

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 23, 2005

1:03 p.m.

MEMBERS PRESENT

Representative Ralph Samuels, Co-Chair
Representative Jim Elkins
Representative Carl Gatto
Representative Gabrielle LeDoux
Representative Kurt Olson
Representative Paul Seaton
Representative Mary Kapsner

MEMBERS ABSENT

Representative Jay Ramras, Co-Chair
Representative Harry Crawford

COMMITTEE CALENDAR

HOUSE BILL NO. 197

"An Act exempting certain natural gas exploration and production facilities from oil discharge prevention and contingency plans and proof of financial responsibility, and amending the powers and duties of the Alaska Oil and Gas Conservation Commission with respect to those plans; and providing for an effective date."

- MOVED CSHB 197(RES) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 5

Opposing imposition of a milk tax on Alaskans.

- MOVED CSHJR 5(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 197

SHORT TITLE: OIL SPILL EXEMPTIONS FOR GAS WELLS

SPONSOR(S): OIL & GAS

03/03/05	(H)	READ THE FIRST TIME - REFERRALS
03/03/05	(H)	O&G, RES
03/15/05	(H)	O&G AT 5:00 PM CAPITOL 124
03/15/05	(H)	Moved Out of Committee

03/15/05 (H) MINUTE(O&G)
 03/16/05 (H) O&G RPT 5DP 1NR
 03/16/05 (H) DP: SAMUELS, GARDNER, DAHLSTROM,
 ROKEBERG, KOHRING;
 03/16/05 (H) NR: KERTTULA
 03/21/05 (H) RES AT 1:00 PM CAPITOL 124
 03/21/05 (H) Heard & Held
 03/21/05 (H) MINUTE(RES)
 03/23/05 (H) RES AT 1:00 PM CAPITOL 124

BILL: HJR 5
 SHORT TITLE: NO MILK TAX
 SPONSOR(S): REPRESENTATIVE(S) LYNN

01/10/05 (H) READ THE FIRST TIME - REFERRALS
 01/10/05 (H) RES, L&C
 03/21/05 (H) RES AT 1:00 PM CAPITOL 124
 03/21/05 (H) Scheduled But Not Heard
 03/23/05 (H) RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

BRECK TOSTEVIN, Assistant Attorney General
 Environmental Section
 Department of Law
 Anchorage, Alaska
 POSITION STATEMENT: Answered questions regarding HB 197.

JOHN NORMAN, Commissioner/Chair
 Alaska Oil and Gas Conservation Commission (AOGCC)
 Anchorage, Alaska
 POSITION STATEMENT: Answered questions regarding HB 197.

STEVE DAVIES, Petroleum Geologist
 Alaska Oil and Gas Conservation Commission
 Anchorage, Alaska
 POSITION STATEMENT: Answered questions regarding HB 197.

MARK MYERS, Director
 Division of Oil and Gas
 Department of Natural Resources
 Anchorage, Alaska
 POSITION STATEMENT: Answered questions regarding HB 197.

REPRESENTATIVE BOB LYNN
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented HJR 5 as sponsor.

PETE FELLMAN, Dairy Farmer and Staff
to Representative John Harris
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on HJR 5.

JIM EICHSTADT, Senior Manager
Public Affairs and Trade Policy
Dairy Trade Coalition

POSITION STATEMENT: Testified on HJR 5.

MARIO CASTILLO
Washington, D.C.

POSITION STATEMENT: Testified on HJR 5.

JLONA RICHEY
Alaska Dairy Coalition

POSITION STATEMENT: Testified on HJR 5.

LARRY DEVILBISS, Director
Division of Agriculture
Department of Natural Resource
Palmer, Alaska

POSITION STATEMENT: Testified on HJR 5.

ACTION NARRATIVE

CO-CHAIR RALPH SAMUELS called the House Resources Standing Committee meeting to order at [1:03:17 PM](#). Representatives Samuels, Seaton, Elkins, LeDoux, Olson, and Gatto were present at the call to order. Representative Kapsner arrived as the meeting was in progress.

HB 197-OIL SPILL EXEMPTIONS FOR GAS WELLS

CO-CHAIR SAMUELS announced that the first order of business would be HOUSE BILL NO. 197, "An Act exempting certain natural gas exploration and production facilities from oil discharge prevention and contingency plans and proof of financial responsibility, and amending the powers and duties of the Alaska Oil and Gas Conservation Commission with respect to those plans; and providing for an effective date."

CO-CHAIR SAMUELS said he wanted to discuss the crude oil definition in HB 197.

BRECK TOSTEVIN, Assistant Attorney General, Environmental Section, Department of Law, Anchorage, said there isn't a definition of crude oil elsewhere in the statutes, and it was put there to clarify the meaning of the exemption. "The exemption for a natural gas facility did not extend to a facility that is going to be producing or transporting crude oil. So crude oil is defined in terms of not including natural gas or a refined petroleum product," he said.

REPRESENTATIVE SEATON said this is an exemption, but the exemption does not include crude oil, and crude oil does not include natural gas or refined petroleum products. He said that means refined petroleum products would be exempt the same way natural gas is exempt. Within the definition it is tying natural gas and refined petroleum products together, he added. Unless there is a reason to keep "refined petroleum products" in the definition, he said he would like to remove it.

MR. TOSTEVIN said Representative Seaton is misunderstanding the way the exemption works. "The exemption is for a natural gas facility. Now if a natural gas facility involves crude oil, then there is no exemption. It would need to have a contingency plan. With respect to a refined product, if you had a facility, for example, that was storing refined products, that doesn't take it out of the exemption unless the refined petroleum product exceeds the volume set out in (a) of that section, which is 10,000 barrels."

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MR. TOSTEVIN said homes and residences store small amounts of refined petroleum, and a plan is not required. "So what the bill is saying is that if you are a natural gas facility and you are only producing gas, and you're not producing crude oil or you're not storing petroleum products in amounts that exceed 10,000 barrels, then you are exempt," he stated.

REPRESENTATIVE SEATON said the language regarding exceeding 10,000 barrels is in a different section. The bill says a natural gas production facility or terminal facility is exempt, and crude oil is not exempt, he said. But the bill then states that crude oil is not a refined petroleum product, which confuses the subject, he stated.

MR. TOSTEVIN said that in Section 4, lines 11 and 12, the bill says "for purposes of this subsection." He continued:

The definitions are only for this subsection, and we aren't exempting crude oil facilities. We're not exempting refined product facilities. What we're saying is, is what does "natural gas production facility" mean. And then in Section 2, it goes on to say "a natural gas production facility means a platform facility or structure that is used solely for the production ... of natural gas." It does not include a facility that produces, stores, or transports natural gas in combination with crude oil or that would be an oil terminal facility, if it's storing oil in excess of the amounts in [subsection] (a). The practical point that this section is aimed at is: a gas exploration facility may need lubricant, fuel for engines and for operations on it, and so even if it's exploring for natural gas, it's going to have small amounts of petroleum on it.

REPRESENTATIVE SEATON said that is allowed up to the barrel limit anyway.

REPRESENTATIVE GATTO asked if natural gas is always methane.

MR. TOSTEVIN said the definition of natural gas in statute is a hydrocarbon that is in a gaseous state at 70 degrees Fahrenheit and at atmospheric pressure, and it is not limited to methane.

REPRESENTATIVE GATTO asked if there is anything called natural gas that is not methane.

JOHN NORMAN, Commissioner/Chair, Alaska Oil and Gas Conservation Commission, Anchorage, said methane is the "ordinary" natural gas, but it can include hydrocarbons that are not methane.

STEVE DAVIES, Petroleum Geologist, Alaska Oil and Gas Conservation Commission, said the intent is to eliminate the exemption for things that would spill and flow on the ground.

MR. NORMAN said natural gas is a gaseous form of petroleum or hydrocarbon consisting of hydrocarbon gases and vapors including methane, ethane, propane, butane, pentane, and hexane.

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MARK MYERS, Director, Division of Oil and Gas, Department of Natural Resources, said oil spill contingency plans are for

underground production; "it did not relate to the potential use or storage tanks or other facilities on the surface," which he thinks are covered under other Department of Environmental Conservation regulations. "This bill is to look at the risks and the clean-up associated with a release of hydrocarbons from formation," which would not be refined. "So it is making a distinction between that sort of regulation that you would use for any user on the surface that would be storing hydrocarbons or grease, or oil, or gasoline, or kerosene for whatever purposes, versus those that would be drilling to an underground reservoir and finding unrefined crude."

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MR. MYERS said, "The bill is pretty well thought out in terms of its definition of natural gas, which, I think, fits the purpose for spill planning." He added that one would never encounter refined products in an underground reservoir, "and that is covered through other regulations in terms of storage of surface facility use."

REPRESENTATIVE SEATON referred to page 3, line 25, where the language defines oil. He said there are two definitions, and one says a plan is required for crude but not natural gas or refined petroleum products. "We're giving a blanket exclusion, not based on 10,000 barrels or anything else, to natural gas and refined petroleum products." On line 25 and 26, "we're defining oil and we're just removing natural gas, which I don't have a problem with. I am trying to figure out why, when we have other exclusion portions that allow certain quantities of refined petroleum products, why are we putting this in the definition of crude and then excluding these from the exclusion?" he asked.

MR. MYERS said, "To be honest, I will have to look more at the section to answer your question."

REPRESENTATIVE SEATON said the purpose of HB 197 is to exclude natural gas production, not refined petroleum products, and he asked if there would be a detrimental effect by taking "refined petroleum products" out of the bill.

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MR. TOSTEVIN said there are pre-existing definitions of oil and natural gas. He continued:

Lines 25-26 say oil has a meaning in that section and that oil doesn't include natural gas, because there is some overlap between the two definitions, because butane and propane are listed as an oil. But then it explains that those things ... are part of natural gas, if they're gaseous or if they're under pressure. The exemption you're speaking of, with respect to petroleum products and the volumes--that's in a different section of AS 46.04.050, that's 050 (a). That's an existing exemption. So all we're simply doing in (b) is acknowledging that that exemption exists and that if you're storing ... the way it was originally phrased is, in existing statute, just refers to oil, and that's ambiguous because oil can be crude oil, [it] can be refined products, [or] it could be some components of natural gas. So each one of these definitions is really just explaining what is being excluded when we speak in terms of what is natural gas. The harm if you took it out, it would create, well, the provisions were put in, really, to provide clarity as to the scope of what does it mean when you're transporting/producing natural gas in combination with oil, because that took you out of the exemption if you had oil with you. So if you took out those definitions it would be unclear as to what was meant by the term "oil".

REPRESENTATIVE GATTO said he agrees with Representative Seaton. The simplest process can turn crude into a refined product, he said.

CO-CHAIR SAMUELS said he sees what Mr. Tostevin is saying. "We're not changing any exemption, we are simply clarifying what we mean the exemption is. The exemption for this is if you're drilling for gas and there is no chance ... that you'll hit oil, that you don't have to have the c-plan. That's all we're doing here. We're not changing any other exemptions - there's no fast one being pulled on the refined petroleum products. But if you happen to have gas for the vehicles or the pumps or oil for this or that, just regular lubricants for the day-to-day business of running a facility, that you don't need a c-plan because you happen to have that on site."

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REPRESENTATIVE SEATON said it is like an equation; crude oil does not equal natural gas, so there will be no exemption with

crude oil. But then crude oil does not mean refined petroleum products, he said, so it looks like a loophole. "I am all for exempting natural gas," he said, but not refined petroleum products. He said there is no concern with small amounts of petroleum products because that is covered in another section. He said he still hasn't gotten an acceptable explanation.

CO-CHAIR SAMUELS said it is only a clarification.

REPRESENTATIVE SEATON offered to move Amendment 2, labeled 24-LS0664\G.1, Chenoweth, 3/23/05, as follows:

Page 3, lines 13-14:

Delete "or refined petroleum products"

Page 4, Lines 7-8:

Delete "or refined petroleum products"

CO-CHAIR SAMUELS objected.

A roll call vote was taken. Representatives Seaton, Elkins, LeDoux, Olson, and Gatto voted in favor of Amendment 2. Representatives Samuels and Kapsner voted against it. Therefore, Amendment 2 passed by a vote of 5-2.

REPRESENTATIVE SEATON moved to report HB 197 as amended out of committee with individual recommendations and the attached fiscal notes. There being no objection, CSHB 197(RES) was reported from the House Resources Standing Committee.

HJR 5-NO MILK TAX

CO-CHAIR SAMUELS announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 5, Opposing imposition of a milk tax on Alaskans.

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REPRESENTATIVE BOB LYNN, Alaska State Legislature, said the tax referred to in HJR5 is a mandatory tax assessment from 1983, which was designed to increase sales of milk when there was a milk surplus. Alaska, Hawaii, and Puerto Rico were exempted from the tax because all are milk deficit states. The tax would be a serious detriment to Alaskan milk producers and consumers, he said, and it would only benefit states that have milk surpluses. The National Milk Federation wants to tax foreign

milk imports, and the United States can't tax foreign milk unless all states are taxed, he explained.

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REPRESENTATIVE LYNN said that Alaska already has high milk prices. "Milk in bush communities is already outrageous ... to the point that children in many of these communities are drinking sugar-laden soft drinks rather than milk because it's less expensive," he said. He said Alaska dairy farmers have trouble making ends meet.

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PETE FELLMAN, Staff to Representative John Harris, Alaska State Legislature, said he produces milk and is representing milk producers. He said the tax would be an undue burden on Alaska dairy farmers. Currently, 75 percent of Alaska milk comes from outside the state, he said. As a producer, he said, he has shipping costs and delays unlike farmers in the Lower 48 states.

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MR. FELLMAN said there has not been an increase in Alaska's milk prices since 1987, but fuel costs have doubled, and everything else has gone up. He also said Alaska producers don't get the benefit of being paid extra for milk with high butterfat and protein. The tax would equal one cent per gallon, which would cost Mr. Fellman \$1,200 per year.

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CO-CHAIR SAMUELS asked if this tax is pending in Congress.

REPRESENTATIVE LYNN said yes.

REPRESENTATIVE GATTO asked if the purpose of the tax is to encourage milk consumption. Alaska consumes all of its milk, so there is no need to advertise, he surmised.

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REPRESENTATIVE SEATON asked why farmers aren't paid for milk components.

MR. FELLMAN said the question requires a long answer, but there was an attempt three years ago to pass legislation to compensate for butter.

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REPRESENTATIVE LEDOUX asked who makes the decisions.

MR. FELLMAN said Matanuska Maid is a state-owned facility, and there is a creamery corporation that is supposed to represent dairy farmers. The shareholders of Matanuska Maid is the state of Alaska, but the creamery corporation claims it does not need to follow the recommendations of the shareholders.

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JIM EICHSTADT, Senior Manager of Public Affairs and Trade Policy, Dairy Trade Coalition, said that even though the tax is 1.3 cents per gallon, the middlemen are going to double or triple the increase to consumers. He said Congress never intended the tax to include Alaska. When the tax was implemented there were milk surpluses costing the American public millions of dollars because the government was buying the products and not using them, he said. Instead of paying to store dairy products in caves, he stated, a milk tax was instituted to market the product.

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MR. EICHSTADT said there is no longer a big surplus, but the milk promotion bureaucracy has taken a life of its own. In 2002 organic milk was excluded from the tax, he said, so there is no sense to suddenly apply the tax to Alaska, Hawaii, and Puerto Rico. The dairy industry has noted that Alaska is not part of the dairy surplus problem, but the lobby in Washington is behind the tax.

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MARIO CASTILLO, Washington, D.C., said he used to be the Chief of Staff for the House Agriculture Committee, and he quoted two republicans who said "there is something fundamentally un-American about forcing people to pay taxes." He said he is not against marketing promotions, but the milk tax is designed to hurt people like Pete Fellman.

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JLONA RICHEY, Alaska Dairy Coalition, said there is a double taxation on milk coming in from Seattle and other places. She said HJR 5 will help the elderly and the young who depend on the milk.

LARRY DEVILBISS, Director, Division of Agriculture, Department of Natural Resource, Palmer, said, "This is a really a no brainer."

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CO-CHAIR SAMUELS said the last whereas on page 2, line 8, doesn't seem to fit the topic, and he would like to eliminate it.

REPRESENTATIVE LYNN said he had no problem eliminating it.

REPRESENTATIVE SEATON moved Amendment 1 as follows:

Page 2, delete lines 8-11

There being no objection, Amendment 1 carried.

REPRESENTATIVE SEATON moved to report HJR 5 as amended out of out of committee with individual recommendations. There being no objection, CSHJR 5(RES) was reported from the House Resources Standing Committee.

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ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 1:56 p.m.