

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

7340 SENATE COMMUNITY & REGIONAL AFFAIRS

22

UTILITY NAME Anchorage Refuse, Inc. YEAR ENDED 12 / 31 / 89

PARTICULARS CONCERNING OTHER CURRENT AND ACCRUED ASSETS

| <u>ITEM</u>                     | <u>AMOUNT</u>      |
|---------------------------------|--------------------|
| NBA Reserve for mortgage #18449 | \$ 10,784.         |
| NBA Reserve for Mortgage #33758 | 15,017.            |
| Utility Deposit                 | 1,115.             |
| Stock E.R.R. Inc.               | 15,000.            |
| Recycling Inv.                  | 81,729.            |
| FLA Inv.                        | 81,729.            |
| Reserve                         | 4,156.             |
|                                 | <u>\$ 583,927.</u> |

PARTICULARS CONCERNING MISCELLANEOUS ASSETS AND OTHER DEBITS

| <u>ITEM</u>  | <u>AMOUNT</u>       |
|--------------|---------------------|
| Trailer      | 707.                |
| Emerson Bldg | 787,272.            |
| Sewer        | 4,406.              |
| Water        | 1,666.              |
| Emerson Land | 23,182.             |
| Recycle Eqp. | 304,368.            |
| FLA Eqp.     | 29,127.             |
|              | <u>\$1,150,728.</u> |

PARTICULARS CONCERNING OTHER CURRENT AND ACCRUED LIABILITIES

| <u>ITEM</u>          | <u>AMOUNT</u>      |
|----------------------|--------------------|
| Accrued Salaries     | \$ 73,196.         |
| Accrued Annual Leave | 134,984.           |
| Accrued Expense      | 76,962.            |
| Income Tax           | 60,513.            |
|                      | <u>\$ 345,655.</u> |

PARTICULARS CONCERNING MISCELLANEOUS LIAB. AND OTHER CREDITS

| <u>ITEM</u>    | <u>AMOUNT</u>      |
|----------------|--------------------|
| Deferred Taxes | \$ 264,000.        |
|                | <u>\$ 264,000.</u> |

UTILITY NAME Anchorage Refuse, Inc.

YEAR ENDED 12 / 31 / 89

SALES DATA FOR THE YEAR

| <u>Class of Service</u>   | <u>Revenues</u>       | <u>Average #<br/>of Customers</u> |
|---------------------------|-----------------------|-----------------------------------|
| Residential Sales         | \$ 3,647,764.         | 20,977                            |
| Commercial and Industrial |                       |                                   |
| Small (or Commercial)     | 4,090,677.            | 2,976                             |
| Large (or Industrial)     | 2,952,248.            | 230                               |
| Total Sales               | <u>10,690,689.</u>    | <u>24,183</u>                     |
| Other Sales Revenues      | <u>0</u>              |                                   |
| Total Operating Revenue   | <u>\$ 10,690,689.</u> |                                   |

NUMBER OF EMPLOYEES

|   |            |
|---|------------|
| Total Regular Full Time Employees       | 112        |
| Total Part-Time and Temporary Employees | <u>5</u>   |
| Total Employees                         | <u>117</u> |

UTILITY CONTRACTS

| <u>Customer</u> | <u>Contract Dates</u>          | <u>Amount</u> |
|-----------------|--------------------------------|---------------|
|                 | <u>Beginning</u> <u>Ending</u> |               |
|                 | N/A                            | \$            |

\$

UTILITY NAME Anchorage Refuse, Inc.

YEAR ENDED 12 / 31 / 89

SUMMARY OF UTILITY PLANT

|   |                         |
|---|-------------------------|
| Intangible Plant                              | \$ 12,000.              |
| Collection Utility Property                   |                         |
| Structures and Improvements                   | 1,702,744.              |
| Rolling Equipment (Mobile)                    | 2,677,249.              |
| Containers, Bins, etc.                        | 1,650,758.              |
| Other Collection Property                     | Ø                       |
| General Utility Property                      | 517,438.                |
| Construction Work In Progress                 | Ø                       |
| <br>Total Utility Plant                       | <br>6,560,189.          |
| Less: Accumulated Provision for Depr & Amort. | <u>3,836,883.</u>       |
| <br>NET UTILITY PLANT                         | <br><u>\$2,723,306.</u> |

DEPRECIATION & AMORTIZATION OF REFUSE PLANT

| <u>Functional Classification</u> | <u>Depreciation Expense</u> |
|----------------------------------|-----------------------------|
| Intangible Plant                 | \$ Ø                        |
| Collection Utility Property      |                             |
| Structures and Improvements      | 37,686.                     |
| Rolling Equipment (Mobile)       | 187,830.                    |
| Containers, Bins etc.            | 59,092.                     |
| Other Collection Property        | Ø                           |
| General Utility Property         | <u>43,038.</u>              |
| <br>Total                        | <br><u>\$ 328,246.</u>      |

FACTORS USED IN ESTIMATING DEPRECIATION CHARGES

| <u>Type Plant</u>   | <u>Depreciable Plant Base</u> | <u>Estimated Avg Service Life</u> | <u>Deprec Rate %</u> | <u>Avg. Remain. Life</u> |
|---------------------|-------------------------------|-----------------------------------|----------------------|--------------------------|
| Structurs & Improv. | 726,524.                      | 5 - 40                            | 7.7%                 | 11 1/2 yrs.              |
| Rolling Eqp.        | 1,086,563.                    | 10                                | 10.0%                | 4 3/4 "                  |
| Containers & Bins   | 40,294.                       | 5                                 | 20.0%                | 2 1/2 "                  |
| General Utility     | 101,739.                      | 5 - 8                             | 20.0%                | 2 1/3 "                  |

\$

UTILITY NAME Anchorage Refuse, Inc.

YEAR ENDED 12 / 31 / 89

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SUMMARY OF OFFICER'S/OWNER'S COMPENSATION

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| <u>Name</u>                             | <u>Title</u> | <u>Salary</u>      |
|---|--------------|--------------------|
| Construction Supervision:               |              | \$                 |
| Total                                   |              | <u>\$</u>          |
| Operation Supervision:                  |              | \$                 |
| Thomas R. Culhane                       |              | 91,753.            |
| Total                                   |              | <u>\$ 91,753.</u>  |
| Maintenance Supervision:                |              | \$                 |
| Gerald J. Culhane                       |              | 76,720.            |
| Total                                   |              | <u>\$ 76,720.</u>  |
| Administrative and<br>General Salaries: |              | \$                 |
| John P. Culhane - President             |              | 84,508.            |
| Total                                   |              | <u>\$ 84,508.</u>  |
| Total Officers/Owners<br>Compensation   |              | <u>\$ 252,981.</u> |



# *Anchorage Refuse, Inc.*

PHONE 563-3717 — 6301 ROSEWOOD ST.

ANCHORAGE, ALASKA 99518

ANCHORAGE REFUSE, INC.

YEAR END 12/31/89

## Number of Customers

|                              |                      |
|------------------------------|----------------------|
| Residential Customers        | 21,098               |
| Commercial Customers (small) | 3,004                |
| Commercial Customers (large) | <u>225</u>           |
| TOTAL:                       | <u><u>24,327</u></u> |



## *Anchorage Refuse, Inc.*

PHONE 563-3717 — 6301 ROSEWOOD ST.

ANCHORAGE, ALASKA 99518

1. Anchorage Refuse, Inc. leases vehicles from a shareholder in the amount of \$3,512.00 per month.
2. Anchorage Refuse, Inc. leases a lot from the shareholders in the amount of \$3,800.00 per month.



# *Anchorage Refuse, Inc.*

PHONE 563-3717 — 6301 ROSEWOOD ST.

ANCHORAGE, ALASKA 99518

## Anticipated Expenditures for 1990:

|                    |              |
|--------------------|--------------|
| Trucks & Equipment | \$175,000.00 |
|--------------------|--------------|

SB 2: - SUPPORTERS WHO WILL TESTIFY

JUNEAU:

Dick Eliason - Senator

Scott Burgess - AML

*Randy Walker - leg. Audit*

FAIRBANKS:

Kelly McMullin - FNSB Environmental Services

ANCHORAGE:

Don May - APUC

KENAI:

Mayor Gillman or designee

WASILLA:

Mayor Jones or designee

Ref # 91-02-003

C&RA COMMITTEE CHECK LIST

TCF  
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Kencin  
Fb/c/s

Bill: SB 2  
Sponsor: Elison  
Date In: 1/21/91  
Schedule Memo: \_\_\_\_\_

1) Agency Position Papers:

✓ APAC - last year's : HB 499  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2) Fiscal Notes:

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

3) Sectional Analysis:

4) Other Backup:

2/1 - requested AFAC to testify  
- set up TCF

S B

2 5



## SENATOR FRED F. ZHAROFF

### ALASKA STATE LEGISLATURE

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

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 485-3474

DISTRICT N

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

SSSB 25

### SPONSOR STATEMENT

March 25, 1991

A handwritten signature in black ink, appearing to read "Fred F. Zharoff".

This legislation is intended as a follow-through of the worthy efforts begun during the Sixteenth Legislature to address the needs of communities to effectively respond to and mitigate the extraordinary social and economic costs associated with the containment and cleanup of oil or hazardous substances into the environment, upon the declaration by the governor of a disaster emergency. The broad scope and magnitude of the impacts of such spills became apparent with the occurrence of the March 24, 1989 Exxon Valdez oil spill. It is clear that such spills do present a real and substantial threat to the environment and to the economy and public welfare of affected municipalities and villages, and that a mechanism for the state to provide timely and substantial assistance is both appropriate and necessary.

SSSB 25 addresses the above concerns by:

- 1) Setting up a program to provide municipalities and villages access through DCRA to up to \$10,000,000 in funding, with the agreement of DEC, from the Oil and Hazardous Substance Response Fund ("470 Fund"). These funds are to provide "grants to a municipality or village that...demonstrates that the release or response to the release involves extraordinary expenditures..." for services whose costs are directly or indirectly affected by the spill, and to compensate the municipality or village for reductions in revenue, and the costs of projects or activities that are delayed or lost, because of the spill.
- 2) Providing and defining a mechanism for the transfer of these funds between DEC and DCRA. Community needs are presented to the commissioner of DCRA, who then requests 470 Funds from the commissioner of DEC. If the two commissioners agree on the amount and circumstances, the funds are transferred to DCRA for distribution as grants to the effected communities. Any disagreement between the two commissioners will be resolved by the governor.
- 3) Broadening the powers of municipalities and villages under AS 29 and under AS 46 to more effectively respond to the release or threatened release of oil or a hazardous substance. This grant of power is not intended to preempt state powers, but as a means to facilitate the response to a disaster by municipalities and villages on behalf of the state.
- 4) Authorizing and providing a mechanism for DEC to provide emergency "first response" funds to municipalities and villages to respond to and clean up oil and hazardous substance spills on behalf of the state.

or (B) at crude oil production facilities by crude oil or wastewater treatment process before custody transfer of the crude oil;

(34) "waters" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state. (§ 3 ch 120 SLA 1971; am §§ 16, 17 ch 220 SLA 1976; am § 2 ch 26 SLA 1977; am § 2 ch 129 SLA 1977; am §§ 7, 12 ch 172 SLA 1978; am § 5 ch 163 SLA 1980; am §§ 7, 14 ch 93 SLA 1981; am §§ 115, 116 ch 59 SLA 1982; am § 9 ch 77 SLA 1984; am § 4 ch 97 SLA 1989)

Revisor's notes. — Paragraph (10) was enacted as (34). Renumbered in 1989, at which time the remaining paragraphs were renumbered accordingly.

Effect of amendments. — The 1989 amendment, effective July 1, 1989, added paragraph (10).

## Chapter 04. Oil and Hazardous Substance Pollution Control.

### Article

1. Oil Pollution Control (§§ 46.04.020, 46.04.030 — 46.04.060, 46.04.080, 46.04.090, 46.04.120)
2. Oil and Hazardous Substance Discharge and Prevention Contingency Plans (§§ 46.04.200, 46.04.210)
3. General Provisions (§ 46.04.900)

### Article 1. Oil Pollution Control.

#### Section

20. Removal of oil discharges
30. Oil discharge prevention and contingency plans
40. Proof of financial responsibility
45. Adjustment of dollar amounts
50. Exemptions

#### Section

60. Inspections
80. Catastrophic oil discharges
90. Oil discharge cleanup personnel, equipment, expenses
120. {Renumbered}

**Sec. 46.04.020. Removal of oil discharges.** (a) A person causing or permitting the discharge of oil shall immediately contain and clean up the discharge. The department may waive this requirement

(1) if it determines, in consultation with the United States Coast Guard or the United States Environmental Protection Agency, as appropriate, that containment or cleanup is technically not feasible; or

(2) if the cleanup or containment activities would result in greater environmental damage than the discharge itself.

(b) The containment and cleanup of discharged oil must be carried out in a manner approved by the department. Waste generated as a result of containment or cleanup activities shall be disposed of in a

rude oil or wastewater  
the crude oil;  
ponds, impounding res-  
s, estuaries, marshes,  
ocean, Gulf of Alaska,  
limits of the state, and  
r, natural or artificial,  
t, which are wholly or  
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) SLA 1976; am § 2 ch  
, 12 ch 172 SLA 1978;  
1981; am §§ 115, 116  
§ 4 ch 97 SLA 1989)

endments. — The 1989  
ective July 1, 1989, added

Substance

10, 46.04.080, 46.04.090,  
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manner approved by the department. The requirement of this subsection for approval of containment and cleanup activities does not apply to the United States Coast Guard or United States Environmental Protection Agency acting under the authority of § 311(c) or (d) of the Clean Water Act.

(c) If the department determines that containment or cleanup activities are not adequate, it may direct the person engaged in the activities to cease and may undertake the activities itself through contract or its own resources, or both. The department may not direct the cessation of containment or cleanup activities undertaken by the United States Coast Guard or United States Environmental Protection Agency under § 311 of the Clean Water Act. However, the department may undertake, direct, or authorize supplemental cleanup or containment efforts.

(d) The department shall provide for the immediate containment or cleanup of an oil discharge of unexplained origin unless

(1) the department determines, in consultation with the United States Coast Guard or the United States Environmental Protection Agency that containment or cleanup of the oil discharge is technically not feasible; or

(2) the containment or cleanup activities would result in greater environmental damage than the discharge itself.

(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, and other persons in order to

(1) facilitate coordinated and effective oil discharge prevention and response in the state, including agreements relating to development and enforcement of vessel traffic control and monitoring systems for tank vessels and oil barges operating in or near the waters of the state;

(2) provide for cooperative review of oil discharge prevention and 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 United States Environmental Protection Agency; and

(4) provide for cooperative oil discharge notification procedures. (§ 2 ch 116 SLA 1980; am § 8 ch 191 SLA 1990)

Effect of amendments. — The 1990 amendment, effective June 27, 1990, substituted all of the present language of paragraph (e)(1) following "discharge" for "response in the state", and inserted "prevention and" in paragraph (e)(2).

**Sec. 46.04.030. Oil discharge prevention and contingency plans.** (a) A person may not cause or permit the operation of an oil terminal facility in the state unless an oil discharge prevention and contingency plan for the facility has been approved by the department and the person is in compliance with the plan.

(b) A person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless an oil discharge prevention and contingency plan for the pipeline or facility has been approved by the department and the person is in compliance with the plan.

(c) Except as provided in (n) of this section, a person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or an oil barge, unless an oil discharge prevention and contingency plan for the tank vessel or oil barge has been approved by the department and the person is in compliance with the plan.

(d) Upon approval of a contingency plan, the department shall issue to the plan holder a certificate stating that the contingency plan has been approved by the department. The certificate must include the name of the facility, pipeline, tank vessel, or oil barge for which it is issued, the effective date of the contingency plan, and the date by which the contingency plan must be submitted for renewal. A contingency plan must be submitted for renewal every three years.

(e) The department may attach reasonable terms and conditions to its approval or modification of a contingency plan that the department determines are necessary to ensure that the applicant for a contingency plan has access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or vessel as provided in (k) of this section, and to ensure that the applicant complies with the contingency plan. The contingency plan must provide for the use by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed. The department may require an applicant or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including

- (1) periodic training;
- (2) response team exercises; and
- (3) verifying access to inventories of equipment, supplies, and personnel identified as available in the approved contingency plan.

(f) Upon request of a plan holder or on the department's own initiative, the department, after notice and opportunity for hearing, may modify its approval of a contingency plan if the department determines that a change has occurred in the operation of a facility or vessel necessitating an amended or supplemented plan, or the operator's discharge experience demonstrates a necessity for modification.

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The department, after notice and opportunity for hearing, may revoke its approval of a contingency plan if the department determines that

- (1) approval was obtained by fraud or misrepresentation;
- (2) the operator does not have access to the quality or quantity of resources identified in the plan;
- (3) a term or condition of approval or modification has been violated; or
- (4) the person is not in compliance with the contingency plan and the deficiency materially affects the plan holder's response capability.

(g) Failure of a holder of an approved or modified contingency plan to comply with the plan, or to have access to the quality or quantity of resources identified in the plan or to respond with those resources within the shortest possible time in the event of a spill is a violation of this chapter for purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applicable law. If the holder of an approved or modified contingency plan fails to respond to and conduct cleanup operations of an unpermitted discharge of crude oil with the quality and quantity of resources identified in the plan and in a manner required under the plan, the holder is strictly liable, jointly and severally, for the civil penalty assessed under AS 46.03.758, 46.03.759, or 46.03.760 against any other person for that discharge.

(h) The department is the only state agency that has the power to approve, modify, or revoke a contingency plan for the purposes of this section. The department shall exercise its power under this section in a timely manner. Except for prosecutions under AS 46.03.790(b) and except as provided in (i) of this section, it is not a defense to an action brought for a violation of (a) — (c) of this section that the person charged believed that a current contingency plan had been approved by the department.

(i) It is a defense to an action brought for a violation of (a) — (c) of this section that the person charged relied on a certificate of approval issued by the department under (d) of this section unless the person knew or had reason to know at the time of the alleged violation that approval of the plan had been revoked or that the holder of the plan was not capable of carrying out the plan.

(j) Before the department approves or modifies a contingency plan under this section, the department shall provide a copy of the contingency plan to the Department of Fish and Game and to the Department of Natural Resources for their review. The department shall by regulation establish the procedures and time limits applicable to agency review of contingency plans.

(k) Except as provided in (m) and (o) of this section, the holder of an approved contingency plan required under this section shall maintain, or have available under contract, in its region of operation or in another region of operation approved by the department, singly or in conjunction with other operators, sufficient oil discharge containment,

storage, transfer, and cleanup equipment, personnel, and resources to meet the following response planning standards:

(1) for a discharge from an oil terminal facility, the plan holder shall plan to be able to contain or control, and clean up a discharge equal to the capacity of the largest oil storage tank at the facility within 72 hours, except that if the department determines that the facility is located in an area of high risk because of natural or man-made conditions outside of the facility, it may increase the volume requirement under this paragraph so that the contingency plan must be designed for a response that is greater in amount than the capacity of the largest oil storage tank at the facility;

(2) for a discharge from an exploration or production facility or a pipeline, the plan holder shall plan to be able to contain or control, and clean up the realistic maximum oil discharge within 72 hours;

(3) for a discharge of crude oil from a tank vessel or oil barge, the plan holder shall plan to be able to contain or control, and clean up a realistic maximum oil discharge as provided in (A), (B), and (C) of this paragraph:

(A) for tank vessels and oil barges having a cargo volume of less than 500,000 barrels, the plan holder shall maintain at a minimum in the region of operation, equipment, personnel, and other resources sufficient to contain or control, and clean up a 50,000 barrel discharge within 72 hours;

(B) for tank vessels and oil barges having a cargo volume of 500,000 barrels or more, the plan holder shall maintain at a minimum in its region of operation, equipment, personnel, and other resources sufficient to contain or control, and clean up a 300,000 barrel discharge within 72 hours;

(C) in addition to the minimum equipment, personnel, and other resources required to be maintained within the region of operation by (A) or (B) of this paragraph, a plan holder shall maintain, either within or outside of the plan holder's region of operation, additional equipment, personnel, and other resources sufficient to contain or control, and clean up a realistic maximum discharge within the shortest possible time; the plan holder must demonstrate that the equipment, personnel, and other resources maintained outside the plan holder's region of operation are accessible to the plan holder and will be deployed and operating at the discharge site within 72 hours;

(4) for a discharge from a tank vessel or oil barge carrying noncrude oil in bulk as cargo, the plan holder shall plan to be able to contain or control 15 percent of the maximum capacity of the vessel or barge or the realistic maximum oil discharge, whichever is greater, within 48 hours and clean up the discharge within the shortest possible time consistent with minimizing damage to the environment;

(5) for a discharge subject to the provisions of (1) — (3) of this subsection that enters a receiving environment other than open

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water, the time requirement for clean up of the portion of the discharge that enters the receiving environment may, in the department's discretion, be within the shortest possible time consistent with minimizing damage to the environment.

(l) The provisions of (k) of this section do not constitute cleanup standards that must be met by the holder of a contingency plan. Notwithstanding (k) of this section, failure to remove a discharge within the time periods set out in (k) of this section does not constitute failure to comply with a contingency plan for purposes of (g) of this section or for the purpose of imposing administrative, civil, or criminal penalties under any other law.

(m) When considering whether to approve or modify a contingency plan, the department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems, or enhanced crew or staffing levels have been implemented, and, in its discretion, may make exceptions to the requirements of (k) of this section to reflect the reduced risk of oil discharges from the facility, pipeline, vessel, or barge for which the plan is submitted or being modified.

(n) A tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of (c) of this section if the tank vessel or oil barge has received prior approval of the department. The department may approve exemptions under this subsection upon application and presentation of information required by the department.

(o) A holder of an approved contingency plan does not violate the terms of the contingency plan by furnishing to another plan holder, with the approval of the department, equipment, materials, or personnel to assist the other plan holder in a response to an oil discharge. The plan holder shall replace or return the transferred equipment, materials, and personnel as soon as feasible. The department shall by regulation determine the maximum amount of equipment, materials, or personnel and the maximum amount of time for which it will approve a transfer.

(p) The department shall approve or disapprove a proposed contingency plan within 65 days after it receives a complete application for approval under this section.

(q) In this section,

(1) "contingency plan" means an oil discharge prevention and contingency plan required under this section;

(2) "in compliance with the plan" means, with respect to a contingency plan, to

(A) establish and carry out procedures identified in the plan as being the responsibility of the holder of the plan;

(B) have access to and have on hand the quantity and quality of equipment, personnel, and other resources identified as being accessible or on hand in the plan;

(C) fulfill the assurances espoused in the plan in the manner described in the plan;

(D) comply with terms and conditions attached to the plan by the department under the authority of (e) of this section; and

(E) successfully demonstrate the ability to carry out the plan when required by the department under (e) of this section;

(3) "realistic maximum oil discharge" means the maximum and most damaging oil discharge that the department estimates could occur during the lifetime of the tank vessel, oil barge, facility, or pipeline based on the size, location, and capacity of the tank vessel, oil barge, facility, or pipeline; on the department's knowledge and experience with the tank vessel, oil barge, facility, or pipeline or with similar tank vessels, oil barges, facilities, or pipelines; and on the department's analysis of possible mishaps to the tank vessel or oil barge or at the facility or pipeline or to similar tank vessels or oil barges or at similar facilities or pipelines;

(4) "region of operation," with respect to the holder of a contingency plan, means the area where the operations of the holder that require a contingency plan are located, the boundaries of which correspond to the regional boundaries established by the commissioner for regional master planning purposes under AS 46.04.210. (§ 2 ch 116 SLA 1980; am §§ 1, 2 ch 140 SLA 1988; am § 6 ch 41 SLA 1989; am §§ 9, 10 ch 191 SLA 1990)

**Cross references.** — For required study relating to noncrude oil tankers and barges, see § 31, ch. 191, SLA 1990 in the Temporary and Special Acts.

**Effect of amendments.** — The 1988 amendment, in subsection (e), added paragraphs (1)-(3) and substituted "or holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including" for "to undertake discharge exercises" in the last sentence in the introductory paragraph; and added subsection (g).

The 1989 amendment, effective August 10, 1989, added the second sentence in subsection (g).

The 1990 amendment, effective June 27, 1990, rewrote subsections (a)-(g) and added subsections (h)-(q).

**Editor's notes.** — Section 32(a), ch. 191, SLA 1990 provides that (k)-(m) of this section "do not apply to oil discharge prevention and contingency plans until June 1, 1991. On and after June 1, 1991, a contingency plan must comply with AS 46.04.030(k)-(m), regardless of whether the contingency plan is due for renewal under AS 46.04.030(d), as amended by § 9, ch. 191, SLA 1990."

AS 46.03.790(b), referred to in subsection (h), was repealed by § 5, ch. 141, SLA 1990, effective September 19, 1990.

**Sec. 46.04.040. Proof of financial responsibility.** (a) A person may not cause or permit the operation of an oil terminal facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for a crude oil terminal

is \$50,000,000 per incident. Proof of financial responsibility required for a noncrude oil terminal is \$25, per incident, for each barrel of total noncrude oil storage capacity at the terminal or \$1,000,000, whichever is greater, subject to a maximum of \$50,000,000. For purposes of this subsection, an oil terminal facility that stores both crude oil and noncrude oil is subject to the financial responsibility requirements applicable to the type of facility that corresponds to the type of oil storage that predominates at the facility. However, if the facility stores more noncrude oil than crude oil, the \$25 per incident, per barrel requirement of this subsection applies to each barrel of oil storage capacity at the facility.

(b) A person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for a pipeline or an offshore exploration or production facility is \$50,000,000 per incident. Proof of financial responsibility required for an onshore production facility is \$20,000,000 per incident. Proof of financial responsibility required for an onshore exploration facility is \$5,000,000 per incident.

(c) Except as provided in (m) of this section, a person may not operate a tank vessel or an oil barge within the waters of the state, or cause or permit the transfer of oil to or from a tank vessel or an oil barge, unless the person operating the tank vessel or oil barge has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required under this subsection is

(1) \$300, per incident, for each barrel of storage capacity or \$100,000,000, whichever is greater, for a tank vessel or barge carrying crude oil;

(2) \$100, per incident, for each barrel of storage capacity or \$1,000,000, whichever is greater, subject to a maximum of \$35,000,000, for a tank vessel or barge carrying noncrude oil.

(d) Except for prosecutions under AS 46.03.790(b) and except as provided in (k) of this section, it is not a defense to an action brought for violation of (a) — (c) of this section that the person charged believed in good faith that proof of financial ability to respond in damages had been furnished to, and approved by, the department.

(e) Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3) surety, (4) guarantee, (5) letter of credit approved by the department, or (6) other proof of financial responsibility approved by the department, including proof of financial responsibility provided by a group of insureds who have agreed to cover pollution risks of members of the group under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.759, 46.03.760(a) or (e), 46.03.822, or AS 46.04.030(g) may be brought in a state court

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directly against the insurer, the group, or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, guarantor, person furnishing an approved letter of credit, or other group or person providing proof of financial responsibility approved by the department shall appoint an agent for service of process in the state. For purposes of this subsection, an insurer, other than a group of insureds whose agreement has been approved by the department, must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state.

(f) Acceptance of proof of financial responsibility expires

(1) one year from its issuance for self-insurance;

(2) on the effective date of a change in the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility; or

(3) on the expiration or cancellation of the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility.

(g) The person whose proof of financial responsibility is accepted by the department under this section shall notify the department at least 30 days before the effective date of a change, expiration or cancellation in the surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility. Application for renewal of acceptance of proof of financial responsibility under this section must be filed at least 30 days before the date of expiration.

(h) The department, after notice and hearing, may revoke acceptance of proof of financial responsibility if it determines that

(1) acceptance was procured by fraud or misrepresentation; or

(2) a change of circumstance has occurred other than a change specified in (f)(1) — (3) of this section, which would have warranted denial of the application.

(i) Financial responsibility under this section extends to a loss compensable under AS 46.03.760(e) or 46.03.822 and an assessment under AS 46.03.758, 46.03.759, 46.03.760(a), or AS 46.04.030(g).

(j) Upon acceptance and approval of proof of financial responsibility under this section, the department shall issue to the applicant a certificate stating that the state's financial responsibility requirements have been satisfied. The certificate must include the name of the facility, pipeline, tank vessel, or oil barge for which it is issued and the expiration date of the certificate.

(k) It is a defense to an action brought for violation of (a) — (c) of this section that the person charged relied on a certificate of approval issued under (j) of this section unless the person knew or had reason to know at the time of the alleged violation that the approval had been revoked or was expired.

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(D) Notwithstanding the requirements of (e) of this section, the applicant may provide evidence of financial responsibility provided by an insurer or other person who does not agree to be subject to direct action in state courts or to appoint an agent for service of process if

(1) the department is satisfied that the insurance or other form of financial responsibility covers judgments under the statutes listed in (e) of this section;

(2) the applicant provides proof of \$50,000,000, or the amount required by (a) — (c) of this section, whichever is less, in insurance or other form of financial responsibility that meets the requirements of (e) of this section; and

(3) the applicant provides a sworn statement or affidavit that insurance or other form of financial responsibility that meets the requirements of (e) of this section is not available in greater amounts.

(m) A tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of (c) of this section if the tank vessel or oil barge has received prior approval of the department. The department may approve an exemption under this subsection upon application and presentation of information required by the department. (§ 2 ch 116 SLA 1980; §§ 117, 118 ch 59 SLA 1982; am §§ 7, 8 ch 41 SLA 1989; am §§ 11 — 18 ch 191 SLA 1990)

Effect of amendments. — The 1989 amendments, effective August 10, 1989, inserted "or AS 46.04.030(g) or to collect penalties imposed under AS 46.03.759" in the second sentence in subsection (e) and inserted the references to "46.03.759" and "46.04.030(g)" in subsection (i).

The 1990 amendment, effective June 27, 1990, rewrote subsections (a)-(f); in subsection (g) substituted all of the present language of the first sentence following "guarantee" for "or insurance agreement"; and added subsections (j)-(m).

Editor's notes. — Section 32(b), ch. 191, SLA 1990 provides that the amend-

ments to this section made by §§ 11 — 18, ch. 191, SLA 1990, "do not apply to persons required to show proof of financial responsibility until June 1, 1991. On and after June 1, 1991, proof of financial responsibility must comply with AS 46.04.040, as amended by §§ 11 — 18, ch. 191, regardless of whether acceptance of proof of financial responsibility has expired under AS 46.04.040(f), as amended by § 16, ch. 191."

AS 46.03.790(b), referred to in subsection (b), was repealed by § 5, ch. 141, SLA 1990, effective September 19, 1990.

Sec. 46.04.045. Adjustment of dollar amounts. (a) The dollar amounts in AS 46.04.040 change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all urban consumers for the Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January 1990 is the reference base index.

(b) The dollar amounts change on October 1 of each third year according to the percentage change between the index for January of that year and the most recent index used to determine whether to change the dollar amounts. After calculation of the new amounts, the resulting amounts shall be rounded to the nearest cent.

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The department shall adopt a regulation announcing

(1) on or before June 30 of each third year, the changes in dollar amounts required by (b) of this section; and

(2) promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(e) The department shall also provide notification of a change in dollar amounts required under (b) of this section to the clerks of court in each judicial district of the state. (§ 19 ch 191 SLA 1990)

**Effective dates.** — Section 33, ch. 191, June 27, 1990, in accordance with AS SLA 1990 makes this section effective 01.10.070(c).

**Sec. 46.04.050. Exemptions.** The provisions of AS 46.04.030, 46.04.040, and 46.04.060 do not apply to an oil terminal facility that has an effective storage capacity of less than 5,000 barrels of crude oil or less than 10,000 barrels of noncrude oil. (§ 2 ch 116 SLA 1980; am § 20 ch 191 SLA 1990)

**Cross references.** — For required survey of noncrude oil terminal facilities with an effective storage capacity of 5,000 to 10,000 barrels, see § 30, ch. 191, SLA 1990 in the Temporary and Special Acts.

**Effect of amendments.** — The 1990 amendment, effective June 27, 1990, rewrote this section.

**Sec. 46.04.060. Inspections.** (a) In addition to other rights of access or inspection conferred upon the department by law or otherwise, the department may at reasonable times and in a safe manner enter and inspect oil terminal facilities, pipelines, exploration and production facilities, tank vessels, and oil barges in order to

(1) ensure compliance with the provisions of this chapter; or

(2) participate in an examination of the structural integrity and the operating and mechanical systems of those vessels, barges, pipelines, and facilities by federal and state agencies with jurisdiction.

(b) When the department determines that no federal or state agencies with jurisdiction are performing timely and adequate inspections of an oil terminal facility, pipeline, exploration or production facility, tank vessel, or oil barge, it may perform its own inspection of the

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WATER, AIR, ENERGY, ETC.

§ 46.04.090

structural integrity and operating and mechanical systems of a facility, pipeline, tank vessel, or oil barge by using personnel with qualifications in the areas being inspected. (§ 2 ch 116 SLA 1980; am §§ 21, 22 ch 191 SLA 1990)

Effect of amendments. — The 1990 amendment, effective June 27, 1990, re-

Sec. 46.04.080. Catastrophic oil discharges. (a) The actual or imminent occurrence of a catastrophic oil discharge constitutes a disaster emergency under AS 26.23 without a declaration of disaster by the governor under AS 26.23.020. The department and the Alaska division of emergency services, Department of Military and Veterans' Affairs, shall coordinate their duties under AS 26.23.040 and AS 46.08.100 — 46.08.190 as they apply to catastrophic oil discharges, consistent with the responsibilities assigned to them under applicable incident command systems.

(b) The department shall promptly, under AS 46.04.010, seek reimbursement of oil discharge cleanup or containment expenses incurred as a result of an actual or imminent catastrophic oil discharge under AS 26.23.050. (§ 2 ch 116 SLA 1980; am § 10 ch 190 SLA 1990)

Effect of amendments. — The 1990 amendment rewrote subsection (a).

Sec. 46.04.090. Oil discharge cleanup personnel, equipment, expenses. (a) The department, when feasible, shall enter into contracts with persons or private organizations to provide the personnel, equipment, or other services or supplies that may be required to carry out this chapter. Contracts under this section are governed by AS 36.30 (State Procurement Code). When private contracting is not feasible, the department may establish and maintain at ports, harbors, or other locations in the state, the cleanup personnel, equipment, and supplies that, in its judgment, are necessary to carry out this chapter. When exercising its authority under this subsection, the department shall coordinate with the Department of Military and Veterans' Affairs to avoid duplication of efforts.

(b) Inspection and enforcement employees of the department designated by the commissioner are peace officers in the performance of their duties under this chapter, AS 46.03, and AS 46.09. (§ 2 ch 116 SLA 1980; am § 16 ch 59 SLA 1986; am § 54 ch 106 SLA 1986; am § 11 ch 190 SLA 1990)

Effect of amendments. — The 1990 amendment added the last sentence in

*Sec. 46.04.120. [Renumbered as AS 46.04.900.]*

## Article 2. Oil and Hazardous Substance Discharge and Prevention Contingency Plans.

### Section

200. State master plan

210. Regional master plan

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**Cross references.** — For legislative findings and purpose in connection with the enactment of AS 46.04.200 — 46.04.210, see § 1, ch. 90, SLA 1989 in the Temporary and Special Acts; for deadlines for initial master plans under AS 46.04.200 and 46.04.210, see § 4, ch. 90, SLA 1989 in the Temporary and Special Acts.

**Editor's notes.** — Section 5, ch. 90,

SLA 1989 provides that chapter 90, which enacted AS 46.04.200 — 46.04.210, "does not relieve a person responsible for an oil terminal facility, offshore exploration or production facility, or a vessel that transports crude oil, or a person who has control of a hazardous substance, from the responsibility for containing and cleaning up a discharge of oil or the hazardous substance as required by law."

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**Sec. 46.04.200. State master plan.** (a) The department shall prepare and annually review and revise a statewide master oil and hazardous substance discharge prevention and contingency plan.

(b) The state master plan prepared under this section must

(1) take into consideration the elements of an oil discharge prevention and contingency plan approved or submitted for approval under AS 46.04.030;

(2) include incident command systems that clarify and specify the respective responsibilities of each of the following in the assessment, containment, and cleanup of various types and sizes of discharges of oil or a hazardous substance into the environment of the state:

(A) the Department of Environmental Conservation, the division of emergency services in the Department of Military and Veterans' Affairs, and other agencies of the state; responsibilities assigned to each agency must be consistent with its statutory authority;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

(E) private parties whose land and other property may be affected by the oil or hazardous substance discharge; and

(F) other parties identified by the commission as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance discharge;

(3) include incident command systems that specify the respective responsibilities of parties identified in (2) of this subsection in an emergency response under AS 26.23, AS 46.03.865, or AS 46.04.080;

responsibilities assigned to each state agency must be consistent with its statutory authority;

(4) identify actions necessary to reduce the likelihood of catastrophic oil discharges and significant discharges of hazardous substances; and

(5) designate the locations where oil and hazardous substance emergency response depots should be established in the state and where emergency response corps personnel should be available.

(c) In preparing and annually reviewing the state master plan, the commissioner shall

(1) consult with municipal and community officials, and with representatives of affected regional organizations;

(2) submit the draft plan to the public for review and comment;

(3) submit to the legislature for review, not later than the 10th day following the convening of each regular session, the plan and any annual revision of the plan;

(4) require or schedule unannounced oil spill drills to test the sufficiency of an oil discharge prevention and contingency plan approved under AS 46.04.030 or of the cleanup plans of a party identified under (b)(2) of this section; and

(5) submit the plan and any annual revision to the Alaska State Emergency Response Commission for its review and approval under AS 46.13.045. (§ 2 ch 90 SLA 1989; am §§ 12, 13 ch 190 SLA 1990; am § 23 ch 191 SLA 1990)

**Effect of amendments.** — The first 1990 amendment rewrote subsection (b) and, in subsection (c), added paragraph (5).

The second 1990 amendment, effective

June 27, 1990, transposed the words "prevention" and "and" in subsection (a) and inserted "prevention and" in paragraphs (b)(1) and (c)(4).

**Sec. 46.04.210. Regional master plan.** (a) For any region of the state, the boundaries of which are determined by the commissioner by regulation, in which the department is required to review and approve an oil discharge prevention and contingency plan submitted by a person under AS 46.04.030, the department shall prepare and annually review and revise a regional master oil and hazardous substance discharge prevention and contingency plan.

(b) The provisions of AS 46.04.200(b) and (c) apply to preparation and review of a regional master plan under this section. (§ 2 ch 90 SLA 1989; am § 24 ch 191 SLA 1990)

**Effect of amendments.** — The 1990 amendment, effective June 27, 1990, inserted "prevention and" near the middle

of subsection (a) and transposed the words "prevention" and "and" near the end of that subsection.

**Article 3. General Provisions.****Section**  
900. Definitions

**Sec. 46.04.900. Definitions.** In this chapter, unless the context requires otherwise,

(1) "barrel" is a measure of capacity equal to the space occupied by 42 U.S. gallons at 60 degrees Fahrenheit;

(2) "catastrophic oil discharge" means an oil discharge in excess of 100,000 barrels, or any other discharge which the governor determines presents a grave and substantial threat to the economy or environment of the state;

(3) "Clean Water Act" means the Federal Water Pollution Control Act of 1972 (P.L. 92-500), as amended by the Clean Water Act of 1977 (P.L. 95-217), as amended (33 U.S.C. 1251 — 1376);

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

(5) "containment and cleanup" includes all direct and indirect efforts associated with the prevention, abatement, containment or removal of a pollutant, the restoration of the environment to its former state, and all incidental administrative costs;

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

(7) "discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(8) "exploration facility" means a platform, vessel, or other facility used to explore for hydrocarbons in or on the waters of the state or in or on land in the state; the term does not include platforms or vessels used for stratigraphic drilling or other operations that are not authorized or intended to drill to a producing formation;

(9) "oil" means oil of any kind and in any form, whether crude, refined, or a petroleum by-product, including but not limited to petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquefied natural gas, propane, butane, or other liquid hydrocarbons regardless of specific gravity;

(10) "oil barge" means a vessel which is not self-propelled and which is constructed or converted to carry oil as cargo in bulk;

(11) "oil terminal facility" means an onshore or offshore facility of any kind, and related appurtenances, including but not limited to a deepwater port, bulk storage facility or marina, located in, on, or under the surface of the land or waters of the state, including tide and submerged land, which is used for the purpose of transferring, processing, refining, or storing oil; a vessel is considered an oil terminal facility only when it is used to make a ship-to-ship transfer of oil, and

when it is traveling between the place of the ship-to-ship transfer of oil and an oil terminal facility;

(12) "operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(13) "person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, partnership, association, firm, trust, estate, or any other entity;

(14) "pipeline" means the facilities, including piping, compressors, pump stations, and storage tanks, used to transport crude oil and associated hydrocarbons between production facilities or from one or more production facilities to marine vessels;

(15) "production facility" means a drilling rig, drill site, flow station, gathering center, pump station, storage tank, well, and related appurtenances on other facilities to produce, gather, clean, dehydrate, condition, or store crude oil and associated hydrocarbons in or on the water of the state or on land in the state, and gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility.

(16) "self-propelled" means propelled either by machinery aboard the vessel, or by a tug or other vessel secured into the cargo-carrying vessel through special hull design;

(17) "tank vessel" means a self-propelled waterborne vessel that is constructed or converted to carry liquid bulk cargo in tanks and includes tankers, tankships, and combination carriers when carrying oil; the term does not include vessels carrying oil in drums, barrels, or other packages, or vessels carrying oil as fuel or stores for that vessel;

(18) "vessel" includes tank vessels and oil barges;

(19) "waters of the state" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state. (§ 2 ch 116 SLA 1980; am §§ 25 — 27 ch 191 SLA 1990)

Revisor's notes. — Formerly AS 46.04.120. Renumbered in 1989. Paragraphs (14) and (15) were enacted as (18) and (19) respectively. Renumbered in 1990, at which time former paragraphs (14)-(17) were renumbered accordingly.

Effect of amendments. — The 1990 amendment, effective June 27, 1990, rewrote paragraph (8), added present paragraphs (14) and (15), and inserted "waterborne" near the beginning of present paragraph (17).

## Chapter 08. Oil and Hazardous Substance Releases.

### Article

1. Release Response Fund (§§ 46.08.020, 46.08.040, 46.08.060 — 46.08.080)
2. Oil and Hazardous Substance Response Office (§§ 46.08.100 — 46.08.190)

### Article 1. Release Response Fund.

#### Section

20. Financing of the fund
40. Purposes of the fund
60. Report to the legislature
70. Reimbursement for containment and cleanup

#### Section

75. Liens against property as security for state expenditures
80. Regulations

**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 AS 46.08.005 — 46.08.080 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 a 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)

**Revisor's notes.** — A reference to "AS 46.08.005 — 46.08.080" was substituted for "this chapter" in (a)(3) of this section in 1989 to reflect the enactment of AS 46.08.100 — 46.08.190.

**Sec. 46.08.040. Purposes of the fund.** (a) 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;

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(2) pay all costs incurred to

(A) establish and maintain the oil and hazardous substance re-  
sponse office;

(B) review oil discharge prevention and contingency plans submit-  
ted under AS 46.04.030;

(C) conduct training, response exercises, inspections, and tests, in  
order to verify equipment inventories and ability to prevent and re-  
spond to oil and hazardous substance release emergencies, and to un-  
dertake other activities intended to verify or establish the prepared-  
ness of the state, a municipality, or a party required by AS 46.04.030  
to have an approved contingency plan to act in accordance with that  
plan; and

(D) verify or establish proof of financial responsibility required by  
AS 46.04.040;

(3) pay the expenses incurred by the Alaska division of emergency  
services for the oil and hazardous substance response corps and the oil  
and hazardous substance response depots when presented with appro-  
priate documentation by the division;

(4) provide matching funds for participation in federal oil discharge  
cleanup activities and under 42 U.S.C. 9601 — 9657 (Comprehensive  
Environmental Response, Compensation, and Liability Act of 1980);

(5) recover the 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;

(6) prepare, review, and revise

(A) the state's master oil and hazardous substance discharge pre-  
vention and contingency plan required by AS 46.04.200; and

(B) a regional master oil and hazardous substance discharge pre-  
vention and contingency plan required by AS 46.04.210; and

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

(b) When the governor declares a disaster related to an oil or haz-  
ardous substance discharge emergency under AS 26.23.020(c), the  
governor may, during the effective period of the disaster emergency,  
use money from the fund to respond to the disaster emergency.

(c) Notwithstanding other provisions of this section, money from  
the fund may not be used for a purpose specified in (a)(2)-(7) of this  
section unless funds are available from an appropriation made specifi-  
cally for that purpose.

(d) Upon a request from the Alaska Legislative Council, the com-  
missioner shall use money from the fund to reimburse the Alaska  
Legislative Council for expenditures that it makes for the operation of  
the Citizens' Oversight Council on Oil and Other Hazardous Sub-  
stances, established under AS 24.20.600. (§ 1 ch 59 SLA 1986; am § 3  
ch 90 SLA 1989; am § 2 ch 113 SLA 1989; am §§ 14, 15 ch 190 SLA  
1990; am § 28 ch 191 SLA 1990; am § 3 ch 199 SLA 1990)

**Revisor's notes.** — Paragraphs (5) and (6) were enacted as (4) and (5) respectively. Renumbered in 1989.

Subsection (d) was enacted as (b). Relettered in 1990.

**Effect of amendments.** — The first 1989 amendment, effective June 3, 1989, in paragraph (1), added "investigate and evaluate the release or threatened release of oil or a hazardous substance, and" at the beginning and substituted "and assessing, to address a release" for "assessing, investigating, and evaluating the release"; and added paragraphs (5) and (6).

The second 1989 amendment, effective June 16, 1989, added present paragraph (2) and designated former paragraphs (2) and (3) as paragraphs (3) and (4).

The first 1990 amendment, effective September 24, 1990, rewrote subsection (a) and added subsections (b) and (c).

The second 1990 amendment, effective June 27, 1990, also rewrote subsection (a).

The third 1990 amendment, effective September 25, 1990, added subsection (d).

The 1990 amendments were harmonized by the revisor.

**Editor's notes.** — Section 5, ch. 90, SLA 1989 provides that the amendments to this section by that chapter do "not relieve a person responsible for an oil terminal facility, offshore exploration or production facility, or a vessel that transports crude oil, or a person who has control of a hazardous substance, from the responsibility for containing and cleaning up a discharge of oil or the hazardous substance as required by law."

For essentially similar language in connection with the amendments to this section by ch. 113, SLA 1989, see § 4, ch. 113, SLA 1989 in the Temporary and Special Acts.

**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 by the department under AS 46.08.040(a) during the preceding fiscal year;

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

(3) a summary of municipal participation in the department's responses that were funded by the fund;

(4) a detailed summary of department activities in responses funded by the fund during the preceding fiscal year, including response descriptions and statements outlining the nature of the threat; in this paragraph, "detailed" includes information describing each personal services position and total compensation for that position, each contract in excess of \$20,000, and each purchase in excess of \$10,000; and

(5) the projected cost to the department 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.

(c) In addition to the department's report required under (a) of this section, the governor shall submit a report about use of the fund during the previous fiscal year to the legislature not later than the 10th day following the convening of each regular session of the legislature. In the report, the governor shall describe in detail the governor's use of money from the fund, with separate explanations, by agency, of the activities that were funded under the authority of AS 46.08.040(b). (§ 1 ch 59 SLA 1986; am §§ 16, 17 ch 190 SLA 1990; am § 29 ch 191 SLA 1990)

**Effect of amendments.** — The first 1990 amendment, effective September 24, 1990, inserted references to the department throughout subsection (a), made an internal reference change, and added subsection (c).

The second 1990 amendment, effective June 27, 1990, added all of the language of paragraph (a)(4) following "threat."

**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, shall immediately seek to recover money expended by the department under AS 46.08.005 — 46.08.080 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 or 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); 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; am §§ 1, 2 ch 29 SLA 1989)

**Revisor's notes.** — A reference to "AS 46.08.005 — 46.08.080" was substituted for "this chapter" in (b) of this section in 1989 to reflect the enactment of AS 46.08.100 — 46.08.190.

"may seek" near the beginning of subsection (b) and deleted "before incurring the expenses for which reimbursement is sought" at the end of paragraph (c)(1).

**Editor's notes.** — Section 3, ch. 29, SLA 1989 provides that this section is retroactive to March 24, 1989.

**Effect of amendments.** — The 1989 amendment, effective May 12, 1989, substituted "shall immediately seek" for

**Sec. 46.08.075. Liens against property as security for state expenditures.** (a) The state has a lien for expenditures by the state from the oil and hazardous substance release response fund or from any other state fund, for the costs of response, containment, removal, or remedial action resulting from an oil or hazardous substance spill, or, with respect to response costs, the substantial threat of a release of oil or a hazardous substance against all property owned by a person who is determined by the commissioner to be liable for the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of competent jurisdiction in order to foreclose on the lien.

(b) A lien established under this section against real property is not effective until

(1) a certificate of lien is recorded in the district recorder's office for the district in which the property is located, describing the property and stating the amount of the lien, the name of the owner as grantor, and, if known, the name of the person causing the oil or hazardous substance release; and

(2) the commissioner sends a copy of the certificate of lien by certified mail return receipt requested, or actually delivers a copy of the certificate of lien, to the persons described in (1) of this subsection and to all other persons of record holding an interest in the property.

(c) When any amount with respect to which a lien has been recorded under this section has been paid or reduced, the commissioner shall, upon request of the property owner, issue a certificate discharging or partially releasing the lien. That certificate may be recorded in the office in which the certificate of lien was recorded.

(d) The commissioner may, in the commissioner's discretion, reduce, discharge or partially release a lien under this section if a bond, or other security, in a form and an amount satisfactory to the commissioner is posted. The bond or other security must include an amount sufficient to cover the cost of execution, collection, or foreclosure, including attorney fees. A reduction, discharge, or partial release may not be granted under this subsection if it would be contrary to the public interest. When a lien is reduced, discharged, or partially released under this subsection, the commissioner shall, at the request of the property owner, issue a certificate to that effect.

(e) A person with an ownership interest in property against which a lien is recorded may bring an action in a court of competent jurisdiction to require that the lien be released. The lien may be released to the extent of that person's ownership interest if the court finds that the person is not liable for the expenses incurred by the state in connection with the costs of response, containment, removal, or remedial

action resulting from the oil or hazardous substance release or threat of release of oil or a hazardous substance. (§ 7 ch 39 SLA 1989)

**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 AS 46.08.005 — 46.08.080 otherwise apply. The commissioner may otherwise adopt only those regulations that are expressly required to implement the specific purposes of AS 46.08.005 — 46.08.080. (§ 1 ch 59 SLA 1986)

**Revisor's notes.** — References to "AS 46.08.005 — 46.08.080" were substituted for "this chapter" in this section, with a corresponding minor word change, in 1989 to reflect the enactment of AS 46.08.100 — 46.08.190.

**Article 2. Oil and Hazardous Substance Response Office.**

| Section                   | Section                      |
|---------------------------|------------------------------|
| 100. Office established   | 140. Emergency powers        |
| 110. Response corps       | 150. Contracts               |
| 120. Response depots      | 160. Limitation of liability |
| 130. Duties of the office | 190. Definitions             |

**Cross references.** — For legislative findings and purpose in connection with the enactment of AS 46.08.100 — 46.08.190, see § 1, ch. 113, SLA 1989 in the Temporary and Special Acts.

**Editor's notes.** — In ch. 113, SLA 1989, which enacted AS 46.08.100 — 46.08.190, Sec. 4 provides: "APPLICABILITY OF ACT. (a) This Act does not relieve a person responsible for an oil terminal facility, offshore exploration or production facility, or a vessel that transports crude oil, or a person who has control of a haz-

ardous substance from the responsibility for containing and cleaning up a discharge of oil or the hazardous substance as required by law.

"(b) This Act does not add to or detract from the authority under law of a municipality to impose taxes on oil and gas property or other properties for the purpose of establishing or maintaining services and facilities to minimize the risk of or respond to a release of oil or a hazardous substance."

**Sec. 46.08.100. Office established.** There is established in the department the oil and hazardous substance response office. The office shall include a director and employees who are specially trained in programs and technologies related to the containment and cleanup of releases or threatened releases of oil and hazardous substances. (§ 3 ch 113 SLA 1989)

**Sec. 46.08.110. Response corps.** (a) The division of emergency services, Department of Military and Veterans' Affairs, shall establish an oil and hazardous substance response corps.

(b) The corps consists of volunteers who register with the division and agree to be trained by the division in techniques for containment and cleanup and to be available on short notice to assist in containment and cleanup consistent with the responsibilities assigned to the corps under an applicable incident command system.

(c) Members of the corps are entitled to per diem and expenses as determined by the division for training and for days spent in service to the state in containment and cleanup actions. (§ 3 ch 113 SLA 1989; am § 18 ch 190 SLA 1990)

**Effect of amendments.** — The 1990 amendment substituted all of the present language of subsection (a) preceding "shall" for "The office", added all of the language following "cleanup" in subsec-

tion (b) while substituting "division" for "office" throughout that subsection, and substituted "division" for "commissioner" in subsection (c).

**Sec. 46.08.120. Response depots.** The division shall maintain emergency response depots in areas of the state determined in the plans prepared under AS 46.04.200 — 46.04.210 to be potential sites of releases or threatened releases of oil or hazardous substances. The depots shall be equipped and staffed in a manner that ensures prompt response when containment and cleanup actions are necessary. (§ 3 ch 113 SLA 1989; am § 19 ch 190 SLA 1990)

**Effect of amendments.** — The 1990 amendment rewrote the first sentence.

**Sec. 46.08.130. Duties of the office.** (a) The office shall be prepared to respond promptly to a discharge of oil or a hazardous substance.

(b) The office may respond under (a) of this section to an oil or hazardous substance discharge only if:

(1) the oil discharge is a catastrophic oil discharge that constitutes an emergency under AS 46.04.080(a);

(2) the discharge of oil or a hazardous substance is declared to be an emergency under AS 46.03.065;

(3) the governor declares the discharge an emergency under AS 26.23;

(4) the commissioner reasonably believes that there has been a discharge of oil or a hazardous substance, or that there is a potential discharge of oil or a hazardous substance, and the discharge may qualify under (1) — (3) of this subsection; or

(5) the commissioner reasonably believes that the discharge or potential discharge poses an imminent and substantial threat to public health or welfare or to the environment.

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(c) When the office or corps responds to an oil or hazardous substance discharge under this section, its activities shall be guided by the relevant provisions of the incident command system applicable to the type of discharge to which it is responding. (§ 3 ch 113 SLA 1989; am § 20 ch 190 SLA 1990)

Effect of amendments. — The 1990 amendment added subsection (c).

Sec. 46.08.140. Emergency powers. (a) When the office has reasonable grounds to believe that a release of oil or a hazardous substance has occurred or is threatened to occur which, in the judgment of its director, presents an imminent or present danger to the health or welfare of the people of the state or would result in or is likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interest of the people of the state to delay action until an opportunity for a hearing can be provided, state employees or members of the corps may, with permission of the director and without prior hearing, enter private property for the purpose of containment or cleanup.

(b) The property owner affected by a response action taken under (a) of this section has the right to be heard as soon as practicable and to present proof to the office that the containment or cleanup action is unnecessary or that it is not necessary to enter the person's property for the containment or cleanup action. (§ 3 ch 113 SLA 1989)

Sec. 46.08.150. Contracts. The office or the division, as applicable, may enter into agreements with agencies of the state and federal government, political subdivisions, the University of Alaska, or private persons or entities to

(1) provide the personnel, equipment, or other services or supplies necessary to establish and maintain regional oil and hazardous substances depots and as necessary for response readiness;

(2) train members of response corps; and

(3) conduct research into oil and hazardous substances spill technology; the office shall include in the research topics for which it conducts or contracts for research, the research topics recommended to it by the Hazardous Substance Spill Technology Review Council under AS 46.13.120. (§ 3 ch 113 SLA 1989; am § 21 ch 190 SLA 1990)

Effect of amendments. — The 1990 amendment rewrote this section.

**Sec. 46.08.160. Limitation of liability.** The state, an employee of the state, and a member of the corps are not liable for costs or damages as a result of actions taken under AS 46.08.100 — 46.08.190 in response to a release or threatened release unless the actions taken by the state, the employee, or the member of the corps constitute gross negligence or intentional misconduct. (§ 3 ch 113 SLA 1989)

**Sec. 46.08.190. Definitions.** In AS 46.08.100 — 46.08.190

(1) "corps" means the oil and hazardous substance response corps;

(2) "depots" means the oil and hazardous substance supply and equipment storage depots;

(3) "division" means the division of emergency services, Department of Military and Veterans' Affairs;

(4) "office" means the oil and hazardous substance response office. (§ 3 ch 113 SLA 1989; am § 22 ch 190 SLA 1990)

**Revisor's notes.** — Paragraph (3) was enacted as (4). Renumbered in 1990.

**Effect of amendments.** — The 1990 amendment added paragraph (3).

## Chapter 09. Hazardous Substance Release Control.

### Section

20. Containment and cleanup of a released hazardous substance

### Section

30. Disaster emergencies

**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

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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)

Editor's notes. — This section is set out above to correct a typographical error in the main pamphlet.

**Sec. 46.09.030. Disaster emergencies.** The commissioner of environmental conservation or the director of the division of emergency services, Department of Military and Veterans' Affairs, may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency under AS 26.23, the commissioner and the division of emergency services, Department of Military and Veterans' Affairs, shall respond appropriately in the relief of the emergency, in accordance with the relevant provisions of the applicable incident command system. (§ 2 ch 59 SLA 1986; am § 23 ch 190 SLA 1990)

Effect of amendments. — The 1990 amendment rewrote this section.

## Chapter 20. Civil Defense.

### Section

#### 40. Emergency powers of the governor

**Sec. 26.20.040. Emergency powers of the governor.** In the event of actual enemy attack against the state the governor may declare that a state of emergency exists, and, during the period of time that the state of emergency exists or continues, the governor has and may exercise the additional emergency power

(1) to enforce all laws and regulations relating to civil defense and assume direct operational control of all civil defense forces and helpers in the state;

(2) to seize, take, or condemn property for the protection of the public or at the request of the president, the armed forces or the civil defense agency of the United States, including

(A) all means of transportation and communication, except newspapers and news services;

(B) all stocks of fuel of whatever nature;

(C) food, clothing, equipment, materials, medicines, and supplies; and

(D) facilities including buildings and plants;

(3) to sell, lend, give, or distribute the fuel, food, clothing, medicines, and supplies among the inhabitants of the state and account to the commissioner of revenue for funds received for the property;

(4) to make compensation for the property seized, taken, or condemned on the basis described in AS 26.20.045;

(5) to perform and exercise other functions, powers, and duties that are considered necessary to promote and secure the safety and protection of the civilian population. (§ 7 ch 131 SLA 1951)

**Revisor's notes.** — The term "commissioner of revenue" was substituted for "state treasurer" in (3) of this section in 1990 because the office of state treasurer does not exist.

## Chapter 23. Disasters.

### Article

1. Alaska Disaster Act (§§ 26.23.020, 26.23.025, 26.23.040 — 26.23.060, 26.23.080, 26.23.090, 26.23.110, 26.23.190, 26.23.195, 26.23.210, 26.23.215, 26.23.230)
2. Disaster Relief Fund (§ 26.23.300)
3. Fuel Emergency (§ 26.23.400)
4. General Provisions (§ 26.23.900)

Article 1. Alaska Disaster Act.

Section

- 20. The governor and disaster emergencies
- 25. The legislature and disaster emergencies
- 40. Duties of the Alaska division of emergency services
- 50. Financing
- 60. Local and interjurisdictional disaster agencies and services
- 80. Disaster loans

Section

- 90. Grants to disaster victims
- 110. Debris and wreckage removal in disaster emergency or major disaster
- 190. Emergency powers
- 195. Discharge response actions
- 210. Relationship to civil defense laws
- 215. Relationship to other planning statutes
- 230. [Renumbered]

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Sec. 26.23.020. The governor and disaster emergencies.

(a) The governor is responsible for meeting the dangers presented by disasters to the state and its people.

(b) The governor may issue orders, proclamations, and regulations necessary to carry out the purposes of this chapter, and amend or rescind them. These orders, proclamations, and regulations have the force of law.

(c) A condition of disaster emergency shall be declared by proclamation of the governor if the governor finds that a disaster has occurred or that such an occurrence is imminent or threatened. If the legislature is not in session when a proclamation is issued, concurrently with the issuance of the proclamation, a call shall be issued by the governor to convene a special session of the legislature to consider ratification of actions taken under this chapter. A call for a special session under this section may be cancelled by the unanimous agreement of the presiding officers of the senate, house of representatives and the governor before the actual convening of the special session. If a special session is held, actions taken by the governor under this chapter that are not ratified by the legislature within 15 days of its convening are void. The disaster emergency so declared remains in effect until the governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and the governor terminates the disaster emergency by proclamation; but a proclamation of disaster emergency does not remain in effect for longer than 30 days unless renewed by the legislature. The legislature, by concurrent resolution, may terminate a disaster emergency at any time. All proclamations issued under this subsection must indicate the nature of the disaster, the area or areas threatened or affected, and the conditions that have brought it about or which make possible the termination of the disaster emergency.

(d) An order or proclamation issued under this chapter shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless prevented or impeded by circumstances attendant upon the disaster, promptly filed with the

Alaska division of emergency services, the lieutenant governor, and the municipal clerk in the area to which it applies.

(e) A proclamation of a disaster emergency activates the disaster response and recovery aspects of the state, local and interjurisdictional disaster emergency plans applicable to the political subdivisions or areas in question, and constitutes authority for the deployment and use of any force to which the plan or plans apply and for use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available under this chapter or any other provision of law relating to disaster emergency response.

(f) During the effective period of a disaster emergency, the governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty. The governor may delegate or assign command authority by appropriate orders or regulations.

(g) In addition to any other powers conferred upon the governor by law, the governor may, under this chapter,

(1) suspend the provisions of any regulatory statute prescribing procedures for the conduct of state business, or the orders or regulations of any state agency, if compliance with the provisions of the statute, order, or regulation would prevent, or substantially impede or delay, action necessary to cope with the disaster emergency;

(2) use all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the disaster emergency;

(3) transfer personnel or alter the functions of state departments and agencies or units of them for the purpose of performing or facilitating the performance of disaster emergency services;

(4) subject to any applicable requirements for compensation under AS 26.23.160, commandeer or utilize any private property, except for all news media other than as specifically provided for in this chapter, if the governor considers this necessary to cope with the disaster emergency;

(5) direct and compel the relocation of all or part of the population from any stricken or threatened area in the state, if the governor considers relocation necessary for the preservation of life or for other disaster mitigation purpose;

(6) prescribe routes, modes of transportation, and destinations in connection with necessary relocation;

(7) control ingress to and egress from a disaster area, the movement of persons within the area, and the occupancy of premises in it;

(8) suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles;

(9) make provisions for the availability and use of temporary emergency housing;

- (10) allocate or redistribute food, water, fuel, or clothing; and
- (11) use money from the oil and hazardous substance release response fund, established by AS 46.08.010, to respond to a declared disaster emergency related to an oil or hazardous substance discharge. (§ 3 ch 104 SLA 1977; am § 1 ch 190 SLA 1990)

Effect of amendments. — The 1990 amendment added paragraph (g)(11).

Sec. 26.23.025. The legislature and disaster emergencies.

(a) The provisions of this section apply when the governor declares a condition of disaster emergency under AS 26.23.020(c) and in response to the disaster the governor proposes to expend

- (1) more than \$1,000,000 of the assets of the disaster relief fund under AS 26.23.300(b);
- (2) more than \$500,000 of the assets of the disaster relief fund under AS 26.23.300(c); or
- (3) an amount from the disaster relief fund that exceeds the unallocated balance of the fund.

(b) When the governor declares a condition of disaster emergency while the legislature is in session, concurrently with the issuance of the proclamation the governor shall prepare and deliver to the presiding officers of the legislature and to the persons who chair the finance committees in each house of the legislature

- (1) a financing plan relating to the source or sources of money available from sources identified in AS 26.23.050(b) that the governor proposes to use to cope with the disaster; or
- (2) a supplemental appropriation to provide money necessary to cope with the disaster.

(c) When the governor declares a condition of disaster emergency while the legislature is not in session, concurrently with the issuance of the disaster emergency proclamation the governor shall

- (1) convene a special session of the legislature under this subsection within five days unless the presiding officers of both the house of representatives and the senate agree that a special session should not be convened and so advise the governor in writing; and
- (2) prepare and deliver to the presiding officers of the legislature and to the persons who chair the finance committees in each house of the legislature

(A) a financing plan relating to the source or sources of money available from sources identified in AS 26.23.050(b) that the governor proposes to use to cope with the disaster; or

- (B) a supplemental appropriation to provide money necessary to cope with the disaster.
- (d) If the declaration of a disaster emergency occurs while the legislature is in session, or if a special session is held, actions taken by the

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governor under this chapter that are not ratified by a concurrent resolution adopted during that session are void.

(e) If the legislature does not convene in special session under (c)(1) of this section, the governor may act under this chapter in a manner that is consistent with the financing plan submitted.

(f) The legislature, by concurrent resolution, may terminate a disaster emergency at any time. (§ 2 ch 178 SLA 1990)

*Effective dates.* — Section 2, ch. 178, SLA 1990, which enacted this section took effect on September 19, 1990.

**Sec. 26.23.040. Duties of the Alaska division of emergency services.** (a) The Alaska division of emergency services shall prepare and maintain a state emergency plan and keep it current. The plan may include provisions for

(1) prevention and minimization of injury and damage caused by disasters;

(2) prompt and effective response to disasters;

(3) emergency relief;

(4) identification of geographical areas, municipalities, cities or villages especially vulnerable to a disaster;

(5) recommendations for

(A) zoning, building, and other land use controls;

(B) safety measures for securing mobile homes or other nonpermanent or semi-permanent structures; and

(C) other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(6) assistance to local officials in designing local emergency action plans;

(7) authorization and procedures for the construction of temporary works designed to protect against or mitigate danger, damage, or loss from a disaster;

(8) organization of manpower and chains of command;

(9) coordination of federal, state, and local disaster activities;

(10) coordination of the state emergency plan with the disaster plans of the federal government; and

(11) other matters necessary to carry out the purposes of this chapter.

(b) The Alaska division of emergency services shall play an integral part in the development and revision of local and interjurisdictional disaster plans prepared under AS 26.23.060. To this end, it may employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, their disaster agencies, and interjurisdictional planning and disaster agencies. These personnel shall consult with political subdivi-

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sions and agencies on a regular basis and shall make field examina-  
tions of the areas, circumstances, and conditions to which particular  
local and interjurisdictional disaster plans are intended to apply and  
may suggest or require revisions.

(c) In preparing and maintaining the state emergency plan, the  
Alaska division of emergency services shall seek the advice and assist-  
ance of local government, business, labor, industry, agriculture, civic  
and volunteer organizations and community leaders. In advising local  
and interjurisdictional agencies, the office shall encourage them also  
to seek advice from these sources.

(d) The state emergency plan or any part of it may be incorporated  
in regulations or orders of the Alaska division of emergency services.  
Regulations and orders of the Alaska division of emergency services  
have the force and effect of law.

(e) The Alaska division of emergency services shall

(1) determine requirements of the state and its political subdivi-  
sions for food, clothing, and other necessities in the event of a disaster  
emergency;

(2) procure and pre-position supplies, medicines, materials, and  
equipment;

(3) adopt standards and requirements for local and interjurisdic-  
tional disaster plans;

(4) periodically review local and interjurisdictional disaster plans;

(5) establish and operate, or assist political subdivisions, their di-  
saster agencies, and interjurisdictional disaster agencies to establish  
and operate, training programs;

(6) plan and make arrangements for the availability and use of any  
private facilities, services, and property and, if necessary and if in fact  
used, provide for payment for use under terms and conditions agreed  
upon by the parties;

(7) establish a register of persons with types of training and skills  
important in disaster prevention, preparedness, response, and recov-  
ery;

(8) prepare, for issuance by the governor, orders, proclamations,  
and regulations as necessary or appropriate in coping with disasters;

(9) cooperate with the federal government and any public or private  
agency or entity in achieving any purpose of this chapter and in im-  
plementing programs for disaster prevention, preparedness, response  
and recovery;

(10) develop and carry out procedures and policies to effectively  
employ disaster relief funds made available by the governor's author-  
ity or by special legislative action; these procedures shall include ap-  
plication and documentation by disaster victims or applicants, review,  
verification and funding approval, and processing of appeals;

(11) do other things necessary or proper for the implementation of  
this chapter. (§ 3 ch 104 SLA 1977; am §§ 3, 4 ch 178 SLA 1990)

**Effect of amendments.** -- The 1990 amendment, in subsection (a), made stylistic changes in paragraph (5), deleted former paragraph (8) relating to preparation and distribution of catalogs or extracts listing assistance programs, and redesignated former paragraphs (9) through (12) as present paragraphs (8) through (11); and in subsection (e), deleted former paragraph (5) relating to provision for mo-

bile support units, deleted former paragraph (7) relating to surveys, deleted former paragraph (10) relating to registration of certain equipment and housing, redesignated former paragraphs (6), (8), (9), and (11) through (14) as present paragraphs (5) through (11), and deleted "and public information" following "training" in present paragraph (5).

**Sec. 26.23.050. Financing.** (a) It is the intent of the legislature, and declared to be the policy of the state, that funds to meet disaster emergencies will always be available.

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to money regularly appropriated to state and local agencies. The second recourse shall be to money available in the disaster relief fund or, for oil or hazardous substances discharges, the oil and hazardous substance release response fund, as the governor determines appropriate. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding the limitations imposed by AS 37.07.080(e),

- (1) transfer and spend money appropriated for other purposes; or
- (2) borrow money for a term not to exceed two years.

(c) Nothing in this section limits the governor's authority to apply for, receive, administer, and spend grants, gifts, or payments from any source, to aid in disaster prevention, preparedness, response, or recovery. (§ 3 ch 104 SLA 1977; am § 3 ch 59 SLA 1986; am § 5 ch 178 SLA 1990; am § 2 ch 190 SLA 1990)

**Effect of amendments.** -- The first 1990 amendment, in subsection (b), substituted "money" for "funds" in the first and second sentences and substituted the language beginning "the limitations imposed" for "any limitation imposed by AS 37.07.080(e), transfer and spend money appropriated for other purposes or, in situations involving natural disasters, borrow

from the United States government or other public or private sources for a term not to exceed two years" at the end of the third sentence.

The second 1990 amendment, in the second sentence of subsection (b), inserted ", for oil or hazardous substances discharges," and "the governor determines".

**Sec. 26.23.060. Local and interjurisdictional disaster agencies and services.** (a) Each political subdivision in the state is within the jurisdiction of, and shall be served by, the Alaska division of emergency services. A municipality also may be served by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

(b) Each borough may maintain a disaster agency, or participate in a local or interjurisdictional disaster agency which, except as other-

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wise provided in this chapter, has jurisdiction over and serves the entire borough.

(c) Each political subdivision that does not have a disaster agency and has not made arrangements to secure or participate in the services of a disaster agency shall designate a liaison officer to facilitate the cooperation and protection of that political subdivision in the work of disaster prevention, preparedness, response, and recovery.

(d) The principal executive officer of each political subdivision in the state shall notify the Alaska division of emergency services of the manner in which the political subdivision is providing or securing disaster planning; and intends to provide or secure emergency services, identify the person who heads the agency from which the services are or will be obtained, and furnish additional information relating to the services as the Alaska division of emergency services requires.

(e) Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional disaster emergency plan for its area.

(f) The local or interjurisdictional disaster agency, as the case may be, shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the emergency responsibilities of all local agencies and officials. (§ 3 ch 104 SLA 1977; am §§ 6, 7 ch 178 SLA 1990)

Effect of amendments. — The 1990 amendment substituted "A municipality" for "An incorporated municipality" at the beginning of the second sentence of subsection (a) and substituted "political subdivision" for "city" in subsection (c).

**Sec. 26.23.080. Disaster loans.** Whenever, at the request of the governor, the President has declared a major disaster to exist in this state, the governor may

(1) upon the governor's determination that a political subdivision of the state will suffer a substantial loss of tax and other revenue from the disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the political subdivision, for a loan; the governor may receive and disburse the proceeds of any approved loan to any applicant political subdivision;

(2) determine the amount needed by any applicant political subdivision to restore or resume its governmental functions, and to certify the amount to the federal government;

(3) recommend to the federal government, based upon review by the governor, the cancellation of all or any part of repayment when, for the first three full fiscal years following the major disaster, the revenue of the political subdivision is insufficient to meet its operating expenses, including additional disaster-related expenses of a municipi-

pal operation character. (§ 3 ch 104 SLA 1977; am § 8 ch 178 SLA 1990)

**Effect of amendments.** — The 1990 amendment substituted "political subdivision" for "local government" throughout the section and deleted a provision at the end of paragraph (2) limiting the application amount.

**Sec. 26.23.090. Grants to disaster victims.** (a) Whenever the President, at the request of the governor, has declared a major disaster to exist in this state, the governor may

(1) upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund that financial assistance, subject to the terms and conditions that may be imposed upon the grant;

(2) enter into an agreement with the federal government, or any officer or agency of it, pledging the state to participate in the funding of the financial assistance authorized in (1) of this subsection, in an amount not to exceed 25 per cent of the assistance and, if state funds are not otherwise available to the governor, to accept an advance of the state's share from the federal government to be repaid when the state is able to do so.

(b) The governor is authorized to make financial grants to an individual or family to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by the disaster that cannot otherwise adequately be met from other means of assistance. The governor may make a grant to an individual and family under this subsection as follows:

(1) when the President declares a major disaster, the governor may make a grant of an amount whose total of federal and state shares does not exceed the maximum amount authorized by 42 U.S.C. 5178(f) for grants payable to individuals and families;

(2) when the President does not declare a major disaster but the governor declares a disaster emergency, the governor may make a grant of an amount not to exceed \$5,000.

(c) [*Repealed, § 18 ch 178 SLA 1990.*] (§ 3 ch 104 SLA 1977; am §§ 9, 18 ch 178 SLA 1990)

**Effect of amendments.** — The 1990 amendment deleted "the total of federal and state shares not to exceed \$5,000" following "financial grants" and "in any single major disaster declared by the president" following "individual or family" and substituted "the disaster" for "a major di-

saster" in the first sentence of subsection (b); added the second sentence of subsection (b); and repealed subsection (c), which penalized fraudulent or wilful misstatements of fact in connection with financial assistance applications.

ENT § 26.23.090

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§ 26.23.110 MILITARY AFFAIRS AND VETERANS § 26.23.190

**Sec. 26.23.110. Debris and wreckage removal in disaster emergency or major disaster.** (a) When the governor has declared a disaster emergency, or the President, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor may

(1) through the use of state agencies, clear from publicly or privately owned land or water, debris and wreckage that may threaten public health, safety, or property;

(2) apply for and accept funds from the federal government and use those funds to make grants to a political subdivision for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(b) Authority under (a)(1) of this section may not be exercised unless the affected political subdivision, corporation, organization, or individual unconditionally authorizes the removal of the debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, first agrees to indemnify the state government against claims arising from the removal. (§ 3 ch 104 SLA 1977; am §§ 10, 11 ch 178 SLA 1990)

*Effect of amendments.* — The 1990 amendment substituted "a political subdivision" for "any local government" in paragraph (a)(2) and "political subdivision" for "local government" in subsection (b).

**Sec. 26.23.190. Emergency powers.** (a) If entry is reasonably necessary to actually alleviate or prevent the disaster, all persons authorized to carry out emergency measures directed under the provisions of AS 26.23.010 — 26.23.220 shall be accorded free access to all public and private land and public buildings within the areas specified, and are authorized to enter them and to perform work and take measures that are appropriate without the consent of the owners of the land or buildings.

(b) When performing responsibilities assigned to it under an incident command system established under this chapter, AS 46.04.200 — 46.04.210, or AS 46.13, the Alaska division of emergency services may, in a situation involving an actual or imminent discharge of oil or a hazardous substance, issue an order directing persons and governmental agencies to take action the division believes necessary to carry out its assigned responsibilities. (§ 3 ch 104 SLA 1977; am § 3 ch 190 SLA 1990)

*Revisor's notes.* — In 1990, in this section a reference to AS 26.23.010 — 26.23.220 was substituted for "this chapter" to reflect the enactment of Articles 2 and 3 by ch. 178, SLA 1990.

*Effect of amendments.* — The 1990 amendment added subsection (b).

**Sec. 26.23.195. Discharge response actions.** (a) The Alaska division of emergency services shall perform the responsibilities assigned to it under an incident command system established under this chapter, AS 46.04.200 — 46.04.210, or AS 46.13 in a state response to a release or threatened release of oil or a hazardous substance.

(b) The Alaska division of emergency services may contract with persons to provide personnel, including members of the emergency response corps, to assist them with a nongovernmental response to a release or threatened release of oil or a hazardous substance.

(c) Within the limit of appropriations made specifically for the purpose, the Alaska division of emergency services may assist persons with mobilization of personnel and resources, communications, transportation planning, and other logistics involved in a nongovernmental response to a release or threatened release of oil or a hazardous substance when to do so would be consistent with the duties assigned to it under an incident command system established under this chapter, AS 46.04.200 — 46.04.210, or AS 46.13. (§ 4 ch 190 SLA 1990)

**Effective dates.** — Section 4, ch. 190, SLA 1990, which enacted this section, took effect on September 24, 1990.

**Sec. 26.23.210. Relationship to civil defense laws.** (a) AS 26.20 (civil defense) applies to preparedness, response, and recovery from disasters caused by enemy attack and other hostile military or paramilitary action.

(b) The provisions of this chapter, other than AS 26.23.130, apply to preparedness, response, and recovery in cases of natural and man-made disasters other than disasters listed in (a) of this section. (§ 3 ch 104 SLA 1977; am § 12 ch 178 SLA 1990)

**Effect of amendments.** — The 1990 amendment divided the section into subsections; made a stylistic change at the beginning of subsection (a); and in subsection (b), deleted "nonmilitary" before "manmade" and added "other than disasters listed in (a) of this section" at the end.

**Sec. 26.23.215. Relationship to other planning statutes.** To the extent that the state emergency plan, interjurisdictional plans, and local plans prepared under this chapter relate to action required to avert damage from a release of oil or a hazardous substance, the plans must be substantially equivalent in relevant respects to the local emergency plans prepared under AS 46.13 and the state and regional master plans prepared by the Department of Environmental Conservation under AS 46.04.200 — 46.04.210, use the same incident command systems used in those plans, and be approved by the Alaska State Emergency Response Commission under AS 46.13.045. (§ 5 ch 190 SLA 1990)

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took effect on September 24, 1990.

*Sec. 26.23.230. [Renumbered as AS 26.23.900.]*

### Article 2. Disaster Relief Fund.

Section  
300. Disaster relief fund

**Sec. 26.23.300. Disaster relief fund.** (a) There is in the Office of the Governor a disaster relief fund. The Department of Revenue is custodian of the fund.

(b) Subject to the restrictions of (d) of this section, the governor may, without additional legislative authorization, expend not more than \$1,000,000 of the assets of the disaster relief fund for the following purposes:

(1) to implement provisions of law relating to disaster relief in the case of a disaster;

(2) to alleviate the effects of a disaster by making grants or loans to persons or political subdivisions on terms the governor considers appropriate or by other means the governor considers appropriate.

(c) Subject to the restrictions of (d) of this section, the governor may, without additional legislative authorization, expend during a fiscal year not more than \$500,000 of the assets of the disaster relief fund to prevent or minimize the effects of an event that occurs in the state and that, in the determination of the governor, poses a direct and imminent threat of a disaster of sufficient magnitude and severity to justify state action.

(d) The governor shall present to the legislature an annual accounting of money expended from the disaster relief fund.

(e) The governor shall adopt regulations to carry out the provisions of this section. (§ 17 ch 178 SLA 1990)

Effective dates. — Section 17, ch. 178,  
SLA 1990, which enacted this section,  
took effect on September 19, 1990.

### Article 3. Fuel Emergency.

Section  
400. Fuel emergency fund

**Sec. 26.23.400. Fuel emergency fund.** There is established in the Office of the Governor the fuel emergency fund. When the governor determines that a shortage of fuel is sufficiently severe to justify state assistance, the governor may make a grant from the fuel emergency fund to a political subdivision to purchase emergency supplies of fuel. (§ 17 ch 178 SLA 1990)

**Effective dates.** — Section 17, ch. 178, SLA 1990, which enacted this section, took effect on September 19, 1990.

#### Article 4. General Provisions.

##### Section 900. Definitions

**Sec. 26.23.900. 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 a natural or man-made cause, including

(A) fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, or shortage of food, water, fuel, or clothing;

(B) the release of oil or a hazardous substance, if the release requires prompt action to avert environmental danger or damage; and

(C) equipment failure, if the failure is not a predictably frequent or recurring event or preventable by adequate equipment maintenance or operation;

(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;

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

(5) "political subdivision" means

(A) a municipality;

(B) an unincorporated village; or

(C) another unit of local government;

(6) "temporary housing" has the meaning given in the federal Disaster Relief Act as amended;

(7) "unorganized militia" means all persons comprising that component of the militia of the state, as described in AS 26.05.010. (§ 3 ch 104 SLA 1977; am § 49 ch 74 SLA 1985; am § 4 ch 59 SLA 1986; am § 2 ch 5 SLA 1987; am §§ 13 — 16 ch 178 SLA 1990)

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): SENATORS ZHAROFF, Sturgulewski

A BILL

FOR AN ACT ENTITLED

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

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

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

8 (b) A municipality may adopt an ordinance to exercise a power authorized by this  
9 subsection [PROTECT ITS WATER SUPPLY AND WATERSHED,] and may enforce the  
10 ordinance outside its boundaries. Before a [THIS] power authorized by this subsection may  
11 be exercised inside the boundaries of another municipality, the approval of the other municipality  
12 must be given by ordinance, and before a power authorized by this subsection may be  
13 exercised inside a village, the governing body of the municipality shall notify and consult



1 has been prepared by the Department of Environmental Conservation under AS 46.04.210.

2 \* Sec. 5. AS 29.35.220 is amended by adding a new subsection to read:

3 (e) A third class borough may by ordinance exercise power necessary to contain, clean  
4 up, or prevent a release or threatened release of oil or a hazardous substance, and exercise a  
5 power granted to a municipality under AS 46.04, AS 46.08, or AS 46.09, but the power  
6 authorized by this subsection may be exercised only on a nonareawide basis. The borough shall  
7 exercise its authority under this subsection in a manner that is consistent with a regional master  
8 plan for the region in which the borough is located if a plan has been prepared by the  
9 Department of Environmental Conservation under AS 46.04.210.

10 \* Sec. 6. AS 29.60 is amended by adding new sections to read:

11 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL  
12 IMPACT ASSISTANCE.

13 Sec. 29.60.500. PURPOSE AND POLICY. (a) The legislature finds and declares that  
14 a major release of oil or hazardous substances into the environment presents a real and substantial  
15 threat to the economy and public welfare of the municipalities and villages that are affected by  
16 the release and the resultant activities to contain and clean up the release.

17 (b) The legislature concludes that it is in the best interest of the state and its citizens to  
18 provide a readily available fund for the payment of the expenses incurred by municipalities and  
19 villages to mitigate the social and economic effects that arise out of a major release of oil or  
20 hazardous substances and resultant cleanup activities.

21 (c) It is the intent of the legislature and declared to be the public policy of the state that  
22 money to defray the cost of social and economic effects on municipalities and villages arising  
23 from a major release of oil or a hazardous substance and resultant cleanup activities and to pay  
24 for efforts to abate that major release will be immediately available upon the declaration by the  
25 governor of a disaster emergency relating to the release.

26 Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) If a release of  
27 oil or a hazardous substance has been proclaimed a disaster emergency by the governor under  
28 AS 26.23.020, the commissioner may use money from the oil and hazardous substance release  
29 response fund to make grants to a municipality or village that is affected by the release or by the  
30 response to the release and that demonstrates that the release or response to the release involves  
31 extraordinary expenditures that are beyond the reasonable capability of the municipality or village

*It is the general policy of the state that a community or village as a result of the release*

1 to meet from the municipality's or village's current revenue sources.

2 (b) For each disaster emergency declared by the governor under AS 26.23.020, and  
3 subject to agreement with the commissioner of environmental conservation as to the amount of  
4 money in the fund that may be used by the department to make grants, the commissioner may  
5 expend not more than \$10,000,000 of the balance of the fund that is appropriated to the spill  
6 reserve or of the unrestricted balance of the fund for grants authorized under this section. If the  
7 commissioner and the commissioner of environmental conservation do not agree on the amount  
8 of money in the fund that may be used by the department to make grants under AS 29.60.500 -  
9 29.60.599, the governor shall make the determination.

10 (c) Notwithstanding the limitation of AS 37.07.080(e) against the transfer of money  
11 between appropriations, when the commissioner and the commissioner of environmental  
12 conservation have agreed to the amount of money in the fund that may be used by the  
13 department to make grants, or when that determination has been made by the governor, the  
14 commissioner of environmental conservation shall promptly transfer that amount to the  
15 department for use under AS 29.60.500 - 29.60.599.

16 (d) For money that has been transferred under (c) of this section, if within any one-year  
17 period thereafter the commissioner does not use the money to make a grant under AS 29.60.500 -  
18 29.60.599, the commissioner shall, at the direction of the governor or the request of the  
19 commissioner of environmental conservation, return the unexpended amount transferred under  
20 (c) of this section to the fund.

21 Sec. 29.60.520. PURPOSES OF MUNICIPAL IMPACT GRANTS. (a) A grant made  
22 under AS 29.60.510 may be made only

23 (1) for a service, including all incidental administrative costs related to the  
24 service, that is directly or indirectly affected by efforts associated with prevention, abatement,  
25 containment, or removal of oil or a hazardous substance and that relates to

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

29 (B) alleviation or mitigation of adverse social or cultural effects;

30 (C) public health and welfare needs, including hospital, clinic, and  
31 emergency medical services; alcohol, drug abuse, and mental health services; family

1 support services; and the operation of waste disposal systems and water quality  
2 improvement systems;

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

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

8 (F) housing and office needs;

9 (G) transportation needs;

10 (H) public administration needs, including the value of the time of staff  
11 and administrative personnel necessary to direct efforts to prevent, abate, contain, and  
12 remove oil or a hazardous substance; and

13 (I) planning needs, including the value of the time of staff and  
14 administrative personnel necessary to coordinate efforts with other governments to  
15 prevent, abate, contain, and remove oil or a hazardous substance; and

16 (2) to compensate the municipality or village for

17 (A) the reduction of revenue attributable to the release of the oil or  
18 hazardous substance; and

19 (B) the costs of projects or activities that are delayed or lost because of  
20 the efforts of the municipality or village responding to the release or associated with the  
21 containment or cleanup of oil or the hazardous substance.

22 (b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may  
23 not be used for a capital improvement, as that term is defined by AS 46.08.900(1). *unless essential -*  
*owning revenue*

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

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

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

31 (3) the severity of the effect addressed in the grant application.

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

5 (c) The department shall adopt, by regulation, criteria by which to rank all or a portion  
 6 of applications for the purpose of establishing the priority order of awarding grants if money  
 7 requested by eligible municipalities and villages under this section exceeds the amount available.  
 8 The criteria must be based on the elements set out in (a) of this section. If the total amount of  
 9 money requested by eligible municipalities and villages under this section exceeds the amount  
 10 available, the department shall rank applications for the purpose of establishing the priority order  
 11 of awarding grants in accordance with the regulations.

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

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

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

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

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

26 Sec. 29.60.570. IMPACT ASSESSMENT AND REMEDIAL PLANS. (a) For each  
 27 disaster emergency declared by the governor under AS 26.23.020 based on a release of oil or a  
 28 hazardous substance, the commissioner *in consultation w/ the other agencies* after consulting with and securing the written approval  
 29 of the attorney general, shall

30 (1) make an assessment of the social and economic effects of the release of the  
 31 oil or hazardous substance;

- 1 (2) develop a plan to
- 2 (A) recover the cost of release-related expenditures; and
- 3 (B) mitigate the social and economic effects of the release of the oil or
- 4 hazardous substance on the municipalities, the villages, and the region in which the
- 5 discharge occurs;

6 (b) The commissioner may make the assessment and plans required by (a) of this section  
7 by

- 8 (1) using staff of the department;
- 9 (2) contracting with a municipality or other entity; or
- 10 (3) authorizing a municipality or other entity to perform that work and supporting
- 11 that effort by a grant.

12 (c) Only one assessment and one plan may be completed under this section for each  
13 declaration of a disaster emergency.

14 (d) The commissioner may pay the costs of the assessment <sup>and plan</sup> from money  
15 available in the fund., *29.60.516(c) or by separate agreement w/ town of Dec*

16 Sec. 29.60.580. REGULATIONS. The commissioner and the commissioner of  
17 environmental conservation shall jointly develop and adopt regulations that are necessary to  
18 implement the purposes of AS 29.60.500 - 29.60.599.

19 Sec. 29.60.599. DEFINITIONS. In AS 29.60.500 - 29.60.599,

- 20 (1) "containment and cleanup" has the meaning given in AS 46.08.900;
- 21 (2) "disaster emergency" means a disaster declared by the governor under
- 22 AS 26.23.020;
- 23 (3) "fund" means the oil and hazardous substance release response fund
- 24 established by AS 46.08.010;
- 25 (4) "hazardous substance," "oil," and "release" have the meanings given in
- 26 AS 46.08.900;
- 27 (5) "service"

28 (A) means a function performed or service provided by a municipality  
29 under a duty or power authorized by this title or by another provision of law authorizing  
30 a municipality to perform functions or provide services, or a comparable function  
31 performed or service provided by a village;

1 (B) includes functions not previously performed and services not  
2 previously provided by the municipality or village;

3 (6) "village" means each of the following in the unorganized borough or within  
4 a borough if the power, function, or service for which a grant application is submitted under  
5 AS 29.60.500 - 29.60.599 is not exercised or provided by the borough on an areawide or  
6 nonareawide basis at the time the grant application is submitted, if the village has irrevocably  
7 waived, in a form approved by the Department of Law, any claim of sovereign immunity that  
8 might arise in connection with the use of grant money under this chapter, and if the village has

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

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

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

16 \* Sec. 7. AS 46.03.760(e) is amended to read:

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

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

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

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

26 (4) all incidental administrative costs.

27 \* Sec. 8. AS 46.03.822(a) is amended to read:

28 (a) Notwithstanding any other provision or rule of law and subject only to the defenses  
29 set out in (b) of this section and the exception set out in (i) of this section, the following persons  
30 are strictly liable, jointly and severally, for damages to persons or property, whether public or  
31 private, including damage to the natural resources of the state or municipality, [AND] for the

1 costs of response, containment, removal, or remedial action incurred by the state, [OR] a munic-  
2 ipality, or a village, and for the additional costs of a function or service, including  
3 administrative expenses for the incremental costs of providing the function or service, that  
4 are incurred by the state, a municipality, or a village, and the costs of projects or activities  
5 that are delayed or lost because of the efforts of the state, the municipality, or the village,  
6 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,  
7 the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

28 \* Sec. 9. 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  
30 or damages as a result of actions taken in response to an emergency created by a release or  
31 threatened release of a hazardous substance generated by or from a facility or vessel owned by

1 another person unless the actions taken by the state, the [OR] municipality, or the village  
2 constitute gross negligence or intentional misconduct.

3 \* Sec. 10. AS 46.03.900 is amended by adding new paragraphs to read:

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

9 (36) "village" means each of the following in the unorganized borough or within  
10 a borough as to a power, function, or service that is not exercised or provided by the borough  
11 on an areawide or nonareawide basis if the village has irrevocably waived, in a form approved  
12 by the Department of Law, any claim of sovereign immunity that might arise under this chapter,  
13 and if the village has

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

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

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

21 \* Sec. 11. AS 46.04.020 is amended by adding a new subsection to read:

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

24 \* Sec. 12. AS 46.04.900(5) is amended to read:

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

31 \* Sec. 13. AS 46.04.900 is amended by adding new paragraphs to read:

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

3 (21) "village" means each of the following in the unorganized borough or with  
4 a borough as to a power, function, or service that is not exercised or provided by the borough  
5 on an areawide or nonareawide basis if the village has irrevocably waived, in a form approved  
6 by the Department of Law, any claim of sovereign immunity that might arise under this chapter,  
7 and if the village has

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

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

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

15 \* Sec. 14. AS 46.08.040(a) is amended to read:

16 (a) In addition to money in the fund that is transferred to the commissioner of  
17 community and regional affairs to make grants under AS 29.60.510 and to pay for impact  
18 assessments under AS 29.60.570, the [THE] commissioner of environmental conservation may  
19 use money from the fund to

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

24 (2) pay all costs incurred to

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

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

28 (C) conduct training, response exercises, inspections, and tests, in order  
29 to verify equipment inventories and ability to prevent and respond to oil and hazardous  
30 substance release emergencies, and to undertake other activities intended to verify or  
31 establish the preparedness of the state, a municipality, or a party required by

1 AS 46.04.030 to have an approved contingency plan to act in accordance with that plan;  
2 and

3 (D) verify or establish proof of financial responsibility required by  
4 AS 46.04.040;

5 (3) pay the expenses incurred by the Alaska division of emergency services for  
6 the oil and hazardous substance response corps and the oil and hazardous substance response  
7 depots when presented with appropriate documentation by the division;

8 (4) provide matching funds for participation in federal oil discharge cleanup  
9 activities and under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,  
10 Compensation, and Liability Act of 1980);

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

14 (6) prepare, review, and revise

15 (A) the state's master oil and hazardous substance discharge prevention  
16 and contingency plan required by AS 46.04.200; and

17 (B) a regional master oil and hazardous substance discharge prevention  
18 and contingency plan required by AS 46.04.210; and

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

21 \* Sec. 15. AS 46.08.070(c) is amended to read:

22 (c) The department shall [MAY] reimburse a municipality or village for actual expenses,  
23 other than normal operating expenses, incurred in the abatement of a release or threatened release  
24 and may advance money to a municipality or village to carry out an emergency first  
25 response to a release or threatened release of oil or a hazardous substance if

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

28 (2) the commissioner determines that

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

1 the environment;

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

7 (C) containment and cleanup efforts paid for in whole or in part by  
8 a reimbursement or an advance made under this section were consistent with the  
9 regional master plan for the region in which the municipality or village is located if  
10 a plan has been prepared by the department under AS 46.04.210.

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

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

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

19 (11) "service"

20 (A) means a function performed or service provided by a municipality  
21 under a duty or power authorized by AS 29 or by another provision of law authorizing  
22 a municipality to perform functions or provide services, or a comparable function  
23 performed or service provided by a village;

24 (B) includes functions not previously performed and services not  
25 previously provided by the municipality or village;

26 (12) "village" means each of the following in the unorganized borough or within  
27 a borough if the power, function, or service for which a grant application under AS 29.60.510  
28 is submitted is not exercised or provided by the borough on an areawide or nonareawide basis  
29 at the time the grant application is submitted if the village has irrevocably waived, in a form  
30 approved by the Department of Law, any claim of sovereign immunity that might arise in  
31 connection with the use of grant money under this chapter, and if the village has

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

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

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

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

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

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

15 (2) "containment and cleanup" includes the direct and indirect efforts associated  
16 with the prevention, abatement, containment, or removal of a hazardous substance, and the  
17 restoration of the environment; when applied to expenses, the term includes the additional  
18 costs of providing a reasonable and appropriate function or service incurred in response to  
19 the release of the hazardous substance, including [ AND INCIDENTAL] administrative  
20 expenses for the incremental costs of providing the function or service;

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

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

24 \* Sec. 21. Sections 8 and 10 of this Act are retroactive to March 24, 1989.

25 \* Sec. 22. APPLICABILITY. The amendments made by secs. 6, 7, 14, and 15 of this Act do not  
26 apply to a release of oil or a hazardous substance and resultant cleanup activities or to efforts to respond  
27 to or abate that release if the release occurred before the effective date of this Act.

28 \* Sec. 23. This Act takes effect immediately under AS 01.10.070(c).

Solicitor  
General

Don't need Chenoweth  
amend # 6

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 25  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS ZHAROFF, Sturgulewski

Introduced: 3/22/91  
Referred: C&RA and Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act concerning the exercise of authority <sup>by the state and its municipalities</sup> ~~and~~ <sup>in matters relating to environmental conservation and</sup> recovery of damages by the state and <sup>to the</sup>  
2 its municipalities and villages in matters relating to environmental conservation, and relating  
3 to state assistance to municipalities and villages for expenses for prevention and abatement  
4 of environmental degradation; and providing for an effective date."

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

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

7 (b) A municipality may adopt an ordinance to exercise a power authorized by this  
8 subsection [PROTECT ITS WATER SUPPLY AND WATERSHED,] and may enforce the  
9 ordinance outside its boundaries. Before a [THIS] power authorized by this subsection may  
10 be exercised inside the boundaries of another municipality ~~or a village~~ the approval of the other  
11 municipality ~~or the village~~ must be given by resolution. <sup>ordinance and before a power authorized by</sup> A municipality intending to exercise  
12 its authority under this subsection shall act by ordinance, and may adopt an ordinance  
13 under this subsection to <sup>this subsec. may be exercised</sup>

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

inside a governing body of village, the municipality shall notify + consult with the village council concerning SSB 25 the proposed exercise of the power

1                   (2) contain, clean up, or prevent the release or threatened release of oil or  
2 a hazardous substance that may pose an imminent or substantial threat to persons,  
3 property, or natural resources within the municipality's boundaries; however, this  
4 paragraph does not authorize a municipality to enforce an ordinance outside its boundaries  
5 to regulate exploration, development, <sup>or transportation</sup> or production of oil, gas, or minerals in a manner  
6 inconsistent with the state's management of those resources ~~when the state is the owner of~~  
7 ~~the land, tideland, or submerged land;~~ the ordinance adopted must be consistent with a  
8 regional master plan ~~for the region in which the municipality is located if a plan has been~~  
9 prepared by the Department of Environmental Conservation under AS 46.04.210; in this  
10 paragraph, "natural resources" has the meaning given in AS 46.03.826 [ORDINANCE].

11 → a new section defining village  
\* Sec. 2. AS 29.35.200 is amended by adding a new subsection to read:

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

17 \* Sec. 3. AS 29.35.210(a) is amended by adding a new paragraph to read:  
for the region in which the borough is located.

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

23 \* Sec. 4. AS 29.35.220 is amended by adding a new subsection to read:  
for the region in which the borough is located.

24                   (e) A third class borough may by ordinance exercise power necessary to contain, clean  
25 up, or prevent a release or threatened release of oil or a hazardous substance, and exercise a  
26 power granted to a municipality under AS 46.04, AS 46.08, or AS 46.09, but the power  
27 authorized by this subsection may be exercised only on a nonareawide basis. The borough shall  
28 exercise its authority under this subsection in a manner that is consistent with a regional master  
29 plan ~~for the region in which the borough is located if a plan has been~~ prepared by the  
30 Department of Environmental Conservation under AS 46.04.210. for the region in  
which the borough is located.

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

1                   ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL  
2                                   IMPACT ASSISTANCE.

3                   Sec. 29.60.500. PURPOSE AND POLICY. (a) The legislature finds and declares that  
4 the <sup>major</sup> release of oil or hazardous substances into the environment presents a real and substantial  
5 threat to the economy and public welfare of the municipalities and villages that are affected by  
6 the release and the resultant activities to contain and clean up the release.

7                   (b) The legislature concludes that it is in the best interest of the state and its citizens to  
8 provide a readily available fund for the payment of the expenses incurred by municipalities and  
9 villages to mitigate the social and economic effects that arise out of the <sup>major</sup> release of oil or  
10 hazardous substances and resultant cleanup activities.

11                   (c) It is the intent of the legislature and declared to be the public policy of the state that  
12 money to defray the cost of social and economic effects on municipalities and villages arising  
13 from a <sup>major</sup> release of oil or a hazardous substance and resultant cleanup activities and to pay for  
14 efforts to abate that <sup>major</sup> release will be immediately available upon the declaration by the governor  
15 of a disaster emergency relating to the release.

16                   Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) If a release of  
17 oil or a hazardous substance has been proclaimed a disaster emergency by the governor under  
18 AS 26.23.020, the commissioner may use money from the oil and hazardous <sup>substance</sup> release response  
19 fund to make grants to a municipality or village that is affected by the release or by the response  
20 to the release and that demonstrates that the release or response to the release involves  
21 extraordinary expenditures that are beyond the reasonable capability of the municipality or village  
22 to meet from the municipality's or village's current revenue sources.

23                   (b) For each disaster emergency declared by the governor under AS 26.23.020, and  
24 subject to agreement with the commissioner of environmental conservation as to the amount of  
25 money in the fund that may be used by the department to make grants, the commissioner may  
26 expend not more than \$10,000,000 of the unrestricted balance of the fund for grants authorized <sup>balance of the fund that is appropriated to the spill response or the</sup>  
27 under this section. If the commissioner and the commissioner of environmental conservation do  
28 not agree on the amount of money in the fund that may be used by the department to make  
29 grants under AS 29.60.500 - 29.60.599, the governor shall make the determination.

30                   (c) Notwithstanding the limitation of AS 37.07.080(e) against the transfer of money  
31 between appropriations, when the commissioner and the commissioner of environmental

1 conservation have agreed to the amount of money in the fund that may be used by the  
2 department to make grants, or when that determination has been made by the governor, the  
3 commissioner of environmental conservation shall promptly transfer that amount to the  
4 department for use under AS 29.60.500 - 29.60.599.

5 → *add new subsection / see Chenoweth lang. (d)*  
6 Sec. 29.60.520. PURPOSES OF MUNICIPAL IMPACT GRANTS (A) A grant made under  
AS 29.60.510 may be made only

7 (1) for a service, including all incidental administrative costs related to the  
8 service, that is directly or indirectly affected by efforts associated with prevention, abatement,  
9 containment, or removal of oil or a hazardous substance and that relates to

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

13 (B) alleviation or mitigation of adverse social or cultural effects;

14 (C) public health and welfare needs, including hospital, clinic, and  
15 emergency medical services; alcohol, drug abuse, and mental health services; family  
16 support services; and the operation of waste disposal systems and water quality  
17 improvement systems;

18 (D) public safety needs, including police protection, search and rescue, and  
19 fire protection;

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

23 (F) housing and office needs;

24 (G) transportation needs;

25 (H) public administration needs, including the value of the time of staff  
26 and administrative personnel necessary to direct efforts to prevent, abate, contain, and  
27 remove oil or a hazardous substance; and

28 (I) planning needs, including the value of the time of staff and  
29 administrative personnel necessary to coordinate efforts with other governments to  
30 prevent, abate, contain, and remove oil or a hazardous substance; and

31 (2) to compensate the municipality or village for

1 (A) the reduction of revenue attributable to the release of the oil or  
2 hazardous substance; and

3 (B) the costs of projects or activities that are delayed or lost because of  
4 the efforts of the municipality or village responding to the release or associated with the  
5 containment or cleanup of oil or the hazardous substance,

6 *(b) May not be used for capital improvements.*  
7 Sec. 29.60.530. CRITERIA TO EVALUATE GRANT APPLICATIONS. (a) In  
8 determining whether an expenditure or proposed expenditure by a municipality or village is  
9 eligible for a grant under AS 29.60.510, the department shall consider

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

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

14 (3) the severity of the effect addressed in the grant application.

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

19 (c) The department shall adopt, <sup>Jointly with</sup> ~~by~~ <sup>1 Dec</sup> regulation, <sup>setting out</sup> ~~the~~ criteria by which to rank all or a portion  
20 of applications for the purpose of establishing the priority order of awarding grants if money  
21 requested by eligible municipalities and villages under this section exceeds the amount available.  
22 The criteria must be based on the elements set out in (a) of this section. If the total amount of  
23 money requested by eligible municipalities and villages under this section exceeds the amount  
24 available, the department shall rank applications for the purpose of establishing the priority order  
25 of awarding grants in accordance with the regulations.

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

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

32 Sec. 29.60.560. REPORT TO THE LEGISLATURE. The commissioner shall submit a

1 report to the legislature not later than the 10th day following the convening of each regular  
2 session of the legislature. The report may include information considered significant by the  
3 commissioner but must include

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

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

8 Sec. 29.60.570. IMPACT ASSESSMENT. (a) For each disaster emergency declared by  
9 the governor under AS 26.23.020 based on a release of oil or a hazardous substance, the

10 ? commissioner shall, after consulting with and securing the written approval of the attorney  
11 general, make an assessment of the social and economic effects of the release of the oil or  
12 *and develop a plan for cost recovery of release related expenditures*

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 (DCRA), after consulting with and securing the written approval of the attorney general, shall

(1) make an assessment of the social and economic effects of the release of the oil or hazardous substance;

(2) develop a plan for cost recovery of release related expenditures with; and

(3) develop a plan for the mitigation of the social and economic effects

relating to the municipalities, the villages and the region in which the release occurs.

(b) The commissioner may make the assessment and plans by

(1) using department staff;

(2) contracting with an independent third party'

(3) authorizing the municipality or other entity to make the assessment and supporting that effort by a grant under AS 29.60.520.

(c) Only one joint assessment and plans referred to in (a) above shall be authorized for each declaration of a disaster emergency.

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

1 (5) "service"

2 (A) means a function performed or service provided by a municipality  
3 under a duty or power authorized by this title or by another provision of law authorizing  
4 a municipality to perform functions or provide services, or a comparable function  
5 performed or service provided by a village;

6 (B) includes functions not previously performed and services not  
7 previously provided by the municipality or village;

8 (6) "village" means each of the following in the unorganized borough or within  
9 a borough if the power, function, or service for which a grant application is submitted under  
10 AS 29.60.500 - 29.60.599 is not exercised or provided by the borough on an areawide or  
11 nonareawide basis at the time the grant application is submitted, if the village has irrevocably  
12 waived, in a form approved by the Department of Law, any claim of sovereign immunity that  
13 might arise in connection with the use of grant money under this chapter, and if the village has

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

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

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

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

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

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

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

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

31 (4) all incidental administrative costs.

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

2 (a) Notwithstanding any other provision or rule of law and subject only to the defenses  
3 set out in (b) of this section and the exception set out in (i) of this section, the following persons  
4 are strictly liable, jointly and severally, for damages to persons or property, whether public or  
5 private, including damage to the natural resources of the state, [OR] municipality, ~~or a village,~~  
6 [AND] for the costs of response, containment, removal, or remedial action incurred by the state,  
7 [OR] a municipality, or a village, and for the additional costs of a function or service,  
8 including administrative expenses for the incremental costs of providing the function or  
9 service, that are incurred by the state, a municipality, or a village and the costs of projects  
10 or activities that are delayed or lost because of the efforts of the state, the municipality, or  
11 the village resulting from an unpermitted release of a hazardous substance or, with respect to  
12 response costs, the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

23 (4) any person who by contract, agreement, or otherwise arranged for disposal or  
24 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous  
25 substances owned or possessed by the person, other than domestic sewage, or by any other party  
26 or entity, at any facility or vessel owned or operated by another party or entity and containing  
27 hazardous substances, from which there is a release, or a threatened release that causes the  
28 incurrence of response costs, of a hazardous substance;

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

1 of a hazardous substance.

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

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

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

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

14 (36) "village" means each of the following in the unorganized borough or within  
15 a borough as to a power, function, or service that is not exercised or provided by the borough  
16 on an areawide or nonareawide basis if the village has irrevocably waived, in a form approved  
17 by the Department of Law, any claim of sovereign immunity that might arise under this chapter,  
18 and if the village has

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

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

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

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

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

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

30 (5) "containment and cleanup" includes all direct and indirect efforts associated  
31 with the prevention, abatement, containment, or removal of a pollutant, and the restoration of the

1 environment to its former state; when applied to expenses, the term includes the additional  
2 costs of providing a reasonable and appropriate function or service incurred in response to  
3 the discharge of a pollutant, including [, AND ALL INCIDENTAL] administrative expenses  
4 for the incremental costs of providing the function or service;

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

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

8 (21) "village" means each of the following in the unorganized borough or with  
9 a borough as to a power, function, or service that is not exercised or provided by the borough  
10 on an areawide or nonareawide basis if the village has irrevocably waived, in a form approved  
11 by the Department of Law, any claim of sovereign immunity that might arise under this chapter,  
12 and if the village has

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

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

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

20 \* Sec. 13. AS 46.08.040(a) is amended to read:

21 (a) In addition to money in the fund that is transferred to the commissioner of  
22 community and regional affairs to make grants under AS 29.60.510 and to pay for impact  
23 assessments under AS 29.60.570, the [THE] commissioner of environmental conservation may  
24 use money from the fund to

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

29 (2) pay all costs incurred to

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

31 (B) review oil discharge prevention and contingency plans submitted under

1 AS 46.04.030;

2 (C) conduct training, response exercises, inspections, and tests, in order  
3 to verify equipment inventories and ability to prevent and respond to oil and hazardous  
4 substance release emergencies, and to undertake other activities intended to verify or  
5 establish the preparedness of the state, a municipality, or a party required by  
6 AS 46.04.030 to have an approved contingency plan to act in accordance with that plan;  
7 and

8 (D) verify or establish proof of financial responsibility required by  
9 AS 46.04.040;

10 (3) pay the expenses incurred by the Alaska division of emergency services for  
11 the oil and hazardous substance response corps and the oil and hazardous substance response  
12 depots when presented with appropriate documentation by the division;

13 (4) provide matching funds for participation in federal oil discharge cleanup  
14 activities and under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,  
15 Compensation, and Liability Act of 1980);

16 (5) recover the costs [COST] to the state, [OR TO] a municipality, or a village  
17 of a containment and cleanup resulting from the release or the threatened release of oil or a  
18 hazardous substance;

19 (6) prepare, review, and revise

20 (A) the state's master oil and hazardous substance discharge prevention  
21 and contingency plan required by AS 46.04.200; and

22 (B) a regional master oil and hazardous substance discharge prevention  
23 and contingency plan required by AS 46.04.210; and

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

26 \* Sec. 14. AS 46.08.070(c) is amended to read:

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

28 <sup>leave</sup> OTHER THAN NORMAL OPERATING EXPENSES, incurred in the abatement of a release  
29 or threatened release and may advance money to a municipality or village to carry out an  
30 emergency first response to a release or threatened release of oil or a hazardous substance

31 if

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

3 (2) the commissioner determines that

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

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

13 (C) containment and cleanup efforts paid for in whole or in part by  
14 a reimbursement or an advance made under this section were consistent with the  
15 regional master plan for the region in which the municipality or village is located if  
16 a plan has been prepared by the department under AS 46.04.210.

17 \* Sec. 15. AS 46.08.900(3) is amended to read:

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

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

25 (11) "service"

26 (A) means a function performed or service provided by a municipality  
27 under a duty or power authorized by AS 29 or by another provision of law authorizing  
28 a municipality to perform functions or provide services, or a comparable function  
29 performed or service provided by a village;

30 (B) includes functions not previously performed and services not  
31 previously provided by the municipality or village;

1 (12) "village" means each of the following in the unorganized borough or within  
2 a borough if the power, function, or service for which a grant application under AS 29.60.510  
3 is submitted is not exercised or provided by the borough on an areawide or nonareawide basis  
4 at the time the grant application is submitted if the village has irrevocably waived, in a form  
5 approved by the Department of Law, any claim of sovereign immunity that might arise in  
6 connection with the use of grant money under this chapter, and if the village has

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

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

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

14 \* Sec. 17. AS 46.09.060(b) is amended to read:

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

20 \* Sec. 18. AS 46.09.900(2) is amended to read:

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

27 \* Sec. 19. AS 46.09.900 is amended by adding a new paragraph to read:

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

30 \* Sec. 20. Sections 7 and 9 of this Act are retroactive to March 24, 1989.

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

SB0025b Add "Applicability" language (Chenaweth)

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

1 IN THE SENATE BY THE FINANCE COMMITTEE  
2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 359 (Finance)(title am)  
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  
13 regional 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; however, this paragraph does not  
3 authorize a municipality to enforce an ordinance outside its bound-  
4 aries to regulate exploration, development, or production of oil, gas,  
5 or minerals in a manner inconsistent with the state's management of  
6 those resources when the state is the owner of the land, tideland, or  
7 submerged land; the ordinance adopted must be consistent with a  
8 regional master plan for the region in which the municipality is  
9 located if a plan has been prepared by the Department of Environmental  
10 Conservation under AS 46.04.210; in this paragraph, "natural  
11 resources" has the meaning given in AS 46.03.826.

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

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

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

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

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

29 (e) A third class borough may by ordinance exercise power

1 necessary to contain, clean up, or prevent a release or threatened  
2 release of oil or a hazardous substance, and exercise a power granted  
3 to a municipality under AS 46.04, AS 46.08, or AS 46.09, but the power  
4 authorized by this subsection may be exercised only on a nonareawide  
5 basis. The borough shall exercise its authority under this subsection  
6 in a manner that is consistent with a regional master plan for the  
7 region in which the borough is located if a plan has been prepared by  
8 the Department of Environmental Conservation under AS 46.04.210.

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

10 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL  
11 IMPACT ASSISTANCE.

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

17 (b) The legislature concludes that, in the event of a release or  
18 threatened release of oil or a hazardous substance that constitutes a  
19 disaster emergency, it is in the best interest of the state and its  
20 citizens to provide access to money in an available fund for the  
21 payment of the expenses incurred by municipalities and villages to  
22 mitigate the additional costs of reasonable and appropriate functions  
23 and services that arise out of the release of oil or hazardous sub-  
24 stances.

25 (c) It is the intent of the legislature and declared to be the  
26 public policy of the state that money will be available to defray the  
27 additional costs of reasonable and appropriate functions and services  
28 by municipalities and villages arising from a release of oil or a haz-  
29 ardous substance that constitutes a disaster emergency.

1 ✓ Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) If a  
2 release of oil or a hazardous substance has been proclaimed a disaster  
3 emergency by the governor under AS 26.23.020, the commissioner may use  
4 money from the oil and hazardous release response fund to make grants  
5 to a municipality or village that is affected by the release or by the  
6 response to the release and that demonstrates extraordinary expen-  
7 ditures that are beyond the reasonable capability of the municipality  
8 or village to meet from the municipality's or village's current reve-  
9 nue sources.

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

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

16 (1) only for

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

20 ✓(B) the additional costs of a reasonable and appropri-  
21 ate function or service, including administrative expenses for  
22 the incremental costs of providing the function or service,  
23 limited to:

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

29 ✓(ii) public safety functions and services,

1 including police protection, search and rescue, and fire  
2 protection;

3 ✓ (iii) public utility functions and services, in-  
4 cluding the operation of electric generating plants and  
5 distribution systems, water supply systems, telephone sys-  
6 tems, and fuel distribution systems; and

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

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

14 ✓ (D) costs of repair or replacement of equipment or a  
15 capital asset associated with a function or service set out in  
16 (B) of this paragraph the useful life of which has been substan-  
17 tially reduced by use associated with the containment or clean  
18 up; and

19 ✓ (2) to compensate the municipality or village for  
20 ✓ (A) the reduction of revenue attributable to the  
21 discharge of the oil or hazardous substance; and

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

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

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

28 ✓ (1) the degree to which the effect on the municipality or  
29 village is directly caused by the oil or hazardous substance

1 discharge;

2 ✓(2) the availability of money to the recipient from other  
3 sources that can meet the costs of providing the functions or ser-  
4 vices;

5 ✓(3) the degree to which the proposed expenditure in the  
6 grant application alleviates or addresses an effect reasonably attrib-  
7 utable to the oil or hazardous substance release;

8 ✓(4) the ability of the municipality or village to respond  
9 to the oil or hazardous substance release and its effects from exist-  
10 ing resources;

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

13 ✓(6) whether the functions or services for which assistance  
14 is sought are part of a coordinated program with other affected munic-  
15 ipalities and villages.

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

21 ✓(c) The department shall adopt, by regulation, criteria by which  
22 to rank all or a portion of applications for the purpose of establish-  
23 ing the priority order of awarding grants if money requested by eligi-  
24 ble municipalities and villages under this section exceeds the amount  
25 available. The criteria shall be based on the elements set out in (a)  
26 of this section. If the total amount of money requested by eligible  
27 municipalities and villages under this section exceeds the amount  
28 available, the department shall rank applications for the purpose of  
29 establishing the priority order of awarding grants in accordance with

1 the regulations. This subsection does not prevent the department from  
2 making a grant payment in an amount that is less than an amount re-  
3 quired by a municipality or village if the department determines that  
4 payment of the amount requested is not warranted under (a) of this  
5 section.

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

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

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

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

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

23 ✍ Sec. 29.60.570. IMPACT ASSESSMENT. ✍(a) For each disaster  
24 emergency declared by the governor under AS 26.23.020 based on a  
25 release of oil or a hazardous substance, the commissioner shall, after  
26 consulting with and securing the written approval of the attorney  
27 general, make an assessment of the social and economic effects of the  
28 release of the oil or hazardous substance on the municipalities, the  
29 villages, and the region in which the discharge occurs. The

1 commissioner may make the assessment by

2 (1) using staff of the department;

3 (2) contracting with a municipality or other entity for the  
4 assessment; or

5 (3) authorizing a municipality or other entity to make the  
6 assessment and supporting that effort by a grant.

7 (b) Only one assessment may be completed under this section for  
8 each declaration of a disaster emergency.

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

11 Sec. 29.60.580. REGULATIONS. The commissioner may adopt regula-  
12 tions that are necessary to implement the purposes of AS 29.60.500 -  
13 29.60.599.

14 Sec. 29.60.590. RECOVERY OF CERTAIN GRANT EXPENDITURES AUTHOR-  
15 IZED. The commissioner may recover from a municipality or village  
16 amounts paid as impact assistance under AS 29.60.500 - 29.60.599 if  
17 the commissioner determines that the municipality or village receiving  
18 the grant is responsible for the violation that caused the oil or  
19 hazardous substance release.

20 Sec. 29.60.599. DEFINITIONS. In AS 29.60.500 - 29.60.599

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

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

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

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

29 (5) "village" means a community with a residential