

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

May 4, 2006
8:56 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Hollis French

MEMBERS ABSENT

Senator Gene Therriault
Senator Gretchen Guess

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 9 am

Urging the United States Congress to honor the process and judgment of the federal courts in the case of the Exxon Valdez disaster and to refrain from enacting legislation that would affect the outcome of the courts' resolution of the case.

MOVED SCS HJR 9(JUD) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 17

Urging the United States Department of Justice and the Alaska Department of Law to identify all natural resource damages from the Exxon Valdez oil spill that were unanticipated at the time of the 1991 settlement, to develop plans to remedy the damages, and to present the ExxonMobil Corporation with a request for the full \$100,000,000 that is available through the "Reopener for Unknown Injury" clause of the 1991 civil settlement to carry out these plans.

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HJR 9

SHORT TITLE: URGE CONGRESS HONOR EXXON VALDEZ JUDGMENT

SPONSOR(S): REPRESENTATIVE(S) LEDOUX

02/14/05	(H)	READ THE FIRST TIME - REFERRALS
02/14/05	(H)	RES, JUD
03/30/05	(H)	RES AT 1:00 PM SENATE FINANCE 532
03/30/05	(H)	Moved Out of Committee
03/30/05	(H)	MINUTE(RES)

04/01/05 (H) RES RPT 6DP
 04/01/05 (H) DP: OLSON, ELKINS, LEDOUX, CRAWFORD,
 RAMRAS, SAMUELS
 04/11/05 (H) JUD AT 1:00 PM CAPITOL 120
 04/11/05 (H) Moved Out of Committee
 04/11/05 (H) MINUTE(JUD)
 04/12/05 (H) JUD RPT 4DP 3NR
 04/12/05 (H) DP: GRUENBERG, ANDERSON, COGHILL, GARA;
 04/12/05 (H) NR: KOTT, DAHLSTROM, MCGUIRE
 04/19/05 (H) TRANSMITTED TO (S)
 04/19/05 (H) VERSION: HJR 9 AM
 04/20/05 (S) READ THE FIRST TIME - REFERRALS
 04/20/05 (S) RES, JUD
 04/25/05 (S) RES AT 3:30 PM BUTROVICH 205
 04/25/05 (S) Moved HJR 9 am Out of Committee
 04/25/05 (S) MINUTE(RES)
 04/26/05 (S) RES RPT 3DP 1NR
 04/26/05 (S) DP: WAGONER, ELTON, STEDMAN
 04/26/05 (S) NR: DYSON
 01/25/06 (S) JUD AT 8:30 AM BUTROVICH 205
 01/25/06 (S) Bill Hearing Postponed
 05/03/06 (S) JUD AT 8:30 AM BUTROVICH 205
 05/03/06 (S) Heard & Held
 05/03/06 (S) MINUTE(JUD)
 05/04/06 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Senator Hollis French
 Alaska State Capitol
 Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SJR 17

Representative Gabrielle LeDoux
 Alaska State Capitol
 Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HJR 9

Tim Joyce, Mayor
 City of Cordova
 Cordova, Alaska
POSITION STATEMENT: Testified in support of HJR 9

Ken Adams, Fisherman
 Cordova, Alaska
POSITION STATEMENT: Testified in support of HJR 9

Lloyd Montgomery, Fisherman
Cordova, Alaska

POSITION STATEMENT: Testified in support of HJR 9

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:56:10 AM](#). Present were Senators Hollis French, Charlie Huggins, and Chair Ralph Seekins.

HJR 9-URGE CONGRESS HONOR EXXON VALDEZ JUDGMENT

[8:57:33 AM](#)

CHAIR RALPH SEEKINS announced HJR 9 to be up for consideration. He recognized that SJR 17 was similar to the resolution and that Senator French, sponsor of SJR 17, was prepared to offer a committee substitute (CS) for HJR 9 that would combine the efforts of both resolutions.

SENATOR HOLLIS FRENCH distributed a CS that would combine HJR 9 and SJR 17 titled 24-LS0532\G. He explained that the combination would make one "ExxonMobil resolution" for the committee's consideration. He offered to answer questions.

REPRESENTATIVE GABRIELLE LEDOUX agreed with Senator French's proposal. She accepted the Senate Committee Substitute for HJR 9.

SENATOR FRENCH explained that version G would be accompanied by a concurrent resolution calling for a title change. The resolution would urge the federal courts to refrain from enacting legislation that would affect the outcome of the court's resolution in the case before the Ninth Circuit Court of Appeals. The resolution would likewise urge the United States Department of Justice (US DOJ) and the Alaska Department of Law (DOL) to begin the process of pursuing the "reopener clause", which was bargained for in the original settlement and was intended to cover the cost of unanticipated damages.

The "Whereas clauses" begin on page 1 with a short recitation of the basis facts of the Exxon Valdez grounding back in March 1989. The first clause on page 2 covers the facts of the spill size. The clause on line 8 refers to the civil settlement between the federal and state government and ExxonMobil. The clause on line 13 notes that the reopener needs to occur before September 1, 2006. The clause on line 23 relates the fact that there was a unanimous jury finding for the awarding of damages,

which are still in litigation and before the Ninth Circuit Court of Appeals. The clause beginning on line 31 denotes that ExxonMobil once sought an amendment to substantially reduce the amount of damages that it would have to pay for the Exxon Valdez oil spill.

[9:02:49 AM](#)

SENATOR FRENCH continued clauses on page 3 states the fact that there are cost-effective restoration opportunities to mitigate the unanticipated damages and that the governments are required to submit detailed plans to use the reopener funds 90 days before a formal request to the ExxonMobil Corporation. The last clause states that it is in the best interest of the citizens of Alaska that the governments assert the claim for full payment for the additional damages in the Exxon Valdez oil spill.

The "Resolved clauses" combine the two resolutions. One respectfully urges Congress to not enact any legislation that would delay the punitive damages awarded to more than 32,000 plaintiffs and the next two clauses urge the two governments to identify natural resource damages from the oil spill that were unanticipated.

[9:04:12 AM](#)

CHAIR SEEKINS expressed concern that the facts and figures in the resolution need to be absolutely correct if the committee was prepared to move it forward.

SENATOR FRENCH responded the 11,000,000 gallons of crude oil spilled has been a topic of great discussion and is a minimum figure. There are many assertions that the spill was far larger than stated initially. The tankers generally carry close to one million barrels or 350,000,000 gallons of oil. One of the scientists that testified in court described the size of the spill as 10,000 square miles and covering 13,000 miles of shoreline. The numbers on page 2, line 26 need to be adjusted to update the resolution to the present day, he noted.

[9:08:16 AM](#)

REPRESENTATIVE LEDOUX said her office distributed a memo from one of the chief attorneys in the Exxon Valdez case indicating that oral argument in the Ninth Circuit Court of Appeals took place on January 27, 2006 and that there is no decision yet. The oral argument can be viewed online at the Court website.

SENATOR FRENCH noted there have been five or six trips to the Ninth Circuit Court to date on the case. The facts asserted on

page 3 line 3 were buttressed from testimony heard in the Senate Resources Standing Committee from two scientists who have worked on the spill. He recounted testimony from Doctor Jeep Rice who spoke about the amount of oil just below the surface of tidal zones in the affected beaches. He described the oil as being still liquid enough to pool up in the holes that scientists dug.

At the time that damages were assessed it was not envisioned that the oil would take so long to weather. Expert opinion was that the oil would quickly become tar-like and non-toxic and that has turned out to be untrue.

9:11:21 AM

CHAIR SEEKINS asked Senator French whether he knew of any movement in Governor Frank Murkowski's Administration to gather the information necessary to file the reopener.

SENATOR FRENCH said the Administration has conducted hearings in Cordova, Anchorage and Kodiak and that indicates some movement. He said he could not speak to their intentions.

CHAIR SEEKINS inquired as to how recently the meetings were held.

REPRESENTATIVE LEDOUX responded less than a month ago.

CHAIR SEEKINS noted that would indicate that they are aware of the deadline.

9:13:06 AM

CHAIR SEEKINS stated that the resolution was saying that Alaska does not want the United States Congress to intervene with legislation that would reduce or delay payment and that Alaska wants the US DOJ and the DOL to identify all natural resource damages. He said he was taking at face value that the data the committee considered was correct.

SENATOR HUGGINS asked Representative LeDoux whether she could coordinate this effort with Governor Murkowski's Administration.

REPRESENTATIVE LEDOUX explained that the resolution would inform the Administration of the will of the Legislature. She said she would be happy to work with the Administration if they are interested in working together.

SENATOR HUGGINS said the resolution goes well beyond that because it is sent to the President of the United States. He suggested the resolution would appear to spite the Governor.

SENATOR FRENCH interrupted to explain that the resolution is simply recognition of the different branches of government. He said it formalizes the communication between the two branches. It is a cooperative measure, which urges action and offers support.

SENATOR HUGGINS said he saw it as going over the Governor's head.

REPRESENTATIVE LEDOUX said from her perspective the Legislature should deliver the message and that the Administration should deliver a similar message.

9:18:03 AM

CHAIR SEEKINS called for public testimony.

TIM JOYCE, Mayor of Cordova, testified in support of the resolution. He recognized that the two resolutions were combined but addressed two different issues, one that deals with the actual punitive damages and one that deals with the reopener clause. He informed the committee that he recently returned from Washington D.C. where he has been informing people about the Exxon Valdez litigation. There is a letter from the United States House of Representatives to the chairman of ExxonMobil Corporation currently circulating in the House collecting signatures. He read the letter to the committee. He referred to an opinion written by the judge that said, "ExxonMobil's continued protest suggests that Exxon, even today, has not come to grips with the (indisc) that society rightfully attaches to drunk driving."

9:22:41 AM

MR. JOYCE charged that ExxonMobil has never compensated the plaintiffs for their continuing damages including, in the words of the trial judge, "the fact that the social fabric of Prince William Sound and lower Cook Inlet was torn apart." They have only used delay tactics. They have filed nearly 400 motions and a dozen appeals successfully prolonging the litigation beyond all reasonable limits, he asserted. In the meantime thousands of victims have died without obtaining the damages to which they were entitled. ExxonMobil posted a \$36 billion dollar profit last year alone.

MR. JOYCE stated the delay tactics are irresponsible and indefensible. It has now been 17 years since one of the worst maritime environmental disasters in the nation's history and nearly 12 years since the jury verdict. It is past time to get the issue resolved, he said.

9:25:05 AM

SENATOR FRENCH moved to adopt version 24-LS0532\G as the working document before the committee. Hearing no objections, the motion carried.

9:30:41 AM

CHAIR SEEKINS called for public testimony.

KEN ADAMS, Cordova fisherman, testified in support of HJR 9. He said it was not only appropriate but also essential that the resolution be moved forward. He suggested that the energy companies feel like they can do as the please without being held responsible for their actions. The resolution would be at the very least, a deterrent for corporations that are sloppy and negligent in their business with the State of Alaska.

MR. ADAMS asserted that the people in Prince William Sound will always be on the interface between two incompatible industries; the transporting of oil through the sound, and the fisheries for which the area is world famous.

9:37:28 AM

LLOYD MONTGOMERY, Cordova, testified that he accompanied Mayor Joyce to Washington D.C. He shared his experience and questioned how the people responsible for the devastation could continue to believe they should not pay for it. He said that Governor Murkowski and United States Senator Lisa Murkowski were caught in the middle of the action and that they were doing everything they could to settle the situation.

MR. MONTGOMERY referred to a piece of artwork that he made in the fall of 1990 representing the community of Cordova. It referenced frustration, segregation, suicides, and loss of economy. He asserted that people in Washington do not understand the devastation that Cordova has been going through.

9:44:56 AM

MR. MONTGOMERY said he has been through an emotional time the past couple weeks sharing personal examples of suicides, bankruptcies and the "lingering oil after affects." He said:

I'll give you a perfect example. Yesterday there was a lawsuit filed against the seiners and that is a lingering oil effect. If it wasn't for the Exxon oil spill, we wouldn't be in this position now. We wouldn't be going to court.

[9:47:11 AM](#)

CHAIR SEEKINS closed public testimony.

SENATOR FRENCH moved Amendment 1. Page 2 line 24, delete \$5.3 and insert \$4.3. Hearing no objections, Amendment 1 was adopted.

SENATOR FRENCH moved Amendment 2. Page 2 line 26, delete "15" and insert "17." Also delete "more than ten" and insert "nearly twelve." Hearing no objections, Amendment 1 was adopted.

SENATOR HUGGINS moved SCS HJR 9(JUD) from committee with individual recommendations and attached fiscal notes. Hearing no objections, the motion carried.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [9:51:05 AM](#).