

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

May 12, 2003

3:35 p.m.

MEMBERS PRESENT

Senator Scott Ogan, Chair
Senator Thomas Wagoner, Vice Chair
Senator Fred Dyson
Senator Ralph Seekins
Senator Ben Stevens
Senator Kim Elton
Senator Georgianna Lincoln

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

APPOINTMENT OF MR. JOHN JENSEN to the ALASKA BOARD OF FISHERIES
CONFIRMATION ADVANCED

HOUSE BILL NO. 226

"An Act relating to the sale, offer for sale, representation, and labeling of food or other agricultural products as organic, and to the state organic certification program; and providing for an effective date."

MOVED OUT OF COMMITTEE

PREVIOUS ACTION

HB 226 - No previous action to record.

WITNESS REGISTER

Mr. John E. Jensen
Petersburg, AK

POSITION STATEMENT: Answered questions regarding his Board appointment

Ms. Barbara Bittney
Staff to Representative Stoltze
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Presented HB 226 for the sponsor

Mr. Mark Rempel
Palmer, AK

POSITION STATEMENT: Supports HB 226

Mr. River Bean
President, Alaska Organic Association
No address provided

POSITION STATEMENT: Supports HB 226

Mr. Shane Herr
No address provided

POSITION STATEMENT: Supports HB 226

ACTION NARRATIVE
TAPE 03-46, SIDE A

CONFIRMATION: BOARD OF FISHERIES

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:35 p.m. All members were present except Senator Ben Stevens. Chair Ogan announced the committee would first take up the confirmation of John Jensen to the Board of Fisheries. He asked Mr. Jensen to tell members why he wants to serve on the board.

MR. JOHN E. JENSEN told members he is a third generation Alaskan from Petersburg. He has been interested in the work of the Board of Fisheries and has hoped to serve on it at some time. He has diverse experience in both commercial and sport fisheries. His goal is to create sustainable, viable fisheries based on sound management practices for all Alaskan user groups.

CHAIR OGAN asked Mr. Jensen his opinion of the recent ruling by the federal subsistence board that allows subsistence fishermen to catch 20 halibut per day.

MR. JENSEN said he likes the idea of being able to go out and get a few halibut but thinks 20 per day is excessive.

CHAIR OGAN said the committee talked to another appointee of the board about the fact that now that the subsistence fishery for rainbow trout is allowed, there should be better communication between the federal and state boards to make sure the resources are not compromised. He said the federal board is not required to manage on a sustained yield basis like the state board is. He asked Mr. Jensen to comment.

MR. JENSEN said he is disappointed to hear that the [federal board] made that decision. He said the state board just reviewed a very comprehensive trout plan at an Anchorage meeting.

SENATOR WAGONER commented that Mr. Jensen's resume speaks for itself and he believes Mr. Jensen will be a very good board member.

SENATOR LINCOLN said she received a comment from a resident of the Interior who said no one on the board has any Yukon River experience and residents are concerned that individual members on the board without that experience might not have knowledge of inland fisheries. She asked Mr. Jensen to respond.

MR. JENSEN said he does not have any inland fishing experience and realizes there are problems associated with that fishery. He said he believes that issue is scheduled to come up for board review this fall. Members are trying to review the details of those problems right now.

SENATOR LINCOLN said she appreciates his honesty and hopes that he carefully reviews the data and concerns expressed from residents of the Yukon-Kuskokwim area. She then asked Mr. Jensen what he believes the board's role is in carrying out the state's subsistence priority and whether he supports a constitutional amendment for a rural subsistence priority.

MR. JENSEN said, regarding the constitutional amendment, he would support putting the question before the voters. In regard to the board's role, he said the board should allow subsistence for anyone who needs it as long as the resource is viable.

SENATOR SEEKINS asked what criteria were used in making the decision to reverse the Chitina dipnet fishery designation and whether he agreed with that decision.

MR. JENSEN said that decision was primarily based on criteria 8, pattern of use, and the new information that was not available in 2000.

SENATOR SEEKINS asked Mr. Jensen to describe some of the new information he used to make his decision.

MR. JENSEN said two elements were long-term consistent patterns of use and criteria 6, which pertains to passing knowledge of fishing and hunting practices from generation to generation. He

noted the survey showed that many people were either self-taught or taught by friends.

SENATOR SEEKINS asked Mr. Jensen if he looked at the users and determined they did not fit within his definition of what a true subsistence user is.

MR. JENSEN replied, "No, not really. It was more in the - with the definition of use, individual habit or customary usage and privilege of using something. It wasn't the users. I didn't think it was the users."

SENATOR SEEKINS commented that most people eat fish.

MR. JENSEN said he does not believe many fishermen use the fish in the customary and traditional way, as in "substantial, economic, cultural, social, and I'm sure they use the nutritional elements...."

SENATOR SEEKINS asked if he went to Chitina for the first time after hearing that it was a place to get fish to feed his family, and he used the customary and traditional method of catching fish, although no one taught him how, whether he would be considered different from a fourth generation user.

MR. JENSEN said possibly, based on the definition of long-term use.

SENATOR WAGONER said at one time the board held hearings throughout Alaska. He fishes in Cook Inlet and has found the board has basically refused to hold a meeting in Cook Inlet for a number of years. He asked Mr. Jensen if he is aware of any good reason to not hold a hearing in Cook Inlet when the board is reviewing Upper and Lower Cook Inlet issues.

MR. JENSEN said he cannot think of any good reasons.

CHAIR OGAN said a lot of his constituents feel the board has been heavily slanted toward the commercial fisheries. He pointed out that Cook Inlet is a mixed stock intercept fishery. He maintained that when a large amount of fish return and the board is managing for the Kenai River, the board puts a gauntlet up in the Inlet and chokes off the fish. ADF&G has testified in the past that when that type of a situation occurs, the Upper Cook Inlet suffers because the fisheries are not managed for escapement in the Upper Inlet. He asked Mr. Jensen what assurances he can give that upriver fishing opportunities in his

area and the Yukon will be provided so that the fisheries are managed on a sustained yield basis and Alaskans can feed their families.

MR. JENSEN said he will do his best to make sure everyone gets their share of the fish. He said he does not want to see anyone get slighted.

CHAIR OGAN said there is a perception that commercial fishermen were slighted by the last board. He added that a lot of people living at the end of the fish runs believe that now the pendulum has swung too far in the other direction.

MR. JENSEN said he was not aware of that and will do his best to make the best-educated decisions for everyone.

SENATOR WAGONER said he is a drift fisherman in Cook Inlet and has averaged less than 5 days fishing the full Inlet for the last seven years. He said there is not a lot of pressure being put on the stocks that go into the Upper Inlet by the Kenai fleet.

CHAIR OGAN commented that is where the conflict lies. He noted when he first came to the legislature, the Kenai king salmon fishery in the Chesina River was closed to the detriment of some of the fishermen in Cook Inlet. The king and silver salmon fisheries have been really good in the northern Inlet. There's a grave concern in his district that the pendulum will swing back and his district "will be on the short end of the stick." His district is filled with people with lodges and businesses that depend upon those sport caught fish and their use needs to be balanced. He said, in his opinion, fish on a person's dinner table takes priority over a fish caught for commercial use regardless of whether it was caught under a subsistence, personal use, or sport designation. He asked for reassurance that a commercially weighted board will not compromise his and Senator Lincoln's districts.

MR. JENSEN said he will do his best to make just decisions.

SENATOR ELTON commented that Mr. Jensen is the first nominee who has fished everywhere in Alaska with many gear types and for many types of fish. He said it is unfortunate to view a nominee from the commercial versus sport perspective. He said he looks forward to working with Mr. Jensen and is glad that he wants to serve on the board.

CHAIR OGAN noted that Senator Ben Stevens joined the committee. He agreed Mr. Jensen probably has the broadest experience of the nominees and will serve the board well.

SENATOR LINCOLN said she is pleased to learn that Mr. Jensen is a long-term resident and asked him why he wants to serve on the board.

MR. JENSEN said he was born and raised in Alaska and is interested in the health of the fishing stocks in the state, both sport and commercial. He said he wants to do what he can to help the fisheries.

SENATOR DYSON moved to forward Mr. Jensen's name to the full Senate for a vote. There being no objection, the motion carried.

CHAIR OGAN announced an at-ease.

HB 226-ORGANIC FOOD

MS. BARBARA BITTNEY, staff to Representative Bill Stoltze, sponsor, explained that HB 226 simply adopts the federal definition of "organic." Since the federal government changed the definition and standards for "organic," produce can no longer be certified as organic within the State of Alaska without this legislation. Organic producers must go to Oregon, Washington, and other states for certification. This legislation will create a state certification program within Alaska. Inspectors will fly to Alaska but Alaskans who are familiar with local agriculture can certify that produce is organic. Last year, Representative Harris introduced this same legislation [HB 432] but it was not enacted before the end of the session.

MS. BITTNEY told members when the federal definition of "organic" was enacted the certification cost was increased. That increase from \$500 to between \$1500 and \$3000 was significant for smaller producers. Many organic farmers sell to farmers markets; it is not a high volume industry. Anyone who sells \$5000 or more of organic produce must be certified. She clarified that the House Finance Committee zeroed out the fiscal note and plans to fund the program with program receipts.

SENATOR ELTON said the original fiscal note had a cost of \$37,000 per year. He asked the number of organic farmers in Alaska who could cover that cost.

MS. BITTNEY could not give a number but said there are three farmers markets in Anchorage, one in Eagle River, one in Fairbanks, one in Homer, one in Soldotna, and Delta and Talkeetna plan to start farmers markets. In addition, there are some very large agricultural farms in her area. She said the number is fairly significant.

SENATOR ELTON asked if this will be a cheaper alternative than flying an inspector to Alaska.

MS. BITTNEY said her hope is that by having a state certification program, Alaska will eventually have in-state inspection, which will significantly reduce the cost.

CHAIR OGAN stated:

I'd just like to say, you know, my district - in fact in my neighborhood we have one of the best organic farmers - Larry DeVilbiss. I literally - I drank more carrot juice after recovering from my heart attack last year and I can tell you what - that stuff is good. I know it sounds disgusting but the Mat Valley carrots are the sweetest carrots in the world. I mean they're really, really good and you throw a little apple in there and it's full of calcium and really good stuff. I attribute a lot of my good health today due to a vigorous organic carrot program. In fact I'm going back on it when I get home. I miss them. That's weird for me - you're talking a meat and potatoes guy - anyway....

SENATOR SEEKINS said he is very much in support of this bill because he produces organic fertilizer from his herd of horses.

SENATOR LINCOLN noted the federal regulations now recognize wild salmon as organic and asked Ms. Bittney if that interacts with HB 226.

MS. BITTNEY said HB 226 strictly applies to agricultural products. Meats are dealt with in a different section of statute but that is something that could be explored.

SENATOR LINCOLN said she thought Ms. Bittney said HB 226 pertains to more than agricultural products.

MS. BITTNEY said she was referring to herbs and essential oils from lavender, for example.

CHAIR OGAN recognized the presence of Representative Stoltze. He then noted that Ms. Bittney said a farmer must have certification to sell over a certain amount of produce but no amount is included in the bill.

MS. BITTNEY said the amount is listed in the federal guidelines, which require anyone selling under \$5,000 per year in organic products to meet the standard; anyone selling \$5,000 or more must have certification. If a state official went on-site and found a farmer did not have certification, that farmer could be fined. She clarified the limit set on the fines is up to \$10,000. The Department of Natural Resources (DNR) would set the actual fine amounts in regulation.

SENATOR ELTON asked if DNR would be required to do enforcement in Seattle if produce was shipped from Alaska to Seattle.

MS. BITTNEY said when a farm is certified, an inspector reviews the entire operation. Right now, inspectors often look at the end product but it is impossible to determine if it meets the federal guidelines. According to the U.S. Code, an organic farmer will have to keep three-years' worth of documentation on how the soil was amended and the soil would be subject to testing. The Code contains a long list of sprays and other products that can and cannot be used.

SENATOR ELTON asked if anything in HB 226 will require DNR to enforce the labeling requirements outside of Alaska.

MS. BITTNEY said she would have to get an answer to that question.

SENATOR DYSON said he is leery about creating more government.

CHAIR OGAN took public testimony.

MR. MARK REMPEL, an organic farmer from Palmer, stated support for HB 226. He said he was disappointed that the same bill did not pass last year because he was forced to go outside of Alaska to get his certification.

MR. RIVER BEAN, President of the Alaska Organic Association, told members that up until the fall of last year, his organization could certify organic growers. However, that can no longer be done under the new federal rule. He asked the legislature to support HB 226 because it will allow the organic

farmers in Alaska to get their produce certified by the State of Alaska rather than by another state. Also of concern is that many farmers in the state are unaware of the serious consequences of using the word "organic" with their produce. Farmers who are mislabeling their produce could be fined up to \$10,000 if federal enforcement were to occur. That kind of a fine would break most of those farms. He believes those farms are selling more than \$5,000 worth of produce and would have to go out-of-state for certification. He said last year he paid \$350 to have his farm certified as organic; this year the cost to get certified by Washington State would be more than \$2,000, which is unaffordable. He said his association would like to see an agricultural inspector in Alaska, which could be an outcome of HB 226.

SENATOR WAGONER asked how many commercial organic farmers work in Alaska.

MR. BEAN said that four were certified last year. He believes there are about 40 smaller scale organic farmers.

MR. SHANE HERR, a third generation carrot farmer, said he sees HB 226 as a necessary evil for economic development.

CHAIR OGAN said that many people have the perception that farming is not a viable industry in Alaska but that is not true in his district.

TAPE 03-46, SIDE B

CHAIR OGAN said that farmers, like fishermen, are free market risk takers, which he has a lot of respect for. He then moved HB 226 from committee with its zero fiscal note from the House Finance Committee.

SENATOR SEEKINS objected.

SENATOR DYSON said he is very concerned that the House has chosen to not fine parents whose children burn down schools and slash tires yet this House bill fines the poor farmers \$10,000.

CHAIR OGAN called Senator Dyson's comments out of order.

SENATOR DYSON stated objection to the motion.

SENATOR LINCOLN stated objection to the motion because the committee had not heard testimony from farmers in the Delta area.

A roll call vote was taken. The motion to pass HB 226 from committee failed with Senators Stevens, Dyson, Seekins, Elton and Lincoln opposed, and Chair Ogan in favor, who then moved to reconsider the vote. All members then voted in favor, therefore the motion to move HB 226 from committee passed unanimously.

SENATOR SEEKINS asked that the record show that Representative Stoltze had turned three shades of red.

CHAIR OGAN adjourned the meeting at 4:28 p.m.