

HOUSE BILL NO. 232
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES JACKO, Navarre

Introduced: 3/22/91

Referred: Transportation, Community & Regional Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sunken and abandoned vessels and cargo; and providing for an
2 effective date."

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

4 * **Section 1.** AS 29.10.200 is amended by adding a new paragraph to read:

5 (51) AS 29.35.085 (sunken or abandoned vessels).

6 * **Sec. 2.** AS 29.35 is amended by adding a new section to read:

7 Sec. 29.35.085. **SUNKEN OR ABANDONED VESSELS.** A municipality shall regulate
8 sunken or abandoned vessels or cargo of a vessel on municipal land in accordance with
9 AS 30.30.025 - 30.30.099.

10 * **Sec. 3.** AS 30.30 is amended by adding a new section to read:

11 Sec. 30.30.011. **SINKING OF VESSEL OR CARGO PROHIBITED.** (a) Except as
12 provided in (b) of this section, a person may not intentionally sink, or cause to be sunk, a vessel
13 or cargo of a vessel.

14 (b) This section does not apply to a vessel that is sunk with the prior approval under

1 AS 30.30.031(b) of the department or municipality having jurisdiction over the land or water
2 where the vessel is sunk.

3 (c) A person who violates this section is guilty of a class A misdemeanor.

4 * Sec. 4. AS 30.30 is amended by adding a new section to read:

5 Sec. 30.30.021. ABANDONMENT OF VESSEL OR CARGO PROHIBITED. (a) A
6 person may not knowingly abandon, or cause to be abandoned, a vessel or cargo of a vessel.

7 (b) A person who violates this section is guilty of a class B misdemeanor.

8 * Sec. 5. AS 30.30 is amended by adding a new section to read:

9 Sec. 30.30.025. ABANDONED VESSEL. For the purpose of AS 30.30.011 - 30.30.099,
10 a vessel is abandoned if the vessel

11 (1) is

12 (A) unattended;

13 (B) sunk, aground, or in immediate danger of sinking or grounding; and

14 (C) obstructs navigation or endangers life, personal or real property, or
15 natural resources of the state; or

16 (2) has been moored or otherwise left unattended in or on water of the state or
17 on state or municipal land for more than 30 days without permission; and

18 (A) the vessel's certificate of number or marine document, if required, is
19 expired and the registered owner cannot be contacted at the address listed in the vessel
20 registration or marine document records of a state department or the United States Coast
21 Guard;

22 (B) the last registered owner of record disclaims ownership and the name
23 and address of the current owner cannot be determined;

24 (C) efforts to identify the vessel and determine the name and address of
25 owner of the vessel are precluded because the vessel identification numbers and other
26 means of identifying the vessel have been obliterated or removed; or

27 (D) the vessel is not registered or documented with a state or the United
28 States Coast Guard and the name and address of the owner cannot not be determined.

29 * Sec. 6. AS 30.30 is amended by adding new sections to read:

30 Sec. 30.30.031. REMOVAL OF SUNKEN OR ABANDONED VESSEL OR CARGO.

31 (a) Unless a person has permission from the department or a municipality to leave a vessel or

1 cargo of a vessel in place, a person who owned, controlled, or had custody of the vessel or the
2 cargo at the time the vessel or the cargo was sunk or abandoned shall remove the vessel or cargo
3 from the land or water within 30 days of the sinking or abandonment and restore state or
4 municipal land or water damaged as a consequence of the sinking or abandonment to the same
5 condition as the land or water was before the sinking or abandonment.

6 (b) The department or a municipality may grant permission to leave, permanently or
7 temporarily, a sunken or abandoned vessel or cargo of a vessel in place. Permission to leave
8 a sunken or abandoned vessel or cargo in place may be granted only in writing. The department
9 or the municipality may condition temporary permission to leave a sunken or abandoned vessel
10 or cargo in place upon

11 (1) a commitment to remove the vessel or cargo within a specified date and to
12 restore state or municipal land or water damaged as a consequence of the sinking or
13 abandonment; and

14 (2) posting of sufficient bond to ensure the removal of the vessel or cargo and
15 the restoration of state or municipal land or water damaged as a consequence of the sinking or
16 abandonment.

17 (c) Notwithstanding (b) of this section, only the Department of Environmental
18 Conservation may grant permission to leave a hazardous substance on or within land or water
19 in the state.

20 (d) A person who is granted permission under this section to leave a vessel or cargo of
21 a vessel in place is not relieved of liability for damages incurred by a person, the state, or a
22 municipality arising from the presence of the vessel or the cargo of a vessel on or within land
23 or water in the state.

24 (e) The department or municipality that grants permission to leave a vessel or cargo of
25 a vessel in place under this section is not liable for damages arising from the presence of the
26 vessel or the cargo on or within land or water in the state.

27 (f) If a person fails to remove a vessel or cargo of a vessel under (a) of this section or
28 within the time agreed to under (b) of this section, the department or municipality may remove,
29 or cause to be removed, the vessel or cargo from the land or water of the state or the
30 municipality and restore, or cause to be restored, state or municipal land or water damaged as
31 a consequence of the sinking or abandonment. The department or the municipality may bring

1 an action in the superior court against a person who owned, controlled, or had custody of the
2 vessel or the cargo at the time of sinking or abandonment to recover the costs of removing the
3 vessel or cargo from the land or water of the state or municipality and of restoring state or
4 municipal land or water damaged as a consequence of the sinking or abandonment. The costs
5 incurred by the department or municipality to remove a vessel or cargo of a vessel and restore
6 state or municipal land or water under this subsection are a lien against the vessel or cargo until
7 a judgement of the superior court under this subsection is satisfied or the lien is released by the
8 department or the municipality.

9 (g) If a vessel, subject to an action in the superior court under (f) of this section, is
10 longer than 58 feet overall length, then in addition to the costs of removing the vessel and of
11 restoring state or municipal land or water recovered under (b) of this section, the department or
12 the municipality that brought the action shall receive twice the costs of removal and restoration
13 as a civil penalty for the failure to remove the vessel.

14 (h) If the court finds it is proper and just, the insurer of a person who is subject to an
15 action under this section for recovery of the cost of removing a vessel and of restoring state or
16 municipal land or water and for a civil penalty, may be joined in the action to the extent that the
17 contract of insurance between the person and the insurer includes coverage of the costs of
18 removal, restoration, or civil penalties for the failure to remove a sunken or abandoned vessel or
19 to restore state or municipal land or water damaged as a consequence of the sinking or
20 abandonment.

21 (i) The department or municipality may assign its rights to recover costs of removing a
22 sunken or abandoned vessel or cargo of a vessel and of restoring state or municipal land or water
23 under this section to a third party that agrees to complete the removal or restoration within a
24 period fixed by the department or municipality and that does complete the removal or restoration
25 within the time fixed. The right to recover a civil penalty under this section may not be
26 assigned.

27 (j) For the purposes of this chapter, the owner of a vessel or cargo of a vessel is the
28 owner of record as recorded with the appropriate registration or documentation agency on the
29 date that the vessel or cargo of the vessel was sunk or abandoned.

30 **Sec. 30.30.035. CUSTODY OF A SUNKEN OR ABANDONED VESSEL.** (a) The
31 department, a municipality, or a peace officer may take possession and custody of a sunken or

1 abandoned vessel or cargo of a vessel.

2 (b) The department, a municipality, or a peace officer shall take immediate possession
3 and custody of a vessel or cargo of a vessel that is sunk or may be abandoned, if the vessel or
4 cargo of a vessel poses, or threatens to pose, a danger to navigation, the environment, public
5 health, or public safety.

6 (c) Vessels and cargo of a vessel taken into custody under this section, other than timber
7 property subject to AS 45.50.210 - 45.50.325, are subject to disposal under this chapter.

8 * Sec. 7. AS 30.30.040 is amended to read:

9 Sec. 30.30.040. NOTICE TO OWNER. The department or municipality [ON] taking
10 custody of an abandoned or sunken vessel or cargo of a vessel, shall immediately post, if
11 practical, a written notice [IMMEDIATELY SHALL BE POSTED] on the vessel or cargo and
12 shall send a duplicate of that notice [SENT] by registered or certified mail, with a return receipt,
13 to the registered owner of the vessel or cargo at the registered owner's last known address and
14 to all lienholders shown on the records of a state or federal agency. The notice must [SHALL]
15 contain a brief description of the vessel or cargo, the location of custody, [AND] the intended
16 disposition of the vessel or cargo if not repossessed within 30 [20] days after the mailing of the
17 notice, and a statement of the right to repossession. A notice need not be sent to the purported
18 owner or any other person whose interest in the vessel is not recorded with a state department
19 or a federal agency.

20 * Sec. 8. AS 30.30.050 is amended to read:

21 Sec. 30.30.050. PUBLIC AUCTION. If the vessel or cargo of a vessel is not
22 repossessed under AS 30.30.060 within 30 [20] days after the mailing of the notice under
23 AS 30.30.040, the vessel or the cargo shall be disposed of by public auction, through oral
24 tenders, or by sealed bids, after public advertisement has been made once in a newspaper of
25 general circulation. However, the public auction may not be held less than five days after the
26 publication of the advertisement. If no bid is received, the vessel or the cargo may be sold by
27 negotiation, disposed of as junk, donated to a governmental agency, or destroyed.

28 * Sec. 9. AS 30.30.060 is amended to read:

29 Sec. 30.30.060. POSSESSION BY INTERESTED PARTY. A person having an interest
30 in an abandoned or sunken vessel or cargo of a vessel may take possession of it before the date
31 of the public auction upon payment to the department or municipality that has custody of the

1 vessel or cargo of all port or harbor use fees, towing, handling, storage, appraisal, advertising,
2 and any other expenses incurred by the department or municipality in connection with the vessel
3 or cargo and upon posting a bond in an amount sufficient to ensure removal of the vessel
4 or cargo from on or within the land or water of the state or municipality and to ensure
5 restoration of state or municipal land or water damaged as a consequence of the sinking
6 or abandonment. The amount of the bond that is posted to ensure removal of the vessel
7 or cargo and restoration of state or municipal land or water is not limited to the value of
8 the vessel or cargo. If the person taking possession of the vessel or cargo is not the registered
9 owner, the person shall, before taking possession of the vessel or cargo, pay the expenses
10 incurred by the department or municipality and post adequate security which may not exceed
11 the appraised value of the vessel or cargo. The bond posted to ensure removal of the vessel
12 or cargo and restoration of state or municipal land or water shall be returned to the person
13 upon satisfactory completion of the removal and restoration. The security for the value of
14 the vessel or cargo, if not forfeited, shall be returned to the person one year after receipt.

15 * Sec. 10. AS 30.30.080 is amended to read:

16 Sec. 30.30.080. EFFECT OF SALE. The transfer of interest by sale under
17 AS 30.30.050 - 30.30.060 [AS 30.30.050 - 30.30.070] shall be evidenced by a bill of sale from
18 the department or municipality, considered a transfer by operation of law, and governed by
19 applicable provisions of law.

20 * Sec. 11. AS 30.30 is amended by adding new sections to read:

21 Sec. 30.30.091. JURISDICTION OF STATE DEPARTMENTS AND MUNICIPALITIES.

22 (a) Within ports and harbors, the Department of Transportation and Public Facilities shall
23 enforce AS 30.30.011 - 30.30.099 over water and state land below the reach of tidal influence.
24 The Department of Natural Resources shall enforce AS 30.30.011 - 30.30.099 over all other water
25 and state land.

26 (b) A municipality shall enforce AS 30.30.011 - 30.30.099 on municipal land, including
27 municipal tide and submerged land.

28 Sec. 30.30.099. APPLICABILITY. (a) AS 30.30.031 - 30.30.099 apply to all vessels,
29 other than those vessels designated as historic monuments, sites, properties, locations, or remains
30 under AS 41.35.010 - 41.35.240, that have been sunk or abandoned as of the effective date of
31 this Act. The successor in interest of the person who owned, controlled, or had custody of a

1 vessel subject to this subsection, at the time the vessel was sunk or abandoned is subject to
2 AS 30.30.031 - 30.30.099.

3 (b) AS 30.30.011 - 30.30.099 apply to vessels and cargo of vessels that are sunk or
4 abandoned in the state on or after the effective date of this Act.

5 (c) AS 30.30.011 - 30.30.099 and AS 45.50.210 - 45.50.325 shall be construed as
6 consistent. If specific provisions of AS 30.30.011 - 30.30.099 and AS 45.50.210 - 45.50.325
7 cannot be made consistent, AS 45.50.210 - 45.50.325 shall control in that instance.

8 * Sec. 12. AS 30.30.160 is amended to read:

9 Sec. 30.30.160. REGULATIONS. The department may [SHALL] adopt regulations
10 under the Administrative Procedure Act (AS 44.62) to carry out the provisions of this chapter.

11 * Sec. 13. AS 30.30.170 is amended to read:

12 Sec. 30.30.170. DEFINITIONS. In this chapter

13 (1) "department" means the Department of Transportation and Public Facilities
14 or the Department of Natural Resources, as the context may require [, DIVISION OF
15 WATERS AND HARBORS];

16 (2) "hazardous substance" has the meaning given in AS 46.03.826;

17 (3) "land" includes shore, tide, and submerged land;

18 (4) "state land" has the meaning given in AS 38.05.965;

19 (5) [(3)] "vessel" means every description of watercraft or other artificial
20 contrivance [, OTHER THAN A SEAPLANE ON THE WATER,] used or capable of being used
21 as a means of transportation on or through the water; "vessel" includes a detached portion of
22 a vessel that poses a threat to navigation, the public safety, health, and welfare, or the
23 environment and a barge whether self-propelled or not;

24 (6) "water" means navigable water and all other water of the state, whether
25 inland or coastal, fresh or salt [(4) "WATERS OF THIS STATE" MEANS THE NAVIGABLE
26 WATERS WITHIN THE TERRITORIAL LIMITS OF THE STATE, AND THE MARGINAL
27 SEA ADJACENT TO THE STATE, AS DEFINED IN AS 44.03].

28 * Sec. 14. AS 30.30.010, 30.30.020, 30.30.030, 30.30.070, 30.30.090, and 30.30.100 are repealed.

29 * Sec. 15. This Act takes effect immediately under AS 01.10.070(c).