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HOUSE COMMITTEE REPORT

Date Referred: March 22, 1991

FURTHER REFERRALS: Community & Regional Affairs
Judiciary

Date of Committee Action: 4/4/91

Committee TRANSPORTATION considered:

HB 232

HOUSE BILL NO. 232

SUNKEN AND ABANDONED VESSELS

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

RECOMMENDATIONS:

to be replaced with _____ the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note ~~A.A.B.~~ H.T.C

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Arew A. Luman</i>	✓				
<i>Frank Phillips</i>	✓				
<i>Jim Mc...</i>	✓				
<i>W. Anderson</i>	✓				
<i>Richard (Joke)</i>	⊗				
<i>Gene Robinson</i>	✗				

Richard (Joke)
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 232

Revision Date: 28-Mar-91 Department Affected: Natural Resources
 Title: Shipwrecks Act BRU: Land & Water Management
 Components: Land & Water Management
 Sponsor: Representative Jacko
 Requestor: House Transportation COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact: 0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Salli Slaughter Phone: 762-2692
 Division: Land & Water Date: 28-Mar-91

Approved by Commissioner: Harold Heinze Date: 28-Mar-91
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,
 & Impacted Agency(ies).

HB 232
Shipwrecks Act*

Section Analysis
March 26, 1991

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

Summary: There is currently limited power in ports and harbors to effect the cleanup of wrecked or abandoned vessels. This act expands that authority to other state or municipal land, and includes cargo. It requires the removal of sunken or abandoned vessels and cargo unless the agency having jurisdiction gives permission to do otherwise, and provides penalties for non-compliance. It authorizes the appropriate agency to clean up the land if necessary, and to take custody of the vessel or cargo and sell it. It also authorizes a lawsuit to be filed to recover costs (plus double damages, if the vessel is 58 feet or over). In short, it ensures that state tidelands are cleaned-up, and limits the state's liability without protracted litigation.

Section 1. Broadens the powers of home rule municipalities to include AS 29.35.085 (sunken or abandoned vessels).

Section 2. Provides a cross reference for municipalities to regulate sunken or abandoned vessels under AS 30.30.

Section 3. Requires a person who wants to sink a vessel or cargo to get permission from the department or municipality having jurisdiction. To do so without permission is a class A misdemeanor.

Section 4. Knowing abandonment of a vessel or cargo is a class B misdemeanor.

Section 5. Defines abandonment.

Section 6. Requires a person who owns, controlled or had custody of the vessel or cargo when it was sunk to remove it and restore the state or municipal land within 30 days unless they have permission to do otherwise from the appropriate agency. It limits the agency's liability, even if permission to leave the vessel has been granted.

It also allows the appropriate agency to effect clean up and bring a court action against the appropriate person to recover costs and civil penalties (twice the costs of removal and restoration if the vessel is more than 58 feet overall). This section also allows the agency to assign its rights to recover costs to a third party in order to have the vessel removed (the civil penalty may not be assigned).

Defines owner.

It allows the agency or a peace officer to take custody of the vessel or cargo (immediately, if it threatens life, public safety, property, the environment, etc.). It also states that vessels and cargo taken into custody are subject to disposal, except for timber subject to AS 45.50.210-.325 (log brands and abandoned/ salvage logs).

Section 7. Expands existing section regarding notice to owners that custody has been taken to include all state or municipal tidelands (it currently only covers harbors), and to cover cargo as well.

Section 8. Expands existing section regarding public auction of the vessel to include cargo and expand the allowable time for repossession from 20 days to 30. Adds cross reference to the notice provision above.

Section 9. Amends an existing section that states that a third party having an interest in the vessel or cargo may take possession before the date of auction. The amendment expands the section to apply to all state and municipal tidelands, and adds a bonding requirement for removal and restoration (the section already requires a bond sufficient to cover the value of the vessel or cargo).

Section 10. Amends existing section stating that a bill of sale transfers the agency's interest to apply to municipalities as well.

Section 11. Defines areas of jurisdiction: DOT/PF has jurisdiction in ports and harbors below tides; the state on all other state owned tidelands and waters; and municipalities on municipally owned tidelands.

Subsections are (a) and (b) are unclear however, they appear to have the following meanings. The act is inapplicable to historic properties, etc. sunk or abandoned prior to the effective date of the Act and designated under AS 41.35.010-.240. Otherwise it appears to be applicable to all vessels (but not cargo) sunk or abandoned before the effective date of the act; vessels and cargo sunk or abandoned on or after the effective date of the act.

There appears to be no reason to exempt abandoned cargo from the retroactive application of this law. Likewise, there appears to be no reason to exempt future shipwrecks/cargo from the historic preservation act. We therefore suggest the following:

Sec. 30.30.099. APPLICABILITY. (a) Except as provided in (b) of this section, AS 30.30.031 - 30.30.099 apply to all vessels and cargo of vessels that are sunk or abandoned before, on or after the effective date of this Act. The

successor in interest of the person who owned, controlled, or had custody of a vessel or cargo of a vessel subject to this subsection at the time the vessel was sunk or abandoned is subject to AS 30.30.031 - 30.30.099.

(b) AS 30.30.031 - 30.30.099 do not apply to sunk or abandoned vessels or cargo designated as historic monuments, sites, properties, locations, or remains under AS 41.35.010 - 41.5.240.

Subsection (c) states that this Act shall be construed to be consistent with the Article on log brands and salvage timber (AS 45.50.210 - 45.50.325). If the articles are not consistent, AS 45 controls.

Section 12. Changes the qualifier from "shall" to "may" (adopt regulations).

Section 13. Definitions.

Section 14. Repealer.

Section 15. Provides for an immediate effective date.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

February 19, 1991

SUBJECT: Sectional Summary of Work Order 7LS0500; An Act relating to sunken and abandoned vessels and cargo

TO: Representative George Jacko

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is a sectional summary of Work Order 7LS0500.

A sectional summary of a bill is not an authoritative interpretation of a bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends the powers of home rule municipalities in regard to sunken and abandoned vessels.

Section 2 of the bill adds a new section to AS 29.35 relating to the regulation of sunken and abandoned vessels by municipalities.

Section 3 of the bill adds a new section to AS 30.30 that makes it a class A misdemeanor to recklessly sink, or cause to be sunk, a vessel or cargo of a vessel.

Section 4 of the bill adds a new section to AS 30.30 that makes it a class B misdemeanor to knowingly abandon, or cause to be abandoned, a vessel or cargo of a vessel.

Section 5 of the bill adds a new section to AS 30.30 that describes what is an abandoned vessel for the purposes of AS 30.30.011 - 30.30.091.

Section 6 of the bill adds two new sections to AS 30.30 relating to the removal and custody of sunken or abandoned vessels on state or municipal land or water.

Sec. 30.30.031.

Subsection (a) requires a person who owned, controlled, or had custody of a sunken or abandoned vessel or cargo to remove the vessel or cargo from state or

Sectional analysis

municipal land or water within 30 days unless the person receives permission from the state or municipality and to restore state or municipal land or water damaged by the sinking or abandonment. Subsection (b) provides that the state or municipality may grant temporary or permanent permission in writing to leave a vessel or cargo in place.

Subsection (c) provides that only the Department of Environmental Conservation may grant permission to leave a hazardous substance on or within land or water in the state.

Subsection (d) provides that a person who receives permission to leave a vessel or cargo in place is still liable for damages that result from the presence of the vessel or cargo.

Subsection (e) provides that the state or municipality is not liable for damages arising from the presence of a vessel or cargo on state or municipal land or water, even though the state or municipality gave permission to leave the vessel or cargo in place.

Subsection (f) sets out the steps that the state or a municipality may take if a vessel or cargo remains on state or municipality land or water without permission, including legal action for damages and costs of removal of the vessel or cargo and restoration of the land or water.

Subsection (g) provides that the state or a municipality may assign its right to recover the cost of removing a vessel or cargo from state or municipal land and restoring the land and water to a person who agrees to, and actually does, remove the vessel or cargo and restore the land and water.

Subsection (h) sets out who is considered to be the owner of a sunken or abandoned vessel or cargo.

Sec. 30.30.035 provides that sunken and abandoned vessels and cargo may be taken into the custody of the state, a municipality, or a peace officer.

Section 7 of the bill amends AS 30.30.040 relating to the notice that must be given to the owner of a sunken or abandoned vessel or cargo that has been taken into custody by the state or a municipality.

Section 8 of the bill amends AS 30.30.050 relating to the sale of a vessel or cargo that is in the custody of the state or a municipality.

Section 9 of the bill amends AS 30.30.060 relating to possession of a sunken or abandoned vessel or cargo by a person who has an interest in the vessel or cargo before the vessel or cargo is disposed of by the state.

Section 10 of the bill amends AS 30.30.080 relating to the effect of a sale of a sunken or abandoned vessel by the state or a municipality.

Representative George Jacko
February 19, 1991
Page 3

Section 11 of the bill adds a new section to AS 30.30 setting out the jurisdiction of the Department of Transportation and Public Facilities and the Department of Natural Resources and municipalities in implementing AS 30.30.011 - 30.30.091.

Section 12 of the bill amends AS 30.30.160 by providing that the state departments may adopt regulations to carry out the provisions of AS 30.30.

Section 13 of the bill amends the definitions of terms used in AS 30.30.

Section 14 of the bill sets out provisions prescribing how AS 30.30 as amended by this Act, is to be applied to vessels and cargo currently sunk or abandoned in the state and to those that will be sunk or abandoned in the future.

Section 15 of the bill repeals various section of AS 30.30.

Section 16 of the bill provides that the bill takes effect immediately after becoming law.

GU:lmb:pl
91-053.lmb

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

April 3, 1991

The Honorable Richard Foster, Chair
House Transportation Committee
P.O. Box V
Juneau, AK 99811

APR 03

8.
A.L.

Dear Representative Foster:

Subject: ~~HB 232,~~ which relates to sunken and abandoned vessels and cargo.

Position: The department of natural resources supports this bill, but recommends a clarifying amendment.

Background: Shipwrecks on state tidelands often contain hazardous materials such as oil and ammonia, or methane gas produced from a cargo of rotting fish. Shipwrecks that have no historic value impair other uses of the tidelands and are attractive nuisances that generate liabilities for the state. Shippers often abandon a wrecked ship because it is too expensive to remove. Currently, litigation is the only means for removal of an abandoned shipwreck. During the often lengthy litigation process, the wrecked vessel and its value can continue to deteriorate and the ship can become even more difficult to remove.

This bill would allow the tideland owners (state or municipal governments) to require removal of sunken or abandoned vessels and cargo, unless the agency with jurisdiction decides otherwise. It provides penalties for noncompliance with cleanup requirements, and allows the agency with jurisdiction to take custody of the vessel and cargo, and clean up the wreck site, as necessary. The bill also authorizes lawsuits to recover ship wreck removal and cleanup costs.

Recommendation: Clarify Section 11, by rewriting as follows, to make the law retroactive for cargo as well as vessels, and to ensure that future wrecks are protected by state historic preservation laws:

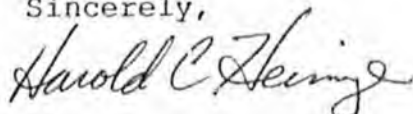
Sec. 30.30.099. APPLICABILITY. (a) Except as provided in (b) of this section, AS 30.30.031 - 30.30.099 apply to all vessels and cargo of vessels sunk or abandoned before, on or after the effective date of this act. The successor in interest of the person who owned, controlled, or had custody of a vessel or cargo of a vessel subject to this subsection at the time the vessel was sunk or abandoned is subject to AS 30.30.031 - 30.30.099.

(b) AS 30.30.031 - 30.30.099 do not apply to sunk or abandoned vessels or cargo designated as historic monuments, sites,

properties, locations, or remains under AS 41.35.010 -
41.5.240.

Please let me know if you would like additional information related
to this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harold C. Heinze".

Harold C. Heinze
Commissioner

enclosures

cc: Committee Members
Representative Jacko
Representative Navarre
Bruce Kendall, Legislative Liaison, Office of the Governor

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 11, 1990

OFFER OF SETTLEMENT & COMPROMISE
PROTECTED UNDER EVIDENCE RULE 408

Mr. Doug Fryer, Esq.
Mikkelboug, Bronz, Wells & Fryer
1001 Fourth Avenue, Suite 3300
Seattle, WA 98154

Mr. William Wuestenfeld, Esq.
Sandberg & Smith
310 K Street, Suite 500
Anchorage, AK 99501

Re: State of Alaska v. All Alaskan Seafoods

Gentlemen:

In a past conversation, Mr. Fryer inquired as to the State's position as to possible settlement of this matter. After receiving your recent offer of judgment of only \$25,000, we would like to share with you the state's view of this case.

As you know, the Alaska Department of Natural Resources manages the state tidelands upon which the All Alaskan is grounded. The unauthorized presence of the All Alaskan on state tidelands is a continuing trespass on state property and accordingly the Department of Natural Resources demands the removal of the wreck. How this is accomplished is a matter for All Alaska Seafoods and its insurers. The Department would be willing to review any proposals by your clients or their underwriters as to how to effectively and economically remove the wreck. Such a plan would have to meet the approval of DNR, the Department of Fish and Game, the Department of Environmental Conservation and appropriate federal and local agencies. If an acceptable removal operation can be completed, DNR would be willing to drop its trespass and nuisance damage claims resulting from the grounding.

As to the pollution/natural resource claims as a result of the spill, the state would be willing to settle these claims for the base oil spill penalties under AS 46.03.758 and state response costs. State response costs are relatively small in the neighborhood of \$5,000.

According to the figures supplied by All Alaskan Seafoods to the U.S. Coast Guard and ADEC at least 43,250 gallons of diesel fuel were released to the environment. Under the regulations

REPLY TO:

1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (307) 452-1568
FAX: (907) 456-1317

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

Dept of law

APR 27 1990

implementing the oil spill penalty provisions of AS 46.03.758, the waters near the grounding are designated as a critical marine environment. 18 AAC 75.520(1) (E) & (F). The base penalty for oil spills into a critical marine environment is \$2.50 a gallon. 18 AAC 75.570(1). Applying the toxicity, degradability and dispersability factors for marine diesel in 18 AAC 75.540 et. seq. to the base penalty (\$2.50 x .466) produces a net per gallon spill penalty of \$1.17. Using this figure, the total penalty for a spill of 43,250 gallons is \$50,602.50.

In light of your indisputable liability for oil spill penalties in excess of \$50,000, your offer of judgment is clearly inadequate even ignoring the fact that your client refuses to remove the All Alaskan from state lands. Moreover, the state believes it has a strong case that the spill resulted from gross negligence, thereby subjecting All Alaskan Seafoods to five times the base penalty or \$253,012.50. See AS 46.03.758(b) (2).

In the interests of resolving this matter without further litigation, the state is willing to settle this matter for its costs and the basic oil spill penalties, if All Alaska Seafoods will remove the wreck. The state is willing to negotiate a reasonable time frame for removal but is adamant in its position that this environmental blight be removed from its property.

As to your position that your marine protection and indemnity insurers are only obligated to remove the wreck if compelled to do so by a court injunction, we call your attention to Continental Oil Co. v. Bonanza Corp., 706 F.2d 1365 (4th Cir. 1983). In Continental Oil, the court held that an order by a government official to remove a wreck fell within the "compulsory by law" P & I policy provisions for wreck removal. In case there is any doubt in your mind as to the state's position, we enclose an order from the Division of Land & Water Management directly you to remove the M/V All Alaskan from state lands.¹ See also Seaboard Shipping v. Jocharanne Tugboat Corp., 461 F.2d 500, 504 (2d Cir. 1972) ("compulsory removal" met when pursuant to government order the wreck must be removed). If your P & I insurers insist in their

¹ Even without an order from a governmental official, the Continental court held that this condition was met "when a reasonable owner, fully informed, would conclude that failure to remove would likely expose him to liability imposed by law sufficiently great in amount and probability of occurrence to justify the expense of removal." Id. at 1372; see Zurich Ins. Co. v. Pateman, 692 F. Supp. 371, 377-80 (D.N.J. 1987). In light of your liabilities for continuing trespass, nuisance and per day penalties for violation of numerous state environmental statutes, failure to remove the vessel clearly exposes you to liability of such magnitude to justify the expense of removal.

unreasonable refusal to provide coverage, we suggest in light of the rapidly developing law of insurance bad faith in Alaska that your remedy is to remove the vessel and pursue a first party bad faith action against your insurer. See State Farm Fire & Casualty Co. v. Nicholson, 777 P.2d 1152 (Alaska 1989).

In sum, your failure to remove the All Alaskan is simply unjustified. The state is willing to fully litigate this matter, if necessary, to ensure removal. However, in the interests of resolving this dispute without further litigation, the state is willing to settle this matter along the lines discussed above.

If your clients are interested in such a settlement, I would appreciate hearing from you within two weeks of receipt of this letter. If your client's reaction is positive, we can then set up a time frame for your preparing a plan of operations and obtaining approvals from the appropriate state agencies.

Sincerely,

DOUGLAS B. BAILY
Attorney General



By: Breck C. Tostevin
Assistant Attorney General

Enclosure

cc: ✓ Gary Gustafson, DNR/DLWM
Bill H. Lamoreaux, ADEC/SCRO
Bruce Erickson, ADEC/AWDO
Lance Trasky, ADFG/Habitat

TRESPASS NOTICE AND ORDER TO QUIT

TO:

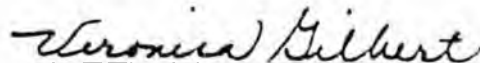
All Alaskan Seafoods Inc.
An Alaska Corporation
311 Mill Bay Road
Kodiak, AK 99615

Lloyd W. Canon, Registered Agent and/or

Other persons owning or having an interest in the vessel M/V All Alaskan.

Under AS 38.05.020 and 38.05.035, the director of the state division of land and water management has the authority and responsibility to manage and control state property and may issue orders to carry out that function. By virtue of the authority delegated to this office by the director, YOU ARE HEREBY NOTIFIED:

1. The M/V All Alaskan is aground on tidelands of the State of Alaska; namely near the northeast point of St. Paul Island, Alaska.
2. Your failure to remove the M/V All Alaskan constitutes an unauthorized remaining unlawfully upon the premises of the State of Alaska, namely the tidelands at the northeast point of St. Paul Island.
3. Your use and occupancy is unauthorized and contrary to law. Accordingly,
4. YOU ARE HEREBY ORDERED to quit your use and occupancy and to vacate the premises immediately and remove the M/V All Alaskan.
5. YOU ARE FURTHER ORDERED to remove all personal property and structures from the premises within thirty (30) days of this notice, including equipment, debris or other items of anything kind whatsoever.



Veronica Gilbert
Regional Manager
Division of Land Water
Management

CERTIFICATE OF SERVICE

On this date a correct copy of the TRESPASS NOTICE AND ORDER TO QUIT was mailed to the All Alaska Seafoods, Inc., by depositing the same in the U.S. Mail at Anchorage, Alaska, postage prepaid.

April 11, 1990
Date

Barbara L. Isaac
Signature

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

August 28, 1990

SUBJECT: Statutes relating to derelict and abandoned vessels

TO: Representative Cliff Davidson
ATTN: Jay Nelson

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a list of statutes relating to derelict and abandoned vessels.

There is relatively little state statutory law dealing with disposition of derelict and abandoned vessels. The bulk of the law dealing with vessels is a function of federal admiralty law which would not be reflected in state statutes.

Enclosed is a copy of AS 30.30. AS 30.30 contains the only statutes directly relating to procedures for the disposition of derelict and abandoned vessels. Other statutes, such as AS 34.45 (copy enclosed), may be implicated at certain stages of proceedings to dispose of a vessel depending on the facts and nature of the particular case, but in the absence of a specific case it is difficult to determine which statutes may be relevant.

Also enclosed is a bill introduced by Governor Sheffield in 1986 to reform AS 30.30. An important concern of Governor Sheffield's bill was the need to ensure the constitutionality of procedures for disposing of derelict and abandoned vessels by providing adequate protection for the due process rights of vessel owners.

If I can provide further assistance, please contact me.

GU:lmb
90-0019.lmb

CC: Corky McCorkle
Harbor Master
Kodiak

HB 525

Introduced: 1/29/86
Referred: State affairs,
Transportation and Judiciary

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 525

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to abandoned vessels; and providing
7 for an effective date."

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

9 * Section 1. AS 30.30.010 is amended to read:

10 Sec. 30.30.010. ABANDONMENT OF VESSEL UNLAWFUL. (a) A person
11 may not store or leave a vessel in a wrecked, junked, or substantially
12 dismantled condition or abandoned upon any public water, or at a port
13 or harbor, [OF THE STATE,] without the consent of the agency having
14 jurisdiction of the water, port, or harbor, or docked or otherwise
15 left at any private property without the consent of the owner or
16 occupant of the property.

17 (b) A [THE DEPARTMENT OR A] peace officer may remove a [DERE-
18 LICT] vessel from public water, or at a port or harbor, in any in-
19 stance when the vessel obstructs or threatens to obstruct navigation,
20 contributes to air or water pollution, or in any other way constitutes
21 a danger or potential danger to the environment, to port or harbor
22 facilities, or to other vessels.

23 (c) This section may not be construed to contravene any applica-
24 ble federal law or regulation.

25 (d) A person who violates this section, upon conviction, is
26 guilty of a misdemeanor and is punishable by a fine of not more than
27 \$500, or by imprisonment for a period of not more than six months, or
28 by both.

29 * Sec. 2. AS 30.30.020 is amended to read:

1 Sec. 30.30.020. CUSTODY [DISPOSITION] OF CERTAIN [ABANDONED]
2 VESSELS. A vessel that has been left unattended for a continuous
3 period of more than 30 days and is upon public water or at a port or
4 harbor without the consent of the agency having jurisdiction of the
5 water, port, or harbor, or is docked or otherwise left at any [IN THE
6 WATERS OF THE STATE OR ON PUBLIC PROPERTY, OR IS ON] private property
7 without authorization of the owner or occupant of the property, may be
8 taken into custody by [THE DEPARTMENT OR] a peace officer and disposed
9 of [BY THE DEPARTMENT] under this chapter.

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

11 Sec. 30.30.051. FORFEITURE OF VESSELS. (a) A vessel that is
12 removed from public water or a port or harbor, under AS 30.30.010(b),
13 or an unattended vessel that is taken into custody under AS 30.30 020,
14 is subject to forfeiture under AS 30.30.051 -- 30.30.057.

15 (b) Within 10 days after a vessel's removal under AS 30.30.-
16 010(b) or taking into custody under AS 30.30.020, the commissioner of
17 public safety or a municipal law enforcement agency shall make an
18 inventory of the vessel and its gear, equipment, cargo, and any other
19 property aboard, and shall estimate their value.

20 (c) Within 30 days after a vessel's removal under AS 30.30.-
21 010(b) or taking into custody under AS 30.30.020, the commissioner of
22 transportation and public facilities, or a municipality, shall give
23 notice of the seizure. The notice must be sent to the last known
24 address of any person known to have an interest in the vessel or whose
25 interest in the vessel is ascertainable from official registration
26 numbers, licenses, or other federal, state, or municipal numbers on
27 the vessel.

28 (d) No sooner than 45 days after the removal or taking into
29 custody, and no sooner than 21 days after notice has been sent under

1 (c) of this section, an action may be filed by the commissioner of
2 transportation and public facilities, or a municipality, in the supe-
3 rior court.

4 (e) Within 30 days after filing the action, the commissioner of
5 transportation and public facilities, or a municipality, shall serve
6 process in the manner provided in the rules of civil procedure.

7 (f) After service of process under (e) of this section, a person
8 claiming an interest in the vessel shall file an answer within the
9 time permitted for answering complaints under the applicable rules of
10 civil procedure. The answer must include the nature of the claimant's
11 interest in the vessel, the date that it was acquired, the considera-
12 tion paid, and the circumstances under which it was acquired. If an
13 answer is not filed within the required time the vessel is forfeited
14 by default without further proceedings or showings.

15 (g) A claimant may, at any time before the court hearing, peti-
16 tion the court for release of a vessel, and its gear, equipment,
17 cargo, and other property aboard, removed under AS 30.30.010(b) or
18 taken into custody under AS 30.30.020, if the claimant

19 (1) has filed a timely answer under this section; or

20 (2) before the initiation of a forfeiture action, files a
21 notice of claim setting out the nature of the claimant's interest in
22 the vessel, the date that it was acquired, the consideration paid, and
23 the circumstances under which it was acquired.

24 (h) The court may release the vessel, and its gear, equipment,
25 cargo, and other property aboard, if a claimant provides a bond or
26 other valid equivalent security equal to twice the estimated value of
27 the vessel, gear, equipment, cargo, and other property.

28 Sec. 30.30.054. NATURE OF PROCEEDING AGAINST VESSEL. (a) The
29 plaintiff in a proceeding filed under AS 30.30.051 may seek (1) the

1 forfeiture of a vessel, and its gear, equipment, cargo, and other
2 property aboard; (2) the recovery of any unpaid harbor user fees, and
3 compensation for damage, if any, caused by the vessel to public port
4 or harbor facilities; (3) the costs of removal under AS 30.30.010(b)
5 or taking into custody under AS 30.30.020; (4) interest on fees and
6 compensation; and (5) costs and attorney fees actually and necessarily
7 incurred in the action.

8 (b) The court, after a hearing, may order forfeiture of the
9 vessel and other property, and the payment of any amount authorized by
10 this section. However, a vessel is not forfeited until the owner or
11 other persons having an interest in the vessel have had an opportunity
12 to pay the monetary judgment under conditions specified by the court.

13 (c) If a bond or equivalent security has been provided for the
14 release of the vessel and other property under AS 30.30.051, the
15 security must be returned upon payment of any monetary judgment under
16 this section or upon the return of the vessel and other property.

17 Sec. 30.30.057. DISPOSAL OF FORFEITED VESSELS. (a) A vessel
18 and other property forfeited to the state under AS 30.30.051 --
19 30.30.057 must be disposed of by the commissioner of administration in
20 accordance with applicable law. The commissioner of administration
21 may, consistent with other applicable law,

22 (1) destroy the vessel and other property; or

23 (2) sell the vessel and other property, and use the pro-
24 ceeds for payment of all proper expenses of the proceedings for for-
25 feiture and sale, including expenses of seizure, custody, and court
26 costs, and for payment for any damage to public port or harbor facil-
27 ities.

28 (b) A vessel and other property forfeited to a municipality
29 under AS 30.30.051 -- 30.30.057 must be disposed of in accordance with

1 municipal ordinance and other applicable law. The municipality may,
2 consistent with other applicable law,

3 (1) destroy the vessel and other property; or

4 (2) sell the vessel and other property, and use the pro-
5 ceeds for payment of all proper expenses of the proceedings for for-
6 feiture and sale, including seizure, custody, and court costs, and for
7 payment for any damage to public port or harbor facilities.

8 * Sec. 4. AS 30.30.160 is amended to read:

9 Sec. 30.30.160. REGULATIONS. The department may [SHALL] adopt
10 regulations under the Administrative Procedure Act (AS 44.62) to
11 implement, interpret, or make more specific its powers and duties
12 under [CARRY OUT THE PROVISIONS OF] this chapter.

13 * Sec. 5. AS 30.30.040 -- 30.30.100 are repealed.

14 * Sec. 6. This Act takes effect immediately in accordance with AS 01.-
15 10.070(c).

HB 524

The first amendment expands AS 47.17.070(2)'s definition of "child abuse or neglect" to expressly include "mental injury."

The second amendment clarifies AS 47.17.070(10)'s definition of "sexual exploitation." It makes clear that "allowing," i.e., not preventing, a child's participation in acts of prostitution, or engaging in conduct that constitutes criminal exploitation of a minor, is considered sexual exploitation for the purposes of finding child abuse or neglect.

By bringing Alaska's child protection statutes into compliance with the Child Abuse and Prevention Act, 42 U.S.C. sec. 5101 et seq., the amendments make the state eligible to receive federal grants for developing, supporting, and implementing child abuse and neglect programs. Alaska is currently operating under a one-year waiver of the federal eligibility requirements, granted June 26, 1985 by the regional administrator of the U.S. Department of Health and Human Services. Because child abuse and neglect is a pressing problem in our state, and because federal support for our efforts to prevent and treat the problem is highly desirable, I urge your prompt passage of this bill.

Sincerely,

/s/

Bill Sheffield
Governor"

HB 525

HOUSE BILL NO. 525 by the Rules Committee by request of the Governor, entitled:

"An Act relating to abandoned vessels;
and providing for an effective date."

was read the first time and referred to the State Affairs, Transportation and Judiciary Committees.

A zero fiscal note with analysis was attached and appears in House Journal Supplement No. 78.

The Governor's transmittal letter dated January 29, 1986, appears below:

"Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the disposition of unauthorized vessels left unattended in boat

HB 525

harbors, and vessels that pose a hazard to navigation or a risk of pollution. The bill will clarify existing procedures in AS 30.30.010 -- 30.30.100.

The current statutory language provides overlapping and conflicting definitions for "abandoned" and "derelict" vessels, and two different procedures for disposing of them. In application, there are serious difficulties with using the statutes. It is nearly impossible to determine which standard to apply with its related disposal procedures. Furthermore, the disposal procedures have serious failings in terms of the notice given owners of seized vessels and other claimants of interest. The notice required is quite perfunctory, and results in the forfeiture of a vessel without any sort of judicial proceeding.

This bill removes the confusion in the statutory scheme, and provides revised procedures for the disposition of vessels removed from harbors. The revised procedures provide appropriate notice of the possible forfeiture of the vessel. They also ensure that there will be no forfeiture of vessels without the filing of a judicial proceeding.

The following sectional analysis of the bill highlights amendments to existing language and explains new language.

Section 1 amends AS 30.30.010(b) by allowing only peace officers to remove a vessel that is creating certain hazards. An existing reference to the Department of Transportation and Public Facilities is deleted. The language "or at a port or harbor" is added to give AS 30.30.010(b) the same coverage as AS 30.30.010(a). The list of situations in which a vessel may be removed has been slightly expanded.

A technical amendment to AS 30.30.010(a) deletes an unclear and unnecessary phrase ("of the state") from that subsection. In addition, this subsection contains two amendments to provide conformity with AS 30.30.020, as amended in sec. 2 of the bill.

Section 2 simply clarifies AS 30.30.020 by describing more precisely the places from which a vessel may be taken into custody. It also deletes the Department of Transportation and Public Facilities' authority to take vessels into custody, leaving that to peace officers.

Section 3 of the bill adds three new AS sections. New AS 30.30.051 sets out procedures for the forfeiture of vessels, and property on board the vessels, removed from public water or a boat harbor under AS 30.30.010(b), or taken into custody under AS 30.30.020. Notice to those known to have an interest in the vessel is required. Because the forfeiture is only accomplished by a judicial proceeding, notice to affected parties is given by service of the complaint. The use of this proceeding to accomplish the forfeiture is a major departure from the existing statutory procedure. The new procedure will provide greater protection of private rights because the process is under the supervision of the superior court.

HB 525

AS 30.30.054 provides the relief available in a proceeding filed under the proposed AS 30.30.051. In addition to the forfeiture of the vessel and other property aboard it, the court may order payment of harbor user fees, compensation for damage to public harbor facilities, and payment of the costs of custody and the costs of the litigation.

AS 30.30.057 prescribes the disposition of forfeited vessels. A vessel and other property aboard it, forfeited to the state, may either be destroyed or sold by the commissioner of administration, with any proceeds used to pay the costs of seizure, custody, forfeiture, and sale, and for any damage to public port or harbor facilities. If a vessel is forfeited to a municipality, the municipality has the same options.

Section 4 of the bill amends AS 30.30.160, to clarify that the Department of Transportation and Public Facilities may adopt regulations to carry out its powers and duties under AS 30.30 only; department regulations will not address the powers and duties of municipalities under that chapter.

Section 5 repeals AS 30.30.040, 30.30.050, 30.30.060, 30.30.070, 30.30.080, 30.30.090, and 30.30.100. It is appropriate to repeal AS 30.30.040 -- 30.30.080 because these sections relate to a disposal scheme that only applies to the disposal of "abandoned" vessels. There are difficulties with this existing language because it provides very little notice of the possible forfeiture of the vessel without a judicial proceeding. The repealed statutes are replaced with new provisions in sec. 3 of the bill, which provide a new forfeiture procedure.

AS 30.30.090 currently sets standards for "derelict" vessels which conflict with, and are unnecessary in light of, standards found in AS 30.30.010 for abandoned vessels. The repeal of AS 30.30.090 resolves this conflict.

AS 30.30.100 currently provides a taking and disposal procedure for derelict vessels. However, there are serious failings with this statute in terms of the notice of the possible forfeiture, and the fact that the forfeiture is accomplished without any sort of judicial proceeding. The repeal of AS 30.30.100 in sec. 5 of the bill, and the new language proposed in sec. 3, resolve these procedural difficulties.

This bill will greatly assist in the management of boat harbors in Alaska. It provides clear standards for dealing with unauthorized and hazardous "abandoned" vessels and provides appropriate safeguards for those having an interest in the vessels.

Sincerely,

/s/

Bill Sheffield
Governor"

1 IN THE HOUSE

2 HOUSE CONCURRENT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Relating to abandoned vessels on the
6 beaches of Alaska.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS about 40 abandoned vessels, including merchant vessels, fish-
9 ing vessels, and other vessels, are grounded on the coast of Alaska; and

10 WHEREAS abandoned vessels are an environmental hazard and are aesthet-
11 ically unpleasing; and

12 WHEREAS the state does not have the resources to salvage or dispose of
13 abandoned vessels; and

14 WHEREAS the state does not currently have statutory authority to
15 impose liability on the owners of abandoned vessels for the cost of salvag-
16 ing or demolishing abandoned vessels; and

17 WHEREAS communities are not compensated for the aesthetic and physical
18 trespass resulting from abandoned vessels;

19 BE IT RESOLVED by the Alaska State Legislature that the governor is
20 respectfully requested to ^{assist} study the problems posed by abandoned vessels and
21 to make appropriate recommendations to the First Session of the Seventeenth
22 Alaska State Legislature for legislation necessary to remedy existing
23 problems and prevent future problems.

24
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26
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28
29
HER

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Mary Van Nimwegen

House Transportation

4-4-91



Please complete all sections

House Transportation Committee

DATE: 4/4/91

PLACE: 17

SUBJECT OF MEETING:
 SB 9-
 HJR 15-
 HB 232-

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
JON SCRIBNER	DOT & PF			789-9110	789-6261	<input checked="" type="radio"/>	<input type="radio"/>	HB 232
Bob TRACZ	L. Indawere Newspaper	170 Fourth St R-202	99801	-	463- 5455	<input type="radio"/>	<input checked="" type="radio"/>	
BRYCE EDGMON	Rep. Juelo					<input checked="" type="radio"/>	<input type="radio"/>	HB 232
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