automotive equipment and is so used during a portion of a year is eligible for payment of \$1,500 per mile if the waterway and connection are maintained during the period of use by a municipality or combination of municipalities. The department, after consultation with the Department of Transportation and Public Facilities, shall determine which waterways and connections qualify and, where the waterways or connections lie outside the corporate limits of a municipality, which municipalities shall receive the payments under this subsection, unless the municipalities involved have agreed in writing to a particular distribution. (§ 16 ch 74 SLA 1985)

Sec. 29.60.120. State aid to municipalities and other eligible recipients for health facilities and hospitals. (a) The department shall pay

(1) to a municipality that has the power to provide hospital facilities and services and that exercises that power, \$1,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the hospital, or \$250,000 a hospital for those hospitals with 10 or more beds, or \$50,000 a hospital for those hospitals with less than 10 beds, as the municipality may elect; money received under this paragraph may be used only for hospitals and shall be apportioned among qualifying hospitals as the municipality determines;

(2) on the basis set out in (1) of this subsection to a municipality for a nonprofit hospital not operated by a municipality if the municipality first certifies to the department that the nonprofit hospital is in compliance with all standards for hospitals that have been adopted by the municipality; money may not be paid on behalf of a nonprofit hospital without this certification; payments to the municipality shall be transferred to the nonprofit hospital in accordance with the basis by which the payment was generated by the hospital, and shall be applied to the annual cost of operation and maintenance of the hospital or for the provision of health care service at the hospital as the directors of the hospital determine;

(3) to a municipality in which a health facility is operated, \$2,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the health facility, or \$8,000 per health facility as the municipality determines.

(b) A hospital may not receive payment under both (a)(1) and (a)(2) of this section.

(c) Money received by a municipality under (a)(3) of this section shall be used for expenses of health services or operation and maintenance of health facilities as the municipality determines.

(d) Before money may be distributed under this section, the commissioner of health and social services shall certify to the commissioner of community and regional affairs that any accumulation of assets by nonprofit corporations or other recipients under this section is dedicated irrevocably to a public purpose.

(e) Subsections (a) and (c) of this section apply to home rule and general law municipalities.

(f) In this section

(1) "health facility"

(A) means a facility that is licensed or certified by the state or approved under regulations adopted by the department and that is owned or operated or both by a municipality or by a nonprofit corporation or other nonprofit sponsor;

(B) includes a public health center, maternity home, community mental health center, facility for the mentally or physically handicapped, nursing home, convalescent center, domestic violence or sexual assault shelter qualified to receive a grant or contract under AS 18.66, or alcohol or drug abuse facility that meets standards established under AS 47.37;

(C) excludes a facility operated or wholly supported by the state or the federal government;

(2) "hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general or special hospital; the term excludes a facility operated or wholly supported by the state or the federal government. (§ 16 ch 74 SLA 1985; am § 45 ch 37 SLA 1986)

Effect of amendment. — The 1986 "health facility" in paragraph (3) of sub-amendment deleted "licensed" preceding section (a).

NOTES TO DECISIONS

For case interpreting the former revenue sharing scheme for hospitals and health care facilities, see *Municipality of Anchorage v. Sisters of Providence*

in *Washington, Inc.*, Sup. Ct. Op. No. 2343 (File Nos. 5017, 5018, 5329), 628 P.2d 22 (1981).

Sec. 29.60.130. State aid to volunteer fire departments not in organized municipality. (a) The department shall pay to a volunteer fire department registered with the state fire marshal and serving an area not in an organized municipality a sum for protection purposes equal to \$10 per capita for the population served by the fire department, as determined by the state fire marshal.

(b) A grant shall be made under (a) of this section to facilitate the organization of a volunteer fire department in an area not in an organized municipality, upon application of the proposed fire protection group to the state fire marshal and upon approval of applications according to standards of organization and service prescribed by regulations adopted by the state fire marshal. (§ 16 ch 74 SLA 1985)

Sec. 29.60.140. State aid to unincorporated communities. (a) The department shall pay to each unincorporated community an entitlement of \$25,000 each fiscal year to be used for a public purpose. The department with advice from the Department of Law shall determine whether there is in each unincorporated community an incorporated nonprofit entity or a Native village council that will agree to receive and spend the entitlement. If there is more than one qualified entity in an unincorporated community, the department shall pay the money under the entitlement to the entity that the department finds most qualified to receive and spend the money. The department may not pay money under an entitlement to a Native village council unless the council waives immunity from suit for claims arising out of activities of the council related to the entitlement. A waiver of immunity from suit under this subsection must be on a form provided by the Department of Law. If there is no qualified incorporated nonprofit entity or Native village council in an unincorporated community that is willing to receive money under an entitlement, the entitlement for that unincorporated community may not be paid. Neither this subsection nor any action taken under it enlarges or diminishes the governmental authority or jurisdiction of a Native village council.

(b) In this section "unincorporated community" means a place in the unorganized borough that is not incorporated as a city and in which 25 or more persons reside as a social unit. (§ 16 ch 74 SLA 1985)

Sec. 29.60.150. Population determination. For purposes of AS 29.60.100 — 29.60.180, population shall be determined by the latest figures of the United States Bureau of the Census or other population data that in the judgment of the department is reliable. (§ 16 ch 74 SLA 1985)

Sec. 29.60.160. Area cost-of-living differential. (a) Payments to a municipality or other eligible recipient under AS 29.60.110 — 29.60.130 shall reflect area cost-of-living differentials. Payments shall be based on the sum of per capita, per mile and per bed or facility grants due each municipality or other recipient multiplied by the appropriate area cost-of-living differential. The area cost-of-living differential for each recipient shall be determined annually by election district under the provisions of AS 39.27.030. Application of the area cost-of-living differential may not result in distribution of an amount less than the amount of the payment determined without reference to application of this section.

(b) The election districts used to establish area cost-of-living differentials under (a) of this section are those designated by the proclamation of reapportionment and redistricting of December 7, 1961, and retained for the house of representatives by proclamation of the governor September 3, 1965. (§ 16 ch 74 SLA 1985)

Sec. 29.60.170. Miscellaneous services account. The miscellaneous services account is established. Money to carry out the provisions of AS 29.60.100 — 29.60.180 shall be allocated by the department to the account in accordance with AS 29.60.280. If amounts in the account are insufficient to pay each municipality's or other recipient's share authorized under AS 29.60.100 — 29.60.180, the amounts that are available shall be distributed pro rata among eligible municipalities and other recipients. (§ 16 ch 74 SLA 1985)

Sec. 29.60.180. Regulations. The department shall adopt regulations necessary to carry out the purposes of AS 29.60.100 — 29.60.180. The regulations shall include minimum standards required to qualify a municipality or other recipient for payments for each service. The department may require a municipality or other recipient to submit a performance report adequate to demonstrate to the department that a service for which payment is requested under AS 29.60.100 — 29.60.180 was performed by the municipality or other recipient and meets minimum standards of service prescribed by regulation. (§ 16 ch 74 SLA 1985)

Article 3. Administration of State Aid Programs.

Section

280. Allocation and distribution

290. Qualification for minimum payment

Section

300. Proration of payments

Sec. 29.60.280. Allocation and distribution. (a) Each year, the department shall allocate money appropriated to the accounts established in AS 29.60.060, 29.60.170, and former AS 29.90.020 in the amounts determined by the legislature.

(b) Money in the miscellaneous services account established in AS 29.60.170 that exceeds the amount required to fully fund distributions authorized by AS 29.60.100 — 29.60.180 shall be reallocated to the tax equalization account established in AS 29.60.060 and distributed according to the provisions of AS 29.60.010 — 29.60.080.

(c) Money in the hospital and health facility construction assistance account established in former AS 29.90.020 that exceeds the amount required to fully fund distributions authorized by sec. 9, ch. 95, SLA 1983 shall be reallocated to the tax equalization account established in AS 29.60.060 and distributed according to the provisions of AS 29.60.010 — 29.60.080. (§ 16 ch 74 SLA 1985)

Sec. 29.60.290. Qualification for minimum payment. (a) A municipality qualifying for an entitlement under AS 29.60.010 — 29.60.080 or 29.60.100 — 29.60.180 shall receive a minimum payment of \$25,000 plus an area cost-of-living differential for each fiscal year if

(1) the municipality has conducted a regular election during the fiscal year preceding the year for which payment of an entitlement is authorized by AS 29.60.010 — 29.60.080 or 29.60.100 — 29.60.180 and has reported the results of the election to the commissioner;

(2) regular meetings of the governing body are held in the municipality during the fiscal year preceding the year for which payment of an entitlement is authorized by AS 29.60.010 — 29.60.080 or 29.60.100 — 29.60.180 and a record of the proceedings is maintained;

(3) a municipal budget has been adopted for the fiscal year during which payment of an entitlement is authorized by AS 29.60.010 — 29.60.080 or 29.60.100 — 29.60.180 and an audit or financial statement for the preceding fiscal year has been prepared and furnished to the department in accordance with AS 29.20.640(a); and

(4) local ordinances adopted by the municipality have been codified in accordance with AS 29.25.050.

(b) The area cost-of-living differential payable to each municipality under this section shall be determined annually by election district under the provisions of AS 39.27.030. Except as provided in AS 29.60.300, application of the area cost-of-living differential may not result in a payment that is less than the minimum payment determined under (a) of this section. For purposes of this subsection, the election districts used are those designated by the proclamation of reapportionment and redistricting of December 7, 1961, and retained for the house of representatives by proclamation of the governor September 3, 1965.

(c) The department shall pay to each municipality eligible to receive a minimum payment under this section an amount equal to the difference between the minimum payment determined under (a) and (b) of this section and the sum of the amounts payable for the same fiscal year under AS 29.60.010 — 29.60.080 and 29.60.100 — 29.60.180.

(d) A payment under this section may be prorated and reduced under AS 29.60.300.

(e) Payments under this section shall be made from the money allocated to the tax equalization account established in AS 29.60.060. (§ 16 ch 74 SLA 1985)

Sec. 29.60.300. Proration of payments. (a) Payments under AS 29.60.290 and 29.60.010 — 29.60.180 shall equal the amount allocated to the tax equalization account (AS 29.60.060), adjusted in accordance with AS 29.60.280.

(b) Adjustments of payments shall be determined by prorating amounts payable under AS 29.60.290 and amounts payable under AS 29.60.010 — 29.60.180 by a factor that, when applied, reduces all payments in equal proportion so that payment under AS 29.60.290 and payments under AS 29.60.010 — 29.60.180 equal the amount allocated to the tax equalization account established in AS 29.60.060. (§ 16 ch 74 SLA 1985)

Article 4. Municipal Assistance.

Section
350. Municipal assistance fund
360. Base amount of assistance
365. Municipalities organized under federal law

Section
370. Increased assistance
375. Definition.

Sec. 29.60.350. Municipal assistance fund. (a) There is established in the department the municipal assistance fund. The legislature may appropriate to the municipal assistance fund during each fiscal year an amount equal to or greater than 30 percent of the income tax revenue received by the state under AS 43.20.011(e) for the previous fiscal year.

(b) The department shall distribute money from the municipal assistance fund to each municipality on an annual basis as provided in AS 29.60.360 and 29.60.370. A municipality may not receive payment until it submits to the department a resolution approved by the governing body of the municipality that requests the money. Distribution of money from the municipal assistance fund to a municipality with a fiscal year beginning on January 1 shall be made on February 1 of the state fiscal year for which the appropriation to the fund is made.

Distribution of money from the municipal assistance fund to all other municipalities shall be made on June 1 of the state fiscal year for which the appropriation to the fund is made. A municipality that incorporates after December 31 of a state fiscal year is not eligible for a distribution under this section until the following state fiscal year. (§ 16 ch 74 SLA 1985)

Sec. 29.60.360. Base amount of assistance. (a) The base amount to be distributed from the municipal assistance fund to each municipality for the fiscal year shall be the amount received by the municipality during fiscal year 1978 under AS 43.70.080 as that section provided before the 1978 amendment. A city incorporated within a borough after June 30, 1977, shall receive as a base amount a share of the amount distributed to the borough in which it is located based on a ratio of population in the city to the total population of the borough. A city incorporated outside a borough after June 30, 1977, shall receive as a base amount the amount received by the city in the state most closely approximating it in population at the time of its incorporation. A borough incorporated after June 30, 1977, shall receive as a base amount the amount received by the borough in the state most closely approximating it in population at the time of its incorporation. The base amount to be distributed to each municipality organized under federal law shall be the amount received as a base amount by the city most closely approximating it in population on June 30, 1977.

(b) If the amount appropriated to the municipal assistance fund by the legislature during a fiscal year is insufficient for distribution of the full base amount to each municipality, the department shall prorate the amount available for distribution on the basis of amounts received during the fiscal year 1978 under AS 43.70.080. (§ 16 ch 74 SLA 1985; am § 46 ch 37 SLA 1986)

Effect of amendments. — The 1986 amendment in subsection (a) added "as that section provided before the 1978 amendment" at the end of the first sentence and added the last sentence.

Editor's notes. — The 1986 amendment of subsection (a) made by § 46, ch. 37, SLA 1986 is retroactive to January 1,

1986, under the terms of § 49, ch. 37, SLA 1986.

Legislative history reports. — For purpose of 1986 amendment to (a) of this section, see 1986 House Journal Supplement No. 95, March 7, 1986, at page 7 under the caption "Secs. 48 - 51."

Sec. 29.60.365. Municipalities organized under federal law. To qualify to receive money under AS 29.60.350 — 29.60.370, a municipality organized under federal law as an Indian reserve that existed before enactment of 43 U.S.C. 1618(a) and is continued in existence under that subsection shall form a community development corporation with authority to determine how money received under AS 29.60.350 — 29.60.370 will be used. The charter must require that the

governing board of the corporation shall be elected at an annual election open to all residents of the municipality who are registered and qualified to vote in state elections. The department may distribute money for the municipality only to a corporation organized in accordance with this section and only after the corporation has delivered a written waiver of sovereign immunity from legal action by the state to recover all or a portion of the money distributed under AS 29.60.350 — 29.60.370. (§ 47 ch 37 SLA 1986)

Editor's notes. — This section is effective retroactive to January 1, 1986 under the terms of § 49, ch. 37, SLA 1986.

Legislative history reports. — For

purpose of the 1986 enactment of this section, see 1986 House Journal Supplement No. 95, March 7, 1986, at page 7 under the caption "Secs. 48 - 51."

Sec. 29.60.370. Increased assistance. (a) If the amount in the municipal assistance fund at the time of distribution exceeds the base amount to be distributed under AS 29.60.360, the excess amount shall be distributed to each municipality on the basis of population. Population for the purpose of this section shall be as certified by the commissioner of community and regional affairs. In determining the population of a borough, the population of all cities in the borough shall be deducted from the total population of the borough.

(b) The intent of (a) of this section is that a municipality that levies property taxes reduce those levies in reasonable proportion to the amount of increased state aid received by the municipality. The governing body of each municipality shall furnish a notice with each tax statement describing its use of this increased state aid. (§ 16 ch 74 SLA 1985)

Sec. 29.60.375. Definition. In AS 29.60.350 — 29.60.370 "municipality" includes a municipality organized under federal law as an Indian reserve that existed before enactment of 43 U.S.C. 1618(a) and is continued in existence under that subsection. (§ 48 ch 37 SLA 1986)

Editor's notes. — This section is effective retroactive to January 1, 1986 under the terms of § 49, ch. 37, SLA 1986.

Legislative history reports. — For

purpose of the 1986 enactment of this section, see 1986 House Journal Supplement No. 95, March 7, 1986, at page 7 under the caption "Secs. 48 - 51."

Article 5. Community Facilities Grants.

Section

400. Grants for community facilities

410. Grant procedures

420. Powers and duties of the commissioner

Section

430. Allocation of money

440. Limitation

Sec. 29.60.400. Grants for community facilities. (a) Within the limits of appropriations for the purpose the Department of Commerce and Economic Development shall make matching grants in accordance with the provisions of AS 29.60.410 — 29.60.440 to municipalities or their nonprofit designees equal to

- (1) 50 percent of the estimated reasonable costs of construction of municipal civic, convention, and community recreation centers; and
- (2) 50 percent of the cost of feasibility studies relating to the construction of municipal civic, convention, and community recreation centers.

(b) A grant may be made under this section only to a municipality with the power to implement the study or project for which the grant is authorized or to its nonprofit designee. A grant for only one study and one project may be awarded to a municipality or its designee under this section.

(c) In this section "costs of construction" means, in addition to costs directly related to a project, the sum of all costs of financing and carrying out the project, including the costs of all necessary studies, surveys, plans and specifications, architectural, engineering or other special services, acquisition of real property, site preparation and development, purchase, construction, reconstruction and improvement of real property and the acquisition of machinery and equipment necessary to the project; an allocable portion of the administrative and operating expenses of the grantee; and the cost of financing the project, including interest on bonds issued to finance the project, the cost of indemnity and surety bonds, premiums on insurance, legal fees, fees and expenses of trustees, depositaries, financial advisors, and the costs associated with the issuance of bonds. It does not include the cost of feasibility studies. (§ 16 ch 74 SLA 1985)

Sec. 29.60.410. Grant procedures. (a) An application for a grant under AS 29.60.400 shall be made in a form prescribed by the commissioner of commerce and economic development.

(b) A grant shall be allotted in accordance with an agreement made between the commissioner of commerce and economic development on behalf of the state and the grantee. The agreement may include any provision agreed upon by the parties and shall include in substance the following provisions:

- (1) estimates of reasonable costs of the study or project as approved by the commissioner after consultation with the Department of Transportation and Public Facilities;
- (2) a schedule of disbursements of money from the grant if the commissioner determines that the grant money is not to be disbursed in one sum;
- (3) agreement by the grantee

(A) to proceed with and complete the proposed study or project expeditiously;

(B) not to discontinue operation or dispose of all or part of a community facility for which it receives a grant without the approval of the commissioner;

(C) to apply for and make reasonable efforts to secure federal assistance that may be available for the study or project, subject to any conditions the commissioner may require to maximize the amounts of that assistance available for all projects in the state;

(D) to provide for payment of the grantee's share of the cost of the study or project;

(E) that, if federal assistance for a study or project becomes available to the grantee that was not included in the calculation of the amount of the grant, the value of the federal assistance shall be subtracted from the total value of the project and the balance shall be equally divided between the grantee and the state;

(4) alteration or modification of an approved study or project;

(5) alteration or modification of an existing facility that would have qualified for a grant at the time of initial construction if AS 29.60.400 — 29.60.440 had been in effect;

(6) remedies in case of failure to perform the agreement or noncompliance with regulations adopted under AS 29.60.420.

(c) The commissioner of commerce and economic development shall require in negotiations and in each grant agreement that continued maintenance of the community facility is the responsibility of the municipality. The municipality must show the feasibility of continuing to maintain the facility before state money may be authorized for a grant. (§ 16 ch 74 SLA 1985)

Sec. 29.60.420. Powers and duties of the commissioner. (a) The commissioner of commerce and economic development shall provide an annual report to the legislature about grants made under AS 29.60.400.

(b) The commissioner of commerce and economic development shall adopt regulations to carry out the purposes of AS 29.60.400 — 29.60.440. (§ 16 ch 74 SLA 1985)

Sec. 29.60.430. Allocation of money. If the amount of money appropriated by the legislature for grants under AS 29.60.400 is not adequate to satisfy amounts required for approved grant applications, money shall be allocated on the basis of priority established by regulations of the Department of Commerce and Economic Development. (§ 16 ch 74 SLA 1985)

Sec. 29.60.440. Limitation. AS 29.60.400 — 29.60.440 do not require that a recipient of a grant for a feasibility study must proceed with construction of the project, regardless of whether the project is determined to be feasible. (§ 16 ch 74 SLA 1985)

Chapter 63. Special Assessments and Service Areas.

[Repealed, § 88 ch 74 SLA 1985.]

Chapter 65. General Grant Land.

Section	Section
10. Determination of entitlement of boroughs and unified municipalities	70. Selection and conveyance procedure
20. Determination of entitlement for cities	80. Payment for land deficiency
30. Determination of entitlement for newly incorporated municipalities	90. Authorization for land exchanges
40. Status of entitlements	100. Public purpose and expansion needs
50. Fulfillment of land entitlements	110. Election of benefits
60. School and mental health land	120. Administration
	130. Definitions
	140. Application

Cross references. — For statement of purpose of 1978 Act that enacted the provisions from which this chapter derived, see § 1, ch. 180, SLA 1978 in the Temporary and Special Acts.

Sec. 29.65.010. Determination of entitlement of boroughs and unified municipalities. (a) The general grant land entitlement of each of the municipalities in this section is the amount set out opposite each:

- (1) Municipality of Anchorage — 44,893 acres;
- (2) City and Borough of Juneau — 19,584 acres;
- (3) City and Borough of Sitka — 10,500 acres;
- (4) Bristol Bay Borough — 2,898 acres;
- (5) Fairbanks North Star Borough — 112,000 acres;
- (6) Haines Borough — 2,800 acres;
- (7) Kenai Peninsula Borough — 155,780 acres;
- (8) Ketchikan Gateway Borough — 11,593 acres;
- (9) Kodiak Island Borough — 56,500 acres;
- (10) Matanuska-Susitna Borough — 355,210 acres;
- (11) North Slope Borough — 89,850 acres.

(b) This section is a continuation of the provisions of former AS 29.18.201 and does not grant additional entitlements. (§ 17 ch 74 SLA 1985)

Sec. 29.65.020. Determination of entitlement for cities. (a) The general grant land entitlement of a city formerly eligible to receive general grant land under the provisions of former AS 29.18.190 and 29.18.200 is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land in the boundaries of each city at any time between the initial date of eligibility under former AS 29.18.190 and 29.18.200 and July 1, 1978. Within six months after July 1, 1978, the director shall determine the entitlement for each city eligible to receive general grant land under former AS 29.18.202 and certify that entitlement to the city.

(b) This section is a continuation of the provisions of former AS 29.18.203 and does not grant additional entitlements to cities incorporated before January 1, 1986. (§ 17 ch 74 SLA 1985)

Sec. 29.65.030. Determination of entitlement for newly incorporated municipalities. (a) The general grant land entitlement of a municipality incorporated after July 1, 1978, is 10 percent of the total acreage of vacant, unappropriated, unreserved land within the boundaries of the municipality on the date of its incorporation.

(b) Within six months after the date of incorporation of a municipality that is incorporated after July 1, 1978, the director shall determine the entitlement of each municipality eligible to receive general grant land under (a) of this section and certify the entitlement to the municipality.

(c) This section is a continuation of the provisions of former AS 29.18.203 and does not grant additional entitlements to municipalities incorporated before January 1, 1986. (§ 17 ch 74 SLA 1985)

Sec. 29.65.040. Status of entitlements. (a) After July 1, 1978, general grant land entitlements provided in former AS 29.18.201 and former AS 29.18.202 are vested property rights that must be fulfilled as provided in AS 29.65.050 or 29.65.080.

(b) General grant land entitlements provided by AS 29.65.030 are property rights that vest on the date of incorporation of the municipality. The entitlement must be fulfilled as provided in AS 29.65.050.

(c) Land may be selected or nominated for selection by a municipality to satisfy a general grant land entitlement under former AS 29.18.201 and 29.18.202 at any time before October 1, 1980. However, if a municipal selection or nomination or a part of a municipal selection or nomination is rejected by the director, the municipality may, not later than 90 days after receipt of the rejection, select additional state land as necessary to satisfy its entitlement.

(d) Land may be selected by a municipality to satisfy a general grant land entitlement under AS 29.65.030 at any time within one year after the director certifies the entitlement to the municipality.

the powers and duties set out in this chapter for the governing bodies of other incorporated cities. (§ 1 ch 186 SLA 1970)

Sec. 46.07.060. Educational and informational program. The commissioner shall conduct, in each village where there is located a safe water and hygienic sewage disposal facility, an appropriate educational and informational program designed to familiarize the residents of the village as to the health advantages to be achieved by the utilization of the facility. (§ 1 ch 186 SLA 1970)

Sec. 46.07.070. Economy of administration. In order to prevent duplication of effort and to promote economy of administration, the commissioner shall, to the maximum extent feasible, utilize the facilities of appropriate public agencies in the administration of the provisions of this chapter. (§ 1 ch 186 SLA 1970)

Sec. 46.07.080. Definitions. In this chapter

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

(2) "village" means an unincorporated community which has between 25 and 600 people residing within a two-mile radius, or a second class city. (§ 1 ch 186 SLA 1970; am § 6 ch 104 SLA 1971; am § 53 ch 53 SLA 1973; am § 28 ch 208 SLA 1975)

Chapter 08. Oil and Hazardous Substance Releases.

Section

- 05. Purpose
- 10. Fund established
- 20. Financing of the fund
- 30. Financing the abatement of oil or hazardous substance releases
- 40. Purposes of the fund

Section

- 50. Records of the fund
- 60. Report to the legislature
- 70. Reimbursement for containment and cleanup
- 80. Regulations
- 900. Definitions

Cross references. — For other provisions related to oil pollution control, see AS 46.04. For other provisions related to hazardous substance release control, see

AS 46.09. For authority of municipalities to implement this chapter, see AS 46.09.060(b).

Sec. 46.08.005. Purpose. The legislature finds and declares that the release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it is in the best interest of the state and its citizens to provide a readily available fund for the payment of the

expenses incurred by the Department of Environmental Conservation in the protection of the environment of the state from the release of oil or hazardous substances. (§ 1 ch 59 SLA 1986)

Sec. 46.08.010. Fund established. (a) There is established in the state general fund the oil and hazardous substance release response fund. The fund shall be administered by the commissioner.

(b) Money from an appropriation made to the fund remaining in the fund at the end of a fiscal year remains available for expenditure in successive fiscal years.

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. The fund may not be used for capital improvements. (§ 1 ch 59 SLA 1986)

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

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

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

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

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

Sec. 46.08.030. Financing the abatement of oil or hazardous substance releases. It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available. (§ 1 ch 59 SLA 1986)

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

(1) contain, clean up, and take other necessary action, such as monitoring, assessing, investigating, and evaluating the release or threatened release of oil or a hazardous substance that poses an imminent

and substantial threat to the public health or welfare, or to the environment;

(2) 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); and

(3) recover the cost to the state or to a municipality of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance. (§ 1 ch 59 SLA 1986)

Sec. 46.08.050. Records of the fund. (a) The department shall maintain accounting records showing the income and expenses of the fund.

(b) The department shall develop procedures governing the expenditure of, and accounting for, money expended from the fund, and may not delay implementation of this chapter pending the effective date of the procedures. (§ 1 ch 59 SLA 1986)

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

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

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

(3) a summary of municipal participation in responses funded by the fund;

(4) a detailed summary of department activities in responses funded by the fund during the preceding fiscal year, including response and descriptions and statements outlining the nature of the threat; and

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

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

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

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

(3) the appropriate actions needed to abate these threats, and their estimated cost. (§ 1 ch 59 SLA 1986)

Sec. 46.08.070. Reimbursement for containment and cleanup.

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

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

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

(1) the municipality has entered into an agreement with the commissioner under AS 46.09.020(e) before incurring the expenses for which reimbursement is sought; and

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

Cross references. — For authority of cleanup of oil and hazardous substances, municipalities for containment and see AS 46.09.060(b).

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

Sec. 46.08.900. Definitions. In this chapter

(1) "capital improvement" includes construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property, such as construction of a dike or retaining wall;

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

(3) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of oil or a hazardous substance, the restoration of the environment, and incidental administrative costs;

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

(5) "fund" means the oil and hazardous substance release response fund;

(6) "hazardous substance" means

(A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 — 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons or less;

(7) "oil" means petroleum products of any kind and in any form, whether crude, refined, or a petroleum by-product, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily refuse, oil mixed with other wastes, liquified natural gas, propane, butane, and other liquid hydrocarbons regardless of specific gravity;

(8) "permitted release" means a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency;

(9) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that "release" does not include a permitted release or an act of nature;

(10) "threatened release" means an imminent danger that a release will occur. (§ 1 ch 59 SLA 1986)

Chapter 09. Hazardous Substance Release Control.

Section	Section
10. Report of hazardous substance releases	40. Hazardous substances containment and cleanup
20. Containment and cleanup of a released hazardous substance	50. Compacts authorized
30. Disaster emergencies	60. Municipalities
	70. Regulations
	900. Definitions

Sec. 46.09.010. Report of hazardous substance releases.

(a) Except as provided in (b) of this section, a person in charge of a vehicle, vessel or container from which, or a place at which, a hazardous substance is released shall report the release to the department and appropriate public safety agencies promptly after learning of the release.

(b) The commissioner may enter into an agreement with a person for the periodic reporting of a controlled release of a hazardous substance if the release is not into water. (§ 2 ch 59 SLA 1986)

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

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

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

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

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

(c) If the commissioner determines that the containment or cleanup of a hazardous substance undertaken is inadequate, the commissioner may direct the person undertaking the containment or cleanup to cease and may undertake the containment or cleanup directly or by contract.

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

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

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

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

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

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

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

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

6-1727D
Chenoweth
2/27/90

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

1 IN THE SENATE

BY THE SENATE SPECIAL COMMITTEE ON OIL & GAS

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 359 (O&G)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

28 (2) contain, clean up, or prevent the release or threatened
29 release of oil or a hazardous substance that may pose an imminent or

1 substantial threat to persons, property, or natural resources within
2 the municipality's boundaries; in this paragraph, "natural resources"
3 has the meaning given in AS 46.03.826.

4 * Sec. 2. AS 29.35.210(a) is amended by adding a new paragraph to read:

5 (13) contain, clean up, or prevent a release or threatened
6 release of oil or a hazardous substance, and exercise a power granted
7 to a municipality under AS 46.04, AS 46.08, or AS 46.09.

8 * Sec. 3. AS 29.35.220 is amended by adding a new subsection to read:

9 (e) A third class borough may by ordinance exercise power neces-
10 sary to contain, clean up, or prevent a release or threatened release
11 of oil or a hazardous substance, and exercise a power granted to a
12 municipality under AS 46.04, AS 46.08, or AS 46.09, but the power
13 authorized by this subsection may be exercised only on a nonareawide
14 basis.

15 * Sec. 4. AS 29.60 is amended by adding new sections to read:

16 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL
17 IMPACT ASSISTANCE.

18 Sec. 29.60.500. PURPOSE AND POLICY. (a) The legislature finds
19 and declares that the release of oil or hazardous substances into the
20 environment presents a real and substantial threat to the economy and
21 public welfare of the municipalities and villages that are affected by
22 the release.

23 (b) The legislature concludes that, in the event of a release
24 or threatened release of oil or a hazardous substance that consti-
25 tutes a disaster emergency, it is in the best interest of the state
26 and its citizens to provide access to money in an available fund
27 for the payment of the expenses incurred by municipalities and
28 villages to mitigate the additional costs of necessary and appropri-
29 ate functions and services that arise out of the release of oil or

1 hazardous substances.

2 (c) It is the intent of the legislature and declared to be the
3 public policy of the state that money will be available to defray the
4 additional costs of necessary and appropriate functions and services
5 by municipalities and villages arising from a release of oil or a haz-
6 ardous substance that constitutes a disaster emergency.

7 Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) If a
8 release of oil or a hazardous substance has been proclaimed a disaster
9 emergency by the governor under AS 26.23.020, the commissioner may use
10 money from the oil and hazardous release response fund to make grants
11 to a municipality or village that is affected by the release or by the
12 response to the release and that demonstrates extraordinary expen-
13 ditures that are beyond the reasonable capability of the municipality
14 or village to meet from the municipality's or village's current
15 revenue sources.

16 (b) For each disaster emergency declared by the governor under
17 AS 26.23.020, the commissioner may expend not more than \$5,000,000 of
18 the unrestricted balance of the fund as grants authorized under this
19 section.

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

22 (1) only for

23 (A) provision of subsistence resources on which the
24 residents of the municipality or village rely for subsistence
25 needs;

26 (B) the additional costs of a necessary and appropri-
27 ate function or service, including administrative expenses for
28 the incremental costs of providing the function or service,
29 limited to:

1 (i) public health and welfare functions and
2 services, including hospital, clinic, and emergency medical
3 services; alcohol, drug abuse, and mental health services;
4 family support services; and the operation of waste disposal
5 systems and water quality improvement systems;

6 (ii) public safety functions and services, includ-
7 ing police protection, search and rescue, and fire pro-
8 tection;

9 (iii) public utility functions and services, in-
10 cluding the operation of electric generating plants and
11 distribution systems, water supply systems, telephone sys-
12 tems, and fuel distribution systems; and

13 (iv) housing functions and services, limited to
14 leasing or making other arrangements for temporary housing
15 to be occupied by persons associated with containment or
16 clean up of the release;

17 (C) costs associated with leasing transportation
18 facilities for use in activities associated with the containment
19 or clean up;

20 (D) costs of repair or replacement of equipment or a
21 capital asset associated with a function or service set out in
22 (B) of this paragraph the useful life of which has been substan-
23 tially reduced by use associated with the containment or clean
24 up; and

25 (2) to compensate the municipality or village for

26 (A) the reduction of revenue attributable to the
27 discharge of the oil or hazardous substance; and

28 (B) the costs of projects or activities that are
29 delayed or lost because of the efforts of the municipality or

1 village associated with the containment or clean up.

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

3 In determining whether an expenditure by a municipality or village is
4 eligible for a grant under AS 29.60.510, the department shall consider

5 (1) the degree to which the effect on the municipality or
6 village is directly caused by the oil or hazardous substance dis-
7 charge;

8 (2) the availability of money to the recipient from other
9 sources that can meet the costs of providing the functions or ser-
10 vices;

11 (3) the degree to which the proposed expenditure in the
12 grant application alleviates or addresses an effect reasonably attrib-
13 utable to the oil or hazardous substance release;

14 (4) the ability of the municipality or village to respond
15 to the oil or hazardous substance release and its effects from exist-
16 ing resources;

17 (5) the severity of the effect addressed in the grant
18 application;

19 (6) whether the functions or services for which assistance
20 is sought are part of a coordinated program with other affected munic-
21 ipalities and villages; and

22 (7) other criteria the department considers appropriate.

23 (b) The department shall adopt, by regulation, criteria by which
24 to rank applications for the purpose of establishing the priority
25 order of awarding grants if money requested by eligible municipalities
26 and villages under this section exceeds the amount available. The
27 criteria shall be based on the elements set out in (a) of this sec-
28 tion. If the total amount of money requested by eligible municipal-
29 ities and villages under this section exceeds the amount available,

1 the department shall rank applications for the purpose of establishing
2 the priority order of awarding grants in accordance with the regula-
3 tions.

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

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

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

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

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

21 Sec. 29.60.570. IMPACT ASSESSMENT. (a) For each disaster
22 emergency declared by the governor under AS 26.23.020 based on a
23 release of oil or a hazardous substance, the commissioner shall make
24 an assessment of the social and economic effects of the release of the
25 oil or hazardous substance on the municipalities, the villoges, and
26 the region in which the discharge occurs.

27 (b) The commissioner may pay the costs of the assessment from
28 money available in the fund.

29 Sec. 29.60.580. REGULATIONS. The commissioner may adopt
CSSSSB 359(O&G)

1 regulations that are necessary to implement the purposes of AS 29.-
2 60.500 - 29.60.590.

3 Sec. 29.60.590 DEFINITIONS. In AS 29.60.500 - 29.60.590

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

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

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

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

12 (5) "village" means a community or settlement not incor-
13 porated as a municipality under state law in the unorganized borough
14 or within a borough if the power, function, or service for which the
15 grant application is submitted is not exercised or provided by the
16 borough on an areawide or nonareawide basis at the time the grant
17 application is submitted, if the village council

18 (A) has irrevocably waived, in a form approved by the
19 Department of Law, any claims to sovereign immunity that might
20 arise in connection with the use of grant money under this chap-
21 ter; and

22 (B) is

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

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

27 (iii) a council recognized by the commissioner
28 under regulations adopted by the department to determine and
29 give official recognition of village entities under

1 AS 44.47.150(b).

2 * Sec. 5. AS 46.03.822(a) is amended to read:

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

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

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

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

28 (4) any person who by contract, agreement, or otherwise
29 arranged for disposal or treatment, or arranged with a transporter for

1 transport for disposal or treatment, of hazardous substances owned or
2 possessed by the person, other than domestic sewage, or by any other
3 party or entity, at any facility or vessel owned or operated by an-
4 other party or entity and containing hazardous substances, from which
5 there is a release, or a threatened release that causes the incurrence
6 of response costs, of a hazardous substance;

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

12 * Sec. 6. AS 46.03.900 is amended by adding new paragraphs to read:

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

20 (36) "village" has the meaning given in AS 46.08.900.

21 * Sec. 7. AS 46.04.020(e) is amended to read:

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

26 (1) facilitate coordinated and effective oil discharge
27 response in the state;

28 (2) provide for cooperative review of oil discharge contin-
29 gency plans submitted to the department under AS 46.04.030;

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

4 (4) provide for cooperative oil discharge notification
5 procedures.

6 * Sec. 8. AS 46.04.900(5) is amended to read:

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

15 * Sec. 9. AS 46.04.900 is amended by adding a new paragraph to read:

16 (18) "public service" means a function performed or service
17 provided by the state, including functions not previously performed
18 and services not previously provided by the state.

19 * Sec. 10. AS 46.08.040 is amended to read:

20 Sec. 46.08.040. PURPOSES OF THE FUND. In addition to the appro-
21 priations to the fund that may be used by the commissioner of communi-
22 ty and regional affairs to make grants under AS 29.60.510 and to pay
23 for impact assessments under AS 29.60.570, the [THE] commissioner may
24 use money from the fund to

25 (1) investigate and evaluate the release or threatened
26 release of oil or a hazardous substance, and contain, clean up, and
27 take other necessary action, such as monitoring and assessing, to
28 address a release or threatened release of oil or a hazardous sub-
29 stance that poses an imminent and substantial threat to the public

1 health or welfare, or to the environment;

2 (2) pay all costs incurred to establish and maintain the
3 oil and hazardous substance response office and for the expenses of
4 the oil and hazardous substance response corps and the oil and hazard-
5 ous substance response depots established by that office;

6 (3) provide matching funds for participation in federal oil
7 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
8 hensive Environmental Response, Compensation, and Liability Act of
9 1980); [AND]

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

13 (5) prepare, review, and revise

14 (A) the state's master oil and hazardous substance
15 discharge and prevention contingency plan required by AS 46.04.-
16 200; and

17 (B) a regional master oil and hazardous substance
18 discharge and prevention contingency plan required by AS 46.04.-
19 210; [AND]

20 (6) restore the environment by addressing the effects of an
21 oil or hazardous substance release; and

22 (7) make grants under AS 46.08.072.

23 * Sec. 11. AS 46.08.070(c) is amended to read:

24 (c) Subject to availability of money for the purpose, the [THE]
25 department shall [MAY] reimburse a municipality for actual expenses [,
26 OTHER THAN NORMAL OPERATING EXPENSES,] incurred in the abatement of a
27 release or threatened release of oil or a hazardous substance if

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

1 (2) the commissioner determines that the expenses were for
2 a necessary emergency first response to a release or threatened
3 release that, at the time of the release or threatened release, posed
4 an imminent and substantial threat to the public health or welfare, or
5 to the environment.

6 * Sec. 12. AS 46.08 is amended by adding a new section to read:

7 Sec. 46.08.072. GRANTS. (a) The department may make grants to
8 a municipality or a village to enable the municipality or village to
9 carry out an emergency first response to a release or threatened
10 release of oil or a hazardous substance that poses an imminent and
11 substantial threat to the public health or welfare or to the environ-
12 ment. A grant may be used by the grant recipient to pay costs in-
13 curred by the recipient for the direct efforts associated with the
14 containment and clean up of oil or a hazardous substance and related
15 incidental administrative costs.

16 (b) When an applicant submits an application for a grant under
17 this section, the department shall review and accept or reject a grant
18 application as promptly as possible to permit the municipality or
19 village to execute a proper emergency first response.

20 (c) After consultation with the Department of Community and
21 Regional Affairs, the department shall adopt regulations to carry out
22 this section. The regulations must establish

23 (1) eligibility requirements of applicants;

24 (2) procedures for review of applications submitted under
25 (a) of this section so that the department may meet the deadlines for
26 decisions set out in (b) of this section;

27 (3) standards for the evaluation of applications; and

28 (4) other conditions for the receipt of a grant.

29 (d) Regulations adopted under (c) of this section must include

1 as a factor the applicant's ability to provide an emergency first
2 response if the grant application is not approved.

3 (e) In reviewing and making a determination about the applica-
4 tion submitted under this section, the department may not consider
5 whether the amount to be expended as a grant is an expense recoverable
6 under AS 46.08.070.

7 * Sec. 13. AS 46.08.900(3) is amended to read:

8 (3) "containment and cleanup" includes the direct and
9 indirect efforts associated with the prevention, abatement, contain-
10 ment, or removal of oil or a hazardous substance, and the restoration
11 of the environment; when applied to expenses, the term includes the
12 additional costs of providing a necessary and appropriate function or
13 service incurred in response to the discharge of the oil or hazardous
14 substance, including [, AND INCIDENTAL] administrative expenses for
15 the incremental costs of providing the function or service;

16 * Sec. 14. AS 46.08.900 is amended by adding new paragraphs to read:

17 (11) "service" means a function performed or service
18 provided by the state, a municipality, or a village, including
19 functions not previously performed and services not previously pro-
20 vided by the state, a municipality, or a village;

21 (12) "village" means a community or settlement not incor-
22 porated as a municipality under state law in the unorganized borough
23 or within a borough if the power, function, or service for which the
24 grant application is submitted is not exercised or provided by the
25 borough on an areawide or nonareawide basis at the time the grant
26 application is submitted, if the village council

27 (A) has irrevocably waived, in a form approved by the
28 Department of Law, any claims to sovereign immunity that might
29 arise in connection with the use of grant money under this chap-

1 ter; and

2 (B) is

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

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

7 (iii) a council recognized by the commissioner of
8 community and regional affairs under regulations adopted by
9 the Department of Community and Regional Affairs to deter-
10 mine and give official recognition of village entities under
11 AS 44.47.150(b).

12 * Sec. 15. AS 46.09.060(b) is amended to read:

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

20 * Sec. 16. AS 46.09.900(2) is amended to read:

21 (2) "containment and cleanup" includes the direct and
22 indirect efforts associated with the prevention, abatement, contain-
23 ment, or removal of a hazardous substance, and the restoration of the
24 environment; when applied to expenses, the term includes the addi-
25 tional costs of providing a necessary and appropriate function or ser-
26 vice incurred in response to the discharge of the hazardous substance,
27 including [, AND INCIDENTAL] administrative expenses for the
28 incremental costs of providing the function or service;

29 * Sec. 17. AS 46.09.900 is amended by adding a new paragraph to read:

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

4 * Sec. 18. This Act takes effect immediately under AS 01.10.070(c).
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Original sponsor(s): SEN. SZYMANSKI, Adams, Zharoff

1 IN THE SENATE

BY THE SENATE SPECIAL COMMITTEE ON OIL & GAS

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 359 (O&G)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

28 (2) contain, clean up, or prevent the release or threatened
29 release of oil or a hazardous substance that may pose an imminent or

14 substantial threat to persons, property, or natural resources within
20 the municipality's boundaries; the ordinance adopted must be consis-
21 tent with a regional master plan for the region in which the munici-
22 pality is located if a plan has been prepared by the Department of
23 Environmental Conservation under AS 46.04.210; in this paragraph,
24 "natural resources" has the meaning given in AS 46.03.826.

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

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

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

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

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

42 (e) A third class borough may by ordinance exercise power neces-
43 sary to contain, clean up, or prevent a release or threatened release
44 of oil or a hazardous substance, and exercise a power granted to a
45 municipality under AS 46.04, AS 46.08, or AS 46.09, but the power
46 authorized by this subsection may be exercised only on a nonareawide
47 basis. The borough shall exercise its authority under this subsection

in a manner that is consistent with a regional master plan for the region in which the borough is located if a plan has been prepared by the Department of Environmental Conservation under AS 46.04.210.

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

ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL
IMPACT ASSISTANCE.

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

(b) The legislature concludes that, in the event of a release or threatened release of oil or a hazardous substance that constitutes a disaster emergency, it is in the best interest of the state and its citizens to provide access to money in an available fund for the payment of the expenses incurred by municipalities and villages to mitigate the additional costs of necessary and appropriate functions and services that arise out of the release of oil or hazardous substances.

(c) It is the intent of the legislature and declared to be the public policy of the state that money will be available to defray the additional costs of necessary and appropriate functions and services by municipalities and villages arising from a release of oil or a hazardous substance that constitutes a disaster emergency.

Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) If a release of oil or a hazardous substance has been proclaimed a disaster emergency by the governor under AS 26.23.020, the commissioner may use money from the oil and hazardous release response fund to make grants to a municipality or village that is affected by the release or by the

response to the release and that demonstrates extraordinary expenditures that are beyond the reasonable capability of the municipality or village to meet from the municipality's or village's current revenue sources.

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

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

(1) only for

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

(B) the additional costs of a necessary and appropriate function or service, including administrative expenses for the incremental costs of providing the function or service, limited to:

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

(ii) public safety functions and services, including police protection, search and rescue, and fire protection;

(iii) public utility functions and services, including the operation of electric generating plants and distribution systems, water supply systems, telephone

systems, and fuel distribution systems; and

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

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

(D) costs of repair or replacement of equipment or a capital asset associated with a function or service set out in (B) of this paragraph the useful life of which has been substantially reduced by use associated with the containment or clean up; and

(2) to compensate the municipality or village for

(A) the reduction of revenue attributable to the discharge of the oil or hazardous substance; and

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

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

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

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

(3) the degree to which the proposed expenditure in the

grant application alleviates or addresses an effect reasonably attributable to the oil or hazardous substance release;

(4) the ability of the municipality or village to respond to the oil or hazardous substance release and its effects from existing resources;

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

(6) whether the functions or services for which assistance is sought are part of a coordinated program with other affected municipalities and villages.

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

(c) The department shall adopt, by regulation, criteria by which to rank all or a portion of applications for the purpose of establishing the priority order of awarding grants if money requested by eligible municipalities and villages under this section exceeds the amount available. The criteria shall be based on the elements set out in (a) of this section. If the total amount of money requested by eligible municipalities and villages under this section exceeds the amount available, the department shall rank applications for the purpose of establishing the priority order of awarding grants in accordance with the regulations. This subsection does not prevent the department from making a grant payment in an amount that is less than an amount requested by a municipality or village if the department determines that payment of the amount requested is not warranted under (a) of this section.

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

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

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

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

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

Sec. 29.60.570. IMPACT ASSESSMENT. (a) For each disaster emergency declared by the governor under AS 26.23.020 based on a release of oil or a hazardous substance, the commissioner shall make an assessment of the social and economic effects of the release of the oil or hazardous substance on the municipalities, the villages, and the region in which the discharge occurs.

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

Sec. 29.60.580. REGULATIONS. The commissioner may adopt regulations that are necessary to implement the purposes of AS 29.60.500 - 29.60.599.

Sec. 29.60.590. RECOVERY OF CERTAIN GRANT EXPENDITURES

AUTHORIZED. The commissioner may recover from a municipality or village amounts paid as impact assistance under AS 29.60.500 - 29.60.599 if the commissioner determines that the municipality or village receiving the grant is responsible for the violation that caused the oil or hazardous substance release.

Sec. 29.60.599. DEFINITIONS. In AS 29.60.500 - 29.60.599

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

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

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

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

(5) "village" means a community or settlement 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 on an areawide or nonareawide basis at the time the grant application is submitted, if the village council

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

(B) is

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

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

(iii) a council recognized by the commissioner under regulations adopted by the department to determine and give official recognition of village entities under AS 44.-47.150(b).

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

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

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

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

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

(4) all incidental administrative costs.

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

(a) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section and the exception set out in (i) of this section, the following persons are strictly liable, jointly and severally, for damages to persons or property, whether public or private, including damage to the natural resources of the state, [OR] a municipality, or a village, [AND] for the costs of response, containment, removal, or remedial action incurred by the state, [OR] a municipality, or a village, and for the additional costs of a necessary and appropriate function or service, including administrative expenses for the incremental costs of providing the function or service, that are incurred by the state, a

1 municipality, or a village [,] resulting from an unpermitted release
2 of a hazardous substance or, with respect to response costs, the
3 substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

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

29 (h) The state, [OR] a municipality, or a village is not liable

under this section for costs or damages as a result of actions taken in response to an emergency created by a release or threatened release of a hazardous substance generated by or from a facility or vessel owned by another person unless the actions taken by the state, the [OR] municipality, or the village constitute gross negligence or intentional misconduct.

* Sec. 9. AS 46.03.900 is amended by adding new paragraphs to read:

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

(36) "village" means a community or settlement not incorporated as a municipality under state law if the village council

(A) has irrevocably waived, in a form approved by the Department of Law, any claims to sovereign immunity that might arise in connection with a claim under AS 46.03.822; and

(B) is

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

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

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

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

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

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

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

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

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

(19) "village" means a community or settlement not incorporated as a municipality under state law, if the village council

(A) has irrevocably waived, in a form approved by the Department of Law, any claims to sovereign immunity that might arise in connection with this chapter; and

(B) is

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

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

(iii) a council recognized by the commissioner of community and regional affairs under regulations adopted by the Department of Community and Regional Affairs to

determine and give official recognition of village entities under AS 44.47.150(b).

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

Sec. 46.08.040. PURPOSES OF THE FUND. In addition to money in the fund that may be used by the commissioner of community and regional affairs to make grants under AS 29.60.510 and to pay for impact assessments under AS 29.60.570, the [THE] commissioner of environmental conservation may use money from the fund to

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

(2) pay all costs incurred to establish and maintain the oil and hazardous substance response office and for the expenses of the oil and hazardous substance response corps and the oil and hazardous substance response depots established by that office;

(3) 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); [AND]

(4) recover the costs 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; [.]

(5) prepare, review, and revise

(A) the state's master oil and hazardous substance discharge and prevention contingency plan required by AS 46.04.-200; and

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

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

* Sec. 14. 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 and may advance money to a municipality or village to carry out an emergency first response to a release or threatened release of oil or a hazardous substance if

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

(2) the commissioner determines that

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

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

(C) containment and cleanup efforts paid for in whole

or in part by a reimbursement or an advance made under this section were consistent with the regional master plan for the region in which the municipality or village is located if a plan has been prepared by the department under AS 46.04.210.

* Sec. 15. AS 4 08.070 is amended by adding a new subsection to read:

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

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

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

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

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

(12) "village" means a community or settlement 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 on an areawide or nonareawide basis at the time the grant

application or request for reimbursement is submitted, if the village council

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

(B) is

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

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

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

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

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

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

(2) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of a hazardous substance, and the restoration of the environment; when applied to expenses, the term includes the

additional costs of providing a necessary and appropriate function or service incurred in response to the discharge of the hazardous substance, including [, AND INCIDENTAL] administrative expenses for the incremental costs of providing the function or service;

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

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

* Sec. 21. This Act takes effect immediately under AS 01.10.070(c).

EXPLANATION OF AMENDMENTS

AMENDMENT #1: Adds a requirement that any local government "extra-territorial jurisdiction" ordinance adopted under these sections must be consistent with regional master contingency plans.

AMENDMENT #2: The CS lists criteria CRA must consider when evaluating grant applications for municipal impact assistance. This amendment would delete the phrase "other criteria the department deems appropriate".

AMENDMENT #3: This amendment makes it clear that CRA may reject grant applications or approve an application for less than the amount requested.

AMENDMENT #4: Adds back a provision in the Sponsor Substitute that would give village councils limited immunity for emergency response cleanup activities. Municipalities already have this protection.

AMENDMENT #5: This amendment would require DEC to consult with municipalities and village councils when it is negotiating cooperative agreements (etc.) with federal agencies (and others) on oil discharge matters. The Sponsor Substitute and the proposed CS now require the Department to negotiate with municipalities and village councils on these matters.

AMENDMENT #6: The Sponsor Substitute clarifies that DEC is required to reimburse municipalities and village councils for emergency first response cleanup costs if there is an agreement between the parties which calls for reimbursement and the department determines that these expenditures were "necessary". The proposed CS added a requirement that the State's obligation to reimburse is also "subject to the availability of money for that purpose". This amendment would delete the additional language in the proposed CS.

AMENDMENT #7: This amendment would delete the emergency first response grant provisions contained in both the Sponsor Substitute and the proposed CS and simply allow the Commissioner of DEC to "advance" funds to municipalities and villages if the applicant can demonstrate that it has a need for the money and the proposed expenditures are necessary to carry out an emergency first response to a release or threatened release.

AMENDMENT #8: Emergency first response grant funds must be used in a manner consistent with regional contingency plans.

A M E N D M E N T #1

Sen. O & G

OFFERED IN THE SENATE

TO: CSSSSB 359(O&G), "M" version 2/28/90

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

Insert "the ordinance adopted must be consistent with a regional master plan for the region in which the municipality is located if a plan has been prepared by the Department of Environmental Conservation under AS 46.04.210;"

Page 2, following line 3:

Insert a new bill section to read:

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

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

Renumber the following bill sections accordingly.

Page 2, line 7, after "AS 46.09":

Insert "; the borough shall exercise its authority under this

paragraph in a manner that is consistent with a regional master plan for the region in which the borough is located if a plan has been prepared by the Department of Environmental Conservation under AS 46.04.210"

Page 2, line 14, after "basis.":

Insert "The borough shall exercise its authority under this subsection in a manner that is consistent with a regional master plan for the region in which the borough is located if a plan has been prepared by the Department of Environmental Conservation under AS 46.04.210."

A M E N D M E N T #2

OFFERED IN THE SENATE

TO: CSSSSB 359(O&G), "M" version 2/28/90

Page 5, line 18, after "application;"

Insert "and"

Page 5, lines 21 - 22:

Delete "; and

(7) other criteria the department considers appropriate"

A M E N D M E N T #3

OFFERED IN THE SENATE

TO: CSSSSB 359(O&G), "M" version 2/28/90

Page 5, following line 22:

Insert a new subsection to read:

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

Reletter the following subsection accordingly.

Page 5, line 24, after "rank":

Insert "all or a portion of"

Page 6, lines 2 - 3, after "regulations.":

Insert "This subsection does not prevent the department from making a grant payment in an amount that is less than an amount requested by a municipality or village if the department determines that payment of the amount requested is not warranted under (a) of this section."

A M E N D M E N T #4

OFFERED IN THE SENATE

TO: CSSB 359(O&G), "M" version 2/28/90

Page 9, following line 11:

Insert a new bill section to read:

"* Sec. 6. AS 46.03.822(h) is amended to read:

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

Renumber the following bill sections accordingly.