

SCOMM

62:14

Municipality of Anchorage



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4433
TOM FIJK,
MAYOR

OFFICE OF THE MUNICIPAL MANAGER

April 6, 1990

Senator Drue Pearce
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Re: SB 359, an act relating to matters of environmental conservation, to state assistance to municipalities and village councils for expenses relating to abatement of environmental degradation, etc.

Dear Senator Pearce:

The Municipality of Anchorage has reviewed SB 359 and supports the intent of the bill. However, Sec. 29.60.530 needs clarification. This section currently reads, "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 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."

Per this section, what criteria will be used to determine whether or not an expenditure is beyond the reasonable capability of the municipality or village council? Also, are municipally owned and operated utilities included in this bill?

In our opinion, a dollar amount per incident needs to be established. Also, the grants should include funds for reimbursement of expenses incurred prior to the application for or the actual receipt of a grant. An easy method for expeditious grant approval would be to have the Department of Environmental Conservation (DEC) evaluate the spill and conclude whether the remediation cost would exceed the base amount as established.

The Municipality of Anchorage supports the bill if the section is clarified and larger municipalities are not excluded from grant eligibility.

If you have any questions, please contact Ken Lythgoe, Director of Property & Facility Management at 786-8114.

Sincerely,


Larry D. Crawford
Municipal Manager

MAR 25 1990

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☒ 1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

☐ 1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

☐ P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-4300
FAX: (907) 463-5295

March 7, 1990

VIA FACSIMILE

Honorable Drue Pearce, Chair
Senate Special Committee
on Oil and Gas
Capitol Building
P.O. Box V
Juneau, AK 99811

Dear Chairwoman Pearce:

You have asked a question concerning SB 359 and the interaction between local spill response ordinances and regional contingency plans. In particular, you asked whether a regional oil discharge contingency plan developed pursuant to AS 46.04.210 would preempt a conflicting municipal oil spill response ordinance adopted pursuant to SB 359.

Our short answer is that a local ordinance which conflicts with the terms of a regional contingency plan would be preempted. However, local ordinances would not necessarily have to be consistent in that they could require more stringent actions or different actions and not necessarily be considered in conflict with the regional plan adopted by the Commissioner of Environmental Conservation. Our reasoning is set forth below.

1. Home Rule Municipalities

Under article X section 11 of the Alaska Constitution, a home rule borough or city "may exercise all legislative powers not prohibited by law or by charter." Article X section 1 of the Alaska Constitution mandates that "[a] liberal construction be given to the powers of local government units."

The Alaska Supreme Court has made clear on a number of occasions that:

a municipal ordinance of a home rule municipality is not necessarily invalid because it is inconsistent or in conflict with a state statute. The question of validity of the conflicting

Chairwoman Pearce

March 7, 1990
Page 2

ordinance rests on whether the exercise of authority has been prohibited to home rule municipalities. 'The prohibition must be by express terms or by implication such as where the statute and ordinance are so irreconcilable that one cannot be given its substantial effect if the other is to be accorded the weight of law.'

Area Dispatch, Inc. v. City of Anchorage, 544 P.2d 1024, 1025 (Alaska 1976) (quoting Jefferson v. State, 527 P.2d 37, 43 (Alaska 1974)).

There exists no express prohibition against a home rule municipality acting by ordinance to contain, clean up or prevent the release of oil or hazardous substances within its own borders.¹ Accordingly, unless state law and a municipal ordinance "are so irreconcilable that one cannot be given its substantial effect if the other is to be accorded the weight of law," then the ordinance is a valid exercise of a home rule power. Acevedo v. City of North Pole, 672 P.2d 130, 132 (Alaska 1982); Area Dispatch, Inc., supra.

AS 46.04.110 provides that "[i]f a conflict occurs between a provision of AS 46.04 or a "regulation, order, decision or other determination of the department" made under AS 46.04 and an municipal charter, ordinance or other action, the Department's action will prevail."² AS 46.04.210 directs the Commissioner of Environmental Conservation to prepare a regional master oil and hazardous substance discharge contingency plan for any region in which a person submits a contingency plan under AS 46.04.030. The plan must "clarify and specify the respective responsibilities" of agencies of the state, municipalities of the state, appropriate federal agencies and private parties. AS 46.04.210(b). The statute, however, does not expressly mandate that local response actions be consistent with the plan. The regional plan itself does not have the force of law since it is not a regulation or statute.

Assuming that a regional plan adopted by the Commissioner is a "decision or other determination of the department" under AS 46.04.210, local ordinances could not conflict with the plan.

¹ AS 29.10.200 does limit home rule municipalities powers by requiring compliance with the provisions in AS 29.35.500 -- 590 concerning hazardous chemicals, materials and wastes listed under federal regulations.

² 18 AAC 75.160 provides that the regulations implementing the oil and hazardous substance release statutes do "not preempt local or other governmental control as stringent or more stringent than the requirements of [that] chapter."

Chairwoman Pearce

March 7, 1990
Page 3

However, local ordinances would not necessarily have to be consistent in that they could require more stringent actions or different actions and not necessarily be considered in conflict with the plan.

Section 1 of SB 359 expands present law by allowing a municipality to enforce an oil or hazardous response ordinance outside of its boundaries. This is an additional grant of legislative power to both general law and home rule municipalities. Again, unless the statute granting this authority requires it to be exercised in a manner consistent with regional response plans, a home rule municipality would be free to impose inconsistent requirements as long as they were at least as stringent as the Department's requirements.

2. General Law Municipalities

A general law municipality may only exercise legislative powers conferred upon it by law. AS 29.04.020; AS 29.25.010. In construing general law municipalities' legislative authority, the Alaska Supreme Court has noted that

[m]erely because the state has enacted legislation concerning a particular subject does not mean that all municipal power to act on the subject is lost. We have consistently rejected application of any such concept in our cases dealing with home rule municipalities. We do so now with respect to general law municipalities because our constitution requires that their powers be liberally construed as well. We believe that the proper accommodation can be made between the state and general law municipalities by a rule, which determines preemption to exist, in the absence of an express legislative direction or a direct conflict with a statute, only where an ordinance substantially interferes with the effective functioning of a state statute or regulation or its underlying purpose.

Liberati v. Bristol Bay Borough, 584 P.2d 1115, 1122 (Alaska 1978).

Under section 1 of SB 359, a general law municipality could enforce an oil or hazardous response ordinance outside of its boundaries. Section 2 and 3 of SB 359 provide that second class boroughs and third class boroughs, respectively, may by ordinance exercise authority 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.

Chairwoman Pearce

March 7, 1990

Page 4

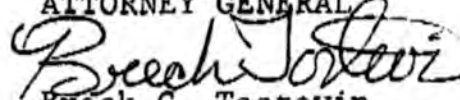
As discussed above in the context of charter municipalities, unless the statute granting this authority requires it to be exercised in a manner consistent with regional response plans, a general law municipality would, under AS 46.04.110, be free to impose inconsistent requirements as long as they did not conflict with the regional plan or AS 46.04 or a regulation adopted under that chapter.

In conclusion, if municipal oil or hazardous substance response ordinances are to be consistent with regional contingency plans under AS 46.04.210 then specific language should be included in SB 359 requiring consistency. Additionally, language might also be added to ensure that a regional contingency plan falls within the protections of AS 46.04.210 since it is arguably unclear whether a plan would be considered a "decision or other determination of the department." The committee also might consider clarifying the status of the state plan under AS 46.04.200 and regional plans under AS 46.04.210. For example, does the Commissioner's duty to clarify and specify the respective responsibilities of certain parties carry the authority of state law.

If you have any further questions, or if we can be of further assistance, please contact us.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL



Breck C. Tostevin
Assistant Attorney General

BCT:bi

cc: Jeff Bush

Master

Alaska State Legislature

3111 C Street, Suite 150
Anchorage, Alaska 99503
(907) 561-2038



During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-4993

Senator Drue Pearce
District G

March 7, 1990

Senator Bettye Fahrenkamp, Chair
Senate Resources Committee
Capitol, Room 125
Juneau, Alaska

Dear Senator Fahrenkamp:

The Senate Special Committee on Oil and Gas has just passed out CS for Sponsor Substitute for Senate Bill 359. This legislation proposes a reasonable system which will allow municipalities and village councils to request and obtain state financial assistance from the "470 Fund" to mitigate social and economic impacts resulting from releases of oil or hazardous substances. The bill also would modify existing law to clarify the scope of liability under "strict liability" provisions contained in Title 46 and makes other changes designed to enhance a community's ability to deal with spills. While the Committee has spent many hours on this legislation and is generally satisfied with the final product, there are several issues I'd like to bring to your attention which may require further consideration:

1. **TRIGGER MECHANISM:** At the suggestion of the prime sponsor, Senator Szymanski, the Committee reviewed the question of whether to set up a mechanism to "trigger" the availability of state assistance. After considering several options, we decided a trigger mechanism was a good idea to promote stability but that we did not have to re-invent the wheel. Instead, the bill requires a declaration of a disaster emergency by the Governor under existing law before grant monies for municipal impact assistance under Section 5 of the bill may be expended. This often utilized system appears to work and should give the Administration the ability to respond quickly and appropriately in a variety of situations (see also Recommendation #53 from the Executive Summary of the Report of the Alaska Oil Spill Commission attached). Nevertheless, you should know that many of the

communities interested in this legislation do not agree with our decision and are concerned that this approach may be unnecessarily burdensome. Please note that we did not adopt a similar trigger system for emergency first response assistance.

2. RETROACTIVITY. We were asked to make retroactive a change to the "strict liability" provisions of existing law which clarifies that "spillers" are liable for certain additional service costs incurred by the state, municipalities and village councils. The Committee considered and unanimously rejected this request. The Committee also intended to preclude use of state impact assistance for prior incidents.

3. LIMITS. The Committee has imposed a limit of \$10 million per declaration of disaster emergency for municipal impact assistance grants available through CRA under Section 5 of the bill but has not set a limit on the amount of "emergency first response" funds (cash advances and reimbursements) available through DEC under later sections of the bill. Due to time constraints, the latter provision was not fully evaluated by the Committee and probably requires further discussion along with the question of whether the \$10 million municipal impact assistance allocation should be modified to deal with situations where there isn't enough "470 fund" money to go around.

4. OTHER. There are at least two technical issues that were not settled for one reason or another: a) the question of whether to use the term "village" or "village council" is unresolved because we have received conflicting advice from the Administration; and b) other provisions in the bill may have to be modified to accommodate structural changes concerning "lead agency" and related matters that will be handled in separate legislation. Due to the complexity of the bill and the large number of amendments to the Sponsor Substitute, there also may be additional minor technical changes warranted although we tried our best to iron these out.

Thanks, Bettye. If you have any questions please let me know.

Sincerely,



Drue Pearce

DP:DR

SPILL

The Wreck of the *Exxon Valdez*

Implications for Safe Marine Transportation



State of Alaska



January 1990

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.

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.

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.

Recommendation 53
Local service impact funding

Recommendation 54
Full-cost reimbursement

SECTIONAL ANALYSIS - SPONSOR SUBSTITUTE SENATE BILL 359

This legislation is based on proposals first offered by mayors of municipalities whose communities bore the brunt of the Exxon Valdez disaster. To a great extent, the document follows a suggested model prepared by Perkins Coie, an Anchorage-based law firm, to broaden the ability of municipalities and village councils to address and receive compensation for their efforts to contain and clean up spilled oil and hazardous substances. The earlier draft was then revised by eliminating selected elements in order to limit the sources from which municipalities and village councils may receive compensation.

This bill establishes a second fund, parallel to, but not duplicative of, the existing oil and hazardous release response fund. The principal distinction between the two funds is this: the existing fund is intended to be the principal source of money for expenditures incurred by any eligible party within the state directly for oil and hazardous substance discharge containment and clean up, and by the state (alone) for incremental and additional public services prompted by that containment and clean up; the new fund would serve as a source of assistance to municipalities and village councils (alone) for incremental and additional public services prompted by necessary containment and clean up. There would be no overlap.

MUNICIPAL EXTRA-JURISDICTIONAL AUTHORITY:

These changes, part of the Perkins Coie memo that resulted in an early draft, were sought by mayors and officials of municipalities who bore the burden of the Exxon Valdez spill and clean up.

Sections 1-3, amendments to various sections of AS 29.35, extend the authority of municipalities to exercise containment and clean up of spilled oil and hazardous substances if the spill occurs outside the municipal boundaries. The change made by Section 1 specifically prescribes how extrajurisdictional containment and clean up authority may be legally assumed by a municipality while the changes made by Sections 2 and 3 authorize the exercise of extrajurisdictional containment and cleanup authority for second and third class boroughs, respectively. (First class boroughs already enjoy general authority; home rule boroughs (e.g. North Slope Borough) and unified municipalities (e.g. Anchorage, Juneau,

Sitka) already enjoy that authority under existing law, so it is not necessary to amend the law in any way to authorize the municipalities of those classes to so act.)

STATE FINANCIAL ASSISTANCE TO MUNICIPALITIES FOR MUNICIPAL SERVICES.

SECTION 4 establishes a new "oil and hazardous substance municipal impact fund" and describes the manner of its administration. The fund is established in the Department of Community and Regional Affairs, and that department has principal responsibility for its administration.

There is a codified statement of policy and purpose (AS 29.,60.500) underpinning the municipal impact assistance program. Sections establish the fund and spell out its general purpose ("to make grants under AS 29.60.530 for actual expenses incurred by municipalities and village councils" - AS 29.60.510) and authorize appropriations by the legislature to the fund (AS 29.60.520).

The principal provision applicable to the new "impact assistance fund" is AS 29.60.530. The legislation would permit the Commissioner of Community and Regional Affairs to make grants to a municipality or village council that is

...affected by 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." (page 3, lines 17-21).

The municipal expenditures that may qualify for grant assistance are those affected by prevention, containment, and clean up efforts related to functions or services and incidental administrative costs related to these functions or services in eight general areas (pages 3-4).

Grant approval would be based on the determination by the commissioner by application of the three factors specifically identified in subsection (c) together with any "other criteria the department considers appropriate." (page 4, line 23). To better assure that the grants are used to offset extraordinary municipal initiatives in response to a spill emergency, the section includes language prohibiting the municipality receiving the grant from using the grant to reduce municipal tax rates or retire its bonded indebtedness(subsection d).

Subsection (e) authorizes the commissioner to prioritize or rank grant applications and specifies the ranking criteria.

The remainder of the new sections in Section 4 are intended to provide for smooth operation of the fund.

AS 29.60.540 establishes a record-keeping requirement.

AS 29.60.550 directs preparation and submission of an annual report.

AS 29.60.560 permits the commissioner to adopt necessary regulations.

AS 29.60.590 sets out pertinent definitions.

For the purposes of this Section, a village council may apply for a municipal impact fund grant, a) independently, if the community is part of the unorganized borough, or b) through the organized borough if the community is part of the organized borough and the borough exercises the function or service for which the grant application is submitted or c) independently even if the village is part of the organized borough, if the borough does not exercise the function or service for which the grant application is submitted.

FINANCING THE NEW MUNICIPAL IMPACT ASSISTANCE FUND.

SECTIONS 5-10 identify a source of money for the new fund. That source is the same nickel-per-barrel addition or surcharge to the state severance tax (technically, the oil and gas "properties production tax" as it applies only to produced oil) first imposed during the 1989 legislative session to support the oil and hazardous substance release response fund in AS 46. The proposed legislation contemplates that the proposed fund will have a normal operating balance of \$25 million available to assist municipalities.

SECTION 5, amending AS 43.55.220, authorizes use of revenue from the surcharge for appropriation into the municipal impact assistance fund.

SECTION 6 amends the mechanism applicable to trigger the off-again on-again feature of the nickel-per-barrel surcharge to make it applicable to expenditures from both the existing oil and hazardous substance release response fund and the proposed municipal impact fund.

SECTIONS 7 and 8 increase the benchmark figure applicable to the trigger mechanism from \$50 million to \$75 million.

SECTION 9 revises the mechanism so that, as a condition of surcharge imposition, the legislature must appropriate not only to restore the balance of the existing oil and hazardous substance release response fund to \$50 million, but also must restore the balance of the proposed municipal impact fund to \$25 million.

SECTION 10. The amendment proposed by this section, an uncodified provision, is intended to assure that, from the inception of the nickel-per-barrel surcharge, its collection is not to be suspended until a total of \$75 million is

received in order to meet the normal operating balances of the two funds -- \$50 million in the existing oil and hazardous substance release response fund and \$25 million in the proposed municipal impact fund.

The section also amends the existing statute to require the commissioner of administration to include the Commissioner of Community and Regional Affairs in its certification procedures.

OTHER TECHNICAL AND CORRECTIVE CHANGES.

The remaining bill sections make technical and corrective changes sought by mayors of municipalities and village council leaders who bore the brunt of the Exxon Valdez disaster and cleanup. Here, as noted earlier, there have been changes incorporated to assure that communities eligible for financial assistance under the municipal impact fund of AS 29.60 are not also eligible for assistance for those same expenditures from sources in AS 46.

SECTION 11, an amendment to AS 46.03.822(a) defines the scope of a person's liability under the "Strict Liability" provisions of that section. That liability is extended to "incremental costs of providing public services that are incurred by state or a municipality or a village council

SECTION 12, amends the strict liability provisions to protect a village council, as well as the state or a municipality from liability for costs or damages incurred in response to release or threatened release of a hazardous substance.

SECTION 13 limits the amount a municipality or a village council may recover under the strict liability statutes if it also receives impact grant funds.

SECTION 14 offers a new definition of those "public services".

SECTIONS 15-18 AS 46.04 generally addresses oil discharge and cleanup.

SECTION 15 AS 46.04.020(e) establishes a basis for agreements between parties to facilitate containment and cleanup. Amends the reimbursement agreement provision of AS 46.020(e), adds to the parties with whom the Department of Environmental Conservation may enter into cooperative agreements to include municipalities and village councils. (The change supports a compensation arrangement modified by amendments made in section 19, later in the bill)

SECTION 16 Oil discharge contingency plans are documents important to the protection of the environment. The amendment made by addition of subsection (h) directs the commissioner of

environmental conservation to consult with a larger number of groups and to disseminate the draft contingency plans to the public for review and comment.

SECTION 17 amends the definition of "containment and cleanup" applicable to AS 46.04 to add "discharged oil" as a legitimate object of containment and cleanup efforts. More significantly for our purposes, the amendment of the definition of the term incorporates reference to certain incremental and additional public services costs "incurred in response to the actual discharge of the oil or a pollutant" as an expense qualifying within the definition.

SECTION 18 sets out additional definitions for two terms, "public services" and "village council," that are added by the changes made to provisions of AS 46.04 in the bill. The definition of "public services" is limited to STATE public services; incremental municipal public services would be compensable under AS 29.60, the municipal impact assistance fund.

The definition of village council is consistent with the definitions in previous sections of the bill

SECTIONS 19-23 amend the scope of expenses incurred that are compensable from the oil and hazardous substance release response fund, the \$50 million dollar fund.

SECTION 19 amendments would 1) permit the money in the fund to be used for "assessments," including assessments of social and economic effects of a discharge or threatened discharge; 2) authorize compensation of costs incurred by a village council as a result of a discharge or threatened discharge; and 3) serve as a source of grants.

SECTION 20 incorporates amendments substituting mandated payment of compensation for actual abatement expenses incurred, whether by a municipality or by a village council under an oil spill cleanup agreement, and further broadens authorized payment by the state from the fund if the response of the municipality or village council was an "appropriate" response, not just a "necessary emergency first response" to a release or threatened release.

SECTION 21. The grant provision of this section is new. The section spells out, in much greater detail than in existing law, how municipalities and village councils may receive "grants...to enable [them] to carry out an emergency first response to a release or threatened release." The grants would be payable on application, based on short deadlines under regulations approved by the Commissioner of Environmental Conservation.

SECTIONS 21 and 22 make the same amendments to the definition of "containment and cleanup" and add definitions of "public

services" and "village council" to AS 46.08 that are described earlier with reference to the changes made to AS 46.04.

SECTION 23. AS 46.09 is a chapter that addresses release of hazardous substances. This section is a technical amendment to AS 46.09.060(b) which gives municipalities, for the purposes of environmental protection, the broadest possible authority under all pertinent environmental-related chapters of AS 46 exercisable within the municipality's boundaries. (This change complements the amendments proposed in SECTIONS 1-3 applicable to extra-jurisdictional authority outside the municipality's boundaries.)

SECTIONS 24 and 25 make the same amendment to the definition of "containment and cleanup" and add the definition of "public service" to AS 46.09 that are described earlier with reference to the changes made to AS 46.04 and AS 46.08.

SECTION 26 immediate effective date.

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

February 8, 1990

POSITION PAPER

RE: Sponsor Substitute for Senate Bill 359

SPONSOR: Senator Szymanski

Program Effects of Bill:

Sections 1 - 3 of the bill would expand municipal powers to respond to a release of oil or a hazardous substance by authorizing extraterritorial exercise of such powers and explicitly authorizing exercise of these powers by ordinance by second and third class boroughs. Section 4 establishes an oil and hazardous substance municipal impact fund in the Department of Community and Regional Affairs to provide assistance to municipalities and village councils affected by a release and provides guidelines for the administration of the fund. As provided in Sections 5 - 10, the source of money for the fund is the five-cent-a-barrel surcharge which shall be deposited in the fund until the cumulative total of the balances in this fund and the oil and hazardous substance release fund amounts to \$75,000,000.

Sections 11 - 13 deal with liability issues. Sections 14, 18 and 23 add definitions for public services and village council. Section 15 adds municipalities and village councils to the list of entities with which DEC may enter into agreements when dealing with the discharge of oil. Section 16 provides for expanded public participation in the contingency planning process. Section 17 adds incremental costs of public services to containment and cleanup costs. Section 19 adds to purposes of the oil and hazardous material clean up fund social and economic assessments. Section 20 would require DEC to reimburse a municipality or village council for actual expenses associated with the abatement of a spill. Section 20 gives DEC the authority to make grants to municipalities and village councils to carry out emergency first response to a release. Section 21 and section 25 would include additional costs eligible as containment and cleanup costs. Section 26 adds a definition for public services.

Comments:

The administration recognizes the need for a mechanism to address municipal social and economic impacts resulting from the catastrophic release of oil and hazardous substances into the environment. Rather than create a new fund, as proposed in

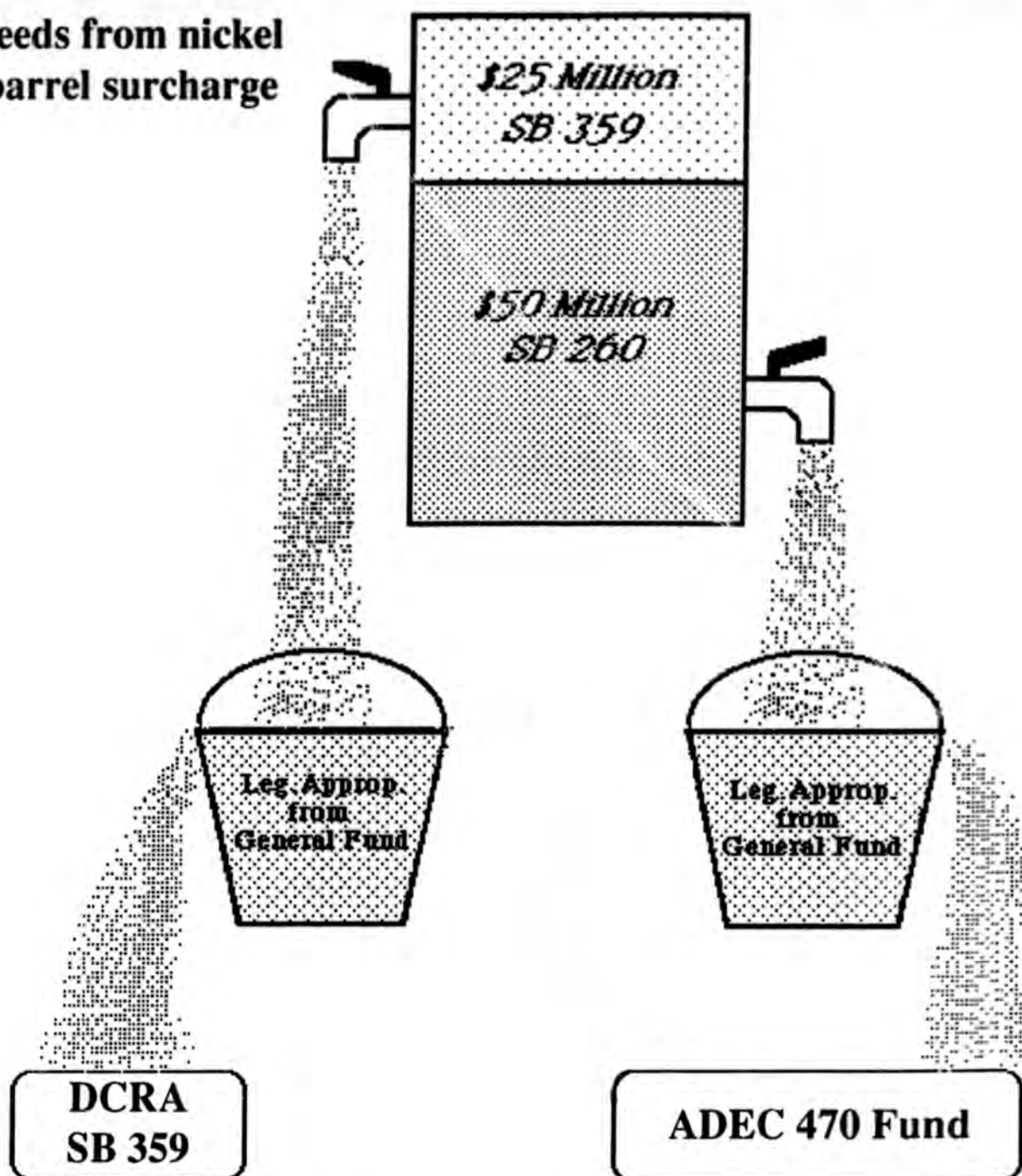
- ☐ P.O. BOX 8
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700
- ☐ 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

Sponsor Substitute for Senate Bill 359
February 8, 1990
Page Two

this bill, however, the administration would prefer to see the utilization of existing structures. The most appropriate mechanism to address these impacts would be to amend the existing oil and hazardous substance release response fund statutes to address community needs. Under such a mechanism, ten percent of the fund balance, or as much as \$5 million, would be administratively transferred from the oil and hazardous substance release response fund to the Department of Community and Regional Affairs for distribution to respond to community social and economic impacts. At this time, the administration does not believe it is necessary to raise the existing \$50 million cap on the oil and hazardous substance release response fund.

John Bertram DC, CNA
For David G. Hoffman, Commissioner

**Proceeds from nickel
per barrel surcharge**



- * Social and economic impact assistance fund in DCRA
- * Grants to municipalities and village councils for costs of incremental and additional public services
- * Changes to Title 29 to broaden authority of municipalities and village councils to deal with oil and hazardous substance discharges
- * DCRA lead agency

CHANGES TO TITLE 46

- * 470 Fund may pay for social and economic impact assessment
- * Establishes grant program to communities for emergency first response
- * Expands powers of municipalities and village councils to deal with oil and hazardous substance discharges

- * Emergency first response cleanup, containment and abatement
- * Contingency plan
- * Reimbursement agreements with communities for emergency 1st response
- * Costs relating to response office, response depots, response corps (including administrative expenses)
- * Costs related to reimbursement actions
- * Matching funds for CERCLA
- * Need for State to seek recovery
- * No capital expenditures
- * ADEC lead agency

STATUS OF OIL SPILL RESPONSE FUND

February 1, 1990

FUND APPROPRIATIONS

Non Exxon Account Balance on 1/15/90	\$ 1,524.0
#48815 General Fund	32,000.0
#48715 General Fund	10,000.0
#48717 Program Receipts	10,000.0
#48701 Program Receipts	<u>20,000.0</u>
TOTAL	73,524.0

EXPENDITURES AND OBLIGATIONS

Exxon Spill Expenditures by DEC to 12/31/89	23,397.2
Exxon Spill Obligations by DEC to 12/31/89	<u>4,929.8</u>
SUBTOTAL	28,327.0
Exxon Spill Agency RSA's to 12/31/89	8,279.7
Exxon Spill Agency RSA's projected to 6/30/90	<u>2,202.8</u>
SUBTOTAL	10,482.5
Local Community Agreements to 5/31/90	8,203.0
DEC Exxon Spill Oversight and Monitoring to 6/30/90	19,248.8
261/264 Response Corps and Depots and Contingency Planning	4,371.8
Other Site Cleanup & Contracts & Spill Response Reserve	<u>2,890.9</u>
TOTAL	73,524.0

Note: Does not include direct expenditures by Exxon

EXXON VALDEZ OIL SPILL RESPONSE

On Scene Coordinators Office	554.5
Cleanup Monitoring	3,741.0
Waste Management & Disposal	694.9
Scientific Support	1,326.5
Treatment Technology Review	203.1
Documentation/Data Management	231.5
Logistical Support	12,820.2
Shoreline and Offshore Oil Tracking	2,633.8
Local Response Projects	610.5
Fish Inspection	530.2
Damage Assessment	<u>51.0</u>
TOTAL	23,397.2

ADEC REQUESTING RSA'S
VALDEZ OIL SPILL
ACTIVITY THROUGH 01/15/90

NUMBER	FY	SERVICING AGENCY	TOTAL	LIQUIDATION	BALANCE
1892050	89	LAW	50,900.00	-44,899.15	6,000.85
1892057	89	MARINE HIGHWAYS M/V AURORA	647,080.00	-487,559.35	159,520.65
1892058	89	MARINE HIGHWAYS M/V BARTLETT	122,700.00	-45,622.14	77,077.86
1892066	89	FISH AND GAME	1,379,100.00	00.00	1,379,100.00
1803003	90	ADMINISTRATION TELECOM.	3,000.00	-3,000.00	00.00
1803010	90	DNR	1,513,000.00	00.00	1,513,000.00
1803016	90	FISH AND GAME	2,446,500.00	00.00	2,446,500.00
1803020	90	ADMINISTRATION TELECOM.	450,000.00	00.00	450,000.00
1803021	90	ADMINISTRATION TELECOM.	1,198,000.00	00.00	1,198,000.00
1803025	90	ADMINISTRATION TELECOM.	9,000.00	-9,000.00	00.00
1803030	90	ADMINISTRATION OIL SPILL COMM.	490,000.00	-59,911.15	430,188.85
1803031	90	ADMINISTRATION TELECOM.	111,800.00	00.00	111,800.00
1803035	90	GOV. OFFICE ADMINISTRATION	185,200.00	-22,576.44	162,623.56
1803037*	90	ADMINISTRATION TELECOM	39,700.00	00.00	39,700.00
1803040	90	ADMINISTRATION GEN. SVC & SUPPLY	35,700.00	00.00	35,700.00
1803053	90	LABOR OCCUPATIONAL SAFETY	257,000.00	00.00	257,000.00
1803066	90	HEALTH AND SOCIAL SERVICES HUMAN SERVICES DEVELOPMENT	13,500.00	00.00	13,500.00
SUBTOTAL OTHER AGENCY:			8,952,180.00	-672,468.23	8,279,711.77

OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

COMMUNITY RESPONSE

JANUARY 30, 1990 STATUS

I. INITIAL AGREEMENTS

- - signed in early April 1989

COMMUNITY	AGREEMENT \$	PAID OUT	BALANCE CARRIED FORWARD
Valdez	500,000	15,000	0
Cordova	500,000	205,618	0
Chignik	50,000	0	0
Kenai Pen. Bor.	500,000	0	500,000
Kodiak Is. Bor.	500,000	332,354	167,646
Homer	100,000	44,992	0
Whittier	50,000	0	0
Chenega	50,000	50,000	0
TOTAL	\$2,250,000	\$647,964	\$667,646

WHAT DID THE MONEY BUY?

Cordova - - booming and protective measures of hatchery

Chenega - - support services in the port and harbor area in support of defense of hatchery and in water oil recovery. (community building, laundry, bank of telephones, water & power, 24 hour dock attendant, storage of materials dropped on beach, fax & copying)

Kodiak Is. Bor. -- baseline sampling of subsistence beaches (350K)
-- clean up on Tugidak Island (100K)

Homer -- supported HARC volunteer cleanup at Mars Cove

II. LOCAL RESPONSE PROJECTS - WINTER PLAN TO ADDRESS LOCAL PRIORITY BEACHES

- beach cleanup using type A techniques
- safety, planning, and implementation
- coordination of community response activities
- administration and overhead

COMMUNITY	AGREEMENT \$
Kodiak Is Bor.	2,060,000
Kenai Pen. Bor.	1,831,000
Valdez	485,000
Cordova	1,209,382
Chenega	572,000
Tatitlek	172,000
Chignik	222,000
Whittier	336,000
TOTAL	\$6,887,382

NOTE: TOTAL TO BE SPENT BY COMMUNITIES OF 470 FUNDS = \$8,202,992 (both agreements)

OIL & HAZARDOUS SUBSTANCE RELEASE RESPONSE FUND

COMMUNITY RESPONSE

JANUARY 30, 1990 STATUS

I. INITIAL AGREEMENTS

- - signed in early April 1989

COMMUNITY	AGREEMENT \$	PAID OUT	BALANCE CARRIED FORWARD
Valdez	500,000	15,000	0
Cordova	500,000	205,618	0
Chignik	50,000	0	0
Kenai Pen. Bor.	500,000	0	500,000
Kodiak Is. Bor.	500,000	332,354	167,646
Homer	100,000	44,992	0
Whittier	50,000	0	0
Chenega	50,000	50,000	0
TOTAL	\$2,250,000	\$647,964	\$667,646

WHAT DID THE MONEY BUY?

Cordova - - booming and protective measures of hatchery

Chenega - - support services in the port and harbor area in support of defense of hatchery and in water oil recovery. (community building, laundry, bank of telephones, water & power, 24 hour dock attendant, storage of materials dropped on beach, fax & copying)

Kodiak Is. Bor. -- baseline sampling of subsistence beaches (350K)
-- clean up on Tugidak Island (100K)

Homer -- supported HARC volunteer cleanup at Mars Cove

II. LOCAL RESPONSE PROJECTS - WINTER PLAN TO ADDRESS LOCAL PRIORITY BEACHES

- beach cleanup using type A techniques
- safety, planning, and implementation
- coordination of community response activities
- administration and overhead

COMMUNITY	AGREEMENT \$
Kodiak Is Bor.	2,060,000
Kenai Pen. Bor.	1,831,000
Valdez	485,000
Cordova	1,209,382
Chenega	572,000
Tatitlek	172,000
Chignik	222,000
Whittier	336,000
TOTAL	\$6,887,382

NOTE: TOTAL TO BE SPENT BY COMMUNITIES OF 470 FUNDS = \$8,202,992 (both agreements)

OIL SPILL GRANT SUMMARY

Page Three

COMMUNITY/PROJECT	PROJECT COST	DEC Clean-Up	Dept. of HHS	DCRA Project	DCRA Funded Projects	Referred Projects*	Second Round Consideration Projects
CITY OF WHITTIER							
1. Public Safety	42,000			42,000	25,000		17,000
2. Public Health Service	38,000		38,000			38,000	
3. Police Vehicle	18,000			16,000			18,000
4. Clinic	17,000		17,000			17,000	
5. EMT Training	4,000		4,000			4,000	
6. City Shop Fees	2,000			2,000			2,000
7. Garbage Disposal	3,375			3,375			3,375
8. Lost Market Revenues	5,385			5,385			5,385
TOTAL	129,760		59,000	70,760	25,000	59,000	45,760
COMMUNITY OF FORT GRAHAM							
1. Gov't Coordination	\$103,600			\$103,600			103,600
2. Mental Health Prgrm	74,304		\$74,304			74,304	
3. VISO Trainee	16,680			16,680			16,680
4. Septic System Maint.	70,000			70,000			70,000
5. Runway Resurface	200,000			200,000			200,000
6. Recreation Fac.	100,000			100,000			100,000
TOTAL	564,584		74,304	490,280		74,304	490,280
CITY OF CORDOVA							
1. Oil Spill Office	\$284,250			\$284,250			284,250
2. Child Care Facility	16,936		\$16,936			16,936	
3. Mental Health Prgrm	45,750		45,750			45,750	
4. Eyak Bldg. Expansion	26,500			26,500			26,500
5. Heritage Celebration	10,000			10,000			10,000
TOTAL	383,436		62,686	320,750		62,686	320,750

OIL SPILL GRANT SUMMARY - ROUTE #1 - APPLICATION DEADLINE SEPTEMBER 15, 1989

COMMUNITY/REQUEST	PROJECT COST	DEC Clean-Up	Dept. of HHS	DCRA Project	DCPA Funded Projects	Referred Projects*	Second Round Consideration Projects
CITY OF KODIAK							52,055
1. Spill Admin Costs	52,055			52,055			
2. Oiled Mayors Travel	30,000			30,000	30,000		
3. Oiled Mayors Admin.	25,000			25,000	25,000		
4. Socio/Econ. Study	600,000			600,000	600,000		
TOTAL	707,055			707,055	655,000		52,055
KODIAK ISLAND BOROUGH							
1. Mental Health	260,000		260,000			260,000	
2. Drug/alcohol. Program	45,942		45,942			45,942	
3. Batters Program	38,648		38,648			38,648	
4. Village Alcohol. Program	75,266		75,266			75,266	
5. Admin. Support	13,257	\$13,257				13,257	
6. Admin./Communication	155,150			\$155,150			155,150
7. Oil Cleanup Program	4,433,289	4,433,289				4,433,289	
8. Bounty Bag Program	1,231,000	1,231,000				1,231,000	
9. Geo-Textile Program	310,280	310,280				310,280	
10. Re-appraisal Impact	25,000			25,000			25,000
TOTAL	6,587,832	5,987,826	419,856	180,150		6,407,682	180,150
CITY OF LAKEVIEW							141,517
1. Mini-Hydro project	141,517			141,517			
TOTAL	141,517			141,517			141,517
CITY OF OUZINKIE							
1. Subsistence Foods	61,400			61,400	61,400		
TOTAL	61,400			61,400	61,400		

OIL SPILL GRANT SUMMARY

Page Two

COMMUNITY/PROJECT	PROJECT COST	DEC Clean-Up	Dept. of HHS	DCRA Project	DCRA Funded Projects	Referred Projects*	Second Round Consideration Projects
CITY OF VALDEZ							
1. Land Fill	500,000			500,000			500,000
2. Impact Film	35,848			35,848			35,848
3. Police Staffing	45,336			45,336			45,336
4. Counseling Staff	90,000		90,000			90,000	
5. Animal Incinerator	12,773			12,773			12,773
6. Tourism Marketing	79,000			79,000			79,000
7. Police Computer	23,311			23,311			23,311
8. Press Program	35,000			35,000			35,000
9. Socio-Econ. Study	245,000			245,000			
10. Civic Center Staff	10,014			10,014			10,014
11. Airport Carpeting	34,375			34,375			34,375
TOTAL	1,110,657		90,000	1,020,657		90,000	1,020,657
CITY OF SEWARD							
1. Police Impact	134,387			134,387			134,387
2. Mental Health Staff	105,421		105,421			105,421	
3. New Tele. System	7,085		7,085			7,085	
4. Vessel Motor Replcmt.	13,000			13,000			13,000
5. Media Marketing	100,000			100,000			100,000
6. Native Hlth. Prgrm.	178,500		178,500			178,500	
TOTAL	538,393		291,006	247,387		291,006	247,387
COMMUNITY OF ONEDEGA							
1. Shoreline Cleanup	21,600	21,600				21,600	
2. Solid waste Site	230,000			230,000			230,000
3. School Addition	750,000			750,000			750,000
TOTAL	1,001,600	21,600		980,000		21,600	980,000
CITY OF KENAI							
1. Dock Revenue Loss	41,760			41,760			41,760
TOTAL	41,760			41,760			41,760

OIL SPILL GRANT SUMMARY

Page Four

COMMUNITY/PROJECT	PROJECT COST	DEC Clean-Up	Dept. of HHS	DCRA Project	DCRA Funded Projects	Referred Projects*	Second Round Consideration Projects
COMMUNITY OF TATITUEN							
1. VPSO HOUSING	53,625			53,625	53,625		
2. CHILD ACTIVITY CTR	82,240		82,240			82,240	
TOTAL	135,865		82,240	53,625	53,625	82,240	
CITY OF SELDOVIA							
1. Oil Spill Coord. Progm	89,811			89,811			89,811
2. Reimbursements	78,945			78,945			78,945
3. Counseling Progm	24,621			24,621			24,621
TOTAL	193,377			193,377			193,377
GRAND-TOTALS	11,597,236	6,009,426	1,079,092	4,508,718	795,025	7,088,518	3,713,693

PROJECTS NOT ELIGIBLE FOR CURRENT FUNDING CYCLE DUE TO LATE SUBMISSION

CITY OF HOMER							
1. Main Dock Repair	50,000			50,000			50,000
2. User Fee Credits	136,600			136,600			136,600
3. Homer Public Safety	41,000			41,000			41,000
4. Alcohol/Drug Abuse	24,200		24,200			24,200	
5. Comm. Mental Health	53,720		53,720			53,720	
6. Staff Augmentation	16,000			16,000			16,000
7. Port Harbor Impact	30,300			30,300			30,300
8. Revenue Replacement	281,600			281,600			281,600
TOTAL	633,420		77,920	555,500		77,920	555,500

GRAND-TOTAL OF ALL PROJECTS
SUBMITTED UNDER THE OIL SPILL

ASSISTANCE GRANT PROGRAM	12,230,656	6,009,426	1,157,012	5,064,218	795,025	7,166,438	4,269,193
--------------------------	------------	-----------	-----------	-----------	---------	-----------	-----------

* The column, "Referred Projects", refers to potential funding through DEC and DHSS.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to municipal
assistance: oil spill response fund.
Sponsor: Szymanski
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact anticipated in FY 90.

* See attached analysis.

Prepared by: Jim Plasman
Division: Municipal & Regional Assistance

Phone: 465-4750
Date: _____

Approved by Commissioner: Mark C. Kelly
Agency: Community & Regional Affairs

Date: 2-1-90

Distribution (by preparer):

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

Position Title		Local Government Specialist IV		No. of Positions	1	Range/Step	19 A	Barg. Unit	XE
Time Status	Staff Months			Location		Election District			
Temporary	12			Juneau					
				Justification					
Type of Expenditure				Amount					
1				2		3			
Salary				40.2					
Benefits				13.5					
Premium Pay									
Other									
Total Personal Services						53.7			
Travel						10.0			
Contractual						3.0			
Commodities									
Equipment									
Other									
Total Cost						66.7			
Funding Source for Total Cost									
Federal Receipts 1002									
G. F. Match 1003									
General Fund 1004						66.7			
I-A Receipts 1006									
CIP Receipts 1061									
Other									

This position will be needed to provide technical assistance to local government administrators in determining the extent of local impacts, developing and implementing strategies for community recovery, and applying for the grant monies to carry out these strategies. This position would be temporary and may not be needed for the full 12 months reflected, depending upon community progress. The funding source would be a percent of the total funds available.

**Request For
New Position**

Agency Community & Regional Affairs
 BRU Local Government Assistance
 Component Training & Development

FY 91

Page 2 of 4
 Revised Date

Position Title <u>Grant Administrator II</u>			No. of Positions <u>1</u>	Range/Step <u>17A</u>	Barg. Unit <u>GGU</u>
Time Status <u>Temporary</u>	Staff Months <u>12 Months</u>		Location <u>Anchorage/Juneau</u>		Election District
			Justification		
Type of Expenditure			Amount		
<u>1</u>		<u>2</u>	<u>3</u>		
Salary		35.0			
Benefits		12.2			
Premium Pay					
Other					
Total Personal Services			47.2		
Travel					
Contractual					
Commodities					
Equipment					
Other					
Total Cost			47.2		
Funding Source for Total Cost					
Federal Receipts		1002			
G. F. Match		1003			
General Fund		1004			
I-A Receipts		1006			
CIP Receipts		1061			
Other			47.2		

During the recent oil spill, DCRA administered an oil spill grant program of \$1,160,000. Based on experience with this program, one temporary position to prepare grant/contractual documents will be needed during program activity. This position would be responsible for developing the agreement, reviewing payment requests, monitoring the project until completion, then finally closing out the grant. This position is budgeted here at salary for 12 months funded from the amount designated in the bill. Actual staff months worked depends on extent of disaster.

Request For New Position

Agency Department of Community & Regional Affairs
 BRU Admin & Support
 Component Admin Services

Page 3 of 4
 Revised Date

FY 91

Position Title Accountant II		No. of Positions 1	Range/Step 16A	Barg. Unit GGU	
Time Status Temp	Staff Months 12 Months	Location Juneau		Election District	
		Justification An Accountant II will be needed to respond to the increased activity that would be generated by a program of this size. Staff in the fiscal section of DCRA are presently working to capacity due to addition of new and expanded programs in recent years. This position would be temporary during the time of highest fiscal activity. The position is described as 12 months but may be of shorter duration. This position would have fiscal oversight of all billings, entries on the state accounting systems and report preparation for management. Funding source would be part of a percent of total funds available.			
Type of Expenditure					Amount
1	2				3
Salary	32.4				
Benefits	11.9				
Premium Pay					
Other					
Total Personal Services					44.3
Travel					
Contractual					
Commodities					
Equipment					
Other					
Total Cost					44.3
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004				
I-A Receipts	1006				
CIP Receipts	1061				
Other		44.3			

**Request For
New Position**

Agency Department of Community & Regional Affairs
BRU Admin & Support
Component Admin Services

Page 4 of 4
Revised Date

FY 91

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SS SB 359

PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____

Title: Municipal Oil Spill Fund

Agency Affected: Department of Revenue

BRU: Oil & Gas Audit Division

Sponsor: Szymanski

Requestor: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE	3600	21400	See Analysis			

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page for analysis.

Prepared By: Charles L. Logsdon

Division: Oil & Gas Audit Division

Phone: 277-5627

Date: January 31, 1990

Approved by Commissioner: Hugh Malone

Agency: Department of Revenue

Date: 2/1/1990

Distribution (by preparer):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

SS SB 359
Fiscal Note Analysis

The bill creates a municipal oil spill fund and raises the cap under which the \$.05/bbl oil surcharge is levied from \$50 million to \$75 million. The revenues shown on the fiscal note of \$3.6 million and \$21.4 million reflect the additional collections attributed to raising the cap. The cap is based on the difference between the amount collected to date under this surcharge and the amount expended from the Oil and Hazardous Release Fund. Collections of the surcharge through December amounted to \$11 million. The balance in the hazardous spill fund was \$32 million effective January 1990. (FY 90 collections were for 11 months of the year.)

The surcharge is directly dependent on oil production. The maximum amount of revenue that could be collected from a \$.05/bbl surcharge, assuming the Department of Revenue Mid Scenario production estimates, is as follows:

TOTAL MAXIMUM REVENUE FROM A \$.05/BARREL SURCHARGE

Fiscal Year	Production * (MM bbl/day)	Revenue (MM \$)	Cumulative Revenue
1990	1.816	26.6	26.6
1991	1.691	27.0	53.6
1992	1.567	25.0	78.6
1993	1.504	24.0	102.6
1994	1.468	23.4	126.1
1995	1.350	21.5	147.6
1996	1.189	19.0	166.6
1997	1.032	16.5	183.1
1998	0.920	14.7	197.8
1999	0.800	12.8	210.6
2000	0.683	10.9	221.5

The table indicates that the surcharge will collect \$75 million by late FY 92.

* Excludes NGLs.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Municipal Assistance: Oil
Response Fund _____
Sponsor: Szymanski
Requestor: Senate Oil & Gas

Agency Affected: Department of Revenue

BRU: Treasury

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: attach a separate page for analysis.

Fiscal year 1990 effect is zero.

Prepared By: Milt Barker MB
Division: Treasury

Phone: 465-2350

Date: February 1, 1990

Approved by Commissioner: [Signature]
Agency: Department of Revenue

Date: 2/1/90

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act concerning authority by
State and its municipalities related to *
Sponsor: Szymanski, Adams
Requestor: _____

Agency Affected: Administration
BRU: Central Administration
Administrative Services
Components: Municipal Grants

* environmental conservation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

There currently exists a fund used in making grants to municipalities and village councils for those costs attributed to oil and hazardous substance release response. The fund is administered solely by the Department of Community and Regional Affairs. This bill would create an additional fund, the same in all respects except that its use would be for oil and hazardous substance municipal impact. The new fund would also be administered only by the Department of Community and Regional Affairs. There is not anticipated to be any involvement by the Department of

Administration Municipal Grants Program

Prepared by: Mike Maher *Mike Maher*

Phone: 465-2277

Division: Administrative Services *Frank S. Baxter*

Date: 01/17/90

Approved by Commissioner: Frank S. Baxter

Date: 1/19/90

Agency: Department of Administration

Distribution (by preparer):

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

STATE OF ALASKA 1990 - 16TH LEGISLATURE
SECOND SESSION
FISCAL NOTE

Bill Number: Sponsor Substitute for Senate Bill 359

Title: "An Act relating to municipal assistance: oil spills"

While this bill will have a specific fiscal impact upon the department, the impact will occur only if the release of oil or other hazardous substance triggers the operation of the fund. Because of the conditional nature of this impact, no fiscal impact is indicated in a specific fiscal year. It would be the intention of the department to take funding for these positions from the fund itself once the fund became operational. The anticipated impact would include positions and funds to manage the operation of the grant program.

DCN

MEMORANDUM

State of Alaska

Department of Law

TO: Garrey Peska
Chief of Staff
Office of the Governor

DATE: September 12, 1989

FILE NO:

TEL. NO:

465-3600

SUBJECT:

Oil and Hazardous
Substance Response Fund

FROM:

Douglas K. Mertz *AKM*
Assistant Attorney General
Natural Resources Section-Juneau

You asked for our quick review of what we considered to be permissible expenditures under AS 46.08.005--46.08.900, the Oil and Hazardous Substance Release Fund.

The Fund was first established in 1980, as an appropriation line item to fund the Department of Environmental Conservation's new program on oil spills. The original appropriation merely noted "prevention & control/oil spills" as the purpose without elaboration. Since then the legislature has broadened the coverage of the Fund to include hazardous substances in addition to oil, and has set out in more detail the purposes of the Fund. (Section 1, ch. 59, SLA 1986). The Fund's statutory basis was amended as recently as last legislative session (sec. 2, ch. 113, SLA 1989).

AS 46.08.040 sets out four basic purposes:

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) establish and maintain the oil and hazardous substance response corps and response depots;

3) provide matching funds for federal oil spill cleanups under CERCLA (42 U.S.C. § 9601-9657); and

4) recover the cost to the state or municipalities of containment and cleanup.

This language is quite broad and authorizes a wide range of responses to spill-related problems. It is clear that any response involving "containment and cleanup" activities is permissible; in fact, AS 46.08.900(3) defines "containment and cleanup" to include "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." This language can be read as covering virtually any response costs related to a spill, including both preventative work in advance of a spill and restoration work after it. The preventative aspect is confirmed by the second purpose listed, establishment and maintenance of the response corps and depots, whose sole purpose is to maintain readiness for a major spill. (Chapter 113, SLA 1989). We believe it would also include scientific assessment work, either for the purpose of improving cleanup, designing restoration work, or assisting in recoupment to the state of damages. Since cost recovery is specifically mentioned in purpose 4), we believe litigation efforts, including scientific assessments, can also be funded from this source.

We also believe that the reference to "other necessary action" also supports use of the fund for indirect purposes associated with spill response, but which are one step removed from actual containment or cleanup work at the site of the spill. For example, disposal of oily waste material left behind after cleanup would be eligible. Likewise, the logistical support necessary to combat a major spill would be eligible. The Fund's purposes probably also include any increased costs in management of fish and game or other natural resources as a result of the spill. In short, the Fund was, we believe, intended to be available for payment of virtually all costs that relate to and result from an oil or hazardous substance spill, with few exceptions.

One of the exceptions is explicit: the fund cannot be used for capital improvements (except for dikes and retaining walls) (AS 46.08.010(c); AS 46.08.900(1)). We also believe the funds may not be used for expenses of entities other than the state, except to the extent that the entity contracts with the state to work on behalf of the state, or to reimburse an emergency response by a municipality (AS 46.08.070(c)). (And the exception for joint federal/state efforts under CERCLA is explicit.) There is nothing in the law that prevents efforts of state departments other than ADEC from being eligible for use of the Fund, however. The commissioner of ADEC, as manager of the Fund, may utilize and pay for the services of any state agency that fits within the stated purposes.

We do have one caution, however. Certain response costs to a major spill may include attending to problems in the human environment, as opposed to the natural environment. There may be an increased need for mental health services, law enforcement services, and social services of various kinds. The language of AS 46.08.040(1) is certainly broad enough to encompass such additional costs: "... take other necessary action ... [regarding] ... a release or threatened release of

oil . . . that poses an imminent and substantial threat to the public health or welfare, or to the environment." This language can be read as authorizing expenditures to deal with social problems that result from a spill as well as problems of the natural environment. But there is no indication in the legislative history that the legislature actually considered expenditures of this type when it passed the statute. Lack of explicit legislative history, one way or the other, certainly does not disqualify such expenditures, particularly in view of language that appears to authorize expenditures for purposes other than protecting the environment, i.e., the public health or welfare. But the fact that the use of the Fund was left to the discretion of the commissioner of environmental conservation, whose own statutory authority does not reach to social problems, rather than the Governor or some other interagency coordinating office, may suggest a more limited legislative purpose. The best advice we can offer is that, although payment from the Fund of expenditures for social problems resulting from a spill may be sustained, the legality of such expenditures is not nearly as clear as expenditures for the natural environment. Therefore we urge caution.

Finally, we note that the commissioner of environmental conservation, as manager of the Fund, does have a duty to manage with more than the expenses of the immediate spill in mind. When faced with a wide range of claims on the Fund, the commissioner may legitimately withhold monies in the Fund in order to have them available for responses to other spills; and the commissioner may legitimately reserve monies for setting up and maintaining the emergency response corps and depots as directed by ch. 113, SLA 1989.

This has necessarily been a hasty review of the subject. Please let us know if you have further questions.

cc: Douglas B. Baily, Attorney General
Department of Law

Dennis Kelso, Commissioner
Department of Environmental Conservation

D. Collinsworth, Commissioner
Department of Fish and Game

Lennie Boston-Gorsuch, Commissioner
Department of Natural Resources

Robert E. LeResche, Executive Director
Oil Spill Coordinating Office
Office of the Governor

MEMORANDUM

TO : Matt Jamin
FROM : Allen Field
DATE : February 1, 1990
RE : Retroactive Application of a Civil Statute: The WPPS Example.

I thought this might be of interest to you. It appears that a scenario similar to what we are trying to do in Alaska was successfully accomplished in the WPPS litigation.

While the WPPS litigation was in progress, the Washington Legislature, in 1985, passed an amendment raising the standard of fault applicable to municipal entities and officials from a negligence standard to scienter. The amendment, however, made no mention of retroactive effect. Consequently, a Washington federal district court ruled the statute (RCW sect. 21.20.130(7)) was only prospective in application. Within two weeks, the legislature introduced and later passed an amendment making the statute explicitly retroactive. Legislature history revealed that the sole purpose of the amendment was to effect the instant litigation to protect local ratepayers.

In re Washington Public Power Supply Syst. Sec. Litigation, 673 F.Supp. 411 (W.D. Wash. 1987) held that the legislature's motive in passing the amendment was improper and unconstitutionally impinged on the power of the judiciary, violating the principle of separation of powers. However, on a motion to reconsider, the court vacated its ruling, declaring that:

While remaining convinced that the actions of the Washington Legislature in this matter were inappropriate and overreaching, I reluctantly conclude that the application of the separation of powers doctrine to the actions by a branch of state government affecting a branch of federal government is not supported in the law.

In re Washington Public Power Supply Syst. Sec. Litigation, CCH Fed. Sec. Law Rep. Par. 94,325 (1988).

The Washington Supreme Court in related litigation upheld the legislature's actions and the retroactive application of the statute against a variety of constitutional challenges. Haberman v. Public Power Supply System, 744 P.2d 1032 (Wash. 1987).

1. Equal Protection

Notwithstanding that plaintiffs and intervenors lacked standing to assert this claim within the context of the particular statute, the court held there was a rational basis to the legislature's

Memorandum
Retroactive Application
Page 2

purpose and the statute was a means reasonably related to this purpose. The court emphasized that "such a rational basis for a legislative decision need not have actually motivated the Legislature's decision." 744 P.2d at 1056. Under a rational basis test "a statutory classification will be upheld if any state of facts may reasonably be conceived to substantiate it." *Id.*

For similar reasons, the court rejected the argument that the statute violated the prohibition against special legislation, Wash. Const. art. 2 sect. 28(17).

2. Due Process

The court did not even reach the merits of the intervenors' federal and state due process claims, holding that claimants had not first established a legitimate claim of entitlement. Under Washington law, statutory tort claim rights do not vest until a final, unreviewable judgement. The intervenors had no claim of entitlement to the pre-amendment terms and, therefore, the retroactive application of the statute did not implicate any interest protected by state or federal due process guarantees. 744 P.d at 1058.

3. Separation of Powers

The court ruled that a statute which prescribes new rules to be applied to pending litigation does not infringe upon a judicial function and, therefore, does not violate the separation of powers clause. The court noted that it disagreed with the federal district court's initial ruling discussed *supra*. 744 P.2d at 1058 n.1.

4. Impairment of Contracts

The contracts clause does not prohibit generally states from enacting legislation with retroactive effects. 744 P.2d at 1059. Moreover, the negligence standard of the former statute was not expressly incorporated into the bond contract. Therefore, the amendment did not unconstitutionally impair any of the plaintiff's contractual rights.

MEMORANDUM

TO : Matt Jamin
FROM : Allen Field
DATE : February 1, 1990
RE : Retroactive Application of a Civil Statute: The WPPS Example.

While the WPPS litigation was in progress, the Washington Legislature, in 1985, passed an amendment raising the standard of fault applicable to municipal entities and officials from a negligence standard to scienter. The amendment, however, made no mention of retroactive effect. Consequently, a Washington federal district court ruled the statute (RCW sect. 21.20.430(7)) was only prospective in application. Within two weeks, the legislature introduced and later passed an amendment making the statute explicitly retroactive. Legislature history revealed that the sole purpose of the amendment was to effect the instant litigation to protect local ratepayers.

The Washington Supreme Court in related litigation upheld the legislature's actions and the retroactive application of the statute against a variety of constitutional challenges. Haberman v. Public Power Supply System, 744 P.2d 1032 (Wash. 1987).

1. Equal Protection

Notwithstanding that plaintiffs and intervenors lacked standing to assert this claim within the context of the particular statute, the court held there was a rational basis to the legislature's

purpose and the statute was a means reasonably related to this purpose. The court emphasized that "such a rational basis for a legislative decision need not have actually motivated the Legislature's decision." 744 P.2d at 1056. Under a rational basis test "a statutory classification will be upheld if any state of facts may reasonably be conceived to substantiate it." Id.

For similar reasons, the court rejected the argument that the statute violated the prohibition against special legislation, Wash. Const. art. 2 sect. 28(17).

2. Due Process

The court did not even reach the merits of the intervenors' federal and state due process claims, holding that claimants had not first established a legitimate claim of entitlement. Under Washington law, statutory tort claim rights do not vest until a final, unreviewable judgement. The intervenors had no claim of entitlement to the pre-amendment terms and, therefore, the retroactive application of the statute did not implicate any interest protected by state or federal due process guarantees. 744 P.d at 1058.

3. Separation of Powers

The court ruled that a statute which prescribes new rules to be applied to pending litigation does not infringe upon a judicial function and, therefore, does not violate the separation of powers clause. The court noted that it disagreed with the federal district court's initial ruling discussed supra. 744 P.2d at 1058 n.1.

4. Impairment of Contracts

The contracts clause does not prohibit generally states from enacting legislation with retroactive effects. 744 P.2d at 1059. Moreover, the negligence standard of the former statute was not expressly incorporated into the bond contract. Therefore, the amendment did not unconstitutionally impair any of the plaintiff's contractual rights.



FEB 26 1990

February 22, 1990

Senator Drue Pearce
Room 510, Capitol
P. O. Box V
Juneau, Alaska 99811

Dear Senator Pearce:

Enclosed for your consideration is Resolution No. 9007 which was adopted by the Valdez City Council on February 20, 1990.

This resolution urges the Alaska Legislature to adopt the Sponsor Substitute for Senate Bill 359 and the revisions thereto proposed by the Oiled Mayors Subcommittee of the Alaska Conference of Mayors.

Thank you for your consideration of this resolution.

Yours truly,

Jeanne Donald
Jeanne Donald
City Clerk

Enclosure

CITY OF VALDEZ

RESOLUTION NO. 9007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, AUTHORIZING LOBBYING IN FAVOR OF SPONSOR SUBSTITUTE FOR ALASKA STATE SENATE BILL 359

WHEREAS, the release of oil and hazardous substances into the environment has presented and can present in the future a real and substantial threat to the health, safety and welfare of the citizens of Valdez; and

WHEREAS, the release of oil and hazardous substances into the environment has presented and can present in the future a real and substantial threat to the economy of the City of Valdez; and

WHEREAS, the release of oil and hazardous substances into the environment has presented and can present in the future a real and substantial impact upon the delivery of public services and performance of public functions by the City of Valdez; and

WHEREAS, the City Council of the City of Valdez desires to have future releases of oil and hazardous substances prevented; and

WHEREAS, the City Council of the City of Valdez desires to containment and cleanup authority outside municipal boundaries; and

WHEREAS, the costs incurred by the City of Valdez in responding to cleanup and containment of oil and hazardous substances and in providing increased public services as a result of a past or future release of oil or a hazardous substance should be paid to the City by means of either grants or reimbursement from the State of Alaska or from the person responsible for the release; and

WHEREAS, Alaska State Senate Bill 359 clarifies a municipality's exercise of extraterritorial authority for containment and cleanup, clarifies a municipality's right of recovery against the responsible person for the increased costs of providing public services, creates two separate and distinct grant programs to aid a municipality in responding to a release, establishes an oil and hazardous substance municipal impact fund, clarifies the municipality's right to reimbursement from the State, and clarifies the State's obligation to consult with a municipality in preparing contingency plans; and

CITY OF VALDEZ, ALASKA
RESOLUTION NO. 9007
Page 2

WHEREAS, Sponsor Substitute for Alaska State Senate Bill 359 amends Alaska State Senate Bill 359 by treating village councils the same as municipalities, increases the list of needs eligible for municipal impact fund grants, prohibits a municipality from recovering twice for the same costs without limiting the ability of a municipality to recover for all damages caused by the release of oil or a hazardous substance and contains miscellaneous technical revisions; and

WHEREAS, the Oiled Mayors group has proposed additional revisions to Alaska State Senate Bill 359, including expanding the list of needs eligible for grants and making the bill retroactive to March 1, 1989; and

WHEREAS, the City Council of the City of Valdez finds that it is in the public interest as well as the interest of the City of Valdez to support Sponsor Substitute for Alaska State Senate Bill 359 and support the revisions proposed by the Oiled Mayors group;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, that

Section 1. The City of Valdez strongly urges the Alaska Legislature to adopt the Sponsor Substitute for Alaska State Senate Bill 359 and the revisions thereto proposed by the Oiled Mayors Subcommittee of the Alaska Conference of Mayors.

Section 2. A copy of this resolution, properly certified, shall be sent to Governor Steve Cowper, Senator Jay Kerttula, Senator Mike Szymanski, Representative Gene Kubina, Senator Drue Pearce, and the Alaska Municipal League.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, this 20th day of February, 1990, at Valdez, Alaska.

CITY OF VALDEZ, ALASKA


Lynn Chrystal, Mayor

ATTEST:


Jeanne D. Donald, City Clerk

REPORT TO THE VALDEZ CITY COUNCIL
1989 ANNUAL REPORT

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,		

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 Dangel. 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.

	<u>Hydraulic Loading</u> <u>million gallons per day</u>		<u>Solids Loading</u> <u>pounds per day</u>	
	<u>1988</u>	<u>1989</u>	<u>1988</u>	<u>1989</u>
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.

	<u>1988</u>	<u>1989</u>
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.

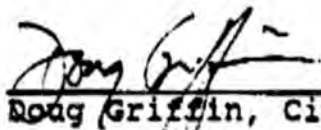
PORTS/HARBOR

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

FEB 20 1990

PRINCE WILLIAM SOUND

C O M M U N I T Y C O L L E G E

February 7, 1990

The Honorable Drue Pearce
Alaska State Senate
Box V
Juneau, AK 99811

Dear Senator Pearce:

I realize the Alaska State Legislature will be considering a number of bills regarding the Exxon Valdez Oil Spill. Last week I attended a Senate Oil and Gas Committee meeting regarding SB 359 and today I testified on this bill via audioconference.

The attached materials may help give you insight into the many problems faced by the affected Alaskan communities. As mayor of Valdez at the time of the spill and as president of Prince William Sound Community College, I was very aware of the problems Valdez faced. As one of the Oiled Mayors, I learned of the many and varied problems faced by the other communities.

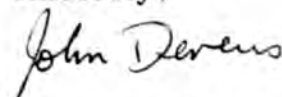
There is no community in our state that is totally immune from a disaster such as we faced. Earthquakes, mechanical failures, and human error can place any Alaskan community in jeopardy. A source of immediate financial aid is extremely important. During the Exxon Valdez spill, our only source of funding was our own reserves or Exxon. Going to Exxon with every one of our needs for community services placed us in a very difficult position.

The Exxon Valdez spill was a best case example. Exxon paid for more than many of us expected but they did not pay all of the costs the communities experienced. Another company may have refused to pay for any costs.

As you can see from the attached materials, our communities were faced with a number of problems that were either directly caused or aggravated by the financial situation and this was with a company that spent more than one billion dollars. The next time it could be a foreign-owned tanker or other type of disaster that will leave Alaskan communities without adequate resources to protect themselves.

I would encourage you to pass either SB 359 or a comparable bill to provide our communities with the protection they need.

Sincerely,



John Devens, Ph.D.
President
Prince William Sound Community College

cc: Mayor Robert Brodie, Chair, Oiled Mayors
Mayor Willie Goodman, President, Conference of Mayors

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 loss 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.

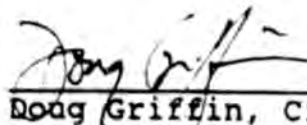
PORTS/HARBOR

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 two sides had to work out 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:

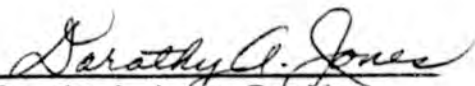
(1) extend to all communities in the state broad powers, within and outside of their boundaries, to cleanup and otherwise mitigate the effects of a hazardous substance discharge;

(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

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

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

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																																									
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																																										

**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.		
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 \$																																							
<table border="1"> <thead> <tr> <th colspan="2">Funding Source for Total Cost</th> <th></th> </tr> </thead> <tbody> <tr> <td>Federal Receipts</td> <td>1002</td> <td></td> </tr> <tr> <td>G. P. Match</td> <td>1003</td> <td></td> </tr> <tr> <td>General Fund</td> <td>1004</td> <td>42.6</td> </tr> <tr> <td>GP Program Receipts</td> <td>1005</td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> </tbody> </table>			Funding Source for Total Cost			Federal Receipts	1002		G. P. Match	1003		General Fund	1004	42.6	GP Program Receipts	1005		Other																							
Funding Source for Total Cost																																									
Federal Receipts	1002																																								
G. P. Match	1003																																								
General Fund	1004	42.6																																							
GP Program Receipts	1005																																								
Other																																									

**Request For
New Position**

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

Page 4 of 4
 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 national defense;
- (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 International

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

1. Emergency

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

SUBCHAPTER

§ 5131. Federal

(a) Title

The President is authorized that utilizes services Civil Preparedness Agency

(1) preparation of 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

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

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).
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

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-
3 tent with a regional master plan for the region in which the munici-
4 pality is located if a plan has been prepared by the Department of
5 Environmental Conservation under AS 46.04.210; in this paragraph,
6 "natural resources" has the meaning given in AS 46.03.826.

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

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

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

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

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

24 (e) A third class borough may by ordinance exercise power neces-
25 sary to contain, clean up, or prevent a release or threatened release
26 of oil or a hazardous substance, and exercise a power granted to a
27 municipality under AS 46.04, AS 46.08, or AS 46.09, but the power
28 authorized by this subsection may be exercised only on a nonareawide
29 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.

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).
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

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."

WORK DRAFT

WORK DRAFT

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.

4

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.

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

* 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.

18
19
20
21
22
23
24
25
26
27
28
29
1
(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 curred 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.

15
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

17
18
19
20
21
22

(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

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

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

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

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 viced 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.

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

11 * Sec. 15. AS 46.09.900(2) is amended to read:

12 (2) "containment and cleanup" includes the direct and
13 indirect efforts associated with the prevention, abatement, contain-
14 ment, or removal of a hazardous substance, and the restoration of the
15 environment; when applied to expenses, the term includes the incre-
16 mental costs of providing public services and the costs of providing
17 additional public services incurred by the state in response to the
18 discharge of the hazardous substance, and all incidental administra-
19 tive costs;

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

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

COMMENT. Definition of public services. See below.

- 20 * Sec. 26. AS 46.09.900 is amended by adding a new paragraph to read:
21 (8) "public services" means any function performed or
22 service provided by the state, including functions not previously
23 performed and services not previously provided by the state.
24 * Sec. 27. This Act takes effect immediately under AS 01.10.070(c).

29

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

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

- (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. 18. This Act takes effect immediately under AS 01.10.070(c).

GENERAL COMMENTS. 1) The term "village council" has been changed throughout the proposed CS to read "village"; 2) the term "public service" has been changed throughout the bill to read "service".
