

**ALASKA STATE LEGISLATURE**  
**HOUSE RESOURCES STANDING COMMITTEE**

March 22, 2004

1:10 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Representative Carl Gatto

**COMMITTEE CALENDAR**

HOUSE BILL NO. 297

"An Act relating to wildfires and other natural disasters."

- HEARD AND HELD

SENATE BILL NO. 264

"An Act repealing the time limitation on the authority of the Department of Natural Resources to enter into agreements with a person or persons desiring to own an oil or natural gas pipeline proposed to be located on state land for the purposes of providing for payment of the reasonable costs incurred in preparing for activities before receipt of an application under the Alaska Right-of-Way Leasing Act; and providing for an effective date."

- MOVED SB 264 OUT OF COMMITTEE

HOUSE BILL NO. 531

"An Act relating to natural gas exploration and development and to nonconventional gas, and amending the section under which shallow natural gas leases may be issued; and providing for an effective date."

- SCHEDULED BUT NOT REFERRED

**PREVIOUS COMMITTEE ACTION**

BILL: HB 297

SHORT TITLE: WILDFIRES AND NATURAL DISASTERS

SPONSOR(S): REPRESENTATIVE(S) STOLTZE

05/05/03 (H) READ THE FIRST TIME - REFERRALS  
05/05/03 (H) STA, RES  
01/13/04 (H) STA AT 8:00 AM CAPITOL 102  
01/13/04 (H) <Bill Hearing Postponed>  
02/03/04 (H) STA AT 8:00 AM CAPITOL 102  
02/03/04 (H) Scheduled But Not Heard  
02/05/04 (H) STA AT 8:00 AM CAPITOL 102  
02/05/04 (H) Heard & Held  
02/05/04 (H) MINUTE(STA)  
02/26/04 (H) STA AT 8:00 AM CAPITOL 102  
02/26/04 (H) Moved Out of Committee  
02/26/04 (H) MINUTE(STA)  
03/15/04 (H) STA RPT 1DP 1NR 4AM  
03/15/04 (H) DP: LYNN; NR: GRUENBERG; AM: SEATON,  
03/15/04 (H) HOLM, BERKOWITZ, WEYHRAUCH  
03/15/04 (H) STA REQUESTS JUD REFERRAL  
03/15/04 (H) FIN REFERRAL ADDED AFTER RES  
03/22/04 (H) RES AT 1:00 PM CAPITOL 124

BILL: SB 264

SHORT TITLE: REPEAL PIPELINE PREAPPLICATION DEADLINE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/14/04 (S) READ THE FIRST TIME - REFERRALS  
01/14/04 (S) RES  
01/28/04 (S) RES AT 3:30 PM BUTROVICH 205  
01/28/04 (S) Moved SB 264 Out of Committee  
01/28/04 (S) MINUTE(RES)  
01/30/04 (S) RES RPT 4DP 1NR  
01/30/04 (S) DP: OGAN, STEVENS B, SEEKINS, DYSON  
01/30/04 (S) NR: ELTON  
02/25/04 (S) TRANSMITTED TO (H)  
02/25/04 (S) VERSION: SB 264  
02/26/04 (H) READ THE FIRST TIME - REFERRALS  
02/26/04 (H) O&G, RES  
03/16/04 (H) O&G AT 3:15 PM CAPITOL 124  
03/16/04 (H) Moved Out of Committee  
03/16/04 (H) MINUTE(O&G)  
03/18/04 (H) O&G RPT 4DP 1NR  
03/18/04 (H) DP: HEINZE, KERTTULA, ROKEBERG,  
03/18/04 (H) KOHRING; NR: CRAWFORD

03/22/04

(H)

RES AT 1:00 PM CAPITOL 124

**WITNESS REGISTER**

BEN MULLIGAN, Staff  
to Representative Bill Stoltze  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented CSHB 297 on half of  
Representative Stoltze, sponsor, and answered questions from the  
members.

GAIL VOIGTLANDER, Assistant Attorney General  
Supervisor, Torts and Worker's Compensation Section  
Department of Law  
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 297 and answered questions  
from the members.

LIEUTENANT ALLEN STOREY, Director of Staff  
Alaska State Troopers  
Department of Public Safety  
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 297 and answered questions  
from the members.

DEAN BROWN, Deputy Director  
Division of Forestry  
Department of Natural Resources  
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 297 and answered questions  
from the members.

RICHARD LefEBVRE, Deputy Commissioner  
Office of the Commissioner  
Department of Natural Resources  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 264; explained  
the preapplication process and the purpose for the bill.

**ACTION NARRATIVE**

**TAPE 04-16, SIDE A**

Number 0001

**CO-CHAIR NANCY DAHLSTROM** called the House Resources Standing  
Committee meeting to order at 1:10 p.m. Representatives

Dahlstrom, Masek, Lynn, Stepovich, and Guttenberg were present at the call to order. Representatives Heinze, Wolf, and Kerttula arrived as the meeting was in progress.

HB 297-WILDFIRES AND NATURAL DISASTERS

Number 0037

CO-CHAIR DAHLSTROM announced that the first order of business would be HOUSE BILL NO. 297, "An Act relating to wildfires and other natural disasters."

Number 0078

BEN MULLIGAN, Staff to Representative Bill Stoltze, Alaska State Legislature, presented CSHB 297 on half of Representative Stoltze, sponsor.

Number 0099

CO-CHAIR MASEK moved to adopt CSHB 297, 23-LS1073\H, Luckhaupt, 3/18/04, as the working document. There being no objection, CSHB 297, version H, was before the committee.

MR. MULLIGAN told the members that this bill came about due to Miller's Reach fire, and then later, the Lazy Mountain fire. He explained that a lot of people were forced to evacuate the area. Some individuals were able to regain entry to the area and were able to personally save their homes. Representative Stoltze introduced this legislation in an effort to allow individuals to either regain entry or remain at their place of residence in order to save their property.

Number 0240

REPRESENTATIVE GUTTENBERG asked if Mr. Mulligan could review the differences between the CS and the original bill.

MR. MULLIGAN replied that one change addresses the issue of minors accessing the area. The change indicates that the person gaining reentry or remaining must be an adult, he said.

MR. MULLIGAN said another change refers to (b) on page 2, [lines 30 and 31, and page 3, lines 1 through 3], which reads as follows:

(b) Notwithstanding another provision of law, the state, a municipality, a fire department, an emergency medical, rescue, or emergency services organization or an employee or volunteer of the state, a municipality, a fire department, or an emergency medical, rescue, or an emergency services organization is not liable for property damage or the injury or death ...

MR. MULLIGAN explained that this language was expanded to include the removal of liability of emergency personnel for property damage.

CO-CHAIR DAHLSTROM announced for the record that Representative Heinze and Kerttula have joined the meeting.

Number 0365

GAIL VOIGTLANDER, Assistant Attorney General, Supervisor, Torts and Worker's Compensation Section, Department of Law, testified on HB 297 and answered questions from the members. She acknowledged that she has not seen the CS which is being discussed; however, if she understands the presentation correctly some of the department's concerns have been addressed. Ms. Voigtlander explained that she did have concerns with the original bill where there could be competing statutes and children could be placed at risk. The CS addresses that point. As she understands it, she said, the CS only provides for adults to remain or return to an evacuated area. Ms. Voigtlander said if that is the case it removes any conflict with child protective statutes.

MS. VOIGTLANDER commented that another concern the department had was with the scope of immunity that was being provided by the bill. It appears that property damage has been added into the CS so immunity for both personal injury and property damage are included.

Number 0448

MS. VOIGTLANDER pointed out that there remains a couple of issues that do not seem to be addressed by the CS. She pointed to the need for clarity on the scope of immunity which is discussed in (b) [page 2, lines 30 and 31, and page 3, lines 1 through 3, text previously provided]. Ms. Voigtlander explained that this language could be read to include claims by any person or it could be read to only include claims by the person who is allowed to reenter or stay in an evacuated area. When there is

personal injury or property damages often times it involves others interests as well, she said. Ms. Voigtlander suggested that subsection (b) be tightened up so that no civil action may be filed for injury, death, or property damage out of provisions of the section.

MS. VOIGTLANDER said that another issue which needs to be addressed in subsection (b) is a concern that if individuals are allowed to remain in or reenter an evacuated area, there may be claims made by their neighbors if their neighbors believe that individuals who stay in the area may do things to their property which causes them loss or theft. She referred to some suggested wording that would provide for that issue so that emergency providers would also be immunized from third party claims.

MS. VOIGTLANDER made a final suggestion to include broader language which would take care of the issue of paper trails in order to defend tort claims that might arise. She explained that as the bill is presently drafted, if for example someone is allowed to reenter or to stay in an evacuated area, and the emergency provider has given that individual a list of rights, which is required by the bill, it would also require that a determination be made that the person who wishes to remain or reenter is competent to make that decision in order to defend against claims downstream. Ms. Voigtlander emphasized that it is not an issue of whether the emergency personnel are qualified to make these determinations, but that in order to defend a law suit two years downstream, it is necessary to have the documents that would show that the person was informed of their rights and that competency was determined. She said it is important to be mindful that this bill is written to address issues in an emergency situation, so this poses some procedural problems in ensuring that everything in the bill is followed and then documented.

Number 0895

CO-CHAIR MASEK noted that the fiscal note is the same for the CS the committee adopted as the working document. She referred to the analysis in the fiscal note from the Department of Law that says the following:

...expected to have a fiscal impact on the Department of Law that will arise in the event that an emergency worker's on-the-spot decision is challenged...

CO-CHAIR MASEK asked Ms. Voigtlander to comment on that point.

MS. VOIGTLANDER replied that the Department of Law would be challenging lawsuits that challenge whether or not everything that was required under the law was actually done. This would include issues of fact rather than issues of law, so it could not be summarily disposed of and could in all likelihood result in jury trials on these issues. Since this bill does not take care of third party claims it is quite possible that there would be tort claims raised by family members of someone who was allowed to remain or reenter or by other property owners who have third party claims.

Number 1029

REPRESENTATIVE GUTTENBERG commented that even though this bill deals with wildfires and natural disasters, he said it is his belief that this bill should have a House Judiciary Standing Committee referral because many of his concerns deal with issues under judiciary purview.

REPRESENTATIVE GUTTENBERG pointed out that individuals who are allowed to reenter or remain in an evacuated area are facing very high stress levels. He said he is concerned that individuals would be presented with a list of conditions under which the individual is permit to enter. What if the family comes back later and says the person who may have died in the fire was not rational and should never have been allowed to remain or reenter. Representative Guttenberg asked what the state's role is in this.

Number 1110

MS. VOIGTLANDER responded that the emergency evacuation may have been done by state agents or agencies, or local agents or agencies, or it could be done by coordinated teams of state, federal, and local personnel. She said that Representative Guttenberg's point is exactly the issue that she was referring to in her earlier statement. If after the fact, someone were to challenge whether the determination was properly made or whether the resident was or was not competent to understand the risks he/she were putting themselves in, the state could face liability, she said.

MS. VOIGTLANDER told the members that last session there was legislation passed that included immunity provisions in Title 41 that relate to wildfires. There are sections in there for reckless conduct or things of that nature. She said that since

this bill provides for immunities there may be an issue as to whether it is the intent of the legislature to make in roads into immunities that passed last session related to wildfires and emergency situations. The legal issue that this raises is whether or not this bill is intended to cut back on those immunities. Ms. Voigtlander said that if it is not intended to do so, but that the intent is to allow residents to enter or remain in an evacuated area, the way to avoid liability to local, state, and federal governments would be to provide broader language such as "there may be no claims arising out of this bill". That way there would be no incompatibility between HB 297 and the statutes that were passed last session, Ms. Voigtlander summarized.

CO-CHAIR DAHLSTROM told the members that after hearing the other testifiers, it is her intention to hold the bill. There have been significant concerns brought forward both from the sponsor and the testifiers.

Number 1349

REPRESENTATIVE KERTTULA asked if Ms. Voigtlander knows if any other state has laws similar to what is being proposed in this bill.

MS. VOIGTLANDER replied that she has not looked at the issue of how other states handle individuals reentering [or remaining] in an evacuated area.

REPRESENTATIVE KERTTULA commented that she thinks this is unusual.

Number 1403

LIEUTENANT ALLEN STOREY, Director of Staff, Alaska State Troopers, Department of Public Safety (DPS), testified on HB 297 and answered questions from the members. He preferenced his comments by saying that he just received a copy of the CS and has not had an opportunity to discuss it with the commissioner of the DPS, so his testimony is based upon past discussions of the issues, and not necessarily in light of the CS. Lieutenant Storey told the members that the lessons of the Big Lake fire and the Lazy Mountain fire were not lost on the department and those lessons that were learned will help the department manage instances like that in the future.

LIEUTENANT STOREY explained that the department is in compliance with the governor's Administrative Order 170 which was signed in January of 1997. From this order a plan was put together which was primarily spearheaded by the Department of Natural Resources (DNR) with DPS, local, and other agency involvement, to outline in great detail how to manage these kinds of incidents. He said that DNR and DPS use this plan now when dealing with natural disasters and other events that are applicable. The plan has many of the same provisions that are in the proposed bill, Lieutenant Storey commented. The plan is actually more resident-friendly and provides for more flexibility, he added. He emphasized that the plan which already exists is very dynamic and has the input of all the agencies. Don Savage, who at the time was a captain with the Alaska State Troopers in Palmer and is now the chief of the Wasilla Police Department, is an expert in the incident command system, he said. Lieutenant Storey reaffirmed his belief that the plan is more comprehensive than the provisions of the bill.

LIEUTENANT STOREY clarified that the authority to evacuate an area is very limited. It is primarily centered at the feet of firefighters who can order an evacuation, he said. He summarized that DPS would be working through the incident command system. He reiterated that the exiting plan is more user-friendly, has greater flexibility, and addresses the issues that HB 279 is targeting.

Number 1638

REPRESENTATIVE WOLF referred to the Kenai Lake fire in 2001 where there was tremendous community support to protect structures. There was an ordered evacuation to take citizens to Seward; however, it is his understanding that very few people left. They remained behind to protect their homes, he added. Representative Wolf asked if it is up to individuals to determine whether they leave or not after an evacuation order is given.

LIEUTENANT STOREY replied that is a prime example where this plan was used. He said he understands from previous hearings that the plan has been used on three wildfires. Lieutenant Storey said the plan does not have the enforced evacuation provisions in it, it allows people to stay and try to protect their property. However, in the public safety industry it is their responsibility to make people aware of the dangers and seek voluntary compliance if it is appropriate to do so.

REPRESENTATIVE WOLF commented that the volunteer support during that fire is the very reason there is a Trail Lakes Campground on the Kenai Lake. A volunteer firefighter, who did not have his red card, jumped on a CAT and cut a fire line around the Trail Lakes Campground. The fact that he was discovered that he was not certified about half way through the process, so a certified firefighter jumped on the CAT and rode with him, Representative Wolf said.

Number 1790

DEAN BROWN, Deputy Director, Division of Forestry, Department of Natural Resources, testified on HB 297 and answered questions from the members. He told the members that he supports the testimony provided to the committee. Mr. Brown offered that the department has utilized and refined the evacuation guidelines that were developed in order to essentially implement evacuations. There is a working process ongoing with the homeowners' association on Lazy Mountain, Alaska State Troopers, and the Department of Military and Veteran Affairs.

Number 1843

REPRESENTATIVE HEINZE said she recalls that the priority in fighting fires was saving lives, first; saving cabins, second, and acreage, third. Is that correct she asked.

MR. BROWN agreed.

REPRESENTATIVE HEINZE posed a hypothetical question where an individual either remains or reenters an evacuated area. Does that mean that firefighting efforts will be shifted to save the person who refuses to leave, she asked.

MR. BROWN commented that is a good observation. There have been internal discussions about risking the lives of firefighters or other support personnel to save the lives of individuals who have gone back into an area that is known to be risky. That is a concern and will be factored into any decision that is made, he said.

REPRESENTATIVE HEINZE agreed that is a major concern. She suggested that an obstinate person or one who for whatever reason refuses to leave an area, can put a firefighter or rescue personnel in jeopardy because they are charged with saving lives. It also affects the strategy in fighting the fire, Representative Heinze added.

MR. BROWN acknowledged that this is an important concern. Much depends on the facts that are known at the time the decision is made. He emphasized that [saving] lives is the primary mission, then saving property.

REPRESENTATIVE HEINZE posed a hypothetical question where a fire was threatening Talkeetna. However, there is one person who is 90 degrees South of there, and manpower will have to be pulled to protect that person and possibly endanger other lives. What if the decision was made to have greater security in Talkeetna, and the one person who lives South of there is lost. She asked what would happen then.

MR. BROWN suggested that question be posed to the Department of Law. The incident commander makes decisions in many situations, and while speculation is important in preplanning what might be faced, he said he is not comfortable providing an answer without having actual situation.

Number 2081

REPRESENTATIVE HEINZE commented that this bill may put the department in a situation where it cannot get out.

MR. BROWN replied that he believes the comments that Ms. Voigtlander made regarding exposure to liability for individual firefighters and local municipalities are good ones.

REPRESENTATIVE GUTTENBERG shared that in his youth he fought a lot of forest fires both in urban and rural settings. He noted that there is a zero fiscal note and questioned whether a component would be added for liability. He also asked if a protocol would be written for individuals who come up a road or trail and want a decision on whether or not he/she can go into an area. Will there be a component for training with respect to this, he asked.

MR. BROWN responded that policy and procedures are in place, and there has already been training of firefighters. The liability question is not one that he can address, he said. Mr. Brown told the members that it is not the department's intention to add a fiscal note for firefighter training at the point.

Number 2192

CO-CHAIR DAHLSTROM announced the HB 297 will be held in committee.

[Co-Chair Dahlstrom passed the gavel over to Co-Chair Masek.]

SB 264-REPEAL PIPELINE PREAPPLICATION DEADLINE

CO-CHAIR MASEK announced that the final order of business would be SENATE BILL NO. 264, "An Act repealing the time limitation on the authority of the Department of Natural Resources to enter into agreements with a person or persons desiring to own an oil or natural gas pipeline proposed to be located on state land for the purposes of providing for payment of the reasonable costs incurred in preparing for activities before receipt of an application under the Alaska Right-of-Way Leasing Act; and providing for an effective date."

Number 2239

RICHARD LeFEBVRE, Deputy Commissioner, Office of the Commissioner, Department of Natural Resources (DNR), testified, and stated support for SB 264. He explained that the purpose of the bill is to repeal the sunset date in AS 38.35.145(c). This statute allows DNR to enter into agreements with prospective lessees to recover the costs of preliminary work or "preapplication work" on a pipeline right-of-way lease application. He said the provision ended on December 31, 2003. Mr. LeFebvre offered some background on the subject by explaining that the pipeline right-of-way lease applicants must submit very detailed applications that require significant engineering, detail and design work. The requirement for that is under AS 38.35.050 and .100. He said in doing this the [applicant] must invest significant financial resources into a project just to complete the application. He said applicants have found that this is very useful, to have agencies involved in pre-application phase, so [DNR] is aware of the permitting issues at an early stage, and can address those issues in the applications.

MR. LeFEBVRE said it provides both sides, the applicant and the agencies, to get a good feel for what the requirements will be for the final application. He explained that DNR has also found that the preapplication participation of agencies expedites the review and approval of the project. It also provides for more certainty up front and less uncertainty further into the process, he noted.

MR. LeFEBVRE said the aforementioned provision has been used most recently in a preapplication work done on the Point Thompson project before it was delayed, and was also used on the Kenai-Kachemak pipeline extension. He explained that the types of assistance that are provided at the preapplication stage include identification and explanation of applicable state laws and regulatory requirements, as well as explanation of the regulatory process itself. Mr. LeFebvre said the identification of land ownership, including state, federal, and private land, affects the applicant and must be dealt with. He said it benefits both sides to get a good feel exactly where the alignment is or the corridor may be, and how that interaction and interface would be with either the private sector, federal agencies, or state agencies.

Number 2380

MR. LeFEBVRE explained that the identification of any restrictions that exist on the affected state lands that might interfere with authorizing the right-of-way or hinder the applicant's construction itself might include third-party interests such as utility rights-of-ways or other outside influences such as possibly archeological sites. He said [DNR] also gets into the identification of potential environmental issues such as stream crossings and how those will be handled. He said it is beneficial to both sides to resolve those issues in a preapplication period instead of having to do modifications to the applications later on or something to that effect. He explained that the preapplication process could also include assistance in reaching out to other affected parties such as the utilities themselves, other landowners, or competing applicants who understand the issues, and to help resolve them. He said DNR also provides assistance with development of the application's initial project description and application.

MR. LeFEBVRE explained that it also allows DNR to staff up in a timely fashion, so when the applicant does turn in the application; DNR is ready to move quickly into the project and through the process. He pointed out that the preapplication work is completely applicant initiated and voluntary, and he explained that an applicant may initiate the request for the preapplication services but are under no obligation to do so. However, he said without this legislation DNR is not able to work with applicants until an application is received.

MR. LeFEBVRE said DNR uses the funds it receives to allow the staff to participate in that particular project. He said there

is no fiscal impact for having this legislation, but the impact of not passing it is significant because without it [DNR] cannot enter into the reimbursable agreements with the applicants desiring the preapplication assistance [DNR] offers. Mr. LeFebvre noted that DNR does not have any general funds available to use to provide this preapplication assistance.

Number 2498

REPRESENTATIVE STEPOVICH asked if this new legislation would have sped up the Point Thompson project and how long ago that occurred. He also asked how often the applications are done.

MR. LeFEBVRE asked for clarification.

REPRESENTATIVE STEPOVICH clarified that he was asking how many applications were submitted with regard to the Point Thompson project.

MR. LeFEBVRE said [ExxonMobil Corporation] submitted one application related to the Point Thompson project. He said a total of approximately six applications have been received on pipeline right-of-way leases.

REPRESENTATIVE STEPOVICH asked if these applications are part of the unitization process.

MR. LeFEBVRE replied that it is totally separate and is part of the development process "once they have all their other paperwork in order and they want to go ahead and actually do the development work." He said there were two portions to the Point Thompson project - the right-of-way lease itself to the pipeline, which would go from Point Thompson to Prudhoe Bay, and the authorizations that were being sought for the project development itself right at Point Thompson.

Number 2581

CO-CHAIR MASEK, upon determining no one else wished to testify, closed public testimony.

Number 2586

CO-CHAIR DAHLSTROM moved to report SB 264 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SB 264 was reported from the House Resources Standing Committee.

**ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 1:50 p.m.