

CS FOR SENATE BILL NO. 110(RLS) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE

Amended: 5/7/99
Offered: 5/5/99

Sponsor(s): SENATOR WILKEN

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. For purposes of this subsection, "caused

20 or contributed to the release or threatened release of a hazardous substance"

21 (1) does not include the failure to prevent the passive leaching at or

22 from a facility or vessel of a hazardous substance in the air, land, or water that had

23 first been released to the environment by a person other than the governmental unit

24 that acquired the facility or vessel;

25 (2) does not include the exercise or failure to exercise regulatory or

26 enforcement authority;

27 (3) after the ownership or control of the facility or vessel has been

28 acquired by the governmental unit, includes

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

30 escaping, or dumping of a hazardous substance from barrels, tanks, containers,

31 or other closed receptacles; or

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

3 (m) For purposes of determining liability in an action to recover damages or
4 costs under this section, a release shall be considered to have occurred when a
5 hazardous substance is first introduced into the environment. A party, other than the
6 party responsible for the initial release, who had no reason to know that a hazardous
7 substance was disposed of on, in, or at the facility and who has acted responsibly upon
8 discovering contamination in accordance with (b)(2) of this section may not be held
9 liable for the spread or migration of the hazardous substance except by an act of
10 intentional misconduct or gross negligence.

11 * **Sec. 3.** APPLICABILITY. AS 46.03.822(1), as added in sec. 2 of this Act, applies to a
12 vessel or facility acquired by a governmental entity on or after the effective date of this Act.
13 For purposes of this section, when foreclosure by a municipality is involved, the property is
14 acquired on the date it is deeded to the municipality under AS 29.45.450.

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