

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

February 28, 2017

3:30 p.m.

MEMBERS PRESENT

Senator Click Bishop, Chair
Senator Anna MacKinnon
Senator Lyman Hoffman
Senator Bert Stedman
Senator Berta Gardner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 78

"An Act establishing the second Monday of October of each year as Indigenous Peoples Day."

- MOVED HB 78 OUT OF COMMITTEE

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."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 78

SHORT TITLE: INDIGENOUS PEOPLES DAY

SPONSOR(S): REPRESENTATIVE(S) WESTLAKE

01/25/17	(H)	READ THE FIRST TIME - REFERRALS
01/25/17	(H)	CRA
01/31/17	(H)	CRA AT 8:00 AM BARNES 124
01/31/17	(H)	Moved HB 78 Out of Committee
01/31/17	(H)	MINUTE(CRA)
02/01/17	(H)	CRA RPT 4DP 2NR

02/01/17 (H) DP: WESTLAKE, DRUMMOND, FANSLER, PARISH
 02/01/17 (H) NR: TALERICO, RAUSCHER
 02/03/17 (H) TRANSMITTED TO (S)
 02/03/17 (H) VERSION: HB 78
 02/06/17 (S) READ THE FIRST TIME - REFERRALS
 02/06/17 (S) CRA, STA
 02/21/17 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)
 02/21/17 (S) Scheduled but Not Heard
 02/23/17 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)
 02/23/17 (S) Heard & Held
 02/23/17 (S) MINUTE(CRA)
 02/28/17 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)

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)

WITNESS REGISTER

ALBERT NINGEULOOK, representing himself and respectful memories of his late parents, grandparent, ancestors and people from Alaska

Shishmaref, Alaska

POSITION STATEMENT: Supported HB 78.

SENATOR MICCICHE

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 64.

RACHEL HANKE, Staff to Senator Micciche

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Commented on SB 64 for the sponsor.

JENNIFER CURRIE

Department of Law (DOL)

Anchorage, Alaska

POSITION STATEMENT: Commented on SB 64.

KRISTIN RYAN, Director

Division of Spill Prevention and Response

Department of Environmental Conservation (DEC)

Anchorage, Alaska

POSITION STATEMENT: Commented on SB 64.

BEN ORZESKE

Uniform Law Commission

Chicago, Illinois

POSITION STATEMENT: Commented on SB 64.

ACTION NARRATIVE

[3:30:07 PM](#)

CHAIR CLICK BISHOP called the Senate Community and Regional Affairs Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Hoffman, MacKinnon, Gardiner, and Chair Bishop. Senator Stedman arrived soon thereafter.

HB 78-INDIGENOUS PEOPLES DAY

[3:30:42 PM](#)

CHAIR BISHOP announced consideration of HB 78. He said that Representative Westlake provided an overview during the last hearing. He opened public testimony on HB 78.

He recognized Representative David Westlake, sponsor of HB 78, in the audience.

[3:32:04 PM](#)

ALBERT NINGEULOOK, representing himself and respectful memories of his late parents, grandparent, ancestors and people from Alaska, Shishmaref, Alaska, supported HB 78. He said that Webster's Dictionary defines "indigenous" as "having originated in and being produced, growing, living, or occurring naturally in a particular region or environment."

He said that HB 78 simply recognizes and respectfully honors the original inhabitants of Alaska. His Mount Edgecombe High School year book's title was "Taheta," signifying the tribes: Tlingit, Athabaskan, Heida, Eskimo, Tsimshian, and Aleut. Alaska's legislators make powerful decisions on their behalf unlike the federal government who is still "stomping grapes."

CHAIR BISHOP, finding no further comments, closed public testimony on HB 78.

SENATOR MACKINNON moved to report HB 78, version 30-LS0368\A, from committee with individual recommendations and attached zero fiscal note(s).

CHAIR BISHOP stated that without objection, HB 78 moved from the Senate Community and Regional Affairs Standing Committee.

[3:34:18 PM](#)

At ease

SB 64-UNIFORM ENVIRONMENTAL COVENANTS ACT

[3:35:34 PM](#)

CHAIR BISHOP called the meeting back to order and announced consideration of SB 64.

SENATOR PETER MICCICHE, sponsor of SB 64, Alaska State Legislature, Juneau, said this bill is about taking blighted property and putting it back into productive use in our communities. It's something lawmakers think about in moving policy forward. They want to streamline and remove obstacles that inhibit business, commerce, or the transfer of property, but they are unwilling to reduce expectations for public health, safety, and a healthy environment. He said SB 64 blends all those objectives.

By way of background, he explained that the Uniform Law Commission created the Uniform Environmental Covenants Act in 2003 to overcome inadequate common law rules. It allows for the sale of property with use limitations to mitigate risk. Alaska is one of only seven states that does not have an environmental covenant law at this time. It protects both the buyer and the seller of contaminated property while allowing the fullest and best use of the property until the contamination reaches safe levels. The covenant is specific to the risks at a particular site and restricts activities that result in exposure while allowing other uses to occur. Such a process is often all that is necessary to make property transferable as well as economically and functionally viable.

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SENATOR MICCICHE gave an example of what used to be a gasoline station with some contamination on the site. Perhaps it's gone into an estate and is becoming blighted. It's in a valuable part of town. The seller now could record the contamination on a covenant if somebody is willing to invest in the property and want to open an auto parts store that is appropriate on that site and is willing to take on that contamination level. Then some day when the contamination is removed it would be removed from the covenant. It's voluntary, but the covenant provides

transparency throughout the life of the property. It provides assurances to buyers and sellers that risks will be safely managed. It is a simple process and would not supplant or impose current contamination removal standards which will continue to be managed as they are currently. The act would not affect the liability of the principally responsible parties, but would provide a method to reduce exposure to third parties.

[3:39:15 PM](#)

RACHEL HANKE, Staff to Senator Peter Micciche, Alaska State Legislature, Juneau, Alaska, reviewed the following sectional analysis for SB 64:

Section 1

Adds a new article to AS 46.04 that

- AS 46.04.300 - establishes when an environmental covenant is necessary, who is a holder (multiple holders are allowed), who is bound by the covenant, subordination, rules for commonly-held property, and states that the covenant has no interest in the land;
- AS 46.04.305 - provides which documents are required for the record and additional documents that may be requested;
- AS 46.04.310 - provides situations in which the covenant is still valid and enforceable and is priority over common law;
- AS 46.04.315 - outlines procedure for notice;
- AS 46.04.320 - establishes guidelines for recording the covenant in property records;
- AS 46.04.325 - defines terms for termination of a covenant and amendment by court action i.e., consent, foreclosure with another interest as priority, or eminent domain;
- AS 46.04.330 - defines procedure for termination of a covenant and amendment by consent;
- AS 46.04.335 - states the department has the power to enforce and bring civil action if there is failure to comply;
- AS 46.04.340 - creates the ability to enforce an environmental covenant on federal lands;
- AS 46.04.345 - places covenant restrictions above other land-use laws;

- AS 46.04.350 - provides that the department shall maintain a registry for covenants;
- AS 46.04.355 - states that this Act is uniform law;
- AS 46.04.390 - provides definitions used in the Act.

Section 2 is uncodified law and provides that the Department of Environmental Conservation and the Department of Natural Resources may adopt necessary regulations to implement this Act.

Section 3 provides an immediate effective date for Section 2 of this Act.

[3:41:24 PM](#)

SENATOR GARDNER asked what the differences are between the original bill and version J.

JENNIFER CURRIE, Department of Law (DOL), Anchorage, Alaska, answered that one small change adds a list of items that may be included in a covenant but are not required in section 305(b).

Another addition was made to the number of signatories of a covenant. The Department of Natural Resources (DNR) is a required signatory for any piece of property the state has an interest in and the bill specifies that the DNR signature cannot be waived.

[3:43:28 PM](#)

SENATOR MACKINNON asked what an environmental covenant is.

SENATOR MICCICHE answered that it is a specific recordable interest in real estate that will be tracked to the Department of Environmental Conservation (DEC) on its database. The department's database is already in place, so they don't expect a fiscal note. The covenant is specific to the risks of that particular site and restricts activities that could result in exposure while allowing other uses to occur. Essentially, he said it travels with the property until the removal standards are met for that particular contaminant.

He added that it protects the buyer as much as the seller for a couple of reasons and was prompted by an incident in Anchorage where a buyer was unaware of the contamination on a piece of property and spread a bunch of dirt around it for the current use of that property, and in doing so, he contaminated adjacent sites, and then became liable for that contamination, too. So, it really does protect both, and it allows greater flexibility

for the department on a timeline of dealing with contaminated property while allowing blighted property to return to productivity.

[3:45:21 PM](#)

SENATOR MACKINNON said she wanted it on the record specifically that it's a "recordable interest on a piece of property."

[3:46:40 PM](#)

At ease

[3:47:25 PM](#)

CHAIR BISHOP called the meeting back to order and invited Kristin Ryan to comment on his following hypothetical: say there is a business here and there's a fire, and the fire department comes in and puts the fire out. There are different types of hazardous materials once they are released from their containers. Another person owns another piece of property and the retardant ran over onto it. Now this person can't sell their property because the department has identified some of the material as a real problem. Does this bill help that person be able to make a sale of this property?

KRISTIN RYAN, Director, Division of Spill Prevention and Response, Department of Environmental Conservation (DEC), Anchorage, Alaska, replied in that scenario they would require the responsible party to address the contamination they caused on their property and their neighbor's property. If for some reason - there are many reasons this could occur - it's okay to leave some of that contamination on either property above the cleanup level, a covenant would come into play. It would say - for example, a flame retardant contaminated the ground water - you would not be allowed to put a well on this property, but all other uses can go forward.

[3:49:04 PM](#)

SENATOR STEDMAN joined the committee.

SENATOR GARDNER asked if a person considers buying a piece of property and needs to work with DEC to transfer it, what the timeline is for this process to be resolved.

MS. RYAN replied the department already does this with what they call "institutional controls;" it is put on a property where contamination has been left above cleanup levels. This bill communicates those controls to future buyers by staying with the land. Right now those controls remain on a database the

department maintains; sometimes they are referenced and sometimes they're not. This bill doesn't change anything they are currently doing; it just records that action on the title of the property so that future buyers know about it. It won't have any impact on the timeline of the transfer of a property.

CHAIR BISHOP said this bill is just a full disclosure on the property title.

MS. RYAN said that was right.

CHAIR BISHOP asked how AS 46.04.340 that creates the ability to enforce environmental covenant on federal lands works.

MS. RYAN replied that over 68 percent of contaminated sites are on federal property and the department is not allowed to put an environmental covenant on federal property. This bill will allow them to put a notice of use restriction on federal property, which is about as good as it can get. It is a tool that the State of Colorado developed in conjunction with federal agencies, and it has been working there.

CHAIR BISHOP said so they can make a public notification of federal contaminated property.

MS. RYAN answered yes, because there are many cases where that property is transferred either into state ownership or private ownership, they want to make sure that restriction is communicated to future buyers (Native corporations), because there have been many cases of the transfer of contaminated federal property and the new purchaser may or may not know about it. The old transfers can't be fixed, but going forward this legislation would stop that from occurring.

[3:52:43 PM](#)

SENATOR HOFFMAN asked how contaminated properties are identified particularly those that are on state and private lands.

MS. RYAN answered they are identified in a variety of ways, but usually someone discovers a release and contacts the department about it.

SENATOR HOFFMAN said some people from Bristol Bay came to his office last week and were concerned about some contaminations that may have occurred during the Pebble Mine search for minerals and asked if those had been identified.

MS. RYAN said that activity occurred under DNR permits and no contamination has been left that is above the cleanup levels. Residual drilling muds remain, but they are not designated as contaminated sites, which would trigger her department's involvement.

SENATOR HOFFMAN asked if it's DNR's responsibility to make that determination or DEC's if the people of the region have concerns.

MS. RYAN replied that they can contact her department and they can talk about the results if they have data that indicates the contamination is above the cleanup levels.

[3:54:38 PM](#)

SENATOR MACKINNON asked if she is familiar with the Legacy Well issue on federal land and if those are listed as contaminated sites.

MS. RYAN answered yes, they are known. And if the federal government chose to leave contamination above the cleanup levels, which has been decided for some of the sites, they would issue a notice of restricted use because of the inability to use an environmental covenant on federal property.

[3:55:26 PM](#)

BEN ORZESKE, Uniform Law Commission, Chicago, Illinois, said they are a non-profit organization that has been around since 1982, and their job is to draft nonpartisan, model legislation in areas of state law for which there is some need for uniformity between the states. Alaska has enacted dozens of uniform laws including the Uniform Commercial Code and the Uniform Anatomical Gift Act. This is another uniform act and it was completed in 2003. It has since been enacted in 23 states, plus the District of Columbia (D.C.) and the U.S. Virgin Islands. Another 20 states have their own environmental covenant law that is not a version of the uniform act, but Alaska is one of only seven states that doesn't have some version of an environmental covenant law.

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He agreed with all of the previous testimonies and provided a couple of examples of how the environmental covenants can be used which will help illustrate how flexible it is. One common use is when a land fill is closed. Often a place where trash has been dumped will be capped with a concrete cap and the environmental covenant in that case might prohibit any

excavation that would penetrate that cap and allow moisture to seep in. They might be familiar with the Love Canal dump site in upstate New York that was capped and later sold to a developer who punched through the containment measure on top of the dump releasing hazard substances to people who had built homes on top of it. That could have been avoided had there been some sort of covenant in place.

MR. ORZESKE said covenants often have some sort of reporting requirement, one can't dig a new well or pump ground water to the surface without a monitoring requirement where the owner has to do some sort of test monthly or quarterly and report the result to the DEC. An environmental covenant might say that requirement remains in place until the contamination level reaches a certain level for six months consecutively and at that point it can be removed, and title cleared, and that land put back into fully productive use.

He said it's as flexible as the department chooses to make it: whatever parties agree to. It is completely voluntary, and people will generally get into these things because they are trying to make the best of a bad situation and make the land as productive as it can be.

CHAIR BISHOP announced he would hold SB 64 in committee for future consideration.

[4:00:08 PM](#)

CHAIR BISHOP adjourned the Senate Community and Regional Affairs Committee meeting at 4:00 p.m.