

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES**

January 23, 2008

8:36 a.m.

MEMBERS PRESENT

Representative Paul, Chair
Representative Kyle Johansen
Representative Craig Johnson
Representative Gabrielle LeDoux
Representative Bryce Edgmon
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Peggy Wilson

COMMITTEE CALENDAR

HOUSE BILL NO. 289

"An Act exempting employers from paying unemployment tax for crewmembers on fishing vessels that respond or prepare to respond to, or that prepare for or engage in an emergency or practice drill response to, an oil spill; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 289

SHORT TITLE: EMPLOYMENT TAX EXEMPTION: SPILL RESPONSE

SPONSOR(S): REPRESENTATIVE(S) HARRIS, SEATON

01/04/08	(H)	PREFILE RELEASED 1/4/08
01/15/08	(H)	READ THE FIRST TIME - REFERRALS
01/15/08	(H)	FSH, L&C
01/23/08	(H)	FSH AT 8:30 AM BARNES 124

WITNESS REGISTER

REPRESENTATIVE JOHN HARRIS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As co-prime sponsor, presented HB 289, and responded to questions.

PAULA SCAVERA, Special Assistant
Office of the Commissioner
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska

POSITION STATEMENT: Testified with neutrality on behalf of DLWD for HB 289, and responded to questions.

BILL KRAMER, Chief, Unemployment Insurance
Division of Employment Security
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska

POSITION STATEMENT: Responded to questions on HB 289.

JERRY MCCUNE, Lobbyist
President, Cordova District Fishermen United (CDFU)
Cordova, Alaska

POSITION STATEMENT: Testified in support of HB 289.

DOUGLAS MERTZ, Legislative Monitor
Prince William Sound Regional Citizens Advisory Council
Juneau, Alaska

POSITION STATEMENT: Testified on HB 289.

TRACEY MAYHEW, Representative
Seafarers International Union (SIU)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 289.

MIKE MUNGER, Executive Director
Cook Inlet Regional Citizens' Advisory Council
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 289

JOHN VELSKO, Board Member
City of Homer Prince William Sound Regional Citizens Advisory
Committee (PSWRCAC)
Chairman, PWSRCAC Legislative Affairs Committee
Homer, Alaska

POSITION STATEMENT: Testified in support of HB 289.

ACTION NARRATIVE

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at [8:36:36 AM](#). Representatives Seaton, Johansen, Johnson, and Edgmon were present at the call

to order. Representatives LeDoux and Holmes arrived as the meeting was in progress.

8:36:48 AM

HB 289-EMPLOYMENT TAX EXEMPTION: SPILL RESPONSE

8:37:01 AM

CHAIR SEATON announced that the only order of business would be HOUSE BILL NO. 289, "An Act exempting employers from paying unemployment tax for crewmembers on fishing vessels that respond or prepare to respond to, or that prepare for or engage in an emergency or practice drill response to, an oil spill; and providing for an effective date."

8:37:35 AM

REPRESENTATIVE JOHN HARRIS, Alaska State Legislature, as co-prime sponsor, introduced HB 289, paraphrasing from the sponsor statement, which read as follows [original punctuation provided]:

HB 289 encourages participation in the state's oil spill response program by exempting fishing vessel owners and crew who participate from having to pay unemployment taxes while they are performing oil spill response duties.

Vessel owners and crew members undergo oil spill response training to be prepared to respond to state disasters as a service to the state on a voluntary basis. Training for the program and responding to small spills only takes a few days at a time, filing paperwork and paying unemployment taxes for such a short period of service is unreasonably burdensome. Because commercial fisherman are not covered by unemployment insurance when they engage in commercial fishing, most will not be in a position to have enough service time accrued to collect unemployment after having only worked a handful of qualified days in the oil spill response program.

In the unfortunate event of a large spill (such as the Exxon Valdez), if vessels spend seven or more continuous days responding to an oil spill vessel

owners would be required to participate in the unemployment system and their crew would be covered.

In summary, HB 289 encourages fisherman to continue to participate in the state's oil spill response program by removing burdensome unemployment requirements. The state needs more vessels willing and able to respond to such disasters and must work to remove barriers to their participation.

[8:39:47 AM](#)

REPRESENTATIVE HARRIS stressed that it is important to not lose the oil spill response "vehicle" that has been assembled since the Exxon Valdez oil spill, trained, and is currently available. He paraphrased from an Anchorage Daily News article published November 1, 2007, which read [original punctuation provided]:

Some fishermen have vowed to quit the industry-funded oil spill response program due to the paperwork and costs involved with unemployment insurance.

REPRESENTATIVE HARRIS named the various organizations that support this legislation, which include major fishing industry entities, pipeline organizations, and the maritime shippers.

[8:41:50 AM](#)

REPRESENTATIVE JOHANSEN asked if fishermen enter into the program via the Department of Labor.

REPRESENTATIVE HARRIS deferred.

[8:43:46 AM](#)

CHAIR SEATON opened public testimony

[8:44:50 AM](#)

PAULA SCAVERA, Special Assistant, Office of The Commissioner, Department of Labor & Workforce Development (DLWD), pointed out that this bill is specific to oil spills, and oil spill drills; non inclusive of other disaster response. She noted that DLWD does not run the oil spill response program, which is overseen by the Department of Environmental Conservation (DEC). The DLWD is represented at this meeting to respond to questions regarding unemployment insurance (UI).

8:45:36 AM

CHAIR SEATON stated that current law provides for various exemptions; this is not a new rule, but a clarification of what exists in statute.

MS. SCAVERA said that this has been in place since the Exxon Valdez spill. At that time, crew members paid into the UI program.

8:46:29 AM

REPRESENTATIVE EDGMON asked for an estimation of the oil spill response training's annual contribution to the UI program.

MS. SCAVERA explained that the employer and employee both pay contributions to the unemployment tax, which is based on a crew members wage/earnings. For an annual estimate she deferred.

8:47:53 AM

BILL KRAMER, Chief, Unemployment Insurance, Division of Employment Security, Department of Labor & Workforce Development (DLWD), said that an accurate number would be difficult to estimate. The attached fiscal note indicates that, in comparison to the UI trust fund total, the amount that this bill reflects is insignificant.

CHAIR SEATON, as co-sponsor, pointed out that the bill lists a series of exemptions from the UI tax. He directed attention to the current statute exemption for commercial fisherman, page 5, lines 12-16, paragraph (17), and paraphrased the language; which read [original punctuation provided]:

(17) service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of that boat under which

(A) that individual does not receive any cash remuneration except as provided in (B) of this paragraph;

CHAIR SEATON said the intent is to ensure that anyone being trained/drilled for spill response doesn't "throw this into a non exempt category." He paraphrased the proposed new language, which read [original punctuation provided]:

(ii) for remuneration for service performed while the boat responds or prepares to respond to, or prepares for or engages in an emergency or practice drill response to, an oil spill;

CHAIR SEATON said that, in accordance with the program, each member of the crew undergoes an annual, land based, eight hour, hazardous materials training course. Once every three years, the crews practice the annual skills under simulated conditions, at sea. Barring an actual incident, this represents the level of employee activity that the bill targets.

[8:50:50 AM](#)

CHAIR SEATON if there were another spill, requiring a lengthy commitment of time, the owners of a vessel would be able to opt into the program; the exemption does not preclude that action. The intent is to ensure that the state has an adequate number of contracted vessels, with trained crews, available to provide a high quality, volunteer, response to oil spills. He directed attention to the committee packet, and read from the David Blossom letter [no date provided; FAX dated 1/08/08]:

Many fishermen have indicated that if they have to do all this paperwork and pay this tax, they will probably drop out of the oil spill vessel response program.

[8:52:13 AM](#)

REPRESENTATIVE JOHNSON asked if the tax was paid by the Exxon Valdez spill responders.

MS. SCAVERA said that it was required. To a follow-up question, she explained that under existing state law, the only time employers and crew members are exempt, from paying UI tax, is when they are commercial fishing. When responding to the oil spill, crews were working on boats under contract, but were not exempt from the tax.

[8:53:26 AM](#)

REPRESENTATIVE JOHNSON gathered that the responders were not employees of Alyeska Pipeline Service Company, but rather contract labor responsible for their own taxes.

MS. SCAVERA pointed out that, during the Exxon spill response, there were many contractors, sub contractors, and sub-sub contractors, however, exemption only applies for crews that are commercial fishing.

REPRESENTATIVE JOHNSON stated that his interest is in establishing how these groups of people are categorized by the state: as employees, on retainer, or contractors.

MS. SCAVERA stated that the exemption is based on what service the employee is performing.

[8:55:55 AM](#)

MR. KRAMER said that the fishermen who are engaged in oil spill response training/drills are viewed as employees covered under the UI program, and taxes should be paid. If they are private contractors, it constitutes self employment, self employment is not covered under the program.

[8:56:39 AM](#)

REPRESENTATIVE LEDOUX attempted to clarify the question, and who should be filling out the paperwork.

[8:57:24 AM](#)

REPRESENTATIVE JOHNSON recalled the earlier comment that "fishing boat captains, and fishermen, don't like to do paperwork," however, if they are employees they simply receive a paycheck; the paperwork is handled by the employer. A contractor would need to fill out his/her own paperwork. He questioned whether the issue is about paperwork, or money.

[8:58:20 AM](#)

CHAIR SEATON provided a perspective from his experience as a vessel owner, and spill response operator. Anyone under the direct supervision of an employer cannot be considered an independent contractor. However, an exemption does exist for an independent contractor who is engaged in the commercial catching of fish, or other forms of aquatic animal life. The bill expands that exemption to include crew undergoing training to respond to an oil spill. On a fishing boat the crew is under the supervision of the captain at all times.

REPRESENTATIVE JOHNSON asked who handles the paperwork: the company, the captain, is the employee responsible. Who actually handles the deduction, and writes a check to the state.

MS. SCAVERA responded that it is the responsibility of the vessel captain.

[9:01:30 AM](#)

REPRESENTATIVE LEDOUX asked, "Do you really mean, when you say it's the vessel captain, [that] it's the vessel owner."

MS. SCAVERA clarified that her answer was based on the assumption that most captains are the owner of the vessel, and she said, "I stand corrected."

[9:02:11 AM](#)

REPRESENTATIVE EDGMON asked whether the department supports this legislation.

MS. SCAVERA answered that the department is neutral on the bill.

[9:02:38 AM](#)

JERRY MCCUNE, Lobbyist, President, Cordova District Fishermen United (CDFU), said that until the training program was implemented, fishermen were unable to respond to an oil spill. Money is a concern, he said. The training exercises are attended 2-3 times a year, at a per person cost of approximately \$200 a day. CDFU has a contract with Alyeska to provide response, and it is a challenge to maintain a trained fleet. The captains are balking at the paperwork involved, along with the cost and time involved. He expressed concern that many of the long time, well trained, participants may drop out of the program. He explained how the contract with Alyeska began.

[9:06:55 AM](#)

REPRESENTATIVE JOHNSON asked how many volunteers and boats are involved.

MR. MCCUNE said that Cordova maintains the primary core fleet, which is the largest in the state. These are the larger vessels, that undergo drills 2-3 times per year. The smaller backup fleets train annually, as mentioned. He was unable to provide a number of participants, but suggested that perhaps 50

boats are active in Cordova. He offered to provide accurate numbers for Kodiak, and other areas.

REPRESENTATIVE JOHNSON stressed that these citizens are standing in reserve, to act on behalf of the state, in the event of an oil spill.

[9:08:51 AM](#)

DOUGLAS MERTZ, Legislative Monitor, Prince William Sound Regional Citizens Advisory Council, explained the difference between the Federal Unemployment Tax Act (FUTA), and the state UI tax requirements. State law must be consistent with federal statute, and the question is if HB 289, as written, is in accord with federal law. A response has, thus far, not been received, he reported. It would be important to have this answered prior to proceeding with HB 289.

[9:12:22 AM](#)

REPRESENTATIVE JOHANSEN asked how long ago Mr. Mertz was in contact with DLWD to resolve this question.

MR. MERTZ said the question was submitted 2-3 weeks ago.

[9:12:40 AM](#)

REPRESENTATIVE LEDOUX said that it has been stated that this law has been on the books since the Exxon spill. She asked, "Up until now people haven't been filling out this paperwork. What did the feds do?"

MR. MERTZ speculated that the federal government may not have been aware of the situation. For a more direct answer, he deferred to other speakers present.

[9:14:55 AM](#)

MS. SCAVERA stated that she has not received a request from Mr. Mertz requesting a response. The question has been put to the U.S. DOL and a response has been received.

[9:16:04 AM](#)

MR. KRAMER paraphrased from the U.S. DOL e-mail, which read:

Excluding workers from state unemployment insurance coverage would not cause a federal issue, as long as they were not excluded, if they worked for government, non-profit, or, in Alaska, Native American tribes. We said we could not speak to the Internal Revenue Service, but that if the Internal Revenue Service found them to be employees, they could be required to pay the full federal unemployment tax act without the credit for paying the state tax. Requesting a revenue service, from the Internal Revenue Service was suggested as a possibility. The fishing boats might opt out of the training, if they do not treat their workers as employees and do all the paperwork associated as being classified.

CHAIR SEATON surmised that the federal government will not have an issue, as these people are not government workers.

REPRESENTATIVE HOLMES requested a copy of the federal response.

[9:18:47 AM](#)

TRACEY MAYHEW, Representative, Seafarers International Union (SIU), stated support for HB 289, paraphrasing from a written statement, which read as follows [original punctuation provided]:

The Seafarers International Union represents merchant mariners working onboard large ocean going vessels. In Alaskan waters this would be companies like Alaska Tanker Company, Seabulk, Tote, and Horizon Lines.

The SIU is in favor of passing this bill. Should this bill not pass and the fishermen pull out of participating in the oil spill response teams, then the Prince William Sound contingency plan could be in non-compliance which will threaten the livelihood of our members working onboard these vessels.

It is important to ensure that a consistent well trained local response team be maintained, after all who best to protect Alaska waters than Alaskans. Our interest is in seeing that there are steady hands among the fishing crews who drill with the tanker crews as this type of training and familiarity between responders and crews help ensure that the best system of spill response and clean-up is undertaken by the

parties involved. Not passing this bill will create a disincentive for Alaskan fishing crews to participate in this vital program and put other Alaskan livelihoods at risk.

[9:20:21 AM](#)

CHAIR SEATON asked if the voluntary fishing vessel program is an integral part of the oil spill contingency response plan, and if, without their participation, the contingency plan would be compromised, and consequences incurred.

MS. MAYHEW responded, "Yes."

[9:21:13 AM](#)

MIKE MUNGER, Executive Director, Cook Inlet Regional Citizens' Advisory Council, stated support for HB 289. He said that anything that diminishes the spill response program is a step backwards.

[9:22:20 AM](#)

CHAIR SEATON asked for the approximate number of participating response vessels in the Cook Inlet area.

MR. MUNGER estimated approximately 100. The Cook Inlet spill response co-op goes to great lengths to provide "vessels of opportunity" on contract, knowing that at any time some vessels may be out of service.

[9:23:49 AM](#)

JOHN VELSKO, Board Member, City of Homer Prince William Sound Regional Citizens Advisory Committee (PSWRCAC), Chairman, PWSRCAC Legislative Affairs Committee, pointed out that this program is federally mandated. Currently three categories of vessels exist: Tier one, the core fleet, is comprised of about 50 vessels, based out of Cordova, which participate in numerous drills throughout the year; Tier two, comprised of about 220 vessels, based out of Kodiak and Seward, train annually, with two crew members, at a cost of about \$200 per day; Tier three are vessels of opportunity, and the number is unknown. The tier three vessels are not under contract, but would come under contract in the case of a spill, within 1-2 days. He stressed the importance for this legislation to pass, and he pointed out that it pertains to training/drills only, and not continued

clean-up work. Additionally, a definitive legal opinion is imperative to allow the bill to face a federal challenge. Further, he said, if the DLWD wage reporting threshold was raised from \$250 up to \$1,500, a vast number of tier two boats would be in compliance without additional effort or concern. Unfortunately, that will not be of help to the tier one fleet. The total number of participating vessels varies, but the number of available boats at any one time is targeted at 300-350.

[9:30:39 AM](#)

CHAIR SEATON suspended public testimony to the next hearing of the bill.

[9:31:22 AM](#)

CHAIR SEATON offered Amendment 1, labeled 25-LS1182\C, Wayne, 1/22/08, which read:

Page 5, lines 16 - 20:

Delete all material.

Insert "except as provided in (B) of this paragraph;"

Page 6, lines 25 - 28:

Delete all material and insert:

"(22) temporary services related to emergency oil spill training and response activities by an individual described in (17) of this subsection."

[9:31:53 AM](#)

REPRESENTATIVE JOHNSON objected.

REPRESENTATIVE HOLMES objected for discussion, also.

[9:32:01 AM](#)

CHAIR SEATON directed attention to HB 289, page 6 and read paragraph (22):

(22) service performed by a crewmember on a fishing vessel, registered in the state under AS 16.05.475, for services performed while the vessel responds or prepares to respond to, or prepares for or

engages in an emergency or practice drill response to,
an oil spill.

CHAIR SEATON stated that the intention of this bill is not to expand the category of employees but to protect people who are exempt. Paragraph (22) provided an unintentional expansion.

[9:34:08 AM](#)

REPRESENTATIVE HOLMES asked whether Amendment 1 would effect paragraph (17).

CHAIR SEATON assured that it only amends section (22), and minimizes any misunderstandings of who is covered.

REPRESENTATIVE HOLMES offered her understanding of the amendment.

[9:35:48 AM](#)

The committee took an at-ease from 9:35 a.m. to 9:37 a.m.

[9:37:43 AM](#)

CHAIR SEATON clarified that the first part of the amendment eliminates the changes that were listed in [paragraph] (17). The change will now be made in [paragraph] (22) that allows the exemption for oil spill training; by the people that are covered under [paragraph] (17) of the current law.

[9:38:01 AM](#)

REPRESENTATIVE EDGMON pointed out that the amendment includes the term "temporary," and asked if a definition would be prudent, to avoid future argument.

[9:38:47 AM](#)

MS. SCAVERA responded that the word temporary is defined as anyone who is employed full time, 12 months of the year, on a fishing boat. She said, "Working on an oil spill, you may be considered something other than a crewmember on a fishing boat."

CHAIR SEATON asked that DLWD provide a response for the next hearing, and include whether a definition is necessary.

MS. SCAVERA agreed to provide additional information to the committee to clarify the language in the amendment.

[9:41:29 AM](#)

REPRESENTATIVE JOHNSON withdrew his objection.

[9:41:36 AM](#)

REPRESENTATIVE JOHANSEN inquired whether the chair, as co-prime sponsor, supports the amendment.

CHAIR SEATON said, "Yes."

[9:41:51 AM](#)

REPRESENTATIVE HOLMES withdrew her objection.

There being no further objection, Amendment 1 was adopted.

[9:42:21 AM](#)

CHAIR SEATON said that the bill would be held and a CS would be forthcoming.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 9:42 a.m.