

1 IN THE HOUSE

BY SPECKING

2 HOUSE BILL NO. 33

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST 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 20. PORTS, HARBORS AND NAVIGABLE WATERWAYS.

12 ARTICLE 1. DECLARATION OF POLICY.

13 Sec. 30.20.010. 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. 30.20.020. 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. 30.20.030. 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. 30.20.040. 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. 30.20.050. 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. 30.20.060. 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. 30.20.070. 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. 30.20.080. 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. 30.20.090. 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. 30.20.100. 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. 30.20.110. 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. 30.20.120. COMMISSION'S GEOGRAPHIC JURISDICTION. The commis-  
18 sion has jurisdiction, supervision and control of all ports, deepwater  
19 ports, harbors, navigable coastal, inside coastal, and other public  
20 waterways of the state, including tidal, tidewater and submerged  
21 tidelands, except those transferred to a municipality or other person,  
22 within the boundaries of the state. However, the commission's juris-  
23 diction, supervision and control does not extend to areas which are  
24 under the exclusive control of

- 25 (1) the United States; or  
26 (2) a municipality, except as provided in this chapter.

27 Sec. 30.20.130. 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) issue subpoenas, administer oaths, hold hearings and
- 4 conduct investigations;
- 5 (5) accept grants or loans from, and contract with, agencies
- 6 or departments of the federal government, the state, or its political
- 7 subdivisions, to comply with the provisions of federal and state programs,
- 8 policies, procedures, directives or regulations;
- 9 (6) authorize the disbursement of money.

10 (b) Collection and deposit of fees, service charges, civil penal-

11 ties, or income from any source shall be in accordance with AS 37.05

12 and 37.10. Contracts for the purchase, sale or transfer of any interest

13 in real property may be executed only after approval of the department

14 of law.

15 ARTICLE 4. PORTS, HARBORS AND PORT FACILITIES.

16 Sec. 30.20.140. COMPREHENSIVE MASTER OR GENERAL PLAN. (a) After

17 conducting public hearings throughout the state, the commission shall

18 prepare, adopt, publish and maintain a comprehensive master or general

19 plan for the development of ports, harbors and port facilities in the

20 state.

21 (b) The commission shall review and make recommendations to the

22 commissioner of public works concerning applications for state port

23 facilities grants under AS 30.15 to determine if the proposed port

24 facilities development project conforms to the master or general plan

25 adopted under (a) of this section.

26 Sec. 30.20.150. REGULATION OF PORTS AND HARBORS; MARINE TRAFFIC;

27 TERMINAL AND TRANSPORTATION FACILITIES. (a) The commission shall regu-

28 late the manner in which ports, harbors and port terminal or other

29 transportation facilities are operated in order to insure the safety

1 and accommodation of the public. The commission shall promulgate  
2 regulations to implement this section which shall be compatible with  
3 federal statutes or regulations issued by a federal department or agency.

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

10 Sec. 30.20.160. PORT FACILITIES, TERMINAL, TRANSPORTATION FACILI-  
11 TIES OPERATION; PERMIT REQUIRED. (a) All lessees, owners or occupants  
12 of property in the state who wish to construct or operate a port,  
13 harbor or port facility, including but not limited to a freight or  
14 cargo terminal or other transportation facility in any port or harbor  
15 of this state, shall apply to the commission for a permit. Application  
16 for a permit shall be made in accordance with regulations promulgated  
17 by the commission and shall be accompanied by a plan for the proposed  
18 construction or operation which meets the standards provided in the  
19 comprehensive master or general plan for port facilities development  
20 prepared, adopted and published under sec. 140 of this chapter.

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

1 (c) The commission may issue port facility, terminal and trans-  
2 portation permits on those terms and conditions, and for the duration,  
3 it considers appropriate for the safe and efficient use of the port or  
4 harbor and to ensure that adequate port, terminal and transportation  
5 facilities will be continuously provided in the port or harbor. No  
6 construction or operation may be begun or carried on without a permit  
7 issued by the commission.

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

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

17 Sec. 30.20.170. INVESTIGATION OF PERMIT HOLDER; SUSPENSION;  
18 CANCELLATION. The commission may inquire into the manner in which obli-  
19 gations under permits issued by it are carried out, and into the rate  
20 schedules and practices of the permit holders to determine whether the  
21 provisions of the permits are being complied with. The commission shall  
22 have access to books and records, and to the terminal and transportation  
23 facilities that may be necessary to enable it to make this determina-  
24 tion. Should the commission at any time find that a permit holder is  
25 not complying with the terms of its permit, it may suspend or cancel  
26 the permit upon notice and hearing, in accordance with the procedure it  
27 prescribes by regulation.

28 Sec. 30.20.180. FIXING RATES, CHARGES, CLASSIFICATIONS FOR USE  
29 OF PORT TERMINAL OR TRANSPORTATION FACILITIES. The commission shall

1 fix the rates, fees, charges and classifications to be charged for the  
2 use of facilities, goods or services provided by the state in those  
3 port facilities it owns or operates. These rates, fees, charges and  
4 classifications shall be just and reasonable, and shall be published  
5 before and following a hearing in the manner required by law, or as  
6 prescribed by the commission by regulation, and shall be final unless  
7 appealed in the manner prescribed under the Administrative Procedure  
8 Act (AS 44.62).

9       Sec. 30.20.190. STATE PORT FACILITIES. The commission may acquire,  
10 construct, purchase or lease and operate and maintain port facilities  
11 subject to the provisions of this chapter. Where practicable, the com-  
12 mission shall construct, operate and maintain these state port facili-  
13 ties in conjunction with state ferry terminal facilities operated and  
14 maintained under AS 19.60.

15       Sec. 30.20.200. DEEPWATER PORT FACILITIES. The commission is the  
16 exclusive state agency to make application to the appropriate federal  
17 department or agency for a license to own, construct and operate a deep-  
18 water port facility under applicable federal law and regulations. Not-  
19 withstanding any contrary provisions of secs. 270 - 300 of this chapter  
20 or any municipal ordinance or charter, no municipality may apply for a  
21 license to own, construct or operate a deepwater port facility, and any  
22 existing ordinance or charter adopted by the governing body of a munici-  
23 pality that relates to deepwater port facilities is superseded and the  
24 enactment of future ordinances or charters that provide otherwise is  
25 prohibited.

26       Sec. 30.20.210. FOREIGN TRADE ZONES. The commission may apply to  
27 the United States for permission to establish, operate and maintain  
28 foreign trade zones in any port or harbor in the state.

29                   ARTICLE 5. NAVIGATION; PILOT RULES

1 AND WATERWAY MARKING SYSTEM.

2 Sec. 30.20.220. PILOT RULES, OTHER MARINE TRAFFIC REGULATIONS.

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

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

13 Sec. 30.20.230. UNIFORM NAVIGATIONAL MARKINGS. The commission  
14 shall promulgate regulations for the uniform navigational marking of  
15 the waters of the state through the placement of aids to navigation and  
16 regulatory markers. The regulations shall establish a marking system  
17 compatible with the system of aids to navigation prescribed by the United  
18 States Coast Guard. No person or municipality may mark or obstruct the  
19 waters of this state in any manner that will endanger the operation of  
20 watercraft or conflict with the marking system prescribed by the commis-  
21 sion.

22 Sec. 30.20.240. VIOLATION OF PILOT RULES, MARINE TRAFFIC REGULA-  
23 TIONS OR INTERFERENCE WITH AIDS TO NAVIGATION, REGULATORY MARKERS. (a)  
24 It is unlawful for a person to operate a vessel on the waters of this  
25 state in a manner other than that prescribed or permitted by the pilot  
26 rules or marine traffic regulations or by regulatory markers.

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

1 ARTICLE 6. PORT ADMINISTRATION.

2 Sec. 30.20.250. SELECTION OF PORT ADMINISTRATOR. (a) Where there  
3 is no municipal port administrator or other port officer or employee,  
4 the commission may

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

8 (2) designate a municipal officer or employee as the port  
9 administrator.

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

16 Sec. 30.20.260. PORT ADMINISTRATOR; POWERS AND DUTIES. The chief  
17 administrator of a port shall be a port director, port superintendent,  
18 port captain, harbormaster, or shall be designated by the commission by  
19 some other title appropriate to his duties under this chapter. The port  
20 administrator shall exercise those powers and perform those duties  
21 assigned by the commission and shall perform those duties imposed by  
22 state or federal law or regulation upon port directors, harbormasters,  
23 or other port administrators. The port administrator shall employ  
24 persons necessary to carry out port functions and, subject to the approv-  
25 al of the executive officer of the commission, shall establish position  
26 classifications, pay plans and provide for the employment, suspension,  
27 discipline or dismissal of port employees.

28 ARTICLE 7. APPLICATION OF CHAPTER;  
29 MUNICIPAL ORDINANCES, REGULATIONS.

1           Sec. 30.20.270. APPLICATION OF CHAPTER. The provisions of this  
2 chapter and other related, applicable laws of the state, and regula-  
3 tions implementing them, govern the operation and management of any port  
4 or harbor, or port facility in, and the operation of any vessel in the  
5 waters of, the state, except as otherwise provided by this chapter.

6           Sec. 30.20.280. MUNICIPAL ORDINANCES, REGULATIONS. (a) The  
7 commission's jurisdiction and authority extend to a port, harbor or  
8 port facility operated by a municipality. If a conflict occurs between  
9 a provision of this chapter, or a regulation, permit, order, decision  
10 or other determination of the commission and a charter, ordinance,  
11 regulation, permit, franchise, decision or other determination of a  
12 municipality, the provisions of this chapter, or a regulation, permit,  
13 order, decision or other determination of the commission prevails.

14           (b) However, nothing in this chapter may be construed to prevent  
15 a municipality from adopting any ordinance or regulation relating to  
16 the operation or management of, or marine traffic in, ports, harbors,  
17 or port facilities. A municipal ordinance or regulation may not con-  
18 flict with the provisions of this chapter, or the implementing regula-  
19 tions, and shall be submitted to the commission for its review before  
20 adoption or at least 30 days before its effective date to ensure the  
21 maintenance of a system of uniform port, harbor and marine traffic  
22 regulations in the state. The commission, after a public hearing, may  
23 nullify municipal ordinances or regulations that conflict with this  
24 chapter.

25           Sec. 30.20.290. SPECIAL REGULATIONS. (a) The commission may  
26 promulgate special regulations with respect to the operation of any  
27 vessel on a body of water, or for any port, harbor or port facility,  
28 within the territorial limits of two or more municipalities

29           (1) where no special regulations appropriate to the

1 situation exist; or

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

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

10 Sec. 30.20.300. EMERGENCY REGULATIONS. A municipality may adopt  
11 emergency ordinances or regulations that are not in conflict with the  
12 provisions of this chapter, or the implementing regulations, relating  
13 to the operation of vessels, ports, harbors and port facilities, if  
14 these regulations are required to insure the safety of persons and  
15 property because of disaster or other public calamity. These emergency  
16 regulations become effective immediately upon adoption and may remain  
17 in effect for not more than 60 days thereafter. Upon submission of  
18 these emergency regulations to the commission, the commission may  
19 authorize the municipality to make the emergency regulations effective  
20 for a period of time greater than 60 days as is necessary in view of  
21 the disaster, calamity or other relevant circumstances.

22 ARTICLE 8. ENFORCEMENT.

23 Sec. 30.20.310. AUTHORITY TO ENTER, STOP AND BOARD. Members of  
24 the commission, or its designated employees, every peace officer and  
25 municipal port officer or designated employee, shall enforce the pro-  
26 visions of this chapter and the implementing regulations and may stop  
27 and board a vessel or enter a port, harbor or the premises of any port  
28 facility subject to this chapter to inspect or determine compliance  
29 with this chapter and the implementing regulations. Commission members,

1 or designated employees, peace officers or municipal port officers and  
2 designated employees may issue a summons for appearance before the  
3 commission, in a court or before a magistrate for all violations of this  
4 chapter, or the implementing regulations. Commission vessels shall be  
5 marked to identify them as enforcement vessels.

6 Sec. 30.20.320. VESSELS REQUIRED TO COOPERATE, STOP AND LIE TO.  
7 Every vessel subject to this chapter, if underway and lawfully ordered  
8 to stop, upon being hailed by a peace officer, or person designated to  
9 enforce the provisions of this chapter, or the implementing regulations,  
10 shall stop immediately and lie to or shall permit the peace officer or  
11 other designated person to come aboard.

12 Sec. 30.20.330. HARBOR POLICE. (a) On recommendation of the  
13 commission, and subject to the approval of the governor, the commis-  
14 sioner of public safety may create a division of harbor police, or a  
15 harbor police enforcement unit in the division of state troopers, in  
16 the Department of Public Safety to enforce the provisions of this  
17 chapter and the implementing regulations.

18 (b) Municipalities may employ harbor policemen.

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

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

26 Sec. 30.20.340. ENFORCEMENT OFFICERS. Every peace officer, and  
27 every person designated by the commission to enforce the provisions of  
28 this chapter, or the implementing regulations, may

29 (1) arrest on view for a violation of this chapter, or the

1 implementing regulations;

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

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

7 (4) board vessels in use to examine documents, safety  
8 equipment and search without warrant a vessel which is not at its  
9 regular mooring or berth, when he believes that this chapter, or the  
10 implementing regulations relating to marine traffic or port operation  
11 and management has been violated;

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

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

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

18 ARTICLE 9. PENALTIES.

19 Sec. 30.20.350. INJUNCTIVE RELIEF. A person may be enjoined by  
20 the superior court from committing a violation of a provision of this  
21 chapter, or the implementing regulations.

22 Sec. 30.20.360. CIVIL PENALTIES. (a) In addition to all other  
23 penalties, sanctions and remedies provided by law, every person subject  
24 to the provisions of this chapter, and the implementing regulations,  
25 as well as their officers, managers, agents or employees, that either  
26 violates, procures, aids or abets the violation of any provision of this  
27 chapter, or of the implementing regulations, an order issued under them,  
28 is subject to a maximum penalty of \$10,000 for each violation.

29 (b) No penalty may be assessed unless the commission first issues

1 an order to show cause why the penalty should not be levied. The order  
2 shall describe the violation with reasonable particularity and designate  
3 the maximum penalty which may be assessed for the violation. The order  
4 shall be served on the alleged violator named in the order. The order  
5 shall state a time and place for the hearing.

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

10 Sec. 30.20.370. ACTIONS TO RECOVER PENALTIES. (a) Actions to  
11 recover penalties under this chapter shall be brought by the attorney  
12 general in a court of competent jurisdiction.

13 (b) All penalties recovered under the provisions of this chapter  
14 shall be paid to the commission and deposited by it in the general  
15 fund. However, damages and penalties recovered under this chapter for  
16 violations occurring within the territorial limits of a municipal port,  
17 harbor or port facility shall be divided equally between the municipal-  
18 ity and the state; the state portion shall be paid to the commission  
19 and deposited by it in the general fund.

20 Sec. 30.20.380. CRIMINAL SANCTIONS. (a) A person convicted of  
21 reckless or negligent operation of a vessel or of operating a vessel  
22 while under the influence of intoxicating liquor, narcotic, depressant,  
23 stimulant or hallucinogenic drugs is punishable under (b) of this  
24 section and, in addition to the other penalties provided by this  
25 chapter, or other provisions of law,

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

29 (2) if he holds a valid marine pilot's license under

1 AS 08.62, may have that license suspended for a period of not more than  
2 three years, or revoked, by the court or by the Board of Marine Pilots.

3 (b) A person who violates secs. 240 and 320 of this chapter,  
4 and (a) of this section, upon conviction for the first offense, is  
5 guilty of a misdemeanor and is punishable by a fine of at least \$100  
6 but not more than \$500, or by imprisonment for a period of not more  
7 than six months, or by both. Upon conviction for a second offense, a  
8 person is guilty of a misdemeanor and is punishable by a fine of at  
9 least \$500 but not more than \$1,000, or by imprisonment for a period  
10 of not more than one year, or by both. Upon conviction of a third and  
11 any subsequent offense, a person is guilty of a felony and is punish-  
12 able by a fine of at least \$1,000 but not more than \$5,000, or by  
13 imprisonment for a period of not more than three years, or by both.

14 Sec. 30.20.390. EACH VIOLATION A SEPARATE OFFENSE. Each violation  
15 of a provision of this chapter, an implementing regulation, or an order  
16 issued under them, is a separate and distinct offense and, in case of  
17 a continuing violation, each day the violation continues constitutes a  
18 separate offense.

19 Sec. 30.20.400. PENALTIES CUMULATIVE. (a) All penalties imposed  
20 under this chapter are cumulative.

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

24 Sec. 30.20.410. JOINDER OF ACTIONS. Under the applicable court  
25 rules, appeals from orders of the commission, and actions for recovery  
26 of penalties may be joined. The court may in the interests of justice  
27 separate the actions.

28 Sec. 30.20.420. PRIVATE CAUSE OF ACTION. (a) A person subjected  
29 to an unlawful rate, price, service, or practice, in violation of this

1 chapter, may sue in a state court of appropriate jurisdiction for  
2 damages resulting from the unlawful rate, price, service, or practice.

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

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

10 ARTICLE 10. GENERAL, MISCELLANEOUS PROVISIONS.

11 Sec. 30.20.430. EXPENSES OF INVESTIGATION OR HEARING. After com-  
12 pletion of a hearing or investigation held under this chapter, the  
13 commission shall allocate the costs of the hearing or investigation  
14 among the parties, including the commission, as is just under the cir-  
15 cumstances. The costs allocated may include the costs of any time  
16 devoted to the investigation or hearing by hired consultants, whether  
17 or not the consultants appear as witnesses or participants. The  
18 commission shall provide an opportunity for any person objecting to an  
19 allocation to be heard before the allocation becomes final.

20 Sec. 30.20.440. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a)  
21 The administrative adjudication procedures of the Administrative  
22 Procedure Act (AS 44.62) do not apply to the adjudicatory, licensing,  
23 permit granting or rate fixing proceedings of the commission. However,

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

26 (2) commission hearings shall be held only after at least  
27 10 days public notice, unless it is an emergency hearing, and they shall  
28 be held at a place most convenient for those interested in the subject  
29 of the hearing;

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

3 (b) The Administrative Procedure Act applies to regulations  
4 promulgated by the commission.

5 Sec. 30.20.450. COMPREHENSIVE SAFETY AND EDUCATIONAL PROGRAM. The  
6 commission may inaugurate a comprehensive vessel or port safety and  
7 educational program, and seek the cooperation of vessel operators,  
8 owners, port administrators and employees, the departments and agencies  
9 of the state, other states and the federal government. The commission  
10 may issue certificates to persons who complete courses in vessel or  
11 port safety education.

12 Sec. 30.20.460. ANNUAL REPORT. The commission shall prepare and  
13 publish an annual report reviewing its work and submit it to the  
14 governor and the legislature not later than the first day each regular  
15 session of the legislature convenes. The report may include recommen-  
16 dations for the enactment of appropriate legislation.

17 Sec. 30.20.470. DEFINITIONS. In this chapter, unless the context  
18 requires otherwise:

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

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

23 (3) "commissioners" means members of the Alaska State Port  
24 Commission;

25 (4) "deepwater port" means a fixed or floating man-made  
26 structure other than a vessel, or a group of these structures, located  
27 off the coast of the United States beyond the territorial waters of the  
28 state and which are used or intended for use as a port or terminal for  
29 the loading or unloading and further handling of oil or natural gas

1 for transportation to any state, and commonly known as "superports" or  
2 "mono-buoys"; the term includes all associated components and equipment,  
3 including pipelines, pumping stations, service platforms, mooring buoys  
4 and similar appurtenances to the extent they are located seaward of the  
5 high water mark;

6 (5) "department" means the Department of Commerce;

7 (6) "motorboat" means any vessel not more than 65 feet in  
8 length propelled by machinery whether or not the machinery is the  
9 principal source of propulsion;

10 (7) "municipality" means a home rule or general law borough  
11 or city including but not limited to a unified municipality organized  
12 under AS 29.68;

13 (8) "operate" means to navigate or otherwise use a vessel;

14 (9) "operator" means the person who operates or has charge of  
15 the navigation or use of a vessel;

16 (10) "owner" means a person, other than a lien holder, having  
17 the property in or title to a vessel; the term includes a person  
18 entitled to the use or possession of a vessel subject to an interest of  
19 another person reserved or created by agreement and securing payment or  
20 performance of an obligation, but the term excludes a lessee under a  
21 lease not intended as security;

22 (11) "port facilities" means docks, landings, dolphins,  
23 wharves, bulkheads, seawalls, landfills, breakwaters or jetties,  
24 administration buildings, warehouses or other storage facilities for  
25 the handling and processing of freight or cargo, staging areas, transfer  
26 spans and aprons, lifting equipment and similar structures together  
27 with the necessary equipment and transfer, transportation or terminal  
28 facilities, or any combination of these, required to accommodate  
29 waterborne commerce and shipping, including but not limited to combined

1 port and ferry terminal facilities;

2 (12) "regulatory markers" means an anchored or fixed marker  
3 in or on the water or sign on the shore or on the bridge over the  
4 water or at any port or harbor facilities other than aids to navigation  
5 and includes but is not limited to bathing markers, speed zone markers,  
6 information markers, danger zone markers, vessel keep out markers, and  
7 mooring buoys;

8 (13) "vessel" means every description of watercraft or other  
9 artificial contrivance, other than a seaplane on the water, used or  
10 capable of being used as a means of transportation on or through the  
11 water;

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

15 Sec. 30.20.480. SHORT TITLE. This chapter may be cited as the  
16 Alaska Ports, Harbors and Navigable Waterways Act.

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

18 (6) "peace officer" means any officer of the state troopers  
19 including harbor police, members of the police force of any incorporated  
20 city or borough, United States marshals and their deputies, and other  
21 officers whose duty it is to enforce and preserve the public peace;

22 \* Sec. 3. AS 30.15.020 is amended by adding a new subsection to read:

23 (c) No grant may be awarded under this chapter until the appli-  
24 cation is reviewed and a permit granted for the port facilities develop-  
25 ment project by the Alaska State Port Commission under AS 30.20.140 -  
26 30.20.160. The commission shall determine if the proposed port facilities  
27 development project conforms to the comprehensive master or general  
28 plan for port facilities development adopted by the commission.

29 \* Sec. 4. AS 39.25.110 is amended by adding a new paragraph to read:

1           (16) the members and executive officer of the Alaska State  
2 Port Commission.

3       \* Sec. 5. If at any time, legislation is enacted creating a Department  
4 of Transportation including but not limited to the existing Department of  
5 Highways, and the division of marine transportation and the division of  
6 aviation of the Department of Public Works, the Alaska State Port Commission,  
7 its members, officers and employees, its property and its port, harbor and  
8 waterways enforcement duties and responsibilities shall be transferred from  
9 the Department of Commerce to the Department of Transportation.

10       \* Sec. 6. This Act takes effect January 1, 1976.  
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