

SENATE BILL NO. 154

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR RODEY

Introduced: 3/1/91
Referred: Resources and Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to liability for environmental damage and to liens arising from
2 environmental damage."

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

4 * Section 1. AS 46.03.826(8) is amended to read:

5 (8) "owner" and "operator"

6 (A) mean

7 (i) in the case of a vessel, any person owning, operating, or
8 chartering by demise, a vessel;

9 (ii) in the case of facility, any person owning or operating the
10 facility;

11 (iii) in the case of an abandoned facility or vessel, any person who
12 owned, operated, or otherwise controlled activities at the facility or vessel
13 immediately before the abandonment; and

14 (iv) in the case of a facility or vessel, title or control of which was

1 conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar
2 means to a unit of the state or a political subdivision of the state or to a person
3 covered by (B) of this paragraph, any person who owned, operated, or otherwise
4 controlled the facility or vessel immediately beforehand;

5 (B) do not include

6 (i) a person who, without participating in the management of a
7 vessel or facility, holds indicia of ownership primarily to protect that person's
8 security interest in the vessel or facility; or

9 (ii) a designated lending institution that acquires ownership or
10 control of the facility or vessel under the terms of a security interest held by
11 the institution in the facility or vessel;

12 (iii) a corporation that in a fiduciary capacity has legal title to
13 a facility or vessel for the purpose of administering an estate or trust of
14 which the facility or vessel is a part or does not have legal title to a facility
15 or vessel but operates or manages the facility or vessel under the terms of an
16 estate or trust of which the facility or vessel is a part;

17 (iv) an individual who in a fiduciary capacity has legal title to
18 a facility or vessel for the purpose of administering an estate or trust of
19 which the facility or vessel is a part;

20 (v) an indenture trustee for debt securities or for a certificate
21 of interest or participation in debt securities that acquires ownership or
22 control of a facility or vessel as the result of a default under the terms of the
23 indenture agreement, or similar financing document, between the trustee and
24 the entity issuing the debt securities or certificates of interest or participation;

25 (vi) a designated lending institution that acquires ownership of
26 a facility or vessel in connection with a lease subject to regulation by federal
27 or state banking authorities;

28 * Sec. 2. AS 46.03.826 is amended by adding new paragraphs to read:

29 (14) "designated lending institution" means

30 (A) a depository institution, a leasing company that is an affiliate of a
31 depository institution, a member of the Farm Credit System (12 U.S.C. 2001 - 2260), or

1 a trust company; in this subparagraph, "depository institution" has the meaning given in
2 12 U.S.C. 461(b)(1)(A) (Federal Reserve Act); or

3 (B) a person who is a bona fide lending institution, including

4 (i) a mortgage lender, including a lender that has a loan secured
5 by a deed of trust given by a facility;

6 (ii) an agency, department, or other unit of the United States, a
7 state, or local government, including an economic or industrial development
8 agency, that is not otherwise described in (8) of this section and that makes loans
9 on the security of a facility or vessel;

10 (15) "possessed" or "possession" does not include possession by a person
11 identified in (8)(B) of this section.

12 * Sec. 3. AS 46.08.075(a) is amended to read:

13 (a) The state has a lien for expenditures by the state from the oil and hazardous substance
14 release response fund or from any other state fund, for the costs of response, containment,
15 removal, or remedial action resulting from an oil or hazardous substance spill, or, with respect
16 to response costs, the substantial threat of a release of oil or a hazardous substance against all
17 real property that is owned by a person who is determined by the commissioner to be liable for
18 the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal
19 law, and that is subject to or affected by a removal or remedial action. The lien includes
20 interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures.

21 The state may file an action in a court of competent jurisdiction in order to foreclose on the lien.

22 * Sec. 4. AS 46.08.075 is amended by adding a new subsection to read:

23 (f) The lien imposed by this section is subject to the rights of a purchaser, holder of a
24 security interest, or judgment lien creditor if the interest of the purchaser, holder, or creditor is
25 perfected under applicable law before notice of the lien is filed in the appropriate recorder's
26 office under (b) of this section. The purchaser, holder of a security interest, or judgment lien
27 creditor shall be afforded the same protections against the lien imposed by this section as are
28 afforded under state law to a purchaser, holder of a security interest, or judgment lien creditor
29 against a judgment lien that arises out of an unsecured obligation and that arises at the same time
30 the notice of the lien created under this section is filed.

31 * Sec. 5. AS 46.03.822(b)(2) and AS 46.08.075(e) are repealed.