

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

February 14, 2018

3:32 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator John Coghill, Vice Chair
Senator Natasha von Imhof
Senator Bert Stedman
Senator Kevin Meyer
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Click Bishop

COMMITTEE CALENDAR

SENATE BILL NO. 158

"An Act relating to oil and hazardous substances and waiver of cost recovery for containment and cleanup of certain releases; and providing for an effective date."

- MOVED SB 158 OUT OF COMMITTEE

SENATE BILL NO. 173

"An Act relating to the liability of a person or the state for the release of certain pesticides during application on a utility pole."

- HEARD & HELD

SENATE BILL NO. 92

"An Act relating to abandoned and derelict vessels; relating to the registration of vessels; relating to certificates of title for vessels; relating to the duties of the Department of Administration; relating to the duties of the Department of Natural Resources; establishing the derelict vessel prevention program; establishing the derelict vessel prevention program fund; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 158

SHORT TITLE: OIL/HAZARDOUS SUB.:CLEANUP/REIMBURSEMENT

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/24/18	(S)	READ THE FIRST TIME - REFERRALS
01/24/18	(S)	RES, FIN
02/02/18	(S)	RES AT 3:30 PM BUTROVICH 205
02/02/18	(S)	Heard & Held
02/02/18	(S)	MINUTE(RES)
02/14/18	(S)	RES AT 3:30 PM BUTROVICH 205

BILL: SB 173

SHORT TITLE: LIABILITY: PESTICIDES & UTILITY POLES

SPONSOR(s): MICCICHE

02/02/18	(S)	READ THE FIRST TIME - REFERRALS
02/02/18	(S)	RES
02/12/18	(S)	RES AT 3:30 PM BUTROVICH 205
02/12/18	(S)	Heard & Held
02/12/18	(S)	MINUTE(RES)
02/14/18	(S)	RES AT 3:30 PM BUTROVICH 205

BILL: SB 92

SHORT TITLE: VESSELS: REGISTRATION/TITLES; DERELICTS

SPONSOR(s): MICCICHE

03/10/17	(S)	READ THE FIRST TIME - REFERRALS
03/10/17	(S)	RES, FIN
03/27/17	(S)	RES AT 3:30 PM BUTROVICH 205
03/27/17	(S)	Heard & Held
03/27/17	(S)	MINUTE(RES)
03/31/17	(S)	RES AT 3:30 PM BUTROVICH 205
03/31/17	(S)	Heard & Held
03/31/17	(S)	MINUTE(RES)
02/12/18	(S)	RES AT 3:30 PM BUTROVICH 205
02/12/18	(S)	Scheduled but Not Heard
02/14/18	(S)	RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

AKIS GIALOPSOS, staff to Senator Giessel and the Senate Resources Committee
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Commented on SB 173 and SB 92.

EMILY NAUMAN, Attorney
Legislative Legal
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Commented on SB 173.

RACHEL HANKE, staff to Senator Micciche
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Commented on SB 173 and presented the sectional analysis of CSSB 92 (RES), version 30-LS0481\J, for the sponsor.

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

POSITION STATEMENT: Answered questions on SB 173.

KATHIE WASSERMAN, Executive Director
Alaska Municipal League
Juneau, Alaska

POSITION STATEMENT: Supported SB 92.

CARL UCHYTIL, President
Alaska Association of Harbor Masters and Port Authorities
Juneau, Alaska

POSITION STATEMENT: Supported SB 92.

MARLA THOMPSON, Director
Division of Motor Vehicles (DMV)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Commented on the fiscal note for SB 92.

BRYAN HAWKINS, Vice President
Alaska Association of Harbor Masters and Port Authorities and
Homer Harbor Master
City of Homer, Alaska

POSITION STATEMENT: Supported SB 92.

RACHEL LORD, Executive Secretary
Alaska Association of Harbor Masters and Port Authorities

POSITION STATEMENT: Supported SB 92.

ED KING, Special Assistant to the Commissioner
Department of Natural Resources (DNR)

Juneau, Alaska

POSITION STATEMENT: Commented on the DNR fiscal note for SB 92.

KRIS HESS, Operations Manager
Division of Mining, Land and Water
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Commented on SB 92.

ACTION NARRATIVE

[3:32:41 PM](#)

CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:32 p.m. Present at the call to order were Senators Stedman, Bishop, Von Imhof, Coghill, Wielechowski, and Chair Giessel. Senator Meyer was excused.

SB 158-OIL/HAZARDOUS SUB.:CLEANUP/REIMBURSEMENT

[3:33:29 PM](#)

CHAIR GIESSEL announced consideration of SB 158 giving the Department of Environmental Conservation (DEC) the discretion not to charge homeowners the cost of technical assistance for a localized spill such as with heating oil tanks. She said public testimony was opened and closed on February 2. There are no proposed amendments. She found no comments.

SENATOR COGHILL moved to report SB 158, version 30-GS2583\A, from committee with individual recommendations and attached fiscal note(s). There were no objections and it was so ordered.

[3:34:49 PM](#)

At ease

SB 173-LIABILITY: PESTICIDES & UTILITY POLES

[3:36:13 PM](#)

CHAIR GIESSEL called the meeting back to order and announced consideration of SB 173. It would limit the liability for utilities using a specific pesticide on wood utility poles. Public testimony was opened and closed on February 12. The sponsor asked for some clarifying changes and that is the reason for the proposed committee substitute.

SENATOR COGHILL moved to adopt the work draft CSSB 173(), version 30-LS1332\D, as the working document.

CHAIR GIESSEL objected for discussion purposes and invited her staff to review the changes.

[3:37:20 PM](#)

AKIS GIALOPSOS, staff to Senator Giessel and the Senate Resources Committee, Alaska State Legislature, Juneau, Alaska, explained:

CS for Senate Bill 173 CORRECTED Explanation of
Changes from Version A to Version D

1. Page 1, Lines 1-2: Amends the title to read "An Act relating to the liability of a person for the release of certain pesticides on a wood utility pole." [The title in the previous version read "An Act relating to the liability of a person or the state for the release of certain pesticides during application on a utility pole."]
2. Page 1, Line Six: Amends Section. 1 (the proposed newly created AS 09.65.243) by removing the words "neither the state nor" [The Committee Substitute, in Change 4, add the definition of person given in AS 46.03.900. Because the state is considered a person under AS 46.03.900, the references to the state in Section. 1 were redundant and removed.]
3. Page 1, Lines 10-11: Amends Section. 1 (the proposed newly created AS 09.65.243), by rewriting paragraph (1) to read "the release resulted during the installation, use, or removal of a wood utility pole treated with a registered pesticide;" [The previous paragraph (1) read "the release resulted from the application of the pesticide on a wood utility pole during the installation, use, or removal of the utility pole;]
4. Page 1, Lines 14-15: Amends Section. 1 (the proposed newly created AS 09.65.243) by adding a new subsection (b) to read: "For the purposes of this section, "person" has the meaning given in AS 46.03.900"

[3:39:52 PM](#)

CHAIR GIESSEL removed her objection and finding no further objections, announced that CSSB 173(RES), version 30-LS1332\D, was adopted and that she would set it aside until Friday's

hearing, which will allow time for amendments to be submitted by 5 p.m. on Thursday.

3:40:55 PM

SENATOR WIELECHOWSKI said he understood that AS 46.03.822 deals with strict liability, so now if there is a release of a pesticide the utility would be strictly liable. He asked if the bill removes all liability including gross negligence.

EMILY NAUMAN, Attorney, Legislative Legal, Alaska State Legislature, said she didn't know the answer to his questions, but would be happy to do research on how AS 46.03.822 has been applied.

3:42:59 PM

SENATOR WIELECHOWSKI asked the sponsor if he was open to a provision saying there would still be liability for gross negligence or reckless conduct on behalf of an installer.

SENATOR MICCICHE answered that the utility companies don't apply the pesticide. The poles are treated in the manufacturing process and the utility company installs it. He didn't think it fits in this case.

SENATOR WIELECHOWSKI said that was a good point. He recalled a recent incidence in which hundreds of wells were polluted. Under strict liability Flint Hills is responsible. But this swings responsibility to the other side of the pendulum and his concern is that utilities have easements all across the state. So, who is responsible if they are eliminating liability for a person, defined as anyone? Who is responsible? The manufacturer? It shouldn't be a person who has absolutely no say about where the poles go. And Pentachlorophenol, called "Penta," is banned in 26 countries. Private home owners are being forced to put a product on their property that is a known carcinogen, that has been listed by the EPA as being extremely toxic, and that has contaminated water wells in other states. His reasoning was if someone was grossly negligent, at least keep the liability for the applicator or the manufacturer.

SENATOR MICCICHE said he was sure there is a place in Alaska law saying if gross negligence occurs in the installation of a pole - penetrate an aquifer, for instance, not with Penta but with some geologic damage - this does not release a utility company from gross negligence as they carry out their duties. It releases them from the effects of Penta. In this case, Penta is what is used for power poles in the United States. It's not

banned in the U.S. In fact, it is specifically exempted if it is used under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

SENATOR GIESSEL said they have heard that a pole somehow contaminated an aquifer for a shall well in Vermont and asked if he knew how deep the poles are inserted into the ground and how deep are wells are that are certified by DEC. She knows that people in the Hillside area of Anchorage seal the tops of their wells because natural nitrates seep in from the vegetation on the surface.

[3:49:40 PM](#)

RACHEL HANKE, staff to Senator Micciche, Alaska State Legislature, answered that the utility poles are inserted eight feet below ground level.

SENATOR WIELECHOWSKI asked if the federal government or any other state provides absolute exemption from liability for damages caused by Penta in a utility setting.

SENATOR MICCICHE said he would have to get that answer for him.

[3:50:55 PM](#)

KRISTIN RYAN, Director, Division of Spill Prevention and Response (SPAR), Department of Environmental Conservation (DEC), Anchorage, Alaska, answered that she wasn't aware of any states or the federal government doing that.

SENATOR WIELECHOWSKI said the one thing Vermont did was create best management practices, and he wondered if the sponsor would support an amendment that required DEC to come up with best management practices for installing and removal of poles that are treated with registered pesticides.

SENATOR MICCICHE responded that he expects the DEC to do that.

SENATOR WIELECHOWSKI asked if the sponsor would object to redefining "person" so that the ones that are excluded from liability are the utilities and the state but not the applicator or manufacturer of the pesticide.

SENATOR MICCICHE replied that he wanted to think that over until tomorrow. The utilities and the state might already have an exemption under FIFRA.

He said Rotenone is an insecticide/pesticide, that the state uses to poison entire water systems to kill pike. When Rotenone arrives in a container it has a dangerous sticker on it because in a concentrated form it is dangerous. It is applied in a much less concentrated form. The toxicity is gone in five to six days in spring sunlight. It quickly reaches its half-life and is no longer toxic. He is bringing this up because they are talking about permitted use for a very specific case. The Alaska Department of Fish and Game (ADF&G) - when one talks about its risk to fish - uses Rotenone because it is not good for fish.

SENATOR MICCICHE said in the case of utility poles, Penta is used very locally. When samples have been taken, it remains very close to the pole and in very low levels. When it is exempted under FIFRA it is for a specific use, which is related to the installation, removal, and replacement of power poles that are treated with a substance that is used all over the country.

[3:56:51 PM](#)

SENATOR WIELECHOWSKI said there are 250,000 poles across Alaska, and he agreed that it is extremely rare for someone to be damaged, but he wasn't aware of any waiver of liability under federal law for using these substances. He was curious if ADF&G had undertaken any studies of the impacts of Penta on wildlife, humans, and the environment in Alaska.

MS. RYAN answered that SPAR is doing a study right now called the Contaminated Sites Program on some poles in the Kenai Wildlife Refuge. The results aren't out yet, and she is not aware of any other work being done on Penta. She said they all rely heavily on EPA work when it comes to pesticides, and the work they have done on Penta is very thorough as well as being accessible on line.

SENATOR WIELECHOWSKI asked how far the study has gone and if they had found anything. Maybe they don't have to worry about this issue.

MS. RYAN answered that the contractor is collecting samples now and the data is being coordinated with a project in the Department of Transportation and Public Facilities (DOTPF) that is adjusting a road and therefore, moving some poles nearby. The samples are being collected and the results won't be ready for several weeks. The question they are trying to answer, knowing the product's toxicity through the EPA, is if it behaves the same way in the Alaskan environment as it does in Vermont to

figure out how to develop best management practices for the industry when the poles are used in wetlands.

[4:01:10 PM](#)

SENATOR WIELECHOWSKI said it looks like this issue is being rushed and he wondered if that was premature in light of the fact that a study is going on right now. They don't know if it is permeating into waters or not. He urged them to slow down.

SENATOR MICCICHE said he wanted to clarify that there has been no damage. They are talking today because a detectable level was found in one instance of unscientific sampling. He welcomes any research by the department, but the reality is that the state has 250,000 poles, and if something is learned, they may have a different way of handling poles in the future. This bill is about existing exposure to the ratepayers and the utilities that provide those services in Alaska.

[4:03:05 PM](#)

CHAIR GIESSEL held SB 173 in committee until Friday with amendments due by 5 p.m. tomorrow.

SB 92-VESSELS: REGISTRATION/TITLES; DERELICTS

[4:03:18 PM](#)

CHAIR GIESSEL announced consideration of SB 92. This is its third hearing and the sponsor had done some work on the bill.

[4:03:54 PM](#)

At ease

[4:04:31 PM](#)

CHAIR GIESSEL called the meeting back to order.

SENATOR COGHILL moved to adopt work draft CSSB 92(), version 30-LS0481\J, as the working document.

CHAIR GIESSEL objected for discussion purposes. She invited her committee staff to explain the changes.

[4:04:57 PM](#)

AKIS GIALOPSOS explained the following changes in CSSB 92(), from version D to version 30-LS0481\J:

1. Page 2, Line 28: Amends Section. 3 (AS 05.25.055(i)) by removing the words "The United States or." [The words "The United States or" are currently

in existing law and appeared in the previous version of the bill.]

2. Page 5, Line 10: Amends Section. 9 (AS 30.30.010(a)) by removing the word "Docked." [The word "Docked" is currently in existing law and appeared in the previous version of the bill.]

3. Page 5, Line 20: Amends Section. 11 (AS 30.30.010(e)) by changing the proposed penalty from a "B" misdemeanor to an "A" misdemeanor [The previous version of the bill proposed to make the violation a class "B" misdemeanor. Existing law stipulated a violation under AS 30.30.010 was an unclassified misdemeanor.]

4. Page 5, Line 27: Amends Section. 12 (AS 30.30.010) by removing the words "(a) of" to the proposed newly created subsection (f). [The newly created subsection (f) to AS 30.30.010 permits the Department of Natural Resources and municipalities to report a violation to the Attorney General. Whereas the previous version only permitted reporting of a violation to AS 30.30.010 (a), the proposed CS permits reporting of any violation under AS 30.30.010.]

[4:07:49 PM](#)

5. Page 6, Lines 4-6: Amends Section. 13 (the proposed newly created AS 30.30.015) by rewriting the following sentence to read "On application for injunctive relief and a finding that a person has violated AS 30.30.010, the superior court may grant the injunction. [The sentence in the prior version of the bill read "On application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction.]

6. Page 6, Lines 14, 17: Amends Section. 14 (AS 30.30.030) by changing the days a vessel owner has to obtain authorization to be exempted from a derelict classification from "30" to "14."

7. Page 7, Lines 5, 8: Amends Section. 15 (AS 30.30.040) by changing the wording to read "the state agency or municipality." [The prior version of the bill proposed using the wording "the state or municipal agency."]

8. Page 7, Line 7: Amends Section. 15 (AS 30.30.040) by adding the words "if possible." [The prior version of the bill required the state agency or municipality to physically post a written notice of impoundment on the vessel 30 days prior to impoundment without exception.]

9. Page 7, Line 27-28: Amends Section. 16 (the proposed newly created AS 30.30.040) by adding language that reads "with the state agency or municipality that sent the notice." [The prior version of the bill afforded the vessel owner to file a demand for a pre-impoundment hearing. But the previous version did not specify to what entity the vessel owner could make such a demand.]

10. Page 8, Lines 9, 16-17: Amends Section. 16 (the proposed newly created AS 30.30.040) by changing the wording to read "the state agency or municipality." [Please see Change 7.]

11. Page 8, Lines 21-22: Amends Section. 17 (the proposed newly created AS 30.30.045) by changing the wording to read "the state agency or municipality." [Please see Change 7.]

12. Page 9, Lines 9-10, 12, 16, 23, 25, 27, 29: Amends Section. 18 (the proposed newly created AS 30.30.055) by changing the wording to read "the state agency or municipality." [Please see Change 7.]

13. Page 9, Line 26: Amends Section. 18 (the proposed newly created AS 30.30.055) by changing the reference from AS 30.30.097 to AS 30.30.096. [This is due to subsequent proposed newly created sections being removed and renumbered in the Committee Substitute.]

14. Page 10, Lines 19-20, 23; Page 11, Line 1, 9, 12: Amends Section. 20 (the proposed newly created AS 30.30.065) by changing the wording to read "the state agency or municipality." [Please see Change 7.]

15. Page 11, Lines 12-20: Amends Section. 20 (the proposed newly created AS 30.30.065) by adding a new paragraph (2) to subsection (e) that reads "the hearing officer shall award to the owner attorney fees

and costs incurred in the hearing; the award shall be made as provided by Rules 69, 79, and 82, Alaska Rules and Civil Procedures." [The prior paragraphs (1), (2), and (3) have been consolidated under paragraph (1) and organized with subparagraphs (A), (B), and (C).]

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16. Page 11, Line 24: Amends Section. 21 (the proposed newly created AS 30.30.075) by changing the wording to read "the state agency or municipality." [Please see Change 7.]

17. The prior version's Section. 22, related to insurance requirements, is removed and not in the proposed Committee Substitute. The following sections are renumbered accordingly.

18. Page 12, Lines 2, 22: Amends AS 30.30.090 (Current Section. 22, Prior Version Section. 23) by adding the word "abandoned" to the list of actions that constitute the classification of derelict vessel.

19. Page 12, Lines 8-24: Amends AS 30.30.090 (Current Section. 22, Prior Version Section. 23) by removing the words "and if" on line 8. This removal of words requires reformatting the subparagraphs into paragraphs. [The words "and if" are currently in existing law and were in the prior version of the bill.]

20. Page 12, Line 26: Amends the title of the proposed newly created AS 30.30.095 (Current Section. 23, Prior Version Section. 24) by renaming it "Duties and Powers of the Department" from "Derelict Vessel Prevention Program." [Conforming to this change, the subsequent new proposed section AS 30.30.096 entitled "Duties and Powers of the Department" has been removed and absorbed into AS 30.30.095, and the new proposed section AS.30.30.097 entitled "Derelict Vessel Prevention Fund" is renumbered is now section AS 30.30.096 under the Committee Substitute.]

21. Page 12, Line 27: Amends the proposed newly created AS 30.30.095 (Current Section. 23, Prior Version Section. 24) to add new language that reads "subject to appropriations."

22. Page 13, Line 14: Amends the proposed newly created AS 30.30.096 (Current Section. 23, Prior Version Section. 24) by changing the wording to read "the state agency or municipality." [Please see Change 7.]

23. Page 13, Line 25: Amends the proposed newly created AS 30.30.096 (Current Section. 23, Prior Version Section. 24) by changing paragraph (b)(4) to read "money collected under AS 05.25.096(a)(5) and (6). [The prior version read "money received by the Department of Administration for registering and titling vessels."]

24. Page 14, Lines 17-18: Amends AS 30.30.170 (Current Section. 25, Prior Version Section. 26), by defining "state agency" rather than "state or municipal agency" in accordance with the changes originating in Change 7 and conformed through the Committee Substitute.

[4:16:42 PM](#)

CHAIR GIESSEL asked for a sectional analysis.

[4:17:21 PM](#)

RACHEL HANKE, staff to senator Micciche, Alaska State Legislature, presented the sectional analysis of CSSB 92 (RES), version 30-LS0481\J, as follows:

Section 1: Requires that a boat placed on the waters of the state be titled, registered, or numbered.

Section 2: Requires all boats have a certificate of number if operated on the waters of the state for more than 90 consecutive days or 60 consecutive days for barges unless otherwise provided in the chapter.

Section 3: Provides exceptions from numbering and registration for boats and barges.

Section 4: Adds new section for establishing a system for certification of titles.

Section 5: Inserts a new cross-reference.

Section 6: Increases boat registrations for a three-year period from \$24 to \$30, adds barge registration

fee at \$75 for a three-year period, adds boat title and duplicate boat title fee of \$20.

Section 7: Adds definition of "barge".

Section 8: Repeals and reenacts definitions from AS 05.25.100.

Sections 9 & 10: Clarifies existing language.

Section 11: Raises the fine for abandoning a vessel from not less than \$500 to not less than \$5,000 or more than \$10,000 and lowers the maximum term of imprisonment from six months to 90 days.

Section 12: Allows the department or a municipality to report violations to the Attorney General in order to enforce criminal penalties.

Section 13: Adds new section allowing an aggrieved person to file a civil injunction with a penalty of not more than \$1,000 per violation.

Section 14: Allows the department to provide written authorization for a vessel to be left within 14 days and clarifies language.

Section 15: Changes section to pre-impoundment notice and hearing. Requires 30 days' notice prior to impoundment, requires the impounding authority to post notice on vessel when possible and online.

Section 16: Adds new subsections establishing notice specification and defines the procedure for pre-impoundment hearings.

Section 17: Adds new section establishing requirements for the notice of disposition.

Section 18: New section providing clear guidelines of procedure for impoundment of a vessel by the state or a municipality.

Section 19: Removes requirement that an interested party taking possession of a derelict vessel post security.

Section 20: Establishes procedure for the immediate impoundment of derelict vessels that pose an imminent threat to safety.

Section 21: Adds new section stating that the individual owning an impounded vessel is liable for all costs incurred in the process.

Section 22: Provides situations that would make a vessel derelict.

Section 23: Gives the department the power to establish and administer the derelict vessel prevention program which includes education, outreach, an advisory council and creates a program fund which consists of money appropriated from donations, vessel sales under this chapter, federal funds, civil penalties and money collected from barge registration and titling of vessels.

Section 24: Adds "floating facility" to the definition of "vessel".

Section 25: Adds definitions.

Section 26: Names this chapter the Derelict Vessels Act.

Section 27: Adds titling to Title 37.

Section 28: Allows civil penalties collected under AS 30.30 to be deposited to the derelict vessel prevention program fund.

Section 29: Removes repealed sections allowing the fund to remain without federal funding.

Section 30: Repealing sections of AS 30.30.

Section 31: Transition language allowing DNR and DOA to adopt regulations.

Section 32: Reviser's instruction to change two headings.

Sections 33-36: Effective date sections.

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CHAIR GIESSEL removed her objection and finding no further objections, announced that version J was the committee's working document. Public testimony was open.

4:21:51 PM

KATHIE WASSERMAN, Executive Director, Alaska Municipal League, Juneau, Alaska, supported SB 92. This issue has been one of their top priorities for over two and a half years. Most municipalities have access to water one way or another, and the heart of many communities is the harbor. When it gets cluttered up with boats it is very difficult for municipalities to go through all the work to deal with those vessels. Usually owners of the vessels have problems long before then: they quit paying moorage or haul their boat onto a beach.

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CARL UCHYTIL, President, Alaska Association of Harbor Masters and Port Authorities (AAHPA), Juneau, Alaska, supported SB 92. AAHPA has 43-member harbors and has documentation from other communities outside their membership that also support it.

SENATOR STEDMAN asked what tool this bill would give to harbor masters that they don't currently have.

MR. UCHYTIL said the strongest argument he could make is when the M/V Challenger went down. She [the boat] was no longer welcome in the harbor and as a result was anchored on DNR tidelands. When she sank, the Coast Guard came out and opened the Oil Spill Trust Fund to raise and demolish her (for \$2 million). To this day, the Coast Guard doesn't know who the responsible owner is.

SENATOR STEDMAN said that ship should have had a marine title at some point, and the question is who owned it at the end. He wanted to know what useful tools SB 92 would provide in this instance.

MR. UCHYTIL said he couldn't speak with great authority on what enforcement activity the Coast Guard is taking on the Challenger now, but the Juneau Harbor system has other instances of irresponsible boat owners that will transfer ownership of vessels on a bar napkin or flip ownership with a handshake. Just having a clear title would allow the harbor master to pursue the actual owner of several derelict vessels in their harbor system today.

SENATOR STEDMAN said he has concept issues with this bill, not that derelict vessels aren't a problem. He said marine titled vessels are usually small, in the neighborhood of 27 feet, and are required to have "AK" numbers and to get a sticker. If you don't, you get a ticket. So, the owner pays the harbor master once a month as a tenant, and all of a sudden someone else shows up to pay the monthly fee. He asked what tools he needs as a harbor master here in Juneau to ensure that a person who pays the rent owns the boat.

SENATOR STEDMAN said his boat is a "documented vessel" and that it is in the Juneau harbor now where he is also required to have an insurance document to show that it is not only insurable but that it is insured. So, he was really struggling with why organized harbors around Alaska can't keep track of their tenants - like he used to keep track of renters he was a landlord.

MR. UCHYTIL answered that "registered" doesn't necessarily mean owner, and he does have difficulty with some harbor clientele in establishing clear ownership. For instance, someone could be behind in their rent and when they get kicked out, the client can say he sold the boat to someone at the Pioneer Bar last night. Lawyers have told him that title is important in establishing ownership.

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SENATOR STEDMAN said the situation is similar to used cars that eventually get "ditched out the road" and the owner can't be found. It is an enforcement issue, and he wasn't sure this wouldn't set boats up with the same solution. And at some point, the unorganized municipalities need to be addressed.

SENATOR VON IMHOF said this bill has a fiscal note of \$589,000 (which she assumed was collected by titling registrations and abandoned vessel fees) and asked if the duties of this fund cease to exist if the fees are not raised. Maybe they have to wait a few years for money to be raised and then this program can get off the ground.

MARLA THOMPSON, Director, Division of Motor Vehicles (DMV), Department of Administration (DOA), Anchorage, Alaska, said the fiscal note for SB 92 is based off the registration numbers they currently have at \$20 per boat and 68,000 boats are registered. That would generate approximately \$1.36 million. The registration period is for three years, so they divided that

number by three and expected to collect about one-third of the revenues for that the customer in the first year.

BRYAN HAWKINS, Vice President, Alaska Association of Harbor Masters and Port Authorities (AAHPA), and Harbor Master, City of Homer, Alaska, supported SB 92. He noted the Homer City Council passed resolutions in support of this bill, as well. Homer has over the years had to deal with quite a few abandoned derelict vessels in the range of 80-450 feet long. A local code was passed that helped with that.

He explained that cities have clearly defined boundaries. They can write local laws that can help people make better decisions to "move along" and can legally impound and dispose, which Homer has done many times.

MR. HAWKINS said currently Alaska doesn't require titling a vessel, but it does require a registration. Boat builders say people who buy vessels from them are concerned because they don't actually get a title. This would fix that.

SENATOR STEDMAN said he has a 52 ft. boat and has a marine title with the Coast Guard.

MR. HAWKINS replied that he has Coast Guard documentation, which is not a title.

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RACHEL LORD, Executive Secretary, Alaska Association of Harbor Masters and Port Authorities (AAHPA), supported SB 92. She said state statutes are outdated and were written in 1976 by DOTPF and briefly updated in 2013 to open up authority that had only rested with the Department of Transportation and Public Facilities (DOTPF) because of their historical role as owner of all Alaska harbors.

Through a situation in Kachemak Bay where two vessels sank, it became clear that a problem existed with DOTPF being the only one with authority to exercise the chapter because they didn't have any mandate to do so. So, HB 131 opened up the use of the chapter to all state agencies and municipalities. That was just a starting point.

She explained that the AAHMPA and others supported the formation of an ad hoc derelict vessel task force, which she facilitated. It met for nine full days over a year and a half. They had the entire "alphabet soup" of every state and federal agency, the

municipalities, Senator Murkowski's office, a Bethel Native Council, and some private salvage companies participating. The group discussed case studies in Alaska, what is going on, what people are dealing with, what the problems are in preventing and managing them, what people's jurisdictional boundaries and authorities are, and what other states are doing around the country. It became very clear that a full rewrite of Alaska statutes was a very necessary first step.

MS. LORD said the group had pro bono legal assistance from the municipal law firm of Birch Horton Bittner & and Cherot that worked through the problems everyone agreed upon and crafted solutions and a suite of tools to make some forward progress.

In the case of the M/V Akutan, before taking legal action you a vessel has to be determined as derelict or abandoned. Under state law now, if it's derelict or abandoned there are two different courses of action for due process, hearings, and for noticing, and two different paths of options for disposition of that vessel. So, one has to choose carefully, because current statutes are layered with confusion and lack of clarity.

MS. LORD said SB 92 clarifies not only the notice and impoundment process for agencies and municipalities, but it also improves due process for vessel owners. Some would contend that perhaps current statutes are not federally constitutional under federal Admiralty law and do not afford vessel owners the proper amount of due process that should be afforded to somebody under it, and SB 92 clarifies that.

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To answer some of the concerns regarding registration and titling issues, there is no silver bullet. However, under SB 92 federally documented vessels are not required to get a state title, but they would be asked to register with the state for the increased fee of \$30 (from \$24) if SB 92 passes. That is true in at least 26 other states, including Washington.

One of the problems with relying on federal documentation exclusively for tracking of ownership is the point at which the owner stops paying for documentation. And at that point the State of Alaska doesn't have any document of any of these boats existing.

MS. LORD said if you have ever owned a boat trailer and tried to get it titled or registered, you know that it can be really challenging. It is way easier to own a boat in Alaska now than a

boat trailer, because a boat trailer is regulated as a highway vehicle. Many contend, including her, that a boat has a much greater potential public liability than a boat trailer.

While she appreciated not wanting to expand that universe of registration with added paperwork, Ms. Lord said, however, this is borne out of very real problems being found daily in Alaska. The language in SB 92 was crafted in a way to try to help the state have some more recourse when it comes to determining a vessel owner. The fact remains that with nearly every derelict vessel has contention over who owns it because of the huge amount of liability that is on the hook.

She said SB 92 clarifies liability for owners, which is important. The state wants to hold people accountable that if you buy a boat the easiest dumping ground should not be state or municipal waters, and right now it is. Neighboring states have dramatically cracked down on their laws, which leaves Alaska as an easy target for dumping of boats.

MS. LORD noted the DNR's zero fiscal note saying the hope is that some funds are raised to help address this situation. Other states have found that a little money goes a long way with consolidating efforts. Right now, DNR, as the land manager, is dealing with these problems, spending staff time and state resources on dealing with derelict vessels throughout the state, across the coast, and across the river systems. They are doing it in a way that is not consolidated or streamlined, and there is no one to call if a derelict vessel is in an unincorporated area or in state waters.

She said the language in SB 92 is permissive to allow for the department to create that program, to allow for them to look proactively at this issue. It does not require them to do it immediately. It would take time and resources.

MS. LORD summarized that this is a national problem, and this is the direction in which other states are going. The federal delegation is aware of that, but in the meantime, the State of Alaska is still back in 1976.

SENATOR STEDMAN said derelict boat inhabitants live basically week to week and if their boat sinks, they "play the hot potato game." Some are drug addicts and unemployed, but he could assure people that crime issues in the harbors don't come from the \$2 and \$3 million boats. But he wanted to know how identifying the derelicts would help extract money from them.

MS. LORD answered there is no silver bullet, but a law deters more people than otherwise. One of the big problems not explicitly addressed in SB 92 is the cradle to grave problem. She explained that everything that is created has a shelf life. A well-maintained boat will operate for decades or more, but that takes money and resources neither of which are ever guaranteed. And they have not come up with a plan for what to do with a boat at the end of its useful life. Right now, the default plan is to keep passing it down the line until it is with a person who has the least resources to deal with it. That is a problem. But raising the awareness and clarifying the law and liability of an owner is a big step forward and helps agencies and municipalities legally deal with these situations when they invariably arise.

She said that SB 92 under the permissive language in the Derelict Vessel Prevention Program allows for the department, with resources permitting, to explore options for the cradle to grave question including voluntary vessel turn-in programs, which have been "hugely beneficial" and saved states around the country a lot of money. California is one state that has been very successful. Alaska is different: our harbors can't pull out all the boats. We don't have the infrastructure, the salvage companies or the ship breakers to do it. The people in Alaska have to look collectively at how to deal with it.

SENATOR STEDMAN remarked that the organized harbors are all managed differently. A useful thing that Juneau does that others don't do is require insurance certificates, and in order to get an insurance certificate, an owner has to get a survey and the boat will have to be fairly sound to get it. An uninsured boat helps tip off a harbor master. It comes back to his point: knowing your tenant and being responsive to who you are renting to. And knowing you don't have to rent to anybody that shows up.

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MS. LORD said people have dreams and those should be protected, but huge liabilities are being created as those dreams go awry. Her wish is that the state takes the situation seriously enough to provide enough resources to be able to enforce mooring laws around the state where the liability is big enough that someone will think three times before signing a bill of sale, and that people are more circumspect about buying a boat because more liability is associated with it than there currently is. She also pointed out that some municipal harbors have great ordinances and have spent a lot of money to protect themselves,

but that means that those boats leave the harbor and moor on state waters or they moor in smaller communities that don't have the legal or financial resources to deal with them. The larger communities will continue to protect themselves, but the state loses, and the smaller communities and unorganized communities are the losers in that and the protected one at the end of the day is the person who made a really poor choice with no resources to buy a crappy old boat. They get to walk away free.

CHAIR GIESSEL asked the Department of Natural Resources (DNR) to comment on the fiscal note.

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ED KING, Special Assistant to the Commissioner, Department of Natural Resources (DNR), Juneau, Alaska, said the department is working on a fiscal note, but had some issues surrounding Senator Von Imhof's question about the intent of the department and what the costs might be. They interpret the bill to mean that to the extent that there are funds available within the fund that is being created by the bill, and only then, would action be required. The fiscal note is being finalized under that interpretation.

CHAIR GIESSEL asked if the department is spending a lot of resources on this subject currently.

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KRIS HESS, Operations Manager, Division of Mining, Land and Water, Department of Natural Resources, Anchorage, Alaska, answered that they spent considerable time and resources between herself, Director Brent Goodrum, Deputy Commissioner Heidi Hansen, and others in terms of coordinating with federal, state, and local agencies to deal with this situation. From August 2017 when the Akutan suffered problems with its engines and the time of actual disposal, which was in January 2018, a rough estimate is at least 250 hours of staff time was spent.

SENATOR STEDMAN asked, when a derelict vessel is sitting on their tidelands, if it isn't it a matter of an appropriation of funds to the Department of Law. And if this bill is only going to produce \$100,000-200,000/year, it would take 10 years to just pay for the tug boat that sank in Juneau last year. He didn't think the ends were lining up very well outside of large appropriations from the legislature, with or without this bill.

MR. KING agreed that a lot of money would be needed to take immediate action, and those funds are not available.

MS. HESS also agreed that was probably an accurate assessment.

SENATOR BISHOP suggested that the federal Resource Conservation and Recovery Act (RCRA) addressed midnight dumping of hazardous materials, and he was thinking if a 400-foot barge grounded on state tidelands if the state could access some of those federal funds to help with clean-up.

MR. KING replied yes; the Coast Guard does assist in the removal of contaminants or environmentally dangerous materials and did that in the Akutan case. But once the hazardous materials are removed, that is where it stops: at the boat.

SENATOR BISHOP suggested stretching it a little to take in the whole boat removal. He said they are trying to eliminate future liabilities and that would be going in the right direction.

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CHAIR GIESSEL, finding no further comments, closed public testimony. She held SB 92 in committee.

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CHAIR GIESSEL adjourned the Senate Resources Standing Committee meeting at 5:04 p.m.