

HOUSE FINANCE COMMITTEE
February 28, 2001
1:35 PM

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TAPE HFC 01 - 34, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 1:35 PM.

MEMBERS PRESENT

Representative Eldon Mulder, Co-Chair
Representative Bill Williams, Co-Chair
Representative Con Bunde, Vice-Chair
Representative Eric Croft
Representative John Davies
Representative Carl Moses
Representative Richard Foster
Representative John Harris
Representative Bill Hudson
Representative Ken Lancaster
Representative Jim Whitaker

MEMBERS ABSENT

None

ALSO PRESENT

Carol Carroll, Director, Division of Support Services, Department of Natural Resources and Military and Veterans Affairs; Pat, Staff, Senator Drue Pearce; Larry Dietrick, Director, Division of Spill Prevention and Response, Department of Environmental Conservation; Paul Fuhs, Technical Support Contractor on Marine Issues, Task Force on Motorized Oil Transportation;

PRESENT VIA TELECONFERENCE

Brian Rogers, Facilitator, Task Force on Motorized Oil Transportation, Fairbanks; Breck Tostovin, Anchorage;

SUMMARY

HB 72 An Act relating to an assistant adjutant general for national missile defense in the Department of Military and Veterans' Affairs.

HB 72 was REPORTED out of Committee with a "do pass" recommendation and with a fiscal impact note by the Military and Veterans Affairs.

CS SB 16(RLS)

An Act regarding oil discharge prevention and cleanup involving self-propelled nontank vessels exceeding 400 gross registered tonnage and railroad tank cars and related facilities and operations and requiring preparation and implementation of oil discharge contingency plans for those nontank vessels and railroad tank cars; amending the definition of 'response action' that relates to releases or threatened releases of oil and thereby amending the duties and liabilities of response action contractors; authorizing compliance verification for nontank vessels and for trains and related facilities and operations; and providing for an effective date.

CSSB 16 (RLS) was REPORTED out of Committee with "no recommendation" and two fiscal impact note by the Department of Environmental Conservation (published note #2) and the Department of Transportation and Public Facilities (published note #1).

#hb72

HOUSE BILL NO. 72

An Act relating to an assistant adjutant general for national missile defense in the Department of Military and Veterans' Affairs.

CAROL CARROLL, DIRECTOR, DIVISION OF SUPPORT SERVICES, DEPARTMENT OF NATURAL RESOURCES AND MILITARY AND VETERANS AFFAIRS explained that the bill would create an Assistant Adjutant General for National Missile Defense. The position would be authorized for the duration of the development and deployment of the missile defense system in Alaska. Only the legislature has the authority to create positions of Assistant Adjutant General. Currently, the department is authorized an Assistant Adjutant General for the Army National Guard and an Assistant Adjutant General for the Air National Guard. The position would be federally funded and would be in effect during the development and deployment of the missile system in Alaska. The Assistant Adjutant General for National Missile Defense would be a member of the Alaska National Guard and the site commander for the development of missile defense in Alaska. She stressed the importance of filling the position with an Alaskan and member of the Alaska National Guard in order to promote Alaska jobs and training.

In response to a question by Vice-Chair Bunde, Ms. Carroll clarified that the position has not been created. The legislation would require that the position be a member of the National Guard.

Vice-Chair Bunde asked how the position would affect training. Ms. Carroll replied that an Alaskan perspective would increase the likelihood that Alaskans would be hired and that training needed to deploy the system in Alaska would occur.

Representative Foster inquired what a chain of command would look like. Ms. Carroll replied that they would report to the Adjutant Commander. They would work with the National Missile Defense Joint Program Office, which would be the site Activation Command in Alaska.

Representative Harris asked if the Governor had submitted a name for the position. Ms. Carroll could not confirm that any name had been indicated. To her knowledge, no name had been submitted.

Representative Hudson MOVED to report HB 72 out of Committee with the accompanying fiscal note.

Vice-Chair Bunde OBJECTED for comment. He pointed out that the legislation would increase the budget by \$200 thousand dollars per year.

There being NO FURTHER OBJECTION, HB 72 was reported out of Committee.

HB 72 was REPORTED out of Committee with a "do pass" recommendation and with a fiscal impact note by the Military and Veterans Affairs.

#SB16

CS FOR SENATE BILL NO. 16(RLS)

An Act regarding oil discharge prevention and cleanup involving self-propelled nontank vessels exceeding 400 gross registered tonnage and railroad tank cars and related facilities and operations and requiring preparation and implementation of oil discharge contingency plans for those nontank vessels and railroad tank cars; amending the definition of 'response action' that relates to releases or threatened releases of oil and thereby amending the duties and liabilities of response action contractors; authorizing compliance verification for nontank vessels and for trains and related facilities and operations; and providing for an effective date.

LARRY DIETRICK, DIRECTOR, DIVISION OF SPILL PREVENTION AND RESPONSE, DEPARTMENT OF ENVIRONMENTAL CONSERVATION testified in support of the legislation. He observed that the Task Force included a 23-member cross-section of the maritime industry, the Alaska Railroad and other interested parties. The goal of the legislation is to protect Alaska's renewable resources and keep Alaska's waters the cleanest and most pristine in the world by including large sea-going marine nontank vessels and the Alaska Railroad in Alaska's safety net for oil spill prevention and response. Alaska is the only west coast state that does not include nontank vessels in the oil spill safety net. In May of last year the 21st Legislature debated and passed Senate Bill 273 and Senate Concurrent Resolution 1, which commissioned the Task Force on Motorized Oil Transport to work out details to implement oil spill contingency plans and achieve the response planning standard in a way that was acceptable to those who would be affected. The Task Force has completed the work directed by the Legislature and achieved unanimous consensus on legislation. The consensus legislation is SB 16, which was developed by the Task Force and is predicated on no further amendments by the members.

Mr. Dietrick observed that although the requirement for financial responsibility was made effective last year, the requirement to have an oil spill contingency plan and meet the response planning standard was not. Instead, the Legislature through SB 273 and Senate Concurrent Resolution 1 commissioned the Task Force to determine how to implement the response planning standards and provide opportunities for streamlined oil spill contingency plans. Those standards were set by the Legislature in SB 273 as the containment and control of 15% of the maximum oil capacity of a nontank vessel or train, within 48 hours and cleanup of the discharge within the shortest possible time, consistent with minimizing damage to the environment. Nontank vessels were defined as self-propelled vessels over 400 gross tons, not including tank vessels, oil barges or public vessels.

Mr. Dietrick noted that Senate Concurrent Resolution 1 specified that there would be 23 members on the Task Force on Motorized Oil Transport. This served to ensure a diversity of viewpoints and adequate representation of all groups to be regulated. The members included representatives from the U. S. Coast Guard, the DEC, the Railroad, spill response cooperatives, the shipping industry, spot charter groups, the fishing industry, the Regional Citizens' Advisory Councils, and representatives from the crude oil industry and the refined oil distributors and transporters. Many more persons, who were not appointed representatives, attended the work group sessions and formal task force meetings.

Mr. Dietrick noted that the Task Force held eleven formal meetings over a five-month period in which the members worked through legal and technical issues on prevention, contingency plans, and response planning standards. Three workgroups were created to address specific areas of concern.

Mr. Dietrick discussed the recommendations of the Task Force. He maintained that the recommendations are practical and meet the requirements the Legislature established in last years' bill. They include implementation measures that use a market-based economy approach to keep costs down. The recommendations are based on Alaska's existing oil spill response infrastructure and provide maximum flexibility for meeting the requirements. The work of the Task Force has already fostered private sector initiatives that significantly increase the resources that will be brought to bear on a spill. Alliances between ship agents, stevedoring companies and spill-response cooperatives are now being explored to meet response needs and a new Marine Exchange that covers all of Alaska is being created.

The members of the Task Force were extremely attentive to the proceedings and assimilated a tremendous amount of information during their tenure. All meetings were well attended and the level of dialogue was frank, constructive and productive. After careful and thorough consideration of all ideas and requests brought before them, they achieved a unanimous consensus to support 31 recommendations.

Mr. Dietrick observed that the Task Force also exhaustively reviewed the legal issues and meticulously identified what elements should be contained in regulation and what should be contained in statute.

Mr. Dietrick maintained that the legislation provides a foundation for enhanced spill prevention and response preparedness thereby ensuring that state resources and economy are adequately protected for future generations.

BRIAN ROGERS, FACILITATOR, TASK FORCE ON MOTORIZED OIL TRANSPORTATION, FAIRBANKS testified via teleconference. He explained the work of the task force was how to implement the legislation. Most of the changes are not statutory but pertain to the regulatory process. The legislation contains the minimum changes necessary to:

Activate the contingency planning process, establishing a streamlined procedure for nontank vessels;

Limit liability for response action contractors, including those providing incident management team services and response planning facilitator services;

Enable the Department to adopt regulations consistent with the Task Force report.

Mr. Rogers reiterated that the recommendations follow a market-based approach giving affected vessels alternative means for compliance and allows a phased implementation to spread the cost on the regulated industry. The Task Force recommended a letter of Intent, which has been adopted as section 1 of the bill. He reiterated that the goals of the Task Force were met, which were that the process be realistic, effective, economically feasible and flexible.

Mr. Rogers reviewed the provisions of the recommendations. The response finding standards calls for control and containment within 24 hours. Vessels can demonstrate this ability through sufficient booms to go three times the lengths of the vessel and the means for deployment. To meet the clean up standard, vessels should have a skimmer appropriate for the type of oil in the operations or be able to be mobilized to the area of the operations within 24 hours. The recommendations provided for alternative calculations on the size of the response planning standards for vessels that are carrying less than a full load of oil. Contingency planning is a streamline process that begins with the information required for financial responsibility and a qualified individual able to make decisions in a spill event. A response action plan would be required, which would include initial notification procedures, contract with a primary response action contractor and a contract with a incident management team or the equivalent resources brought by the vessel or a combination of contract and resources. The legislation allows the development of fleet plans or generic plans that could be set up for the spot charter industry. The Department of Environmental Conservation would review timeframes and conduct drills and vessel verifications.

Mr. Rogers discussed prevention measures. He noted that all prevention measures are voluntary. The Task Force endorsed the risk analysis process being undertaken by the Alaska Railroad. The Alaska Railroad Corporation's contingency planning would go through the same guidelines as other regulated facilities.

Mr. Roger reviewed the legislation by section. Section 1 is the intent section. Sections 2 - 4 limit civil liabilities of action response contractors. Section 5 amends the definitions of "response action" to include civil liabilities for management team services and response plan facilitator services. Section 6 amends last year's legislation on proof of financial responsibility to make the language identical for tank vessels. Section 7 extends the inner passage exemptions. Section 8 adds new provisions

requiring sea plans and authorizes the Department of Environmental Conservation to adopt implementing regulations. Section 9 gives the Department of Environmental Conservation verification authority. Section 10 requires that the lieutenant governor to certify to the revisor of statutes the effective date of the regulations.

Representative Hudson noted that since the Exxon Valdez spill the legislature has taken an in-depth look at the oil spill laws. He maintained that the legislation is the best piece of abbreviated legislation and regulations yet accomplished and should give Alaska protection from the nonpaying as well as the paying vessels.

Representative Hudson noted that gross registered ton would be determined by the US Coast Guard under 33 C.F.R.

Mr. Dietrick agreed and noted that the definition was put into effect in last year's bill. The term was defined in regulation. There is a specific reference to the US Coast Guard's regulation 33 C.F.R. 13830. Representative Hudson reiterated that it is the regulatory gross tonnage definition.

Representative Harris asked if there were enough responders within the state to handle the requirements. Mr. Dietrick explained that five spill cooperatives have developed throughout the state. Cooperatives account for 80% or more of the response capability in the state. The state needs to build from that capability. There is no requirement to belong to a cooperative, but the intent is to strengthen the cooperatives to receive a stronger response.

Representative Harris asked for clarification of the fund source 1052 designation. Mr. Dietrick noted that funds would come from the Prevention Account in the Oil and Hazardous Substance Release Prevention Response Fund.

Co-Chair Mulder asked what would constitute "innocent passage".

BRECK TOSTOVIN, DEPARTMENT OF LAW testified via teleconference. He stated that "innocent passage" is an international law concept, which allows vessels of foreign nations to travel through territorial waters. The legislation would extend that concept to flagged vessels of the United States. It would allow for a vessel to transit through our waters, but they could not call at a port or engage in fishing.

Co-Chair Williams inquired how much time would be given to spot charters to review documents. Mr. Dietrick replied that under a generic or fleet plan spot charters could give notice in as few as 5 days.

Co-Chair Williams asked about the comparison of the fees with other states. Mr. Dietrick replied that all the West coast states currently have similar legislation. The state of Washington's model was used for the contingency model. He pointed out that Alaska could not use the model completely due to the length of coastline within the state. Alaska is using a regional approach based on the state of Washington model.

Co-Chair Williams commented that Puget Sound and SE Alaska cannot be compared. There are many more ships and ports in Puget Sound.

PAUL FUHS, TECHNICAL SUPPORT CONTRACTOR ON MARINE ISSUES, TASK FORCE ON MOTORIZED OIL TRANSPORTATION provided information on the legislation. He noted that a dollar figure could not be assessed because the cooperatives do not know how many people would join. The Task Force determined the equipment schedule for the tank vessels with a minimum of new equipment purchases. He stressed that additional vessels would substantially bring the costs down. Limitations on liability were included for vessel agents and spot charters because it would not be known until 10 days before which vessel would come. This allows a generic plan with the Department of Environmental Conservation demonstrating financial responsibility and a contract with a spill response contractor and incident management team. Vessels can have a certificate to come into the state of Alaska within five days. He emphasized that this is an efficient system.

Co-Chair Mulder asked for more information regarding the current structure of the Alaska Railroad's response. Mr. Dietrick replied that currently the Railroad is not under any state requirements for a contingency plan or required to meet a response plan standard. He added that the implementation for the railroad would be a more complex planning effort under the legislation. The plan would have to cover from Seward to Anchorage and Fairbanks. He provided more information on how spills by the railroad could be contained.

Co-Chair Mulder noted that the railroad would have a response-planning standard of 15 percent of the maximum fuel carried and asked if any railroads in the lower 48 have similar requirements. Mr. Dietrick did not believe so.

Co-Chair Mulder asked how much it would cost the railroad to meet the standard. Mr. Dietrick could not answer, but thought that the railroad had made an estimation.

Mr. Fuhs noted that the railroad had already moved in the direction adopted by the Task Force. The Alaska Railroad Corporation is supportive of the requirements.

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Co-Chair Mulder thought that there would be a significant cost to the railroad. Mr. Fuhs noted that the railroad is counting on the road system or aircraft as the primary means of delivery. Equipment would not be on site. The requirement for delivery is 24 hours.

Mr. Dietrick noted that the railroad had committed to upgrading their ability to respond and that fair amount of pre-stage gear already exists. The railroad has done a lot of work with the truckers. They have been cooperative with the department.

Representative Davies asked if there would be any cost recovery for the plans. Mr. Dietrick stated that the fiscal note is based on using funds from the Prevention Account. They would be applied if there were a spill. There would not be any cost recovery in terms of contingency plan review.

Representative Davies asked if a 50/50 model was considered. Mr. Dietrick stated that discussion has occurred regarding fee structures, but that the Task Force did not focus on fee structures. The Task Force deliberations were centered on finding an affordable system. The Task Force assumed that the Prevention Account would be the appropriate direction to go to for the funding. Representative Davies voiced concern that other activities would be displaced by the use of those funds. Mr. Dietrick noted that projections by the Legislative Finance Division, used in other Committees, indicated that the Prevention Account would not be adversely affected.

Vice-Chair Bunde expressed concern that contributors to the 470 Fund were not considered. Mr. Fuhs stated that there were concerns regarding the cost of the legislation to the industry. The industry will bear the largest portion of the responsibility.

Representative Croft asked to see the Legislative Finance sheet regarding the distribution costs.

Co-Chair Mulder asked the intention of section 9, page 6:

Compliance verification for nontank vessels and for trains and related facilities and operations. In addition to other rights of access or examination conferred upon the department by law or otherwise, to ensure compliance with the provisions of this chapter relating to oil pollution control, the department may

at reasonable times and in a safe manner enter and examine

- (1) nontank vessels; and
- (2) trains, railroad tracks, associated facilities, and railroad operations.

Mr. Tostovin explained that the language gives the department the ability to access facilities to assure compliance to oil pollution laws and C-planning requirements. The intention was not to create a track inspection program. The intent was to give the department access to tracks in the event of an incident or in an inspection for the sea plan requirements. The intention was to give the Department the ability to track the C-plan requirement.

Co-Chair Mulder pointed out that all associated facilities would be included. He suggested that the broadness of the language could result in the Department of Environmental Conservation running the railroad. Mr. Fuhs disagreed. He emphasized that the Department of Environmental Conservation would not hire train track specialists. The intent is to get access to the premise in the event of an incident or to check on certificates of financial responsibility.

Representative Hudson stressed that the Department of Environmental Conservation would not supplant the US Coast Guard's marine safety specialist in hiring ship inspectors.

Mr. Dietrick stated that there is a detailed operating agreement for nontank vessels and tightly coordinated procedures with the Coast Guard to prevent overlapping. He stressed that there is a good working relationship with the US Coast Guard. The Department's concern is that they do not have legal access to react to a spill. The intent is to travel the rail right-of-way to get to a site.

Co-Chair Mulder summarized that the intent of the language is to gain legal access in the event of a spill. He noted that the language is broadly worded and asked if the Department would be willing to reword the language. Mr. Dietrick commented that there was extensive dialogue regarding that language.

Mr. Fuhs noted that the legislation states:

In addition to other rights of access or examination conferred upon the department by law or otherwise, to ensure compliance with the provisions of this chapter relating to oil pollution control, the department at reasonable times and in a safe manner enter and examine...

Co-Chair Mulder voiced concern that the language is too broad. Mr. Dietrick stated that the language limits authority to the provision of the chapter, which deals with compliance of response planning standards.

Representative Davies thought that the language was preventative and would guarantee that things were in place.

Mr. Dietrick agreed. Representative Davies noted that the legislation provides for prevention and response. Mr. Dietrick replied that the language was written specifically to prevention, but would also apply to spills.

Representative Davies questioned if the department currently has legal access for spills. Mr. Dietrick stated that the Department is required to get the legal access if it does not already exist.

Representative Davies pointed out that the department is not being given authority to control operations.

Co-Chair Mulder questioned what would happen if the Department determined that there were not enough "boom" on board. He maintained that the legislation gives the statutory authority to shut down an operation if the required equipment is not present. Mr. Dietrick emphasized that a shut down would be an extreme action that would only be taken with the commissioner's authority under an emergency order. Co-Chair Mulder stressed that government is not always reasonable and added that politics affect governmental actions. He wanted additional assurances.

Mr. Dietrick responded that the Department's approach to compliance in the state is education, technical assistance, and voluntary compliance. Enforcement action would be the last step. Compliance by consent is the primary focus.

Mr. Fuhs noted that the decision was made by the Legislature last year in SB 273. Industry voiced the same concerns as Co-Chair Mulder. The Task Force was formed as a result of concerns by industry. He noted the letters of support from industry. He maintained that the concerns have been met.

Representative Croft acknowledged Co-Chair Mulder's concern with section 6, "A person may not operate," but concluded that the authority was needed to ascertain compliance. He voiced confidence that the department would work into compliance.

Representative Davies noted that the department's track record has been good.

Co-Chair Mulder asked if there were other entities capable of doing the reports. Mr. Dietrick responded that the state

has not been involved in this arena to date. There are none in the Coast Guard area. He did not know if there were any exceptions. Mr. Fuhs asked if the department's regulatory activity would be discretionary. He noted that if it is not discretionary the department could not contract out for services. He pointed out that if an entity stated that they were not signing with a cooperative and that they had their own equipment the department would want to ascertain if they have the equipment and if they have the needed personnel. The oil spill response organizations have already been preauthorized and might be discretionary.

Mr. Tostovin referred to opinions regarding delegating decision-making functions. The opinions concluded that decision-making functions should remain in government. Courts in other states have upheld delegation to private or other governmental entities if there is very structured oversight and little discretion or decision-making by the private entity. Clerical and objective items can be delegated. Decisions where judgment is involved cannot be delegated. He stressed that the oversight by the department would require two extra positions. If a private entity were used the department would still need a position to supervise. He concluded that only one position is in question.

Co-Chair Mulder discussed the fiscal note. He observed that there are two permanent and two temporary employees for two years as applications are submitted. He noted that the question is what is a reasonable workload for the amount of work that needs to be done.

Mr. Dietrick explained that the Task Force's intent would be to approve plans as they are submitted. Review of plans would be staggered overtime on a three-year cycle. Co-Chair Mulder commented that the initial rush would be in the first year and questioned why funding was retained for FY04. Mr. Dietrick responded that the reviews would span over a two-year period. More than one year would be needed to come to a steady workload. The department would also be responsible for training, electronic posting of plans, technical assistance, registering primary response action contractors and launching the prevention credit program during the startup period. These costs would be backed out by FY05. He voiced concern with the aggressive review times.

Co-Chair Mulder cautioned that the numbers for travel, contractual and supplies were generous. He noted that he would continue to keep an eye out on the recommended numbers.

Vice-Chair Bunde noted concern with public policy that requires some people to pay for the regulation while others do not.

Representative Hudson MOVED to adopt CS SB 16 (RLS) out of Committee with individual recommendations. There being NO OBJECTION, it was so ordered.

Co-Chair Mulder noted that he would be working with the department to address his concerns.

CSSB 16 (RLS) was REPORTED out of Committee with "no recommendation" and two fiscal impact note by the Department of Environmental Conservation (published note #2) and the Department of Transportation and Public Facilities (published note #1).

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ADJOURNMENT

The meeting was adjourned at 2:55 p.m.