

MINUTES
SENATE FINANCE COMMITTEE
February 06, 2001
10:12 AM

TAPES

SFC-01 # 10, SIDE A

CALL TO ORDER

Co-Chair Pete Kelly convened the meeting at approximately 10:12 a.m.

PRESENT

Senator Dave Donley, Co-Chair
Senator Pete Kelly, Co-Chair
Senator Jerry Ward, Vice Chair
Senator Loren Leman
Senator Lyda Green
Senator Gary Wilken
Senator Alan Austerman
Senator Lyman Hoffman
Senator Donald Olson

Also Attending: LARRY DIETRICK, Director, Division of Spill Prevention and Response, Department of Environmental Conservation; BRIAN ROGERS, Information Insights; GEORGE CAPACCI, General Manager, Alaska Marine Highway, Department of Transportation and Public Facilities; SUE SCHRADER, Alaska Conservation Voters; ERIC BRITTEN, CSX Lines, Limited Liability Company (LLC)

Attending via Teleconference: From Anchorage: MICHELE BROWN, Commissioner, Department of Environmental Conservation; BRECK TOSTEVIN, Assistant Attorney General, Environmental Section, Department of Law

SUMMARY INFORMATION

SB 16-OIL DISCH PREVENTION: NONTANK VESSELS/RR

The Committee heard from the Department of Environmental Conservation, the Department of Transportation and Public Facilities, the Department of Law, Alaska Conservation Voters and members of the Task Force. The bill was held in Committee.

#sb16

SENATE BILL NO. 16

"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; and authorizing compliance verification for nontank vessels and for trains and related facilities and operations; and providing for an effective date."

COMMISSIONER MICHELE BROWN, Department of Environmental Conservation, testified via teleconference from Anchorage, indicating that she was the Chair of the Task Force on Motorized Oil Transport until the passage of SB 273 and served with Senator Drue Pearce and Representative Pete Kott on the steering committee. She pointed out that the Task Force included a twenty-three member cross-section of the maritime industry, the Alaska Railroad and [indisc.]. She explained that the goal of SB 16 was simple; to protect Alaska's renewable resources and to keep Alaska's waters the cleanest and most pristine in the world by including the large seagoing marine nontank vessels and the Alaska Railroad in Alaska Safety Net for Oil Spill Prevention and Response.

Commissioner Brown noted that last year the legislature passed SB 273 and SCR 1, which asked the Task Force to work out the details on how to implement the standards. She indicated that the Task Force completed the work directed by the legislature and achieved unanimous agreement to accomplish that goal. She further stated that SB 273 established a requirement for proof of financial responsibility for the nontank vessels and the railroad and was made effective last year. She added that SB 273 also set out a planning standard for the oil spill response contingency plan (c-plan), but did not make that a formal requirement, instead the legislature, through SB 273 and SCR 1, commissioned a Task Force to determine how to implement those response planning standards and to provide opportunities to streamline them.

Commissioner Brown further explained that the response planning standard set by the legislature in SB 273 was the containment and control of fifteen percent of the maximum oil capacity of the nontank vessel or train within 48 hours and cleanup of the discharge within the shortest possible time in order to minimize

the 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. She said that SCR 1 specified 23 members to the Task Force to ensure a diversity of viewpoints and adequate representation of all groups to be regulated. She indicated that the Task Force held 11 formal meetings over a five-month period and the members worked through a lot of legal and technical issues on oil spill prevention, contingency plans and response planning standards. She explained that there were work groups setup to address specific concerns. She asserted that the recommendations provided by the Task Force are practical and realistic and meet the requirements implemented by last years legislature including 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. She said that private sector initiatives have already been fostered that significantly increases the resources that will be brought to bear on a spill. She pointed out that alliances have been formed between ship agents, stevedoring companies and spill response cooperatives and a new marine exchange coving the entire State of Alaska is being created. The members of the Task Force were extremely intent and assimilated a tremendous amount of information. She noted that all of the meetings were very well attended.

Commissioner Brown continued, saying that the Task force unanimously agreed to support 31 separate recommendations. She added that it is the Task Force's recommendation to adopt the bill without amendment since the legal nuances and details have been reviewed and an enormous amount of effort has gone into formulating this legislation. She asserted that SB 16 is straight forward in its' approach and basically makes SB 273 effective, while including enabling language for regulation detailing out the implementation. The regulation has effectively been negotiated through the Task Force proceedings and will be drafted consistent with the 31 recommendations in the report. She summarized that the Task Force has successfully completed the work requested by the legislature and has produced unanimous agreement of the reported recommendations for rule making to allow them to participate in a oil spill safety net without facing a number of pre-spill requirements. She expressed her gratitude for the leadership of Senator Pearce and Representative Kott on the Task Force.

BRIAN ROGERS, Principle of Information Insights and Task Force facilitator, stated that the Task Force went through a public process on how to implement the legislation adopted by the legislature last year. The group reached unanimous agreement on

the recommendations. He noted that most of the recommendations were not statutory in nature, but rather a guidance for the departments setting limits on the regulatory process. He indicated that SB 16 contained the minimum changes in statute that were necessary to activate the process; basically three things: first, to activate the contingency planning process; second, to limit liability for certain participants in the process; third, to enable the adoption of the regulation.

Mr. Rogers pointed out that the recommendations contained in the report cover four basic areas: the response planning standard, the contingency plan process, the prevention and the Alaska railroad. The Task Force, in unanimously adopting this report, recommended this legislation with the attached letter of intent. He explained that the letter of intent is designed to insure that the regulatory process, that would follow the adoption of this legislation, follows the intent of the Task Force. The approach chosen by the Task Force is a market-based approach providing several alternative means for compliance in order to meet the needs of the different sectors of the regulated industry. Also, to provide for phased implementation, allowing time for response and time for investment by the regulated community in the expenses necessary to meet the terms of the bill. He believes the process shows that negotiated rule making can work; involving industry in writing the rules together with the regulators can be a successful process.

Mr. Rogers pointed out that the group started with four goals (listed on page 8 of the report): that the recommendations be realistic, effective, economically feasible and flexible.

Mr. Rogers indicated that the recommendations in the report, first on the response planning standard, calls for the vessels to have a boom three times their length and the ability to deploy it. Second, cleanup in the shortest time possible, which means there needs to be a skimmer in the area or the ability to get a skimmer appropriate to the type of oil to the area within 24 hours. Third, the standard is fifteen percent of vessel capacity and in the recommendations they are reducing the standard for a vessel that is never carrying the full capacity.

Mr. Rogers explained that the second area is the contingency plan, which has three basic requirements. First, that the vessel has shown its financial responsibility and has a qualified individual to make the decisions binding the company. Second, that they have a response action plan consisting of their procedures for notification of a spill and that they have a contract with a primary response action contractor and a contract with an incident management team to manage a spill should one happen. Third, that

they meet the international maritime requirement. He noted that alternatives to the contract with cooperatives or primary response action contractors the vessels provide their own equivalent resources or can use part of their own resources and part contract resources, providing owners some flexibility on how they meet the requirements for contingency planning.

Mr. Rogers said that in addition the recommendations provide for a generic plan to be developed by the vessel agents for those spot charters that enter Alaska waters on short notice who are not going to be in a position to develop a whole plan. The generic plan is faxed to the owner and signed and faxed back. He further explained that they have provided for fleet plans that might cover a group of vessels; an owner of a group of vessels or a group of vessel owners can ban together to form their own alternative compliance. He pointed out that recommendations set tight timeframes for Department of Environmental Conservation review of the applications. He explained that the initial applications would be deemed acceptable and then reviewed over a cycle, rather than vessels having to wait for Department of Environmental Conservation to approve them in the first place. The recommendations provide for oil spill drills and for review of compliance by the Department of Environmental Conservation. He noted that the prevention measures are all voluntary under international maritime law, but there is a process set out with a potential reward for vessels that undertake methods to prevent oil spills. He added that for the Alaska railroad the group endorsed the railroad's risk analysis process and basically said that the railroad should go through the same c-plan process.

Mr. Rogers briefly discussed the sectional analysis of the bill.

- Sections 1 - 3 limits civil liability of oil response action contractors.
- Section 4 amends the definition of "response action" to clarify the limitations on civil liability for incident management team services and response plan facilitator services.
- Section 5 relates to the proof of financial responsibility and basically makes the language for nontank vessels identical to that for tank vessels.
- Section 6 extends the existing innocent passage exemptions to all of the requirements for nontank vessel c-plans.
- Section 7 sets up the c-plan process. Assuming passage of legislation this year there will be roughly a year to adopt regulations and then six months following the adoption of regulations would be when the c-plan would be due. He noted

that the equipment would not be due for another year and a half to allow for phasing of capital expenditures.

- (f) requires approved c-plans
- (g) sets forth the contents of those plans
- (h) lays out the alternatives to having contracts
- (i) extends the c-plan provisions of existing law to the nontank vessels
- (j) & (k) relate to the railroad tank cars that transport oil
- (l) directs the Department of Environmental Conservation to adopt the regulations to implement the legislation
- Section 8 is the compliance section that allows the Department of Environmental Conservation to verify compliance.
- Section 9 is the certification of the effective date of the statute and the implementing regulation.
- Section 10 provides the immediate effective date of the bill.

Co-Chair Kelly wondered if the private industry is able to respond to the new need created by the legislation.

Mr. Rogers said yes, in part. He explained that there are three existing oil spill cooperatives. He indicated that they have a phased schedule of moving into areas of Western Alaska and establishing a hub with equipment. The process designed by the Task Force was designed to dovetail with that system, so by the time this is effective there would be equipment ready to respond in Western Alaska where they do not currently have equipment. He added that the general feeling is that there are sufficient contractors.

Co-Chair Kelly wondered if there was a federal requirement hanging over their head and if there have been a number of spills.

Mr. Rogers responded that there have been a number of spills. He indicated that the Department of Environmental Conservation could speak to that in terms of numbers. He noted that there do exist federal requirements that effect oil spill prevention and response and this would be an enhancement to that within state waters.

Senator Austerman requested clarification on whether the agencies would be setting up their own response.

Mr. Rogers clarified that vessels or groups of vessels can set up their own response.

Senator Hoffman wondered, in the legislation, where it speaks to when the c-plans and contracts are required.

Mr. Rogers referred to Section 7(j), page 5, line 14, for railroad and Section 7(f), page 4, line 7, for marine vessels. He explained that it is the time at which the c-plan has to have been filed with the Department of Environmental Conservation in order for a vessel to operate, which is 180 days after the adoption of the regulations.

Senator Hoffman wondered if they have an indication of the timeframe?

Mr. Rogers responded that they have anticipated the regulatory process would take approximately 12 months following the signing of the legislation; it has to go through whole public process.

Senator Hoffman wondered if it would be some time in 2003.

Mr. Rogers responded that they anticipate the c-plans would be due in January 2003.

Senator Hoffman asked when the contracts would have to be signed?

Mr. Rogers stated that the contracts would have to be in place at that time. In order to have a valid c-plan they either need to have a contract with a response action contractor in place or they have to certify that they have their own resources to meet the requirement.

Co-Chair Kelly wondered what happens if the plans are not in place at that time.

Mr. Rogers responded that the nontank vessel would not be able to be operated in state.

Co-Chair Kelly asked what the fines were relating to that.

Mr. Rogers deferred the question to the Attorney General's office.

Senator Green requested a glossary of all the terms.

Mr. Rogers understood Senator Green's concern and would add it for the Committee.

BRECK TOSTEVIN, Assistant Attorney General, Environmental Section, Department of law, said that he did not have any specific testimony, but would address any questions. He indicated that under statute providing for civil assessment the fine ranges from \$500 to \$100,000 per day and \$5,000 for each day violation

continues.

Co-Chair Kelly added that it seems they would be pretty motivated to comply.

Senator Hoffman wondered what types of rates are going to be required with such steep fines.

Mr. Tostevin indicated that in current law and in last years legislation, SB 273, there was proof of financial responsibility required.

Senator Hoffman wondered if there was going to be required bonding. He pointed out that even with a simple filling station there is substantial bonding required. He noted that it seemed this would put an additional burden particularly on the small carriers.

Co-Chair Donley requested clarification on whether there was insurance available to cover people for fines.

Mr. Tostevin responded that some insurance would cover people for these fines. He clarified that vessels need to have proof of financial responsibility already in law.

Mr. Rogers indicated that each vessel has to file proof of financial responsibility, basically, a letter of credit stating that they could cover the cost of the spill. He explained that failing to file a response plan would be separate from insurance that was available in case there was a spill. He noted that most vessels would insure against those kinds of catastrophes. He did not believe that Mr. Tostevin was suggesting that insurance would be available for failing to meet administrative requirements. He further clarified that the administrative penalty of \$500 to \$100,000 per day would be for failing to operate under the law not for a spill, which has a different set of calculations.

Senator Ward referred to senator Hoffman's question about insurance and requested clarification that in existing law it requires a letter of credit that indicates that the entity is financially able to clean up a spill.

Mr. Rogers responded correct.

Senator Ward remarked that there is already some cost to create that document.

Mr. Rogers said that the existing letters of credit would impose costs on the regulated industry. He explained that this

legislation would cover the contingency and prevention side, which would lower the cost of the spill. He further explained that if the regulated industry were ready for a spill it would reduce the overall costs of dealing with a spill and lower costs of insurance against spills because they would be less likely to happen if people are prepared for them. Therefore, while it does impose some costs in terms of the contracts being in place over time the costs of preparation should save money compared to the cost of a spill.

LARRY DIETRICK, Director, Division of Spill Prevention and Response, Department of Environmental Conservation. He explained that the fiscal note projection was taken out to FY07. He pointed out that they tried to look at the resources that would be required to implement the plan in the long run, recognizing that the task force would need a startup window of a couple years. Those couple years, he stated, would allow for the accommodation of the promulgation of the rule, which they estimated would be about a twelve-month process and the completion of that process would trigger submission of the plans, which would be required 180 days after the effective date of the regulations. He added that there is another window to accommodate the capitalization of the equipment items to bring the whole thing to completion. He indicated that FY03 and FY04 are the peak years when they would be receiving the plans and registering the primary response action contractors for the incident management teams.

Mr. Dietrick further noted that the system is heavily dependent on the private sector resources to assemble the plans and facilitate them with the various shippers and return them to the department. He pointed out that there is a training component that the task force wants them to perform that would help educate the regulated community, there is the prevention credit program and they were also asked to post the contingency plan on a website. He reiterated that the peak years for accomplishing that would be FY03 and FY04. He explained that the FY02 amount of \$78,000 was for the one position to get started and put the regulation packet together. He noted that they also increased that with one additional full-time person for FY03 and FY04 and backed that up with two temporary positions that may be needed to deal with that peak. He said that they converted the positions to temporary status so they would not linger on after they were finished with the review and approval process, which means they go away in FY05, FY06 and FY07. He pointed out that two positions or \$141,000 is what they believe to be the minimum cost necessary to process approximately 500 applications accounting for approximately 900 vessels. He specified that the estimate on the vessels was coming from the financial responsibility requirement that was imposed in SB 273 last year and became effective on September 1. He informed the

Committee that the bulk of the plans would be done on the private sector side in terms of the arrangements for the qualified individuals, the incident commander; in essence the response team and the response resources. He reported that they estimating that very few companies will want to develop their own. The efficiencies using market forces, he thinks, will tend to drive participation and the sharing of resources the way it was done to date. He noted that the three cooperatives in the state, currently, have evolved over the past ten years meeting the state's new oil spill requirements that were imposed in 1990 based on the need to meet the requirements. He indicated that the three cooperatives now provide that capability.

Co-Chair Kelly requested clarification on what happens to the person brought on to promulgate the regulations after the regulation process is done.

Mr. Dietrick responded that the person would subsequently become one of the reviewers of the plan.

Senator Hoffman wondered why they did not use a combination of user fees, instead of wholly relying upon the oil spill response fund.

Mr. Dietrick explained that the task force did "rassle" with the funding issue. He referred to Recommendation 31 and indicated that it was one of the many ways the task force tried to hold the cost down for everybody; they made a recommendation that the industry not be charged a user fee. He noted that the recommendation actually suggested that the response fund and/or general fund be used. In view of the concerns over the general fund they interpreted that to mean that the first choice would probably be the response fund, so they directed that account as the funding source.

Senator Hoffman wondered what the difference was between user fee and the one time initiation fee.

Mr. Dietrick deferred the question to the representative from the Department of Transportation and Public Facilities.

GEORGE CAPPACCI, General Manager, Alaska Marine Highway System, Department of Transportation and Public Facilities, indicated that the funding source for all the contingency planning is the spill response fund for the Alaska Marine Highway. He noted that there is a fee to sign up with contracting agencies to have those resources and join the cooperative.

Senator Ward wondered if there was any discussion to have the

industry contract out to private contractors without using any state employees.

Mr. Cappacci indicated that there was a heavy alliance to use the current marine infrastructure that has been created in the state for response as the primary response vehicle. He explained that the discussion with the Task Force was to not charge user fees for the regulated community for participating.

Senator Ward wondered why.

Mr. Cappacci indicated that one of the goals of the Task Force was the affordability of the whole package for the regulated industry; therefore, the piece about charging a user fee to pay for the cost to implement the program was discussed and the recommendation of the Task Force was not charging a user fee to keep the cost down.

Senator Ward wondered if there was analysis on that.

Mr. Cappacci responded that the documentation was included in the Task Force report and the transcript of the proceeding was also available.

Co-Chair Kelly asked for the testimony specifically on the bill itself.

SUE SCHRADER, Alaska Conservation Voters, indicated that they are pleased with the Task Force and support the requirements of SB 16. She urged the Committee to support the bill.

ERIC BRITTEN, Manager of planning and development, CSX Lines, indicated that he was a member of the Task Force created by SB 273 and SCR 1.

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Mr. Britten continued that it was a phenomenal process. He understood that there is a degree of concern about a lack of opposition to the bill and the regulations. He indicated that whether that is true or not, he thinks, the way all parties came to the table and the interactions were pretty phenomenal. He pointed out that the report before them is indicative of where they arrived and it was by consensus. He noted that it took a lot of hard work and late evenings to work through it; the members of the Task Force were very dedicated. He said that he personally received several e-mails of support. The process is working here and the regulations that have been proposed are focused on cost. He asked for the Committee's support for SB 16.

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ADJOURNED

Co-Chair Kelly adjourned the meeting at 11:00 a.m.