

**HOUSE CS FOR CS FOR SENATE BILL NO. 110(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/14/99

Referred: Finance

Sponsor(s): SENATOR WILKEN

REPRESENTATIVE Smalley

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

8 (d) To establish that a person had no reason to know that the hazardous  
9 substance was disposed of on, in, or at the facility, as provided in (c)(1) and (m) of  
10 this section, the person must have undertaken, at the time of voluntary acquisition, all  
11 reasonable inquiries into the previous ownership and uses of the property consistent  
12 with good commercial or customary practice in an effort to minimize liability. For  
13 purposes of this subsection a court shall take into account all relevant facts, including

- 1 (1) any specialized knowledge or experience the person has;
- 2 (2) the relationship of the purchase price to the value of the property
- 3 if it were uncontaminated;
- 4 (3) commonly known or reasonably ascertainable information about the
- 5 property;
- 6 (4) the obviousness of the presence or likely presence of contamination
- 7 at the property; and
- 8 (5) the ability to detect contamination by appropriate inspection.

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

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

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

27 (2) does not include the exercise or failure to exercise regulatory or  
 28 enforcement authority;

29 (3) after the ownership or control of the facility or vessel has been  
 30 acquired by the governmental unit, includes

31 (A) the spilling, leaking, pumping, pouring, emptying, injecting,

1 escaping, or dumping of a hazardous substance from barrels, tanks, containers,  
2 or other closed receptacles; or

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

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

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

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

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

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

27 \* **Sec. 3.** APPLICABILITY. AS 46.03.822(l), as added in sec. 2 of this Act, applies to a  
28 vessel or facility acquired by a governmental entity on or after the effective date of this Act.  
29 For purposes of this section, when foreclosure by a municipality is involved, the property is  
30 acquired on the date it is deeded to the municipality under AS 29.45.450.

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