

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
1634 SCOMM 62 • SENATE SPEC. COMM. ON OIL & GAS, 1989-1990 12021

A M E N D M E N T #5

OFFERED IN THE SENATE

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

Page 10, lines 4 - 17:

Delete all material and insert:

"* Sec. 7. 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 with village councils."

Page 11, line 2:

After "village" insert "council"

After "means" insert "the governing body of"

A M E N D M E N T #6

OFFERED IN THE SENATE

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

Page 12, lines 22 - 23:

Delete "Subject to availability of money for the purpose, the [THE]"

Insert "The"

A M E N D M E N T #7

OFFERED IN THE SENATE

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

Page 12, line 17:

Delete "[AND]"

Insert "and"

Page 12, lines 19 - 20:

Delete "; and

(7) make grants under AS 46.08.072"

Page 12, line 25, after "threatened release":

Insert "and may advance money to a municipality or village to carry out an emergency first response to a release or threatened release"

Page 13, line 1:

After "that" insert "(A)"

After "expenses" insert "to be reimbursed"

Page 13, line 5, after "environment":

Insert ";

(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 immi-
nent and substantial threat to the public health or welfare, or
to the environment"

Page 13, line 6 through page 14, line 6:

Delete all material.

Renumber the following bill sections accordingly.

A M E N D M E N T #8

OFFERED IN THE SENATE

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

Page 13, line 15, after "costs.":

Insert "Containment and cleanup efforts paid for in whole or in part by a grant made under this section must be 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."

6-1727M*
Chenoweth
2/28/90Sen. O & G
c/o Chenoweth

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
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; or28 (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 villages, 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

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

AS 44.47.150(b).

* Sec. 5. 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 municipality, or a village [,] resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

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

* Sec. 6. 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

1 under regulations adopted by the department to determine and
2 give official recognition of village entities under AS 44.-
3 47.150(b).

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

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

9 (1) facilitate coordinated and effective oil discharge
10 response in the state;

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

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

16 (4) provide for cooperative oil discharge notification
17 procedures.

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

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

27 * Sec. 9. AS 46.04.900 is amended by adding new paragraphs to read:

28 (18) "service" means a function performed or service pro-
29 vided by the state, including functions not previously performed and

1 services not previously provided by the state;

2 (19) "village" means a community or settlement not incor-
3 porated as a municipality under state law if the village council

4 (A) has irrevocably waived, in a form approved by the
5 Department of Law, any claims to sovereign immunity that might
6 arise in connection with an agreement entered into under this
7 chapter; and

8 (B) is

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

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

13 (iii) a council recognized by the commissioner
14 under regulations adopted by the department to determine and
15 give official recognition of village entities under AS 44.-
16 47.150(b).

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

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

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

29 (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; and

(7) make grants under AS 46.08.072.

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

(c) Subject to availability of money for the purpose, the [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 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

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

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

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

* Sec. 13. 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. 14. 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;

1 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 incre-
28 mental 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 provid-
2 ed by the state, including functions not previously performed and
3 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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Introduced: 1/31/90
Referred: Senate Spec. Comte. on Oil and Gas,
Resources and Finance

6-1727H

SEN. SZYMANSKI, Adams, Zharoff, Faiks

1 IN THE SENATE

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 359

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 village councils in matters relating to
9 environmental conservation; relating to state assis-
10 tance to municipalities and village councils for
11 expenses for prevention and abatement of environ-
12 mental degradation, and to state review of oil dis-
13 charge contingency plans; establishing an oil and
14 hazardous substance municipal impact fund in the
15 Department of Community and Regional Affairs; and
16 amending provisions applicable to the suspension and
17 reimposition of the oil and gas production tax oil
18 surcharge to provide money to that fund; and pro-
19 viding for an effective date."

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WORK DRAFT

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."

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

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

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

1 (1) protect its water supply and watershed; or
2 (2) contain, clean up, or prevent the release or threatened
3 release of oil or a hazardous substance that may pose an imminent or
4 substantial threat to persons, property, or natural resources within
5 the municipality's boundaries; in this paragraph, "natural resources"
6 has the meaning given in AS 46.03.826.

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

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

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

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

COMMENT. These sections grant extra-territorial jurisdiction
to municipalities and second and third class boroughs to
allow them to respond to discharges of oil or hazardous
substances. No Change

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.

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COMMENT. This section: 1) eliminates the new fund proposed in the Sponsor Substitute; municipal impact grants will be handled by the Department of Community and Regional Affairs (CRA) through the existing "470" fund; 2) establishes a trigger mechanism - declaration of a "disaster emergency" under existing law - for release of up to \$5 million from the "470" fund to CRA for Municipal Impact Grants (sponsor substitute contemplated a \$25,000,000 allocation to municipal grants); 3) requires CRA to initiate an assessment of social and economic impacts immediately following the disaster emergency proclamation; to be paid for out of general 470 fund dollars (Sponsor substitute authorized, but did not require, DEC to perform this assessment); and 4) tightens up and rewrites provisions concerning eligibility for grant assistance by deleting and/or limiting certain items contained in the sponsor substitute (see subsections 1, 2, 6, 7 and 8 of the Sponsor Substitute); adding provisions designed to cover income losses and similar impacts and the costs of repair and replacement of certain capital items; rewriting the "threshold" eligibility criteria to clarify what requests are eligible (additional service costs that are necessary and appropriate); and consolidating and adding to provisions concerning criteria to evaluate grant applications.

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* Sec. 4. 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 village councils that are affected by the release.

(b) The legislature 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 municipalities and village councils to mitigate the social and economic effects arising from 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 to defray the cost of social and economic effects on municipalities and village councils arising from a release of oil or a hazardous substance and to pay for efforts to abate that release will always be available.

Sec. 29.60.510. FUND ESTABLISHED. (a) There is established in the state general fund the oil and hazardous substance municipal impact 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 by the department in successive fiscal years.

(c) The fund shall be used to make grants under AS 29.60.530 for actual expenses incurred by municipalities and village councils.

Sec. 29.60.520. FINANCING OF THE FUND. The legislature may appropriate from the account established in AS 43.55.210 to the fund.

Sec. 29.60.530. ADMINISTRATION OF THE FUND. (a) The commissioner may use money from the fund to make grants to a municipality or village council affected by a release of oil or a hazardous substance and demonstrating extraordinary expenditures that are beyond the reasonable capability of the municipality or village council to meet from the municipality's or council's current revenue sources.

* Sec. 4. 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) A grant made under this section may be expended only for a function or service, including all incidental administrative costs related to the function or service, that is directly or indirectly affected by efforts associated with prevention, abatement, containment, or removal of oil or a hazardous substance, and that relates to

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

(2) alleviation or mitigation of adverse social or cultural effects;

(3) public health and welfare needs, 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;

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

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

(6) housing needs;

(7) public administration needs, including the value of staff and administrative time devoted to direct efforts to prevent, abate, contain, or remove oil or a hazardous substance, and the costs of projects or activities that are delayed or lost because of the grantee's efforts; and

(8) planning needs, including the value of staff and administrative time attributable to coordinating efforts to prevent, abate, contain, or remove oil or a hazardous substance with other governments.

(c) In determining whether an expenditure by a municipality or village council is eligible for a grant from the fund, the department shall consider

(b) For each disaster emergency declared by the governor under AS 26.23.020, the commissioner may expend not more than \$5,000,000 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;

(1) the availability of money to the recipient from other sources that can be used to support the request;

(2) the degree to which the proposed expenditure in the grant application alleviates or addresses an effect reasonably attributable to the oil or hazardous substance discharge;

(3) the ability of the municipality or village council to accommodate or absorb the effect through existing programs; and

(4) other criteria the department considers appropriate.

(d) A grant made under (a) of this section may not be used directly or indirectly to reduce current municipal tax rates or to retire existing bonded indebtedness of a municipality.

(e) If the total amount of money requested by eligible municipalities and village councils for projects exceeds the amount available in the fund, the department shall rank applications for the purpose of establishing the priority order of awarding grants. In ranking an application under this subsection, the department shall consider

(1) the severity of the effect addressed in the application;

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

(3) whether the proposed project is part of a coordinated program with other affected municipalities and village councils.

Sec. 29.60.540. 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.

Sec. 29.60.550. 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

(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;

commissioner but must include:

(1) the amount of money expended under AS 29.60.530 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 29.60.520;

(3) a detailed summary of department activities in administering the fund during the preceding fiscal year; and

(4) the projected costs to be met from the fund during the next fiscal year.

Sec. 29.60.560. REGULATIONS. The commissioner may adopt regulations that are necessary to implement the purposes of AS 29.60.500 - 29.60.590.

Sec. 29.60.590 DEFINITIONS. In AS 29.60.500 - 29.60.590

(1) "fund" means the oil and hazardous substance municipal impact fund;

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

(3) "village council" means each of the following 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 that council 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:

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

(B) a traditional village council recognized by the

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

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

(7) other criteria the department considers appropriate.

(b) The department shall adopt, by regulation, criteria by which to rank 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.

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 United States as eligible for federal aid to Indians; or

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

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 villages, 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
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.

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(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).

Sections 5-10 of the Sponsor Substitute are changed.

COMMENT. Provisions in the Sponsor Substitute which increased the 5 cent per barrel surcharge balance requirement from \$50 million to \$75 million have been deleted.

5 * Sec. 5. AS 43.55.220 is amended to read:

6 Sec. 43.55.220. USE OF REVENUE DERIVED FROM SURCHARGE. The
7 legislature may appropriate the annual estimated balance of the ac-
8 count established under AS 43.55.210 to

9 (1) the oil and hazardous substance release response fund
10 established by AS 46.08.010; and

11 (2) the oil and hazardous substance municipal impact fund
12 established by AS 29.60.510.

13 * Sec. 6. AS 43.55.230(a) is amended to read:

14 (a) Not later than 30 days after the end of each calendar quar-
15 ter, the commissioner of administration shall determine the cumulative
16 total of money

17 (1) that has been deposited through that calendar quarter
18 into the general fund under AS 43.55.210;

19 (2) expended through that calendar quarter from

20 (A) the oil and hazardous substance release response
21 fund established in AS 46.08.010; and

22 (B) the oil and hazardous substance municipal impact
23 fund established in AS 29.60.510.

24 * Sec. 7. AS 43.55.230(c) is amended to read:

25 (c) If the commissioner of administration reports that the
26 difference determined under (b) of this section equals or exceeds
27 \$75,000,000 [\$50,000,000], the commissioner of revenue shall suspend
28 imposition and collection of the surcharge levied and collected under
29 AS 43.55.200. Suspension of the imposition and collection of the
1 surcharge begins on the first day of the calendar quarter next follow-
2 ing the commissioner's receipt of the commissioner of administration's
3 report under (b) of this section. Before the first day of a suspen-
4 sion authorized by this subsection, the commissioner shall make a
5 reasonable effort to notify all persons who are known to the depart-
6 ment to be paying the surcharge under AS 43.55.200 that the surcharge
7 will be suspended.

8 * Sec. 8. AS 43.55.230(d) is amended to read:

9 (d) Except as provided in AS 43.55.240, if the commissioner of
10 administration reports that the difference determined under (b) of
11 this section is less than \$75,000,000 [\$50,000,000], the commissioner
12 of revenue shall require imposition and collection of the surcharge
13 authorized under AS 43.55.200. Reimposition of the surcharge begins
14 on the first day of the calendar quarter next following the commis-
15 sioner's receipt of the commissioner of administration's report under
16 (b) of this section. Before the first day of reimposition of the
17 surcharge authorized by this subsection, the commissioner shall make a
18 reasonable effort to notify all persons who are known to the depart-
19 ment to be required to pay the surcharge under AS 43.55.200 that the
20 surcharge will be reimposed.

21 * Sec. 9. AS 43.55.240 is amended to read:

22 Sec. 43.55.240. SURCHARGE NOT IMPOSED. The surcharge authorized
23 by AS 43.55.200 is not levied during any fiscal year for which the
24 estimated revenue from the surcharge would be sufficient to restore
25 the combined balances [BALANCE] of the oil and hazardous substance
26 release response fund and the oil and hazardous substance municipal
27 impact fund on the first day of the fiscal year to at least
28 \$75,000,000 [\$50,000,000], and

29 (1) the legislature does not, during the regular
1 legislative session preceding the first day of the fiscal year, appro-
2 priate money from the general fund

3 (A) to the oil and hazardous substance release re-
4 sponse fund sufficient to restore the balance of that fund on the
5 first day of the fiscal year to at least \$50,000,000; and

6 (B) to the oil and hazardous substance municipal
7 impact fund sufficient to restore the balance of that fund on the
8 first day of the fiscal year to at least \$25,000,000; or

9 (2) the legislature, during the regular legislative session
10 preceding the first day of the fiscal year, appropriates money from
11 the general fund

12 (A) to the oil and hazardous substance release re-
13 sponse fund sufficient to restore the balance of that fund on the
14 first day of the fiscal year to at least \$50,000,000 and, because
15 of gubernatorial veto or reduction in the amount of the appropri-
16 ation, restoration of the balance of the fund to at least
17 \$50,000,000 does not become law: or

18 (B) to the oil and hazardous substance municipal
19 impact fund sufficient to restore the balance of that fund on the
20 first day of the fiscal year to at least \$25,000,000 and, because
21 of gubernatorial veto or reduction in the amount of the appro-
22 priation, restoration of the balance of the fund to at least
23 \$25,000,000 does not become law.

24 * Sec. 10. Section 3, ch. 112, SLA 1989 is amended to read:

25 Sec. 3. APPLICATION OF AS 43.55.240. (a) AS 43.55.240, added
26 by sec. 2 of this Act, does not apply to prevent the levy and collec-
27 tion of the surcharge imposed by AS 43.55.200 until the first day of
28 the fiscal year next following the day on which the combined balances
29 [BALANCE] of the oil and hazardous substance release response fund and
30 the oil and hazardous substance municipal impact fund first exceed
31 \$75,000,000 [EXCEEDS \$50,000,000].

32 (b) The commissioner of administration shall certify to the
33 commissioner of environmental conservation, the commissioner of reve-
34 nue, the commissioner of community and regional affairs, and the
35 division of legislative finance the date on which the combined bal-
36 ances [BALANCE] of the oil and hazardous substance release response
37 fund and the oil and hazardous substance municipal impact fund first
38 exceed \$75,000,000 [EXCEEDS \$50,000,000].
39

Section 11 of the Sponsor Substitute is changed.

COMMENT. Technical change to make this provision consistent with terminology used elsewhere in the bill.

10 Sec. 11. AS 46.03.822(a) is amended to read:

11 (a) Notwithstanding any other provision or rule of law and
12 subject only to the defenses set out in (b) of this section, [AND] the
13 exception set out in (i) of this section, and the limitation set out
14 in (k) of this section, the following persons are strictly liable,
15 jointly and severally, for damages to persons or property, whether
16 public or private, including damage to the natural resources of the
17 state, [OR] a municipality, or a village council, [AND] for the costs
18 of response, containment, removal, or remedial action incurred by the
19 state, [OR] a municipality, or a village council, and for the incre-
20 mental costs of providing public services that are incurred by the
21 state, a municipality, or a village council [,] resulting from an
22 unpermitted release of a hazardous substance or, with respect to
23 response costs, the substantial threat of an unpermitted release of a
24 hazardous substance:

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

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

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

7 (4) any person who by contract, agreement, or otherwise
8 arranged for disposal or treatment, or arranged with a transporter for
9 transport for disposal or treatment, of hazardous substances owned or
10 possessed by the person, other than domestic sewage, or by any other
11 party or entity, at any facility or vessel owned or operated by an-

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

12 other party or entity and containing hazardous substances, from which
13 there is a release, or a threatened release that causes the incurrence
14 of response costs, of a hazardous substance;

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

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.

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COMMENT. This provision, which added village councils to the response liability exemption provisions of existing law, was deleted at the request of the Department of Law.

20 Sec. 12. AS 46.03.822(h) is amended to read:

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

COMMENT. Language requiring judicial recoveries to be reduced by the amount of any grant monies received was deleted because it is unnecessary.

28 * Sec. 13. AS 46.03.822 is amended by adding a new subsection to read:
29 (k) A municipality or village council may recover under this
1 section. The recovery by a municipality or village council under this
2 section must be reduced by an amount equal to amounts received by the
3 municipality or village council as grants under AS 29.60.500 -
4 29.60.590 and AS 46.08.072.

COMMENT. See General Comment #2 below.

5 * Sec. 14. AS 46.03.900 is amended by adding new paragraphs to read:

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

14 (36) "village council" has the meaning given in AS 46.04.-
15 900.

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.

COMMENT. This provision, which would require the state to enter into cooperative agreements with village councils regarding oil discharge matters, was deleted at the request of the Department of Law.

46.04.020(e) is amended to read:

department shall enter into negotiations for memoranda of understanding or cooperative agreements with the United States Coast Guard, the United States Environmental Protection Agency, municipalities, and other persons in order to facilitate coordinated and effective oil discharge response in the state;

provide for cooperative review of oil discharge contingency plans submitted to the department under AS 46.04.030;

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

provide for cooperative oil discharge notification procedures.

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

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

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

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

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

(4) provide for cooperative oil discharge notification procedures.

COMMENT. This provision which requires the commissioner of DEC to consult with local officials and the public prior to approval of an oil spill discharge contingency plan has been deleted. The issue will be handled in the general "Oil Spill Package".

1 * Sec. 16. AS 46.04.030 is amended by adding a new subsection to read:

2 (h) Before approving an oil discharge contingency plan under
3 this section, the commissioner shall

4 (1) consult with municipal officials and with representa-
5 tives of affected regions and community organizations; and

6 (2) disseminate the draft plan to the public for review and
7 comment.

COMMENT. This section drops the proposed change in the Sponsor Substitute which added "discharged oil" as unnecessary and potentially confusing. This section also makes conforming changes as discussed above in connection with Section 11 of the Sponsor Substitute.

8 * Sec. 17. AS 46.04.900(5) is amended to read:

9 (5) "containment and cleanup" includes all direct and
10 indirect efforts associated with the prevention, abatement, contain-
11 ment, or removal of discharged oil or a pollutant, and the restoration
12 of the environment to its former state; when applied to expenses, the
13 term includes the incremental costs of providing public services
14 incurred in response to an actual discharge of oil or a pollutant and
15 the costs of providing additional public services incurred in response
16 to the actual discharge of the oil or pollutant, and all incidental
17 administrative costs;

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;

COMMENT. Definition of village council no longer necessary
because of change in Section 15 of the Sponsor Substitute
discussed above.

18 * Sec. 18. AS 46.04.900 is amended by adding new paragraphs to read:

19 (18) "public services" means any function performed or
20 service provided by the state, including functions not previously
21 performed and services not previously provided by the state;

22 (19) "village council" means each of the following in the
23 unorganized borough or within a borough if the power, function, or
24 service for which the department seeks to assign responsibility under
25 the memorandum of understanding or cooperative agreement is not ex-
26 exercised or provided by the borough on an areawide or nonareawide basis
27 at the time negotiations are entered into, if that council has irrevocably
28 waived, in a form approved by the Department of Law, any claims
29 to sovereign immunity that might arise in connection with the exercise
1 of the council's authority under this chapter:

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

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

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

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.

COMMENT. this change deletes the social and economic assessment authority granted to DEC under the Sponsor Substitute and shifts the responsibility to CRA as discussed above. Now, DEC must initiate the assessment immediately following a declaration of disaster emergency. Funds to pay for this assessment come out of the 470 Fund but are not deducted from \$5 million grant allowance. This section also clarifies that both impact assessment and municipal grant funds come out of the 470 Fund.

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

Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use money from the fund to

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

(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 council 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; and

(7) make grants under AS 46.08.072.

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

Sec. 46.08.040. PURPOSES OF THE FUND. In addition to the appropriations to 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 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

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(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; and

(7) make grants under AS 46.08.072.

COMMENT. This change, requested by DEC, simply restores the word "necessary" now in existing law (The commissioner must determine that expenses sought to be reimbursed were for a "necessary" emergency first response to a release or threatened release). Deletion of the term "village council" was inadvertent.

COMMENT. The requirement that an "emergency first response" grant application must be accepted or rejected by DEC within "48 hours" of receipt has been changed to "as promptly as possible".

* Sec. 21. AS 46.08 is amended by adding a new section to read:

Sec. 46.08.072. GRANTS. (a) The department may provide grants to a municipality or a village council to enable the municipality or village council to carry out an emergency first response to 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. A grant may be used by the grant recipient to pay costs incurred by the recipient for the direct efforts associated with the prevention, abatement, clean up, containment, or removal of oil or a hazardous substance and all incidental administrative costs.

(b) When an applicant submits an application for a grant under this section,

(1) if the release or threatened release of oil or a hazardous substance constitutes a catastrophic oil discharge or a disaster emergency, the department shall review and accept or reject a grant application within 48 hours after receipt of the application;

(2) if the release or threatened release of oil or a hazardous substance does not constitute a catastrophic oil discharge or a disaster emergency, the department shall review and accept or reject a grant application as promptly as possible to permit the municipality or village council to execute a proper response.

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

(1) eligibility requirements of applicants;

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

(3) standards for the evaluation of applications; and

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

Sec. 46.08.072. GRANTS. (a) The department may make grants to a municipality or a village to enable the municipality or village to carry out an emergency first response to 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. A grant may be used by the grant recipient to pay costs incurred by the recipient for the direct efforts associated with the containment and clean up of oil or a hazardous substance and related incidental administrative costs.

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

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

(1) eligibility requirements of applicants;

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

(3) standards for the evaluation of applications; and

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

(d) Regulations adopted under (c) of this section must include as a factor the applicant's ability to provide an emergency first response if the grant application is not approved.

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

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

26 (d) Regulations adopted under (c) of this section must include
27 as a factor the applicant's ability to provide an emergency first
28 response if the grant application is not approved.

29 (e) In reviewing and making a determination about the
1 application submitted under this section, the department may not
2 consider whether the amount to be expended as a grant is an expense
3 recoverable under AS 46.08.070.

COMMENT. Conforming change. See discussion regarding Section
11 of the Sponsor Substitute.

4 * Sec. 22. AS 46.08.900(3) is amended to read:

5 (3) "containment and cleanup" includes the direct and
6 indirect efforts associated with the prevention, abatement, contain-
7 ment, or removal of oil or a hazardous substance, and the restoration
8 of the environment; when applied to expenses, the term includes the
9 incremental costs of providing public services and the costs of pro-
10 viding additional public services incurred by the state in response to
11 the discharge of the oil or hazardous substance, and all incidental
12 administrative costs;

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;

COMMENT. Technical change to clarify that the Commissioner
in these cases is the Commissioner of the Department of
Community and Regional Affairs.

13 * Sec. 23. AS 46.08.900 is amended by adding new paragraphs to read:

14 (11) "public services" means any function performed or
15 service provided by the state, including functions not previously
16 performed and services not previously provided by the state;

17 (12) "village council" means each of the following in the
18 unorganized borough or within a borough if the power, function, or
19 service for which the grant application is submitted is not exercised
20 or provided by the borough on an areawide or nonareawide basis at the
21 time the grant application is submitted, if that council has irrevocably waived, in a form approved by the Department of Law, any claims
22 to sovereign immunity that might arise in connection with the use of
23 grant money under this chapter:

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

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

28 (C) a council recognized by the commissioner under
29 regulations adopted by the department to determine and give
1 official recognition of village entities under AS 44.47.150(b).
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16 * Sec. 14. AS 46.08.900 is amended by adding new paragraphs to read

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

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

27 (A) has irrevocably waived, in a form approved by
28 Department of Law, any claims to sovereign immunity that m
29 arise in connection with the use of grant money under this c
1 ter; and

2 (B) is

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

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

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

— COMMENT. No change —

3 * Sec. 24. AS 46.09.060(b) is amended to read:

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

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.