

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

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SENATE COMMUNITY & REGIONAL AFFAIRS

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1 population of 25 or more not incorporated as a municipality under
2 state law in the unorganized borough or within a borough if the power,
3 function, or service for which the grant application is submitted is
4 not exercised or provided by the borough on an areawide or nonareawide
5 basis at the time the grant application is submitted.

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

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

12 (1) direct and indirect costs associated with the abate-
13 ment, containment, or removal of the pollutant;

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

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

18 (4) all incidental administrative costs.

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

20 (a) Notwithstanding any other provision or rule of law and
21 subject only to the defenses set out in (b) of this section and the
22 exception set out in (i) of this section, the following persons are
23 strictly liable, jointly and severally, for damages to persons or
24 property, whether public or private, including damage to the natural
25 resources of the state or a municipality, or to the natural resources
26 that are owned by a village, [AND] for the costs of response, contain-
27 ment, removal, or remedial action incurred by the state, [OR] a munic-
28 ipality, or a village, and for the additional costs of a function or
29 service, including administrative expenses for the incremental costs

1 of providing the function or service, that are incurred by the state,
2 a municipality, or a village [,] resulting from an unpermitted release
3 of a hazardous substance or, with respect to response costs, the
4 substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

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

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

8 * S.c. 9. AS 46.03.900 is amended by adding new paragraphs to read:

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

15 (36) "village" means a community with a residential popula-
16 tion of 25 or more not incorporated as a municipality under state law.

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

18 ✓(f) In fulfilling its responsibilities under (e) of this sec-
19 tion, the department shall consult with the governing bodies of munic-
20 ipalities and villages.

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

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

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

2 ~~(18)~~ "service" means a function performed or service pro-
3 vided by the state, including functions not previously performed and
4 services not previously provided by the state;

5 (19) "village" means a community with a residential popula-
6 tion of 25 or more not incorporated as a municipality under state law.

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

8 Sec. 46.08.040. PURPOSES OF THE FUND. In addition to money in
9 the fund that may be used by the commissioner of community and re-
10 gional affairs to make grants under AS 29.60.510 and to pay for impact
11 assessments under AS 29.60.570, the [THE] commissioner of environ-
12 mental conservation may use money from the fund to

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

19 ~~(2)~~ pay all costs incurred to establish and maintain the
20 oil and hazardous substance response office and for the expenses of
21 the oil and hazardous substance response corps and the oil and hazard-
22 ous substance response depots established by that office;

23 ~~(3)~~ provide matching funds for participation in federal oil
24 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
25 hensive Environmental Response, Compensation, and Liability Act of
26 1980); [AND]

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

- 1 (5) prepare, review, and revise
2 ~~(A)~~ the state's master oil and hazardous substance
3 discharge and prevention contingency plan required by AS 46.04.-
4 200; and
5 ~~(B)~~ a regional master oil and hazardous substance
6 discharge and prevention contingency plan required by AS 46.04.-
7 210; and
8 (6) restore the environment by addressing the effects of an
9 oil or hazardous substance release.

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

11 ~~(c)~~ The department shall [MAY] reimburse a municipality or
12 village for actual expenses [, OTHER THAN NORMAL OPERATING EXPENSES,]
13 incurred in the abatement of a release or threatened release and may
14 advance money to a municipality or village to carry out an emergency
15 first response to a release or threatened release of oil or a hazard-
16 ous substance ~~if~~

17 ~~(1)~~ the municipality or village has entered into an agree-
18 ment with the commissioner under AS 46.04.020(e) or AS 46.09.020(e);
19 and

20 (2) the commissioner determines that

21 ~~(A)~~ the expenses to be reimbursed were for a necessary
22 emergency first response to a release or threatened release that,
23 at the time of the release or threatened release, posed an immi-
24 nent and substantial threat to the public health or welfare, or
25 to the environment;

26 ~~(B)~~ the municipality or village has demonstrated a
27 need for financial assistance, and the money to be advanced is
28 necessary to enable the municipality or village to carry out an
29 emergency first response to a release or threatened release that,

1 at the time of the release or threatened release, poses an immi-
2 nent and substantial threat to the public health or welfare, or
3 to the environment; and

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

9 * Sec. 15. AS 46.08.070 is amended by adding a new subsection to read:

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

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

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

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

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

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

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1 population of 25 or more not incorporated as a municipality under
2 state law in the unorganized borough or within a borough if the rele-
3 vant power, function, or service is not exercised or provided by the
4 borough on an areawide or nonareawide basis at the time the grant
5 application or request for reimbursement is submitted.

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

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

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

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

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

24 (8) "service" means a function performed or service provid-
25 ed by the state, including functions not previously performed and
26 services not previously provided by the state.

27 * Sec. 21. Sections 7 and 9 of this Act are retroactive to March 24,
28 1989.

29 * Sec. 22. This Act takes effect immediately under AS 01.10.070(c).

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATORS ZHAROFF, Sturgulewski

A BILL

FOR AN ACT ENTITLED

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

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * Section 1. INTENT. The provisions of AS 29.60.500 - 29.60.599, added by sec. 7 of this Act, are
9 not intended by the legislature to confirm long-term benefits on municipalities receiving financial
10 assistance under those provisions.

11 * Sec. 2. AS 29.35.020(b) is amended to read:

12 (b) A municipality may adopt an ordinance to exercise a power authorized by this
13 subsection [PROTECT ITS WATER SUPPLY AND WATERSHED,] and may enforce the

1 ordinance outside its boundaries. Before a [THIS] power authorized by this subsection may
2 be exercised inside the boundaries of another municipality, the approval of the other municipality
3 must be given by ordinance, and before a power authorized by this subsection may be
4 exercised inside a village, as that term is defined by AS 46.08.900, the approval of the
5 village must be given by resolution. A municipality intending to exercise its authority under
6 this subsection shall act by ordinance, and may adopt an ordinance under this subsection
7 to

8 (1) protect its water supply and watershed; or
9 (2) contain, clean up, or prevent the release or threatened release of oil or
10 a hazardous substance that may pose an imminent or substantial threat to persons,
11 property, or natural resources within the municipality's boundaries; however, this
12 paragraph does not authorize a municipality to enforce an ordinance outside its boundaries
13 to regulate exploration, development, production, or transportation of oil, gas, or minerals
14 in a manner inconsistent with the state's management of those resources, and enforcement
15 of the ordinance must be consistent with a regional master plan prepared by the
16 Department of Environmental Conservation under AS 46.04.210; in this paragraph,
17 "natural resources" has the meaning given in AS 46.03.826.

18 * Sec. 3. AS 29.35.020 is amended by adding a new subsection to read:

19 (e) In this section, "village"

20 (A) means the area within a five-mile radius of the village post office or,
21 if there is no post office, another site designated by the commissioner;

22 (B) does not include an area described in (A) of this paragraph that is
23 within a city or another village.

24 * Sec. 4. AS 29.35.200 is amended by adding a new subsection to read:

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

30 * Sec. 5. AS 29.35.210(a) is amended by adding a new paragraph to read:

31 (13) contain, clean up, or prevent a release or threatened release of oil or a

1 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,
2 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
3 consistent with a regional master plan prepared by the Department of Environmental
4 Conservation under AS 46.04.210.

5 * Sec. 6. AS 29.35.220 is amended by adding a new subsection to read:

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

12 * Sec. 7. AS 29.60 is amended by adding new sections to read:

13 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL
14 IMPACT ASSISTANCE.

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

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

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

27 (1) a determination by the governor that the release exceeds 10,000 barrels of oil
28 [or 550,000 gallons of a hazardous substance];

29 (2) the declaration by the governor of a disaster emergency relating to the release;

30 and

31 (3) a finding by the governor that

1 (A) the release of the oil or hazardous substance into the environment
2 presents a real and substantial threat to the economy and public welfare of the
3 municipalities and villages that are affected by the release and by the resultant activities
4 to contain and clean up the release; and

5 (B) it is in the best interest of the state to pay the expenses incurred by
6 municipalities and villages to mitigate the social and economic effects that arise out of
7 the release of the oil or the hazardous substance and the resultant cleanup activities.

8 Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) The commis-
9 sioner may use money from the oil and hazardous substance release response fund to make grants
10 to a municipality or village that is affected by the release or by the response to the release and
11 that demonstrates that the release or response to the release involves extraordinary expenditures
12 that are beyond the reasonable capability of the municipality or village to meet from the current
13 revenue sources of the municipality or village if

14 (1) the governor determines that a release of oil or a hazardous substance exceeds
15 10,000 barrels of oil [or 550,000 gallons of a hazardous substance;]

16 (2) the release has been proclaimed a disaster emergency by the governor under
17 AS 26.23.020; and

18 (3) the governor finds that

19 (A) the release of the oil or hazardous substance into the environment
20 presents a real and substantial threat to the economy and public welfare of the
21 municipalities and villages that are affected by the release and by the resultant activities
22 to contain and clean up the release; and

23 (B) it is in the best interest of the state to pay the expenses incurred by
24 municipalities and villages to mitigate the social and economic effects that arise out of
25 the release of the oil or the hazardous substance and the resultant cleanup activities.

26 (b) For each disaster emergency declared by the governor under AS 26.23.020, and
27 subject to agreement with the commissioner of environmental conservation as to the amount of
28 money in the fund that may be used by the department to make grants, the commissioner may
29 expend not more than \$10,000,000 of the balance of the fund that is appropriated to the spill
30 reserve or of the unrestricted balance of the fund for grants authorized under this section. If the
31 commissioner and the commissioner of environmental conservation do not agree on the amount

1 of money in the fund that may be used by the department to make grants under AS 29.60.500 -
2 29.60.599, the governor shall make the determination.

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

9 (d) For money that has been transferred under (c) of this section, if within any one-year
10 period thereafter the commissioner does not use the money to make a grant under AS 29.60.500 -
11 29.60.599, the commissioner shall, at the direction of the governor or the request of the
12 commissioner of environmental conservation, return the unexpended amount transferred under
13 (c) of this section to the fund.

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

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

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

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

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

27 (D) public safety needs, including police protection, search and rescue, and
28 fire protection;

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

1 (F) housing and office needs;
2 (G) transportation needs;
3 (H) public administration needs, including the value of the time of staff
4 and administrative personnel necessary to direct efforts to prevent, abate, contain, and
5 remove oil or a hazardous substance; and

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

9 (2) to compensate the municipality or village for

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

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

15 (b) If money received under this section is used for a capital expenditure the
16 commissioner may require the municipality or village that acquired the item as a capital
17 expenditure to transfer it to the state at the end of the period during which the item is actually
18 used for spill response if the commissioner finds that retention of the item would confer an
19 inappropriate benefit on the municipality or village.

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

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

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

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

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

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

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

11 (b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may
12 not be used for a capital improvement, as that term is defined by AS 46.08.900(1); or

13 Sec. 29.50.550. RECORDS. The department shall maintain records showing the income
14 and expenses of grants made under AS 29.60.510, and shall develop procedures governing the
15 expenditure of, and accounting for, money expended.

16 Sec. 29.60.560. IMPACT ASSESSMENT AND REMEDIAL PLANS. (a) For each
17 disaster emergency declared by the governor under AS 26.23.020 based on a release of oil or a
18 hazardous substance, the commissioner, after consulting with and securing the written approval
19 of the attorney general and after consulting with other state agencies, shall

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

22 (2) develop a plan to

23 (A) recover the cost of release-related expenditures; and

24 (B) mitigate the social and economic effects of the release of the oil or
25 hazardous substance on the municipalities, the villages, and the region in which the
26 discharge occurs;

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

28 by

29 (1) using staff of the department;

30 (2) contracting with a municipality or other entity; or

31 (3) authorizing a municipality or other entity to perform that work and supporting

1 that effort by a grant.

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

4 (d) The commissioner may pay the costs of the assessment, the plan, and the recovery
5 of the cost of release-related expenditures from money available in the fund.

6 (e) Expenditures made under this section may be made only from the amount transferred
7 to the commissioner under AS 29.60.510(c), unless

8 (1) the commissioner and the commissioner of environmental conservation
9 mutually agree that payment may be made from money in the oil and hazardous substance release
10 response fund not transferred under AS 29.60.510(c); or

11 (2) the commissioner pays them from another source.

12 Sec. 29.60.590. REGULATIONS. The commissioner and the commissioner of
13 environmental conservation shall jointly develop and adopt regulations that are necessary to
14 implement the purposes of AS 29.60.500 - 29.60.599.

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

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

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

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

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

23 (5) "service"

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

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

30 (6) "village" means a place within the unorganized borough or within a borough
31 if the power, function, or service for which a grant application is submitted under AS 29.60.500 -

1 29.60.599 is not exercised or provided by the borough on an areawide or nonareawide basis at
2 the time the grant application is submitted, that

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

6 (B) has

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

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

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

14 * Sec. 8. AS 46.03.760(e) is amended to read:

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

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

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

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

24 (4) all incidental administrative costs.

25 * Sec. 9. AS 46.03.822(a) is amended to read:

26 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
27 set out in (b) of this section and the exception set out in (i) of this section, the following persons
28 are strictly liable, jointly and severally, for damages to persons or property, whether public or
29 private, including damage to the natural resources of the state or municipality, [AND] for the
30 costs of response, containment, removal, or remedial action incurred by the state, [OR] a munic-
31 ipality, or a village, and for the additional costs of a function or service, including

1 administrative expenses for the incremental costs of providing the function or service, that
2 are incurred by the state, a municipality, or a village, and the costs of projects or activities
3 that are delayed or lost because of the efforts of the state, the municipality, or the village,
4 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,
5 the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

26 * Sec. 10. AS 46.03.822(h) is amended to read:

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

1 * Sec. 11. AS 46.03.900 is amended by adding new paragraphs to read:

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

7 (36) "village" means a place within the unorganized borough or within a borough
8 as to a power, function, or service that is not exercised or provided by the borough on an
9 areawide or nonareawide basis that

10 (A) has irrevocably waived, in a form approved by the Department of
11 Law, any claim of sovereign immunity that might arise under this chapter; and

12 (B) has

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

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

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

21 * Sec. 12. 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. 13. 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. 14. 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 a place within the unorganized borough or within a borough
4 as to a power, function, or service that is not exercised or provided by the borough on an
5 areawide or nonareawide basis that

6 (A) has irrevocably waived, in a form approved by the Department of
7 Law, any claim of sovereign immunity that might arise under this chapter; and

8 (B) has

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

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

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

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

18 (a) In addition to money in the fund that is transferred to the commissioner of
19 community and regional affairs to make grants under AS 29.60.510 and to pay for impact
20 assessments under AS 29.60.560, the [THE] commissioner of environmental conservation may
21 use money from the fund to

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

26 (2) pay all costs incurred to

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

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

29 AS 46.04.030;

30 (C) conduct training, response exercises, inspections, and tests, in order
31 to verify equipment inventories and ability to prevent and respond to oil and hazardous

1 substance release emergencies, and to undertake other activities intended to verify or
2 establish the preparedness of the state, a municipality, or a party required by
3 AS 46.04.030 to have an approved contingency plan to act in accordance with that plan;
4 and

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

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

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

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

16 (6) prepare, review, and revise

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

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

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

23 * Sec. 16. AS 46.08.070(c) is amended to read:

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

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

30 (2) the commissioner determines that

31 (A) the expenses to be reimbursed were for a necessary emergency first

1 response to a release or threatened release that, at the time of the release or threatened
2 release, posed an imminent and substantial threat to the public health or welfare, or to
3 the environment;

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

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

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

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

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

21 (11) "service"

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

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

28 (12) "village" means a place within the unorganized borough or within a borough
29 if the power, function, or service for which a grant application under AS 29.60.510 is submitted
30 is not exercised or provided by the borough on an areawide or nonareawide basis at the time the
31 grant application is submitted that

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

4 (B) has

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

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

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

13 * Sec. 19. AS 46.09.060(b) is amended to read:

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

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

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

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

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

29 * Sec. 22. Sections 9 and 11 of this Act are retroactive to March 24, 1989.

30 * Sec. 23. APPLICABILITY. The amendments made by secs. 7, 8, 15, and 16 of this Act do not
31 apply to a release of oil or a hazardous substance and resultant cleanup activities or to efforts to respond

1 to or abate that release if the release occurred before the effective date of this Act.

2 * Sec. 24. This Act takes effect immediately under AS 01.10.070(c).

CS FOR **HOUSE** **275**
FOR BILL NO. ()

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~~

SEE ATTACHMENT A.

1 with the village council concerning the proposed exercise of the power. A municipality
 2 intending to exercise its authority under this subsection shall act by ordinance, and may
 3 adopt an ordinance under this subsection to

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

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

15 * Sec. 2. AS 29.35.020 is amended by adding a new subsection to read:

16 (e) In this section, "village"

17 (A) means the area within a five-mile radius of the village post office or,
 18 if there is no post office, another site designated by the commissioner;

19 (B) does not include an area described in (A) of this paragraph that is
 20 within a city or another village.

21 * Sec. 3. AS 29.35.200 is amended by adding a new subsection to read:

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

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

28 (13) contain, clean up, or prevent a release or threatened release of oil or a
 29 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,
 30 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
 31 consistent with a regional master plan for the region in which the borough is located if a plan

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
30 response to the release and that demonstrates that the release or response to the release
31 extraordinary expenditures that are beyond the reasonable capability of the municipality or village

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). *

* SEE ATTACHMENT B

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

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

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

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

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

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

12 Sec. 29.60.540. LIMITATIONS ON USES OF GRANTS BY MUNICIPALITIES. 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.

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, after consulting with and securing the written approval
 29 of the attorney general, ^{and consulting with other agencies,} 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 and plan from money~~
 15 ~~available in the fund.~~ ATTACHMENT C.

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 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 the
 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).

Attachments to CS for House Bill No. 275

Attachment A

Before a power authorized by this subsection may be exercised inside the boundaries of another municipality, the approval of the other municipality must be given by ordinance. Before a power authorized by this subsection may be exercised within a village as defined under AS 46.08.900 (12), the approval of the village must be given by resolution.

Attachment B

To the extent money is received by a community under this section for capital expenditures, such as vehicles, the commissioner may, at the end of the period for which there has been demonstrated special need, require the community to return the purchased item to the State if the commissioner determines that an inappropriate benefit would otherwise be conferred on the community.

Attachment C

The commissioner may pay the costs of the assessment plan and cost recovery plan from money available in the fund under AS 29.60.510(b) or by separate agreement with the commissioner of the Department of Environmental Conservation, or by other means.

7-LS0012P
Chenoweth
4/25/91

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

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

8 * Section 1. INTENT. The provisions of AS 29.60.500 - 29.60.599, added by sec. 7 of this Act, are
9 not intended by the legislature to confirm long-term benefits on municipalities receiving financial
10 assistance under those provisions.

11 * Sec. 2. AS 29.35.020(b) is amended to read:

12 (b) A municipality may adopt an ordinance to exercise a power authorized by this
13 subsection [PROTECT ITS WATER SUPPLY AND WATERSHED,] and may enforce the

1 ordinance outside its boundaries. Before a [THIS] power authorized by this subsection may
 2 be exercised inside the boundaries of another municipality, the approval of the other municipality
 3 must be given by ordinance, and before a power authorized by this subsection may be
 4 exercised inside a village, as that term is defined by AS 46.08.900, the approval of the
 5 village must be given by resolution. A municipality intending to exercise its authority under
 6 this subsection shall act by ordinance, and may adopt an ordinance under this subsection
 7 to

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

9 (2) contain, clean up, or prevent the release or threatened release of oil or
 10 a hazardous substance that may pose an imminent or substantial threat to persons,
 11 property, or natural resources within the municipality's boundaries; however, this
 12 paragraph does not authorize a municipality to enforce an ordinance outside its boundaries
 13 to regulate exploration, development, production, or transportation of oil, gas, or minerals
 14 in a manner inconsistent with the state's management of those resources, and enforcement
 15 of the ordinance must be consistent with a regional master plan prepared by the
 16 Department of Environmental Conservation under AS 46.04.210; in this paragraph,
 17 "natural resources" has the meaning given in AS 46.03.826.

18 * Sec. 3. AS 29.35.020 is amended by adding a new subsection to read:

19 (e) In this section, "village"

20 (A) means the area within a five-mile radius of the village post office or,
 21 if there is no post office, another site designated by the commissioner;

22 (B) does not include an area described in (A) of this paragraph that is
 23 within a city or another village.

24 * Sec. 4. AS 29.35.200 is amended by adding a new subsection to read:

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

30 * Sec. 5. AS 29.35.210(a) is amended by adding a new paragraph to read:

31 (13) contain, clean up, or prevent a release or threatened release of oil or a

1 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,
2 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
3 consistent with a regional master plan prepared by the Department of Environmental
4 Conservation under AS 46.04.210.

5 * Sec. 6. AS 29.35.220 is amended by adding a new subsection to read:

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

12 * Sec. 7. AS 29.60 is amended by adding new sections to read:

13 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL
14 IMPACT ASSISTANCE.

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

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

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

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

1 response to the release and that demonstrates that the release or response to the release involves
2 extraordinary expenditures that are beyond the reasonable capability of the municipality or village
3 to meet from the current revenue sources of the municipality or village.

4 (b) For each disaster emergency declared by the governor under AS 26.23.020, and
5 subject to agreement with the commissioner of environmental conservation as to the amount of
6 money in the fund that may be used by the department to make grants, the commissioner may
7 expend not more than \$10,000,000 of the balance of the fund that is appropriated to the spill
8 reserve or of the unrestricted balance of the fund for grants authorized under this section. If the
9 commissioner and the commissioner of environmental conservation do not agree on the amount
10 of money in the fund that may be used by the department to make grants under AS 29.60.500 -
11 29.60.599, the governor shall make the determination.

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

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

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

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

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

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

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

5 (D) public safety needs, including police protection, search and rescue, and
 6 fire protection;

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

10 (F) housing and office needs;

11 (G) transportation needs;

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

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

18 (2) to compensate the municipality or village for

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

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

24 (b) If money received under this section is used for a capital expenditure, the
 25 commissioner may require the municipality or village that acquired the item as a capital
 26 expenditure to transfer it to the state at the end of the period during which the item is actually
 27 used for spill response if the commissioner finds that retention of the item would confer an
 28 inappropriate benefit on the municipality or village.

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

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

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

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

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

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

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

20 (b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may
21 not be used for a capital improvement, as that term is defined by AS 46.08.900(1).

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

25 Sec. 29.60.560. IMPACT ASSESSMENT AND REMEDIAL PLANS. (a) For each
26 disaster emergency declared by the governor under AS 26.23.020 based on a release of oil or a
27 hazardous substance, the commissioner, after consulting with and securing the written approval
28 of the attorney general and after consulting with other state agencies, shall

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

31 (2) develop a plan to

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

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

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

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

13 (d) The commissioner may pay the costs of the assessment, the plan, and the recovery
14 of the cost of release-related expenditures from money available in the fund.

15 (e) Expenditures made under this section may be made only from the amount transferred
16 to the commissioner under AS 29.60.510(c), unless

17 (1) the commissioner and the commissioner of environmental conservation
18 mutually agree that payment may be made from money in the oil and hazardous substance release
19 response fund not transferred under AS 29.60.510(c); or

20 (2) the commissioner pays them from another source.

21 Sec. 29.60.590. REGULATIONS. The commissioner and the commissioner of
22 environmental conservation shall jointly develop and adopt regulations that are necessary to
23 implement the purposes of AS 29.60.500 - 29.60.599.

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

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

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

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

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

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(5) "service"

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

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

(6) "village" means a place within the unorganized borough or within a borough if the power, function, or service for which a grant application is submitted under AS 29.60.500 - 29.60.599 is not exercised or provided by the borough on an areawide or nonareawide basis at the time the grant application is submitted, that

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

(B) has

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

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

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

* Sec. 8. AS 46.03.760(e) is amended to read:

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

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

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

(3) amounts paid as grants under AS 29.60.510 - 29.60.599 and as emergency

1 first response advances and reimbursements under AS 46.08.070(c): [,] and

2 (4) all incidental administrative costs.

3 * Sec. 9. AS 46.03.822(a) is amended to read:

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

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

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

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

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

31 (5) any person who accepts or accepted any hazardous substances, other than

1 refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person,
2 from which there is a release, or a threatened release that causes the incurrence of response costs,
3 of a hazardous substance.

4 * Sec. 10. AS 46.03.822(h) is amended to read:

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

10 * Sec. 11. AS 46.03.900 is amended by adding new paragraphs to read:

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

16 (36) "village" means a place within the unorganized borough or within a borough
17 as to a power, function, or service that is not exercised or provided by the borough on an
18 areawide or nonareawide basis that

19 (A) has irrevocably waived, in a form approved by the Department of
20 Law, any claim of sovereign immunity that might arise under this chapter; and

21 (B) has

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

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

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

30 * Sec. 12. AS 46.04.020 is amended by adding a new subsection to read:

31 (f) In fulfilling its responsibilities under (e) of this section, the department shall consult

1 with the governing bodies of municipalities and villages.

2 * Sec. 13. AS 46.04.900(5) is amended to read:

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

9 * Sec. 14. AS 46.04.900 is amended by adding new paragraphs to read:

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

12 (21) "village" means a place within the unorganized borough or within a borough
13 as to a power, function, or service that is not exercised or provided by the borough on an
14 areawide or nonareawide basis that

15 (A) has irrevocably waived, in a form approved by the Department of
16 Law, any claim of sovereign immunity that might arise under this chapter; and

17 (B) has

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

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

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

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

27 (a) In addition to money in the fund that is transferred to the commissioner of
28 community and regional affairs to make grants under AS 29.60.510 and to pay for impact
29 assessments under AS 29.60.560, the [THE] commissioner of environmental conservation may
30 use money from the fund to

31 (1) investigate and evaluate the release or threatened release of oil or a hazardous

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

4 (2) pay all costs incurred to

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

6 (B) review oil discharge prevention and contingency plans submitted under
7 AS 46.04.030;

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

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

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

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

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

25 (6) prepare, review, and revise

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

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

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

1 * Sec. 16. AS 46.08.070(c) is amended to read:

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

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

8 (2) the commissioner determines that

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

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

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

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

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

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

30 (11) "service"

31 (A) means a function performed or service provided by a municipality

1 under a duty or power authorized by AS 29 or by another provision of law authorizing
2 a municipality to perform functions or provide services, or a comparable function
3 performed or service provided by a village;

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

6 (12) "village" means a place within the unorganized borough or within a borough
7 if the power, function, or service for which a grant application under AS 29.60.510 is submitted
8 is not exercised or provided by the borough on an areawide or nonareawide basis at the time the
9 grant application is submitted that

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

13 (B) has

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

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

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

22 * Sec. 19. AS 46.09.060(b) is amended to read:

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

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

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

1 costs of providing a reasonable and appropriate function or service incurred in response to
2 the release of the hazardous substance, including [, AND INCIDENTAL] administrative
3 expenses for the incremental costs of providing the function or service;

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

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

7 * Sec. 22. Sections 9 and 11 of this Act are retroactive to March 24, 1989.

8 * Sec. 23. APPLICABILITY. The amendments made by secs. 7, 8, 15, and 16 of this Act do not
9 apply to a release of oil or a hazardous substance and resultant cleanup activities or to efforts to respond
10 to or abate that release if the release occurred before the effective date of this Act.

11 * Sec. 24. This Act takes effect immediately under AS 01.10.070(c).

7-LS0012J ✓
Chenoweth
4/10/91

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS ZHAROFF, Sturgulewski

A BILL

FOR AN ACT ENTITLED

1 "An Act concerning the exercise of authority and recovery of damages by the state and
2 its municipalities and villages in matters relating to environmental conservation, relating to
3 state assistance to municipalities and villages for expenses for prevention and abatement
4 of environmental degradation, and adding to the governor's responsibilities after declaration
5 of a disaster emergency for the discharge of oil or a hazardous substance; and providing
6 for an effective date."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * Section 1. AS 26.23 is amended by adding a new section to read:

9 Sec. 26.23.027. IMPACT ASSESSMENT. (a) For each disaster emergency declared by
10 the governor under AS 26.23.020 based on a release of oil or a hazardous substance, the governor
11 shall make an assessment of the social and economic effects of the release of the oil or hazardous
12 substance on the municipalities, the villages, and the region in which the discharge occurs. The
13 governor may make the assessment by

- 1 (1) using staff of one or more of the departments of state government;
2 (2) contracting with a municipality or other entity for the assessment; or
3 (3) authorizing a municipality or other entity to make the assessment and
4 supporting that effort by the payment of a grant.

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

7 (c) The governor may pay the costs of the assessment from money available in the oil
8 and hazardous substance release response fund established by AS 46.08.010.

9 * Sec. 2. AS 29.35.020(b) is amended to read:

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

17 (1) protect its water supply and watershed; or
18 (2) contain, clean up, or prevent the release or threatened release of oil or
19 a hazardous substance that may pose an imminent or substantial threat to persons,
20 property, or natural resources within the municipality's boundaries; however, this
21 paragraph does not authorize a municipality to enforce an ordinance outside its boundaries
22 to regulate exploration, development, or production of oil, gas, or minerals in a manner
23 inconsistent with the state's management of those resources when the state is the owner of
24 the land, tideland, or submerged land; the ordinance adopted must be consistent with a
25 regional master plan for the region in which the municipality is located if a plan has been
26 prepared by the Department of Environmental Conservation under AS 46.04.210; in this
27 paragraph, "natural resources" has the meaning given in AS 46.03.826 [ORDINANCE].

28 * Sec. 3. AS 29.35.200 is amended by adding a new subsection to read:

29 (d) A first class borough that exercises power necessary to contain, clean up, or prevent
30 a release or threatened release of oil or a hazardous substance, and exercise a power granted to
31 a municipality under AS 46.04, AS 46.08, or AS 46.09 shall exercise its authority in a manner

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

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

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

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

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

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

18 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL
19 IMPACT ASSISTANCE.

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

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

28 (c) It is the intent of the legislature and declared to be the public policy of the state that
29 money to defray the cost of social and economic effects on municipalities and villages arising
30 from a release of oil or a hazardous substance and resultant cleanup activities and to pay for
31 efforts to abate that release will be immediately available upon the declaration by the governor

1 of a disaster emergency relating to the release.

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

9 (b) For each disaster emergency declared by the governor under AS 26.23.020, and
10 subject to agreement with the commissioner of environmental conservation as to the amount of
11 money in the fund that may be used by the department to make grants, the commissioner may
12 expend not more than \$10,000,000 of the unrestricted balance of the fund for grants authorized
13 under this section. If the commissioner and the commissioner of environmental conservation do
14 not agree on the amount of money in the fund that may be used by the department to make
15 grants under AS 29.60.500 - 29.60.599, the governor shall make the determination.

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

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

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

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

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

31 (C) public health and welfare needs, including hospital, clinic, and

1 emergency medical services; alcohol, drug abuse, and mental health services; family
2 support services; and the operation of waste disposal systems and water quality
3 improvement systems;

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

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

9 (F) housing and office needs;

10 (G) transportation needs;

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

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

17 (2) to compensate the municipality or village for

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

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

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

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

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

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

31 (b) The department may reject an application for a grant under AS 29.60.510 or approve

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

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

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

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

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

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

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

25 Sec. 29.60.570. REGULATIONS. The commissioner may adopt regulations that are
26 necessary to implement the purposes of AS 29.60.500 - 29.60.599.

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

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

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

31 (3) "fund" means the oil and hazardous substance release response fund

1 established by AS 46.08.010;

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

4 (5) "service"

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

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

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

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

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

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

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

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

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

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

1 (3) amounts transferred to the Office of the Governor to pay for impact
2 assessments under AS 26.23.027, and amounts paid as grants under AS 29.60.510 - 29.60.599
3 and as emergency first response advances and reimbursements under AS 46.08.070(c); [,]
4 and

5 (4) all incidental administrative costs.

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

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

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

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

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

28 (4) any person who by contract, agreement, or otherwise arranged for disposal or
29 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous
30 substances owned or possessed by the person, other than domestic sewage, or by any other party
31 or entity, at any facility or vessel owned or operated by another party or entity and containing

1 hazardous substances, from which there is a release, or a threatened release that causes the
2 incurrence of response costs, of a hazardous substance;

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

7 * Sec. 9. AS 46.03.822(h) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (a) In addition to money in the fund that is transferred to the Office of the
27 Governor to pay for impact assessments under AS 26.23.027 and to the commissioner of
28 community and regional affairs to make grants under AS 29.60.510, the [THE] commissioner
29 of environmental conservation may use money from the fund to

30 (1) investigate and evaluate the release or threatened release of oil or a hazardous
31 substance, and contain, clean up, and take other necessary action, such as monitoring and

1 assessing, to address a release or threatened release of oil or a hazardous substance that poses
2 an imminent and substantial threat to the public health or welfare, or to the environment;

3 (2) pay all costs incurred to

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

5 (B) review oil discharge prevention and contingency plans submitted under
6 AS 46.04.030;

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

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

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

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

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

24 (6) prepare, review, and revise

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

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

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

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

1 (c) The department shall [MAY] reimburse a municipality or village for actual expenses
 2 [, OTHER THAN NORMAL OPERATING EXPENSES,] incurred in the abatement of a release
 3 or threatened release and may advance money to a municipality or village to carry out an
 4 emergency first response to a release or threatened release of oil or a hazardous substance
 5 if

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

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

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

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

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

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

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

30 (11) "service"
 31 (A) means a function performed or service provided by a municipality

1 under a duty or power authorized by AS 29 or by another provision of law authorizing
2 a municipality to perform functions or provide services, or a comparable function
3 performed or service provided by a village;

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

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

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

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

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

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

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

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

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

- 1 * Sec. 20. AS 46.09.900 is amended by adding a new paragraph to read:
- 2 (8) "service" means a function performed or service provided by the state,
- 3 including functions not previously performed and services not previously provided by the state.
- 4 * Sec. 21. Sections 8 and 10 of this Act are retroactive to March 24, 1989.
- 5 * Sec. 22. This Act takes effect immediately under AS 01.10.070(c).

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): **SENATORS ZHAROFF, Sturgulewski**

A BILL

FOR AN ACT ENTITLED

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

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * Section 1. INTENT. The provisions of AS 29.60.500 - 29.60.599, added by sec. 7 of this Act, are
9 not intended by the legislature to confirm long-term benefits on municipalities receiving financial
10 assistance under those provisions.

11 * Sec. 2. AS 29.35.020(b) is amended to read:

12 (b) A municipality may adopt an ordinance to exercise a power authorized by this
13 subsection [PROTECT ITS WATER SUPPLY AND WATERSHED,] and may enforce the

1 ordinance outside its boundaries. Before a [THIS] power authorized by this subsection may
 2 be exercised inside the boundaries of another municipality, the approval of the other municipality
 3 must be given by ordinance, and before a power authorized by this subsection may be
 4 exercised inside a village, as that term is defined by AS 46.08.900, the approval of the
 5 village must be given by resolution. A municipality intending to exercise its authority under
 6 this subsection shall act by ordinance, and may adopt an ordinance under this subsection
 7 to

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

9 (2) contain, clean up, or prevent the release or threatened release of oil or
 10 a hazardous substance that may pose an imminent or substantial threat to persons,
 11 property, or natural resources within the municipality's boundaries; however, this
 12 paragraph does not authorize a municipality to enforce an ordinance outside its boundaries
 13 to regulate exploration, development, production, or ^{new}transportation of oil, gas, or minerals
 14 in a manner inconsistent with the state's management of those resources, and enforcement
 15 of the ordinance must be consistent with a regional master plan prepared by the
 16 Department of Environmental Conservation under AS 46.04.210; in this paragraph,
 17 "natural resources" has the meaning given in AS 46.03.826.

18 *new* * Sec. 3. AS 29.35.020 is amended by adding a new subsection to read:

19 (e) In this section, "village"

20 (A) means the area within a five-mile radius of the village post office or,
 21 if there is no post office, another site designated by the commissioner;

22 (B) does not include an area described in (A) of this paragraph that is
 23 within a city or another village.

24 * Sec. 4. AS 29.35.200 is amended by adding a new subsection to read:

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

30 ✓ * Sec. 5. AS 29.35.210(a) is amended by adding a new paragraph to read:

31 (13) contain, clean up, or prevent a release or threatened release of oil or a

1 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,
 2 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
 3 consistent with a regional master plan prepared by the Department of Environmental
 4 Conservation under AS 46.04.210.

5 * Sec. 6. AS 29.35.220 is amended by adding a new subsection to read:

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

12 * Sec. 7. AS 29.60 is amended by adding new sections to read:

13 ARTICLE 6. OIL AND HAZARDOUS SUBSTANCE MUNICIPAL
 14 IMPACT ASSISTANCE.

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

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

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

27 (1) a determination by the governor that the release exceeds 10,000 barrels of oil
 28 [or 550,000 gallons of a hazardous substance]

29 (2) the declaration by the governor of a disaster emergency relating to the release;

30 and

31 (3) a finding by the governor that

1 (A) the release of the oil or hazardous substance into the environment
 2 presents a real and substantial threat to the economy and public welfare of the
 3 municipalities and villages that are affected by the release and by the resultant activities
 4 to contain and clean up the release; and

5 (B) it is in the best interest of the state to pay the expenses incurred by
 6 municipalities and villages to mitigate the social and economic effects that arise out of
 7 the release of the oil or the hazardous substance and the resultant cleanup activities.

8 Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) The commis-
 9 sioner may use money from the oil and hazardous substance release response fund to make grants
 10 to a municipality or village that is affected by the release or by the response to the release and
 11 that demonstrates that the release or response to the release involves extraordinary expenditures
 12 that are beyond the reasonable capability of the municipality or village to meet from the current
 13 revenue sources of the municipality or village if

14 (1) the governor determines that a release of oil or a hazardous substance exceeds
 15 10,000 barrels of oil [or 550,000 gallons of a hazardous substance;]

16 (2) the release has been proclaimed a disaster emergency by the governor under
 17 AS 26.23.020; and

18 (3) the governor finds that

19 (A) the release of the oil or hazardous substance into the environment
 20 presents a real and substantial threat to the economy and public welfare of the
 21 municipalities and villages that are affected by the release and by the resultant activities
 22 to contain and clean up the release; and

23 (B) it is in the best interest of the state to pay the expenses incurred by
 24 municipalities and villages to mitigate the social and economic effects that arise out of
 25 the release of the oil or the hazardous substance and the resultant cleanup activities.

26 (b) For each disaster emergency declared by the governor under AS 26.23.020, and
 27 subject to agreement with the commissioner of environmental conservation as to the amount of
 28 money in the fund that may be used by the department to make grants, the commissioner may
 29 expend not more than \$10,000,000 of the balance of the fund that is appropriated to the spill
 30 reserve or of the unrestricted balance of the fund for grants authorized under this section. ~~If the~~
 31 ~~commissioner and the commissioner of environmental conservation do not agree on the amount~~

1 of money in the fund that may be used by the department to make grants under AS 29.60.500 -
2 29.60.599, the ~~governor~~ shall make the determination.


3 ~~Notwithstanding~~ Notwithstanding the limitation of AS 37.07.080(e) against the transfer of money
4 between appropriations, when the commissioner and the commissioner of environmental
5 conservation have agreed to the amount of money in the fund that may be used by the
6 department to make grants, or when that determination has been made by the governor, the
7 commissioner of environmental conservation shall promptly transfer that amount to the
8 department for use under AS 29.60.500 - 29.60.599.

9 ~~(d)~~ (d) For money that has been transferred under (c) of this section, if within any one-year
10 period thereafter the commissioner does not use the money to make a grant under AS 29.60.500 -
11 29.60.599, the commissioner shall, at the direction of the governor or the request of the
12 commissioner of environmental conservation, return the unexpended amount transferred under
13 (c) of this section to the fund.

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

16 ~~(b)~~ (b) for a service, including all incidental administrative costs related to the
17 service, that is directly or indirectly affected by efforts associated with prevention, abatement,
18 containment, or removal of oil or a hazardous substance and that relates to

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

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

23 ~~(C)~~ (C) public health and welfare needs, including hospital, clinic, and
24 emergency medical services; alcohol, drug abuse, and mental health services; family
25 support services; and the operation of waste disposal systems and water quality
26 improvement systems;

27 ~~(D)~~ (D) public safety needs, including police protection, search and rescue, and
28 fire protection;

29 ~~(E)~~ (E) public utility needs, including the operation of electric generating
30 plants and distribution systems, water supply systems, telephone systems, and fuel
31 distribution systems;

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- (F) housing and office needs;
- (G) transportation needs;
- (H) public administration needs, including the value of the time of staff and administrative personnel necessary to direct efforts to prevent, abate, contain, and remove oil or a hazardous substance; and
- (I) planning needs, including the value of the time of staff and administrative personnel necessary to coordinate efforts with other governments to prevent, abate, contain, and remove oil or a hazardous substance; and
- ✓(2) to compensate the municipality or village for
 - ✓(A) the reduction of revenue attributable to the release of the oil or hazardous substance; and
 - ✓(B) the costs of projects or activities that are delayed or lost because of the efforts of the municipality or village responding to the release or associated with the containment or cleanup of oil or the hazardous substance.

~~(3)~~ If money received under this section is used for a capital expenditure the commissioner may require the municipality or village that acquired the item as a capital expenditure to transfer it to the state at the end of the period during which the item is actually used for spill response if the commissioner finds that retention of the item would confer an inappropriate benefit on the municipality or village.

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

- (1) the degree to which the effect on the municipality or village is directly caused by the oil or hazardous substance release or the response to the release;
- (2) the availability of money to the recipient from other sources that can meet the costs of providing the functions or services; and
- (3) the severity of the effect addressed in the grant application.

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

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

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

11 (b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may
12 not be used for a capital improvement, as that term is defined by AS 46.08.900(1); or

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

16 Sec. 29.60.560. IMPACT ASSESSMENT AND REMEDIAL PLANS. (a) For each
17 disaster emergency declared by the governor under AS 26.23.020 based on a release of oil or a
18 hazardous substance, the commissioner, after consulting with and securing the written approval
19 of the attorney general and after consulting with other state agencies, shall

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

22 (2) develop a plan to

23 (A) recover the cost of release-related expenditures; and

24 (B) mitigate the social and economic effects of the release of the oil or
25 hazardous substance on the municipalities, the villages, and the region in which the
26 discharge occurs;

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

28 by

29 (1) using staff of the department;

30 (2) contracting with a municipality or other entity; or

31 (3) authorizing a municipality or other entity to perform that work and supporting

1 that effort by a grant.

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

4 (d) The commissioner may pay the costs of the assessment, the plan, and the recovery
5 of the cost of release-related expenditures from money available in the fund.

6 (e) Expenditures made under this section may be made only from the amount transferred
7 to the commissioner under AS 29.60.510(c), unless

8 (1) the commissioner and the commissioner of environmental conservation
9 mutually agree that payment may be made from money in the oil and hazardous substance release
10 response fund not transferred under AS 29.60.510(c); or

11 (2) the commissioner pays them from another source.

12 Sec. 29.60.590. REGULATIONS. The commissioner and the commissioner of
13 environmental conservation shall jointly develop and adopt regulations that are necessary to
14 implement the purposes of AS 29.60.500 - 29.60.599.

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

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

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

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

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

23 (5) "service"

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

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

30 (6) "village" means a place within the unorganized borough or within a borough
31 if the power, function, or service for which a grant application is submitted under AS 29.60.500 -

1 29.60.599 is not exercised or provided by the borough on an areawide or nonareawide basis at
2 the time the grant application is submitted, that

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

6 (B) has

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

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

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

14 * Sec. 8. AS 46.03.760(e) is amended to read:

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

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

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

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

24 (4) all incidental administrative costs.

25 * Sec. 9. AS 46.03.822(a) is amended to read:

26 (a) Notwithstanding any other provision or rule of law and subject only to the defenses
27 set out in (b) of this section and the exception set out in (i) of this section, the following persons
28 are strictly liable, jointly and severally, for damages to persons or property, whether public or
29 private, including damage to the natural resources of the state or municipality, [AND] for the
30 costs of response, containment, removal, or remedial action incurred by the state, [OR] a munic-
31 ipality, or a village, and for the additional costs of a function or service, including

1 administrative expenses for the incremental costs of providing the function or service, that
2 are incurred by the state, a municipality, or a village, and the costs of projects or activities
3 that are delayed or lost because of the efforts of the state, the municipality, or the village,
4 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,
5 the substantial threat of an unpermitted release of a hazardous substance:

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

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

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

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

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

26 * Sec. 10. AS 46.03.822(h) ~~is~~ amended to read:

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

1 * Sec. 11. AS 46.03.900 is amended by adding new paragraphs to read:

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

7 (36) "village" means a place within the unorganized borough or within a borough
8 as to a power, function, or service that is not exercised or provided by the borough on an
9 areawide or nonareawide basis that

10 (A) has irrevocably waived, in a form approved by the Department of
11 Law, any claim of sovereign immunity that might arise under this chapter; and

12 (B) has

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

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

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

21 * Sec. 12. 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. 13. 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. 14. 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 a place within the unorganized borough or within a borough
4 as to a power, function, or service that is not exercised or provided by the borough on an
5 areawide or nonareawide basis that

6 (A) has irrevocably waived, in a form approved by the Department of
7 Law, any claim of sovereign immunity that might arise under this chapter; and

8 (B) has

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

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

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

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

18 (a) In addition to money in the fund that is transferred to the commissioner of
19 community and regional affairs to make grants under AS 29.60.510 and to pay for impact
20 assessments under AS 29.60.560, the [THE] commissioner of environmental conservation may
21 use money from the fund to

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

26 (2) pay all costs incurred to

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

28 (B) review oil discharge prevention and contingency plans submitted under
29 AS 46.04.030;

30 (C) conduct training, response exercises, inspections, and tests, in order
31 to verify equipment inventories and ability to prevent and respond to oil and hazardous

1 substance release emergencies, and to undertake other activities intended to verify or
2 establish the preparedness of the state, a municipality, or a party required by
3 AS 46.04.030 to have an approved contingency plan to act in accordance with that plan;
4 and

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

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

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

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

16 (6) prepare, review, and revise

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

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

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

23 * Sec. 16. AS 46.08.070(c) is amended to read:

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

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

30 (2) the commissioner determines that

31 (A) the expenses to be reimbursed were for a necessary emergency first

1 response to a release or threatened release that, at the time of the release or threatened
2 release, posed an imminent and substantial threat to the public health or welfare, or to
3 the environment;

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

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

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

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

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

21 (11) "service"

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

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

28 (12) "village" means a place within the unorganized borough or within a borough
29 if the power, function, or service for which a grant application under AS 29.60.510 is submitted
30 is not exercised or provided by the borough on an areawide or nonareawide basis at the time the
31 grant application is submitted that

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

4 (B) has

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

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

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

13 * Sec. 19. AS 46.09.060(b) is amended to read:

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

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

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

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

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

29 * Sec. 22. Sections 9 and 11 of this Act are retroactive to March 24, 1989.

30 * Sec. 23. APPLICABILITY. The amendments made by secs. 7, 8, 15, and 16 of this Act do not
31 apply to a release of oil or a hazardous substance and resultant cleanup activities or to efforts to respond

1 to or abate that release if the release occurred before the effective date of this Act.

2 * Sec. 24. This Act takes effect immediately under AS 01.10.070(c).

7-LS0012NY ✓
Chenoweth
5/2/91

Adopted 5/2/91

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS ZHAROFF, Sturgulewski

A BILL

FOR AN ACT ENTITLED

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

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

7 * Section 1. INTENT. The provisions of AS 29.60.500 - 29.60.599, added by sec. 7 of this Act, are
8 not intended by the legislature to confirm long-term benefits on municipalities receiving financial
9 assistance under those provisions.

10 * Sec. 2. AS 29.35.020(b) is amended to read:

11 (b) A municipality may adopt an ordinance to exercise a power authorized by this
12 subsection [PROTECT ITS WATER SUPPLY AND WATERSHED.] and may enforce the
13 ordinance outside its boundaries. Before a [THIS] power authorized by this subsection may

1 be exercised inside the boundaries of another municipality, the approval of the other municipality
2 must be given by ordinance, and before a power authorized by this subsection may be
3 exercised inside a village, as that term is defined by AS 46.08.900, the approval of the
4 village must be given by resolution. A municipality intending to exercise its authority under
5 this subsection shall act by ordinance, and may adopt an ordinance under this subsection
6 to

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

8 (2) contain, clean up, or prevent the release or threatened release of oil or
9 a hazardous substance that may pose an imminent or substantial threat to persons,
10 property, or natural resources within the municipality's boundaries; however, this
11 paragraph does not authorize a municipality to enforce an ordinance outside its boundaries
12 to regulate exploration, development, production, or transportation of oil, gas, or minerals
13 in a manner inconsistent with the state's management of those resources, and enforcement
14 of the ordinance must be consistent with a regional master plan prepared by the
15 Department of Environmental Conservation under AS 46.04.210; in this paragraph,
16 "natural resources" has the meaning given in AS 46.03.826.

17 * Sec. 3. AS 29.35.020 is amended by adding a new subsection to read:

18 (e) In this section, "village"

19 (1) means the area within a five-mile radius of the village post office or, if there
20 is no post office, another site designated by the commissioner:

21 (2) does not include an area described in (A) of this paragraph that is within a
22 city or another village.

23 * Sec. 4. AS 29.35.200 is amended by adding a new subsection to read:

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

29 * Sec. 5. AS 29.35.210(a) is amended by adding a new paragraph to read:

30 (13) contain, clean up, or prevent a release or threatened release of oil or a
31 hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08,