A BILL

FOR AN ACT ENTITLED

"An Act relating to liability for the release of hazardous substances involving certain property acquired by a governmental entity; relating to making a determination as to when a hazardous substance release has occurred; relating to liability of a party other than the party responsible for the initial release of a hazardous substance; and providing for an effective date."

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

* Section. 1. AS 46.03.822(d) is amended to read:

(d) To establish that a person had no reason to know that the hazardous substance was disposed of on, in, or at the facility, as provided in (c)(1) and (m) of this section, the person must have undertaken, at the time of voluntary acquisition, all reasonable inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this subsection a court shall take into account all relevant facts, including
(1) any specialized knowledge or experience the person has;
(2) the relationship of the purchase price to the value of the property if it were uncontaminated;
(3) commonly known or reasonably ascertainable information about the property;
(4) the obviousness of the presence or likely presence of contamination at the property; and
(5) the ability to detect contamination by appropriate inspection.

* Sec. 2. AS 46.03.822 is amended by adding new subsections to read:

   (l) A unit of state or local government that acquired ownership or control of a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax delinquency proceeding, abandonment, escheat, the exercise of eminent domain authority by purchase or condemnation, or circumstances in which the governmental unit involuntarily acquired title by virtue of its function as a sovereign is not liable as an owner or operator under this section unless the governmental unit has caused or contributed to the release or threatened release of a hazardous substance at or from the facility or vessel, in which case, the governmental unit is subject to liability under this section in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity. A hazardous substance release shall be determined to have occurred as provided in this section. For purposes of this subsection, "caused or contributed to the release or threatened release of a hazardous substance"

   (1) does not include the failure to prevent the passive leaching or migration at or from a facility or vessel of a hazardous substance in the air, land, or water that had first been released to the environment by a person other than the governmental unit that acquired the facility or vessel;
   (2) does not include the exercise or failure to exercise regulatory or enforcement authority;
   (3) after the ownership or control of the facility or vessel has been acquired by the governmental unit, includes

   (A) the spilling, leaking, pumping, pouring, emptying, injecting,
escaping, or dumping of a hazardous substance from barrels, tanks, containers, or other closed receptacles; or

(B) the abandonment or discarding of barrels, tanks, containers, or other closed receptacles containing a hazardous substance.

(m) For purposes of determining liability in an action to recover damages or costs under this section, a person who acquires a facility and who, upon discovering a release or threatened release on, in, or at the facility that occurred before acquisition of the facility, who had no reason to know that a hazardous substance was disposed of on, in, or at the facility, and who, upon discovering the release or threatened release, acted in accordance with (b)(2) of this section to begin operations to contain and clean up the hazardous substance, may not be held liable under this section unless the person has caused or contributed to the release or threatened release of the hazardous substance, in which case, the person is subject to liability under this section in the same manner as any other person. For purposes of this subsection, "caused or contributed to the release or threatened release of the hazardous substance"

(1) does not include the failure to prevent the passive leaching or migration at or from a facility of a hazardous substance in the air, land, or water that had first been released into the environment by a person other than the person that acquired the facility;

(2) after the ownership or control of the facility has been acquired by the person includes

(A) the spilling, leaking, pumping, pouring, emptying, injecting, escaping, or dumping of a hazardous substance from barrels, tanks, containers, or other closed receptacles; or

(B) the abandonment or discarding of barrels, tanks, containers, or other closed receptacles containing a hazardous substance.

* Sec. 3. APPLICABILITY. AS 46.03.822(l), as added in sec. 2 of this Act, applies to a vessel or facility acquired by a governmental entity on or after the effective date of this Act.

For purposes of this section, when foreclosure by a municipality is involved, the property is acquired on the date it is deeded to the municipality under AS 29.45.450.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).