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1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 406

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to oil terminal facilities and the
7 marine transportation of crude oil, refined petroleum
8 products or their by-products; and providing for an
9 effective date."

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

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

12 CHAPTER 20. REGULATION OF TANK VESSEL TRAFFIC.

13 Sec. 30.20.010. POLICY AND PURPOSE. (a) Because of the danger of
14 spills, the legislature finds and declares that the marine transporta-
15 tion of crude oil, refined petroleum products or their by-products by
16 tankers or other carriers so engaged in the coastal waters and inside
17 coastal waters of the state creates a great potential hazard to impor-
18 tant natural resources of the state and to jobs and incomes dependent on
19 these resources. The legislature also recognizes that the state's
20 coastal and inside coastal waters are a relatively confined saltwater
21 environment with irregular shorelines and therefore there is a greater
22 than usual likelihood of long-term damage from a large oil discharge.
23 Certain areas of the state's coastal and inside coastal waters have
24 limited space for maneuvering large tank vessels engaged in the marine
25 transportation of crude oil, refined petroleum products or their by-
26 products. These waters also contain many natural obstacles and pheno-
27 mena and at certain times and places a high density of commercial,
28 fishing and pleasure boat traffic. Thus, it is important that large
29 tank vessels have sufficient capability for rapid maneuvering responses.

1 (b) It is also the purpose of this chapter to decrease the likeli-
2 hood of oil discharges in the coastal and inside coastal waters of the
3 state and its shorelines by requiring tank vessels engaged in the marine
4 transportation of crude oil, refined petroleum products or their by-
5 products to be equipped with certain safety and maneuvering capability
6 features and, if these vessels are above a certain size but lack these
7 features, to be escorted by tugs while navigating in the coastal and
8 inside coastal waters of the state.

9 Sec. 30.20.020. STANDARD SAFETY, MANEUVERABILITY FEATURES. (a) A
10 tank vessel engaged in the marine transportation of crude oil, refined
11 petroleum products or their by-products while navigating those portions
12 of the navigable coastal, inside coastal or other navigable waters of
13 the state prescribed by the department by regulation shall be equipped
14 or fitted with

15 (1) LORAN-C navigational system receivers and other position
16 location systems as may be prescribed from time to time by the depart-
17 ment by regulation;

18 (2) electronically controlled collision avoidance systems
19 where applicable to an appropriate vessel prescribed by the department
20 by regulation; and

21 (3) two radars of types prescribed by the department by regu-
22 lation in working order and operating.

23 (b) A tank vessel engaged in the marine transportation of crude
24 oil, refined petroleum products or their by-products of 40,000 dead-
25 weight tons or more, which lacks the following maneuverability and
26 stopping features, must be escorted by tugs with an aggregate shaft
27 horsepower equivalent to five per cent of the deadweight tons of that
28 tank vessel while navigating those portions of the navigable coastal,
29 inside coastal or other navigable waters of the state prescribed by the

1 department by regulation:

2 (1) lateral thrusters;

3 (2) controllable pitch propellers or astern horsepower equal
4 to 40 per cent of rated horsepower; and

5 (3) redundant boilers, an auxiliary propulsion source or
6 other backup equipment that the department may require by regulation to
7 provide for a vessel's safe operation if the primary equipment fails.

8 (c) However, the department may by regulation exempt a tank vessel
9 from the tug escort provisions of (b) of this section in certain ports,
10 harbors or navigable waters of the state or at certain times of the
11 year, as in the judgment of the department are dictated by meteorolo-
12 gical or oceanographic conditions.

13 Sec. 30.20.030. TANK VESSEL TRAFFIC REGULATIONS. (a) The depart-
14 ment shall adopt and maintain a comprehensive, uniform system of traffic
15 regulations for the operation of tank vessels engaged in the transporta-
16 tion of crude oil, refined petroleum products or their by-products in
17 the navigable waters of the state that may be required to implement the
18 provisions of this chapter and that are not in conflict with traffic
19 regulations contained in federal navigation laws or regulations promul-
20 gated by the United States Coast Guard.

21 (b) In adopting these regulations, the department may prescribe
22 the maximum and minimum speed for vessels subject to this chapter and
23 the weather conditions under which the movement of these vessels may be
24 prohibited.

25 (c) The department shall consult and cooperate with the United
26 States Coast Guard in the establishment, adoption, maintenance, adminis-
27 tration and enforcement of the traffic regulations adopted under this
28 chapter.

29 (d) The Administrative Procedure Act (AS 44.62) applies to regula-

1 tions adopted by the department under this chapter.

2 Sec. 30.20.040. ENFORCEMENT; PENALTIES. (a) This chapter and the
3 regulations adopted under it shall be enforced by a peace officer or an
4 employee of the department or other state agency authorized by the com-
5 missioner.

6 (b) An owner or operator of a tank vessel who violates a provision
7 of this chapter, or a regulation adopted under it, upon conviction is
8 guilty of a misdemeanor and is punishable by a fine of not less than
9 \$1,000 nor more than \$25,000, or by imprisonment for not more than one
10 year, or by both. Each day on which a violation occurs may be con-
11 sidered a separate and additional offense.

12 Sec. 30.20.050. INTERSTATE, FOREIGN COMPACTS, OTHER AGREEMENTS,
13 ARRANGEMENTS AUTHORIZED. Subject to the approval of the legislature or
14 of the Congress of the United States, as may be required under appli-
15 cable provisions of law, the governor may execute supplementary agree-
16 ments, reciprocal arrangements or compacts with any other state or with
17 a foreign government to implement the purposes of this chapter.

18 Sec. 30.20.080. DEFINITIONS. In this chapter

19 (1) "carrier" means a person who owns or who, for compensa-
20 tion, operates or otherwise provides a tank vessel engaged in, used or
21 capable of being used for, the marine transportation of crude oil,
22 refined petroleum products or their by-products on the waters of this
23 state;

24 (2) "commissioner" means the commissioner of environmental
25 conservation;

26 (3) "deadweight tons" or "DWT" means the difference in metric
27 tons between the lightweight displacement and the total displacement of
28 a vessel measured in water of specific gravity 1.025 at the load water-
29 line corresponding to the assigned summer freeboard;

1 (4) "department" means the Department of Environmental Con-
2 servation;

3 (5) "crude oil, refined petroleum products or their by-
4 products" means oil of any kind and in any form including, but not
5 limited to, petroleum, fuel oil, gasoline, lubricating oils, oily
6 sludge, oil refuse, oil mixed with other wastes, crude oils, liquified
7 natural gas, propane, butane or other liquid hydrocarbons regardless of
8 specific gravity;

9 (6) "operate" means to navigate or otherwise use a vessel
10 subject to the provisions of this chapter;

11 (7) "operator" means the person who operates or has charge of
12 the navigation or use of a vessel subject to the provisions of this
13 chapter;

14 (8) "owner" means a person, other than a lienholder, having
15 the property in or title to a vessel; the term includes a person en-
16 titled to the use or possession of a vessel subject to an interest of
17 another person reserved or created by agreement and securing payment or
18 performance of an obligation, but the term excludes a lessee under a
19 lease not intended as security;

20 (9) "tank vessel" means a self-propelled vessel that is
21 specially constructed or converted to carry liquid bulk cargo in tanks
22 and includes tankers, tankships and combination carriers when carrying
23 crude oil, petroleum products or their by-products in bulk; it does not
24 include vessels carrying crude oil, petroleum products or their by-
25 products in drums, barrels, or other packages, or vessels carrying crude
26 oil, petroleum products or their by-products as fuel or stores for that
27 vessel;

28 (10) "waters of the state" means the navigable coastal, inside
29 coastal and other navigable waters within the territorial limits of this

1 state, and the marginal sea adjacent to this state, as defined in
2 AS 44.03 and AS 46.03.900(22).

3 Sec. 30.20.090. SHORT TITLE. This chapter may be cited as the
4 Tank Vessel Traffic Regulation Act.

5 * Sec. 2. AS 30 is amended by adding a new chapter to read:

6 CHAPTER 25. OIL TERMINAL FACILITIES: TRANSFER
7 OF CRUDE OIL, REFINED PETROLEUM PRODUCTS OR THEIR BY-PRODUCTS.

8 Sec. 30.25.010. DECLARATION OF POLICY AND PURPOSE. (a) The
9 legislature finds and declares that the highest and best uses of the
10 seacoast of the state are as a source of public and private habitation
11 and recreation and as a source of public use and private commerce in
12 fishing and the gathering of other marine life used and useful in food
13 production and other commercial activities.

14 (b) The legislature further finds and declares that the preserva-
15 tion of these uses is a matter of the highest urgency and priority and
16 that these uses can only be served effectively by maintaining the
17 coastal and inside coastal waters, estuaries, wetlands, beaches and
18 public lands adjoining the seacoast in as close to existing condition as
19 possible taking into account multiple use accommodations necessary to
20 provide the broadest possible protection of public and private interests
21 with the least possible conflicts among these diverse uses.

22 (c) The legislature further finds and declares that the transfer
23 of crude oil, petroleum products or their by-products between vessels,
24 and between vessels and onshore or offshore facilities within the juris-
25 diction of the state is a hazardous undertaking. Spills, discharges and
26 escapes of crude oil, refined petroleum or their by-products that may
27 occur as a result of procedures involved in the transfer and storage of
28 these products pose threats of great danger and damage to the marine,
29 estuarine and adjacent terrestrial environment of the state, to owners

1 and users of shorefront property, to public and private recreation, to
2 residents of the state and other interests deriving livelihood from
3 fishing and other marine-related activities, and to the beauty of the
4 state's coastline. These spills have occurred frequently and present
5 future threats of potentially catastrophic proportions, all of which are
6 expressly declared to be inimical to the paramount interests of the
7 state as set out in this section. These state interests outweigh any
8 economic and liability burdens imposed by the legislature upon those
9 engaged in transferring crude oil, refined petroleum products or their
10 by-products and related activities.

11 (d) The legislature further finds and declares that the particular
12 marine environment of the state through which tank vessels engaged in
13 the marine transportation of crude oil, refined petroleum products or
14 their by-products will navigate is potentially more hazardous than other
15 maritime routes. The introduction of crude oil, refined petroleum pro-
16 ducts or their by-products into the marine environment of the state's
17 coastal and inside coastal waterways causes extreme damage to the
18 marine, estuarine and adjacent terrestrial environment lasting beyond
19 the visible existence of the spilled, discharged or escaped oil and is
20 potentially destructive of the valuable species of fish and shellfish
21 that are harvested in Alaskan waters.

22 (e) The legislature intends by the enactment of this legislation to

23 (1) exercise the police power of the state through the
24 Department of Environmental Conservation by conferring upon the depart-
25 ment the authority to deal with the hazards and threats of danger and
26 damage posed by these transfers and related activities and to encourage
27 and ensure cooperation with the United States Coast Guard and any other
28 state or federal department or agency;

29 (2) require, through the maximum practicable utilization of

1 contractual services, the prompt containment and removal of the pollu-
2 tion occasioned by oil spills;

3 (3) provide procedures whereby persons suffering damage from
4 these occurrences may be made whole promptly;

5 (4) establish a fund to provide for the inspection and super-
6 vision of oil transfer activities and guarantee the prompt cleanup of
7 oil spills and the payment of those costs; and

8 (5) to establish a system of regulation by requiring the
9 possession of a certificate of risk avoidance, the payment of risk
10 charges and the proof of financial responsibility by owners or operators
11 of oil terminal facilities and tank vessels engaged in the transporta-
12 tion or transfer of crude oil, refined petroleum products or their by-
13 products; the risk avoidance scheme is designed to provide incentives to
14 owners or operators of tank vessels engaged in the marine transportation
15 of crude oil, refined petroleum products or their by-products to incor-
16 porate safety and maneuvering capability features in those tank vessels
17 to reduce the risk that these vessels will release crude oil, refined
18 petroleum products or their by-products into the marine environment by
19 granting a reduction in the risk established under sec. 250 of this
20 chapter and by reducing requirements for proof of financial responsi-
21 bility under sec. 50 of this chapter.

22 (f) The legislature further finds and declares that the preserva-
23 tion of the public uses referred to in this section is of grave public
24 interest and concern to the state in promoting its general welfare,
25 promoting health and providing for the public safety, and that the
26 state's interest in the preservation of these interests outweighs any
27 burdens of strict liability imposed by the legislature upon those en-
28 gaged in transferring crude oil, refined petroleum products or their by-
29 products and related activities.

1 ARTICLE 2. REGULATION OF OIL TERMINAL FACILITIES, MARINE
2 CARRIERS; ISSUANCE OF CERTIFICATES OF RISK AVOIDANCE.

3 Sec. 30.25.020. POLLUTION AND CORRUPTION OF WATERS AND LANDS OF
4 THE STATE PROHIBITED. Except as provided in AS 46.03.740, the discharge
5 of crude oil, refined petroleum products or their by-products into or
6 upon any waters and lands of the state, as defined in AS 46.03.826(7),
7 is prohibited.

8 Sec. 30.25.030. AUTHORITY OF DEPARTMENT. (a) The authority of
9 the department under this chapter extends to the areas described in
10 sec. 20 of this chapter, and in AS 44.03.

11 (b) Certificates of risk avoidance required under this chapter
12 shall be obtained from and proof of financial responsibility shall be
13 submitted to the department subject to the terms and conditions pre-
14 scribed in this chapter and regulations adopted under it.

15 Sec. 30.25.040. OPERATION WITHOUT A CERTIFICATE PROHIBITED; APPLI-
16 CATION; PERIODIC INSPECTION. (a) No person may operate, or cause to be
17 operated in the state, an oil terminal facility used or capable of being
18 used in the transfer of crude oil, refined petroleum products or their
19 by-products without proof of financial responsibility submitted to, and
20 a certificate of risk avoidance issued by, the department under this
21 chapter.

22 (b) No person may operate, or cause to be operated, a tank vessel
23 engaged in the marine transportation of crude oil, refined petroleum
24 products or their by-products

25 (1) to or from oil terminal facilities located onshore in the
26 ports, harbors or elsewhere in the state;

27 (2) to or from deepwater port facilities located offshore in
28 the waters of the state; or

29 (3) through the waters of the state without proof of finan-

1 cial responsibility submitted to, and a certificate of risk avoidance
2 issued by, the department under this chapter.

3 (c) The department shall prohibit the loading or unloading of a
4 tank vessel subject to the provisions of this chapter, that does not
5 possess a certificate of risk avoidance or proof of financial responsi-
6 bility, or both the certificate and proof.

7 (d) Certificates of risk avoidance shall be issued on an annual
8 basis subject to those terms and conditions the department considers
9 necessary and prescribes by regulation to carry out the purposes of this
10 chapter.

11 (e) As a condition precedent to the issuance or renewal of a
12 certificate of risk avoidance the department shall require payment of an
13 annual risk charge established under sec. 250 of this chapter and sub-
14 mission of satisfactory evidence that the applicant has, or is in the
15 process of implementing state and federal plans and regulations for
16 control of pollution related to crude oil, refined petroleum products or
17 their by-products and the abatement of the pollution when a discharge
18 occurs.

19 (f) In addition to the evidence supplied under (d) of this sec-
20 tion, applicants for an oil terminal facility certificate shall demon-
21 strate that they can provide all necessary equipment, personnel and
22 supplies to prevent, contain, and remove discharges of oil and other
23 pollutants, and shall submit information to the department in a form
24 satisfactory to it, describing the following:

25 (1) the barrel or other measurement capacity of the terminal
26 facility;

27 (2) all containment and removal equipment, including but not
28 limited to vehicles, vessels, pumps, skimmers, booms, chemicals and
29 communications devices to which the facility has access, whether through

1 direct ownership or by contract or membership in an oil cleanup organi-
2 zation; and

3 (3) the terms of agreement and operation plan of any dis-
4 charge cleanup organization to which the owner or operator of the
5 terminal facility belongs.

6 (g) In addition to the evidence supplied under (e) and (f) of this
7 section, applicants for a marine carrier certificate shall demonstrate
8 that they can provide all necessary equipment, personnel and supplies to
9 prevent, contain, and remove discharges of oil and other pollutants, and
10 shall submit information to the department in a form satisfactory to it,
11 describing the following:

12 (1) the name and description of each tank vessel for which a
13 certificate is sought that is engaged in, used or capable of being used
14 by the carrier for the marine transportation of crude oil, refined
15 petroleum products or their by-products to and from onshore and offshore
16 oil terminal facilities in this state; the vessel description shall in-
17 clude, but is not limited to, the overall length, beam, draft, gross
18 tonnage, deadweight tonnage, net tonnage, and design capacity for trans-
19 porting crude oil, refined petroleum products or their by-products, and
20 a detailed statement as to the tank vessel's seaworthiness; the depart-
21 ment may, in addition, require that the carrier furnish a marine survey
22 of the tank vessel's condition;

23 (2) a projection of the number of visits each tank vessel
24 will make annually to or from an oil terminal facility in the state, or
25 through the waters of the state;

26 (3) all containment and removal equipment, including but not
27 limited to vehicles, vessels, pumps, skimmers, booms, chemicals, and
28 communication devices to which the carrier or the tank vessel has
29 access, whether through direct ownership or by contract or membership in

1 an approved discharge cleanup organization; and

2 (4) the terms of agreement and operation plan of any dis-
3 charge cleanup organization to which the carrier or the owner or opera-
4 tor of the tank vessel belongs.

5 (h) Upon showing of satisfactory containment and removal or
6 cleanup capability under this section, and upon payment of the annual
7 risk charge, the department shall issue the applicant a certificate of
8 risk avoidance for each terminal facility and related appurtenances or
9 for each tank vessel. In addition to the annual risk charge, the
10 department may assess a penalty for late applications and a fee for the
11 processing of an application for the issuance or renewal of a certi-
12 ficate of risk avoidance under this section. This fee shall be reason-
13 ably related to the administrative costs of verifying the data submitted
14 under (e), (f) and (g) of this section.

15 (i) Oil terminal facilities engaged in the transfer of, and
16 carriers engaged in the marine transportation of crude oil, refined
17 petroleum products or their by-products, that are applicants for, or are
18 holders of, a certificate of risk avoidance under this section are
19 subject to inspection by the department to ensure compliance with the
20 provisions of this chapter.

21 Sec. 30.25.050. PROOF OF FINANCIAL RESPONSIBILITY. (a) Carriers
22 and facilities subject to the provisions of this chapter shall present to
23 the department evidence of insurance, bonding or other forms of financial
24 responsibility acceptable to the department for property damage, personal
25 injuries, loss of income or other losses resulting from the unlawful dis-
26 charge of crude oil, refined petroleum products or their by-products.

27 (b) The amount of financial responsibility required for each
28 carrier shall not be less than \$20,000,000, or an amount required under
29 applicable federal law or regulation.

1 (c) The amount of financial responsibility required for each
2 facility may not be less than \$1,000,000 or an amount set by the depart-
3 ment by regulation.

4 Sec. 30.25.060. EXEMPTIONS. (a) Because of the restricted nature
5 of marina and limited capacity facility operations and the minimal danger
6 to the environment posed by their activities, a marina used or capable of
7 being used to store less than 500 barrels of refined petroleum products
8 or their by-products, or an onshore limited capacity facility used or
9 capable of being used to store less than 2,500 barrels of refined petro-
10 leum products or their by-products are exempt from the proof of financial
11 responsibility requirements of sec. 50 of this chapter and the certificate
12 of risk avoidance requirements of sec. 40 of this chapter.

13 (b) For the purposes of (a) of this section

14 (1) "marina" means a person or facility engaged in the
15 business, whether onshore or offshore, of servicing the fuel require-
16 ments of pleasure craft, fishing boats and other commercial vessels,
17 where the purchaser and the consumer are the same entity, and the fuel
18 capacity of the servicing or serviced vessel is less than 500 barrels of
19 refined petroleum products or their by-products;

20 (2) "limited capacity facility" means a small tank farm,
21 small bulk fuel storage facility, or other onshore facility storing
22 refined petroleum products or their by-products, except asphalt, and
23 which is engaged in the business of servicing the requirements of pro-
24 duct transporters and vendors, or storing the fuel requirements for
25 village domestic, school or commercial use, including but not limited to
26 fish processing, logging operations, construction projects or electric
27 power generation.

28 Sec. 30.25.070. SCOPE OF REGULATIONS. The department shall adopt
29 regulations to carry out the purposes of this chapter that do not

1 conflict with federal law or regulations issued by any federal department
2 or agency, including but not limited to the following:

3 (1) operating and inspection requirements for oil terminal fa-
4 cilities, tank vessels, personnel, equipment, supplies and other matters
5 relating to the insured's operations under sec. 40 of this chapter;

6 (2) procedures and methods of reporting discharges and other
7 occurrences prohibited by this chapter;

8 (3) procedures, methods, means and equipment to be used by
9 persons subject to this chapter and the implementing regulations;

10 (4) procedures, methods, means and equipment to be used in
11 the removal of oil and petroleum pollutants;

12 (5) development and implementation of criteria and plans to
13 meet oil and petroleum pollution discharges, spills or other occurrences
14 of various degrees and kinds;

15 (6) the establishment from time to time of control districts
16 comprising sections of the state's coast and the establishment of regu-
17 lations which may be required to meet the particular requirements of
18 each district;

19 (7) requirements for the safety and operation of tank vessels,
20 barges, tugs, motor vehicles, motorized equipment and other equipment
21 relating to the use and operation of terminals, facilities and refiner-
22 ies and the approach and departure from terminals, facilities and
23 refineries;

24 (8) establishment of the risk charges for annual issuance of
25 the certificate of risk avoidance; and

26 (9) those other regulations that may be required by or for
27 emergency conditions or that reasonably may be necessary to carry out
28 the purposes of this chapter.

29 ARTICLE 3. EMERGENCIES.

1 Sec. 30.25.080. GOVERNOR'S POWERS: EMERGENCY PROCLAMATION. (a) In
2 addition to exercising his civil defense powers under AS 26.20, or
3 directing the department to exercise its emergency powers under AS 46.-
4 03.820, when a disaster or catastrophe occurs or appears imminent aris-
5 ing from the discharge of crude oil, refined petroleum products or their
6 by-products, the governor, or in his absence or inability, the lieute-
7 nant governor, shall by proclamation declare (1) that fact and (2) that
8 an emergency exists in one, several or all sections of the state. A
9 copy of the proclamation shall be filed with the lieutenant governor in
10 the manner prescribed by law.

11 (b) The governor has general direction and control of the depart-
12 ment and is responsible for carrying out the provisions of this chapter
13 when a disaster or catastrophe occurs or appears imminent arising from
14 the discharge of crude oil, refined petroleum products or their by-
15 products.

16 (c) In performing his duties under this chapter, the governor may
17 (1) issue, amend and rescind the necessary orders and regu-
18 lations to carry out the provisions of this chapter within the limits of
19 the authority conferred upon him and not inconsistent with the regula-
20 tions and directives of the President of the United States or of any
21 federal department or agency that has specifically authorized emergency
22 functions;

23 (2) delegate any authority vested in him under this chapter
24 and provide for the subdelegation of that authority.

25 (d) When the governor is satisfied that an emergency no longer
26 exists he shall terminate the proclamation issued under (a) of this
27 section by another proclamation affecting the sections of the state
28 covered by the original proclamation. The proclamation shall be pub-
29 lished in the newspapers of general circulation in the state and posted

1 at other places that the governor, or the person acting in that capa-
2 city, considers appropriate.

3 (e) The provisions of AS 26.20 as they apply to eminent domain and
4 compensation, mutual aid, immunity, aid in emergency, right-of-way, en-
5 forcement and compensation apply to disasters or catastrophes proclaimed
6 by the governor under this chapter.

7 Sec. 30.25.090. INTERAGENCY COOPERATION. In performing his duties
8 under sec. 80 of this chapter, the governor shall secure cooperation
9 from all departments and agencies of the federal government, and the
10 governments of other states and foreign countries, and the political
11 subdivisions of them, as well as from private agencies, in all matters
12 relating to disaster or catastrophe.

13 ARTICLE 4. REMOVAL OF PROHIBITED DISCHARGES.

14 Sec. 30.25.100. IMMEDIATE REMOVAL REQUIRED. A person discharging
15 crude oil, refined petroleum products or their by-products in a manner
16 prohibited by sec. 20 of this chapter shall immediately undertake to
17 remove the discharge to the department's satisfaction. Notwithstanding
18 this requirement, the department may undertake the removal of the
19 discharge and may retain agents and enter into contracts for that
20 purpose notwithstanding the provisions of AS 37.05.220 - 37.05.280.
21 These agents or contractors shall operate under the direction of the
22 department.

23 Sec. 30.25.110. UNEXPLAINED DISCHARGES. An unexplained discharge
24 of crude oil, refined petroleum products or their by-products within the
25 state's jurisdiction or discharge of crude oil, refined petroleum pro-
26 ducts or their by-products occurring in waters beyond state jurisdiction
27 that for any reason penetrates within state jurisdiction shall be re-
28 moved by or under the direction of the department. Expenses involved in
29 the removal of discharges, whether by the person causing the discharge,

1 the person reporting it, or the department by itself, or through its
2 agents or contracts shall be paid solely from the coastal protection
3 fund established under this chapter.

4 Sec. 30.25.120. OIL DISCHARGE CLEANUP PERSONNEL, EQUIPMENT. (a)
5 The department may establish and maintain at ports, harbors or other
6 locations in the state, the personnel, equipment and supplies that, in
7 its judgment, may be necessary to carry out the provisions of this chap-
8 ter. Whenever feasible, the department shall enter into contracts with
9 persons or private organizations to provide the oil discharge cleanup
10 personnel, equipment or other services or supplies that may be required
11 to carry out the provisions of this chapter.

12 (b) The salaries of department employees and the cost of equip-
13 ment, supplies and contracts entered into under (a) of this section re-
14 quired to carry out the provisions of this chapter shall be paid from
15 the coastal protection fund.

16 (c) The department and the Departments of Natural Resources and
17 Fish and Game shall consult with one another periodically relative to
18 procedures for the prevention of oil discharges into the coastal and
19 inside coastal waters of the state from offshore drilling production
20 facilities. These departments shall jointly establish predesignated
21 sites for the deposit of oil discharge refuse and waste.

22 (d) Those inspection and enforcement employees of the department
23 designated by the commissioner are peace officers under AS 01.10.060(6)
24 in their line duty under this chapter and AS 46.03.

25 ARTICLE 5. ENFORCEMENT; PENALTIES.

26 Sec. 30.25.130. ADMINISTRATIVE ADJUDICATION. When it appears,
27 after investigation, that there is a violation of a regulation, order or
28 certificate issued by the department, the department shall proceed in
29 accordance with its regulations.

1 Sec. 30.25.140. CRIMINAL SANCTIONS. A person who violates sec. 20
2 of this chapter is punishable under AS 46.03.760 or 46.03.790. A person
3 who falsifies information required under sec. 40 of this chapter is
4 punishable under AS 46.03.760 or 46.03.790.

5 Sec. 30.25.150. CIVIL PENALTIES. A person who violates a provi-
6 sion of this chapter or a regulation or order of the department is sub-
7 ject to the penalties prescribed in AS 46.03.760 - 46.03.780.

8 Sec. 30.25.160. INJUNCTIVE RELIEF. A person may be enjoined by
9 the superior court from committing a violation of a provision of this
10 chapter, or the implementing regulations.

11 Sec. 30.25.170. ACTIONS TO RECOVER PENALTIES, DAMAGES. (a)
12 Actions to recover penalties or damages under this chapter shall be
13 brought by the attorney general in a court of competent jurisdiction.

14 (b) All penalties recovered under secs. 140 or 150 of this chapter
15 shall be paid to the department and deposited by it in the coastal pro-
16 tection fund.

17 Sec. 30.25.180. EACH VIOLATION IS A SEPARATE OFFENSE. Each viola-
18 tion of a provision of this chapter, an implementing regulation, or an
19 order or certificate issued by the department under them, is a separate
20 and distinct offense and, in case of a continuing violation, each day
21 the violation continues constitutes a separate offense.

22 Sec. 30.25.190. PENALTIES CUMULATIVE. (a) All penalties imposed
23 under this chapter are cumulative.

24 (b) An action to recover a civil penalty is not a bar to an en-
25 forcement proceeding to require compliance, or to any other remedy or
26 sanction provided by this chapter.

27 Sec. 30.25.200. JOINDER OF ACTIONS. Under the applicable court
28 rules, appeals from orders of the department, and actions for recovery
29 of damages or penalties may be joined. The court may in the interests

1 of justice separate the actions.

2 Sec. 30.25.210. PRIVATE CAUSE OF ACTION. (a) A person subjected
3 to a prohibited discharge in violation of this chapter may sue in a
4 state court of appropriate jurisdiction for damages resulting from the
5 prohibited discharge.

6 (b) A person recovering damages under this section is entitled to
7 a reasonable attorney fee, fixed by the court, to be taxed and collected
8 as costs of the suit.

9 ARTICLE 6. COASTAL PROTECTION FUND.

10 Sec. 30.25.220. FUND CREATED; USES; LIMITATIONS; CHARGES. (a) The
11 coastal protection fund is created as a revolving fund. The fund shall
12 be used by the department to carry out the purposes of this chapter.

13 (b) To this fund shall be credited all risk charges, penalties and
14 other fees or charges established under or related to this chapter. To
15 this fund shall be charged all expenses of the department related to
16 this chapter, including administrative expenses, costs of removal of
17 discharges of pollutants, and costs of arbitration.

18 Sec. 30.25.230. SURPLUS FUNDS. Money in the fund not currently
19 needed to meet the obligations of the department in the exercise of its
20 responsibilities under this chapter shall be deposited with the com-
21 missioner of revenue to the credit of the fund and shall be invested in
22 the manner provided in AS 37.10. Interest received on that investment
23 shall be credited to the fund.

24 Sec. 30.25.240. RESEARCH AND DEVELOPMENT. The department may
25 allocate annually not more than five per cent of the amount than cur-
26 rently in the fund for research and development into the causes, effects,
27 prevention and removal of pollution of the aquatic environment caused by
28 crude oil, refined petroleum products, or their by-products. These
29 allocations shall be made in accordance with the Executive Budget Act

1 (AS 37.07).

2 Sec. 30.25.250. FUNDING; RISK CHARGES. (a) Annual risk charges
3 for each classification of certificates issued by the department under
4 sec. 40 of this chapter shall be based on the following factors:

5 (1) data submitted by applicants under that section;

6 (2) with respect to the issuance of certificates to carriers
7 engaged in the marine transportation of crude oil, refined petroleum
8 products or their by-products, the design characteristics of the tank
9 vessel for which the certificate is issued, including but not limited to

10 (A) the presence or absence of the standard safety or
11 maneuvering capability features prescribed in AS 30.20.020; and

12 (B) if the tank vessel is 40,000 deadweight tons or
13 more, the presence or absence of

14 (i) flue gas or other gas inerting systems to be
15 prescribed by the department by regulation; and

16 (ii) segregated ballast tanks, the combined capacity
17 of which shall be of sufficient size, as prescribed by the
18 department, so that the tank vessel can operate safely on
19 ballast voyages without recourse to the use of cargo tanks for
20 water ballast, and which is achieved in part by fitting,
21 throughout the cargo length, either a double bottom of a mini-
22 mum height of one-fifteenth of the beam or two meters, which-
23 ever is the greater, or a double hull throughout the cargo-
24 carrying length or compartments of the tank vessel of a mini-
25 mum of two meters;

26 (3) the risk experience of oil terminal facilities and
27 carriers during the previous period for which the certificate of risk
28 avoidance was issued and risk charges paid; and

29 (4) any other data, information or standards the department

1 considers relevant or essential to an appropriate determination of the
2 annual charges for the issuance of certificates of risk avoidance under
3 sec. 40 of this chapter.

4 (b) The annual risk charge for a tank vessel that lacks some or
5 all of the design characteristics prescribed in (a)(2) of this section
6 shall be increased accordingly in the manner prescribed by the depart-
7 ment. The annual risk charge shall be reduced when the tank vessel is
8 equipped or fitted with the design characteristics prescribed in (a)(2)
9 of this section.

10 (c) Charges may be adjusted from time to time during each year to
11 allow for risk experience or the equipping or fitting of design charac-
12 teristics prescribed in (a)(2) of this section during that period.

13 (d) Risk charges shall be paid to the department and upon receipt
14 by it deposited in the coastal protection fund.

15 Sec. 30.25.260. DISBURSEMENTS FROM FUND. (a) Money in the
16 coastal protection fund may be disbursed for the following purposes and
17 no other, subject to the provisions of AS 37.07 and AS 37.10:

18 (1) administrative expenses, personnel expenses, contract
19 fees, and equipment and supplies costs of the department related to the
20 enforcement of this chapter;

21 (2) all costs involved in the abatement of pollution related
22 to the discharge of crude oil, refined petroleum products or their by-
23 products covered by this chapter;

24 (3) sums allocated to research and development in accordance
25 with sec. 240 of this chapter;

26 (4) payment of costs of arbitration and arbitrators; and

27 (5) payment of costs of insurance by the state to implement
28 this chapter.

29 (b) The department shall submit annually to the legislature,

1 through the Department of Administration and the governor, in accordance
2 with the Executive Budget Act (AS 37.07), its recommendations for dis-
3 bursements from the fund under (a) of this section and sec. 240 of this
4 chapter.

5 Sec. 30.25.270. SPECIAL RISK CHARGES. (a) If a discharge occurs
6 in any year necessitating disbursements from the fund in excess of
7 expenses funded by that year's charges, the department shall collect
8 from all carriers and facilities subject to the provisions of this
9 chapter at the time the discharge occurs that amount which will reim-
10 burse the fund by the aggregate amount of the excess expenditures.

11 (b) The amount to be collected shall be prorated among those
12 carriers and facilities subject to this chapter at the time of the dis-
13 charge and shall be determined on the basis of the same criteria used to
14 determine annual risk charges under sec. 250 of this chapter.

15 (c) If a carrier or facility subject to (a) of this section re-
16 fuses to pay the special risk charges established under (a) of this
17 section, those charges shall be prorated among the remaining carriers or
18 facilities.

19 (d) Requests for payment of the special risk charges established
20 under (a) of this section, if not paid within 30 days of demand, shall
21 be turned over to the Department of Administration or the Department of
22 Law, or both, for collection.

23 Sec. 30.25.280. OIL TERMINAL FACILITY; CARRIER STRICTLY LIABLE.
24 An operator of an oil terminal facility and a carrier are strictly
25 liable, without regard to fault, under AS 46.03.822 - 46.03.828 for all
26 acts and omissions of their employees and agents. The liability of a
27 carrier extends from the time the vessel enters state waters until the
28 time the vessel leaves state waters.

29 ARTICLE 7. GENERAL; MISCELLANEOUS PROVISIONS.

1 Sec. 30.25.290. THIRD PARTY DAMAGES. (a) A person claiming to
2 have suffered damages to real estate or personal property or loss of
3 income directly or indirectly as a result of a discharge of crude oil,
4 refined petroleum products or their by-products prohibited by sec. 20 of
5 this chapter, or as the result of an unexplained discharge under sec.
6 110 of this chapter may elect within two years after occurrence of the
7 discharge to obtain an award of damages from a board of arbitration.

8 (b) Applications shall be made to the department stating the
9 amount of damage incurred as a result of the discharge. The department
10 shall prescribe appropriate forms and procedures for these applications.
11 The department may, upon petition, and for good cause shown, waive the
12 two-year limitation for filing damage claims.

13 (c) An award of damages to a person on a claim under (a) of this
14 section constitutes an election of that remedy and bars recovery in an
15 action by that person under sec. 210 of this chapter, AS 46.03.822 -
16 46.03.828, or any other provision of law on the same claim for the same
17 injury. A judgment awarded to a person on a claim under sec. 210 of
18 this chapter, AS 46.03.822 - 46.03.828, or any other provision of law,
19 bars a claim for award of damages under (a) of this section on the same
20 claim for the same injury.

21 (d) Third party damage claims by a single person shall be stated
22 in their entirety in one application. Damages omitted from any claim at
23 the time the award is made shall be considered waived, unless it can be
24 shown that the damages subsequently claimed could not have been reason-
25 ably foreseen when the original application was made.

26 Sec. 30.25.300. BOARD OF ARBITRATION. (a) The board of arbitra-
27 tion consists of three persons, one chosen by the person determined in
28 the first instance by the department to have caused the discharge, one
29 to be chosen by the department to represent the public interest, and one

1 person chosen by the first two appointed members to serve as a neutral
2 arbitrator. The neutral arbitrator shall serve as chairman. If the two
3 arbitrators fail to agree upon, select and name the neutral arbitrator
4 within 10 days after their appointment, the department shall request the
5 American Arbitration Association to use its procedures for the selection
6 of a neutral arbitrator. No employee of the department may serve as an
7 arbitrator.

8 (b) Arbitrators shall be named by their principals within 30 days
9 after the department receives an application for arbitration. If either
10 party fails to select its arbitrator within the 10-day period, the other
11 party shall request the American Arbitration Association to use its pro-
12 cedures for the selection of an arbitrator, and the two arbitrators
13 shall proceed to select the neutral arbitrator as provided in (a) of
14 this section.

15 (c) One board of arbitrators shall be established for and hear and
16 determine all claims arising from or related to a common single dis-
17 charge.

18 (d) Hearings before boards of arbitrators shall be informal, and
19 the rules of evidence prevailing in judicial proceedings are not bind-
20 ing. The adjudicatory provisions of the Administrative Procedure Act (AS
21 44.62) are not applicable to proceedings under this subsection. The
22 board has the power to administer oaths and to require by subpoena the
23 attendance and testimony of witnesses, the production of books, records
24 and other evidence relative or pertinent to the issues represented to
25 them for determination.

26 (e) Determinations made by a majority of the board shall be final,
27 but they are subject to appeal under the Administrative Procedure Act
28 (AS 44.62).

29 (f) Representation on a board of arbitration shall not be con-

1 sidered an admission of liability for the discharge.

2 Sec. 30.25.310. INTERSTATE, FOREIGN COMPACTS AUTHORIZED. The
3 governor may execute supplementary agreements, reciprocal arrangements
4 or compacts with any other state or with foreign governments, subject to
5 the approval of the legislature and of the Congress of the United States
6 that may be required by applicable provisions of law, for the purpose of
7 implementing this chapter.

8 Sec. 30.25.320. ANNUAL REPORT. The department shall prepare and
9 publish an annual report to the governor and to the legislature review-
10 ing its work under this chapter and shall include in the report its
11 recommendations for the enactment of appropriate legislation.

12 Sec. 30.25.330. MUNICIPAL ORDINANCES, REGULATIONS; POWERS LIMITED.
13 If a conflict occurs between a provision of this chapter, or a regula-
14 tion, certificate, order, decision or other determination of the depart-
15 ment and a charter, ordinance, permit, regulation, franchise, decision
16 or other determination of a municipality, the provisions of this chapter
17 or a regulation, certificate, order, decision or other determination of
18 the department prevails. However, nothing in this chapter may be con-
19 strued to preclude a municipality, by ordinance or regulation, from ex-
20 exercising its policy powers in the area regulated by this chapter.

21 Sec. 30.25.340. DEEPWATER PORT FACILITIES. The department is the
22 exclusive state agency to make application to the appropriate federal
23 department or agency for a license to own, construct and operate a
24 deepwater port facility under the Deepwater Port Act of 1974 (P.L. 93-
25 627) and other applicable federal laws and regulation. Notwithstanding
26 any contrary provisions of law or sec. 330 of this chapter or any muni-
27 cipal ordinance or charter, no municipality or any other person may
28 apply for a license to own, construct or operate a deepwater port
29 facility, and any existing ordinance or charter adopted by the governing

1 body of a municipality or by the voters of a municipality, respectively,
2 that relates to deepwater port facilities is superseded and the future
3 enactment of ordinances or charters that provide otherwise is prohi-
4 bited.

5 Sec. 30.25.350. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a)
6 The administrative adjudication procedures of the Administrative Proce-
7 dure Act (AS 44.62) do not apply to the adjudicatory, certificate issu-
8 ing, or other proceedings of the department under this chapter. How-
9 ever,

10 (1) final administrative determinations or orders by the
11 department are subject to judicial review under that Act; and

12 (2) department hearings shall be held only after at least 10
13 days public notice, unless it is an emergency hearing; they shall be
14 held at a place most convenient for those interested in the subject of
15 the hearing.

16 (b) Notwithstanding the provisions of (a)(1) of this section, no
17 regulation or order of the department may be stayed pending appeal under
18 the provisions of the Administrative Procedure Act.

19 (c) The Administrative Procedure Act applies to regulations pro-
20 mulgated by the department.

21 Sec. 30.25.360. LIMITATION ON LIABILITY OF THE STATE. Neither
22 the state nor the fund is liable for any action or omission arising out
23 of the enforcement or implementation of this chapter or the failure
24 to enforce or implement this chapter.

25 Sec. 30.25.370. CONSTRUCTION. This chapter shall be liberally
26 construed to effect the purposes set out in sec. 10 of this chapter.

27 Sec. 30.25.380. DEFINITIONS. In this chapter, unless the context
28 requires otherwise,

29 (1) "barrel" means 42 U. S. gallons at 60 degrees Fahrenheit;

1 (2) "board" means a board of arbitration established under
2 this chapter;

3 (3) "carrier" means a person who owns or who, for compensa-
4 tion, operates or otherwise provides a vessel engaged in, used or capa-
5 ble of being used for, the marine transportation of crude oil, refined
6 petroleum products or their by-products on the waters of this state;

7 (4) "commissioner" means the commissioner of environmental
8 conservation;

9 (5) "deadweight tonnage" or "DWT" means the difference in
10 metric tons between the lightweight displacement and the total displace-
11 ment of a vessel measured in water of specific gravity 1.025 at the load
12 waterline corresponding to the assigned summer freeboard;

13 (6) "deepwater port" means a fixed or floating man-made
14 structure other than a vessel, or a group of these structures, located
15 off the coast of the United States within or beyond the territorial
16 waters of the state and which are used or intended for use as a port or
17 terminal for the transfer, loading or unloading and further handling of
18 crude oil, refined petroleum products or their by-products for trans-
19 portation to any state or foreign nation, and those commonly known as
20 "superports" or "monobuoys"; the term includes all associate components
21 and equipment, including pipelines, pumping stations, service platforms,
22 mooring buoys and similar appurtenances to the extent they are located
23 seaward of the high water mark;

24 (7) "department" means the Department of Environmental Con-
25 servation;

26 (8) "discharge" means any spilling, leaking, pumping, pour-
27 ing, emitting, emptying, or dumping;

28 (9) "fund" means the state coastal protection fund;

29 (10) "municipality" means a home rule or general law borough

1 or city including but not limited to a unified municipality organized
2 under AS 29.68;

3 (11) "crude oil, refined petroleum products, or their by-
4 products" means oil of any kind and in any form including, but not limited
5 to, petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil re-
6 fuse, oil mixed with other wastes, crude oils, liquefied natural gas, pro-
7 pane, butane or other liquid hydrocarbons regardless of specific gravity;

8 (12) "oil terminal facility" means an onshore or offshore
9 facility of any kind and related appurtenances, including but not
10 limited to a deepwater port, located in, on, or under the surface of any
11 land or water of the state, including tide and submerged land, which is
12 used or capable of being used for the purpose of transferring, proces-
13 sing or refining, or storing crude oil, refined petroleum products or
14 their by-products; a vessel shall be considered an oil terminal facility
15 only in the event of a ship-to-ship transfer of crude oil, refined
16 petroleum products or their by-products, and only that vessel going to
17 or coming from the place of transfer and the oil terminal facility;

18 (13) "operate" or "operator" means a person owning or oper-
19 ating an oil terminal facility or a carrier whether by lease, contract
20 or any other form of agreement, or a person who navigates or has charge
21 of the navigation or use of a vessel;

22 (14) "transferred" includes both onloading and offloading,
23 between terminal and vessel and vessel to vessel;

24 (15) "tank vessel" means a self-propelled vessel that is
25 specially constructed or converted to carry liquid bulk cargo in tanks
26 and includes tankers, tankships, and combination carriers when carrying
27 crude oil, petroleum products or their by-products in bulk; it does not
28 include vessels carrying crude oil, petroleum products or their by-
29 products in drums, barrels, or other packages, or vessels carrying

1 crude oil, petroleum products or their by-products as fuel or stores for
2 that vessel;

3 (16) "waters of the state" means the navigable waters within
4 the territorial limits of the state, and the marginal sea adjacent to
5 the state, and as defined in AS 44.03 and AS 46.03.900(22).

6 Sec. 30.25.410. SHORT TITLE. This chapter may be cited as the
7 Alaska Oil Discharge Prevention and Pollution Control Act.

8 * Sec. 3. AS 46.03.750 is amended by adding a new subsection to read:

9 (e) Cargo in tank vessels, as defined in AS 30.20.080(9), engaged in
10 the marine transportation of crude oil, refined petroleum products or
11 their by-products may not be placed in segregated ballast tanks, nor may
12 ballast be placed in cargo tanks. However, the department may by regula-
13 tion permit the placing of ballast in cargo tanks in emergency situations,
14 but that ballast shall be processed by or in an onshore ballast water
15 treatment facility and may not be discharged into the waters of the state.

16 * Sec. 4. AS 46.03 is amended by adding a new section to read:

17 Sec. 46.03.755. DISCHARGE REPORTING. (a) A person in charge of a
18 facility, operation or vessel, as soon as he has knowledge of any dis-
19 charge from the facility, operation or vessel in violation of sec. 740
20 or 750 of this chapter or AS 30.25.020, shall immediately notify the
21 department of the discharge.

22 (b) Notwithstanding (a) of this section, the department may enter
23 into a written agreement with a person for the periodic reporting of
24 minor discharges other than into the waters of the state.

25 * Sec. 5. AS 46.03.760 is repealed and re-enacted to read:

26 Sec. 46.03.760. CIVIL ACTION FOR POLLUTION; DAMAGES. (a) A
27 person who violates or causes or permits to be violated a provision of
28 this chapter or AS 30.25.020, or a regulation, a lawful order of the
29 department, or a permit or certificate, or term or condition of a permit

1 or certificate issued under this chapter or AS 30.25 is liable, in a
2 civil action, to the state for a sum to be assessed by the court of not
3 less than \$500 nor more than \$100,000 for the initial violation, nor
4 more than \$5,000 for each day thereafter on which the violation contin-
5 ues, and which shall reflect, when applicable,

6 (1) reasonable compensation in the nature of liquidated
7 damages for any adverse environmental effects caused by the violation,
8 which shall be determined by the court according to the toxicity, de-
9 gradability and dispersal characteristics of the substance discharged,
10 the sensitivity of the receiving environment, and the degree to which
11 the discharge degrades existing environmental quality;

12 (2) reasonable costs incurred by the state in detection,
13 investigation, and attempted correction of the violation, except dis-
14 bursements for pollution abatement costs under AS 30.25.260(a)(2); and

15 (3) the economic savings realized by the person in not com-
16 plying with the requirement for which a violation is charged.

17 (b) Actions under this section may not be used for punitive pur-
18 poses, and sums assessed by the court must be compensatory and remedial
19 in nature.

20 (c) The court, upon motion of the department or upon its own
21 motion, may defer assessment of all or part of that portion of the sum
22 imposed upon a person under (a)(3) of this section conditioned upon the
23 person complying, within the shortest feasible time, with the require-
24 ment for which a violation is shown.

25 (d) As used in this section, "economic savings" means that sum
26 which a person would be required to expend for the planning, acquisi-
27 tion, siting, construction, installation and operation of facilities
28 necessary to effect compliance with the standard violated.

29 (e) In addition to liability under (a) - (d) of this section, a

1 person who violates or causes or permits to be violated a provision of
2 secs. 740 - 750 of this chapter is liable to the state, in a civil
3 action brought under sec. 822 of this chapter, for the full amount of
4 actual damages caused to the state by the violation, including direct
5 and indirect costs associated with the abatement, containment or removal
6 of the pollutant, restoration of the environment to its former state,
7 and all incidental administrative costs.

8 * Sec. 6. AS 46.03 is amended by adding a new section to read:

9 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction
10 to enjoin a violation of this chapter or AS 30.25, or of a regulation,
11 lawful order of the department, or permit or certificate, or term or
12 condition of a permit or certificate issued under this chapter or
13 AS 30.25. In actions brought under this section, temporary or prelim-
14 inary relief may be obtained upon a showing of an imminent threat of
15 continued violation, and probable success on the merits, without the
16 necessity of demonstrating physical irreparable harm. The balance of
17 equities in actions under this section may affect the timing of compli-
18 ance, but not the necessity of compliance within a reasonable period of
19 time.

20 * Sec. 7. AS 46.03.770 is amended to read:

21 Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY
22 FOR DAMAGES. A vessel which is used in or in aid of a violation of
23 secs. 740 - 750 of this chapter, or AS 30.25.020, may be detained after
24 a valid search by the department, an agent of the department, a peace
25 officer of the state, or an authorized protection officer of the Depart-
26 ment of Fish and Game. Upon judgment of the court having jurisdiction
27 that the vessel was used in or the cause of a violation of secs. 740 -
28 750 of this chapter, or AS 30.25.020, with knowledge of its owner or
29 under circumstances indicating that the owner should reasonably have had

1 this knowledge, the vessel may be held as security for payment to the
2 state of the amount [OF DAMAGES] assessed by the court under sec. 760(a)
3 [760(b)] of this chapter or upon determination by the department under
4 AS 30.25, and if the damages so assessed are not paid within 30 days
5 after judgment, final determination by the department or final deter-
6 mination of an appeal, the vessel shall be sold at public auction, or as
7 otherwise directed by the court or by the department, and the damages
8 paid from the proceeds. The balance, if any, shall be paid by the court
9 or the department to the owner of the vessel. The court shall permit
10 the release of the vessel upon posting of a bond set by the court or the
11 department in an amount not to exceed \$100,000. The damages received
12 under this section shall be transmitted to the department [PROPER STATE
13 OFFICER] for deposit in the coastal protection [GENERAL] fund estab-
14 lished under AS 30.25.250(a). A vessel seized under this section shall
15 be returned or the bond exonerated if no assessment is made [DAMAGES ARE
16 ASSESSED] under sec. 760(a) [760(b)] of this chapter or AS 30.25.

17 * Sec. 8. AS 46.03.780(a) is amended to read:

18 (a) A person who violates a provision of this chapter or AS 30.25,
19 or who fails to perform a duty imposed by this chapter or AS 30.25, or
20 violates or disregards an order, permit, or other determination of the
21 department made under the provisions of this chapter or AS 30.25,
22 respectively, and thereby causes the death of fish, animals, or vegeta-
23 tion or otherwise injures or degrades the environment of the state is
24 liable to the state for damages.

25 * Sec. 9. AS 46.03.790 is repealed and re-enacted to read:

26 Sec. 46.03.790. CRIMINAL PENALTIES. (a) A person who violates
27 or who causes or permits a violation of a provision of this chapter or
28 AS 30.25, or of a regulation, lawful order of the department, or permit
29 or certificate, or term or condition of a permit or certificate issued

1 under this chapter or AS 30.25 is guilty of a misdemeanor and, upon
2 conviction, is punishable by a fine of not more than \$25,000 and costs
3 of prosecution.

4 (b) A person who wilfully violates a provision of this chapter, or
5 of a regulation, lawful order of the department, or permit or certifi-
6 cate, or term or condition of a permit or certificate issued under this
7 chapter or AS 30.25 is guilty of a misdemeanor and, upon conviction, is
8 punishable by a fine of not more than \$25,000 and costs of prosecution,
9 or by imprisonment for not more than one year, or by fine, costs, and
10 imprisonment.

11 (c) Each day on which a violation described in (a) or (b) of this
12 section occurs is considered a separate violation.

13 (d) A person who fails to provide or falsely states information
14 required under sec. 755 of this chapter or AS 30.25 is guilty of a mis-
15 demeanor and, upon conviction, is punishable by a fine of not more than
16 \$25,000, or by imprisonment for not more than one year, or by both.
17 Each unlawful act constitutes a separate offense.

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

19 Sec. 46.03.850. COMPLIANCE ORDER. (a) When, in the opinion of
20 the department, a person is violating or is about to violate a provision
21 of this chapter or AS 30.25, or a regulation or lawful order of the
22 department, or a permit or certificate, or a term or condition of a
23 permit or certificate issued by the department under this chapter or
24 AS 30.25, the department may notify the person of its determination by
25 personal service or certified mail. The determination and notice do not
26 constitute an order under sec. 820 of this chapter.

27 (b) The recipient of the determination must file with the depart-
28 ment, within the time period specified in the notice, a report stating
29 what measures have been and are being taken, or are proposed to be

1 taken, to correct or control the conditions outlined in the notice.

2 (c) After the report is filed under (b) of this section or the
3 time period specified for it has elapsed, the department may issue a
4 compliance order in conformity with the authority of the department and
5 the public policy declared in sec. 10 of this chapter. A copy of the
6 compliance order shall be served personally or sent by certified mail to
7 the person affected. A compliance order is effective upon receipt.

8 (d) Within 30 days after receipt the recipient may request a
9 hearing to review the compliance order. Failure to request a hearing
10 within 30 days after the receipt of a compliance order constitutes a
11 waiver of the recipient's right of review.

12 (e) The department shall hold a hearing within 20 days after
13 receipt of a request for one under (d) of this section. After the hear-
14 ing the department may rescind, modify or affirm the compliance order.

15 (f) The attorney general shall seek enforcement of a compliance
16 order.

17 * Sec. 11. AS 46.03 is amended by adding a new section to read:

18 Sec. 46.03.875. REMEDIES CUMULATIVE. All remedies provided by
19 this chapter or AS 30.25 are cumulative, and the securing of relief,
20 whether injunctive, civil or criminal, under a section of this chapter
21 or AS 30.25 does not estop the state from obtaining relief under any
22 other section of this chapter or AS 30.25.

23 * Sec. 12. SEVERABILITY. If any provision of this Act or the application
24 of it to any person or circumstance is held invalid, particularly those pro-
25 visions that establish incentives for carriers to use vessels with certain
26 safety or maneuvering capability features, the remainder of this Act and the
27 application to other persons or circumstances, including but not limited to
28 those provisions which create a coastal protection fund, shall not be af-
29 fected.

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* Sec. 13. This Act takes effect July 1, 1977.

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