

CS FOR SENATE BILL NO. 308(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/20/00

Referred: Rules

Sponsor(s): SENATE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain vessels operating in the marine waters of the state;
2 and providing for an effective date."

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

4 * **Section 1.** AS 43 is amended by adding a new chapter to read:

5 **Chapter 52. Excise Tax on Travel Aboard Commercial Passenger Vessels.**

6 **Sec. 43.52.010. Levy of excise tax on overnight accommodations on**
7 **commercial passenger vessels.** There is imposed an excise tax on travel on
8 commercial passenger vessels providing overnight accommodations in the state's
9 marine water.

10 **Sec. 43.52.020. Rate of tax.** The tax imposed by AS 43.52.010 - 43.52.095
11 is levied at a rate of \$50 a passenger per voyage.

12 **Sec. 43.52.030. Liability for payment of tax.** A passenger traveling on a
13 commercial passenger vessel providing overnight accommodations in state marine
14 water is liable for the tax imposed by AS 43.52.010 - 43. 52.095. The tax shall be

1 collected and is due and payable to the department

2 (1) by the person who provides travel aboard a commercial vessel for
3 which the tax is payable; and

4 (2) in the manner and at the times required by the department by
5 regulation.

6 **Sec. 43.52.040. Disposition of receipts.** (a) The proceeds from the tax on
7 travel on commercial passenger vessels providing overnight accommodations in the
8 state's marine water shall be deposited in a special commercial vessel passenger tax
9 account in the general fund. The legislature may appropriate money from this account
10 for the purposes described in (b) of this section and for state-owned port and harbor
11 facilities.

12 (b) For each sailing of a commercial passenger vessel providing overnight
13 accommodations, the commissioner shall identify the first five ports of call in the state
14 and the number of passengers on board the vessel at each port of call. Subject to
15 appropriation by the legislature, the commissioner shall distribute to each of the first
16 five ports of call \$5 per passenger of the tax revenue collected from the tax levied
17 under this chapter. If the port of call is a city located within a borough, the
18 commissioner shall distribute \$2.50 per passenger to the city and \$2.50 to the borough.

19 **Sec. 43.52.050. Administration.** (a) The department shall

20 (1) administer this chapter; and

21 (2) collect, supervise, and enforce the collection of taxes due under this
22 chapter and penalties as provided in AS 43.05.

23 (b) The department may adopt regulations necessary for the administration of
24 this chapter.

25 **Sec. 43.52.060. Prohibition on local levies.** A municipality, whether home
26 rule or general law, may not impose any form of tax on travel on commercial
27 passenger vessels in state marine water.

28 **Sec. 43.52.095. Definitions.** In this chapter,

29 (1) "commercial passenger vessel" means a boat or vessel that is used
30 in the common carriage of passengers in commerce; "commercial passenger vessel"
31 does not include

1 (A) vessels with fewer than 50 berths or overnight
2 accommodations for passengers;

3 (B) noncommercial vessels, warships, and vessels operated by
4 the state, the United States, or a foreign government;

5 (2) "marine water of the state" and "state marine water" have the
6 meaning given to "waters" in AS 46.03.900, except that they include only marine
7 waters.

8 (3) "passenger" means a person whom a common carrier has contracted
9 to carry from one place to another.

10 * **Sec. 2.** AS 46.03 is amended by adding a new section to read:

11 **Sec. 46.03.072. Exemption for certain United States Navy vessels from**
12 **state marine water quality standards applicable to the discharge of hydrocarbons.**

13 (a) Until September 1, 2005, the state's water quality standards, adopted as regulations
14 under AS 46.03.020(10) to carry out the purposes of this chapter and under other
15 sections of this chapter, establishing limits on the total aqueous hydrocarbons and total
16 aromatic hydrocarbons permissible in the marine water column that are more stringent
17 than the requirements of comparable water quality standards set out in federal law or
18 adopted in federal regulation do not apply to a vessel of the United States Navy
19 operating in the marine waters of the state if the vessel uses a seawater compensation
20 system.

21 (b) Notwithstanding the exemption provided by (a) of this section, a vessel of
22 the United States Navy operating in the marine waters of the state that uses a seawater
23 compensation system may not discharge oil into state waters in violation of 33 U.S.C.
24 1321 (sec. 311, Federal Water pollution Control Act, as amended) and regulations
25 adopted under authority of that section.

26 * **Sec. 3.** AS 46.03 is amended by adding new sections to read:

27 **Article 6A. Large Passenger Vessels.**

28 **Sec. 46.03.460. Registration requirements.** (a) Except as provided in
29 AS 46.03.484, each calendar year in which the owner or operator of a large passenger
30 vessel intends to operate, or cause or allow to be operated, the vessel in the marine
31 waters of the state, the owner or operator of the vessel shall register with the

1 department. The registration shall be completed no later than 72 hours after any large
2 passenger vessel of the owner or operator calls upon a port in the state. The
3 registration must include the following information:

4 (1) the vessel owner's business name and, if different, the vessel
5 operator's business name for each large passenger vessel of the owner that is scheduled
6 to be in the marine waters of the state during the calendar year;

7 (2) the postal address, electronic mail address, telephone number, and
8 facsimile number for the principal place of each business identified under (1) of this
9 subsection;

10 (3) the name and address of an agent for service of process for each
11 business identified under (1) of this subsection; the owner and operator shall
12 continuously maintain a designated agent for service of process whenever a large
13 passenger vessel of the owner or operator is in the marine waters of the state, and the
14 agent must be an individual resident of this state, a domestic corporation, or a foreign
15 corporation having a place of business in and authorized to do business in this state;
16 and

17 (4) the name or call sign of and Port of Registry for each of the
18 owner's or operator's vessels that is scheduled either to call upon a port in this state
19 or otherwise to be in the marine waters of the state during the calendar year occurring
20 after the date of registration.

21 (b) Registration under (a) of this section shall be signed under oath by the
22 owner or operator.

23 (c) Upon request of the department, the registrant shall submit registration
24 information required under this section electronically.

25 **Sec. 46.03.465. Information-gathering requirements.** (a) Owners and
26 operators of large passenger vessels shall, for the time during any calendar month in
27 which they operate, or cause or allow to be operated, a large passenger vessel in the
28 marine waters of the state, record or cause to be recorded all information necessary to
29 completely report as required by AS 46.03.475.

30 (b) At least once during each calendar month in which a large passenger vessel
31 is present in the marine waters of the state, the owner and operator of the vessel shall

1 measure visible emissions, excluding condensed water vapor, of the vessel while the
 2 vessel is at berth or at anchor in a port of this state. Except as provided in (d) of this
 3 section, the measuring technique and the duration of the measurement used to satisfy
 4 the requirement of this subsection must have been approved by the department before
 5 the measurement was taken.

6 (c) The department may adopt regulations directing owners and operators of
 7 large passenger vessels to quantify and qualify the releases of waterborne pollutants
 8 from their vessels into the marine waters of the state.

9 (d) If the owner or operator of a large passenger vessel has, when complying
 10 with another state or federal law that requires substantially equivalent information
 11 gathering, gathered the type of information required under this section, the owner or
 12 operator shall be considered to be in compliance with this section.

13 **Sec. 46.03.470. Record keeping requirements.** An owner or operator subject
 14 to AS 46.03.465 shall record the information required to be gathered under that section
 15 and shall maintain the records for three years after the date the information was
 16 gathered.

17 **Sec. 46.03.475. Reporting requirements.** (a) An owner or operator of a
 18 large passenger vessel shall, within 10 days after the end of a calendar month in which
 19 the owner or operator has operated, or caused or allowed to be operated, a large
 20 passenger vessel in the marine waters of the state, submit to the department a report
 21 concerning the offloading or release of pollutants from that vessel that occurred during
 22 the previous calendar month. The report must

23 (1) include the information required for releases by (c) and (d) of this
 24 section;

25 (2) include the information required for offloading by (e) - (g) of this
 26 section; and

27 (3) be limited to releases and offloading that occurred while the vessel
 28 was in the marine waters of the state.

29 (b) The information in the report required under this section may be provided
 30 by referring to, or including copies of, other reports concerning pollutants that are
 31 required by substantially equivalent state or federal reporting requirements.

1 (c) For each release of a pollutant, except for a release by an emission to
2 ambient air from a stack, the report required under this section must describe the

3 (1) location of the release, including latitude and longitude;

4 (2) date and time of the release;

5 (3) volume or weight, and type and source of the pollutant released;

6 (4) processing or treatment used on the pollutant before the release;

7 (5) circumstances surrounding and cause of the release, including a
8 statement as to whether the release was intentional or accidental;

9 (6) environmental damage caused by the release, to the extent the
10 damage can be reasonably identified; and

11 (7) remedial efforts taken to prevent accidental recurrence of the
12 release.

13 (d) For emissions to ambient air from a stack, the report required under this
14 section must include the measurements of visible emissions collected under
15 AS 46.03.465(b) and, if a stack on the vessel is equipped with continuous emission
16 monitors, the recordings printed by the monitors for the time during that month that
17 the vessel was in the marine waters of the state.

18 (e) For pollutants that were offloaded, the report required under this section
19 must describe the

20 (1) location of offloading;

21 (2) date of offloading;

22 (3) volume or weight, and type and source of the offloaded material;

23 (4) ultimate destination of the offloaded material; and

24 (5) processing or treatment received by the offloaded material before
25 or during the offloading.

26 (f) If hazardous waste was offloaded from the vessel and the hazardous waste
27 was manifested in accordance with 42 U.S.C. 6921 - 6939a (Subtitle C of the Solid
28 Waste Disposal Act), the report required under this section may, instead of the
29 information described in (e) of this section, include a copy of the manifest. If
30 hazardous waste was offloaded from the vessel without a manifest, the report required

1 under this section must, in addition to the information described in (e) of this section,
2 describe the reasons why the waste was offloaded without a manifest.

3 (g) For graywater, sewage, and other wastewater, the report required under this
4 section must state whether the graywater, sewage, and other wastewater were mixed
5 with one another or with other pollutants before or during offloading. If mixing of
6 pollutants occurred before or during offloading, the report must identify the specific
7 pollutants involved in the mixing, if feasible. If identification of the specific pollutants
8 is not feasible, the report must identify the waste streams in the mixture.

9 (h) To the extent allowed under federal law, the department may by regulation
10 require an owner or operator to submit supplemental or additional information
11 concerning the releases or offloading of pollutants.

12 (i) A record or report submitted under this section shall be signed under
13 penalty of unsworn falsification by the owner, operator, or a responsible official of the
14 reporting vessel and must include the following statement: "Based on information and
15 belief formed after reasonable inquiry, I certify that the statements and information in
16 and attached to this document are true, accurate, and complete."

17 (j) Upon request of the department, the report required under this section shall
18 be submitted electronically.

19 (k) This section does not relieve the owner or operator of a large passenger
20 vessel from other applicable reporting requirements of state or federal law.

21 **Sec. 46.03.480. Penalties.** (a) An owner or operator who fails to comply with
22 AS 46.03.460 may not bring a claim or counterclaim in a court of this state for a cause
23 of action that arose during the time that the owner or operator was out of compliance
24 with AS 46.03.460.

25 (b) An owner or operator who fails to comply with AS 46.03.460 or a
26 reporting requirement of AS 46.03.475 is subject to an administrative penalty of not
27 more than \$50 a day for each day of noncompliance with each requirement as
28 determined by the commissioner subject to right of appeal to the superior court.

29 **Sec. 46.03.484. Exemption for vessels in innocent passage.** AS 46.03.460 -
30 46.03.490 do not apply to a large passenger vessel that operates in the marine waters
31 of the state solely in innocent passage. For the purpose of this section, a vessel is

1 engaged in innocent passage if its operation in state waters would constitute innocent
2 passage under the

3 (1) Convention on the Territorial Sea and the Contiguous Zone,
4 April 29, 1958, 15 U.S.T. 1606; or

5 (2) United Nations Convention on the Law of the Sea 1982,
6 December 10, 1982, United Nations Publication No. E.83.V.5., 21 I.L.M. 1261 (1982).

7 **Sec. 46.03.485. Regulations.** The department may adopt regulations that are
8 necessary for the implementation of AS 46.03.460 - 46.03.490.

9 **Sec. 46.03.490. Definitions.** In AS 46.03.460 - 46.03.490,

10 (1) "agent for service of process" means an agent upon whom process,
11 notice, or demand required or permitted by law to be served upon the owner or
12 operator may be served;

13 (2) "air contaminant" means a substance within the meaning given to
14 "air contaminant" in either AS 46.03.900 or AS 46.14.990;

15 (3) "ambient air" has the meaning given in AS 46.14.990;

16 (4) "ballast water" means water and suspended matter taken on board
17 a vessel to control or maintain trim, draught, stability, or stresses of the vessel,
18 regardless of how the water and suspended matter are carried;

19 (5) "emission" means a release of one or more pollutants into the
20 atmosphere;

21 (6) "graywater" means galley, bath, and shower water;

22 (7) "hazardous substance" has the meaning given in AS 46.03.826;

23 (8) "hazardous waste" has the meaning given in AS 46.03.900 and
24 includes wastes that meet that definition and have been collected from staterooms,
25 crew quarters, and other passenger or crew accommodations;

26 (9) "large passenger vessel" means a vessel of 300 gross registered tons
27 or greater that is engaged in the carrying of passengers for hire, excluding

28 (A) vessels without berths or overnight accommodations for
29 passengers; and

30 (B) noncommercial vessels, warships, and vessels operated by
31 the state, the United States, or a foreign government;

1 (10) "marine waters of the state" has the meaning given to "waters" in
2 AS 46.03.900 except that it includes only marine waters;

3 (11) "medical waste" includes each of the types of solid waste listed
4 in 42 U.S.C. 6992a (Demonstration Medical Waste Tracking Program, sec. 11002 of
5 the Solid Waste Disposal Act);

6 (12) "offloading" means the removal of pollutants from a large
7 passenger vessel onto or into a controlled storage, processing, or disposal facility or
8 treatment works;

9 (13) "oil" has the meaning given in AS 46.04.900;

10 (14) "pollutant" means air contaminant, biological materials, chemical
11 wastes, graywater, hazardous substances, hazardous waste, industrial waste, incinerator
12 residue, medical waste, munitions, oil, radioactive materials, sewage, sewage sludge,
13 solid waste, toxic waste, and wrecked or discarded equipment, except that "pollutant"
14 does not include ballast water, a consumer product in consumer use, or, with respect
15 to offloading, a product that remains capable of being put to the beneficial use for
16 which the product was intended;

17 (15) "release" means spilling, leaking, pumping, pouring, emitting,
18 emptying, discharging, injecting, escaping, leaching, dumping, placing, or disposing
19 of pollutants into the environment, including the abandonment or discarding of bags,
20 containers, and other receptacles containing a pollutant, and without regard to whether
21 the pollutants left the vessel through a discrete conveyance or a nonpoint source;

22 (16) "responsible official" means

23 (A) for a corporation, a president, secretary, treasurer, or vice-
24 president of the corporation in charge of a principal business function, or any
25 other person who performs similar policy or decision-making functions for the
26 corporation, or a duly authorized representative of that person if the delegation
27 of authority to the representative is approved in advance by the department;

28 (B) for a partnership, sole proprietorship, or limited liability
29 company, a general partner, the proprietor, or the manager or managing
30 member, respectively;

31 (17) "sewage" has the meaning given in 33 U.S.C. 1322 (sec. 312,

1 Water Pollution Control Act);

2 (18) "stack" means a chimney or conduit through which air or air
3 contaminants are emitted into the atmosphere;

4 (19) "vessel" means any form or manner of watercraft, other than a
5 seaplane on the water, whether or not capable of self-propulsion.

6 * **Sec. 4.** AS 46.03.760(e) is amended to read:

7 (e) A person who **falsifies a registration or report required by AS 46.03.460**
8 **or 46.03.475 or who** violates or causes or permits to be violated a provision of
9 AS 46.03.250 - 46.03.314, **46.03.460 - 46.03.490**, AS 46.14, or a regulation, a lawful
10 order of the department, or a permit, approval, or acceptance, or term or condition of
11 a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314, **46.03.460 -**
12 **46.03.490**, or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed
13 by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor
14 more than \$10,000 for each day after that on which the violation continues, and that
15 shall reflect, when applicable,

16 (1) reasonable compensation in the nature of liquidated damages for
17 any adverse environmental effects caused by the violation, that shall be determined by
18 the court according to the toxicity, degradability and dispersal characteristics of the
19 substance discharged, the sensitivity of the receiving environment, and the degree to
20 which the discharge degrades existing environmental quality; for a violation relating
21 to AS 46.14, the court, in making its determination under this paragraph, shall also
22 consider the degree to which the discharge causes harm to persons or property; this
23 paragraph may not be construed to limit the right of parties other than the state to
24 recover for personal injuries or damage to their property;

25 (2) reasonable costs incurred by the state in detection, investigation, and
26 attempted correction of the violation;

27 (3) the economic savings realized by the person in not complying with
28 the requirement for which a violation is charged; and

29 (4) the need for an enhanced civil penalty to deter future
30 noncompliance.

31 * **Sec. 5.** This Act takes effect July 1, 2000.