

**SENATE BILL NO. 134**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - FIRST SESSION

**BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**Introduced: 3/12/01**

**Referred: Transportation, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act establishing the Alaska Commercial Passenger Vessel Coastal Protection**  
2 **Program for certain vessels with overnight accommodations for 50 or more passengers,**  
3 **including a permit and fees for such vessels operating in waters of this state, oversight of**  
4 **the program by the Department of Environmental Conservation, civil and criminal**  
5 **liability for violations of the program, and recognition of superior environmental**  
6 **performance by vessels subject to the program; creating a commercial passenger vessel**  
7 **coastal protection fund; and providing for an effective date."**

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

9 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
10 to read:

11 FINDINGS. The legislature finds that

12 (1) commercial passenger vessels present a unique and growing threat to the  
13 environment in this state and to commercial and noncommercial uses of the resources of this

1 state;

2 (2) federal and international laws pertaining to regulation of commercial  
3 passenger vessels have been inadequate and have been inadequately enforced in the past;  
4 commercial passenger vessels have deliberately and negligently discharged oil, hazardous  
5 substances, and inadequately treated sewage and graywater into the marine environment of  
6 this state, and have repeatedly fouled the air in coastal communities of this state;

7 (3) during the summer of 2000, a wastewater sampling program facilitated by  
8 the Department of Environmental Conservation involving those vessels revealed that

9 (A) 57 percent of the treated sewage samples tested for fecal coliform  
10 and 68 percent of the samples that were tested for total suspended solids were not in  
11 compliance with treatment standards; only one of the samples from those treatment  
12 systems was in compliance with both standards; and

13 (B) 75 percent of the samples taken from supposedly benign graywater  
14 were over five times the fecal coliform standard for sewage from treatment systems;

15 (4) during the summer of 2000, approximately 240 air opacity readings  
16 involving those vessels were taken by the state and the United States, with 34 samples  
17 showing violations of air quality standards;

18 (5) although federal law regulating some of the larger commercial passenger  
19 vessels has recently been enhanced, federal law does not require reporting to the state, does  
20 not provide for direct enforcement by the state, and does not address pollution of the state's  
21 air;

22 (6) although the state should work collaboratively with the federal  
23 government, the state should not be dependent on the federal government for information  
24 regarding commercial passenger vessels operating in waters of this state and impacts of  
25 commercial passenger vessels on the people and resources of this state, or for enforcement for  
26 environmental violations by commercial passenger vessels in waters of this state;

27 (7) in order to properly manage its resources and provide for sustainable  
28 human use, the state must know the quantity, composition, location, and frequency of  
29 discharges and releases of pollutants from commercial passenger vessels into the state's water  
30 and air;

31 (8) existing state legal authorities that could be applied to commercial

1 passenger vessels are scattered through a number of different programs, many of which do not  
 2 have adequate financing or financing mechanisms to allow for comprehensive monitoring and  
 3 oversight of commercial passenger vessels; further, extensive regulatory revisions would be  
 4 needed by many programs to address discharges from commercial passenger vessels and to  
 5 ensure that existing program authorities reach commercial passenger vessels without also  
 6 creating unneeded regulation of other categories of vessels that do not involve the significant  
 7 environmental threat presented by the commercial passenger vessels;

8 (9) commercial passenger vessels should, to the extent practicable, be subject  
 9 to the same type of environmental regulations related to the discharge of wastes in this state as  
 10 are applicable to shore-based facilities and businesses in this state with similar discharges;

11 (10) commercial passenger vessels benefit from and put a strain on resources  
 12 and infrastructure of this state but do not generally share in the costs of protecting resources  
 13 or providing infrastructure; and

14 (11) comprehensive monitoring and oversight of wastewater, solid waste, and  
 15 air emissions of commercial passenger vessels traveling in state waters and an understanding  
 16 of their impacts on people and resources of this state is needed, and commercial passenger  
 17 vessels should be required to bear the costs of the needed monitoring and oversight.

18 \* **Sec. 2.** AS 46 is amended by adding a new chapter to read:

19 **Chapter 50. Alaska Commercial Passenger Vessel Coastal Protection Program.**

20 **Sec. 46.50.010. Program established.** (a) To protect the coastal areas of this  
 21 state, there is established the Alaska Commercial Passenger Vessel Coastal Protection  
 22 Program in the department to monitor and supervise certain discharges and releases  
 23 from commercial passenger vessels through a permit system.

24 (b) The department may adopt regulations to carry out the purposes of this  
 25 chapter. The department shall use negotiated regulation making under AS 44.62.710 -  
 26 44.62.800, as appropriate, to develop those regulations.

27 **Sec. 46.50.020. Permit requirements and types.** (a) Unless exempted under  
 28 AS 46.50.090, the owner or operator of a commercial passenger vessel shall obtain a  
 29 permit under this chapter from the department for that vessel before operating the  
 30 vessel, or causing or allowing the vessel to be operated, in the waters of this state. A  
 31 permit issued under this chapter is valid only for the calendar year for which the

1 permit is issued.

2 (b) A permit required under (a) of this section is either

3 (1) a standard permit by notification that is obtained in accordance  
4 with AS 46.50.030; or

5 (2) a special permit that is obtained by using the procedures of  
6 AS 46.50.040.

7 **Sec. 46.50.030. Standard permits by notification.** (a) The department shall  
8 issue a standard permit by notification to an owner or operator of a commercial  
9 passenger vessel who meets the requirements of this section. The standard permit by  
10 notification shall contain the terms and conditions established under (b) of this section.

11 (b) By regulation, the department shall establish the terms and conditions of a  
12 standard permit by notification. The terms and conditions established under this  
13 subsection may

14 (1) vary by

15 (A) vessel size and passenger capacity; and

16 (B) environmental or health risk of the discharge or release;

17 and

18 (2) include the following:

19 (A) reporting of any disposal, discharge, or release of  
20 pollutants;

21 (B) development of waste management plans and reporting of  
22 waste management practices;

23 (C) monitoring and sampling of any pollutant discharged,  
24 released, or disposed of within the state;

25 (D) provisions for the department to enter a vessel and examine  
26 waste disposal practices, sampling, monitoring, and equipment to verify  
27 compliance with the terms and conditions of the permit;

28 (E) reporting of a vessel's operations in state waters, including  
29 the number of voyages, number of passengers per voyage, voyage routes, and  
30 voyage lengths;

31 (F) limitations on locations and circumstances under which

1 pollutants may be discharged, disposed of, or released in the state;

2 (G) limitations on the composition or concentrations of  
3 discharges or releases of pollutants to the air or water of the state;

4 (H) reporting of the qualifications and training of individuals  
5 engaged in the treatment, discharge, release, or disposal of wastes from the  
6 vessel;

7 (I) provisions for collection of fees imposed by AS 46.50.070;

8 (J) provisions for revocation of a permit for noncompliance  
9 with this chapter, a regulation adopted under this chapter, or a term or  
10 condition of a permit issued under this chapter.

11 (c) To the maximum extent practicable, the terms and conditions established  
12 under (b) of this section shall

13 (1) regarding limitations on the locations, circumstances, composition,  
14 and concentrations of discharges or releases to the waters of the state, be consistent  
15 with federal law unless the department determines that additional protection of the  
16 water is needed; and

17 (2) be coordinated with reporting and verification requirements of the  
18 United States Coast Guard and the United States Environmental Protection Agency.

19 (d) A standard permit by notification under this section is obtained by  
20 notifying the department in the manner set out in regulations adopted by the  
21 department under this chapter. The notice shall include at least the following:

22 (1) the name of the vessel;

23 (2) the vessel owner's business name and, if different, the vessel  
24 operator's business name;

25 (3) the postal and electronic mail addresses, telephone number, and  
26 facsimile number for the principal place of each business identified under (2) of this  
27 subsection;

28 (4) the name and address of an agent in this state for service of process  
29 for each business identified under (2) of this subsection; the vessel owner and operator  
30 shall continuously maintain an agent for service of process in this state during any  
31 period in which the vessel is covered by a permit issued under this section;

1 (5) a statement that the vessel owner and operator agree to comply  
2 with the terms and conditions of the standard permit by notification.

3 **Sec. 46.50.040. Special permits.** (a) The department may issue a special  
4 permit under this section to the owner or operator of a commercial passenger vessel  
5 who meets the requirements of this section and regulations adopted under this section.  
6 The owner or operator of a vessel who cannot practicably comply with the terms and  
7 conditions of a standard permit by notification under AS 46.50.030, or who wishes to  
8 use or test alternative environmental protection equipment and procedures, may apply  
9 to the department for a special permit for the vessel.

10 (b) Except as specified in alternative terms and conditions set by the  
11 department under this subsection, a special permit under this section shall require  
12 compliance with the terms and conditions that would be required in a standard permit  
13 by notification under AS 46.50.030. The department, on a case-by-case basis, may set  
14 alternative terms and conditions for a special permit if

15 (1) the vessel owner or operator demonstrates to the department's  
16 reasonable satisfaction that equivalent environmental protection can be attained  
17 through other terms or conditions appropriate for the specific configuration or  
18 operation of the vessel;

19 (2) the vessel owner or operator agrees to make necessary changes to  
20 the vessel to allow it to comply with the terms and conditions of a standard permit by  
21 notification under AS 46.50.030 but demonstrates to the department's reasonable  
22 satisfaction that additional time is needed to make the necessary changes; or

23 (3) an experimental technology or method for pollution control of a  
24 discharge or release is being used or is proposed as a term or condition of the special  
25 permit and the department determines that the experimental technology or method has  
26 a reasonable likelihood of success in providing increased protection for the  
27 environment.

28 (c) In a special permit under this section, the department shall impose special  
29 terms and conditions to require additional environmental protection or research if  
30 necessary to prevent the vessel owner or operator from obtaining a significant  
31 economic advantage over its competitors as a result of an alternative term or condition

1 set by the department in the special permit.

2 **Sec. 46.50.050. Monitoring and environmental studies.** The department  
3 may engage in the following activities for commercial passenger vessels:

4 (1) direct monitoring of discharges or releases of pollutants from those  
5 vessels;

6 (2) monitoring and studying of direct or indirect environmental  
7 impacts of those vessels;

8 (3) researching ways to reduce impacts identified or studied under this  
9 section.

10 **Sec. 46.50.060. Superior environmental performance.** The department may  
11 engage in efforts to encourage and recognize superior environmental performance,  
12 beyond what is required by law, by commercial passenger vessels.

13 **Sec. 46.50.070. Fees.** (a) There is imposed a coastal protection fee on each  
14 commercial passenger vessel, other than a vessel operated by this state, operating in  
15 the waters of this state.

16 (b) The fee imposed by (a) of this section is a separate fee for each voyage  
17 during which the commercial passenger vessel operates in waters of this state, and is  
18 set based on the overnight accommodation capacity of the vessel, as follows:

19 (1) \$75 for a commercial passenger vessel with overnight  
20 accommodations for at least 50 but no more than 99 passengers for hire;

21 (2) \$175 for a commercial passenger vessel with overnight  
22 accommodations for at least 100 but no more than 249 passengers for hire;

23 (3) \$375 for a commercial passenger vessel with overnight  
24 accommodations for at least 250 but no more than 499 passengers for hire;

25 (4) \$750 for a commercial passenger vessel with overnight  
26 accommodations for at least 500 but no more than 999 passengers for hire;

27 (5) \$1,250 for a commercial passenger vessel with overnight  
28 accommodations for at least 1,000 but no more than 1,499 passengers for hire;

29 (6) \$1,750 for a commercial passenger vessel with overnight  
30 accommodations for at least 1,500 but no more than 1,999 passengers for hire;

31 (7) \$2,250 for a commercial passenger vessel with overnight

1 accommodations for at least 2,000 but no more than 2,499 passengers for hire;

2 (8) \$2,750 for a commercial passenger vessel with overnight  
3 accommodations for at least 2,500 but no more than 2,999 passengers for hire;

4 (9) \$3,250 for a commercial passenger vessel with overnight  
5 accommodations for at least 3,000 but no more than 3,499 passengers for hire;

6 (10) \$3,750 for each commercial passenger vessel with overnight  
7 accommodations for 3,500 or more passengers for hire.

8 (c) A commercial passenger vessel operating in state waters is liable for the  
9 fee imposed by this section. The fee is due and payable to the department in the  
10 manner and at the times required by the department by regulation.

11 **Sec. 46.50.080. Alaska commercial passenger vessel coastal protection**  
12 **fund.** (a) The Alaska commercial passenger vessel coastal protection fund is created  
13 in the general fund.

14 (b) The fund consists of the following, all of which shall be deposited in the  
15 fund upon receipt:

16 (1) money received by the department in payment of fees under  
17 AS 46.50.070;

18 (2) money received under AS 46.03.760 as a result of a violation  
19 related to this chapter unless the money would otherwise be deposited in the oil and  
20 hazardous substance release prevention and response fund established by  
21 AS 46.08.010;

22 (3) money appropriated by the legislature;

23 (4) earnings on the fund.

24 (c) The legislature may make appropriations from the fund to the department  
25 to pay for the department's operational and administrative costs necessary to carry out  
26 activities under this chapter.

27 (d) Money from an appropriation made to the fund remaining in the fund at  
28 the end of a fiscal year does not lapse and remains available for expenditure in  
29 successive fiscal years.

30 (e) Nothing in this section creates a dedicated fund.

31 **Sec. 46.50.090. Exemption for commercial passenger vessels in innocent**

1 **passage.** This chapter does not apply to a commercial passenger vessel that operates  
 2 solely in innocent passage in the waters of the state. For purposes of this section, a  
 3 vessel is engaged in innocent passage if its operation in waters of the state, regardless  
 4 of whether the vessel is a United States or foreign-flag vessel, would constitute  
 5 innocent passage under the

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

8 (2) United Nations Convention on the Law of the Sea 1982,  
 9 December 10, 1982, United Nations Publication No. E.83.V.5, 21 I.L.M. 1261  
 10 (1982), were the vessel a foreign-flag vessel.

11 **Sec. 46.50.900. Definitions.** In this chapter, unless the context otherwise  
 12 requires,

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

15 (2) "agent for service of process" means an agent upon whom process,  
 16 notice, or demand required or permitted by law to be served upon the vessel owner or  
 17 operator may be served;

18 (3) "commercial passenger vessel" means a vessel that carries  
 19 passengers for hire except for a vessel

20 (A) authorized to carry fewer than 50 passengers;

21 (B) operated by the United States or a foreign government; or

22 (C) that does not provide overnight accommodations for at  
 23 least 50 passengers for hire;

24 (4) "department" means the Department of Environmental  
 25 Conservation;

26 (5) "fund" means the Alaska commercial passenger vessel coastal  
 27 protection fund;

28 (6) "passenger for hire" means a vessel passenger for whom  
 29 consideration is contributed as a condition of carriage on the vessel, whether directly  
 30 or indirectly flowing to the owner, charterer, operator, agent, or any other person  
 31 having an interest in the vessel;

1 (7) "pollutant" means air contaminants, biological materials, chemical  
 2 wastes, graywater, hazardous substances, hazardous waste, industrial waste,  
 3 incinerator residue, medical waste, munitions, oil, radioactive materials, sewage,  
 4 sewage sludge, solid waste, toxic waste, and wrecked or discarded equipment;

5 (8) "release" means spilling, leaking, pumping, pouring, emitting,  
 6 emptying, discharging, injecting, escaping, leaching, dumping, placing, or disposing  
 7 of pollutants into the environment; "release" includes the abandonment or discarding  
 8 of bags, containers, or other receptacles containing a pollutant, regardless of whether  
 9 the pollutant leaves the vessel through a discrete conveyance or a nonpoint source;

10 (9) "voyage" means a vessel trip to or from one or more ports of call in  
 11 the state with the majority of the passengers for hire completing the entire vessel trip;  
 12 a vessel trip involving stops at more than one port of call is considered a single voyage  
 13 so long as the majority of passengers for hire complete the entire trip;

14 (10) "waters" has the meaning given in AS 46.03.900.

15 \* **Sec. 3.** AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:

16 (XX) receipts of fees under the Alaska Commercial Passenger  
 17 Vessel Coastal Protection Program (AS 46.50);

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

19 (e) A person who violates or causes or permits to be violated a provision of  
 20 AS 46.03.250 - 46.03.313 [AS 46.03.250 - 46.03.314], AS 46.14, AS 46.50, or a  
 21 regulation, a lawful order of the department, or a permit, approval, or acceptance, or  
 22 term or condition of a permit, approval, or acceptance issued under AS 46.03.250 -  
 23 46.03.313, [AS 46.03.250 - 46.03.314 OR] AS 46.14, or AS 46.50 is liable, in a civil  
 24 action, to the state for a sum to be assessed by the court of not less than \$500 nor more  
 25 than \$100,000 for the initial violation, nor more than \$10,000 for each day after that  
 26 on which the violation continues, and that shall reflect, when applicable,

27 (1) reasonable compensation in the nature of liquidated damages for  
 28 any adverse environmental effects caused by the violation, that shall be determined by  
 29 the court according to the toxicity, degradability and dispersal characteristics of the  
 30 substance discharged, the sensitivity of the receiving environment, and the degree to  
 31 which the discharge degrades existing environmental quality; for a violation relating to

1 AS 46.14, the court, in making its determination under this paragraph, shall also  
 2 consider the degree to which the discharge causes harm to persons or property; this  
 3 paragraph may not be construed to limit the right of parties other than the state to  
 4 recover for personal injuries or damage to their property;

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

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

9 (4) the need for an enhanced civil penalty to deter future  
 10 noncompliance.

11 \* **Sec. 5.** AS 46.03.790(a) is amended to read:

12 (a) Except as provided in (d) of this section, a person is guilty of a class A  
 13 misdemeanor if the person with criminal negligence

14 (1) violates a provision of this chapter, AS 46.04, AS 46.09, or  
 15 AS 46.14, a regulation or order of the department, or a permit, approval, or  
 16 acceptance, or a term or condition of a permit, approval, or acceptance issued under  
 17 this chapter, AS 46.04, AS 46.09, or AS 46.14;

18 (2) fails to provide information or provides false information required  
 19 by AS 46.03.755, AS 46.04, [OR] AS 46.09, or AS 46.50, or by a regulation adopted  
 20 by the department under AS 46.03.755, AS 46.04, [OR] AS 46.09, or AS 46.50;

21 (3) makes a false statement or representation in an application, label,  
 22 manifest, record, report, permit, or other document filed, maintained, or used for  
 23 purposes of compliance with AS 46.03.250 - 46.03.313 [AS 46.03.250 - 46.03.314]  
 24 applicable to hazardous wastes or a regulation adopted by the department under  
 25 AS 46.03.250 - 46.03.313 [AS 46.03.250 - 46.03.314];

26 (4) makes a false statement, representation, or certification in an  
 27 application, notice, record, report, permit, or other document filed, maintained, or used  
 28 for purposes of compliance with AS 46.14 or AS 46.50, or a regulation adopted under  
 29 AS 46.14 or AS 46.50; or

30 (5) renders inaccurate a monitoring device or method required to be  
 31 maintained under AS 46.14 or AS 46.50, a regulation adopted under AS 46.14 or

1           AS 46.50, or a permit issued by the department or a local air quality control program  
 2           under AS 46.14 or AS 46.50.

3           \* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to  
 4 read:

5           TRANSITION: INITIAL APPLICABILITY AND IMPLEMENTATION. (a)  
 6 Notwithstanding AS 46.50.020, enacted by sec. 2 of this Act, a permit under AS 46.50.020 is  
 7 not required until the later of January 1, 2002, or three days after regulations providing for a  
 8 standard permit by notification under AS 46.50.030, enacted by sec. 2 of this Act, take effect.

9           (b) For a commercial passenger vessel voyage occurring on or after July 1, 2001, and  
 10 before the effective date of regulations providing for payment of the coastal protection fee,  
 11 adopted by the department under AS 46.50.070(c), enacted by sec. 2 of this Act, the coastal  
 12 protection fee required by AS 46.50.070(a) and (b), enacted by sec. 2 of this Act, for each  
 13 such voyage during which the commercial passenger vessel is scheduled to operate in waters  
 14 of this state, is due and payable to the department on or before July 31 of the calendar year in  
 15 which the voyage is scheduled to occur. Any additional amounts owed due to unscheduled  
 16 voyages, or refund requests due to canceled voyages, must be submitted to the department  
 17 within 30 days after the vessel's last voyage in waters of this state in that calendar year.

18           (c) Until three days after regulations providing for a standard permit by notification  
 19 under AS 46.50.030, enacted by sec. 2 of this Act, take effect, the owner or operator of a  
 20 commercial passenger vessel shall register the vessel each calendar year with the department  
 21 before operating the vessel, or causing or allowing the vessel to be operated, in the waters of  
 22 this state in that calendar year. Registration is accomplished by providing the information  
 23 required by AS 46.50.030(d)(1) - (4), enacted by sec. 2 of this Act, to the department.

24           (d) Notwithstanding efforts to develop and implement regulations providing for a  
 25 standard permit by notification under AS 46.50.030, enacted by sec. 2 of this Act, the  
 26 department shall continue to work with the United States Coast Guard, the United States  
 27 Environmental Protection Agency, and owners and operators of commercial passenger vessels  
 28 on issues relating to protection of the coastal environment, and shall continue to engage in  
 29 activities authorized by AS 46.50.050, enacted by sec. 2 of this Act.

30           (e) A violation of a requirement in this section is treated as a violation of AS 46.50,  
 31 enacted by sec. 2 of this Act.

1 (f) In this section, "commercial passenger vessel," "department," "voyage," and  
2 "waters" have the meaning given in AS 46.50.900, enacted by sec. 2 of this Act.

3 \* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 TRANSITION: REGULATIONS. Notwithstanding sec. 9 of this Act, the  
6 Department of Environmental Conservation may immediately proceed to adopt regulations  
7 necessary to implement this Act. The regulations take effect under AS 44.62 (Administrative  
8 Procedure Act) but not before the effective date of the statutory provision.

9 \* **Sec. 8.** Section 7 of this Act takes effect immediately under AS 01.10.070(c).

10 \* **Sec. 9.** Except as provided in sec. 8 of this Act, this Act takes effect July 1, 2001.