

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

April 30, 2004

3:30 p.m.

TAPE(S) 04-46

MEMBERS PRESENT

Senator Scott Ogan, Chair
Senator Thomas Wagoner, Vice Chair
Senator Fred Dyson
Senator Ben Stevens
Senator Kim Elton

MEMBERS ABSENT

Senator Ralph Seekins
Senator Georgianna Lincoln

COMMITTEE CALENDAR

HOUSE BILL NO. 522 am

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

MOVED HB 522 am OUT OF COMMITTEE

SENATE BILL NO. 312

"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."

HEARD AND HELD

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
03/17/04 (H) Moved Out of Committee
03/17/04 (H) MINUTE(RES)
03/18/04 (H) RES RPT 6DP 2NR
03/18/04 (H) DP: LYNN, STEPOVICH, HEINZE, KERTTULA,
03/18/04 (H) DAHLSTROM, MASEK; NR: GATTO, WOLF
04/06/04 (H) TRANSMITTED TO (S)
04/06/04 (H) VERSION: HB 522 AM
04/07/04 (S) READ THE FIRST TIME - REFERRALS
04/07/04 (S) RES
04/30/04 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 312

SHORT TITLE: CONVENTIONAL & NONCONVENTIONAL GAS LEASES
SPONSOR(S): RESOURCES BY REQUEST

02/09/04 (S) READ THE FIRST TIME - REFERRALS
02/09/04 (S) RES, FIN
02/23/04 (S) RES AT 3:30 PM BUTROVICH 205
02/23/04 (S) Heard & Held
02/23/04 (S) MINUTE(RES)
03/05/04 (S) RES AT 3:30 PM BUTROVICH 205
03/05/04 (S) <Above Bill Hearing Postponed>
03/22/04 (S) RES AT 3:30 PM BUTROVICH 205
03/22/04 (S) Heard & Held
03/22/04 (S) MINUTE(RES)
03/26/04 (S) RES AT 3:30 PM BUTROVICH 205
03/26/04 (S) Heard & Held
03/26/04 (S) MINUTE(RES)
04/21/04 (S) RES AT 3:30 PM BUTROVICH 205
04/21/04 (S) Heard & Held
04/21/04 (S) MINUTE(RES)
04/30/04 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

Ms. Linda Sylvester
Staff to Representative Bruce Weyhrauch
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on HB 522 for the sponsor.

Mr. Dan Easton, Director
Division of Water
Department of Environmental Conservation
410 Willoughby
Juneau, AK 99801-1795

POSITION STATEMENT: Commented on HB 522.

Mr. Bryce Brockway, Vice President
Marine Hotel and Technical Operations
Cruise West
No address provided

POSITION STATEMENT: Supports HB 522.

Mr. David Berg, President
Viking Travel Agency
Petersburg AK

POSITION STATEMENT: Supports HB 522.

Captain Michael Jones, Director
Marine Operations
Linblad Expeditions
1415 Western Ave., Ste. 700
Seattle WA 98101

POSITION STATEMENT: Supports HB 522

Mr. John Waterhouse
Elliot Bay Design Group
Seattle, WA

POSITION STATEMENT: Available to answer questions on HB 522.

ACTION NARRATIVE

TAPE 04-46, SIDE A

^#HB522

HB 522-SMALL CRUISE SHIP DISCHARGES

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present were Senators Thomas Wagoner, Ben Stevens, Fred Dyson, Kim Elton and Chair Scott Ogan. The first order of business to come before the committee was HB 522 am.

MS. LINDA SYLVESTER, staff to Representative Bruce Weyhrauch, sponsor, related that in 2001 the Alaska Legislature enacted the Commercial Vessel Environmental Complaints Program to solve concerns over cruise ship and state ferry discharges into Alaskan waters. Since then, most cruise ships discharging into Alaskan waters have installed advanced wastewater treatment systems, which has dramatically improved water quality samplings. Small cruise vessels are required to comply with the same standards for the larger vessels, even though they

contribute approximately only 3 percent of the wastewater discharge.

The assumption was made that the environmental technologies invented by the large cruise ships would filter down to the small vessels, which were given a period of time to comply; and that has now expired. Technology that was invented for the large vessels doesn't work with the smaller vessels. The Department of Environmental Conservation (DEC) and the small vessel organization worked together to come up with an alternative so that small vessels would not be forced to retrofit with large holding wastewater tanks. The plan is flexible enough for the department and vessels to check back with each other every three years to come up with a new plan to utilize new technology that doesn't require massive retrofitting.

MR. DAN EASTON, Director, Division of Water, Department of Environmental Conservation (DEC), related that it's clear that this legislation refers to just small vessels carrying between 50 to 250 passengers. It was hoped in 2001 that some of the larger treatment technologies could be scaled down and made to work on the smaller vessels, which hasn't happened. Small vessels are now required to add technology that doesn't exist or add tankage. The problem arises only at anchor, because vessels can either hold their discharge until they are under way or add tankage. This bill would add another option limiting discharges either to volume, time, or to certain locations.

CHAIR OGAN asked if any ships were built after the last law was passed in reference to January 1, 2004 in section 6.

MR. EASTON replied that he didn't know the answer.

SENATOR BEN STEVENS asked if the owner providing evidence of a change in its treatment system would trigger a stability test - in reference to lines 21 - 24.

MR. EASTON replied that the department didn't envision this situation happening very much.

We were really going to focus on management practices and non-structural changes.... There was a belief on the part of the drafters that there would be some sort of firm guideline.

SENATOR STEVENS asked when the guidelines would be adopted.

MR. EASTON replied that the bill has no time frame, but he intends to start immediately.

SENATOR STEVENS asked him to explain the year 2016 timeframe in sections 3, 5, 8, 10, 12 and 13.

MR. EASTON replied that those sections eliminate the wording that hasn't worked and adds the new provision on best management practices for small vessels until 2016.

MS. SYLVESTER explained that the plan for best management practices is reviewed every three years, but goes away in 2015. The date mirrors what the industry felt is the useful life of the vessels. It is also an estimate of when the better technology will be readily available and when new boats will be replacing the older ones.

MR. BRYCE BROCKWAY, Vice President, Marine Hotel and Technical Operations, Cruise West, said they operate six of the smaller vessels ranging in size from 74 passengers up to 114.

CHAIR OGAN asked if any keels had been laid between the time the last bill had been passed and now. He wanted to know who was exempt from the language.

MR. BROCKWAY replied that Cruise West hadn't laid any more new keels; but America West had laid one and plans to operate in Alaska. He also informed the committee that some municipalities don't want to introduce seawater into their systems and seawater is used as a flushing mechanism in their systems.

MR. DAVID BERG, President, Viking Travel Agency, said that the small ships are important to the economy of Petersburg and urged passage of HB 522.

CAPTAIN MICHAEL JONES, Director, Marine Operations, Linblad Expeditions, said it belongs to the Small Cruise Vessel Association that is representing Cruise West and has been operating in Alaska since 1982. In 1989 it purchased two vessels that are 152 ft. long and carry 70 passengers and 24 crew. He supported the best management practices in HB 522.

MR. JOHN WATERHOUSE, Elliot Bay Design Group, Seattle, said he would answer questions on wastewater design issues, but there were none.

SENATOR THOMAS WAGONER moved to pass HB 522 am from committee with individual recommendations and attached fiscal note. There were no objections and it was so ordered.

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^#SB312

SB 312-CONVENTIONAL & NONCONVENTIONAL GAS LEASES

CHAIR SCOTT OGAN announced SB 312 to be up for consideration. He referred to a publication called "Western Governor's Association Coalbed Methane Best Practices," which doesn't go into a lot of specifics, but covers all the issues that need to be dealt with in states that have been dealing with coalbed methane development. He also noted that other bills on the same subject would be discussed at this meeting.

PATRICK GALVIN, Division of Oil and Gas, Department of Natural Resources (DNR), gave a general overview of the different pieces of legislation on this subject saying that they are primarily geared toward operational issues that DNR will have to review as projects are proposed on state leases and there is some overlap. He related that right now no best interest findings are required for shallow gas leases. HB 531 and SB 312 require those. Public notice requirements are a big issue and all three vehicles address this issue by bringing the shallow gas leasing process more in line with the public notice provisions that are used for DNR's standard oil and gas leasing programs. HB 531 and SB 312 say with the elimination of shallow oil and gas leasing programs, all decisions related to oil and gas will be made under the notice provisions that are currently used for the oil and gas leases and exploration licenses. The proposed draft standards go beyond statutory requirements and include additional requirements for display ads, public service announcements and direct notice to individuals who have requested to be on a notice list.

Concern was noted about notice that would be provided on activities taking place outside of DNR leases and the Alaska Oil and Gas Conservation Commission (AOGCC) would review drilling permits on private subsurface estate lands. But those reviews aren't noticed publicly.

Another area of interest has been what types of disclosures are made public with regard to operations and potential public hazards that may be associated with it. Some information is held confidential by developers for proprietary reasons and not disclosed to the public for two years. The proposed standards

would provide that components of the fracturing materials be provided to DNR as part of the plan of operations, which would be made available to the public. However, the exact formula of how those are put together would remain confidential.

SENATOR ELTON asked what an enforceable standard is.

MR. GALVIN replied that it is a type of regulation that would apply to DNR leases within the Mat-Su area.

SENATOR ELTON asked if it would consist of contract terms between the person that gets the lease and the state. Mr. Galvin said yes.

CHAIR OGAN asked if more statutory authority would be needed for the department to implement this requirement.

MR. GALVIN replied he didn't believe that DNR needed additional authority to enforce and apply these standards to existing or future leases. It would be accomplished through union agreements and other contractual relationships that would be set up in the future. The Mat-Su area is the only area right now that has coalbed methane activities taking place. Enforceable standards will be developed for other areas that are location-specific.

TAPE 04-46, SIDE B

SENATOR ELTON asked how standards would be applied to existing contracts.

MR. GALVIN explained that all the leases require the approval of DNR before work takes place. The decision of whether or not that activity is in the best interest of the state would take place at that time.

He said that coalbed methane operators in the Lower 48 voluntarily agreed to not use diesel-based fracturing materials. The standards prohibit its use, but it is the wrong type of material to be used to fracture coal anyhow. Operators are required to obtain an agreement with the surface owner to establish what damages may be for access activities and to make arrangements for payment of those damages. If they do not reach agreement, the operator can come to DNR and establish a bond. Both bills have provisions that affect the bonding relationship. The primary issue has to do with the type of notice that is being provided and what should be included in the damages for

the bond. Whether this is the only reasonable location for these activities to take place is also considered.

Current authority in enforceable standards provides a framework for a company to request a bond hearing from DNR and includes provisions to ensure good faith negotiations. State law doesn't address these issues outside of the DNR reserved minerals mandate. Instances of different private subsurface and surface owners is common in the Lower 48, but less so in Alaska. Currently, no provisions address how access would be acquired and whether or not a surface use agreement would be needed. One of the house bills would set up a process similar to DNR's process for mineral leasing.

MR. GALVIN continued saying that the enforceable standards provide a number of factors that DNR should look at in determining the value of the bond.

CHAIR OGAN said he thought the split estate issue was probably the thorniest in the entire coalbed methane situation. People get mad when someone can show up with a big drill rig and start drilling on their property. He asked him to explain what really happens.

MR. GALVIN replied that two different requirements involve the surface owner and his relationship with the operator. One is the requirement for establishing a value for the damages and going to DNR for bonding if an agreement can't be reached. Secondly, when a developer wants to actually do something on a lease, he will have to submit a plan to DNR. Currently, he provides a copy of that plan to any surface owner where operations are taking place along with a notice telling the surface owner how to participate in DNR's review of the plan. He would also be required to provide notice of his application to any surface owner within a half-mile of operations. If an agreement can't be reached, the operator would ask DNR for a bond hearing to determine what the possible damages would be and the amount of the bond that would cover it.

CHAIR OGAN asked, assuming a worst-case scenario, if currently an aggressive operator could simply send out the required notice to the last owner of record, who may be absent, and put in a road and drill pad without hearing from the owner.

MR. GALVIN replied if attempts have been made to contact the surface owner and there is no response, DNR would have to move forward with the decision on approving a plan of operations that

would look out for the interests of the owners by establishing a bond.

CHAIR OGAN put himself in the landowner's shoes and said that he would be mad about someone drilling on his land without him knowing about it even though he knew when he bought the land that he didn't buy the subsurface rights.

MR. GALVIN said one of the areas needing a great deal of discussion is what is considered a good faith effort to identify and contact the owner of a property.

CHAIR OGAN asked if signing the title at the land office gives permission to the state to access subsurface minerals in advance.

MR. GALVIN clarified that it's not exactly considered permission. When property is conveyed by the state, it retains the right to the minerals and the right to access those minerals by entry onto the land.

CHAIR OGAN asked if any laws had been established that would change the status of the relationship between the subsurface and surface owners.

MR. GALVIN answered no; this issue has been in place since Statehood and will remain in place for any conventional oil and gas lease or any other potential conflict between a private surface owner who acquired his title from the state and the state's interest in developing those minerals some time later. This is the first wide-scale situation where a potential conflict of interest has arisen here.

MR. GALVIN said the different pieces of legislation address surface impact issues related to coalbed methane through setback requirements. Currently, developers are required to only minimize their impact to residential or commercial activities, but the public wants specifics; so the draft standards have very specific setbacks. Noise and visual mitigation measures are also part of the standards.

Wastewater disposal is a public concern related to coalbed methane specifically and currently DEC statutes exempt it from its wastewater permitting requirements. Well spacing is another issue that is addressed in the standards. Presently, well spacing is addressed only by the AOGCC, which evaluates it on the most efficient means of developing the resource - their

statutory responsibility. It will not look at the issue the way the public is expecting it to be looked at or how to minimize the surface impact associated with well spacing.

The enforceable standards recognize that almost any coalbed methane development is going to be done after a development unit has been formed. A unit is a method to tie leases together including lands of different ownership in order to develop the collective resource in a more efficient manner. DNR will engage the public in a review of the proposal. Specific well spacing density is not suggested - just a recognition that any well spacing decision would be based upon balancing the need to develop the resource with surface impacts.

SENATOR ELTON asked if DNR could go further with non-statutory authority for well spacing.

MR. GALVIN answered that it is an issue of having to recognize the different function of the AOGCC versus DNR. The AOGCC is looking at well spacing as an issue associated with developing the well in the most efficient manner possible. From DNR's perspective, it is the land manager. While it cooperates with the AOGCC, DNR has the additional responsibility to make sure that the activities take place in a responsible manner.

SENATOR ELTON asked if his answer was yes.

MR. GALVIN said yes and elaborated, "We're going to look at well spacing primarily from a surface impact standpoint.... AOGCC is going to look at well spacing at the bottom of the holes...." Two different authorities would be used, but no additional or contradicting authorities. "It's looking at different issues associated with the same activity."

CHAIR OGAN related that the Mat-Su Borough has a draft regulation that mandates well spacing.

MR. GALVIN warned that there is a potential for conflict in that regard. However, the issue is also a function of the state of technology for coalbed methane in this country, which is to have vertical wells. Therefore, there is almost a one-to-one relationship in the well spacing at the bottom of the hole as well as the surface. New technologies are continually being developed in this regard, but DNR is not in a position at this point to say what is or is not an appropriate well spacing at the surface.

He said that AOGCC has the authority to protect drinking water sources from any drilling operation that is proposed. The concern is what if something goes wrong and how that can be known as soon as possible and how redress efforts can be conducted. DNR is responsible for baseline water testing for wells; AOGCC is responsible for water quality testing in general. Monitoring will be needed for quality and quantity and it may occur at the drinking water well or maybe at additional wells in between the drilling site and the drinking water well to identify an impact before it actually gets to the well. Surface discharge standards allow discharge on the surface if water quality does not have a negative environmental impact.

CHAIR OGAN concluded the hearing on SB 312.

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CHAIR OGAN asked Mark Myers, Director, Division of Oil and Gas:

Have I at any time when I was employed by Evergreen Resources ever advocated for the company with your department in carrying their water when I was employed by them or done anything that you thought was [inappropriate]?

MR. MARK MYERS, Director, Division of Oil and Gas, Department of Natural Resources (DNR), responded:

I've known you for multiple years now - back in the past when you were chairman of the House Oil and Gas Committee and now - I've dealt with you as chairman of the Resources Committee. We have discussed oil and gas issues as appropriate on a lot of different issues, both before the committee and in terms of consultation. In all cases, it's been very clear to me that you are representing the state and not in the representation of anybody in industry. In fact, I can go back to at one point you had notified me that you were considering even taking a job. You were letting me know prior to, even in that process, accepting employment with Evergreen that you were and that you expected that to change the relationship in terms of how issues were handled. But, in no cases did I ever see you advocate for the industry, but only advocate on issues directly involving oil and gas policy ranging all the way from North Slope production to gas pipeline to providing - making sure Cook Inlet had oil and gas supplies. So, I can honestly say that in all

my dealings with you, no, in my mind there has never been a conflict that has been brought up before the division.

CHAIR OGAN asked if he would be willing to say that under oath if necessary.

MR. MYERS replied yes.

There being no further business to come before the committee, Chair Ogan adjourned the meeting at 5:10 p.m.