

**ALASKA STATE LEGISLATURE
HOUSE RULES STANDING COMMITTEE**

May 7, 2018

9:30 a.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Chair
Representative Matt Claman, Vice Chair
Representative Sam Kito
Representative Louise Stutes
Representative Mike Chenault
Representative David Eastman
Representative Charisse Millett (alternate)

MEMBERS ABSENT

Representative Lora Reinbold
Representative Chris Tuck (alternate)

OTHER LEGISLATORS PRESENT

Representative Tammie Wilson
Representative Andy Josephson

COMMITTEE CALENDAR

SENATE BILL NO. 64

"An Act adopting the Uniform Environmental Covenants Act; relating to environmental real property covenants and notices of activity and use limitation at contaminated sites to ensure the protection of human health, safety, and welfare, and the environment; and providing for an effective date."

- MOVED HCS SB 64(RLS) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 81(HSS)

"An Act relating to criminal and civil history record checks and requirements; relating to licenses, certifications, appeals, and authorizations by the Department of Health and Social Services; relating to child protection information; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 64

SHORT TITLE: UNIFORM ENVIRONMENTAL COVENANTS ACT

SPONSOR(S): SENATOR(S) MICCICHE

02/17/17 (S) READ THE FIRST TIME - REFERRALS
02/17/17 (S) CRA, L&C
02/28/17 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)
02/28/17 (S) Heard & Held
02/28/17 (S) MINUTE(CRA)
03/07/17 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)
03/07/17 (S) Moved SB 64 Out of Committee
03/07/17 (S) MINUTE(CRA)
03/08/17 (S) CRA RPT 2DP 2NR
03/08/17 (S) DP: BISHOP, HOFFMAN
03/08/17 (S) NR: MACKINNON, STEDMAN
03/14/17 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/14/17 (S) Heard & Held
03/14/17 (S) MINUTE(L&C)
03/16/17 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/16/17 (S) Moved SB 64 Out of Committee
03/16/17 (S) MINUTE(L&C)
03/20/17 (S) L&C RPT 1DP 3NR
03/20/17 (S) NR: COSTELLO, HUGHES, GARDNER
03/20/17 (S) DP: STEVENS
03/27/17 (S) TRANSMITTED TO (H)
03/27/17 (S) VERSION: SB 64
03/29/17 (H) READ THE FIRST TIME - REFERRALS
03/29/17 (H) CRA, L&C
04/11/17 (H) CRA AT 8:00 AM BARNES 124
04/11/17 (H) Heard & Held
04/11/17 (H) MINUTE(CRA)
04/13/17 (H) CRA RPT 4DP 1NR
04/13/17 (H) DP: WESTLAKE, TALERICO, FANSLER, PARISH
04/13/17 (H) NR: RAUSCHER
04/13/17 (H) CRA AT 8:00 AM BARNES 124
04/13/17 (H) Moved SB 64 Out of Committee
04/13/17 (H) MINUTE(CRA)
04/17/17 (H) L&C AT 3:15 PM BARNES 124
04/17/17 (H) Heard & Held
04/17/17 (H) MINUTE(L&C)
02/05/18 (H) L&C AT 3:15 PM BARNES 124
02/05/18 (H) Moved HCS SB 64(L&C) Out of Committee
02/05/18 (H) MINUTE(L&C)
02/07/18 (H) L&C RPT HCS(L&C) 2DP 5NR
02/07/18 (H) DP: BIRCH, KITO
02/07/18 (H) NR: SULLIVAN-LEONARD, STUTES, KNOPP,
JOSEPHSON, WOOL

05/07/18

(H)

RLS AT 9:30 AM GRUENBERG 120

WITNESS REGISTER

KRISTIN RYAN, Director
Division of Spill Prevention and Response
Department of Environmental Conservation (DEC)
Anchorage, Alaska

POSITION STATEMENT: Explained the changes that would be made under the proposed House committee substitute (HCS) for SB 64, labeled 30-LS0446\T, Bullard/Nauman, 5/5/18.

ROBERT SHIRLEY, Regional Environmental Coordinator
U.S. Department of Defense (DoD)
(No address provided)

POSITION STATEMENT: Answered a question during the hearing on SB 64.

EMILY NAUMAN, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered a question during the hearing of SB 64.

ACTION NARRATIVE

[9:30:09 AM](#)

CHAIR GABRIELLE LEDOUX called the House Rules Standing Committee meeting to order at 9:30 a.m. Representatives Chenault, Kito, Claman, Stutes, Millett (alternate), Eastman, and LeDoux were present at the call to order. Also present were Representatives Wilson and Josephson.

SB 64-UNIFORM ENVIRONMENTAL COVENANTS ACT

[9:31:00 AM](#)

CHAIR LEDOUX announced that the only order of business would be SENATE BILL NO. 64, "An Act adopting the Uniform Environmental Covenants Act; relating to environmental real property covenants and notices of activity and use limitation at contaminated sites to ensure the protection of human health, safety, and welfare, and the environment; and providing for an effective date." [Before the committee was HCS SB 64(L&C).]

[9:31:09 AM](#)

REPRESENTATIVE CLAMAN moved to adopt the proposed House committee substitute (HCS) for SB 64, labeled 30-LS0446\T, Bullard/Nauman, 5/5/18, as the working document. There being no objection, Version T was before the committee.

[9:31:44 AM](#)

KRISTIN RYAN, Director, Division of Spill Prevention and Response, Department of Environmental Conservation (DEC), explained the changes that would be made under Version T. She explained that the U.S. Department of Defense (DoD) had raised concerns about SB 64, and DEC worked with the various branches of DoD to find a compromise. She explained that the concern of DoD was in regard to one section of the proposed legislation that addresses notice of use restriction. She said states are not able to put a covenant on federal property, which is why SB 64 proposed a notice of use restriction that would be applied in areas where a covenant could not be used. She said DoD wanted assurance that Alaska was not interested in those properties and would not be restricting use of the property if the state put a notice of use restriction on it. She said in legal terms that is called an interest in the property. She said Version T clarifies that is the case and DoD attorneys are satisfied that that is how the proposed legislation will be interpreted.

[9:33:34 AM](#)

MS. RYAN answered a string of questions from Representative Millett. She said Version T would not give additional powers to DEC; it is a disclosure law that would ensure DEC is "recording what's happening on the record of the property." She said this would allow future buyers of a property to understand what they are getting. She clarified that under the proposed legislation, buyers would be informed when there is remaining contamination above DEC's "cleanup levels." She said the proposed legislation includes language for removal of the covenant, which is voluntary, because the opportunity is always there for cleanup of contamination. She said, "This only comes into effect if you leave contamination above the cleanup level. So, this only applies to ... a portion of our sites, because many are cleaned up to our cleanup standards" She offered an example as follows:

There was a location in Anchorage - a gas station. There was a car wash. ... When they pulled the tanks out of ... the gas station, there was contaminated dirt around the tanks. They removed as much as they could, but some of it migrated over to the foundation of the building. We didn't make them take the building out; we try to be reasonable; and in those scenarios ... you don't have to rip the building out to get the rest of the bad dirt; but when the building is removed, we do want you to deal with that in the right way. The land was transferred. Somebody came in, ripped the building out, spread the dirt everywhere, without knowing that it was above our cleanup levels with petroleum, and put a restaurant in ..., and now we have a problem, because they have now spread this dirt not only in their property but [also] their neighbor's property. So, that's what this bill was intended to avoid. ... If that person had known when they removed the building, this would have been a simple solution to remove that contaminated dirt and not spread it everywhere

MS. RYAN continued her response to Representative Millett's questions. Regarding the covenant, she said, "The terms have to be agreed on by the ... property owner to negotiate a process with the department." She said there is an appeal process to change the covenant. She said if the contamination remains above DEC's cleanup levels and the property owner needs to have that information communicated on the title, then the department can put the covenant on the property; however, she emphasized that department's intent, which she said she thinks is clearly stipulated in the proposed legislation, is for the department to work with the property owner in a joint effort in which everyone agrees "that this is the right path forward."

[9:37:57 AM](#)

REPRESENTATIVE MILLETT pointed to language in Section 1 of Version T, [on page 4, beginning on line 11], which addresses AS 46.04.310. The language she highlighted states that an environmental covenant "is valid and enforceable" even if "it is not of a character that has been traditionally recognized at common law". She asked for an explanation.

MS. RYAN replied the intent is for a covenant that is violated to be enforceable as is the department's other statutory authorities. She gave the example that if someone is told land

is contaminated and puts in a well anyway, then DEC has the right to tell that person he/she cannot provide that unsafe water to people. She said, "That is existing law. All this is doing is communicating that restriction exists."

[9:38:59 AM](#)

REPRESENTATIVE MILLETT offered her understanding that under Version T, AS 46.04.335, [on page 9, line 3], states that the department can bring civil action if there is failure to comply. She asked if DEC can do that now.

MS. RYAN answered yes.

[9:39:38 AM](#)

REPRESENTATIVE STUTES noted there were two House committee substitutes in the committee packet: [30-LS0446\N, Nauman, 5/4/18, which was never offered] and Version T, which the committee had adopted as a working document. She inquired whether DoD was okay with Version T.

[9:41:19 AM](#)

The committee took an at-ease from 9:41 a.m. to 9:43 a.m.

[9:43:47 AM](#)

MS. RYAN reiterated that DEC had worked closely with DoD to come up with a version of SB 64 that DoD approved, and Version T answers all of the concerns raised by DoD.

[9:44:31 AM](#)

ROBERT SHIRLEY, Regional Environmental Coordinator, U.S. Department of Defense (DoD), in response to Representative Stutes' question, stated that Version T meets the intent of a letter from him dated May 4, 2018, concerning DoD consent.

[9:45:05 AM](#)

CHAIR LEDOUX announced the committee would entertain amendments.

[9:45:16 AM](#)

REPRESENTATIVE MILLETT moved to adopt Amendment 1, labeled 30-LS0446\N.1, Bullard, 5/5/18, which read as follows:

Page 6, line 10:

Delete "(b) or (e)"

Insert "(b), (e), or (g)"

Page 8, following line 1:

Insert a new subsection to read:

"(g) The department shall terminate an environmental covenant if the environmental covenant was required under AS 46.04.300 solely because of the level or concentration of residual contamination on the property, and the department determines that level or concentration of residual contamination does not endanger human health, safety, or welfare, or the environment. The department shall provide notice of a termination under this subsection to each person with a current recorded interest in the real property subject to the environmental covenant, each holder, all other persons who originally signed the environmental covenant, or their successors or assigns, and any other person with rights or obligations under the environmental covenant."

Page 10, line 6, following "(e)":

Insert "or (m)"

Page 11, following line 24:

Insert a new subsection to read:

"(m) The department shall terminate a notice of activity and use limitation for real property if the notice of activity and use limitation was required solely because of the level or concentration of residual contamination on the property, and the department determines that level or concentration of residual contamination does not endanger human health, safety, or welfare, or the environment. The department shall provide notice of a termination under this subsection to all persons holding an interest of record in the real property subject to the notice of activity and use limitation, all persons known to the department to have an unrecorded interest in the property, and all affected persons in possession of the property."

[9:45:19 AM](#)

REPRESENTATIVE CLAMAN objected for the purpose of discussion.

[9:45:22 AM](#)

REPRESENTATIVE MILLETT spoke to Amendment 1. She explained that if there is a change in status regarding a contaminant - for example, if DEC lowers it - then the covenant would be removed.

[9:46:13 AM](#)

MS. RYAN said that is the intent of Version T; therefore, the department sees Amendment 1 as consistent with Version T.

[9:46:43 AM](#)

REPRESENTATIVE EASTMAN asked if this is what the department already does or if Amendment 1 is needed as a technical fix.

[9:47:05 AM](#)

MS. RYAN answered that Amendment 1 is not a technical fix that is required and would not change Version T in any way.

[9:47:16 AM](#)

REPRESENTATIVE CLAMAN noted that Amendment 1 had been written for Version N [a proposed House committee substitute never offered], and he questioned where Amendment 1 fits into Version T. He further questioned whether Amendment 1 would significantly change Version T or if Legislative Legal and Research Services would be allowed to make conforming changes.

[9:47:45 AM](#)

EMILY NAUMAN, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, suggested it may be helpful to adopt Amendment 1 as a conceptual amendment, since it was originally written for a different version. That said, she noted that the changes between the N and T Versions were relatively minor; therefore, she said she would be surprised if Amendment 1 would not function as is. She said she did not have time to check the page and line reference, which may be the only changes that would need to be made to conform to Version T.

[9:48:30 AM](#)

CHAIR LEDOUX announced she would grant Legislative Legal Services the right to make technical and conforming changes to any amendments that are adopted.

[9:48:49 AM](#)

REPRESENTATIVE CLAMAN removed his objection to Amendment 1. There being no further objection, Amendment 1 was adopted.

[9:49:04 AM](#)

CHAIR LEDOUX indicated there was an Amendment 2 that she would like to save for discussion at another time.

[9:49:22 AM](#)

REPRESENTATIVE CLAMAN moved to report HCS SB 64, Version 30-LS0446\T, Bullard/Nauman, 5/5/18, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS SB 64(RLS) was reported out of the House Rules Standing Committee.

[9:49:41 AM](#)

The committee took an at-ease from 9:49 a.m. to 9:54 a.m.

[9:54:11 AM](#)

ADJOURNMENT

CHAIR LEDOUX recessed the House Rules Standing Committee meeting at 9:54 a.m. to a call of the chair. [The meeting never reconvened.]