

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

March 17, 2004

1:07 p.m.

**MEMBERS PRESENT**

Representative Nancy Dahlstrom, Co-Chair  
Representative Beverly Masek, Co-Chair  
Representative Cheryll Heinze, Vice Chair  
Representative Carl Gatto  
Representative Bob Lynn  
Representative Nick Stepovich  
Representative Kelly Wolf  
Representative Beth Kerttula

**MEMBERS ABSENT**

Representative David Guttenberg

**COMMITTEE CALENDAR**

HOUSE BILL NO. 522

"An Act relating to discharges from small commercial passenger vessels; and providing for an effective date."

- MOVED HB 522 OUT OF COMMITTEE

SENATE BILL NO. 305

"An Act relating to state ownership of submerged land underlying water that was navigable at the time Alaska achieved statehood."

- MOVED SB 305 OUT OF COMMITTEE

SENATE BILL NO. 295

"An Act extending the termination date of the Navigable Waters Commission for Alaska; and providing for an effective date."

- MOVED SB 295 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 522

SHORT TITLE: SMALL CRUISE SHIP DISCHARGES

SPONSOR(S): STATE AFFAIRS

02/26/04            (H)            READ THE FIRST TIME - REFERRALS

02/26/04 (H) RES  
 03/03/04 (H) RES AT 1:00 PM CAPITOL 124  
 03/03/04 (H) Heard & Held  
 03/03/04 (H) MINUTE(RES)  
 03/17/04 (H) RES AT 1:00 PM CAPITOL 124

BILL: SB 305

SHORT TITLE: ASSERTING STATE TITLE TO SUBMERGED LAND  
 SPONSOR(S): SENATOR(S) THERRIAULT

02/06/04 (S) READ THE FIRST TIME - REFERRALS  
 02/06/04 (S) RES, FIN  
 02/18/04 (S) RES AT 3:30 PM BUTROVICH 205  
 02/18/04 (S) Moved Out of Committee  
 02/18/04 (S) MINUTE(RES)  
 02/19/04 (S) RES RPT 4DP 2NR  
 02/19/04 (S) DP: OGAN, SEEKINS, WAGONER, DYSON  
 02/19/04 (S) NR: STEVENS B, ELTON  
 03/01/04 (S) FIN RPT 3DP 3NR  
 03/01/04 (S) DP: GREEN, DYSON, BUNDE; NR: HOFFMAN  
 03/01/04 (S) OLSON, STEVENS B  
 03/01/04 (H) FIN AT 9:00 AM HOUSE FINANCE 519  
 03/01/04 (S) Moved SB 305 Out of Committee  
 03/01/04 (S) MINUTE(FIN)  
 03/04/04 (S) TRANSMITTED TO (H)  
 03/04/04 (S) VERSION: SB 305  
 03/08/04 (H) READ THE FIRST TIME - REFERRALS  
 03/08/04 (H) RES, FIN  
 03/17/04 (H) RES AT 1:00 PM CAPITOL 124

BILL: SB 295

SHORT TITLE: EXTEND NAVIGABLE WATERS COMMISSION  
 SPONSOR(S): SENATOR(S) THERRIAULT

02/06/04 (S) READ THE FIRST TIME - REFERRALS  
 02/06/04 (S) RES, FIN  
 02/18/04 (S) RES AT 3:30 PM BUTROVICH 205  
 02/18/04 (S) Moved Out of Committee  
 02/18/04 (S) MINUTE(RES)  
 02/19/04 (S) RES RPT 4DP 1NR  
 02/19/04 (S) DP: OGAN, SEEKINS, STEVENS B, WAGONER  
 02/19/04 (S) NR: ELTON  
 03/01/04 (S) FIN RPT 4DP 2NR  
 03/01/04 (S) DP: GREEN, DYSON, BUNDE, STEVENS B  
 03/01/04 (S) NR: HOFFMAN, OLSON  
 03/01/04 (H) FIN AT 9:00 AM HOUSE FINANCE 519  
 03/01/04 (S) Moved SB 295 Out of Committee

03/01/04 (S) MINUTE(FIN)  
03/04/04 (S) TRANSMITTED TO (H)  
03/04/04 (S) VERSION: SB 295  
03/08/04 (H) READ THE FIRST TIME - REFERRALS  
03/08/04 (H) RES, FIN  
03/17/04 (H) RES AT 1:00 PM CAPITOL 124

**WITNESS REGISTER**

REPRESENTATIVE BRUCE WEYHRAUCH  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: As chair of the House State Affairs  
Standing Committee, sponsor of HB 522, explained the bill and  
answered questions.

JOHN WATERHOUSE, P.E., President  
Elliott Bay Design Group, Ltds.  
Seattle, Washington

POSITION STATEMENT: During hearing on HB 522, provided  
information, and answered questions regarding stability testing  
requirements.

DAN EASTON, Director  
Division of Facility Construction and Operation  
Department of Environmental Conservation (DEC)  
Juneau, Alaska

POSITION STATEMENT: During hearing on HB 522, provided  
information and answered questions.

JOE BALASH, Staff  
to Senator Gene Therriault  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented SB 305 on behalf of Senator  
Therriault, sponsor.

DICK MYLIUS, Deputy Director  
Division of Mining, Land and Water  
Department of Natural Resources (DNR)  
Anchorage, Alaska

POSITION STATEMENT: Testified on SB 305; provided information  
and answered questions.

JOANNE GRACE, Senior Assistant Attorney General  
Opinions, Appeals  
Office of the Attorney General

Department of Law  
Anchorage, Alaska

POSITION STATEMENT: During hearing on SB 305, provided information and answered questions.

MYRL THOMPSON

Wasilla, Alaska

POSITION STATEMENT: Testified on SB 305.

ZACK WARWICK, Staff  
to Senator Gene Therriault  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented SB 295 on behalf of Senator Therriault, sponsor of the bill.

#### **ACTION NARRATIVE**

#### **TAPE 04-15, SIDE A**

Number 0001

**CO-CHAIR NANCY DAHLSTROM** called the House Resources Standing Committee meeting to order at 1:07 p.m. Representatives Dahlstrom, Masek, Gatto, Heinze, Lynn, Stepovich, and Wolf were present at the call to order. Representative Kerttula arrived as the meeting was in progress.

#### HB 522-SMALL CRUISE SHIP DISCHARGES

CO-CHAIR DAHLSTROM announced that the first order of business would be HOUSE BILL NO. 522, "An Act relating to discharges from small commercial passenger vessels; and providing for an effective date."

Number 0056

REPRESENTATIVE BRUCE WEYHRAUCH, Alaska State Legislature, speaking as chair of the House State Affairs Standing Committee, sponsor of HB 522, directed attention to a letter contained in the bill packet entitled, "Limitations on Modifying Small Commercial Passenger Vessels." He noted that the letter addressed concerns the committee had expressed during the previous bill hearing with regard to the stability issue. Representative Weyhrauch asked Co-Chair Dahlstrom if she would like him to read the letter to the committee.

CO-CHAIR DAHLSTROM suggested it wasn't necessary to read the letter into the record.

REPRESENTATIVE WEYHRAUCH explained that the bill was not introduced until the House State Affairs Standing Committee had something on the record that indicated some basis for having the state affairs committee introduce it in the first place. He indicated that the committee was interested in the position of the state, the Department of Environmental Conservation (DEC), the cruise ship industry, and also whether the it made sense from a public policy view and if there was some consensus on the desirability for this piece of legislation.

REPRESENTATIVE WEYHRAUCH suggested the small cruise ship compliance program is misunderstood by some of the public. He noted that a poll done by the Juneau Empire indicated that 77 percent of the people polled were opposed to this kind of thing. Representative Weyhrauch said based on the way the question is posed in the poll, he wondered what people were really responding to. He said the bill does not affect anything related to large cruise ships, exempt them from any [compliance] programs, or affect the taxation issues. Furthermore, he said the bill does not allow small cruise ships to pollute and is not being done [at the industry's request]. He said this is something that has been considered by state regulators and small cruise ship operators in order to provide a policy framework that allow [small cruise ships] to operate, and he suggested small cruise ship operators have shown that they are responsible. He said small cruise ship operators have also shown that they need some relief from the standards that were imposed by earlier legislation in order to keep operating in a way that is still monitored by DEC and meets best management practices (BMPs). Representative Weyhrauch said those are the reasons the bill was introduced

REPRESENTATIVE WEYHRAUCH noted there would continue to be an education effort. He said this legislation was recommended by DEC and it keeps small cruise vessels in the passenger compliance program, which is what it's all about. He noted that the aforementioned letter was addressed in part to allay Representative Heinze's specific concerns about stability.

Number 0538

CO-CHAIR MASEK said it seems the issues brought forward have been dealt with, and she suggested the legislation seems compatible with [DEC's policies]. She indicated she thought

protection is provided by the BMPs outlined in the bill and the requirement for DEC to approve the plan for a three-year period in order for small vessels to operate in Alaska's waters.

Number 0623

CO-CHAIR MASEK moved to report HB 522 out of committee with individual recommendations and the accompanying fiscal notes, and asked for unanimous consent.

Number 0635

REPRESENTATIVE GATTO objected for purpose of discussion. He directed attention to page 3, lines 20-24, which read in part:

The department may adopt regulations to implement this subsection but may not require an owner or operator to retrofit a vessel solely for the purpose of waste treatment if the retrofitting requires additional stability testing or relicensing by the United States Coast Guard.

REPRESENTATIVE GATTO noted that this language was previously referred to as the "poison pill" clause. He asked Representative Weyhrauch if he had heard that term used for this language.

CO-CHAIR MASEK turned attention to a memorandum dated March 5 to members of the House Resources Standing Committee from Representative Weyhrauch. She said the memorandum deals with the issue of the poison of the bill.

Number 0773

REPRESENTATIVE KERTTULA said the question from the public was about this same issue and the language in question seems somewhat confusing. Representative Kerttula asked if stability testing is only required when the weight of the vessel has changed.

Number 0909

JOHN WATERHOUSE, P.E., President, Elliott Bay Design Group, Ltds., testified. Mr. Waterhouse explained that stability testing is not like water quality testing, it requires that the ship come out of service for a day and involves setting up test equipment, moving weight on the ship, and then taking very

Careful measurements to determine, from those weight movements, what the center of gravity of the ship is. He said testing is not something that operators will do as a matter of course because it is so disruptive to operations. Mr. Waterhouse said he thought the concern is that if a ship is modified, the U.S. Coast Guard is likely to ask for a stability test to be done because these are small vessels which have applied by name and are typically under fairly stringent stability requirements. He explained that there just isn't a lot of margin in those requirements to accept new equipment or changes in the vessel, which he believes is the concern of the operators.

REPRESENTATIVE KERTTULA said if something is changed on a ship that would require the ship to have stability testing, it's because something is being done that affects the stability of the ship, which is the reason the testing is done. She asked if stability testing is done because a problem has already occurred.

MR. WATERHOUSE replied correct.

REPRESENTATIVE KERTTULA said that was the concern from members of the public, and it certainly resolves her issue.

Number 1091

REPRESENTATIVE WEYHRAUCH offered his understanding that the term "poison pill" came up because a member of the public who was testifying used that phrase. He said it was alleged or stated that [the bill] would have "short circuited" the department's ability to require small passenger vessels to use new wastewater treatment technology. He asked Mr. Waterhouse if he understands the issue in terms of the question that one of the members had raised about this section being called a poison pill.

MR. WATERHOUSE said he believes he understands the issue. He said from his standpoint as an engineer, his customers are going to be looking at wastewater treatment because it is an ongoing changing technology. Some of the technologies that are currently in the laboratories being developed may lead to smaller systems that can be retrofitted into a ship that won't impact the stability of the ship. He said knowing his customer base, if that technology is available, they would be very interested in applying it their ships. Furthermore, he said their concern has to do with existing technology that could not be used without major modifications.

MR. WATERHOUSE remarked, "They're concerned as operators, but I would see how people on the other side may say that it's a poison pill that they're just trying to avoid doing anything." He said he thought what is being dealt with is technology in progress. Mr. Waterhouse said that over the past five years the cruise industry has put about \$50 million into investigating and experimenting with new water treatment technology, so it is very much a work in progress.

REPRESENTATIVE GATTO said what is being discussed is wastewater treatment. He said [the language in question specifies] that the department may adopt regulations to implement this section, but it exempts those that would be required to do any testing. He said he thought this was sort of contradictory to what the intent of the bill was and that it allowed an "escape clause" that was pretty wide open.

REPRESENTATIVE WEYHRAUCH said he thought DEC should comment on whether it believes that it is an escape clause that's going to allow that to [happen]. He said he is curious too, and it should be on the record.

Number 1275

DAN EASTON, Director, Division of Facility Construction and Operation, Department of Environmental Conservation (DEC), testified. He said his understanding of the [language in question] is that DEC can't require an owner or operator to retrofit a vessel solely for the purpose of waste treatment if it requires additional stability testing. Mr. Easton said the types of things that require additional stability testing would primarily be for adding tankage or making substantial changes to the vessel. He said DEC was going to try to avoid that in working with the small cruise ship companies, and DEC believes it can develop a set of regulations that protect water quality and comply with water quality standards without requiring the addition of major tankage that ultimately would require that the vessels be stability tested.

REPRESENTATIVE GATTO said he thought it was good to get it on the record, but it still seems contradictory to him. He commented that it "tickles" some of his neurons and it says there's something "goofy" here. He remarked, "In other words, as long as you have an obligation that says you now have to have a test, why you're excused."

Number 1432

REPRESENTATIVE WEYHRAUCH asked Mr. Waterhouse if there is a correlation between testing and the U.S. Coast Guard certificate of inspection licensing process.

MR. WATERHOUSE said he thought this may partly go back to the misunderstanding of the testing. If it can be demonstrated to the U.S. Coast Guard by calculations of weights on and weights off of stability then the vessel does not need to be tested, and the U.S. Coast Guard will accept that. He said if a wastewater system is being changed out by another wastewater system that weighs the same amount and it can be demonstrated by calculations, the U.S. Coast Guard will not require a stability test. The concern comes in when a system is being replaced by a system that will require additional tankage and cause the U.S. Coast Guard to mandate a stability test. Part of the problem is that as a result of that stability test, if the vessel fails, the work has already been done to the vessel. If it is suddenly discovered that it no longer meets stability requirements, then the situation is that the money has been spent on equipment, the U.S. Coast Guard is saying the boat cannot be sailed because of the equipment has been installed.

MR. WATERHOUSE said it is not testing for knowledge or for the ability to do it, it is a reflection of the fact that as boats grow older they tend to gain weight. He explained that every little bit of weight on these kinds of vessels has to be watched carefully because there are stringent safety and stability requirements, and the U.S. Coast Guard is pretty rigorous about enforcing those.

CO-CHAIR MASEK said the bill specifies that best management practices will include such things as onboard treatment of all wastewater to U.S. Coast Guard standards and whenever possible require that all vessel discharge be made at least one mile offshore traveling at six knots. She said the bill also says the DEC assessment report concluded when small and large vessel discharge underway they are able to meet all Alaska water quality standards. She turned attention to page 53 of the report that DEC came out with on the assessment of cruise ship and ferry wastewater assessment impacts in Alaska. She said schedules are going to be adjusted to minimize stationary discharges; ships will avoid doing laundry while stationary, and will work with manufacturers to develop new technology capable of treating stationary discharges to higher levels on smaller vessels.

CO-CHAIR MASEK noted that ships will utilize holding tanks to the maximum extent to avoid stationary discharges, continue to pay coastal protection fees to DEC, and continue to test, monitor, and report wastewater discharges to DEC. Co-Chair Masek said she thought [DEC] had come a long way in working with this and is on board with [the bill]. She remarked, "I think we've done all we can." She noted that Representative Kerttula had worked hard with another issue that this came out of. She said she thought it was a very good compromise and is encouraged to see the committee making some headway.

REPRESENTATIVE GATTO commented that if the requirements are already satisfied, then no action is needed. He asked if it is satisfactory to simply discharge at a given rate of speed a mile offshore, should the bill go beyond that since that satisfies the requirements. The issue of removing equipment and replacing it with equipment of the same weight may satisfy the weight requirement, but probably not the balance requirement unless it is placed in the same location, he added. Representative Gatto told the members that the bill is not as clean as he would like it to be.

REPRESENTATIVE GATTO emphasized that he would like to see small ships prosper and is a strong supporter. When legislation affects the smaller ships, he said he would like it to be clear that the bill makes it easy for them to adopt the regulations without causing some objections from the community and the U.S. Coast Guard at some later date. Representative Gatto stated that he does not believe that would occur with this bill, but in reading the bill he thought it could use more work.

MR. EASTON said he can't address the question about why a bill is needed if the vessels are complying underway. He said the problem arises when the vessels are not underway.

Number 1841

REPRESENTATIVE GATTO withdrew his objection.

CO-CHAIR DAHLSTROM asked if there was further objection. Hearing none, HB 522 was reported out of the House Resources Standing Committee.

SB 305-ASSERTING STATE TITLE TO SUBMERGED LAND

CO-CHAIR DAHLSTROM announced that the next order of business would be SENATE BILL NO. 305, "An Act relating to state

ownership of submerged land underlying water that was navigable at the time Alaska achieved statehood."

Number 1891

JOE BALASH, Staff to Senator Gene Therriault, Alaska State Legislature, presented SB 305 on behalf of Senator Therriault, sponsor. Mr. Balash characterized SB 305 as a bill that deals with the state's ownership of submerged lands under navigable waters throughout the state, and he paraphrased from the sponsor statement, which read [original punctuation provided]:

With the exception of withdrawn federal lands, at statehood in 1959 Alaska received title under the equal footing doctrine to all submerged lands under state navigable waters and marine waters out to three miles. Unfortunately, the federal government has been slow to concede any navigability determinations. Since Alaska entered the Union, the federal courts have determined fewer than 20 rivers navigable. Unless the state is pro-active in asserting its claims, it stands to lose up to 60 million acres of its statehood entitlement.

MR. BALASH noted that this bill lays out some criteria for making the navigability determinations, and provides a list to the public as well as interested parties. He continued:

In some cases, the federal government has used every possible legal tactic under the Federal Quiet Title Act to impede the state's assertion of ownership. The Black, Kandig, and Nation Rivers in northeast Alaska are examples. These three Rivers clearly meet the criteria established by the federal courts for determining navigability in Alaska. Although no one contested the state's claim that these streams met the federal criteria, this case took nine years and millions of state and federal dollars to litigate. Eventually the state won two of the three cases. The third was resolved by a Federal Recordable Disclaimer of Interest in 2003.

In addition, prior to 1989 the federal government applied incorrect standards to determine navigability and may have mistakenly conveyed state-owned land to Native corporations, clouding the title to hundreds of thousands, if not millions, of acres. This is a

critical topic as Congress considers a deadline for completing the land selection and conveyance processes.

MR. BALASH said the timeframe being discussed recently is 2009; the hope is to have completed everything by then. He continued:

Contributing to the problem is the lack of a reasonable and efficient way for the state to secure title to its submerged lands. SB 305 takes three steps to begin the process of identifying state claims.

First, SB 305 provides notice to all parties that the state is laying claim to all submerged lands, except those withdrawn at the time of statehood, that meet the standards and criteria established in the Submerged Lands Act and in various federal court decisions.

Second, it provides authority for state agencies to identify, in accordance with the appropriate federal and state laws, which water bodies the state claims as navigable and non-navigable. This will help the state clarify criteria for identifying navigable waters, address conflicts involving clouded titles due to inaccurate conveyances from the Bureau of Land Management, and more clearly delineate its title claims.

Third, the bill directs the Department of Natural Resources to give notice to all private property owners, including native corporations created under the Alaska Native Claims Settlement Act, that may have received title to lands that could have erroneously included state submerged lands in their conveyances. This is critical to resolve future problems regarding mineral development, gravel extraction, access and other related land uses.

This legislation is only one step for the state to eventually resolve the title disputes over its submerged lands, and deals only with the issue of state title to submerged lands. It does not address conflicts over federal fish and wildlife management in state navigable waters created by federal reserved water rights claims.

Number 2158

CO-CHAIR MASEK asked how much acreage may affect regional or village Native corporations under this bill.

MR. BALASH replied that an accurate count had not been provided by the Department of Natural Resources, and he is unaware of any sort of estimate.

Number 2204

DICK MYLIUS, Deputy Director, Division of Mining, Land and Water, Department of Natural Resources (DNR), testified. Mr. Mylius, in response Co-Chair Masek's question, said DNR did not have information about the amount of acreage relating to Alaska Native Claims Settlement Act (ANCSA) or state lands that were conveyed to ANCSA corporations.

Number 2252

REPRESENTATIVE HEINZE asked if any of the land erroneously included in the conveyance were [Alaska Mental Health Trust Authority] lands.

MR. BALASH replied that he is not certain that any lands have been erroneously conveyed, but said there is that possibility. He explained that it would take quite a bit of effort to go back and take a look at the Bureau of Land Management (BLM) files on navigability determinations and the land selected by ANCSA corporations to see whether that has occurred.

REPRESENTATIVE HEINZE asked if it is not known how much land is in question.

MR. BALASH replied correct.

Number 2309

REPRESENTATIVE HEINZE told the members that she remembers fighting 10 years ago with DNR to try to get the navigable definition down, so this is not a surprised. She asked how many navigable rivers are affected.

MR. BALASH said the figures are quite astounding. He said there are thousands of rivers and potentially tens of thousands of water bodies [that could be affected]. There was a legislative

audit done a few years ago that tried to quantify it and it came up with some high figures. Mr. Balash explained that the audit was the basis for the formation of the state's navigability certification team, a work group of agency personnel from the Alaska Department of Fish & Game (ADF&G), the Department of Natural Resources (DNR), and the Department of Law (DOL). This group has been working fairly assiduously to try to quantify and identify those areas where the state's sovereignty needs to be asserted on navigable water bodies, so the state retains management rights, as well as all of the privileges that come with it.

REPRESENTATIVE HEINZE asked if the mapping department at DNR had tried to map the 60 million acres.

MR. BALASH replied that he didn't think DNR has any statewide maps, but he believes he has seen a map related to the Copper River that identifies navigability in certain areas of the river and its tributaries. He explained that the fiscal note does provide funds for DNR to acquire files to incorporate into a larger digital map, which would be available to the public, and would help to identify those [areas] statewide.

REPRESENTATIVE HEINZE said she could remember that DNR used to do a lot of mapping, and she was curious about where that's gone in 10 years. She remarked, "We used to sit down and look at it all to try to get the tentative approval for state lands."

Number 2433

REPRESENTATIVE KERTTULA asked if the amendment made to ANCSA Section 901 was intended to resolve some of these issues. What has happened since then to necessitate this legislation, especially with respect to the turn on the burden of proof and timelines, she asked. Representative Kerttula asked for someone to provide her with the history of that amendment and asked what this [bill] would do.

Number 2460

JOANNE GRACE, Senior Assistant Attorney General; Opinions, Appeals and Ethics; Office of the Attorney General; Department of Law, testified. Ms. Grace explained that there was an amendment made to Alaska National Interest Lands Conservation Act (ANILCA) that was intended to resolve a problem that was created when BLM was conveying land to ANCSA corporations. The problem was that in conveying land to ANCSA corporations, BLM

had to consider how much acreage it would convey to the corporations. Therefore, it had to do navigability determinations because to the extent that there were any navigable waters on the lands that that were being conveyed it could not charge the Native corporations for that land because BLM didn't own that land, the state owned it, she explained. Ms. Grace told the members that the navigability determinations would become part of its conveyance decisions which would have to be appealed if there was any disagreement with it. The problem it created was that every time BLM did a determination of nonnavigability and the state disagreed, the state was forced to appeal it and litigate it in order to reserve its right or claim to the title, she summarized.

MS. GRACE said the result was the ANCSA corporation conveyances got tied up in all this litigation because the state had to resolve navigability every time there was a disagreement. There was an agreement made that was eventually codified that BLM would get out of the business of doing navigability determinations and it would simply not charge the ANCSA corporations for any waterways that were greater than a particular size (indisc. - coughing) and that they would now go about actually doing any navigability determinations. She said any lake over 50 acres or any river wider than 198 feet, [BLM] would meander out and wouldn't charge the Native corporations (indisc. - coughing) with that land, and would have to litigate these issues.

MS. GRACE explained that Section 901 eliminated that statute of limitations as it applies to the state, so the state could not be forced to file suit every time BLM did the nonnavigability determinations. She said it made the land conveyances go a lot (indisc. - coughing) and a lot faster, but that was not intended to prevent the state from ever asserting title over any navigable waters. It was just a solution to the problem of having to litigate every time BLM did a nonnavigability determination, she explained.

Number 2629

REPRESENTATIVE KERTTULA asked for further clarification, as it appears the problem has now shifted to the ANCSA corporations.

MS. GRACE told the members that the bill does not really change anything in that regard, to the extent that the state's claim of title to its navigable waters would mean that the state believes it owns the body of water. The state has an obligation to the

public to determine whether it owns the waters and puts private landowners on notice. It may start the statute of limitations running, she commented.

Number 2707

REPRESENTATIVE KERTTULA asked why the bill is necessary if the state already has the right to proceed.

MS. GRACE responded that one purpose of the bill is to put people on notice that the state believes it owns the lands underlying that water. To the extent that time passes between statehood, the present, and as time goes on, there is a danger in failing to assert title. Private landowners will believe they own land, rely on that belief, and make investments. Mr. Grace said that one of the main purposes of the bill is to ensure that it is clear to everyone that just because the state does not have final determinations on all rivers does not mean the state doesn't own it. It is good public policy for landowners and the public to know about state submerged lands and waters so that the state can fulfill its public trust obligations, she emphasized.

REPRESENTATIVE KERTTULA commented that originally the burden of proof was on the state to prove navigability. She said she is concerned that the [burden of proof] is shifting in an unintended way. She said she is also concerned about the notice requirement in Section 3. Representative Kerttula asked what needs to be done to prove navigability. How would that change, she asked. Representative Kerttula indicated that she believes this process is being "speeded up" and it may not be as thoughtful a process as is currently done.

MS. GRACE spoke to Representative Kerttula's concern regarding Section 3 and advised the committee that this section is intended to only be a general notice to the ANCSA corporations. She explained that with the 2009 conveyance deadline the property conveyances will be wrapped up. This is important because BLM might have been using incorrect standards for determining eligibility and the ANCSA corporations could be charged for lands it actually does not own, she summarized. This gives the ANCSA corporations the opportunity to ensure that the correct standards are used. A generic letter will go out to all native corporations within 180 days, she added.

REPRESENTATIVE KERTTULA surmised that there is no navigability determination that goes along with that notice.

MS. GRACE replied that is correct. She told the members that this notice will ensure that ANCSA corporations do not lose their chance to address being incorrectly charged for these lands.

REPRESENTATIVE KERTTULA commented that this notice does not trigger any kind requirement that the Native corporation do anything before the 2009 deadline. She asked if there is anything new. Will the statute of limitations change, Representative Kerttula asked.

Number 2949

MS. GRACE replied that is correct. The only urgency would be if a Native corporation wanted to ensure that it was not incorrectly charged for acreage that will ultimately be closed, she said. It does not affect the statute of limitations, Ms. Grace added.

**TAPE 04-15, SIDE B**

CO-CHAIR MASEK commented that Representative Kerttula brought up some critical topics. In 1989 the U.S. Court of Appeals, Ninth Circuit Court, ruled that incorrect standards were applied by BLM in determining navigable waters. She asked what else has been done since that time.

MR. BALASH said he believes that BLM has been applying the standard which was set out in the Gulkana decision [Alaska v. Ahtna, Inc.] and then later refined in a subsequent decision that was delineated in the Black River decision.

Number 2923

MYRL THOMPSON testified on SB 305. He said that he believes this bill will not only affect Native corporations, but private property owners too. Mr. Thompson asked if a river runs through a private landowner's property, for example, if an individual owns a 70 or 80 acre tract of land, does this mean that the land under the river belongs to the state. He commented that he has been paying taxes on a part of a river where he owns property. Mr. Thompson said he would like to know how this bill will affect him.

Number 2861

MR. BALASH replied that he does not know the particulars related to the land Mr. Thompson owns, and would not be able to provide him with any advice. He suggested that Mr. Thompson's deed would delineate where there are exceptions to the tract of acreage. For example, a right-of-way or easement that might be recorded across his property would be noted on the deed. Mr. Balash summarized that the state does own submerged lands unless it was withdrawn by the federal government prior to statehood.

CO-CHAIR DAHLSTROM told Mr. Thompson that she believes Mr. Balash is correct in stating that it would be inappropriate for him to advise him in this setting. She said she is confident that if Mr. Thompson called the Department of Natural Resources or his Representatives' offices they could provide assistance in getting answers to his question.

MR. THOMPSON said he does not agree. He added that Co-Chair Masek is his representative. Mr. Thompson clarified that he would like an answer to his question. The response does not have to be for his specific circumstances, he said. He explained that he was using his circumstances as a hypothetical example. Mr. Thompson posed another hypothetical example of an individual who owns 60 acres and three of those acres are river. If the river is the state's land in actuality then why would that individual have to pay property taxes on the land, he asked. Mr. Thompson pointed out that this bill may be a drain on boroughs that rely on property taxes for revenue, because all these individuals will be exempt from paying property taxes on these lands.

MR. THOMPSON stated that the way his deed reads, he owns the land under the river and is being charged taxes for it.

Number 2726

MR. BALASH responded that if the federal government conveyed that land to Mr. Thompson and erroneously conveyed that riverbed to him, then he may have a problem. However, if the state conveyed the land and title to Mr. Thompson [then there is not a problem]. The state is capable of conveying its title to him, but the federal government cannot convey title without the state's permission, he concluded.

MR. THOMPSON replied that Mr. Balash's comment is some comfort, but it still does not answer the question about tax liability. He restated the hypothetical example that if he owns 57 acres of land and three acres of it are water, which he is paying taxes

on, who will make up the difference in property taxes to the boroughs [when he no longer pays taxes on those acres].

MR. BALASH told Mr. Thompson that the question he has with respect to how he is being assessed by the borough for property tax purposes is a question that needs to be taken up with the borough. He said he believes the property tax bill would identify that information. The borough assessor's office would also have the information as to whether he is paying taxes for the value of the riverbed, he added.

Number 2648

MR. THOMPSON replied that he is indeed paying the taxes on the riverbed and has since he purchased the property. That is the problem.

CO-CHAIR DAHLSTROM encouraged Mr. Thompson to talk with local officials or call her office or his representative's office for further assistance.

REPRESENTATIVE KERTTULA asked if Mr. Mylius could describe whether there will be any change in navigability determinations.

MR. MYLIUS responded that DNR does not plan on making any changes in the process of making navigability determinations. He said that Section 2 of the legislation directs DNR to compile a list of existing navigability determinations, which are primarily done by BLM, but the state may have had a part in the decisions. He commented that there is no where to go to find a list of what has already been done, so DNR is taking on the task of putting together a list and map.

MR. MYLIUS emphasized that Section 3 of the bill provides for the state to send generic notifications to the Native corporations which says that the corporations may have been conveyed navigable waters, but there won't be information on what rivers have been found to be navigable.

CO-CHAIR MASEK moved to report SB 305 out of committee with individual recommendations and the accompanying fiscal notes.

Number 2495

REPRESENTATIVE GATTO objected. He told the members that he has a question on the fiscal note. The numbers do not add up correctly, he said. He said it looks like \$186,500.

MR. BALASH asked if Representative Gatto is adding up the line items and coming up with a different number than \$186,[500].

REPRESENTATIVE GATTO responded that he is looking at the analysis. He referred to the list of positions and salaries and said the amount is over \$186,[500].

MR. BALASH pointed out that a number of these positions and salaries are for a multiple number of years which would account for the amount being over \$186,[500] for one fiscal year. The fiscal note covers FY05, FY06, and FY07. He commented that compiling this list will be a lengthy process.

CO-CHAIR DAHLSTROM reminded the members that the next committee of referral is the House Finance Committee, where every dollar in the fiscal note will be examined.

Number 2391

REPRESENTATIVE GATTO withdrew his objection.

There being no objection, SB 305 was reported out of the House Resources Standing Committee.

SB 295-EXTEND NAVIGABLE WATERS COMMISSION

CO-CHAIR DAHLSTROM announced that the final order of business would be HOUSE BILL NO. 295, "An Act relating to the publishing and furnishing of certain public notices regarding regulations or rules of certain state agencies; relating to distribution of the Alaska Administrative Code, Alaska Administrative Register, and supplements to the code or register; and providing for an effective date."

Number 2380

ZACK WARWICK, Staff to Senator Gene Therriault, Alaska State Legislature, presented SB 295 on behalf of Senator Therriault, sponsor of the bill. He told the committee that a lot of what SB 295 does piggybacks on SB 305. In 2002 the Alaska State Legislature created the Joint Federal and State Navigable Waters Commission made up of seven state and federal members. The purpose was to create a working group to come to consensus on three objectives. The first was to expedite the process of obtaining title to the state's submerged lands. The second was to determine which bodies of waters are navigable and non-

navigable, which would piggyback some of the work that is being done through SB 305. The third objective was to provide recommendations to the state and federal governments on ways to improve the process of making navigability determinations and obtain title to the state's submerged lands in a fair and expeditious way.

Number 2304

MR. WARWICK said unfortunately, in 2002 after the state legislation passed, the federal legislation did not pass. So the Joint Federal and State Navigable Waters Commission never met. All this bill does is extend the sunset date for two years. It is hoped that the Alaska delegation will introduce federal legislation that will authorize the federal portion of the commission. This is an effort to build consensus on how to proceed.

CO-CHAIR DAHLSTROM announced for the record that Dick Mylius, Deputy Director, Division of Mining, Land and Water, Department of Natural Resources is on line to answer questions.

Number 2278

REPRESENTATIVE WOLF asked if the commission will in any way slow down or compromise the process with the federal government.

MR. WARWICK replied he does not believe so.

Number 2252

CO-CHAIR MASEK referred to the sponsor statement with respect to renewing the sunset, and asked if Mr. Warwick knows if federal lawmakers look favorably on this kind of legislation.

MR. WARWICK replied that in 2002 there was legislation introduced, it received one committee hearing, but it did not move. He said he could not comment on the possibility of federal legislation passing.

CO-CHAIR MASEK asked if SB 295 passes will the commission proceed without the federal legislation passing.

Number 2174

MR. WARWICK commented that when this legislation passed in 2002 there was a zero fiscal note. The state membership was never

appointed and no work was done, he explained. He told the members that there was agreement with DNR that no membership appointments would be made until the federal legislation passes.

Number 2165

REPRESENTATIVE HEINZE asked if after 40 years of dispute does Mr. Warwick believe a two-year extension is enough. She asked if the seven state and federal representatives had been appointed and are currently working.

MR. WARWICK replied no.

REPRESENTATIVE HEINZE again questioned whether two years is long enough.

MR. WARWICK responded that he does not know, but given that a lot of work will be done through SB 305, he believes two years should be adequate.

CO-CHAIR MASEK moved to report SB 295 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SB 295 was reported out of House Resources Standing Committee.

**ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:13 p.m.