

**ALASKA STATE LEGISLATURE  
HOUSE TRANSPORTATION STANDING COMMITTEE**

January 23, 2001

1:40 p.m.

**MEMBERS PRESENT**

Representative Vic Kohring, Chair  
Representative Scott Ogan  
Representative Peggy Wilson  
Representative Mary Kapsner  
Representative Albert Kookesh

**MEMBERS ABSENT**

Representative Beverly Masek, Vice Chair  
Representative Drew Scalzi

**COMMITTEE CALENDAR**

HOUSE BILL NO. 44

"An Act designating the Joe Redington, Sr., Memorial Road."

- MOVED CSHB 44(TRA) OUT OF COMMITTEE

HOUSE BILL NO. 55

"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."

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: HB 44

SHORT TITLE: JOE REDINGTON SR. MEMORIAL ROAD

Jrn-Date	Jrn-Page	Action
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01/10/01	0049	(H)	READ THE FIRST TIME - REFERRALS
01/10/01	0049	(H)	TRA
01/12/01	0073	(H)	COSPONSOR(S): MOSES, HALCRO
01/17/01	0117	(H)	COSPONSOR(S): KERTTULA
01/23/01	Text	(H)	TRA AT 1:30 PM CAPITOL 17

BILL: HB 55

SHORT TITLE: OIL DISCH PREVENTION: NONTANK VESSELS/RR

Jrn-Date	Jrn-Page		Action
01/12/01	0070	(H)	READ THE FIRST TIME - REFERRALS
01/12/01	0071	(H)	TRA, RES, FIN
01/12/01	0071	(H)	REFERRED TO TRANSPORTATION
01/23/01	Text	(H)	TRA AT 1:30 PM CAPITOL 17

**WITNESS REGISTER**

EDWARD GRASSER, Staff  
to Representative Beverly Masek  
Alaska State Legislature  
Capitol Building, Room 128  
Juneau, Alaska 99801-1182

POSITION STATEMENT: Presented sponsor statement for HB 44.

FRANK RICHARDS, State Maintenance Engineer  
Department of Transportation & Public Facilities  
3132 Channel Drive  
Juneau, Alaska 99801-7898

POSITION STATEMENT: Spoke on behalf of the Department of Transportation & Public Facilities (DOT&PF) in support of HB 44.

LARRY DIETRICK, Director  
Division of Spill Prevention & Response  
Department of Environmental Conservation;  
Member

Task Force on Motorized Oil Transport  
410 Willoughby Avenue, Suite 303  
Juneau, Alaska 99801-1795

POSITION STATEMENT: Spoke on behalf of the Department of Environmental Conservation in support of HB 55.

DAN ELLIOTT  
HC 3 Box 5196  
Wasilla, Alaska 99654

POSITION STATEMENT: Testified on HB 55.

JOE LEBEAU

Alaska Center for the Environment  
3375 Seagull Drive  
Palmer, Alaska 99645  
POSITION STATEMENT: Testified on HB 55.

MICHAEL O'HARA, Marine Pilot,  
Southeast Alaska Pilots Association;  
Co-Chair of the Prevention Work Group  
Task Force on Motorized Oil Transport  
P.O. Box 977  
Homer, Alaska 99603  
POSITION STATEMENT: Testified on HB 55 as Co-Chair of the  
Prevention Work Group on the Task Force on Motorized Oil  
Transport.

BRIAN ROGERS, Principal Consultant  
Information Insights, Inc.;  
Facilitator  
Task Force on Motorized Oil Transport  
Information Insights, Inc.  
751 Old Richardson Highway, Suite 235  
Fairbanks, Alaska 99701  
POSITION STATEMENT: Testified on HB 55.

PAUL FUHS, Marine Technical Consultant  
Contractor  
Task Force on Motorized Oil Transport  
1635 Sitka, Number 301  
Anchorage, Alaska 99501  
POSITION STATEMENT: Testified on HB 55.

**ACTION NARRATIVE**

TAPE 01-4, SIDE A  
Number 0001

CHAIR VIC KOHRING called the House Transportation Standing  
Committee meeting to order at 1:40 p.m. Members present at the  
call to order were Representatives Ogan, Wilson, Kapsner,  
Kookesh, and Kohring.

Number 0273

CHAIR KOHRING reviewed committee procedures. He noted that the  
House Transportation Standing Committee will typically meet  
between 1-3 p.m. on Tuesdays and Thursdays. Four committee  
members must be present for a quorum. If there were only four

members present at a meeting, then all four people would be needed to move a bill out of committee. He mentioned that Mike Kriebler is the House Transportation Standing Committee Aide.

HB 44 - JOE REDINGTON SR. MEMORIAL ROAD

CHAIR KOHRING announced the first order of business would be HOUSE BILL NO. 44 "An Act designating the Joe Redington, Sr., Memorial Road."

Number 0296

EDWARD GRASSER, Staff to Representative Beverly Masek, Alaska State Legislature, presented the bill on behalf of the sponsor. He explained that HB 44 deals with naming Knik-Goose Bay Road in the Wasilla area after the famous Iditarod musher, Joe Redington Sr. Several people had requested the name change, including people along the road, Mr. Redington's family, and people who lived outside of this district. The sponsors of this bill believe that renaming this road is a fitting memorial for such a great Alaskan [Joe Redington Sr.], because of its location. It runs past the Iditarod headquarters, Knik, which used to be the jumping-off spot for the Iditarod Trail.

MR. GRASSER stated that the bill is simple. There is one change that has been suggested, to change "Road" to "Trail" which reflects Mr. Redington's commitment to the trail. Mr. Grasser mentioned that he had discussed this change with Chair Kohring's staff, and if there was a committee substitute "we" would "entertain" this change. [The change is reflected in the proposed committee substitute (CS), 22-LS0076\F, Utermohle, 1/22/01.]

CHAIR KOHRING asked for the reason for changing the word from "road" to "trail."

MR. GRASSER replied that Representative Kerttula had suggested the change due to a request by her father. Mr. Grasser had then contacted Mr. Redington's widow who concurred that the change was a great idea. The change from "road" to "trail" represents Joe Redington's dedication to starting the Iditarod [sled dog race] and running it on a trail. He mentioned that there are memorial highways that have more than one name. He stated that the first 15 miles of Knik-Goose Bay Road would be co-named with the title "Joe Redington Sr. Memorial Trail." This road still has trails that go off of it, so "we" feel that this would be an appropriate change.

Number 0460

CHAIR KOHRING made a motion to adopt the proposed committee substitute (CS) for HB 44, version 22-LS0076\F ,Utermohle, 1/22/01 as a work draft. There being no objection, Version F was before the committee.

MR. GRASSER commented:

We believe that Joe's commitment to the formation of the Iditarod Sled Dog race, which has become a worldwide phenomenon, certainly has put Alaska on the map in a lot of different countries. People come from all over the world either as spectators or as participants. It's a truly unique Alaskan event, and because Joe was so instrumental in getting it started, we feel that this is a fitting memorial to such a great Alaskan.

Number 0502

FRANK RICHARDS, State Maintenance Engineer, Department of Transportation & Public Facilities (DOT&PF), stated that the department is in favor of this bill. They will take the necessary steps to designate the road and identify it with signs.

CHAIR KOHRING asked how many signs would be placed on the road and what the potential cost of the signs would be.

MR. RICHARDS replied that "they" would put one sign at each end of the road, with an approximate cost of \$500 a sign for a total cost of \$1000 dollars.

CHAIR KOHRING asked for clarification in that all the signs on the road will not have to be redone because the road is being re-named, not co-named.

MR. RICHARDS confirmed this statement. He said that "we" have not added a fiscal note to the bill, but he is sure it is zero.

Number 0582

CHAIR KOHRING asked if the signs would be similar to the Eisenhower Corridor sign in Anchorage.

MR. RICHARDS replied that the signs would be like those and are similar to ones that "we" identify with memorial bridges.

CHAIR KOHRING stated that he lives up Knik-Goose Road and wanted to note for the record that there is no perception of a conflict.

REPRESENTATIVE OGAN made a motion to move CSHB 44 [Version 22-LS0076\F, Utermohle, 1/22/01] out of committee with the zero fiscal note and attached individual recommendations and asked for unanimous consent. There being no objection, CSHB 44(TRA) was moved out of the House Transportation Standing Committee.

HB 55 - OIL DISCH PREVENTION: NONTANK VESSELS/RR

Number 0730

CHAIR KOHRING introduced HOUSE BILL NO. 55, "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."

CHAIR KOHRING stated that he is not intending to move this bill out of committee today, but it will depend on the will of the committee. He asked if there was a representative of the administration that would like to address the committee.

Number 0751

LARRY DIETRICK, Director, Division of Spill Prevention & Response, Department of Environmental Conservation (DEC); Member, Task Force on Motorized Oil Transport, explained that HB 55 is follow-up legislation to SB 273, which passed both sides of the legislature last year.

MR. DIETRICK read the following testimony:

Chairman and members of the committee, I am pleased to address you today on behalf of Commissioner Brown, who

is the chair of the Task Force on Motorized Oil Transport. Commissioner Brown served on the steering committee of the Task Force along with Senator Drue Pearce and Representative Pete Kott. The Task Force included a 23-member cross-section of the maritime industry, the Alaska Railroad, and other interested parties.

The goal of this legislation, HB 55, is simple. It's designed to protect Alaska's renewable resources and keep Alaska's waters the cleanest and the most pristine in the world by including large seagoing marine nontank vessels and the Alaska Railroad in the Alaska safety net for oil spill prevention and response.

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 the details of how 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 to accomplish that. The consensus legislation is HB 55, which is developed by the Task Force and is predicated on no further amendments by its members.

To provide a little more detail, ... 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 Senate Bill 273 and Senate Concurrent Resolution 1, commissioned the Task Force to determine how to implement the response planning standards and provide opportunities for streamline oil contingency plans.

The standards that were set by the legislature last year in SB 273 included the ability to contain and control 15 percent of the maximum oil capacity of a nontank vessel or train within 48 hours and clean up 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.

Number 0936

Senate Concurrent Resolution [1] specified the 23 members of the Task Force. The purpose of this was to ensure diversity of viewpoints and adequate representation of all groups to be regulated. The members included representatives from the U.S. Coast Guard, our department [DEC], the railroad spill response cooperatives, the shipping industry, spot charter groups, the fishing industry, regional citizens advisory councils, and representatives from the crude oil industry, and the refined oil distributors and transporters. Any more persons who were not appointed representatives attended the workgroup sessions and formal Task Force meetings.

The Task Force held 11 meetings over a five-month period beginning in last July in which the members worked through legal and technical issues on prevention, contingency plans, and response planning standards. The Task Force, as part of its process, broke down into three workgroups to address specific areas of concern.

The recommendations that came out are included in a report I think is included in your packet. The recommendations of the Task Force were intended to be practical. They meet the requirements that the legislature established in last year's bill. It included implementation measures that used a market-based economy approach to keep costs down. 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.

Number 1054

Members of the Task Force were extremely attentive to the proceedings and assimilated a tremendous amount of information during their tenure. All meetings were very 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 consensus to support 31 recommendations, which are included in the report. 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. The bill you have before you is the end result of this detailed process, and it is the Task Force's recommendation that it be adopted without amendment, recognizing that the legal language and details have all been agreed to and an enormous amount of effort has gone into its formation.

Overall, the bill is simple and straightforward in its approach. It fundamentally makes SB 273, passed by the legislature last year, effective while including enabling language to support regulations detailing how it will be implemented. These regulations have effectively been negotiated through the Task Force proceedings and will be drafted consistent with the recommendations contained in the report.

The cooperation between industry, state representatives, and lawmakers to develop recommendations that are practical, reasonable and economic is a really a tribute to the Task Force members. The work provides a foundation for enhanced spill prevention and response preparedness, thereby ensuring our state resources and economy are adequately protected for future generations. In the end, the Task Force has successfully completed the work requested by the legislature and has produced a report and recommendations for rule making that outline an acceptable means by which they will participate in the states oil spill safety net. I am very pleased to have been a part of the process. Speaking for the Department of Environmental Conservation, I can say that we support ... HB 55 and offer our assistance as your deliberations move forward.

Number 1162

I would also like to acknowledge the significant time and cost invested by Task Force members that participated in the process. I believe the Task Force members acted in the interest of all Alaskans, and their work will help Alaska's waters and make our spill response measure up to protecting what are arguably the most pristine and significant resources in the world.

That concludes my remarks, Mr. Chairman. I would at this time introduce Brian Rogers, who is in the audience. Brian was the Task Force Facilitator and was designated as the Task Force spokesperson by the Task Force members. Paul Fuhs is also available in the audience. He was a Task Force technical support contractor, and he is available for questions also and is in the audience. Also online is Mr. Breck Tostevin, who is the state Assistant Attorney General who is assigned to this legislation. That concludes my remarks. I would also be available for questions.

Thank you very much.

Number 1220

REPRESENTATIVE KOOKESH asked Mr. Dietrick the definition of a public vessel.

MR. DIETRICK replied that the Marine Highway System is included in the public vessel definition, if the vessel is engaged in commerce and over 400 gross tons. This definition was determined in SB 273 last year.

CHAIR KOHRING asked if SB 273 was the "vehicle" through which Mr. Dietrick tried to accomplish the same objectives [as HB 55].

MR. DIETRICK confirmed this remark. He said that SB 273 is appended to that report [Task Force on Motorized Oil Transport Final Report] as well as SCR 1.

Number 1249

CHAIR KOHRING asked what problems SB 273 had last year that did not allow it to get through the legislative process.

MR. DIETRICK said that SB 273 established two fundamental things. First, it required financial responsibility, which went into effect on September 1 [2000]. Second, the bill established the response-planning standard and defined what was included as a nontank vessel. As the bill made its way through the legislature last year, there were concerns about the cost, practicality, and affordability of meeting the response planning standard.

MR. DIETRICK stated that the end result was that the legislature decided to establish a Task Force to design the portion of the bill that detailed how nontank operators would meet response-planning standards. Senate Concurrent Resolution 1 details the membership of the Task Force. He stated that the response-planning standard set out in SB 273 has not changed; HB 55 imposes the requirement to make it effective.

Number 1376

DAN ELLIOTT, representing himself, testified to the committee via teleconference:

I am encouraging you to act on this bill. I think that for every ad that I have listened to by a large corporation about how environmentally responsible they are, they got that way by being dragged there. Yet its been good (indisc.) for the public and them in the long run. As you know, recently with the Alaska Railroad, that was an expensive school that they weren't prepared for last year. We know that accidents happen even with the best prevention. But by the very nature, that is why they are called accidents, whether influenced by nature or by man.

I wanted to bring to your attention something that you may not have considered or realized. I'm more concerned with the railroad than the other (indisc.) of this bill. The development of Southcentral Alaska has followed the Alaska Railroad, and that [includes] Talkeetna, Willow, Wasilla. There is school after school within a half mile of the railroad. I mention schools because [they are] more of a sympathetic victim. We are all subject to being victims, but [in] particular, schools are areas that we want to be sure to protect as much as possible. In realizing that development has occurred this way, you realize how

many people can be affected if there is a serious accident. It seems like every week or two out here on the radio or t.v. [that] someplace, Arkansas, Montana, or whatever, that they have evacuated people because of some railroad accident.

Unfortunately, this bill does not seem to deal with hazardous substances. Oil itself is bad enough where there is the fish, animals, the water, subsequent fire, contaminate in the air at the time of the spill. But the hazardous substances are particularly an area that I think should be a concern for tank cars and not just oil. In any case, I would encourage you to consider the public and responsible cooperation actions...

Thank you.

Number 1537

JOE LEBEAU, Alaska Center for the Environment, testified via teleconference:

I live near Palmer. I am employed currently by the Alaska Center for the Environment. I retired from the Department of Environmental Conservation in December of 1999, and went to work for the Alaska Center for the Environment. I was able to attend most of SB 273 Task Force meetings over the summer and into the fall, both the Task Force meetings and the workgroup meetings. I wanted to thank all of the people who took part [in the meetings] and thank the Senate and the House for the opportunity to have input at the Task Force meetings.

My input is still the same. It appears to me that the response timing standard is a little low. It may be resolved with the test of time. The state legislature may decide to come back and raise the response-planning standard, at some point.

The other issue is hazardous substances. The bill does not address hazardous substances that are transported through all the Rail Belt communities. As Mr. Elliot testified earlier today, ... a lot of Alaskan communities are built up around the railroad, and the railroad transports a number of hazardous substances through the communities. I think it's

important that the railroad at some point be required to prepare a response contingency plan and prevention plan for hazardous substances. I fully support the concept that the railroad be fully regulated as it is set up in the bill, and I think this bill is a huge step forward.

Thank you very much for your time.

Number 1658

MICHAEL O'HARA, Marine Pilot, Southeast Alaska Pilots Association (SEAPA); Co-Chair of Prevention Work Group, Task Force on Motorized Oil Transport, said that the Task Force worked on making it economically advantageous for a ship to take preventative measures to avoid a spill. The Task Force came up with a number of recommendations, which will be beneficial to safety.

REPRESENTATIVE OGAN asked Mr. O'Hara to help him visualize a vessel that was 400 tons.

MR. O'HARA replied that he owns a boat that is 93 feet long, with a 12-foot draft and 9-foot beam, that is 97 tons. Therefore, a vessel that was 400 tons would probably be three times those dimensions.

REPRESENTATIVE OGAN asked what these vessels would be hauling.

MR. O'HARA answered that these vessels can be "inland." For example, the M/V Bartlett [an Alaska state ferry] is primarily an inland ship, but "when it goes to sea, you put different licenses on it."

REPRESENTATIVE OGAN asked about [other] ferries in the ferry system.

MR. O'HARA stated that he was only familiar with the M/V Bartlett and M/V Tustamena because they operate in Prince William Sound, where he is from.

Number 1845

BRIAN ROGERS, Principal Consultant, Information Insights Inc.; Facilitator, Task Force on Motorized Oil Transport, said that his firm did the facilitation for the Task Force on Motorized Oil Transport. He stated that the meetings were held to carry

out the provisions of SB 273 and SCR 1. It was a very public process. Every meeting was publicly noticed, and meeting transcripts were put on the web site to ensure that the public knew what was going on. The company did a lot of data gathering to determine how many vessels were likely to be affected and what types of vessels were transiting in Alaskan waters that would be subject to this.

Number 1878

MR. ROGERS stated that this would cover cruise ships, cargo ships, container ships, and the largest of the fish processing refrigeration vessels, for a total of 800-900 vessels. Some of these are on regularly scheduled runs such as the cruise ships through Southeast Alaska, while others enter Alaskan waters on four or five days' notice to pick up cargo. This represents a wide variety in addition to the Alaska Railroad.

MR. ROGERS noted that the group had reached unanimous agreement on the 31 recommendations before the committee. He went on to say that the majority of the recommendations do not require a statutory change. Mostly, they require "fleshing out" regulations through the process. House Bill 55 contains the statutory change.

MR. ROGERS explained that the regulations would be based on the Task Force discussions. The Task Force will ask the committee to adopt a letter of intent which states that the report of the Task Force and the work carried forward is intended to place some general parameters on what that regulatory regime would be. He said that this would take some time if the committee decides to enact the bill this year, meaning passage by May of 2001.

MR. ROGERS stated that it will take about a year to get regulations promulgated, and through the public review process that would mean regulations would be issued around June 2002. The bill provides that contingency plans are due 180 days after the regulations are promulgated. Therefore, the initial contingency plan would come in December 2002 or January 2003. At that point, the vessels would need to have their response equipment identified for containment and control.

MR. ROGERS said there is a longer time for cleanup equipment since it is a heavier investment and "to try to spread the capital cost." The committee developed a market-based approach, which allowed several different avenues for compliance and phased implementation. They tried to reach the initial goals of

the Task Force, which were that this process (on page 8 of report) "be realistic, that it be effective, that it be economically feasible and that it be flexible to meet the needs of industry and the state."

MR. ROGERS explained:

Recommendations cover issues relating to response planning standards, issues relating to contingency planning, to prevention, and finally, the Alaska Railroad. This bill activates the contingency planning process. It enables the adoption of regulations as proposed by the Task Force, and contains some limitations on liabilities for certain participants in the response process.

The recommendations in the response planning area detail: What is it? What do we expect for people to be able to control and contain [in] an oil spill containing 15 percent of their volume?

Basically, that sets out that you need enough "boom" to go three times the length of a vessel, to hold the spill in and some method to deploy that "boom." That's the basic core for a response to a spill event.

The second area for cleanup is [that] you need to have in the region which you operate, or need to ... make arrangements to get to that region within 24 hours, a skimmer that can pick up the type of oil that you are carrying (indisc.) to do that. The amount of fuel that you have to be prepared to clean up is set forth in the statute as 15 percent of your capacity. In this bill, we allowed in the recommendations an alternative if a vessel can demonstrate [that] their capacity may be "X" but they normally only carry 60 percent of that when they are in Alaska's water. They can demonstrate that through the department, and thus their response-planning standard is set on what they are actually doing, rather than some theoretical maximum.

On contingency planning, basically the sea plan has just a few elements. First it has to show that the vessel has met the financial responsibility, has filed that certificate. [They have to] designate a qualified individual who can make decisions that bind

the company if there is a spill event. They have to have a response-action plan that consists of how they are going to initially notify authorities if there has been spill; that they have a contract with a response-action contractor who can deal with cleanup and a contract with a incident-management team who can manage all aspects of the incident; finally, that they are meeting the current federal and international requirements, the IMO [International Maritime Organization] requirement.

Number 2107

They can either do that through contract or through equivalent resources, or combination of the two. If they want to do it themselves, [or] they want to do it as a fleet, there are several different avenues in here. The fleet plan is an alternative for a vessel owner who may own quite a number of vessels. We also have a provision for a generic contingency plan, and basically, a vessel agent would have all the elements of the plan in place ready for this spot charter who comes in on four or five days' notice, faxes the contracts out, the fax comes back in, and that plan is activated and held so that they have met the requirement under this law.

The recommendations set very tight time frames for DEC to respond and review. They will allow for drills. There are a series of voluntary prevention measures set forth in the recommendations. It's the Task Force's hope that this bill would be adopted with the attached letter of intent that sets constraints on the regulatory process.

Number 2160

REPRESENTATIVE OGAN wondered whether, if companies comply with this, it would make a difference in the field when there is a spill. It seems that "no matter how prepared we are or what we do that the spills are always bad and they don't get very much of it up," he remarked. He asked if this [HB 55] was going to make a tangible difference.

Number 2192

MR. ROGERS replied yes. As a facilitator listening to the

group, his job was to bring the group to consensus. There is clear understanding in the group that having a plan in place reduces risk and damage to the environment. In order for vessel owners to operate in Alaska's waters, they have to have someone (on contract) ready to respond [in an oil spill event] or be ready to respond themselves. A company with an incident management team is going to be in better shape to respond to that. Most important, a company that is informed as to where the equipment is and that knows how to get it to the scene quickly will be better off than a company that has to "start looking in the Yellow Pages for a response." This has been the history in the tank industry, especially for oil tankers which go through a substantial drill process, and product tankers, which are not covered by this and which are the barges that carry fuel. Anyone in this industry would say that "having a plan is less likely to be damaging to the environment than not having a plan," Mr. Rogers concluded.

REPRESENTATIVE OGAN commented that there is tremendous liability with HB 55 since Exxon is still in court with over 5 billion dollars' worth of (indisc.) He said he is "always hesitant to reach the long arm of government out and tell the people what they have and have not to do." "Our" compelling interest is to protect natural resources in the environment. However, this is a mandatory program. He asked if there was any discussion about a way to do this that was not a mandate.

Number 2285

MR. ROGERS replied that the mandate was set by last year's legislature. It said that one had to be prepared to contain and control 15 percent of one's capacity, and to clean up as "reasonably as possible." The Task Force's job was to work out the details of that decision and not to go back and question the legislature's decision.

Number 2293

CHAIR KOHRING stated that the fiscal note shows that there will be two to three additional personnel hired in December and more regulation of industry. It will also cost more money, even though it is not out of the general fund but the oil spill response fund. The bottom line is that HB 55 means more government. He said that the "folks that support the bill here need to sell this thing hard to us to justify why we need more government regulating an industry." He noted that he respects the work of the committee and understands that they were asked

by the legislature to have a Task Force. He mentioned that the House Transportation Standing Committee counted nine people at this meeting who represent private industry as members of the Task Force. He said:

I know you have done a lot of work on this. I appreciate that very much. I recognize this and acknowledge this. But I am concerned about the additional government involvement and additional regulations, because that is something I have worked hard to minimize in my years in office.

MR. ROGERS commented that the Task Force was focused on how to keep this process as simple as possible. He said that the contingency plan and major facilities are "much more complex" than what has been laid out. This is really a streamline process designed in a negotiated rule making. This means that the regulators and regulated community get together to figure out what is going to work, to meet these needs. The negotiated rule making process is "pretty good" because there is attentiveness on the part of regulators regarding what the costs are, and a understanding by the regulated communities as to what the objectives of this process are.

Mr. ROGERS stated, as the observer who helped bring the group together, "I think they strip down to the minimum bureaucratic process that allows this to go forward." The process allows turnarounds within five days of fairly complex documentation, he said. The Task Force figured out how to do this even when paperwork might come in on weekends or evenings. The Task Force came up with "some creative ways" in keeping the process simple, especially in addressing the concerns of the Spot Charter Group.

MR. ROGERS stated that for example, by accepting the word of a company when it initially submits its contingency plan, rather than saying "the answer is no until we say it's yes, in this case the answer is yes unless we find a reason that it's no." So, the initial department review when a company receives its contingency plans is that "you filled out, you made statements, we know you're subject to criminal penalties if you didn't tell the truth." "We" will accept this at face value, he said. These [contingency plans] will be reviewed over a cycle that allows them to be spread out over a year, because there's going to be a "whole slug of them coming in at once." He said he did not know if the Task Force could have found another way of "streamlining" that would be simpler than what is in this legislation, this report.

Number 2246

CHAIR KOHRING stated that he was glad Mr. Rogers brought to attention the willingness to accept the proposal for the letter of intent (page 38 of the committee packet). This partly addresses his concern that regulations might go beyond the intent of the legislation. A letter of intent of this nature makes it very clear that "we expect the regulations not to go beyond a certain level, that's very good."

MR. ROGERS commented that the [letter of intent] is essential to the Task Force's understanding of this legislation. The transcripts in which the issues were discussed set the ground rules for how this would operate at the regulatory and statutory levels.

Tape 01-4, SIDE B  
Number 2455

PAUL FUHS, Marine Technical Advisor; Contractor, Task Force on Motorized Oil Transport, stated that HB 55 originates from last year's legislation, which was adopted unanimously in the Senate. In the House, there were 39 votes in favor of the bill. There was one absence, so everyone present voted for the bill.

MR. FUHS said that the industry expressed concern regarding how the regulations were going to be written. The industry wondered, "Is this going to be so onerous that we can't live with it? Is it going to be so expensive that it's going to break our companies?" If the regulations went how they did with tankers, with all of the requirements under OPA 90 [Oil Pollution Act of 1990], it would have broken these small businesses, and "they are not in the oil business; oil just makes their boat go." However, they carry [oil] which presents some risk to the environment. He said that this is why the industry asked for this Task Force.

MR. FUHS explained that one of the most important parts of HB 55 is that it provides some "limits to liabilities" for nonprofit contractors who will provide services on a very cost-effective basis. These contractors would not have been willing to do this if someone would have been able to sue them if they [contractors] acted in "good faith" in response to an oil spill. Vessel agents are included in this new marine exchange. So, these were some of the cost factors used in the generic fleet plans to minimize the cost of it.

MR. FUHS commented that this explains why the projected fiscal note for the Marine Highway System is only \$23,500, with "today's rate." Response contractors expect their costs to decrease as they get more members. In essence, the worst-case scenario for the entire fleet of the Marine Highway System is that the cost would be \$23,500 a year, which is not unreasonable. Consequently, the industry wants the letter of intent which states that the department will use these proposed regulations and will not "go off on their own and do something different."

Number 2385

REPRESENTATIVE OGAN remarked:

Letters of intent aren't worth the paper they are written on. The departments routinely promulgate regulations well beyond the legislative intent, and there's nothing we can do about it. We have no recourse other than the Budget Acts. But we have a regulation review committee and a full-time person that sits there and reads all those [regulations]. ... I don't know if we have ever, in the six-plus years I've been here, had any effect on mitigating any onerous regulations.

So I don't trust them, to be honest with you. I think it might be naive for the industry to trust them. I would like to see in legislation, frankly, that the law is regulations and they can't pass any more regulations beyond what it says in the statute. That's kind of a unique concept that Al Vezey tried pushing a few years ago. We put before the voters three times a constitutional amendment that gives the legislature the authority to repeal regulations. But the legislature delegates that authority to legislate to the administration, and then we can't do anything about it when they don't do it right. I think it's a real separation-of-powers issues. Anyway, thank you for giving me a soapbox.

Number 2328

PAUL FUHS stated that the industry is always able to come back to the legislature. The industry would find a "willing ear now." If HB 55 is passed, he said, "in good faith people move

forward and then someone comes and does something different, I think the industry is not shy about going to the legislature to fix it." However, this letter of intent is critical to the bill "for people, how they feel for it."

REPRESENTATIVE OGAN asked Mr. Fuhs if he has ever been aware of someone feeling like he or she wasn't getting a "fair shake" by the administration, and if so, has the legislature come back and fixed it? He said he has "been here six years, and I don't think I've ever seen it."

MR. FUHS replied that he could not think of an example. But, he said, "in legislation that is passed all the time, [the legislature] has gone in to really clarify issues and take things out of regulation and put it into statute."

CHAIR KOHRING commented that it is odd that a private industry would ask to be regulated. As a private-sector individual and small-business owner, he said, "unless I had a gun held to my head, I wouldn't go to government and say, 'would you please regulate me more than what I already am?'" He said that he appreciates the work of the committee, private-sector members of the Task Force, spot charters, oil industry people, shipping agents, and marine pilots. He appreciates efforts and willingness on their part to support HB 55, but wonders whether "they felt their hand is being forced."

Number 2237

MR. DEITRICH reiterated that the focus of the Task Force was to react to the standard that was passed last year. Senate Bill 273 set the standard at 15 percent. The debate then became how to implement that standard. So the Task Force did not take on the issue of whether or not it "should be a different standard or no standard or some new, higher, more stringent-standard." The Task Force was focused solely how to make the standard work in a way that works for industry, regulators, and other interests. The Task Force dealt with issues such as how it was going to work to make it affordable and cost-effective, and to still do the job in terms of having nontank vessels and railroads participate in the safety net. The Task Force accepted the mission as it was given by the legislature. It truly was a "good faith effort." There was a substantial amount of "push-pull" in the Task Force proceedings and "yielding on all sides to try and hit the Task Force mission," which was to come up with a way to implement the standard. "We" did not get to the issues that you [Chair Kohring] are raising, Mr. Deitrich

said. "We" just accepted the task of trying to carry out the mandate of what was passed last year, like a "bunch of good soldiers."

Number 2160

REPRESENTATIVE WILSON pointed out that everyone who has testified on this bill has been in support of HB 55. She asked if there was anyone here to speak against the bill.

CHAIR KOHRING asked if anyone was here to speak against the bill. He inquired what prompted the bill other than the legislature's forming the Task Force committee. He mentioned a shipping accident in the Aleutians involving a vessel from the Orient. He asked if there was just one incident that caused concern or were there more. In short, he asked what prompted the whole discussion and debate.

Number 2096

MR. DEITRICH clarified that the incident Chair Kohring was referring to was the Kiroshima incident in Dutch Harbor. This incident was cited, along with others in the data, to show that the oil spill prevention response program that this state is structured for has resulted in a significant reduction in the number of spills for those who participate in the oil spill safety net. The number of nontank vessel and railroad incidents was one of the "main drivers" behind the original submission.

CHAIR KOHRING asked if there were laws already in place that dealt with these issues. For example, he wondered if there was a system of fines that would be an incentive for someone to behave.

MR. DEITRICH said yes, the penalties that one would incur for having a spill would apply regardless of whether or not one had a contingency plan.

CHAIR KOHRING reiterated that the fiscal note shows that funding is through the Oil and Hazardous Fund, not the general fund. He asked Mr. Deitrich to explain the funding situation since he is the drafter of the fiscal note and someone who noted the funding source.

Number 2029

MR. DEITRICH explained that the fiscal note for HB 55 is set up

to follow the phasing that is envisioned with the legislation. In the first year, the regulations will come "onboard" and "we" will start to work with the stakeholder in terms of coordinating with marine exchange, spill cooperatives, and people who will be filing as primary response action contractors. "We" will be working with them to "craft the package," to complete the rule making in about a one-year period. Therefore, one person will be hired for FY 02 to cover the startup of the program.

MR. DEITRICH specified that in fiscal years (FY) 03-04, the plans are required to be submitted beginning 180 days after the regulations. They will start coming in a "lump sum" beginning in FY 03. The Task Force recommended that these plans be received immediately, to conditionally improve them, and do "file up" reviews in a staggered fashion. In doing so, they are not all lumped together during the future. There is also a capitalization period which was envisioned for "big ticket items," primarily the skimmer and the storage device.

MR. DEITRICH stated that a second employee would start in FY 03 to help with completing the round of reviews for the initial plans that are envisioned to be finished in FY 03 and FY 04. "We" have allowed for up to two temporary employees to assist in dealing with the "slug flow," he said.

MR. DEITRICH said that beginning at the end of FY 04, the number of employees will go back down to two. This is what the long-term renewal cycle is based on. The assumption is that there will be 500 plans [oil contingency plans]. This number is based on data from 900 vessels in Alaska that have applied for the financial responsibility requirement. It is indicated in the fiscal note that at the end of FY 04, the actual number and type of plans received will be noted and any adjustments that might be appropriate will be made.

MR. DEITRICH remarked that "we" assume the streamline approach discussed by the Task Force will be the preferred approach (480 of the 500 plans). "We" are hopeful that this will be the outcome, he said, based on activity seen with marine exchange and discussion amongst the spill co-operations. The purpose of the fiscal note is to cover new plans and renewals, exercise and verification. There is a registration for the new entities for which "we" will be providing instant management teams. They will be registering as primary response action contractors in the state.

MR. DEITRICH stated that the report also recommended that we

give a "heavy dose" of technology assistance and training to everybody in the industry to help them get "the stuff in the door, walk them through the process, and streamlining it." We were also "tasked" by the Task Force to do electronic posting of all the plans as a way of satisfying a public review requirement. "We" will also be looking at a prevention credit program; there were many good ideas, but they need some additional work.

Number 1867

CHAIR KOHRING pointed out the notation in the fiscal note that says two additional staff are projected for FY 03. He asked what "assurances can you give the committee that we're not going to see anything beyond that." He said that he is always looking at the "bottom line" when it comes to the number of personnel in agencies, particularly with new legislation. He also asked what the assurances were that "we are not going to see a regulatory process that's going to impose more on the industry than what we are really expecting through this legislation, that will result in additional employees."

MR. DEITRICH replied that the Task Force concurred that if there was a fiscal note and a lot of positions [additional employees], the program was getting too big or complex. At this time, "we" do not envision more than two positions for FY 03 on a permanent basis. There will definitely be one person for FY 01, to get the program started, and two positions in FY 03, which would be the "ramp up," because that is the first year the actual plans start coming in.

CHAIR KOHRING referred to Mr. Rogers' comments on the voting process of this bill [SB 273] in the House last year. He said he wanted to note for the record that if "I understood the intent of the legislation last year, I don't believe unless I was absent, that I actually voted for this bill." He would not have expected himself or Representative Ogan to have voted for this bill last year.

REPRESENTATIVE OGAN commented that if there were 39 votes, then either he or Chair Kohring must have voted for the bill last year.

Number 1770

CHAIR KOHRING reiterated that he had concerns with "adding to the bureaucracy." He said he is not saying he opposes the bill.

However, he suggested that HB 55 be held over until Thursday. He meant no disrespect for the Task Force or those present at the meeting who worked on HB 55. He said, "Your intent is very honorable, and your heart is in the right place." He noted that they put a lot of time and effort into this bill, which he respects and appreciates. But, he still has some anxiety and is not yet comfortable with passing the bill. House Bill 55 is a complex bill with a lot of provisions. He would like to hold the bill over in order to think about today's presentation more thoroughly.

Number 1723

REPRESENTATIVE KOOKESH thanked the Task Force and individuals who worked on HB 55. He said:

It's really amazing in this time and age that we can have that kind of industry, Alaska public employees, Alaska legislators, and everyone get together and not have anybody oppose the legislation at the committee level. I really appreciate the work. It's something I wouldn't have spent a summer doing. I'm sure I would have had other things to do or more interesting things to do. But I appreciate you taking the time as Alaskans to do it.

I understand the concern of the chairman and want to assure him he will have another vote on the floor when this comes up. He can vote however his heart desires. But, as a member of this committee, I really feel we need to move this forward, especially when you consider that there's nobody from the industry or public opposing it. I'm willing to allow the chair to hold this over and allow him time to digest this and ask any other questions.

But I want to take the time, for the record, to thank you for all of your work, those in the public and industry who have stepped forward to help us make this a historical piece of legislation for Alaska. We have not gone this route before, and it is new on our horizon. I really appreciate your work.

CHAIR KOHRING echoed Representative Kookesh's thanks. He stated that the lack of opposition to this bill is an important consideration.

Number 1591

REPRESENTATIVE WILSON commented that she thought the Task Force was very wise. They looked to the future and realized that if they did this themselves, it would be "much better on business and industry in the long run than if something came down from the federal level." This could have been a lot worse. She said:

I appreciate the work that has been done. I think in the long run it will benefit Alaskans in all sections, the public and business and industry. [I want all of you to] realize that the economy of our state is touched by this type of thing. I appreciate it.

REPRESENTATIVE OGAN remarked that he appreciated [Chair Kohring's] willingness to hold HB 55 over. He said he would like to work on "looking at feasibility (indisc.) to tighten up the administration's ability to over regulate this." He has seen language in other bills that might be appropriate. He said, "I'll be willing to work with you" on that over the next few days to try to come up with a possible amendment that people in the industry would not oppose. It would give them "a little bit of a circuit breaker" to ensure that they are not being regulated beyond the letter of intent.

CHAIR KOHRING asked how "we" can be assured that "we" will not see something go beyond the intent of the legislation. He said he appreciated the effort of the letter of intent, but being assured of this issue would make him more comfortable with the bill. He stated that he wants to make sure that legislation is not passed where the "committee is ultimately responsible for [something] that, promulgated a lot of excise regulation that we never expected or intended."

REPRESENTATIVE KOOKESH voiced his concern that he wanted to be assured by Representative Ogan that he would be willing to work with industry and people at the meeting on the amendment, so that there won't have to be a "big discussion and a lot of controversy" when it comes back [to the House Transportation Standing Committee].

REPRESENTATIVE OGAN concurred with this statement.

[HB 55 was held over.]

**ADJOURNMENT**

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:50 p.m.