

Introduced: 2/25/74  
Referred: Commerce,  
Judiciary and Finance

1 IN THE HOUSE

BY SPECKING AND TILLION

2 HOUSE BILL NO. 711

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating the Alaska State Port Commission,  
7 prescribing its organization, powers and duties; and  
8 providing for an effective date."

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

10 \* Section 1. AS 30 is amended by adding a new chapter to read:

11 CHAPTER 15. PORTS, HARBORS AND NAVIGABLE WATERWAYS.

12 ARTICLE 1. DECLARATION OF POLICY.

13 Sec. 30.15.010. LEGISLATIVE DECLARATION OF POLICY AND PURPOSE.

14 The legislature finds and declares that because waterborne commerce  
15 to and from the state continues to increase, a need has developed to  
16 expand and improve existing port facilities and to locate, plan and  
17 construct new ports and harbors on a sound engineering and financial  
18 basis. Therefore, the state should prepare a comprehensive master or  
19 general plan for port facilities development and, at the same time,  
20 provide for the effective, uniform regulation of marine traffic and  
21 commercial activity in the ports, harbors and navigable waterways of  
22 the state. A system of port, harbor and waterways regulations is  
23 required to complement existing federal law and regulations, to encour-  
24 age commerce, to ensure the safety of marine traffic, to promote  
25 efficient port operation and management, to protect both public and  
26 private property along, and to safeguard the public interest in, the  
27 navigable coastal, inside coastal and other public waterways of the  
28 state.

29 ARTICLE 2. ALASKA STATE PORT COMMISSION.

1           Sec. 30.15.020. COMMISSION CREATED. There is in the Department  
2 of Commerce the Alaska State Port Commission to formulate, and maintain  
3 current, a master or general plan for the development of ports, harbors  
4 and port facilities in the state, to supervise and regulate waterborne  
5 commerce and other marine activity in the navigable coastal, inside  
6 coastal, and other public waterways, and in the ports and harbors of the  
7 state, in a manner that complements federal law and regulation.

8           Sec. 30.15.030. COMPOSITION, APPOINTMENT OF COMMISSION; TERM OF  
9 OFFICE. (a) The Alaska State Port Commission consists of five members  
10 appointed by the governor for four-year, staggered terms and confirmed  
11 by a majority of the members of the legislature in joint session.

12           (b) Commissioners may be appointed to successive terms. A com-  
13 missioner, upon the expiration of his term, shall continue to hold office  
14 until his successor is appointed and qualifies.

15           Sec. 30.15.040. VACANCIES; REMOVAL. (a) Vacancies in commission  
16 membership shall be filled in the same manner as original appointment.  
17 An appointee to fill a vacancy shall hold office for the balance of the  
18 term for which his predecessor on the commission was appointed. A  
19 vacancy in commission membership does not impair the authority of a  
20 quorum of the commissioners to exercise all the powers and duties of the  
21 commission.

22           (b) The governor may remove a commissioner from office for cause,  
23 by and with the consent of a majority of the members of the legislature  
24 in joint session.

25           Sec. 30.15.050. QUALIFICATIONS OF COMMISSIONERS. In making his  
26 appointments to the commission, the governor should consider ensuring  
27 that at least two of the commission members have, or combine, a profes-  
28 sional or educational background as follows:

29           (1) law: a graduate of an accredited law school, or an

1 attorney admitted to practice law in the state, preferably having experi-  
2 ence in maritime or admiralty law;

3 (2) engineering: a graduate of an accredited college or  
4 university with a major or a degree in transportation or civil engi-  
5 neering;

6 (3) business or economics: a graduate of an accredited  
7 college or university with a major or degree in business, finance or  
8 accounting, or if not otherwise represented on the commission, transpor-  
9 tation planning or economics;

10 (4) a licensed marine pilot, or a person with professional  
11 experience as a port administrator.

12 Sec. 30.15.060. OFFICERS. The chairman and vice-chairman shall  
13 be elected from among the members of the commission for a one-year term,  
14 and no member of the commission may serve as chairman for more than two  
15 consecutive one-year terms.

16 Sec. 30.15.070. MEETINGS, RULES, QUORUM, VOTES REQUIRED. The  
17 commission shall prescribe its own rules of procedure. It shall meet at  
18 least once a month at a time and place determined by the chairman, and  
19 at other times and places as the chairman, or a majority of the commis-  
20 sion members, consider necessary. A quorum is a majority of the members  
21 of the commission. The votes of the commission members shall be recorded,  
22 and effective action requires the affirmative vote of a majority of the  
23 commission members. No commission member may, with respect to a matter  
24 before the commission, vote for or on behalf of, or in any way exercise  
25 the vote of, another member of the commission.

26 Sec. 30.15.080. EXECUTIVE OFFICER; COMMISSION PERSONNEL. (a) The  
27 commission may appoint an executive officer or director who has at least  
28 five years of experience in waterborne commerce, in marine transporta-  
29 tion, marine traffic regulation or management, port or harbor management

1 or an allied field. The executive officer or director may not be one of  
2 the members of the commission.

3 (b) The executive officer or director is a member of the exempt  
4 service under AS 39.25.110. The executive officer serves at the pleasure  
5 of the commission, and he receives compensation fixed by the commission.  
6 Other employees of the commission, other than legal counsel, are in the  
7 classified service under AS 39.25.

8 (c) The commission may, as it considers necessary to carry out its  
9 powers and duties under this chapter, authorize the executive officer  
10 to employ, or contract for the services of, port administrators, engi-  
11 neers, experts, consultants, agents and assistants and other staff  
12 essential to the powers and duties of the commission. Subject to the  
13 approval of the commission, the executive officer shall fix the compen-  
14 sation of the commission staff. The commission shall make the maximum  
15 possible use of employees, experts and consultants in the Departments of  
16 Commerce, Public Safety, Public Works and Environmental Conservation,  
17 and in the other departments or agencies of the state government, as  
18 well as in related municipal departments or agencies.

19 Sec. 30.15.090. LEGAL COUNSEL. (a) The attorney general is legal  
20 counsel for the commission. He shall advise the commission in legal  
21 matters arising in the discharge of its duties and represent the commis-  
22 sion in actions to which it is a party. If, in the opinion of the  
23 commission, the public interest is not adequately represented by counsel  
24 in a proceeding, the attorney general, upon request of the commission,  
25 shall represent the public interest.

26 (b) The commission may employ temporary legal counsel from time  
27 to time in matters in which the commission is involved.

28 Sec. 30.15.100. COMPENSATION OF COMMISSIONERS; PER DIEM AND TRAVEL  
29 EXPENSES. Members of the commission are in the exempt service under

1 AS 39.25.110 and shall receive \$100 a day for each day or portion of a  
2 day spent in actual meeting or on authorized official business incident  
3 to their duties, and they are entitled to per diem and travel allowances  
4 as provided by law for other boards and commissions. If a member of  
5 the commission is a full-time officer or employee of the state, he may  
6 not receive the \$100 a day compensation.

7 Sec. 30.15.110. RESTRICTIONS ON COMMISSIONERS AND EMPLOYEES. No  
8 commission member or employee may have an official or professional con-  
9 nection or relation with, or hold stock or securities in, or have any  
10 other pecuniary or property interest in, a corporation, company or  
11 association engaged in waterborne commerce, or in the construction,  
12 operation or management of ports, harbors or port facilities, subject  
13 to regulation under this chapter. No commission member or employee may  
14 act upon a matter in which his relationship with any person creates a  
15 conflict of interest.

16 ARTICLE 3. SCOPE OF AUTHORITY; POWERS AND DUTIES.

17 Sec. 30.15.120. COMMISSION'S GEOGRAPHIC JURISDICTION. The commis-  
18 sion has jurisdiction, supervision and control of all ports, harbors,  
19 navigable coastal, inside coastal, and other public waterways of the  
20 state, including tidal, tidewater and submerged tidelands, except those  
21 transferred to a municipality or other person, within the boundaries  
22 of the state. However, the commission's jurisdiction, supervision and  
23 control does not extend to areas which are under the exclusive control  
24 of

25 (1) the United States; or

26 (2) a municipality, except as provided in this chapter.

27 Sec. 30.15.130. POWERS. (a) The commission may, in the name of  
28 the state

29 (1) sue and be sued;

1 (2) acquire and own real and personal property;

2 (3) enter into contracts;

3 (4) hold hearings and conduct investigations;

4 (5) accept grants or loans from, and contract with, agencies  
5 or departments of the federal government, the state, or its political  
6 subdivisions, to comply with the provisions of federal and state programs,  
7 policies, procedures, directives or regulations;

8 (6) authorize the disbursement of money.

9 (b) Collection and deposit of fees, service charges, civil penal-  
10 ties, or income from any source shall be in accordance with AS 37.05  
11 and 37.10. Contracts for the purchase, sale or transfer of any interest  
12 in real property may be executed only after approval of the department  
13 of law.

14 ARTICLE 4. PORTS, HARBORS AND PORT FACILITIES.

15 Sec. 30.15.140. COMPREHENSIVE MASTER OR GENERAL PLAN. (a) After  
16 conducting public hearings throughout the state, the commission shall  
17 prepare, adopt, publish and maintain a comprehensive master or general  
18 plan for the development of ports, harbors and port facilities in the  
19 state.

20 (b) The commission shall review and make recommendations to the  
21 commissioner of public works concerning applications for state port  
22 facilities grants under AS 30.30 to determine if the proposed port  
23 facilities development project conforms to the master or general plan  
24 adopted under (a) of this section.

25 Sec. 30.15.150. REGULATION OF PORTS AND HARBORS; MARINE TRAFFIC;  
26 TERMINAL AND TRANSPORTATION FACILITIES. (a) The commission shall regu-  
27 late the manner in which ports, harbors and port terminal or other  
28 transportation facilities are operated in order to insure the safety  
29 and accommodation of the public. The commission shall promulgate

1 regulations to implement this section.

2 (b) The regulations promulgated under (a) of this section shall  
3 include, but are not limited to, procedures for the maneuvering, berthing  
4 and mooring of vessels and other marine traffic in a port or harbor,  
5 the handling of all freight or cargo, including but not limited to,  
6 the transfer of explosives, oil, petroleum products and their by-products,  
7 and other hazardous substances.

8 Sec. 30.15.160. PORT FACILITIES, TERMINAL, TRANSPORTATION FACILI-  
9 TIES OPERATION; PERMIT REQUIRED. (a) All lessees, owners or occupants  
10 of property in the state who wish to construct or operate a port,  
11 harbor or port facility, including but not limited to a freight or  
12 cargo terminal or other transportation facility in any port or harbor  
13 of this state, shall apply to the commission for a permit. Application  
14 for a permit shall be made in accordance with regulations promulgated  
15 by the commission and shall be accompanied by a plan for the proposed  
16 construction or operation which meets the standards provided in the  
17 comprehensive master or general plan for port facilities development  
18 prepared, adopted and published under sec. 140 of this chapter.

19 (b) The commission shall review the proposed plan of construction  
20 and operation to determine whether it is in keeping with the objectives  
21 of the comprehensive master or general plan adopted under sec. 140 of  
22 this chapter. If the commission concludes, following investigation and  
23 hearing, that significant conflicts exist between the proposed port  
24 facility development and the master or general plan, a permit may not  
25 be issued. The commission may recommend modifications in the proposed  
26 construction or operation to meet the standards prescribed by the  
27 commission in the master or general plan.

28 (c) The commission may issue port facility, terminal and trans-  
29 portation permits on those terms and conditions, and for the duration

1 it considers appropriate for the safe and efficient use of the port or  
2 harbor and to ensure that adequate port, terminal and transportation  
3 facilities will be continuously provided in the port or harbor. No  
4 construction or operation may be begun or carried on without a permit  
5 issued by the commission.

6 (d) It shall be a condition of each permit granted by the commis-  
7 sion under this section that the port facilities to be constructed or  
8 operated, or the services to be supplied in connection with the facility  
9 or terminal operation, shall be made available to all carriers on equal  
10 terms, at equal rates, and without discrimination of any kind.

11 (e) Every permit, lease, deed or conveyance of right, title or  
12 interest executed by the commission with respect to land within the  
13 commission's jurisdiction shall incorporate by reference or otherwise,  
14 and shall be subject to, the restrictions contained in this chapter.

15 Sec. 30.15.170. INVESTIGATION OF PERMIT HOLDER; SUSPENSION;  
16 CANCELLATION. The commission may inquire into the manner in which obli-  
17 gations under permits issued by it are carried out, and into the rate  
18 schedules and practices of the permit holders to determine whether the  
19 provisions of the permits are being complied with. The commission shall  
20 have access to books and records, and to the terminal and transportation  
21 facilities that may be necessary to enable it to make this determina-  
22 tion. Should the commission at any time find that a permit holder is  
23 not complying with the terms of its permit, it may suspend or cancel  
24 the permit upon notice and hearing, in accordance with the procedure it  
25 prescribes by regulation.

26 Sec. 30.15.180. FIXING RATES, CHARGES, CLASSIFICATIONS FOR USE  
27 OF PORT TERMINAL OR TRANSPORTATION FACILITIES. The commission shall  
28 fix the rates, fees, charges and classifications to be charged for the  
29 use of facilities, goods or services provided by the state in those

1 port facilities it owns or operates. These rates, fees, charges and  
2 classifications shall be just and reasonable, and shall be published  
3 before and following a hearing in the manner required by law, or as  
4 prescribed by the commission by regulation, and shall be final unless  
5 appealed in the manner prescribed under the Administrative Procedure  
6 Act (AS 44.62).

7 Sec. 30.15.190. STATE PORT FACILITIES. The commission may acquire,  
8 construct, purchase or lease and operate and maintain port facilities  
9 subject to the provisions of this chapter. Where practicable, the com-  
10 mission shall construct, operate and maintain these state port facili-  
11 ties in conjunction with state ferry terminal facilities operated and  
12 maintained under AS 19.60.

13 Sec. 30.15.200. FOREIGN TRADE ZONES. The commission may apply to  
14 the United States for permission to establish, operate and maintain  
15 foreign trade zones in any port or harbor in the state.

16 ARTICLE 5. NAVIGATION; PILOT RULES  
17 AND WATERWAY MARKING SYSTEM.

18 Sec. 30.15.210. PILOT RULES, OTHER MARINE TRAFFIC REGULATIONS.

19 (a) The commission shall establish, promulgate and maintain a compre-  
20 hensive uniform system of pilot rules or other marine traffic regulations  
21 that may be required for the operation of vessels in the waters of  
22 the state that are not in conflict with the pilot rules or other marine  
23 traffic regulations contained in the federal navigation laws or regula-  
24 tions promulgated by the United States Coast Guard.

25 (b) The commission shall consult and cooperate with the United  
26 States Coast Guard in the establishment, promulgation, maintenance,  
27 administration and enforcement of the pilot rules and other marine  
28 traffic regulations promulgated under this section.

29 Sec. 30.15.220. ADMINISTRATION OF ALASKA PILOTAGE ACT. The

1 commission shall administer the provisions of the Alaska Pilotage Act  
2 (AS 08.62), and the Board of Marine Pilots is a division of the commis-  
3 sion, under the Department of Commerce.

4 Sec. 30.15.230. UNIFORM NAVIGATIONAL MARKINGS. The commission  
5 shall promulgate regulations for the uniform navigational marking of  
6 the waters of the state through the placement of aids to navigation and  
7 regulatory markers. The regulations shall establish a marking system  
8 compatible with the system of aids to navigation prescribed by the United  
9 States Coast Guard. No person or municipality may mark or obstruct the  
10 waters of this state in any manner that will endanger the operation of  
11 watercraft or conflict with the marking system prescribed by the commis-  
12 sion.

13 Sec. 30.15.240. VIOLATION OF PILOT RULES, MARINE TRAFFIC REGULA-  
14 TIONS OR INTERFERENCE WITH AIDS TO NAVIGATION, REGULATORY MARKERS. (a)  
15 It is unlawful for a person to operate a vessel on the waters of this  
16 state in a manner other than that prescribed or permitted by the pilot  
17 rules or marine traffic regulations or by regulatory markers.

18 (b) No person may moor or fasten a vessel to or wilfully damage,  
19 tamper with, remove, obstruct, or interfere with an aid to navigation or  
20 regulatory marker established under this chapter.

21 ARTICLE 6. PORT ADMINISTRATION.

22 Sec. 30.15.250. SELECTION OF PORT ADMINISTRATOR. (a) Where there  
23 is no municipal port administrator or other port officer or employee,  
24 the commission may

25 (1) appoint or employ a port administrator and the other  
26 employees essential to carry out the functions of the ports and harbors  
27 of this state, subject to regulations promulgated by the commission; or

28 (2) designate a municipal officer or employee as the port  
29 administrator.

1 (b) If the commission designates a port administrator under (a)(2)  
2 of this section, the commission, or its executive officer, shall consult  
3 with the governing body of the municipality regarding the port adminis-  
4 trator's designation, appointment, discipline, dismissal, position  
5 classification and pay plan and other matters relative to port adminis-  
6 tration that are subject to the direction of the port administrator.

7 Sec. 30.15.260. PORT ADMINISTRATOR; POWERS AND DUTIES. The chief  
8 administrator of a port shall be a port director, port superintendent,  
9 port captain, harbor master, or shall be designated by the commission by  
10 some other title appropriate to his duties under this chapter. The port  
11 administrator shall exercise those powers and perform those duties  
12 assigned by the commission and shall perform those duties imposed by  
13 state or federal law or regulation upon port directors, harbor masters,  
14 or other port administrators. The port administrator shall employ  
15 persons necessary to carry out port functions and, subject to the approv-  
16 al of the executive officer of the commission, shall establish position  
17 classifications, pay plans and provide for the suspension, discipline  
18 or dismissal of port employees.

19 ARTICLE 7. APPLICATION OF CHAPTER; MUNICIPAL REGULATIONS.

20 Sec. 30.15.270. APPLICATION OF CHAPTER. The provisions of this  
21 chapter and other related, applicable laws of the state, and regula-  
22 tions implementing them, govern the operation and management of any port  
23 or harbor, or port facility in, and the operation of any vessel in the  
24 waters of, the state, except as otherwise provided by this chapter.

25 Sec. 30.15.280. MUNICIPAL ORDINANCES, REGULATIONS. (a) The  
26 commission's jurisdiction and authority extend to a port, harbor or  
27 port facility operated by a municipality. If a conflict occurs between  
28 a provision of this chapter, or a regulation, permit, order, decision  
29 or other determination of the commission and a charter, ordinance,

1 regulation, permit, franchise, decision or other determination of a  
2 municipality, the provisions of this chapter, or a regulation, permit,  
3 order, decision or other determination of the commission prevails.

4 (b) However, nothing in this chapter may be construed to prevent  
5 a municipality from adopting any ordinance or regulation relating to  
6 the operation or management of, or marine traffic in, ports, harbors,  
7 or port facilities. A municipal ordinance or regulation may not con-  
8 flict with the provisions of this chapter, or the implementing regula-  
9 tions, and shall be submitted to the commission for its review before  
10 adoption or at least 30 days before its effective date to ensure the  
11 maintenance of a system of uniform port, harbor and marine traffic  
12 regulations in the state. The commission, after a public hearing, may  
13 nullify municipal ordinances or regulations that conflict with this  
14 chapter.

15 Sec. 30.15.290. SPECIAL REGULATIONS. (a) The commission may  
16 promulgate special regulations with respect to the operation of any  
17 vessel on a body of water, or for any port, harbor or port facility,  
18 within the territorial limits of two or more municipalities

19 (1) where no special regulations appropriate to the situa-  
20 tion exist; or

21 (2) when required to establish uniformity essential for the  
22 safe operation of vessels, or of the port, harbor or port facilities.

23 (b) A municipality may at any time, but only after public notice,  
24 make formal application to the commission for special regulations that  
25 would vary from those promulgated by the commission with reference to  
26 the operation of vessels on the waters, or the ports, harbors, or port  
27 facilities, within its territorial limits and shall set out the reasons  
28 which make the special regulations necessary or appropriate.

29 Sec. 30.15.300. EMERGENCY REGULATIONS. A municipality may adopt  
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1 emergency ordinances or regulations that are not in conflict with the  
2 provisions of this chapter, or the implementing regulations, relating  
3 to the operation of vessels, ports, harbors and port facilities, if  
4 these regulations are required to insure the safety of persons and  
5 property because of disaster or other public calamity. These emergency  
6 regulations shall become effective immediately upon adoption and may  
7 remain in effect for not more than 60 days thereafter. Upon submission  
8 of these emergency regulations to the commission, the commission may  
9 authorize the municipality to make the emergency regulations effective  
10 for a period of time greater than 60 days as is necessary in view of  
11 the disaster, calamity or other relevant circumstances.

12 ARTICLE 8. ENFORCEMENT.

13 Sec. 30.15.310. AUTHORITY TO ENTER, STOP AND BOARD. Members of  
14 the commission, or its designated employees, every peace officer and  
15 municipal port officer or designated employee, shall enforce the pro-  
16 visions of this chapter and the implementing regulations and may stop  
17 and board a vessel or enter a port, harbor or the premises of any port  
18 facility subject to this chapter to inspect or determine compliance  
19 with this chapter and the implementing regulations. Commission members,  
20 or designated employees, peace officers or municipal port officers and  
21 designated employees may issue a summons for appearance before the  
22 commission, in a court or before a magistrate for all violations of this  
23 chapter, or the implementing regulations. Commission vessels shall be  
24 marked to identify them as enforcement vessels.

25 Sec. 30.15.320. VESSELS REQUIRED TO COOPERATE, STOP AND LIE TO.  
26 Every vessel subject to this chapter, if underway and lawfully ordered  
27 to stop, upon being hailed by a peace officer, or person designated to  
28 enforce the provisions of this chapter, or the implementing regulations,  
29 shall stop immediately and lay to or shall permit the peace officer or

1 other designated person to come aboard.

2 Sec. 30.15.330. HARBOR POLICE. (a) On recommendation of the  
3 commission, and subject to the approval of the governor, the commis-  
4 sioner of public safety may create a division of harbor police, or a  
5 harbor police enforcement unit in the division of state troopers, in  
6 the Department of Public Safety to enforce the provisions of this  
7 chapter and the implementing regulations.

8 (b) Municipalities may employ harbor policemen.

9 (c) Harbor police have the powers of a peace officer.

10 (d) Every harbor policeman who is on duty for the purpose of  
11 enforcing the provisions of this chapter, the implementing regulations,  
12 or comparable municipal ordinances or regulations, shall wear a full,  
13 distinctive uniform and, if he uses a vessel, the vessel shall be  
14 painted a distinctive color and appropriately marked as specified by the  
15 commission by regulation to identify it as a harbor police vessel.

16 Sec. 30.15.340. ENFORCEMENT OFFICERS. Every peace officer, and  
17 every person designated by the commission to enforce the provisions of  
18 this chapter, or the implementing regulations, may

19 (1) arrest on view for a violation of this chapter, or the  
20 implementing regulations;

21 (2) execute all warrants and search warrants for violations  
22 of this chapter, and the implementing regulations;

23 (3) serve subpoenas issued for the examination, investiga-  
24 tion, and trial of all offenses in violation of this chapter, or  
25 implementing regulations;

26 (4) board vessels in use to examine documents, safety  
27 equipment and search without warrant a vessel which is not at its  
28 regular mooring or berth, when he believes that this chapter, or the  
29 implementing regulations relating to marine traffic or port operation

1 and management has been violated;

2 (5) detain the vessel and arrest the operator of a stolen  
3 vessel or one that is in violation of this chapter, or the implementing  
4 regulations;

5 (6) enter upon any land or water in the performance of his  
6 duty;

7 (7) demand and secure proper assistance in case of emergency.

8 ARTICLE 9. PENALTIES.

9 Sec. 30.15.350. INJUNCTIVE RELIEF. A person may be enjoined by  
10 the superior court from committing a violation of a provision of this  
11 chapter, or the implementing regulations.

12 Sec. 30.15.360. CIVIL PENALTIES. (a) In addition to all other  
13 penalties, sanctions and remedies provided by law, every person subject  
14 to the provisions of this chapter, and the implementing regulations,  
15 as well as their officers, managers, agents or employees, that either  
16 violates, procures, aids or abets the violation of any provision of this  
17 chapter, or of the implementing regulations, an order issued under them,  
18 is subject to a maximum penalty of \$10,000 for each violation.

19 (b) No penalty may be assessed unless the commission first issues  
20 an order to show cause why the penalty should not be levied. The order  
21 shall describe the violation with reasonable particularity and designate  
22 the maximum penalty which may be assessed for the violation. The order  
23 shall be served on the alleged violator named in the order. The order  
24 shall state a time and place for the hearing.

25 (c) After a hearing the commission shall enter its findings of  
26 fact and final order which shall state when the penalties, if any, are  
27 payable. A final order of the commission is appealable under the  
28 Administrative Procedure Act (AS 44.62).

29 Sec. 30.15.370. ACTIONS TO RECOVER PENALTIES. (a) Actions to

1 recover penalties under this chapter shall be brought by the attorney  
2 general in a court of competent jurisdiction.

3 (b) All penalties recovered under the provisions of this chapter  
4 shall be paid to the commission and deposited by it in the general  
5 fund. However, damages and penalties recovered under this chapter for  
6 violations occurring within the territorial limits of a municipal port,  
7 harbor or port facility shall be divided equally between the municipal-  
8 ity and the state; the state portion shall be paid to the commission  
9 and deposited by it in the general fund.

10 Sec. 30.15.380. CRIMINAL SANCTIONS. (a) A person convicted of  
11 reckless or negligent operation of a vessel or of operating a vessel  
12 while under the influence of intoxicating liquor, narcotic, depressant,  
13 stimulant or hallucinogenic drugs is punishable under (b) of this  
14 section and, in addition to the other penalties provided by this  
15 chapter, or other provisions of law,

16 (1) may be prohibited by the court having jurisdiction of  
17 the violation from operating a vessel on the waters of this state for a  
18 period of not more than three years; and

19 (2) if he holds a valid marine pilot's license under  
20 AS 08.62, may have that license suspended for a period of not more than  
21 three years, or revoked, by the court or by the Board of Marine Pilots.

22 (b) A person who violates secs. 240 and 320 of this chapter,  
23 and (a) of this section, is upon conviction for the first offense,  
24 guilty of a misdemeanor and is punishable by a fine of at least \$100  
25 but not more than \$500, or by imprisonment for a period of not more  
26 than six months, or by both. Upon conviction for a second offense, a  
27 person is guilty of a felony and is punishable by a fine of at least  
28 \$500 but not more than \$1,000, or by imprisonment for a period of not  
29 more than one year, or by both. Upon conviction of a third and any

1 subsequent offense, a person is guilty of a felony and is punishable by  
2 a fine of at least \$1,000 but not more than \$5,000, or by imprisonment  
3 for a period of not more than three years, or by both.

4 Sec. 30.15.390. EACH VIOLATION A SEPARATE OFFENSE. Each violation  
5 of a provision of this chapter, an implementing regulation, or an order  
6 issued under them, is a separate and distinct offense and, in case of  
7 a continuing violation, each day the violation continues constitutes a  
8 separate offense.

9 Sec. 30.15.400. PENALTIES CUMULATIVE. (a) All penalties imposed  
10 under this chapter are cumulative.

11 (b) An action to recover a civil penalty is not a bar to an  
12 enforcement proceeding to require compliance, or to any other remedy  
13 or sanction provided by this chapter.

14 Sec. 30.15.410. JOINDER OF ACTIONS. Under the applicable court  
15 rules, appeals from orders of the commission, and actions for recovery  
16 of penalties may be joined. The court may in the interests of justice  
17 separate the actions.

18 Sec. 30.15.420. PRIVATE CAUSE OF ACTION. (a) A person subjected  
19 to an unlawful rate, price, service, or practice, in violation of this  
20 chapter, may sue in a state court of appropriate jurisdiction for  
21 damages resulting from the unlawful rate, price, service, or practice.

22 (b) If the violation described in (a) of this section resulted in  
23 the overcharge of rate or price, the person paying the unlawful rate  
24 or price is entitled to recover as damages at least triple the amount  
25 of the overcharge.

26 (c) A person recovering damages under this section is entitled  
27 to a reasonable attorney fee, fixed by the court, to be taxed and col-  
28 lected as costs of the suit.

29 ARTICLE 10. GENERAL, MISCELLANEOUS PROVISIONS.

1           Sec. 30.15.430. EXPENSES OF INVESTIGATION OR HEARING. After com-  
2 pletion of a hearing or investigation held under this chapter, the  
3 commission shall allocate the costs of the hearing or investigation  
4 among the parties, including the commission, as is just under the cir-  
5 cumstances. The costs allocated may include the costs of any time  
6 devoted to the investigation or hearing by hired consultants, whether  
7 or not the consultants appear as witnesses or participants. The  
8 commission shall provide an opportunity for any person objecting to an  
9 allocation to be heard before the allocation becomes final.

10           Sec. 30.15.440. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a)  
11 The administrative adjudication procedures of the Administrative  
12 Procedure Act (AS 44.62) do not apply to the adjudicatory, licensing,  
13 permit granting or rate fixing proceedings of the commission. However,

14           (1) final administrative determinations or orders by the  
15 commission are subject to judicial review under that Act;

16           (2) commission hearings shall be held only after at least  
17 10 days public notice, unless it is an emergency hearing, and they shall  
18 be held at a place most convenient for those interested in the subject  
19 of the hearing;

20           (3) a commissioner who has not heard the testimony or argu-  
21 ment may not participate in making a decision of the commission.

22           (b) The Administrative Procedure Act applies to regulations  
23 promulgated by the commission.

24           Sec. 30.15.450. COMPREHENSIVE SAFETY AND EDUCATIONAL PROGRAM. The  
25 commission may inaugurate a comprehensive vessel or port safety and  
26 educational program, and seek the cooperation of vessel operators,  
27 owners, port administrators and employees, the departments and agencies  
28 of the state, other states and the federal government. The commission  
29 may issue certificates to persons who complete courses in vessel or

1 port safety education.

2 Sec. 30.15.460. ANNUAL REPORT. The commission shall prepare and  
3 publish an annual report reviewing its work and submit it to the  
4 governor and the legislature not later than the first day each regular  
5 session of the legislature convenes. The report may include recommen-  
6 dations for the enactment of appropriate legislation.

7 Sec. 30.15.470. DEFINITIONS. In this chapter, unless the context  
8 requires otherwise:

9 (1) "aids to navigation" means buoys, beacons or other fixed  
10 objects in the water which are used to mark obstructions to navigation  
11 or to direct navigation through safe channels;

12 (2) "commission" means the Alaska State Port Commission;

13 (3) "commissioners" means members of the Alaska State Port  
14 Commission;

15 (4) "department" means the Department of Commerce;

16 (5) "motorboat" means any vessel not more than 65 feet in  
17 length propelled by machinery whether or not the machinery is the  
18 principal source of propulsion;

19 (6) "municipality" means a general law municipal corporation  
20 and political subdivision, which is a first or second class borough or  
21 city, or a third class borough, incorporated under the laws of the state,  
22 including a home rule first class borough or city, or a unification of  
23 these;

24 (7) "operate" means to navigate or otherwise use a vessel;

25 (8) "operator" means the person who operates or has charge of  
26 the navigation or use of a vessel;

27 (9) "owner" means a person, other than a lien holder, having  
28 the property in or title to a vessel; the term includes a person  
29 entitled to the use or possession of a vessel subject to an interest of

1 another person reserved or created by agreement and securing payment or  
2 performance of an obligation, but the term excludes a lessee under a  
3 lease not intended as security;

4 (10) "port facilities" means docks, landings, dolphins,  
5 wharves, bulkheads, seawalls, landfills, breakwaters or jetties,  
6 administration buildings, warehouses or other storage facilities for  
7 the handling and processing of freight or cargo, staging areas, transfer  
8 spans and aprons, lifting equipment and similar structures together  
9 with the necessary equipment and transfer, transportation or terminal  
10 facilities, or any combination of these, required to accommodate  
11 waterborne commerce and shipping, including but not limited to combined  
12 port and ferry terminal facilities;

13 (11) "regulatory markers" means an anchored or fixed marker in or  
14 on the water or sign on the shore or on the bridge over the water or at  
15 any port or harbor facilities other than aids to navigation and includes  
16 but is not limited to bathing markers, speed zone markers, information  
17 markers, danger zone markers, vessel keep out markers, and mooring  
18 buoys;

19 (12) "vessel" means every description of watercraft, other  
20 than a seaplane on the water, used or capable of being used as a means  
21 of transportation on water;

22 (13) "waters of the state" means the waters within the terri-  
23 torial limits of this state, and the marginal sea adjacent to this  
24 state, and as defined in AS 44.03.

25 Sec. 30.15.480. SHORT TITLE. This chapter may be cited as the  
26 Alaska Ports, Harbors and Navigable Waterways Act.

27 \* Sec. 2. AS 01.10.060(6) is amended to read:

28 (6) "peace officer" means any officer of the state troopers  
29 including harbor police, members of the police force of any incorporated

1 city or borough, United States marshals and their deputies, and other  
2 officers whose duty it is to enforce and preserve the public peace;

3 \* Sec. 3. AS 08.62.010 is amended to read:

4 Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. There is  
5 created the Board of Marine Pilots, as a division of the Alaska State  
6 Port Commission. It consists of two pilots licensed under this chapter  
7 who have been actively engaged in piloting on vessels subject to this  
8 chapter, two agents or managers of vessels subject to this chapter, and  
9 the commissioner or his designee. Not more than one pilot and one  
10 agent or manager shall be from any one judicial district. All members  
11 of the board shall be residents of the state.

12 \* Sec. 4. AS 08.62 is amended by adding a new section to read:

13 Sec. 08.62.210. SHORT TITLE. This chapter may be cited as the  
14 "Alaska Pilotage Act."

15 \* Sec. 5. AS 30.30.020, as proposed by sec. 1 of Senate Bill No. 350  
16 and House Bill No. 587 (Eighth Legislature, Second Session), Acts "providing  
17 for state assistance in the construction of port facilities; and providing  
18 for an effective date", is amended by adding a new subsection to read:

19 (c) No grant may be awarded under this chapter until the appli-  
20 cation is reviewed and a permit granted for the port facilities develop-  
21 ment project by the Alaska State Port Commission under AS 30.15.140 -  
22 30.15.160. The commission shall determine if the proposed port facilities  
23 development project conforms to the comprehensive master or general  
24 plan for port facilities development adopted by the commission.

25 \* Sec. 6. AS 39.25.110 is amended by adding a new paragraph to read:

26 (14) the members and executive officer of the Alaska State  
27 Port Commission.

28 \* Sec. 7. If at any time, legislation is enacted creating a Department  
29 of Transportation including but not limited to the existing Department of

1 Highways, and the division of marine transportation and the division of  
2 aviation of the Department of Public Works, then the Alaska State Port  
3 Commission, its members, officers and employees, its property and its port,  
4 harbor and waterways enforcement duties and responsibilities shall be trans-  
5 ferred from the Department of Commerce to the Department of Transportation.

6 \* Sec. 8. This Act takes effect January 1, 1975.

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