

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7342 SENATE COMMUNITY & REGIONAL AFFAIRS

1 or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is
2 consistent with a regional master plan prepared by the Department of Environmental
3 Conservation under AS 46.04.210.

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

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

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

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

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

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

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

26 (1) a determination by the governor that the release exceeds 2,500 barrels of oil,
27 or exceeds an amount of a hazardous substance that when released into the environment presents
28 a real and substantial threat to the economy and public welfare of the municipalities or villages
29 affected by it;

30 (2) the declaration by the governor of a disaster emergency relating to the release:

31 and

1 (3) a finding by the governor that

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

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

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

15 (1) the governor determines that a release of oil or a hazardous substance exceeds
16 2,500 barrels of oil, or exceeds an amount of a hazardous substance that, when released into the
17 environment, presents a threat to the economy and public welfare of the municipalities and
18 villages affected by it at least equivalent in effect to the effect of a release of oil in an amount
19 defined by this paragraph;

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

22 (3) the governor finds that

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

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

30 (b) For each disaster emergency declared by the governor under AS 26.23.020, and
31 subject to agreement with the commissioner of environmental conservation as to the amount of

1 money in the fund that may be used by the department to make grants. the commissioner may
2 expend not more than \$10,000,000 of the balance of the fund that is appropriated to the spill
3 reserve or of the unrestricted balance of the fund for grants authorized under this section. If the
4 commissioner and the commissioner of environmental conservation do not agree on the amount
5 of money in the fund that may be used by the department to make grants under AS 29.60.500 -
6 29.60.599, the governor shall make the determination.

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

13 (d) For money that has been transferred under (c) of this section, if within any one-year
14 period thereafter the commissioner does not use the money to make a grant under AS 29.60.500 -
15 29.60.599, the commissioner shall, at the direction of the governor or the request of the
16 commissioner of environmental conservation, return the unexpended amount transferred under
17 (c) of this section to the fund.

18 Sec. 29.60.520. PURPOSES OF MUNICIPAL IMPACT GRANTS. (a) A grant made
19 under AS 29.60.510 may be made

20 (1) only for

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

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

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

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

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

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

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

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

13 (2) to compensate the municipality or village for

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

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

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

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 AND
13 VILLAGES. (a) A municipality may not use a grant made under AS 29.60.510 to raise
14 current municipal tax rates or to retire its existing bonded indebtedness.

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

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

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

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

26 (2) develop a plan to

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

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

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

1 by

2 (1) using staff of the department;

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

4 (3) authorizing a municipality or other entity to perform that work and supporting
5 that effort by a grant.

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

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

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

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

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

16 Sec. 29.60.590. 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) "barrel" when used with reference to oil has the meaning given by
21 AS 43.20.072;

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

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

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

27 (5) "hazardous substance" has the meaning given in AS 46.09.900;

28 (6) "oil" and "release" have the meanings given in AS 46.08.900;

29 (7) "service"

30 (A) means a function performed or service provided by a municipality
31 under a duty or power authorized by this title or by another provision of law authorizing

1 a municipality to perform functions or provide services, or a comparable function
2 performed or service provided by a village;

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

5 (8) "village" means a place within the unorganized borough or within a borough
6 if the power, function, or service for which a grant application is submitted under AS 29.60.500 -
7 29.60.599 is not exercised or provided by the borough on an areawide or nonareawide basis at
8 the time the grant application is submitted, that

9 (A) has irrevocably waived, in a form approved by the Department of
10 Law, any claim of sovereign immunity that might arise in connection with the use of
11 grant money 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 under regulations
18 adopted by the department to determine and give official recognition of village
19 entities under AS 44.47.150(b).

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

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

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

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

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

30 (4) all incidental administrative costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (B) has

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

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

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

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

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

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

31 (5) "containment and cleanup" includes all direct and indirect efforts associated

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

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

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

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

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

14 (B) has

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

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

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

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

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

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

- 1 (2) pay all costs incurred to
2 (A) establish and maintain the oil and hazardous substance response office;
3 (B) review oil discharge prevention and contingency plans submitted under
4 AS 46.04.030;
5 (C) conduct training, response exercises, inspections, and tests, in order
6 to verify equipment inventories and ability to prevent and respond to oil and hazardous
7 substance release emergencies, and to undertake other activities intended to verify or
8 establish the preparedness of the state, a municipality, or a party required by
9 AS 46.04.030 to have an approved contingency plan to act in accordance with that plan;
10 and
11 (D) verify or establish proof of financial responsibility required by
12 AS 46.04.040;
- 13 (3) pay the expenses incurred by the Alaska division of emergency services for
14 the oil and hazardous substance response corps and the oil and hazardous substance response
15 depots when presented with appropriate documentation by the division;
- 16 (4) provide matching funds for participation in federal oil discharge cleanup
17 activities and under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,
18 Compensation, and Liability Act of 1980);
- 19 (5) recover the costs [COST] to the state, [OR TO] a municipality, or a village
20 of a containment and cleanup resulting from the release or the threatened release of oil or a
21 hazardous substance;
- 22 (6) prepare, review, and revise
23 (A) the state's master oil and hazardous substance discharge prevention
24 and contingency plan required by AS 46.04.200; and
25 (B) a regional master oil and hazardous substance discharge prevention
26 and contingency plan required by AS 46.04.210; and
27 (7) restore the environment by addressing the effects of an oil or hazardous
28 substance release.

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

30 (c) The department shall [MAY] reimburse a municipality or village for actual expenses,
31 other than normal operating expenses, incurred in the abatement of a release or threatened release

1 and may advance money to a municipality or village to carry out an emergency first
2 response to a release or threatened release of oil or a hazardous substance if

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

5 (2) the commissioner determines that

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

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

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

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

20 (3) "containment and cleanup" includes the direct and indirect efforts associated
21 with the prevention, abatement, containment, or removal of oil or 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 oil or hazardous substance, including [, AND INCIDENTAL] administrative
25 expenses for the incremental costs of providing the function or service;

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

27 (11) "service"

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

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

10 (B) has

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

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

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

19 * Sec. 19. 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. 20. 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. 21. 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. 22. Sections 9 and 11 of this Act are retroactive to March 24, 1989.

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

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

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

April 9, 1991

POSITION PAPER

RE: Sponsor Substitute for Senate Bill 25

SPONSOR: Senator's Zharoff and Sturgulewski

Program Effects of the Bill

The Sponsor Substitute for this bill contains a number of language refinements that clarify the scope and purpose of the Impact Assistance Grants portion of the legislation. The Department's analysis indicates that all of the changes are consistent with our original perception and understanding of the purposes of the Impact Assistance program.

This Sponsor Substitute also amends the authority of a municipality regarding watershed regulation. Specifically, it allows a municipality to delegate authority to regulate watersheds to another municipality by adoption of a resolution instead of an ordinance. The amendment continues by requiring that a municipality exercising extraterritorial powers of watershed regulation obtain the approval of any village whose boundaries are in the watershed.

Comments

As noted the Department considers the grant program amendments to be consistent with its perception of the purpose of the grant program. However, the amendments dealing with watershed regulation pose potential difficulties in implementation.

With respect to the resolution versus ordinance process the Department is inclined to support an ordinance process. Resolutions are used largely to state opinions and make declarations. They do not require public hearings and may be introduced and adopted at the same meeting. Conversely, ordinance's are adopted as local law and must have a public hearing. Additionally, there is a minimum seven day waiting period between the point of introduction and that of adoption. We believe allowing another municipality to exercise authority within your municipality is a significant act and should be subject to the more deliberative process associated with ordinances.

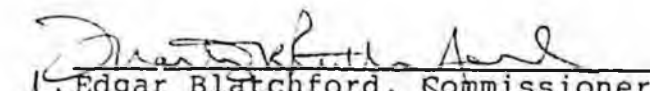
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With respect to the issue of requiring village approval of watershed management within its boundaries, the matter is clouded by the fact that villages have no defined boundaries. And in fact, the concept of what land area constitutes the village often revolves around the function that is being discussed. For example, the village could be the core area where people reside the majority of the time, it could be that area and all the land holdings of the village corporation, or it could be it's traditional hunting and gathering area. Moreover, Title 29 does not presently contain a definition of the term "village".

Staff of the Department are not aware of any instances where there has been conflict between an unincorporated village and a municipality trying to exercise jurisdiction over its watershed. If there have not been any significant number of such instances occurring, it may be better simply to leave matters as they now are. For while the amendment may resolve some potential problems it threatens to create additional ones through ambiguities associated with its jurisdictional application. If the amendment is retained we believe that a definition of "village", consistent with the remainder of SB 25 should be added to AS 29.71.800.

As stated in our previous position paper, the Department of Community and Regional Affairs supports this bill. Our experience with the Exxon Valdez oil spill showed that municipalities and villages are heavily impacted by such occurrences and end up incurring major expenses regardless of whether or not they have direct responsibility for responding. This bill would make clear a municipality's authority to be involved in oil and other hazardous spill response and would provide funds so that the brunt of the cost would not have to be borne locally.


Edgar Blatchford, Commissioner

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

417 Cap

DATE: 1/21/91

FURTHER: Finance

Date of 5-Day Notice: 4/4/91
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: _____

C&RA Committee considered SSSB 25

Exercise of authority and recovery of damages by the state, municipalities and villages in matters relating to environmental conservation; relating to state assistance to municipalities and villages for expenses for prevention and abatement of environmental degradation; efd.

and recommended:

- replace with _____ CS SS SB 25 (CRA) same title new title
- attached amendment(s)
- _____ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

ATTACHES NEW FISCAL NOTE(S):

- | | |
|---|--|
| Department(s)/Date: | Department(s)/Date: |
| <input type="checkbox"/> fiscal note(s) _____ | <input checked="" type="checkbox"/> zero fiscal note(s) <u>SAVES ALL 3</u> |
| _____ | <u>Dept. LAW - 3/27/91</u> |
| _____ | <u>Dept. ENV. COMS. - 3/18/91</u> |
| _____ | <u>Dept. C+RA - 4/9/91</u> |
| <input type="checkbox"/> appropriation-no fiscal note | <input type="checkbox"/> Governor's bill w/fiscal note |

SIGNING DO PASS:

Celine Stunsulovich

Paul F. Ziegler

OTHER RECOMMENDATIONS:

Steve Seal Do Pass

Chair: Signature and Recommendation

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSSB 25

The sponsor substitute for SB 25 adopts new language in Section 5, proposed AS 29.60.599(6), to provide that villages irrevocably waive any claims to sovereign immunity that might arise in connection with the use of grant monies under the impact assistance grant program. The addition of the waiver provision will help insure that any future dispute that might arise involving grants to villages, unincorporated under state law, can be resolved in state courts. This is a change suggested in the Department of Law's original fiscal note, dated February 25, 1991. Otherwise, the department's original fiscal note comments remain unchanged.



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907) 586-1325, Fax (907) 463-5480

In Support of Sponsor Substitute for SB 25

The Alaska Municipal League seeks passage of legislation to establish a program to reimburse municipalities for cleanup of oil spills and discharges of other hazardous substances.

The *Exxon Valdez* oil spill, discharges of chemicals from railroad cars, trucks, and cruise ships, and a variety of other recent incidents involving the release of hazardous substances have emphasized the need for a quick response to cut down on the risk of extensive environmental damage. Municipalities near the release site often have the best chance to respond quickly and thus minimize the spread of the spill, the environmental damage done by it, and the ultimate cost to the state. However, local governments usually are not responsible or liable for such cleanups, nor do they have the budgets or resources to pay for them.

During the 1990 session, legislators considered and nearly passed SB 359, which would have given municipalities authority to undertake cleanups of hazardous substance spills within and near their jurisdictions and established a fund to reimburse them for the cost of such cleanups. The need for legislation that would guarantee full reimbursement for costs of municipal responses to oil and other hazardous materials spills and to authorize the state to advance money to a municipality to carry out an emergency first response has not lessened, and the Alaska Municipal League seeks passage of such a bill during 1991.

A number of changes in the statutes relating to oil spills and other hazardous substance discharges and to municipal powers will be required to reach the League's objective. These changes would:

- extend the authority of municipalities to exercise containment and cleanup of spilled oil and other hazardous substances if the spill occurs outside municipal boundaries. Unified, home rule, and first class boroughs already have such power, but all municipalities need it.
- establish a fund that could be readily accessible by municipalities and villages in the event of a hazardous spill. Grants could be made to meet extraordinary expenditures that are beyond the reasonable capability of the municipality or village to meet given their current revenue sources.

- clarify existing law that permits state reimbursement of municipal expenditures to make it clear that the full costs of the discharge of oil or another hazardous substance can be reimbursed.
- permit the state to advance money to municipalities and villages to carry out an emergency first response.
- permit assessments of the social and economic effects of the release of oil or other hazardous substances on municipalities, villages, and affected regions of the state.
- make it clear that villages as well as the state and municipalities may recover against an entity responsible for a spill for the damage to their natural resources.
- modify existing legislation regarding the strict liability of a spiller to make it clear that all additional costs of services, and all losses of revenue, to a municipality or village brought about by such a spill are recoverable.
- make the recommended changes to the strict liability statute retroactive to March 23, 1989.

3/25/91

FISCAL NOTE

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

BILL NO. SB 25

Revision Date: _____
 Title: Exercise of authority and
recovery of damages...
 Sponsor: Senator Fred Zharoff
 Requestor: _____

Department Affected: DEC
 BRU: Environmental Quality
 Component: EQ Projects

COMPONENT SERIAL NO.

1	1	0	1	1	6
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: NONE

ANALYSIS: (Attach a separate page if necessary.)
 Under normal operating situations, DEC should need no additional resources to implement the legislation. However, should a significant oil spill occur, approximately 2 additional positions may be necessary.

Prepared by: Janice Adair
 Division: Commissioner's Office

Phone: 465-2600
 Date: _____

Approved by Commissioner: *M. J. ...*
 Agency: Department of Environmental Conservation

Date: 3/18/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

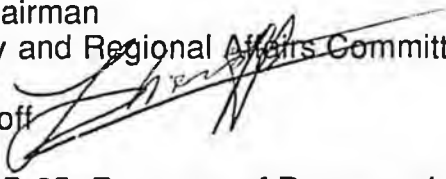
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DISTRICT N

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

MEMORANDUM

TO: Senator Frank, Chairman
Senate Community and Regional Affairs Committee

FROM: Senator Fred Zharoff 

RE: Scheduling of SSSB 25, Recovery of Damages by the State
and Municipalities in Matters Relating to Environmental Conservation

DATE: March 26, 1991

I am writing to request that you schedule SSSB 25 for a committee hearing at your earliest convenience.

SSSB 25 sets up a program to provide municipalities and villages access through DCRA to up to \$10,000,000 in funding from the DEC-managed Oil and Hazardous Substance Spill Response Fund ("470 Fund"), and provides a mechanism for the transfer of those funds between these departments. These funds would be made available to municipalities and villages as impact grants to pay for costs "associated with prevention, abatement, containment, or removal of oil or a hazardous substance."

SSSB 25 also authorizes and provides a mechanism for DEC to provide "first response" funds to municipalities and villages to respond to and clean up oil and hazardous substance spills on behalf of the state.

This bill is a redraft of SSSB 359 from the Sixteenth Legislature, which passed the Senate and died in the House Finance Committee last year.

To address certain concerns expressed to me by officials in the Department of Environmental Conservation. I am including a proposed Letter of Intent for the committee's consideration.

Backup information is included.

C&RA COMMITTEE CHECK LIST

Bill:

SB 25

Sponsor:

Zharoff

Date In:

3-22-91

Schedule Memo:

1) Agency Position Papers:

2) Fiscal Notes:

3) Sectional Analysis:

4) Other Backup:



Alaska State Legislature

Senate

Office of the Secretary

P.O. BOX V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

OFFICIAL BUSINESS

FOR YOUR IMMEDIATE ATTENTION

TO SENATE COMMITTEE: C&RA

Senator Frank

FROM: Office of the Senate Secretary

DATE: March 22, 1991

A Sponsor Substitute has been introduced on the following bill/resolution that is pending in your Committee.

SENATE BILL NO. 25

Damages by the state and its municipalities and villages in matters relating to environmental conservation, etc.; efd.

Please pull this bill/blue back from your files and give to the page delivering this message. The bill/resolution will be returned to you with the Sponsor Substitute. Thank you.

SIGNATURE OF PERSON RECEIVING THIS MESSAGE

S.B 25

Resolution of the Alaska Municipal League

Resolution No. 91-2

**A RESOLUTION SUPPORTING LEGISLATION TO ASSURE
REIMBURSEMENT TO MUNICIPALITIES THAT RESPOND TO AND ADDRESS
THE RELEASE OF OIL AND OTHER HAZARDOUS MATERIALS**

WHEREAS, recent spills involving the transportation of oil and other hazardous materials demonstrate the need for prompt response, and

WHEREAS, municipalities near the site of the hazardous material release may have the best chance to minimize the spread of the spill and the environmental damage done by the incident, and

WHEREAS, local governments usually are not responsible for nor have liability for spills within or near their jurisdictions, and

WHEREAS, the cost of municipal responses to address a private, state, or national problem should not be borne by a local government and its taxpayers, and

WHEREAS, legislation to ensure reimbursement to local governments responding to hazardous material spills, in the form of SB 359, came within a day of being enacted when the 16th Alaska Legislature adjourned, and

WHEREAS, this legislation is still very necessary to protect the Alaskan environment and assure municipalities that respond to hazardous material spills that they will be fully reimbursed;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the 17th Alaskan Legislature to introduce and pass legislation providing for full reimbursement for costs of municipal responses to oil and other hazardous material spills.

BE IT FURTHER RESOLVED that an adequate mechanism be established to fund the full reimbursement of local responses to oil and other hazardous material spills.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

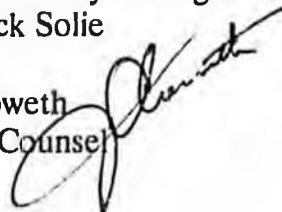
MEMORANDUM

April 8, 1991

SUBJECT: Extension of use of the Oil and Hazardous Substance Release Response Fund to municipalities and villages (SSSB 25)

TO: Senator Steve Frank, Chair
Senate Community & Regional Affairs Committee
ATTN: Rick Solie

FROM: Jack Chenoweth
Legislative Counsel



To isolate the new language, I've prepared the material relating to the governor's preparation of an impact assessment in the form of an amendment.

*

In conjunction with the request, you inquired as to the availability of the Oil and Hazardous Substance Release Response Fund for containment and cleanup purposes.

Although its use has been principally discussed in conjunction with the Exxon Valdez cleanup, the Fund, established by AS 46.08, is not limited to serving as a source of money for containment and cleanup of significant marine-related disasters, nor is it exclusively to serve as a source of containment and cleanup of disasters in which oil or a hazardous substance is released into water of the state. The test, set out at AS 46.08.040(a)(1), authorizes use of the fund balance, subject to other provisions of law, to

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

Senator Steve Frank
April 8, 1991
Page 2

A separate provision, AS 46.08.040(b), declares

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

Under AS 26.23, a condition of disaster emergency includes a series of incidents and circumstances set out in AS 26.23.900(1), not necessarily related to discharges into water.

Thus, if a condition of disaster has been declared, the governor enjoys clear authority to draw from the Fund to support the state's response. If the incident or circumstance involves an unpermitted release of a small quantity of oil or a hazardous substance that does not result in the governor's declaration of a disaster but the spill or discharge is still found to pose an environmental threat, the commissioner of environmental conservation may draw from the Fund to support the containment and cleanup initiatives noted above.

JC:gc
91-191.glc

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

PROPOSED LETTER OF INTENT

SSSB25

It is the intent of the Legislature to broaden the powers of municipalities and villages under AS 29 and AS 46 to more effectively respond to the release or threatened release of oil or a hazardous substance. The Legislature does not intend this grant of authority to municipalities under these specific circumstances and statues as a preemption of the state's powers, but as a means to facilitate the response to a disaster by municipalities and villages on behalf of the state.



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

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

SSSB 25

SPONSOR STATEMENT

March 25, 1991

A handwritten signature in cursive script, likely belonging to Senator Fred F. Zharoff.

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

SSSB 25 addresses the above concerns by:

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

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

MATT JAMIN

(h) 486-3490

(o) 486-6024

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 25, 1991

Arrive
FRIDAY
4/26

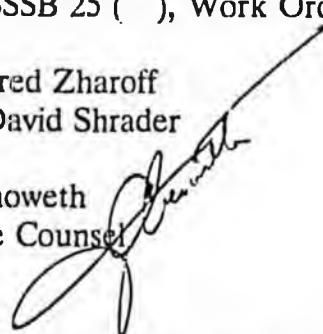
278-6100

(h+o)

SUBJECT: Draft CSSSSB 25 (), Work Order No. 7-LS0012P, 4/25/91

TO: Senator Fred Zharoff
ATTN: David Shrader

FROM: Jack Chenoweth
Legislative Counsel



This measure derives from a meeting involving several participants--I was not among them--yesterday.

Some comments to the draft:

In proposed AS 29.60.520(b)(2)--included based on language set out in an attachment prepared following that meeting--since there is a possibility that the state may require a transfer of title to it of something acquired by a municipality (or village) as a capital expenditure, there comes to my mind the question as to when and whether a municipal (or village) expenditure for a capital purpose--whatever that is--is ever really a municipal (or village) expenditure. And, how long after the spill response period may the commissioner act to require title transfer?

That same attachment indicated new language, brought into this draft as proposed AS 29.60.560(e) (page 7, lines 18 - 23), that raises a question. I have changed the language suggested in the attachment to substitute for the phrase "payment 'by other means'" to one that speaks of "payment 'from another source'", though I can't honestly say that I have any sense of what the author of the language in the attachment had contemplated.

Finally, please review carefully my editorial redrafting of the definition of "village" (" . . . means a place . . . ") every place the definition appears. I found that what we had in the earlier version didn't read right.

JBC:pl
91-307.plm

Enclosure

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 for the region in which the borough is located if
 29 a plan has been prepared by the Department of Environmental 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 ~~for the region in which the borough is located if a plan~~
 4 ~~has been prepared by the Department of Environmental 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 for the region in which the borough is located if a plan has been prepared by the
 12 Department of Environmental Conservation under AS 46.04.210.

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

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

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

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

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

29 Sec. 29.60.510. MUNICIPAL IMPACT GRANTS AUTHORIZED. (a) If a release of
 30 oil or a hazardous substance has been proclaimed a disaster emergency by the governor under
 31 AS 26.23.020, the commissioner may use money from the oil and hazardous substance release

1 response fund to make grants to a municipality or village that is affected by the release or by the
2 response to the release and that demonstrates that the release or response to the release involves
3 extraordinary expenditures that are beyond the reasonable capability of the municipality or village
4 to meet from the current revenue sources of the municipality or village.

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

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

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

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

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

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

- 1 (B) alleviation or mitigation of adverse social or cultural effects;
- 2 (C) public health and welfare needs, including hospital, clinic, and
- 3 emergency medical services; alcohol, drug abuse, and mental health services; family
- 4 support services; and the operation of waste disposal systems and water quality
- 5 improvement systems;
- 6 (D) public safety needs, including police protection, search and rescue, and
- 7 fire protection;
- 8 (E) public utility needs, including the operation of electric generating
- 9 plants and distribution systems, water supply systems, telephone systems, and fuel
- 10 distribution systems;
- 11 (F) housing and office needs;
- 12 (G) transportation needs;
- 13 (H) public administration needs, including the value of the time of staff
- 14 and administrative personnel necessary to direct efforts to prevent, abate, contain, and
- 15 remove oil or a hazardous substance; and
- 16 (I) planning needs, including the value of the time of staff and
- 17 administrative personnel necessary to coordinate efforts with other governments to
- 18 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.

(b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may not be used for

^{Period}
[(1)] a capital improvement, as that term is defined by AS 46.08.900(1); or

^(C) [(2)] a capital expenditure, unless the capital expenditure is necessary for a spill response; If money is used for a capital expenditure under this paragraph, 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

1 the commissioner finds that retention of the item would confer an inappropriate benefit on the
2 municipality or village.

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

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

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

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

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

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

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

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

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

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

3 (2) develop a plan to

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

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

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

10 (1) using staff of the department;

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

12 (3) authorizing a municipality or other entity to perform that work and supporting
13 that effort by a grant.

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

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

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

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

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

24 Sec. 29.60.590. REGULATIONS. The commissioner and the commissioner of
25 environmental conservation shall jointly develop and adopt regulations that are necessary to
26 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 a place within the unorganized borough or within a borough
12 if the power, function, or service for which a grant application is submitted under AS 29.60.500 -
13 29.60.599 is not exercised or provided by the borough on an areawide or nonareawide basis at
14 the time the grant application is submitted, that

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

18 (B) has

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

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

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

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

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

31 (1) direct and indirect costs associated with the abatement, containment, or

1 removal of the pollutant;

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

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

5 (4) all incidental administrative costs.

6 * Sec. 9. 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, [AND] for the
11 costs of response, containment, removal, or remedial action incurred by the state, [OR] a munic-
12 ipality, or a village, and for the additional costs of a function or service, including
13 administrative expenses for the incremental costs of providing the function or service, that
14 are incurred by the state, a municipality, or a village, and the costs of projects or activities
15 that are delayed or lost because of the efforts of the state, the municipality, or the village,
16 resulting from an unpermitted release of a hazardous substance or, with respect to response costs,
17 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. 10. 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. 11. 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 a place within the unorganized borough or within a borough
20 as to a power, function, or service that is not exercised or provided by the borough on an
21 areawide or nonareawide basis that

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

24 (B) has

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

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

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

1 under AS 44.47.150(b).

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

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

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

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

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

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

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

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

20 (B) has

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

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

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

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

30 (a) In addition to money in the fund that is transferred to the commissioner of
31 community and regional affairs to make grants under AS 29.60.510 and to pay for impact

1 assessments under AS 29.60.560, the [THE] commissioner of environmental conservation may
2 use money from the fund to

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

7 (2) pay all costs incurred to

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

9 (B) review oil discharge prevention and contingency plans submitted under
10 AS 46.04.030;

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

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

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

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

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

28 (6) prepare, review, and revise

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

31 (B) a regional master oil and hazardous substance discharge prevention

1 and contingency plan required by AS 46.04.210; and

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

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

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

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

11 (2) the commissioner determines that

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

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

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

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

26 (3) "containment and cleanup" includes the direct and indirect efforts associated
27 with the prevention, abatement, containment, or removal of oil or 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 oil or hazardous substance, including [, AND INCIDENTAL] administrative
31 expenses for the incremental costs of providing the function or service;

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

2 (11) "service"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
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February 27, 1991

POSITION PAPER

RE: Senate Bill 25

SPONSOR: Senator Zharoff


Program Effects of the Bill

The bill authorizes municipalities to "contain, clean up, or prevent the release or threatened release of oil or other hazardous substances" that may pose an imminent threat to municipal residents or property. Exercise of the power must be in accord with any State DEC regional master plan, if one exists. The bill grants this authority to municipalities on an extra-territorial basis as well. Consistent with existing law, extra-territorial jurisdiction may be exercised within another municipality only with the approval of that municipality.

The bill also establishes a grant program in the Department of Community and Regional Affairs to help mitigate damages caused by a hazardous substance related State declared emergency (AS 26.23.020). Reimbursement for expenses incurred by a municipality or village in responding to a hazardous substance State declared emergency would also be possible from the grant fund. Both municipalities and unincorporated villages are eligible for grants from the fund.

Comments

The Department of Community and Regional Affairs supports this bill. Our experience with the Exxon Valdez oil spill showed that municipalities and villages are heavily impacted by such occurrences and end up incurring major expenses regardless of whether or not they have direct responsibility for responding. This bill would make clear a municipality's authority to be involved in oil and other hazardous spill response and would provide funds so that the brunt of the cost would not have to be borne locally.


Edgar Blatchford, Commissioner

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 25

Revision Date: _____ Department Affected: Community & Regional Affairs

Title: "An Act, recovery of damages.." BRU: _____

Component: _____

Sponsor: Senator Zharoff

Requestor: _____ COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

There is no immediate fiscal impact. However, there will be a big fiscal impact if there is a spill.

Prepared By: Remond Henderson, Director *Remond Henderson* Phone: 465-4708

Division: Administrative Services Date: 2/27/91

Approved by Commissioner: _____

Agency: Community & Regional Affairs Date: 2/27/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

RECEIVED APR 13 1991

April 18, 1991

REPLY TO:

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FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
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FAX: (907) 456-1317

P.O. BOX K— STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

Honorable Fred Zharoff
Alaska State Senator
P. O. Box V
Juneau, Alaska 99811

Re: SSSB 25 amendments

Dear Senator Zharoff:

Set out below is an amendment to SSSB 25 that I believe will solve the Native sovereignty issue I discussed with your aide David Shrader on April 17, 1991:

Page 1 line 10: delete "or a village"

line 11: after "municipality" delete "or a village"
after "resolution," insert the following new

material to read:

"Before a power authorized by this subsection may be exercised inside a village, the governing body of the municipality shall notify and consult with the village council concerning the proposed exercise of power."

In addition to the amendment set out above, another section should be amended to satisfy our Native sovereignty concerns about this bill. Section 7, beginning on page 8 of the bill, would enact new material in AS 46.03.822(a) that may have serious implications. The amendment set out between lines 7 and 11 implies that a village is a trustee of natural resources within its area of influence. I understand that an amendment will be added to the bill describing this area of influence as extending from the center of the village out in a three-mile radius. This presents two legal problems. For a village located within an organized municipality, the provision will create potentially conflicting trusteeships for the same resources. Additionally, the implied trust relationship adds an attribute of governmental status to villages that they do not already possess. For these reasons, the

Hon. Fred Zharoff, Alaska State Senator
Re: Native Sovereignty

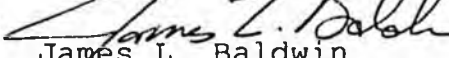
April 18, 1991
Page 2

words "or a village" should be deleted on lines 7, 10, and 11.

Thank you for the opportunity to comment on this bill.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
James L. Baldwin
Assistant Attorney General

JLB:cl

CC: Janice Adair, DEC

stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (J) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307(b) or (c) of the Clean Water Act [33 USCS § 1317(b) or (c)] and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act [33 USCS § 1342], and (K) any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954 [42 USCS §§ 2011 et seq.], in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954 [42 USCS §§ 2011 et seq.].

(11) The term "Fund" or "Trust Fund" means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986 [26 USCS § 9507].

(12) The term "ground water" means water in a saturated zone or stratum beneath the surface of land or water.

(13) The term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act.

(14) The term "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 USCS § 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act [42 USCS § 9602], (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 USCS § 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 USCS § 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 USCS § 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 USCS § 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(15) The term "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas.

Regulation providing for grant of variance from 1977 effluent limitations applicable to discharge of heat from steam electric generating plant, which regulation provides that only technical and engineering factors, exclusive of cost, may be considered in granting or denying variance, is unduly restrictive and would be set aside; 1977 standards and subsequent new source limitations were not intended to be applied any flexibly than 1983 requirements thus, upon reconsideration, EPA should come forward with meaningful variance clause applicable to existing as well as new sources, taking into consideration at least statutory factors set out in 33 USCS §§ 1311(c), 1314(b)(1)(B) and 1316(b)(1)(B). *Appalachian Power Co. v Train* (1976, CA4) 545 F2d 1351.

14. Grace period

It is not clear whether Congress intended to equate "effluent limitations" as used in 33 USCS § 1311 and defined in 33 USCS § 1362, with "standard of performance" as defined in 33 USCS § 1316, nor is it clear intent of Congress with reference to applicability of grace period to plants construction of which began after passage of Act in 1972 and before promulgation of regulations in 1974, however, except for such situations as are later determined to be within 33 USCS § 1316 grace period, plants which go on line between passage of Act and 1983 are subject to 1983 limitations. *E. I. Du Pont de Nemours & Co. v Train* (1976, CA4) 541 F2d 1018, affd in part and revd in part on other grounds 430 US 112, 51 L Ed 2d 204, 97 S Ct 965.

It is inferable from Congress' special treatment of new sources that it determined to afford protection of limited kind to new sources, under 33 USCS § 1316 provisions permitting standards of performance for new point sources to be

revised from time to time, but providing more stringent standard of performance may not be imposed on individual source for 10 years after completion of construction or until facility is fully depreciated or amortized, but not to extend same protection to existing sources or to restrict effectiveness of 33 USCS § 1317 standards even upon new sources. *Inland Steel Co. v Environmental Protection Agency* (1978, CA7) 574 F2d 367.

33 USCS § 1316 provision providing that new sources meeting all applicable standards of performance at time of construction do not have to meet any more stringent standard of performance during specific period of time does not shield qualifying sources from more stringent performance standards set by state which is assumed administration of National Pollutant Discharge Elimination System program under 33 USCS § 1342. *USEPA GCO 76-22*.

15. Violations by new source

Variances for individual plants are not permitted under 33 USCS § 1316, which authorizes Administrator of Environmental Protection Agency to promulgate regulations establishing standards for control of discharge of pollutants by new sources of water polluting discharges. *E. I. Du Pont de Nemours & Co. v Train* (1977) 430 US 112, 51 L Ed 2d 204, 97 S Ct 965.

Since regulations entitled "Ocean Dumping" were explicitly issued pursuant to 33 USCS § 1311 et seq. and 33 USCS § 1343, and not under 33 USCS § 1316(e) allegations that regulations have been violated do not allege violation of any portion of § 1316 so as to fall within 33 USCS § 1365's waiver of 60-day notice requirement. *Save Our Sound Fisheries Asso. v Callaway* (1977, DC RI) 429 F Supp 1136.

§ 1317. Toxic and pretreatment effluent standards

(a) Toxic pollutant list; revision; hearing; promulgation of standards; effective date; consultation. (1) On and after the date of enactment of the Clean Water Act of 1977 [enacted Dec. 27, 1977], the list of toxic pollutants or combination of pollutants subject to this Act shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator shall publish, not later than the thirtieth day after the date of enactment of the Clean Water Act of 1977 [enacted Dec. 27, 1977], that list. From time to time thereafter, the Administrator may revise such list and the Administrator is authorized to add to or remove from such list any pollutant. The Administrator in publishing any revised list, including the addition or removal of any pollutant from such list, shall take into account toxicity

of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms. A determination of the Administrator under this paragraph shall be final except that if, on judicial review, such determination was based on arbitrary and capricious action of the Administrator, the Administrator shall make a redetermination.

(2) Each toxic pollutant listed in accordance with paragraph (1) of this subsection shall be subject to effluent limitations resulting from the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 301(b)(2)(A) and 304(b)(2) of this Act [33 USCS §§ 1311(b)(2)(A), 1314(b)(2)]. The Administrator, in his discretion, may publish in the Federal Register a proposed effluent standard (which may include a prohibition) establishing requirements for a toxic pollutant which, if an effluent limitation is applicable to a class or category of point sources, shall be applicable to such category or class only if such standard imposes more stringent requirements. Such published effluent standard (or prohibition) shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and the extent to which effective control is being or may be achieved under other regulatory authority. The Administrator shall allow a period of not less than sixty days following publication of any such proposed effluent standard (or prohibition) for written comment by interested persons on such proposed standard. In addition, if within thirty days of publication of any such proposed effluent standard (or prohibition) any interested person so requests, the Administrator shall hold a public hearing in connection therewith. Such a public hearing shall provide an opportunity for oral and written presentations, such cross-examination as the Administrator determines is appropriate on disputed issues of material fact, and the transcription of a verbatim record which shall be available to the public. After consideration of such comments and any information and material presented at any public hearing held on such proposed standard or prohibition, the Administrator shall promulgate such standard (or prohibition) with such modification as the Administrator finds are justified. Such promulgation by the Administrator shall be made within two hundred and seventy days after publication of proposed standard (or prohibition). Such standard (or prohibition) shall be final except that if, on judicial review, such standard was not based on substantial evidence, the Administrator shall promulgate a revised standard. Effluent limitations shall be established in accordance with sections 301(b)(2)(A) and 304(b)(2) [33 USCS §§ 1311(b)(2)(A), 1314(b)(2)] for every toxic pollutant referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives as soon as

practicable after the date of enactment of the Clean Water Act of 1977 [enacted Dec. 27, 1977], but no later than July 1, 1980. Such effluent limitations or effluent standards (or prohibitions) shall be established for every other toxic pollutant listed under paragraph (1) of this subsection as soon as practicable after it is so listed.

(3) Each such effluent standard (or prohibition) shall be reviewed and, if appropriate, revised at least every three years.

(4) Any effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.

(5) When proposing or promulgating any effluent standard (or prohibition) under this section, the Administrator shall designate the category or categories of sources to which the effluent standard (or prohibition) shall apply. Any disposal of dredged material may be included in such a category of sources after consultation with the Secretary of the Army.

(6) Any effluent standard (or prohibition) established pursuant to this section shall take effect on such date or dates as specified in the order promulgating such standard, but in no case, more than one year from the date of such promulgation. If the Administrator determines that compliance within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for such category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.

(7) Prior to publishing any regulations pursuant to this section the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, States, independent experts, and Federal departments and agencies.

- (b) Pretreatment standards; hearing; promulgation; compliance period; revision; application to State and local laws. (1) The Administrator shall, within one hundred and eighty days after the date of enactment of this title [enacted Oct. 18, 1972] and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 212 of this Act [33 USCS § 1292]) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 212 of this Act [33 USCS § 1292]) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incom-

owned treatment works require the application of the best available technology economically achievable which will result in reasonable further progress toward the goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(2) of the Act.

Section 304(b) of the Act requires the Administrator to publish regulations providing guidelines for effluent standards setting forth the degree of effluent reduction attainable through the application of the best available technology currently available for the degree of effluent reduction through the application of control measures and procedures, including treatment processes, process and procedures, operating methods, and alternatives.

Section 304(c) of the Act requires the Administrator, after consultation with appropriate Federal and State agencies and other interested persons, to obtain information on the processes, or operating methods, or result in the elimination or reduction of the discharge of pollutants to meet the standards of performance set forth in section 306 of the Act.

Section 306(b)(1)(B) of the Act requires the Administrator, after consultation with the sources included in a category pursuant to section 306(A) of the Act, to propose regulations establishing Federal standards of performance for new sources in each such category. Standards of performance are to provide for the greatest degree of effluent reduction which the Administrator determines to be achievable through the application of the best available technology, including treatment processes, operating methods, or other measures, including where practicable, a standard permitting no discharge of pollutants.

Section 307(b) provides that the Administrator shall establish pretreatment standards which shall prevent the discharge of any pollutant into navigable waters which interferes with, passes

through untreated, or otherwise is incompatible with such works.

(g) Section 307(c) of the Act provides that the Administrator shall promulgate pretreatment standards for discharges from "new sources" under section 306 (if they were to discharge pollutants directly to navigable waters) at the same time standards of performance for the equivalent category of new sources are promulgated.

(h) Section 316(b) of the Act provides that any standard established pursuant to section 301 or section 306 of the Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(i) Section 402(a)(1) of the Act provides that the Administrator may issue permits for the discharge of any pollutant upon condition that such discharge will meet all applicable requirements under sections 301, 302, 306, 307, 308 and 403 of this Act. In addition, section 402(b)(1)(A) of the Act requires that permits issued by States under the National Pollutant Discharge Elimination System (NPDES) established by the Act must apply, and insure compliance with any applicable requirements of sections 301, 302, 306, 307 and 403 of the Act.

§ 401.13 Test procedures for measurement.

The test procedures for measurement which are prescribed at part 136 of this chapter shall apply to expressions of pollutant amounts, characteristics or properties in effluent limitations guidelines and standards of performance and pretreatment standards as set forth at parts 402 through 699 of this subchapter, unless otherwise specifically noted or defined in said parts.

§ 401.14 Cooling water intake structures.

The location, design, construction and capacity of cooling water intake structures of any point source for which a standard is established pursuant to section 301 or 306 of the Act shall reflect the best technology available for minimizing adverse environmental impact, in accordance with the provisions of part 402 of this chapter.

(Sec. 501(a) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1320(b) and 1201(a))

141 FR 17389, Apr. 26, 1976]

§ 401.15 Toxic pollutants.

The following comprise the list of toxic pollutants designated pursuant to section 307(a)(1) of the Act:

1. Acenaphthene
2. Acrolein
3. Acrylonitrile
4. Aldrin/Dieldrin¹
5. Antimony and compounds²
6. Arsenic and compounds
7. Asbestos
8. Benzene
9. Benzidine¹
10. Beryllium and compounds
11. Cadmium and compounds
12. Carbon tetrachloride
13. Chlordane (technical mixture and metabolites)
14. Chlorinated benzenes (other than dichlorobenzenes)
15. Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
16. Chloroalkyl ethers (chloroethyl and mixed ethers)
17. Chlorinated naphthalene
18. Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
19. Chloroform
20. 2-chlorophenol
21. Chromium and compounds
22. Copper and compounds
23. Cyanides
24. DDT and metabolites¹
25. Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
26. Dichlorobenzidine
27. Dichloroethylenes (1,1-, and 1,2-dichloroethylene)
28. 2,4-dichlorophenol
29. Dichloropropane and dichloropropene
30. 2,4-dimethylphenol
31. Dinitrotoluene
32. Diphenylhydrazine
33. Endosulfan and metabolites
34. Endrin and metabolites¹
35. Ethylbenzene
36. Fluoranthene

¹ Effluent standard promulgated (40 CFR part 129).

² The term "compounds" shall include organic and inorganic compounds.

- 37. Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis-(chloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
- 38. Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane)
- 39. Heptachlor and metabolites
- 40. Hexachlorobutadiene
- 41. Hexachlorocyclohexane
- 42. Hexachlorocyclopentadiene
- 43. Isophorone
- 44. Lead and compounds
- 45. Mercury and compounds
- 46. Naphthalene
- 47. Nickel and compounds
- 48. Nitrobenzene
- 49. Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
- 50. Nitrosamines
- 51. Pentachlorophenol
- 52. Phenol
- 53. Phthalate esters
- 54. Polychlorinated biphenyls (PCBs)¹
- 55. Polynuclear aromatic hydrocarbons (including benzantracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
- 56. Selenium and compounds
- 57. Silver and compounds
- 58. 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)
- 59. Tetrachloroethylene
- 60. Thallium and compounds
- 61. Toluene
- 62. Toxaphene¹
- 63. Trichloroethylene
- 64. Vinyl chloride
- 65. Zinc and compounds

[44 FR 44502, July 30, 1979, as amended at 46 FR 2266, Jan. 8, 1981; 46 FR 10724, Feb. 4, 1981]

§ 401.16 Conventional pollutants.

The following comprise the list of conventional pollutants designated pursuant to section 304(a)(4) of the Act:

- 1. Biochemical oxygen demand (BOD)
- 2. Total suspended solids (nonfilterable) (TSS)
- 3. pH
- 4. Fecal coliform
- 5. Oil and grease

[44 FR 44503, July 30, 1979; 44 FR 52685, Sept. 10, 1979]

§ 401.17 pH Effluent limitations under continuous monitoring.

(a) Where a permittee continuously measures the pH of wastewater pursu-

ant to a requirement or option in a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to section 402 of the Act, the permittee shall maintain the pH of such wastewater within the range set forth in the applicable effluent limitations guidelines, except excursions from the range are permitted subject to the following limitations:

(1) The total time during which the pH values are outside the required range of pH values shall not exceed 7 hours and 26 minutes in any calendar month; and

(2) No individual excursion from the range of pH values shall exceed 60 minutes.

(b) The Director, as defined in § 122.3 of this chapter, may adjust the requirements set forth in paragraph (a) of this section with respect to the length of individual excursions from the range of pH values, if a different period of time is appropriate based upon the treatment system, plant configuration or other technical factors.

(c) For purposes of this section, an "excursion" is an unintentional and temporary incident in which the pH value of discharge wastewater exceeds the range set forth in the applicable effluent limitations guidelines.

(Secs. 301, 304, 306 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et. seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217))

[47 FR 24537, June 4, 1982]

PART 402—[RESERVED]

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

- Sec.
- 403.1 Purpose and applicability.
- 403.2 Objective of general pretreatment regulations.
- 403.3 Definitions.
- 403.4 State or local law.
- 403.5 National pretreatment standards: Prohibited discharges.
- 403.6 National pretreatment standards: Categorical standards.
- 403.7 Removal credits.
- 403.8 POTW pretreatment programs: Development by POTW.

- 403.9 POTW pretreatment program authorization to revise pretreatment standards: Submission for approval
- 403.10 Development and submission of NPDES State pretreatment program
- 403.11 Approval procedures for POTW pretreatment programs and POTW removal credits.
- 403.12 Reporting requirements for POTW's and industrial users.
- 403.13 Variances from categorical pretreatment standards for fundamental factors.
- 403.14 Confidentiality.
- 403.15 Net/Gross calculation.
- 403.16 Upset provision.
- 403.17 Bypass.
- 403.18 Modification of POTW pretreatment programs.
- APPENDIX A—PROGRAM GUIDANCE
- APPENDIX B—65 TOXIC POLLUTANTS
- APPENDIX C—INDUSTRIAL CATEGORIES SUBJECT TO NATIONAL CATEGORICAL EFFLUENT STANDARDS
- APPENDIX D—SELECTED INDUSTRIAL CATEGORIES EXEMPTED FROM REGULATIONS PURSUANT TO PARAGRAPH 8 OF THE COASTAL CONSENT DECREE
- APPENDIX E—SAMPLING PROCEDURE
- AUTHORITY: Sec. 54(c)(2) of the Water Act of 1977, (Pub. L. 95-217) 304(b)(1)(C), 208(b)(2), 301(b)(1)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2)(C), 307, 308, 309, 402(b), 405 of the Federal Water Pollution Control Act of 1977 and the Water Act of 1987 (Pub. L. 100-4).
- SOURCE: 46 FR 9439, Jan. 28, 1981, otherwise noted.
- EDITORIAL NOTE: Nomenclature part 403 appears at 51 FR 2043, 1986.

§ 403.1 Purpose and applicability.
 (a) This part implements 204(b)(1)(C), 208(b)(2), 301(b)(1)(A)(ii), 301(b)(2)(C), 301(h)(5) and 301(i)(2), 304 (307, 308, 309, 402(b), 405, and the Federal Water Pollution Act as amended by the Clean Water Act of 1977 (Pub. L. 95-217) "Act". It establishes response Federal, State, and local government industry and the public to National Pretreatment Standards control pollutants which pass or interfere with treatment in Publicly Owned Treatment

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR FRANK

TO: SSSB 25

Page 1, line 2, after "conservation,":

Delete "and"

Page 1, line 4, after "degradation":

Insert ", and adding to the governor's responsibilities after declaration of a disaster emergency for the discharge of oil or a hazardous substance"

Page 1, following line 5:

Insert a new bill section to read:

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

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

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

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

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

Page 1, line 6:

• Delete "Section 1."

Insert "Sec. 2."

Re-number following bill sections accordingly.

Page 6, lines 8 - 21:

Delete all material.

Page 6, line 22:

Delete "AS 29.60.580"

Insert "AS 29.60.570"

Page 7, line 29, after "amounts":

Insert "transferred to the Office of the Governor to pay for impact assessments under AS 26.23.027, and amounts"

Page 10, line 21, after "transferred":

Insert "to the Office of the Governor to pay for impact assessments under AS 26.23.027 and"

Page 10, line 22, after "AS 29.60.510":

Delete "and to pay for impact assessments under AS 29.60.570"

Page 13, line 30:

Delete "Sections 7 and 9"

Insert "Sections 8 and 10"

A M E N D M E N T

OFFERED IN THE SENATE
TO: C S S S S B 25 (CRA)

Page 3, line 28:

Delete "or"

Insert ", or exceeds"

Page 3, line ²⁷28, after "[substance]":

Insert "unless the governor finds that the release involves ^{10,000.} [550,000] or fewer ^{barrels hazardous} [gallons] of a ^{hazardous} [toxic] substance and the effect of the [toxic] substance released into the environment is one that presents a real and substantial threat to the economy and public welfare of the municipalities or villages affected by it"

Page 4, line 15:

Delete "or"

Insert ", or exceeds"

Page 4, line 15, after "[substance]":

Insert "unless the governor determines that the release involves ^{10,000.} [550,000] or fewer ^{barrels} [gallons] of a ^{hazardous} [toxic] substance and that the effect of the ^{hazardous} [toxic] substance released into the environment presents a threat to the economy and public welfare of the municipalities and villages affected by it that is at least equivalent in effect to the effect of a release of oil or a hazardous substance otherwise required by this paragraph"

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
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Court Plaza, Room 500
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MEMORANDUM

April 19, 1991

SUBJECT: Amendment to SSSB 25 (Work Order No. 7-LS0012/G.3)

TO: Senator Fred Zharoff
ATTN: Dave Shrader

FROM: Jack Chenoweth *JBC/lmb*
Legislative Counsel

This amendment is a revision of yesterday's effort.

Under part I, I have revised the language with respect to villages based on Assistant Attorney General Jim Baldwin's comments.

The material set out in parts VIII and IX is new. Part VIII deletes the references to "village" that appear in AS 46.03.822(a), added by bill section 7. Part IX's amendment directs joint development of program regulations.

JBC:lmb
91-132.lmb

Enclosure

A M E N D M E N T

OFFERED IN THE SENATE

TO: SSSB 25

I

Page 1, line 1, following "authority":

Delete "and"

Insert "by the state and its municipalities in matters relating to environmental conservation and to the"

Page 1, lines 9 - 11:

Delete "Before a [THIS] power authorized by this subsection may be exercised inside the boundaries of another municipality or a village, the approval of the other municipality or the village must be given by resolution."

Insert "Before a [THIS] 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, and before a power authorized by this subsection may be exercised inside a village, the governing body of the municipality shall notify and consult with the village council concerning the proposed exercise of the power."

Page 2, after line 10:

Insert a new bill section to read:

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

(e) In this section, "village"

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

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

Renumber the following bill sections accordingly.

Page 13, line 30:

Delete "Sections 7 and 9"

Insert "Sections 8 and 10"

II

Page 3, line 18, after "hazardous":

Insert "substance"

III

Page 3, line 26, after "\$10,000,000 of the":

Insert "balance of the fund that is appropriated to the spill reserve or of the"

IV

Page 4, following line 4:

Insert a new subsection to read:

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

V

Page 4, line 5, after "GRANTS.":

Insert "(a)"

Page 5, following line 5:

Insert a new subsection to read:

"(b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may not be used for capital improvements."

VI

Page 6, line 22, following "REGULATIONS.", through line 23:

Delete all material.

Insert "The commissioner

(1) shall adopt regulations

(A) setting time limits on the use of grants made under AS 29.60.500 - 29.60.599 by municipalities and villages that receive the grants;

(B) defining procedures by which the state may recover from a municipality or village receiving a grant under AS 29.60.500 - 29.60.599 the amount of money used in violation of AS 29.60.540 or used in a manner that is inconsistent with the terms and conditions of the grant award;

(2) may adopt other regulations that are necessary to implement the purposes of AS 29.60.500 - 29.60.599."

VII

Page 13, following line 30:

Insert a new bill section to read:

"* **Sec. 21. APPLICABILITY.** The amendments made by secs. 6, 7, 14, and 15 of this Act do not apply to a release of oil or a hazardous substance and resultant cleanup activities or to efforts to respond to or abate that release if the release occurred before the effective date of this Act."

Renumber the following bill sections accordingly.

VIII

Page 1, line 1:

Delete "and recovery of damages"

Page 1, line 2, following "conservation":

Delete ", and"

Insert "and the recovery of damages by the state and its municipalities in matters relating to environmental conservation; relating to the liability of villages for environmental response actions;"

Page 8, line 5:

Delete "of the state, [OR] municipality, or a village"

Insert "of the state or municipality"

Page 8, lines 6 - 7:

Delete ", [OR] a municipality, or a village,"

Insert "or a municipality,"

Page 8, line 9:

Delete "state, a municipality, or a village"

Insert "state or a municipality"

Page 8, lines 10 - 11:

Delete "the state, the municipality, or the village"

Insert "the state or the municipality"

IX

Page 6, line 22:

Delete "may"

Insert "and the commissioner of environmental conservation shall jointly develop and"

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSSSB 25 (CRA)

Page 3, line 28:

Delete "or"

Insert ", or exceeds"

Page 3, line 28, after "substance":

Insert "unless the governor finds that the release involves ^{10,000 or barrels} ~~550,000~~ or fewer ^{ha.2.} gallons of a toxic substance and the effect of the ^{ha.2.} toxic substance released into the environment is one that presents a real and substantial threat to the economy and public welfare of the municipalities or villages affected by it"

Page 4, line 15:

Delete "or"

Insert ", or exceeds"

Page 4, line 15, after "substance":

Insert "unless the governor determines that the release involves ^{10,000} ~~550,000~~ or fewer ^{barrels} gallons of a toxic substance and that the effect of the ^{hazardous} ~~toxic~~ substance released into the environment presents a threat to the economy and public welfare of the municipalities and villages affected by it that is at least equivalent in effect to the effect of a release of oil or a hazardous substance otherwise required by this paragraph"

A M E N D M E N T

OFFERED IN THE SENATE

TO: SSSB 25

I

Page 1, lines 9 - 11:

Delete "Before a [THIS] power authorized by this subsection may be exercised inside the boundaries of another municipality or a village, the approval of the other municipality or the village must be given by resolution."

Insert "Before a [THIS] 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, and before the power may be exercised within a village, the approval of the village must be given by resolution."

Page 2, line 10:

Delete "[ORDINANCE]"

Page 2, after line 10:

Insert a new bill section to read:

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

(e) In this section, "village"

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

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

Renumber the following bill sections accordingly.

Page 13, line 30:

Delete "Sections 7 and 9"

Insert "Sections 8 and 10"

II

Page 3, line 18, after "hazardous":

Insert "substance"

III

Page 3, line 26, after "\$10,000,000 of the":

Insert "balance of the fund that is appropriated to the spill reserve or of the"

IV

Page 4, following line 4:

Insert a new subsection to read:

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

V

Page 4, line 5, after "GRANTS.":

Insert "(a)"

Page 5, following line 5:

Insert a new subsection to read:

"(b) Money received by a municipality or village under AS 29.60.500 - 29.60.599 may not be used for capital improvements."

VI

Page 6, line 22, following "REGULATIONS.", through line 23:

Delete all material.

Insert "The commissioner

(1) shall adopt regulations

(A) setting time limits on the use of grants made under AS 29.60.500 - 29.60.599 by municipalities and villages that receive the grants;

(B) defining procedures by which the state may recover from a municipality or village receiving a grant under AS 29.60.500 - 29.60.599 the amount of money used in violation of AS 29.60.540 or used in a manner that is inconsistent with the terms and conditions of the grant award;

(2) may adopt other regulations that are necessary to implement the purposes of AS 29.60.500 - 29.60.599."

VII

Page 13, following line 29:

Insert a new bill section to read:

"* **Sec. 21. APPLICABILITY.** The provisions of sections 6, 7, 14, and 15 of this Act do not apply to a release of oil or a hazardous substance and resultant cleanup activities or to efforts to respond to or abate that release if the release occurred before the effective date of this Act."

Renumber the following bill sections accordingly.

Post-It™ brand fax transmittal memo 7671		# of pages 2
To MIKE WORLEY	From DAN BOCKHORST	
Co.	Co.	
Dept.	Phone #	
Fax #	Fax #	

MR. CHAIRMAN, MEMBERS OF THE COMMI

MY NAME IS DAN BOCKHORST, I AM A LOCAL GOVERNMENT SPECIALIST WITH THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS. I AM TESTIFYING ON BEHALF OF THE DEPARTMENT.

THE DEPARTMENT CONCEPTUALLY SUPPORTS SPONSOR SUBSTITUTE FOR SENATE BILL NO 25.

FURTHER, THE DEPARTMENT DOES NOT WANT TO IMPEDE THE CONSIDERATION OF THIS MEASURE BY THE LEGISLATURE IN ANY FASHION.

THE DEPARTMENT'S APRIL 9th POSITION PAPER AND BILL ANALYSIS RAISES TWO RATHER MINOR ISSUES:

1). WE FEEL THAT IT IS BEST TO RETAIN THE PROVISION CURRENTLY IN LAW WHICH REQUIRES A MUNICIPAL GOVERNMENT TO GRANT BY ORDINANCE AUTHORITY FOR ANOTHER MUNICIPALITY TO EXERCISE EXTRATERRITORIAL POWERS WITHIN THAT MUNICIPAL GOVERNMENT'S BOUNDARIES.

2). WE NOTED THAT VILLAGES HAVE NO BOUNDARIES.

AFTER GIVING THE MATTER SOME ADDITIONAL THOUGHT, WE BELIEVE THESE TWO POINTS COULD BE RESOLVED WITH SOME RATHER SIMPLE AMENDMENTS.

WITH RESPECT TO THE FIRST ISSUE, WE UNDERSTAND THAT THE LANGUAGE WAS DRAFTED TO PROVIDE FOR USE OF RESOLUTIONS BECAUSE THE BILL ADDS A REQUIREMENT FOR AUTHORIZATION OF THE RELEVANT EXTRATERRITORIAL POWERS BY VILLAGES, AND VILLAGES CANNOT ADOPT ORDINANCES. FURTHER, THERE WAS A CONCERN OVER TIME REQUIREMENTS FOR THE ADOPTION OF AN ORDINANCE IN THE FACE OF AN EMERGENCY.

WITH RESPECT TO THE ISSUE OF TIMING, I WISH TO NOTE THAT STATE LAW (AS 29.25.030) AUTHORIZES A MUNICIPAL GOVERNMENT TO INTRODUCE, ADOPT AND PUT INTO EFFECT AT THE SAME MEETING, AN EMERGENCY ORDINANCE. THUS, RETAINING THE REQUIREMENT FOR MUNICIPAL ACTION BY ORDINANCE WILL NOT HINDER A MUNICIPAL GOVERNMENT'S ABILITY TO RESPOND TO AN EMERGENCY.

ACCORDINGLY, THE DEPARTMENT SUGGESTS MODIFYING THE LANGUAGE ON PAGE 1, LINE 9, OF THE BILL, BEGINNING WITH THE SENTENCE "BEFORE A POWER . . . TO READ AS FOLLOWS:

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 46.08.090(12), the approval of the village must be given by resolution.

(THEN CONTINUE WITH THE LANGUAGE IN THE BILL . . .

WITH RESPECT TO THE ISSUE OF THE BOUNDARIES OF AN UNINCORPORATED VILLAGE, THE DEPARTMENT SUGGESTS THE ADAPTATION OF LANGUAGE SIMILAR TO THAT USED BY THE ALCOHOLIC BEVERAGE CONTROL BOARD UNDER 15 AAC 104.645(j).

SPECIFICALLY, THE DEPARTMENT SUGGESTS THAT THE COMMITTEE CONSIDER INCLUDING IN THE DEFINITION OF VILLAGE ON PAGE 13, OF THE BILL, BEGINNING AT THE END OF LINE 13, LANGUAGE TO THE EFFECT OF:

For purposes of this definition, a village encompasses the area within a five mile radius of the village post office station, or if there is no post office station, another site reasonably designated by the commissioner, but excludes any area within a city or within another village.

MR. CHAIRMAN, THAT CONCLUDES MY COMMENTS.

See remarks below.

DNR Comments
(Draft)

Re:
HB 275
SB 25

ANALYSIS OF BILL/PROGRAM EFFECTS

The bill has two problems as written.

1. **Municipal Regulation of Oil and Gas Transportation.** As currently written, Section 1 of the bill would allow municipal regulation of oil and gas transportation systems outside the territorial boundaries. The bill appears to give powers to municipalities that currently reside within DNR, DEC, DF&G, DOT/PF, the Coast Guard, EPA, and the Corps of Engineers to regulate handling oil and gas throughout the state. This overlapping state and municipal jurisdiction is likely to create significant confusion, conflicting requirements, and duplicate staffing and enforcement efforts.

Statewide transportation systems must be subject to statewide regulation. To do otherwise would invite confusion, inconsistent requirements and would slow construction without appreciably affecting safety. For example, construction and operation of the TAPS and TAGS line would be extremely difficult if each municipality near the line exerted different and inconsistent regulations concerning the type of construction, safety requirements, etc. To avoid that confusion, that jurisdiction is rightfully lodged in the state agencies. Section 1 of the bill would change this.

2. **Defining Limits of Extraterritorial Jurisdiction.** The original statute was written to allow municipalities to protect the integrity of their water supply watersheds. A water-supply watershed is easily located; it is the watershed from which a municipality gets its water.

SB 25 would allow extra-territorial regulation to "contain, clean up, or prevent the release or threatened release of oil or a hazardous substance that may pose an imminent or substantial threat to property or natural resources within the municipality's boundaries." The Exxon Valdez spill showed that a substantial oil spill will affect natural resources over a large area. Thus, are all municipalities that may be affected able to regulate the transportation system? Since the TAPS line crosses the Yukon River, are all of the downstream municipalities each able to independently regulate the TAPS crossing? Without further definition in the bill, the result will be important and significant ambiguity, overlap and confusion.

PROPOSED AMENDMENTS

Amendment 1. To eliminate duplication of regulation concerning state-wide transportation of oil and gas, recommend changing Section 1 of the bill (page 2, lines 4 through 6) as follows:

"...to regulate exploration, development, ~~or~~ production, or transportation of oil, gas, or minerals in a manner that is inconsistent with the state's management of those resources ~~when the state is the owner of the land, tideland, or submerged land;~~ the ordinance

Analysis Continued - SB 25

adopted.."

This amendment is necessary to ensure that state-wide transportation are subject to state-wide regulation, not to infinitely varying local control.

Amendment 2 Sections 2, 3, and 4 of the bill attempt to eliminate inconsistent application of authorities by requiring municipalities to be consistent with DEC regional master plans for the region in which a borough or municipality is located. AS 46.04.210 requires DEC to prepare such plans and to set regional boundaries for the plan. The consistency requirement in the bill will go part way to assuring that inconsistent requirements do not exist. However, the language in the bill inadvertently implies that regional plans are not required. ("...if a plan has been prepared by DEC..."). For that reason, Section 2, 3, and 4 of SB 25 should be amended as follows (page 2, lines 14-15; 20-21; and 27-29):

"...a municipality under AS 46.04, AS 46.08, or AS 46.09 shall exercise its authority in a manner that is consistent with a regional master plan prepared by the Department of Environmental Conservation under AS 46.04.210 for the region in which the borough is located ~~if a plan has been prepared by the Department of Environmental Conservation under AS 46.04.210.~~"

Amendment 3 To eliminate confusion about the extent of extraterritorial jurisdiction, recommending adding language that restricts jurisdiction to areas nearby and integral to the municipality. This is most easily accomplished by allowing jurisdiction to extend only to the areas where a regional plan has been prepared by DEC under AS 46.04.210. This amendment would eliminate conflicting interpretations of appropriate extraterritorial jurisdiction by state agencies and different municipalities.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 25

Revision Date: _____ Department Affected: Department of Law
 Title: "...Recovery of damages by the state and its municipalities and villages..." BRU: Legal Services
 Component: Operations
 Sponsor: Senator Zharoff
 Requestor: Senator Zharoff COMPONENT SERIAL NO.

		9	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 25, 1991
 Approved by Commissioner: Richard I. Pegues/RL
 Agency: Department of Law Date: February 25, 1991
 Approved by Attorney General: Charles E. Cole

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 25

Senate Bill No. 25 amends Title 29 to establish an oil or hazardous substances impact assistance grant program. Under the program, state impact grants would be available to defray the additional costs of reasonable and appropriate functions and services provided by municipalities and villages arising from a release of oil or a hazardous substance that constitute a disaster emergency. The commissioner of community and regional affairs would be authorized to use money from the oil and hazardous release response fund to make grants to an affected municipality or village that demonstrates that the release or response to the release involves extraordinary expenditures that are beyond the reasonable capability of the municipality or village to meet using existing revenue sources.

The bill would also require that for each oil or hazardous substance release disaster emergency declared under AS 26.23.020 the commissioner of community and regional affairs shall make an assessment of the social and economic effects of the release on the municipalities, villages, and the region in which the discharge occurs. These impact assessments would be made after consulting with and securing the written approval of the attorney general. The cost of making an assessment would be paid from the oil and hazardous substance release response fund. Consequently, Department of Law participation in the impact assessment process for municipalities and villages would not require fiscal note funds.

The bill defines village to mean a community with a residential population of twenty-five or more not incorporated as a municipality under state law in the unorganized borough or within a borough if the power, function, or service for which the grant application is submitted is not exercised or provided by the borough or an areawide or nonareawide basis at the time the grant application is submitted. The bill would also amend Title 46 to include the impact assistance grant program and to include village as defined in the bill, as an entity under the state's oil and hazardous substance pollution laws.

Previous versions of this bill, in the second session of the sixteenth legislature, (SB 359) provided where applicable that villages irrevocably waive any claims to sovereign immunity that might arise in connection with the use of grant monies under the impact assistance grant program. Such a waiver would help insure that future disputes involving these grants, with villages unincorporated under state law, could be resolved in state courts.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SS SB 25

Revision Date: _____ Department Affected: Community & Regional Affairs
 Title: "An Act..recovery of damages.." BRU: _____
 Component: _____
 Sponsor: Sen Zharoff & Sturgulewski
 Requestor: _____ COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

There is no immediate fiscal impact. However, there will be a big fiscal impact if there is a spill.

Prepared By: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Administrative Services Date: 4/10/91
 Approved by Commissioner: Edgar Blatchford *Edgar Blatchford*
 Agency: Community & Regional Affairs Date: 4/9/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSSB 25

The sponsor substitute for SB 25 adopts new language in Section 5, proposed AS 29.60.599(6), to provide that villages irrevocably waive any claims to sovereign immunity that might arise in connection with the use of grant monies under the impact assistance grant program. The addition of the waiver provision will help insure that any future dispute that might arise involving grants to villages, unincorporated under state law, can be resolved in state courts. This is a change suggested in the Department of Law's original fiscal note, dated February 25, 1991. Otherwise, the department's original fiscal note comments remain unchanged.

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

April 9, 1991

POSITION PAPER

RE: Sponsor Substitute for Senate Bill 25

SPONSOR: Senator's Zharoff and Sturgulewski

Program Effects of the Bill

The Sponsor Substitute for this bill contains a number of language refinements that clarify the scope and purpose of the Impact Assistance Grants portion of the legislation. The Department's analysis indicates that all of the changes are consistent with our original perception and understanding of the purposes of the Impact Assistance program.

This Sponsor Substitute also amends the authority of a municipality regarding watershed regulation. Specifically, it allows a municipality to delegate authority to regulate watersheds to another municipality by adoption of a resolution instead of an ordinance. The amendment continues by requiring that a municipality exercising extraterritorial powers of watershed regulation obtain the approval of any village whose boundaries are in the watershed.

Comments

As noted the Department considers the grant program amendments to be consistent with its perception of the purpose of the grant program. However, the amendments dealing with watershed regulation pose potential difficulties in implementation.

With respect to the resolution versus ordinance process the Department is inclined to support an ordinance process. Resolutions are used largely to state opinions and make declarations. They do not require public hearings and may be introduced and adopted at the same meeting. Conversely, ordinance's are adopted as local law and must have a public hearing. Additionally, there is a minimum seven day waiting period between the point of introduction and that of adoption. We believe allowing another municipality to exercise authority within your municipality is a significant act and should be subject to the more deliberative process associated with ordinances.

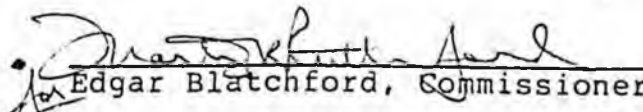
- P.O. BOX B
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- 949 E. 36TH AVENUE, SUITE 400
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PHONE: (907) 563-1073

Position Paper - SS SB 25
April 9, 1991
Page two

With respect to the issue of requiring village approval of watershed management within its boundaries, the matter is clouded by the fact that villages have no defined boundaries. And in fact, the concept of what land area constitutes the village often revolves around the function that is being discussed. For example, the village could be the core area where people reside the majority of the time, it could be that area and all the land holdings of the village corporation, or it could be it's traditional hunting and gathering area. Moreover, Title 29 does not presently contain a definition of the term "village".

Staff of the Department are not aware of any instances where there has been conflict between an unincorporated village and a municipality trying to exercise jurisdiction over its watershed. If there have not been any significant number of such instances occurring, it may be better simply to leave matters as they now are. For while the amendment may resolve some potential problems it threatens to create additional ones through ambiguities associated with its jurisdictional application. If the amendment is retained we believe that a definition of "village", consistent with the remainder of SB 25 should be added to AS 29.71.800.

As stated in our previous position paper, the Department of Community and Regional Affairs supports this bill. Our experience with the Exxon Valdez oil spill showed that municipalities and villages are heavily impacted by such occurrences and end up incurring major expenses regardless of whether or not they have direct responsibility for responding. This bill would make clear a municipality's authority to be involved in oil and other hazardous spill response and would provide funds so that the brunt of the cost would not have to be borne locally.


Edgar Blatchford, Commissioner

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SSSB 25

Revision Date: _____
 Title: Exercise of authority and
recovery of damages...
 Sponsor: Senator Fred Zharoff
 Requestor: _____

Department Affected: DEC
 BRU: Environmental Quality
 Component: EQ Projects

COMPONENT SERIAL NO.

1	1	0	1	1	6
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: NONE

ANALYSIS: (Attach a separate page if necessary.)

Under normal operating situations, DEC should need no additional resources to implement the legislation. However, should a significant oil spill occur, approximately 2 additional positions may be necessary.

The sponsor substitute does not change this fiscal note. 4/10/91

Prepared by: Janice Adair
 Division: Commissioner's Office

Phone: 465-2600
 Date: _____

Approved by Commissioner: *[Signature]*
 Agency: Department of Environmental Conservation

Date: 3/18/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SSSB 25

Revision Date: March 27, 1991 Department Affected: Department of Law
Title: "..recovery of damages by the state and its municipalities and villages.." BRU: Legal Services
Component: Operations

Sponsor: _____
Requestor: _____ COMPONENT SERIAL NO.

		9	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see attached for analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 27, 1991
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law Date: March 27, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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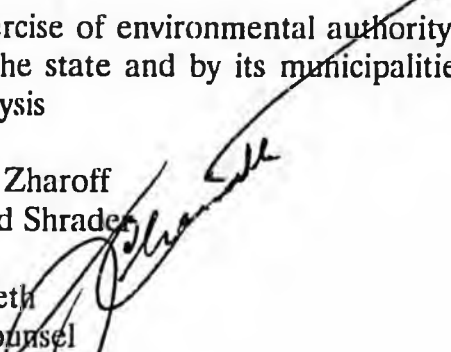
MEMORANDUM

March 26, 1991

SUBJECT: SSSB 25: Exercise of environmental authority and recovery of damages by the state and by its municipalities and villages -- sectional analysis

TO: Senator Fred Zharoff
ATTN: David Shrader

FROM: Jack Chenoweth
Legislative Counsel



The following briefly summarizes the content of the Sponsor Substitute for Senate Bill 25, noting changes between the sponsor substitute and the measure it replaces, Senate Bill 25 (or "the original bill"). The measure is based on last session's SB 359.

The common thread of the bill is its relationship to the powers and duties of the state's municipalities and villages that may be called upon to respond to discharge of oil and hazardous substances in amounts sufficient to constitute disasters, its authorization of financial assistance to municipalities and villages who act in response to those discharges, and its concern for the liability of the state, its municipalities, and its villages when an environmental protection response is required.

*

The first four sections, amending provisions of AS 29.35, relate to the exercise of municipal authority outside the municipality's boundaries:

Current law authorizes municipalities to exercise extra-territorial jurisdiction to protect its water supply and watershed. If that exercise of authority intrudes upon an area within an adjacent municipality, the adjacent municipality must first give its approval by ordinance. Amendments made by bill section 1 (1) extend that authority to include containment, clean up, or prevention of release or threatened releases of hazardous substances, within specific limitations and consistent with any applicable

regional master cleanup plan, (2) condition the exercise of extra-territorial authority within an adjacent village only with the consent of the village, and (3) change the manner of a municipality's giving permission from ordinance to resolution. The provisions applicable to villages and changing the manner of consent from ordinances to resolutions are the additions to the original bill made by the sponsor substitute.

Bill section 2, unchanged in the sponsor substitute from the original bill, conditions exercise of the authority of a first class borough to contain, clean up, or prevent a release or threatened release of oil or a hazardous substance on compliance with the applicable regional master clean up plan if one has been prepared.

Bill section 3, unchanged in the sponsor substitute from the original bill, makes the same amendment in the context of second class boroughs.

Bill section 4, unchanged in the sponsor substitute from the original bill, makes the same amendment in the context of third class boroughs.

*

Bill section 5 sets out a grant authorization program by which the state may pay municipal impact assistance to municipalities and villages. Within the bill section --

Proposed AS 29.60.500 enunciates a statement of purpose and policy; the statement is revised substantially from the original bill.

Proposed AS 29.60.510 authorizes, in the event of a disaster emergency declaration following a release of oil or a hazardous substance, the commissioner of community and regional affairs to make grants, not to exceed \$10,000,000 for each declared disaster emergency, from the balance of the oil and hazardous substance release response fund (AS 46.08) to support the award of grants. In provisions that are new in this sponsor substitute from the original bill, the commissioner and the commissioner of environmental conservation must agree as to the amount available for grants--if they cannot, the matter is referred to the governor for a decision--and the amount agreed to is to be promptly transferred out of the fund to the Department of Community and Regional Affairs to support the grants.

Proposed AS 29.60.520 enumerates the purposes for which grants to municipalities and villages may be made from the impact assistance fund; the list is a substantial revision of the similar list set out in the same section of the original bill.

Proposed AS 29.60.530, a revision of a like provision in the original bill, sets out criteria that the commissioner of community and regional affairs is to consider in evaluating impact assistance grant requests. The number of criteria is less than had been specified in the original measure. The concluding sentence of the section

Senator Fred Zharoff

March 26, 1991

Page 3

directs payment of grants based on priority ranking rather than by pro ration of payments.

Proposed AS 29.60.540, unchanged from the original bill, prohibits a municipality's use of impact assistance grant money to reduce local tax levies.

Proposed AS 29.60.550, unchanged from the original bill, directs the department to maintain pertinent records relating to the grants and to develop procedures by which recipients are to account for impact assistance money received.

Proposed AS 29.60.560, unchanged from the original bill, requires the commissioner of community and regional affairs to prepare and submit to the legislature a report of grant program-related activities.

For each disaster emergency declaration prompted by a spill, proposed AS 29.60.570 directs the commissioner of community and regional affairs to prepare an assessment of the social and economic effects of the spill on the local governments, villages, and affected region. The provision is unchanged from the original bill.

Proposed AS 29.60.580, unchanged from the original bill, authorizes the commissioner to adopt program regulations.

The sponsor substitute drops as unnecessary language appearing as AS 29.60.590 of the original explicitly authorizing the commissioner to recover impact assistance paid to a municipality or village if the commissioner later determines that the municipality or village was responsible for the spill release.

Proposed AS 29.60.599 sets out pertinent definitions: the definitions of the terms "service" and "village" did not appear in the original bill and are new in this sponsor substitute.

*

The provisions of bill sections 6 - 9 amend the state laws generally treating with environmental concerns (AS 46.03), including cleanup and recovery of damages:

Bill section 6, unchanged from the language of the original bill, adds to the list of items that may be recovered by the state in a civil action for damages caused by pollution any amounts that have been expended by the Department of Community and Regional Affairs as municipal impact assistance grants and as emergency first response advances and reimbursements authorized by AS 46.08.070(c).

AS 46.03.822 sets out in current law a strict liability standard. With exceptions, the standard holds a person having custody or control of a hazardous substance (including oil) strictly liable for damages caused by the release or entry of the hazardous substance into the environment. That liability extends, under current law, to damages to natural resources of the state and municipalities, and to costs of containment, clean up, and recovery. The amendments made by bill section 7 revise and extend the strict liability standard to (1) add damage to "village resources" within the scope of the section's coverage, (2) add "village containment and cleanup" efforts to the permissible recoverable costs, and (3) include as damages recoverable under the standard the function or service dislocations, the additional costs of functions and services that are undertaken by the state, its municipalities, and its villages in response to hazardous substance release, and the costs associated with projects delayed or lost due to the hazardous substance release. This bill section is revised from the language of the comparable provision of the original bill by the addition of the "projects delayed or lost" language.

In the same statutory section, current AS 46.03.822(h) precludes the state or a municipality from liability for cleanup actions taken in response to an emergency caused by a release or threatened release of a hazardous substance unless the action of the state or municipality constitutes gross negligence or intentional misconduct. The amendment proposed by bill section 8 would extend the same exemption and exception(s) to actions taken by villages.

Bill section 9 provides definitions of the terms "service" and "village" for purposes of AS 46.03. The definition of village is altered from the definition appearing in the original bill.

*

Bill sections 10 - 12 amend the chapter of state law (AS 46.04) specifically addressing oil and hazardous substance pollution control, with particular emphasis on costs associated with containment and cleanup:

AS 46.04.020 of current law sets out a directive that the Department of Environmental Conservation respond to an oil or hazardous substance discharge. Subsection (e) of the section authorizes use of memoranda of understanding and cooperative agreements with specified federal agencies and with unspecified "other persons" in order to facilitate cooperative efforts. The addition made by bill section 10, unchanged from the language of the original bill, directs the department to consult with municipalities and villages for the preparation of memoranda and cooperative agreements.

Bill section 11, unchanged from the language of the original bill, amends the definition of the term "containment and cleanup" by adding as an element of the

containment, abatement, and restoration efforts the costs of providing "a reasonable and appropriate function or service incurred in response to the discharge of a pollutant," including any associated incremental administrative costs.

Bill section 12 provides definitions of the terms "service" and "village" for purposes of AS 46.04. The definition of village is altered from the definition appearing in the original bill.

*

AS 46.08 generally treats with the state's oil and hazardous substance release response fund, AS 46.08.010 (the so-called "470 fund" named after the number of the House bill that originally established it), intended to serve as the principal source of financial support for prompt containment and cleanup activities following oil and hazardous substance releases. The changes made by bill sections 13 - 16 amend provisions of that chapter:

The first change to AS 46.08.040(a) made by bill section 13, substantively unchanged from the language of the comparable section of the original bill, recognizes that money in the oil and hazardous substance release response fund may be shifted to the commissioner of community and regional affairs for payment of impact assistance grants and for completion of impact assessments. The second change, made at page 11, line 16, adds recovery of the containment and cleanup costs incurred by a "village" as an objective for which money in the oil and hazardous substance release response fund may be used.

Bill section 14 expands the uses authorized for the oil and hazardous substance release response fund. The section (1) adds "villages" as authorized recipients of assistance payable from the fund under this section, (2) directs rather than authorizes the commissioner of environmental conservation to pay reimbursement for abatement efforts, (3) adds "villages" to the list of entities with which the commissioner may enter into containment and cleanup agreements, (4) authorizes advancement of money from the fund to assist recipient municipalities and villages to take emergency first response efforts, and (5) sets standards for the making of reimbursement payments and advancements.

Bill section 15, unchanged from the original, amends the definition of the term "containment and cleanup" in the manner described for bill section 11.

Bill section 16 provides definitions for the terms "service" and "village" for purposes of AS 46.08. The definitions of the terms are substantially different than as set out in the original of the bill.

Senator Fred Zharoff

March 26, 1991

Page 6

The sponsor substitute deletes a bill section of the original explicitly authorizing the commissioner of environmental conservation to recover a reimbursement payment or advance paid to a municipality or village if the commissioner later determines that the municipality or village caused the oil or hazardous substance release that necessitated the containment or cleanup.

*

AS 46.09 addresses procedures relating to or applicable following release of a hazardous substance. The amendments proposed by bill sections 17, 18, and 19--unchanged in the sponsor substitute from comparable provisions of the original measure--alter various provisions of AS 46.09:

AS 46.09.060(b) is a statement of the general grant of authority given to the state's local governments to act in response to a release or threatened release of oil or a hazardous substance. The amendment made by bill section 17 is by way of the addition of reference to "AS 46.04" (oil pollution control) as a source of powers that municipalities are authorized to exercise in response to a release or threatened release.

With reference to AS 46.09--

Bill section 18 amends the definition of the term "containment and cleanup" in the manner described for bill section 11.

Bill section 19 adds a definition for the term "service."

*

Bill section 20 makes section 7, the bill section expanding the strict liability standard for civil damage recovery to municipalities and villages, and bill section 9, adding related definitions of the terms "service" and "village," retroactive to March 24, 1989, the date of the Exxon Valdez grounding.

Bill section 21 gives this measure an immediate effective date.

JBC:pl

91-208.plm

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MEMBER



Senate

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ALBANY COMMITTEE

MAJOR CHANGES TO CS SS SB 25 (CRA):

- 1) Cap of 2,500 (105,000) barrels of oil in order to initiate grant provisions (p. 3 line 26 & p. 4 line 15)
- 2) Allows for spills less than 2,500 barrels of a "hazardous substance" as defined in 46.09.900 to be declared a disaster & grant provisions of this bill used (p 3. line 26 & p.4. line 15)
- 3) Adopted SB 359 passed version for Purposes of Municipal Impact Grants which more narrowly and clearly defines the purpose(p. 5, .line 18)
- 4) Requires the Governor to make findings that the release presents a real & substantial threat ... and it is in the states best interest to pay (from the purpose and policy section already in the bill (a & b P.3. l 7 and p. 4, line 15)
- 5) Limited use of grants for Capital Expenditures so that a municipality could be required to return them & prohibition on use for Capital Improvement, although it would allow the "rug" to be replaced (p 6.line 19 & p. 7. line 15)
- 6) Includes prohibition to "betterment" intent language (p. 1 line 7)
- 7) Adopted Dept of Law Amendments jurisdictions and definitions of villages, was in Oil & Gas version of SB 359 last year (pps, 9, 11, & 12)
- 8) Adopted the ABC Board's definition of village p.2 line 18 for the purposes of conducting a cleanup)
- 9) Limited grant funds use to events after effective date of act so it is clear that municipalities couldn't apply for grants for effects of the Exxon Valdez Oil Spill

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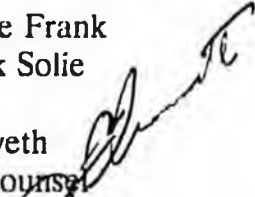
MEMORANDUM

May 1, 1991

SUBJECT: Use of "470 fund" money (CSSSSB 25 (C&RA))

TO: Senator Steve Frank
ATTN: Rick Solie

FROM: Jack Chenoweth
Legislative Counsel



You have asked whether AS 46.08.010(c), prohibiting use of the proceeds of the "470 fund"--the oil and hazardous substance release response fund, AS 46.08.010--for capital improvements, precludes use of the fund as a source of revenue to replace carpeting in a public airport. It has been asserted that the carpet's useful life has been substantially reduced by the recent increased volume of passenger traffic through the airport of personnel who have been involved in the general response to the environmental problems following the Exxon Valdez grounding. It is contended that replacement of the airport carpet is something other than a normal operating expense of the entity responsible for the operation of the airport and, further, that the diminishment of the anticipated useful life of the carpet is attributable principally to the use of the airport building by passengers who were flown in to the community in order to help in the containment and clean-up of the release of oil from the Exxon Valdez.

AS 46.08.010(c) places the money in the oil and hazardous substance release response fund off-limits for capital improvements. The term "capital improvements" is defined to mean "construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property . . ."

While there is an argument to be made that replacement of the airport carpet may constitute a "repair of" or an "improvement to" the airport building, in the context in which the term is used and the definition appears, I have the sense that the prohibition of AS 46.08.010(c) is one that prevents the commissioner from using the money in the fund as a source of money to erect, maintain, or improve a permanent structure. By its terms, AS 46.08.010(c) speaks only to the improvement made to real property. The carpet is, of course, in the nature of a fixture--an item of personal property permanently attached to the airport building and intended for normal use