

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

April 25, 2005

1:11 p.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Co-Chair  
Representative Ralph Samuels, Co-Chair  
Representative Jim Elkins  
Representative Carl Gatto  
Representative Gabrielle LeDoux  
Representative Kurt Olson  
Representative Harry Crawford  
Representative Mary Kapsner

**MEMBERS ABSENT**

Representative Paul Seaton

**COMMITTEE CALENDAR**

HOUSE CONCURRENT RESOLUTION NO. 9  
Proclaiming Alaska Agriculture Day for 2005 and 2006.

- MOVED HCR 9 OUT OF COMMITTEE

HOUSE BILL NO. 241

"An Act relating to participation in matters before the Board of Fisheries by members of the board; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 269

"An Act relating to contribution actions relating to the release of a hazardous substance; and providing for an effective date."

- MOVED HB 269 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HCR 9

SHORT TITLE: AGRICULTURE DAY

SPONSOR(S): REPRESENTATIVE(S) GATTO

04/15/05            (H)            READ THE FIRST TIME - REFERRALS

04/15/05 (H) RES  
04/22/05 (H) RES AT 1:00 PM CAPITOL 124  
04/22/05 (H) Scheduled But Not Heard  
04/25/05 (H) RES AT 1:00 PM CAPITOL 124

BILL: HB 241

SHORT TITLE: BOARD OF FISHERIES CONFLICTS OF INTEREST  
SPONSOR(S): REPRESENTATIVE(S) WILSON

04/01/05 (H) READ THE FIRST TIME - REFERRALS  
04/01/05 (H) FSH, RES  
04/13/05 (H) FSH AT 8:30 AM CAPITOL 124  
04/13/05 (H) Moved CSHB 241(FSH) Out of Committee  
04/13/05 (H) MINUTE(FSH)  
04/14/05 (H) FSH RPT CS(FSH) 5DP 1NR  
04/14/05 (H) DP: WILSON, HARRIS, ELKINS, LEDOUX,  
THOMAS;  
04/14/05 (H) NR: SALMON  
04/18/05 (H) RES AT 1:00 PM CAPITOL 124  
04/18/05 (H) Scheduled But Not Heard  
04/22/05 (H) RES AT 1:00 PM CAPITOL 124  
04/22/05 (H) Scheduled But Not Heard  
04/25/05 (H) RES AT 1:00 PM CAPITOL 124

BILL: HB 269

SHORT TITLE: HAZARDOUS SUBSTANCE RELEASE LIABILITY  
SPONSOR(S): REPRESENTATIVE(S) RAMRAS

04/14/05 (H) READ THE FIRST TIME - REFERRALS  
04/14/05 (H) RES, JUD  
04/22/05 (H) RES AT 1:00 PM CAPITOL 124  
04/22/05 (H) Scheduled But Not Heard  
04/25/05 (H) RES AT 1:00 PM CAPITOL 124

**WITNESS REGISTER**

REPRESENTATIVE PEGGY WILSON

Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented HB 241 as sponsor.

JOHN WHITE

Bethel, Alaska

POSITION STATEMENT: Testified in opposition to HB 241.

PAUL SHADURA

Kenai Peninsula Fisherman's Association

Kenai, Alaska

POSITION STATEMENT: Testified in support of HB 241.

RICKY GEASE, Executive Director  
Kenai River Sport Fishing Association  
Kenai, Alaska

POSITION STATEMENT: Testified in opposition to HB 241.

JERRY MCCUNE

United Fishermen of Alaska  
Juneau, Alaska

POSITION STATEMENT: Testified in support of the concept of HB 241.

PAT CARTER

Juneau, Alaska

POSITION STATEMENT: Expressed concerns with HB 241.

LARRY ENGLE

Palmer, Alaska

POSITION STATEMENT: Testified in opposition to HB 241.

JOHN JENSEN, Commercial Fisherman, Board member  
Board of Fisheries  
Petersburg, Alaska

POSITION STATEMENT: Testified in support of HB 241.

CARL CROME, Commercial Fisherman  
Petersburg, Alaska

POSITION STATEMENT: Testified in support of HB 241.

GARY SLAVEN, Commercial Fisherman  
Petersburg, Alaska

POSITION STATEMENT: Testified on HB 241.

STEVEN DAUGHERTY, Assistant Attorney General  
Alaska Department of Law (DOL)  
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding HB 241.

JENNIFER YUHAS, Executive Director  
Alaska Outdoor Council  
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HB 241.

JANE PIERSON, Staff  
to Representative Jay Ramras

Alaska State Legislature

POSITION STATEMENT: Presented HB 269 on behalf of Representative Ramras, sponsor.

BENJAMIN BROWN, Legislative Liaison  
Department of Environmental Conservation (DEC)  
Juneau, Alaska

POSITION STATEMENT: Testified that HB 269 will prevent a future problem based on this "arcane interpretation" by the U.S. Supreme Court.

BRETT TOSTEVIN, Assistant Attorney General  
Civil Division  
Department of Law (DOL)  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 269.

GEORGE LYLE, Private Attorney  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 269.

#### **ACTION NARRATIVE**

**CO-CHAIR JAY RAMRAS** called the House Resources Standing Committee meeting to order at [1:11:37 PM](#). Representatives Gatto, Samuels, Elkins, Kapsner, and Ramras were present at the call to order. Representatives Olson, Crawford, and LeDoux arrived as the meeting was in progress.

#### HCR 9-AGRICULTURE DAY

CO-CHAIR RAMRAS announced that the first order of business would be HOUSE CONCURRENT RESOLUTION NO. 9, Proclaiming Alaska Agriculture Day for 2005 and 2006.

REPRESENTATIVE CARL GATTO, Alaska State Legislature, spoke of the work of farmers in Alaska. He said his best friend is a farmer and owns patents on crops. A good year nets \$30,000, he noted, and the amount of work for a farmer in Alaska is substantial.

CO-CHAIR SAMUELS moved to report HCR 9 out of committee with individual recommendations and the accompanying fiscal notes.

There being no objection, HCR 9 was passed out of committee.

#### HB 241-BOARD OF FISHERIES CONFLICTS OF INTEREST

CO-CHAIR SAMUELS announced that the next order of business would be HOUSE BILL NO. 241 "An Act relating to participation in matters before the Board of Fisheries by members of the board; and providing for an effective date."

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, said HB 241 implements changes recommended by the Joint Salmon Task Force. She stated that the Board of Fisheries is not as effective as it could be because some of the knowledgeable board members are conflicted out. Even with only a perception of a conflict of interest, members excuse themselves, she said. All board members' expertise should be used during board business to make the most informed decisions, she opined. She noted that legislators can participate when they have conflicts of interest. The conflicted board members can't even discuss issues or go on record, so this bill allows all members to participate in spite of conflicts of interest, she concluded.

REPRESENTATIVE LEDOUX asked about the Board of Game.

REPRESENTATIVE WILSON said she has more fishing interests in her district, and the Salmon Task Force recommended this for the Board or Fish. She said she is open to amendments, but she thinks it is important that the expertise of the board members is not stifled and gets on the record.

CO-CHAIR SAMUELS said that one difference between the Board of Fish and the Legislature is a board member has a one-seventh voting power, and it is one in forty for a representative.

[1:21:49 PM](#)

JOHN WHITE, Bethel, said he is a past chair of the Board of Fisheries. He said Alaska has the finest fisheries regulatory system because impropriety and conflict are kept out of decision-making. A member who is conflicted out still has an opportunity to transmit information to the board, he clarified. In allocation decisions, one party is always trying to get fish away from the other party, and there are always winners and losers. Contentions will increase with HB 241, he opined. He warned that there will be members shamefully abusing their political power to get what they want for their own fishery. "I'm dead set against this," he concluded.

[1:24:46 PM](#)

CO-CHAIR SAMUELS asked if a conflicted member can participate in discussions, and how the rules change when the chair changes.

MR. WHITE said conflicted members can testify before the board and that things do change under different leaders. He said changing chairs is a good thing; it makes the board dynamic. The rest of the board can always overrule the chair, he noted.

REPRESENTATIVE KAPSNER asked about board turnover.

MR. WHITE said it relates to the length of the governor's term, and with the election of a governor, the board can turn over by the end of a governor's four-year term.

[1:27:24 PM](#)

PAUL SHADURA, Kenai Peninsula Fisherman's Association, Kenai, said his organization has testimony on record from the April, 13, 2005 House Special Committee on Fisheries meeting. He said HB 241 should pass without amendments. He said the board appointment process limits the potential for undue preference.

[1:29:23 PM](#)

RICKY GEASE, Executive Director, Kenai River Sport Fishing Association, Kenai, said his organization strongly opposes HB 241. The bill will destroy the perception of an impartial board, and stakeholders must have faith that the board acts in the best interest of everyone, he said. This change could ball up the confirmation process because every interested user group will lobby to be on the board. He said HB 241 places the power of the pocketbook over stewardship of the resource. People don't tend to vote against their own pocket book, and it will call into question every vote that has an interested party voting on it. It will destroy the integrity of the board's committee process, he added. A board member with a direct financial interest could chair a committee and destroy the valuable committee process. There currently exists a method to involve conflicted board members, and they actually can go on the record and have their knowledge considered, he stated.

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MR. GEASE said HB 241 changes the board from a public service to a private interest. Board members are currently shielded from such accusations. "We strongly oppose HB 241," he concluded.

[1:34:44 PM](#)

CO-CHAIR SAMUELS asked if a conflicted member should have a place at the table or just provide testimony.

MR. GEASE said he supports the current process. The conflicted members can participate in the committee and give a three-minute testimony to the whole board.

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JERRY MCCUNE, United Fishermen of Alaska (UFA), Juneau, said UFA supports the concept of HB 241. He suggested leveling the playing field because different chairs make different decisions on the roles of conflicted members. Many lodge owners are not conflicted out when commercial fishing members are, he stated. He said the member should be able to put his or her expertise on the record. The governor can only ask members to resign, and since the terms are two to three years, the board can entirely turn over by the end of a governor's four-year term.

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REPRESENTATIVE LEDOUX suggested making a distinction between lobbyists and someone who is using the fish resource.

MR. MCCUNE said it depends on the appointments, and not many executive directors or lobbyists get on the board. Everyone comes with some kind of prejudice, he noted.

[1:40:32 PM](#)

CO-CHAIR SAMUELS postulated that if a particular gear group gets a vote, then other gear groups will fight to also be represented. The infighting could damage the process.

MR. MCCUNE said he thought someone with a financial conflict would still get conflicted out under HB 241. The appointments are up to the governor and the legislature who would have to balance the board.

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PAT CARTER, Juneau, said he is a former Kenai guide, and he has attended many fish board meetings. He said there has not been an even application of the conflict of interest rules. He gave an example of members being able to vote because they had a

conflict of only 15 percent of their income, but he has never seen anyone vote against their pocketbook. He added that this debate seems to be shaping up as a debate between sport and commercial fisheries. If the bill passes, there will also be fights between each commercial gear type. Certain gear types will push for a seat, and then that person will need to answer to that gear type, he postulated. Government is run by people who show up, he said, so expertise will be heard if someone wants it to. He said a member's financial interest needs to be gauged. Would a hotel or t-shirt shop owner have a financial interest in the sport fishing industry, he asked.

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MR. CARTER said the public is always suspect of the board's decisions, and with financial interests carrying the discussions and voting, it will be a step away from credibility.

[1:48:36 PM](#)

CO-CHAIR SAMUELS asked if allowing conflicted members to debate at the table is inappropriate.

MR. CARTER said currently the member can step aside and testify as a member of the public, but if that person engages as a board member, he or she will be able to go into the committee process and help carry the discussion. The committees form the foundation of the decisions, he said.

CO-CHAIR SAMUELS noted his frustrations of not participating on the House floor when he has expertise on aviation issues.

MR. CARTER said it is a public process with public testimony, and the testimony is used in the debate. The Alaska Department of Fish & Game (ADF&G) gives an overview. He said there are discussions during breaks. There used to be vote trading, he said, and HB 241 will be a step back toward those days.

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LARRY ENGLE, Palmer, said he opposes HB 241. He said he has been involved with the Board of Fisheries process for many years, and he was an ADF&G staff prior to that. He said he agrees with every single word in Mr. White's testimony. He asked if the system is really broken, and noted that the resource used to be in a "shambles." When the legislature set up the boards, it wanted maximum public participation, he said,

and that has stayed intact over all the years. The fish resources are healthier than ever. "Do we want to risk that?" he asked. Fairness is extremely difficult when there are financial ties, he declared. Perceptions are important, and the benefits of HB 241 do not even come close to the loss of the perception of fairness. It will be a real step backwards, he said.

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JOHN JENSEN, Commercial Fisherman, Petersburg, said he is a member of the Board of Fisheries, and he supports HB 241. He said he feels left out of discussions about commercial fisheries, and he wants to be able to provide information during deliberations.

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REPRESENTATIVE KAPSNER asked about the ability to testify.

MR. JENSEN said conflicted members can provide testimony, but will not be chosen to be a member of a committee with the conflict, but can only testify to the committee. He said the frustration is during the debate after the testimony, which could get way off track, and still he would not have input.

REPRESENTATIVE KAPSNER said one solution would be to allow the conflicted member to debate the issues but not vote on them.

MR. JENSEN said that would help a lot.

REPRESENTATIVE ELKINS asked Representative Kapsner why a board member would not vote since that is their job.

CARL CROME, Commercial Fisherman, Petersburg, said he is in favor of HB 241. He said legislators are not conflicted out, and "there's no end to the financial conflict they have." Board members are scrutinized and approved by the legislature, he added. He said commercial fishing members get conflicted out and people are unhappy with the final votes. People on the board should be voting and deliberating, he stated. He said lodge owners aren't conflicted out when they should be. The board is lopsided toward sport fish interests, he concluded.

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CO-CHAIR SAMUELS said that all 40 legislators are not beholden to anybody but their conscience.

REPRESENTATIVE KAPSNER justified legislators not being conflicted out because they are part of a bigger body.

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GARY SLAVEN, Commercial Fisherman, Petersburg, said he was once chair of the Board of Fisheries and has respect for the members. In the 1980s the chair and other members of the board would decide how much participation a conflicted member could have, he said. Other states were envious in the way Alaska residents were part of the debate. He reminisced about his days on the board. He said that sport anglers think the current system is working well, but commercial fishing is represented by less than half the board's members. The perspective of the people who are knowledgeable should be included. He said ADF&G personnel can comment during debate but the public can't, so the board goes to the committee level for that. The committee process is great but takes up a lot of time, he stated. "With the small amount of commercial participation there is on the board now ... the issue has changed," and the board needs the input from the commercial fishing members. If they have a significant financial interest, "of course they shouldn't vote," he said, but a blanket exclusion from the process is not serving the fish board well.

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STEVEN DAUGHERTY, Assistant Attorney General, Alaska Department of Law (DOL), Anchorage, said DOL does not consider HB 241 a complete exemption from the ethics act. It allows conflicted members to vote after disclosure, provided the vote is not a use of state facilities to benefit personal or financial interests. He said certain provisions of the ethics act would still apply, like improper gifts, improper use and disclosure of information, improper representation, accepting compensation for official duties, and coercion of subordinates. Under HB 241, board members could still get advice from DOL. He spoke of a potential amendment, but it was not before the committee.

[2:17:53 PM](#)

REPRESENTATIVE LEDOUX asked why participation in a discussion is considered acting. "Is there a court case?" she asked.

MR. DAUGHERTY said he did not know, but during deliberation the board members try to influence each other's actions.

REPRESENTATIVE LEDOUX asked the difference between personal and financial interests.

MR. DAUGHERTY said personal interest is an interest or involvement by a public officer or immediate family, which includes membership in any organization, whether nonprofit or political, from which a person or organization receives a benefit.

REPRESENTATIVE LEDOUX suggested that a member of UFA might be excluded from discussing anything that UFA may benefit from.

MR. DAUGHERTY said there are situations where a conflict can occur, but it is not across the board.

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REPRESENTATIVE OLSON asked about the amendment.

MR. DAUGHERTY said it is not a DOL amendment.

[2:22:02 PM](#)

JENNIFER YUHAS, Executive Director, Alaska Outdoor Council, Fairbanks, strongly opposes HB 241 because it would corrupt the Board of Fisheries and destroy the fish resource. The board has done a commendable job, she opined. The bill would allow financially interested users to vote to enrich themselves by allocating resources to them. It would become a board of fish lobbyists, she said, and then the legislature will end up allocating the resources. She said board members with sport fish backgrounds have sat out of board discussions; it is not the case that the commercial fisherman have been excluded and not the sport fishing interests.

[2:26:12 PM](#)

REPRESENTATIVE WILSON said everyone needs to be treated the same, and things change when the chair does.

[2:27:30 PM](#)

REPRESENTATIVE LEDOUX asked about other alternatives.

[HB 241 was held over]

HB 269-HAZARDOUS SUBSTANCE RELEASE LIABILITY

CO-CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 269, "An Act relating to contribution actions relating to the release of a hazardous substance; and providing for an effective date."

JANE PIERSON, Staff to Representative Jay Ramras, read the following statement [original punctuation provided]:

HB 269 deals with fixing the uncertainty caused by the United States Supreme Court's December 2004 decision in, *Cooper Industries v. Aviall Services, Inc.*

Alaska's hazardous substance remediation statutes are modeled after the Federal Comprehensive Environmental Response Compensation & Liability Act of 1980 (CERCLA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA)

The US Supreme Court found in the *Aviall* decision that, a responsible party cannot bring a contribution action until such time as the party has been sued by the state or federal government, or has entered into a formal administrative settlement of liability.

The *Aviall* decision puts into question the rights of Alaskan's who conduct voluntary cleanups on properties contaminated by hazardous substances to undergo contribution actions against other potentially responsible parties.

Voluntary cleanups of contaminated sites form the vast majority of environmental cleanups conducted in the State of Alaska.

These voluntary cleanups allow the state to focus its limited resources on monitoring responsible party cleanup actions, instead of undertaking costly administrative or judicial enforcement actions to force cleanups, or undertaking cleanups at public expense.

The right to contribution actions against other potentially responsible parties creates an important

incentive for voluntary remediation, by allowing responsible parties to undertake effective cleanups themselves, and then be able to recover some of those costs from other potentially responsible parties, who fail to voluntarily undertake or assist with the clean up.

The purpose of HB 269, is to respond to the *Aviall* decision by clarifying the language in AS 46.03.822(j), ensuring that responsible parties who conduct voluntary cleanups may bring contribution actions against other potentially responsible parties.

HB 269 has the support of both the Department of Environmental Conservation and the Governor's office.

This is not an area of law where Alaska can afford to have the common law decisions of the court out pace our codified laws. For the reasons stated above I urge the committee to pass HB269.

[2:31:12 PM](#)

REPRESENTATIVE CRAWFORD asked for an explanation.

MS. PIERSON said if there was a gas spill on your property, and you were not the one who spilled it but you clean it up, then you cannot sue the guilty party until the government instigates an action. She said HB 269 changes our statutes so that once the state or federal government has identified other responsible parties you can sue them for their part in the spill.

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BENJAMIN BROWN, Legislative Liaison, Department of Environmental Conservation, said the Supreme Court came to an odd decision and said unless you have a right to a contribution action under certain sections of the act, then you can't go after a third party defendant. The Alaska Supreme Court has not yet made a similar decision, but it could, he said. The bill will prevent a future problem based on this "arcane interpretation" by the U.S. Supreme Court.

[2:35:22 PM](#)

BRETT TOSTEVIN, Assistant Attorney General, Civil Division, Department of Law (DOL), said the DOL supports HB 269 because it

allows people who do voluntary cleanup to try to get costs covered even if they have not been sued, and it would remove the confusion brought about by the Supreme Court decision. Voluntary cleanup can occur "without us having to incur additional costs or enforcement actions or have to bring lawsuits against people simply to allow them to have a right of contribution against other people who are liable." Without HB 269, a monkey wrench could be thrown into the state's voluntary cleanup program. The bill would allow a contribution action after the issuance of the potential liability determination by the Department of Environmental Conservation, and the bill defines what that may determination be. The bill will encourage voluntary cleanups in the future and not reward recalcitrant parties.

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REPRESENTATIVE CRAWFORD asked who would be opposed to the bill.

MR. TOSTEVIN said he does not know of any.

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GEORGE LYLE, Private Attorney, Anchorage, said he has clients who own properties that were contaminated by previous owners. Current owners are obligated to clean up the properties, but they should retain the right to go after the parties responsible for the contamination, he stated. The owners tend to volunteer to do the cleanup with the understanding that they could eventually seek recovery from the people who actually caused the problems. He urged the committee to pass HB 269.

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REPRESENTATIVE OLSON moved to report HB 269 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 269 passed out of committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:45 p.m.