

ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE

February 5, 2018

1:10 p.m.

MEMBERS PRESENT

Representative Andy Josephson, Co-Chair
Representative Geran Tarr, Co-Chair
Representative John Lincoln, Vice Chair
Representative Harriet Drummond
Representative Justin Parish
Representative Chris Birch
Representative DeLena Johnson
Representative George Rauscher
Representative David Talerico

MEMBERS ABSENT

Representative Mike Chenault (alternate)
Representative Chris Tuck (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 322

"An Act relating to penalties for discharges of oil and other pollution violations; relating to oil discharge prevention and contingency plans for commercial motor vehicles transporting crude oil; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 322

SHORT TITLE: OIL SPILLS/POLLUTION: PENALTIES; PREVENTION

SPONSOR(S): RESOURCES

01/31/18	(H)	READ THE FIRST TIME - REFERRALS
01/31/18	(H)	RES, FIN
01/31/18	(H)	RES AT 1:00 PM BARNES 124
01/31/18	(H)	Scheduled but Not Heard
02/02/18	(H)	RES AT 1:00 PM BARNES 124
02/02/18	(H)	Heard & Held
02/02/18	(H)	MINUTE (RES)
02/05/18	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

PATTI SAUNDERS, Spokesperson
Alaska Community Action on Toxics
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 322, testified in support and urged for an amendment to certain sections of the bill.

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

POSITION STATEMENT: Testified in support during the hearing of HB 322.

BOB SHAVELSON, Executive Director
Cook Inletkeeper

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 322, testified in support and urged for an amendment to certain sections of the bill.

STEVE CATALANO, Spokesperson
Cook Inlet Regional Citizens Council
Nikiski, Alaska

POSITION STATEMENT: Testified in support during the hearing of HB 322.

ACTION NARRATIVE

[1:10:09 PM](#)

CO-CHAIR ANDY JOSEPHSON called the House Resources Standing Committee meeting to order at 1:10 p.m. Representatives Josephson, Birch, Parish, Talerico, Rauscher, Drummond, Johnson, Lincoln, and Tarr were present at the call to order.

HB 322-OIL SPILLS/POLLUTION: PENALTIES; PREVENTION

[1:10:49 PM](#)

CO-CHAIR JOSEPHSON announced that the first order of business would be HOUSE BILL NO. 322, "An Act relating to penalties for discharges of oil and other pollution violations; relating to oil discharge prevention and contingency plans for commercial motor vehicles transporting crude oil; and providing for an effective date."

[CO-CHAIR JOSEPHSON opened invited testimony on the bill.]

[1:12:33 PM](#)

PATTI SAUNDERS, Spokesperson, Alaska Community Action on Toxics (ACAT), informed the committee she has a personal interest in the bill as she was one of the original members of the Prince William Sound Regional Citizens' Advisory Council, Oil Spill Prevention and Response Committee, and has been a long-time volunteer following the [Exxon Valdez oil spill in 1989]. She opined the bill contributes to the goal of preventing another Exxon Valdez oil spill by imposing meaningful penalties for oil spills to partially compensate Alaskans for the costs of damage to habitat and wildlife, and of restoration. Ms. Saunders noted provisions in the bill are long overdue, such as violations for spills from tanker trucks and the requirement that tanker trucks have contingency plans. She also spoke in support of Section 19 which removes the prohibition on discharges from ballast, pesticides, paint, underground tanks, and cruise ships. A primary goal of the bill is to adjust penalties to the value in 2018 dollars; however, Sections 2 and 6 double the amount of the 1977 penalty, but the 2018 equivalent would be four times that of 1977 amounts, thus doubling the amount does not meet the stated goal found in the sponsor statement. Although in support of HB 322, ACAT urges the committee to adopt amendments to Sections 2 and 6 to reflect actual 2018 dollars.

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REPRESENTATIVE RAUSCHER asked how the bill would stop future events like the Exxon Valdez [oil spill].

MS. SAUNDERS explained penalties are one important element of preventing future oil spills, and another is the requirement of contingency plans for companies transporting and drilling for oil; planning for preventing, minimizing, and cleaning up after a spill is meaningful. She stressed penalties are a deterrent and a way to compensate for damage to the state's resources. Ms. Saunders cautioned if oil spills have no economic cost to violators, there is no incentive to "be the best and safest company you can be."

REPRESENTATIVE BIRCH expressed concern about the unnecessary burden and regulatory cost the bill would impose on commercial and business operations. He pointed out the aforementioned goal of preventing another Exxon Valdez oil spill has been achieved and said he is interested to hear testimony on the bill's impact on the everyday life of Alaskans.

MS. SAUNDERS suggested a comparison of the price per gallon of gasoline in 2018 with the cost per gallon in 1989; in fact, the cost Alaskans pay [now for gasoline] far exceeds the doubling of the cost of penalties incurred by a violator of Alaska's oil spill statutes and regulations. Further, oil prices have risen since 1989 and profits are high for companies that produce, transport, refine, or sell oil at retail; in contrast, oil spill penalties have not, thus realigning penalties to the value of the 2018 dollar is not an undue burden on the oil industry. Penalties established in 1977 are not an effective deterrent and do not reflect the cost to repair damage to the environment.

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DOUGLAS MERTZ, Legislative Liaison, Prince William Sound Regional Citizens' Advisory Council (Prince William Sound RCAC), informed the committee the Prince William Sound RCAC is a nonprofit coalition of interested parties who have a common intent to protect the assets and people of Prince William Sound including businesses, Tribes, commercial fisherman, and environmentalists. He spoke in support of HB 322 which would adjust penalties to reflect inflation; in fact, due to inflation, the effective penalty rates have become a minor cost of doing business. As written, the bill would address this issue and the Prince William Sound RCAC feels this provision is necessary to maintain effective deterrents, and incentives for proper business practices. His experience in oil spill enforcement since the 1970s has revealed the following cycle: after a big oil spill, interest and legislative/regulatory responses are high for about two years and then decline. Therefore, his organization seeks legislative/regulatory provisions that maintain a constant level of enforcement, particularly now that there is interest in new oil exploration and production in the state and off its coast, and with the absence of pertinent federal regulations and safety measures. Mr. Mertz stressed businesses that are invited into the state must be regulated to exercise diligence and prevent spills. He warned against complacency. Although the Prince William Sound RCAC limits its scope of interest to oil transportation and handling within Prince William Sound, his personal experience is that truck rollovers - though they are small spills - are a constant problem because of their frequency; the bill's requirement that truckers and haulers of oil products provide contingency plans does not have to add a regulatory burden. He pointed out the requirement is limited to crude oil and cautioned that many types of refined products are more toxic and

more common than crude oil, and urged the committee to revisit this serious issue.

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REPRESENTATIVE BIRCH inquired as to whether there have been many spills occurring subsequent to the Exxon Valdez that have not been managed or mitigated by the responsible parties.

MR. MERTZ said no, although there have been near misses involving tankers. [There have been no spills similar to the Exxon Valdez], because "Prince William Sound has the best oil spill prevention and response system in the country, maybe in the world now, and our job at RCAC is to make sure it's, it's maintained that way."

REPRESENTATIVE BIRCH related his experience with Alyeska Pipeline Service Company supports the vigilance of the Prince William Sound RCAC; however, close calls don't count, and he noted the absence of significant occurrences in the past 29 years. He pointed out some fees are quadrupled [by provisions within HB 322], from \$5,000 to \$25,000 per day, and questioned whether there is a problem with the transportation business.

MR. MERTZ said the larger increases [to penalties] in the bill are tied to the responsibility for spills by operators who are negligent and do not take the most common required steps to avoid spills, which justifies higher fees and penalties.

REPRESENTATIVE RAUSCHER asked for the most common required steps to avoid spills.

MR. MERTZ acknowledged there are differences between pipelines, wells, trucks, and tankers; for all entities, the most important primary general requirement is for contingency plans so that knowledgeable parties can plan for prevention and response. The absence of advance planning is playing games with resources and livelihoods. In further response to Representative Rauscher, Mr. Mertz opined advance planning is not happening with tanker trucks, which is a problem.

REPRESENTATIVE RAUSCHER said, "So you figure that this bill will create that?"

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MR. MERTZ stated contingency planning for fleets of tanker trucks would help. In further response to Representative Rauscher, he said the bill would require contingency planning. He advised contingency plans do not need to be onerous, or extremely costly, if the operator of a fleet of trucks contracts with an oil spill cleanup service company.

REPRESENTATIVE JOHNSON questioned whether spills are ignored for economic reasons as is implied by the bill.

MR. MERTZ said no, but spill preventive measures and spill planning are ignored for economic reasons.

CO-CHAIR JOSEPHSON suggested the question is related to the economic benefit of noncompliance, which is a provision of HB 322.

MR. MERTZ stated the state should avoid a situation in which spills and spill responses are a cost of doing business, and a company can choose not to be diligent and save money. He remarked:

But, I don't think we see anywhere where it's actually been applied in any rigorous way where a court or other decider actually looks at how much they saved by not complying.

REPRESENTATIVE BIRCH recalled previous testimony that trucking companies already have contingency plans. He observed in Anchorage most residents heat with natural gas and in Juneau, he personally does not have fuel oil delivery, but in Fairbanks many residents do, and cautioned against unintentionally multiplying the cost of essential services to certain areas of the state.

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CO-CHAIR JOSEPHSON asked:

You're not suggesting that we can't enhance penalties because some people would be impacted more than others based on how they consume fuel. Because then we just could never enhance penalties, we would have to wait [until] everyone's on the same system.

REPRESENTATIVE BIRCH said exactly. In a community which relies on fuel products that are transported by rail, truck, or snow machine - if penalties are added - the cost of fuel would increase: regulation adds cost. He noted the absence of

testimony that oil spills are happening in the Prince William Sound area, and restated the Exxon Valdez oil spill was 29 years ago. He opined responsible operators are acting responsibly and restated his dissatisfaction that HB 322 is a committee bill.

REPRESENTATIVE PARISH requested further information related to the toxicity of refined fuel products compared to that of crude oil.

MR. MERTZ related his experience is there is a constant series of truck rollovers that contaminate streams, rivers, and lakes.

REPRESENTATIVE PARISH directed attention to Section 13, which read:

Sec. 13. AS 46.04.030(d) is amended to read:

(d) Upon approval of a contingency plan, the department shall issue to the plan holder a certificate stating that the contingency plan has been approved by the department. The certificate must include the name of the facility, pipeline, tank vessel, commercial motor vehicle, or oil barge for which it is issued, the effective date of the contingency plan, and the date by which the contingency plan must be submitted for renewal. A contingency plan must be submitted for renewal every five years.

REPRESENTATIVE PARISH suggested the addition of "a fleet of motor vehicles."

CO-CHAIR JOSEPHSON urged for the use of well-defined terms in any forthcoming amendments.

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CO-CHAIR TARR acknowledged the Exxon Valdez oil spill was a number of years ago; however, [in 2010] one of the three major owner-operators on the North Slope was the [lessee] of the Deepwater Horizon drilling rig that exploded and leaked oil resulting in over \$4 billion in fees, fines, penalties, and restoration costs. The lessee was found guilty of 14 criminal counts, and lives were lost. Co-Chair Tarr said [HB 322] is part of safety planning - not just to address environmental damages - and she warned against waiting for another disaster. She asked Mr. Mertz whether it is common for jurisdictions to review fees and penalties - which would only be assessed after an operator makes a mistake or is criminally negligent - in order to protect human lives and the environment.

MR. MERTZ restated the high and then declining interest in penalties and preparedness methods, following the Deepwater Horizon disaster, are part of the aforementioned cycle of interest; in fact, after the Deepwater Horizon disaster, residents sought to create RCAC organizations for the Gulf of Mexico and for the North Slope. Also, the federal government is disinterested in enforcing safety regulations in well blowouts, and the state may need to fulfill the federal government's role, or an accumulating lack of interest will lead to spills.

REPRESENTATIVE DRUMMOND clarified that the bill seeks to only regulate trucks that transport crude oil - not that transport refined fuel oil that is delivered to Fairbanks and elsewhere;

she reminded the committee ExxonMobil was forgiven \$4.5 billion of its \$5 billion penalty originally assessed, "and thousands of Alaskans suffered as a result."

REPRESENTATIVE BIRCH asked for information as to the frequency of truck rollovers.

CO-CHAIR JOSEPHSON offered to provide the requested information from DEC.

REPRESENTATIVE DRUMMOND returned attention to the PowerPoint presentation entitled, "Division of Spill Prevention and Response," dated 2/2/18, that was presented to the committee on 2/2/18, and said slide 4 indicated 4.5 million gallons of oil were spilled in 1997.

[1:49:52 PM](#)

BOB SHAVELSON, Advocacy Director, Cook Inletkeeper, informed the committee Cook Inletkeeper is a public interest group, supported by Alaskans, that works for clean water and healthy salmon around Southcentral Alaska. Further, he has been a board member of the Cook Inlet Regional Citizens' Advisory Council and is a board member representing the Oil Spill Region Environmental Coalition, Prince William Sound Regional Citizens' Advisory Council. Mr. Shavelson expressed general support for HB 322. He said during his 22 years of experience with Cook Inletkeeper he has seen hundreds of spills from pipelines, platforms, trucks, and storage tanks; unfortunately, penalties for spills have become a cost of doing business in Alaska. He reported after a spill a company brings in a contractor - who may or may not clean up the spill - and a relatively small fine is paid;

afterward, there is a return to business as usual. Mr. Shavelson said the current penalty regime does not deter future violations and has been eroded due to inflation, so the penalties need to be inflation-proof. Also, he agreed with a previous speaker that Sections 2 and 6 need to be more robust. Regarding oil trucking, he expressed support for contingency plans for trucking and observed BlueCrest is producing from the Cosmopolitan unit adjacent to Stariski Creek on the Kenai Peninsula. Because there is no pipeline to the Tesoro Refinery, BlueCrest is running several trucks per day north on the Sterling Highway. He said BlueCrest has been open with its plans and has generally done a good job reducing risk, but the riskiest part of BlueCrest's business plan is moving the oil north and crossing several important salmon streams, namely, Stariski Creek, Deep Creek, Ninilchik River, Kasilof River, and Kenai River; driving on icy roads is challenging and stream and river crossings are especially risky. Mr. Shavelson reviewed the importance of the streams and rivers to the tourism, sport, commercial, and subsistence economies, therefore [trucking companies] need a rapid response contingency plan in place should there be a spill in a river. He pointed out there are costs to producing, moving, and using oil, and he questioned whether the cost would be borne by the publicly-owned land, water, and fishery resources, or by oil producers and society.

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STEVE CATALANO, Spokesperson, Cook Inlet Regional Citizens Advisory Council (CIRCAC), informed the committee CIRCAC is a nonprofit corporation organized and federally mandated under the provisions of Section 5002 of the Oil Pollution Act of 1990 [OPA 90], exclusively for the oversight, monitoring, assessing, and

evaluation of oil spill prevention safety and response plans, terminal and oil tanker operations, and environmental impacts of oil tanker and oil terminal operations in Cook Inlet. [CIRCAC] consists of thirteen members from seven communities including Alaska Native groups, commercial fishing and aquaculture, tourism, recreational, and environmental interest groups all of which have a significant stake in the environment and resources at risk from oil production and transportation in the region. [CIRCAC] supports HB 322 in its current form, including the use of a mechanism to annually increase penalties based on the Anchorage consumer price index for January 2018 as the base index. Further, CIRCAC supports enhanced civil penalties to deter future noncompliance due the importance to discourage oil discharges and to encourage oil spill prevention and a proper response when prevention measures fail.

REPRESENTATIVE PARISH asked whether mitigations completed by responsible parties after a spill are sufficient to reverse the damage to fisheries.

MR. CATALANO related the operators in Cook Inlet are responsible and with good oversight by the state there is a complete response.

REPRESENTATIVE PARISH questioned whether CIRCAC is familiar with the occurrences totaling about 15,000 gallons that were spilled last year.

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MR. CATALANO said he is familiar with the crude oil spills.

CO-CHAIR JOSEPHSON expressed his understanding the Prince William Sound Regional Citizens' Advisory Council is funded as a caretaker of Prince William Sound, and CIRCAC is similar, but without staffing and resources.

MR. CATALANO explained both organizations were formed under [Section 5002] of OPA 90 and both are tasked with the same responsibilities; however, CIRCAC has a smaller staff and a different metric for funding.

CO-CHAIR TARR asked Mr. Catalano to describe the process for contingency plans.

MR. CATALANO advised spill contingency plans are on a five-year renewal cycle; after five years, a plan holder submits an application to the state for review and public comment. After public comment, the state comments and requests additional information from the company in response to both state and public comments.

CO-CHAIR TARR observed there are requirements for live drills.

MR. CATALANO said companies are required to hold an annual drill which may occur over multiple days; in addition, after a major change, a contingency plan can be amended after public review.

REPRESENTATIVE BIRCH directed attention to the bill on page 9, [lines 2-3], which read:

(2) "oil" means crude oil, petroleum, and any substance refined from petroleum.

REPRESENTATIVE BIRCH surmised the aforementioned definition includes asphalt and any product refined in Alaska.

[2:02:08 PM](#)

The committee took a brief at-ease.

[2:03:17 PM](#)

CO-CHAIR JOSEPHSON noted the abovementioned definition applies to [HB 322] Section 12: Administrative penalties for discharges of oil and crude oil.

[2:03:39 PM](#)

CO-CHAIR JOSEPHSON opened public testimony. After ascertaining no one wished to testify, public testimony was left open.

[HB 322 was held over.]

CO-CHAIR JOSEPHSON made announcements.

[2:07:47 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at [2:07] p.m.