

**ALASKA STATE LEGISLATURE**  
**SENATE RESOURCES STANDING COMMITTEE**

February 26, 2018

3:30 p.m.

**MEMBERS PRESENT**

Senator Cathy Giessel, Chair  
Senator John Coghill, Vice Chair  
Senator Natasha von Imhof  
Senator Bert Stedman  
Senator Kevin Meyer  
Senator Click Bishop

**MEMBERS ABSENT**

Senator Bill Wielechowski

**COMMITTEE CALENDAR**

SENATE BILL NO. 202

"An Act relating to the liability of a Native corporation for the release or threatened release of hazardous substances present on certain lands."

- MOVED SB 202 OUT OF COMMITTEE

**CONFIRMATION HEARINGS:**

Big Game Commercial Services Board

Michelle Heun from Palmer, Alaska  
Cash Joyce from Wasilla, Alaska  
Robert Beans from Palmer, Alaska

- CONFIRMATIONS ADVANCED

**PREVIOUS COMMITTEE ACTION**

BILL: SB 202

SHORT TITLE: NATIVE CORP. LIABILITY FOR CONTAMINATION

SPONSOR(s): SENATOR(s) HOFFMAN

02/19/18	(S)	READ THE FIRST TIME - REFERRALS
02/19/18	(S)	RES, JUD
02/26/18	(S)	RES AT 3:30 PM BUTROVICH 205

**WITNESS REGISTER**

SENATOR LYMAN HOFFMAN  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Sponsor of SB 202.

MARIDON BOARIO, staff to Senator Hoffman  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Commented on SB 202 for the sponsor.

EMILY NAUMAN, Attorney  
Legislative Legal Division  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Answered legal questions on SB 202.

HALLIE BISSETT, Executive Director  
Alaska Native Village Corporation Association  
Anchorage, Alaska  
**POSITION STATEMENT:** Supported SB 202.

MICHELLE HEUN  
Palmer, Alaska  
**POSITION STATEMENT:** Nominee to the Big Game Commercial Services Board.

CASH JOYCE  
Wasilla, Alaska  
**POSITION STATEMENT:** Nominee for the transporter position on the Big Game Commercial Services Board.

ROBERT BEANS  
Palmer, Alaska  
**POSITION STATEMENT:** Nominee for private landowner member on the Big Game Commercial Services Board.

SAM ROHRER, President  
Alaska Professional Hunters Association (APHA)  
Kodiak, Alaska  
**POSITION STATEMENT:** Supported Mr. Joyce's appointment to the Big Game Commercial Services Board.

**ACTION NARRATIVE**

[3:30:09 PM](#)

**CHAIR CATHY GIESSEL** called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Bishop, Coghill, Stedman, Von Imhof, and Chair Giessel. Senator Wielechowski was excused.

**SB 202-NATIVE CORP. LIABILITY FOR CONTAMINATION**

[3:30:41 PM](#)

CHAIR GIESSEL announced consideration of SB 202. She said it addresses a problem that Native corporations have about receiving contaminated lands under the Alaska Native Claims Settlement Act (ANCSA).

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SENATOR LYMAN HOFFMAN, Alaska State Legislature, Juneau, Alaska, sponsor of SB 202, said this legislation came to him from the Alaska Native Village Corporation Association that formed because of receiving hazardous substance contaminated lands under ANCSA that need remediation.

He said concerns about this issue were raised the 1990s, and the 1998 Department of Interior's (DOI) report to Congress confirmed them and identified more than 650 contaminated sites requiring remediation. These sites were contaminated under the federal government's watch and then transferred to Native ownership, Senator Hoffman said. In 2016, the Bureau of Land Management (BLM) updated the DOI's report to Congress acknowledging that the agency had not acted on much of the 1998 report recommendations. The update identified the DOD as the single largest pre-transfer owner of contaminated sites still requiring clean-up.

SENATOR HOFFMAN said the Alaska Native Villages Corporation Association testified before Congressional committees on the problem as recently as last summer and pushed for the federal government to deal with the problem sites. The association's federal legislative priority list includes protecting the Alaska Native Corporation from liability claims on land that was contaminated before it was transferred to them.

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He said SB 202 amends Alaska statutes so that Alaska Native Corporations are not liable for the contamination, removal, or remediation actions of the contamination before the lands were transferred to them under ANCSA.

He explained that though this change in state statute would not solve the federal issues of this problem, it is an important step toward protection of Alaska Native corporations from liability for actions of prior owners.

CHAIR GIESSEL noted the map of Alaska with red dots denoting contaminated sites.

SENATOR HOFFMAN explained that the red dots are orphan sites; yellow dots are in clean-up programs, the blue dots are informational, and green dots denote that clean-up is completed or about to be completed.

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SENATOR MEYER joined the committee.

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MARIDON BOARIO, staff to Senator Hoffman, Alaska State Legislature, Juneau, Alaska, explained that these sites are called "orphan" because they have not been put into a clean-up program and the responsible parties have not been identified.

SENATOR HOFFMAN said these sites are spread all across the state.

CHAIR GIESSEL asked for a sectional analysis of SB 202.

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MS. BOARIO provided the analysis as follows:

Section 1 amends AS 46.03.822(a) to add subsection (n) which relieves Native corporations from liability if the Native corporation can prove the hazardous materials were already present on the land before the land was transferred to the Native corporation under the Alaska Native Claims Settlement Act (43 U.S.C 1601 et seq.)

Section 2 amends AS 46.03.822(m) to add a new paragraph that defines Native Corporation to have the same meaning as in federal law under U.S.C 1602(m) (ANCSA statutes), which says, Native Corporation means "any regional corporation, any village corporation, any urban corporation, and any group corporation."

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Section 3 amends AS 46.03.822 to add a new subsection (n) that relieves Native corporations from liability if the Native

corporation can prove the hazardous materials were already present on the land before the land was transferred to the Native corporation under the Alaska Native Claims Settlement Act (43 U.S.C 1601 et seq.)

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Section 4 repeals AS 46.03.822 (c)(3), which is a narrower exemption for Native corporations currently in statute and replaces it with the exemption in AS 46.06.822.

SENATOR COGHILL asked for an explanation of what is narrower and if it is primarily the definition of corporations.

MS. BOARIO answered that was her understanding.

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SENATOR BISHOP asked if there is a federal definition of "orphan site."

MS. BOARIO answered yes.

SENATOR BISHOP asked if the military was responsible for the contamination, because that could be researched.

SENATOR HOFFMAN said page 23 of the report - Hazardous Substance Contamination of Alaska Native Claims Settlement Act lands in Alaska - provides a list of some of the 94 orphan sites identified on September 9, 2015; 41 of those are owned by ANCSA corporations. Others could potentially be on private, municipal, or DOD land.

CHAIR GIESSEL noted that the report Senator Hoffman was referring to was very extensive and contained other very interesting materials.

SENATOR VON IMHOF asked what has to change to get the sites off orphan status?

MS. BOARIO said the definition is on page 20 of that same report. A site is considered to be an orphan if contamination was present at the time of conveyance and the site is not currently within a clean-up program.

SENATOR HOFFMAN said although corporations are trying to get the federal government to clean up the sites, this legislation doesn't deal with that. It is trying to deal with the liability

issue that is hovering over the corporations from actions that were not of their making.

SENATOR VON IMHOF asked if the feds could supersede this bill in any way, making it irrelevant.

SENATOR HOFFMAN said he didn't think so. Congress could probably pass legislative action saying that the lands they conveyed were transferred as contaminated, but it was the understanding of the corporations that they were receiving lands that were uncontaminated.

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EMILY NAUMAN, Attorney, Legislative Affairs Agency, Alaska State Legislature, answered that SB 202 specifically deals with state liability and the question is whether future federal law could supersede this law. The answer is both yes and no, and she explained that there is a whole secondary structure of federal liability in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that could also cause liability to run to a Native corporation, but she didn't know of any specific provision that allow or disallow that. However, it is always possible that the federal government could enact such a large piece of legislation - it being so comprehensive - that the state could be crowded out of this particular area of environmental regulation, but that would be extremely unlikely.

SENATOR COGHILL said he wanted to know the difference in the definitions for "corporation" in U.S. Code 1601 that is being replaced with 1602(m) and he wanted to know the difference.

MS. NAUMAN answered the definitions are substantially the same. However, the reference to "narrowing" the waiver of liability is based on the fact that the current waiver of liability in AS 46.03.822(c)(3), which is repealed in section 4 and only waives liability if the Native corporation could prove that the spill or threat of a spill was caused by negligence or an intentional act or omission of a third party, and that the Native corporation didn't know or didn't have reason to know that the hazardous substance was spilled or threatened to spill, and that the Native corporation took action to clean up the hazardous substance if it did spill. The new exemption provided in the bill doesn't require a finding of any of those facts before a Native corporation's liability is waived. Under SB 202, a Native corporation's liability just simply wouldn't exist.

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SENATOR COGHILL said he understood from the sponsor that they just have to prove the land was contaminated before the transfer.

MS. NAUMAN and SENATOR HOFFMAN said that was correct.

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CHAIR GIESSEL opened public testimony.

HALLIE BISSETT, Executive Director, Alaska Native Village Corporation Association, Anchorage, Alaska, said the association was created in 2008 by founding members of the Kuskokwim Corporation that consists of both full-paid members and affiliate-level members of the Alaska Native Village Corporation created under the ANCSA of 1971. While over 220 or so village corporations were created under that act, only about 176 are left. That is because of mergers and companies that have dissolved or gone out of business. The association has a nine-member board of directors. In order to serve on it, you have to be a CEO, a chair, or a COO. Their focus has been on the issue of ANCSA-contaminated lands since 2012.

MS. BISSETT said they are very grateful for the past support they have received from the legislature in their quest to get some resolution to this issue at the federal level by amending CERCLA, the federal law that makes ANCSA corporations liable for cleanup of these lands. In the past couple of years, they discovered through legal analysis that a change is needed at the state level, as well, because it is very similar to the federal CERCLA law.

She pointed out a couple of things that she had heard: that the 94 orphan sites are not even in any kind of program to be cleaned up, and 98 percent of them are within two miles of a village. Since she has been working on this project she has met people from one side the river and everybody is dying of a specific kind of cancer and on the other side they are not. People of Unalakleet have asked her if she knows about the glow-in-the-dark fish and are pretty sure that PCP contamination that is causing everyone in the region to have Parkinson's disease.

MS. BISSETT said this problem is real and these sites need to be cleaned up. All the other sites are in institutional control and are "allegedly cleaned up" according to the federal government. But the fact that they got any contaminated lands at all is a true injustice. The corporations gave up 88 percent of their traditional lands in exchange for contaminated lands, and that's

just unacceptable. It's been 45-plus years and the land is still sitting out there contaminated.

MS. BISSET said they are asking the federal government every year for these changes. Senator Sullivan was very successful in getting them in front of the Senate Environmental Public Works Committee in March 2017 and in August the committee came to Alaska and were shown some of these sites. They were successful in getting language introduced at the federal level on SB 822 to amend CERCLA, which will also give them the same liability shield that SB 202 gives them at the state level. That would allow them to access more federal funds for cleanup. She is talking specifically about using Brown Field grants to clean up the sites and getting them back to their original use (including subsistence use) or to develop them into a commercial property.

She explained the reason they cannot get those grants now is because the corporation is identified as a potential responsible party (PRP). The BLM had no resources to survey when the lands were transferred, and they were not given the documentation that they would have needed to know that there was contamination on these sites. She concluded that while the road before them is long, this is a good step in the right direction.

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CHAIR GIESSEL, finding no further comments, closed public testimony and found no questions from members.

SENATOR COGHILL moved to report SB 202, version A, from committee with individual recommendations and attached zero fiscal note(s). There were no objections and it was so ordered.

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At ease

**CONFIRMATION HEARINGS:**  
**Big Game Commercial Services Board**

[3:55:03 PM](#)

CHAIR GIESSEL called the meeting back to order and announced consideration of the governor's appointee to the Big Game Commercial Services Board. A fact sheet about the Big Game Commercial Services Board states that members serve a limit of two consecutive terms of four years. There are nine members; two are licensed guides and outfitters, two are transporters, one is a member of the Board of Game who does not hold either a guide or transport license, two members are private land owners, and

there are two public members. This board regulates the activities of commercial services to big game hunters and the compensation is travel and per diem. They meet at least twice per year for about three days per meeting and a maximum of 14 days in meetings.

She said this board, in particular, has had some financial issues in the past, and it was actually suspended for a period of time. At its last audit review (2015) the recommendation was only for a three-year renewal. Another audit will be done next year. The biggest issue, aside from the lack of public notice for some of their meetings and exams and minutes not being prepared in a timely manner, is unfunded debt. In 2014-2015 they accrued a \$1-million debt, which is predominantly due to inadequate fee setting and legal challenges to board adjudication issues.

CHAIR GIESSEL said the people they will interview today are brand new members; the board has four remaining veteran members to help orient the new ones.

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CHAIR GIESSEL invited Ms. Heun who is applying for one of the transporter seats to tell them why she wants to serve.

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MICHELLE HEUN, nominee to the Big Game Commercial Services Board, Palmer, Alaska, reviewed her biography. She is a licensed transporter since June 2014, having retired from the state in 2013. She now owns and operates her small family lodge business in the Talkeetna Mountains, accessible by air only. She welcomes the opportunity to answer any of their questions and pursued this seat because she is affected by the new fees, fines and regulations, and she likes to question them and possibly provide alternatives.

CHAIR GIESSEL noted that this board had increased its fees in 2016 in compliance with statute requiring licensing fees to cover regulatory costs. It looks like each one of the Alaska resident fees went up by about \$200 per two-year license renewal and for non-residents it went up by about \$400.

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SENATOR COGHILL thanked Ms. Heun for her service to the state and then advised her that every once in a while, they like to "get hard" on transporters, because of pressure from other people, but it sounds like she will defend them well.

CHAIR GIESSEL invited Mr. Joyce to tell them a little about himself and why he would want to serve on the board.

4:02:40 PM

CASH JOYCE, nominee for the transporter position, Big Game Commercial Services Board, Wasilla, Alaska, said he was born and raised in Alaska and is interested in being an unbiased representative for the people.

SENATOR MEYER said he is the owner operator of Vast Alaska, LLC, and asked him to explain what that is.

MR. JOYCE replied that Vast Alaska is a registered guide outfitter business and he and his wife also own Neacola Mountain Air Taxi with a transporter license.

SENATOR COGHILL asked if he had a chance to be involved in any of the board meetings.

MR. JOYCE answered that he teleconferenced in to the February 15 meeting.

CHAIR GIESSEL added that Mr. Joyce was appointed in January 2018.

SENATOR COGHILL thanked him for being willing to step up and asked what some the board's major issues are.

MR. JOYCE replied there seems to be a conflict between residents and non-residents and the budget deficit.

SENATOR COGHILL said a group called "Resident Hunters of Alaska" will make him earn his keep. It's important that both residents and non-residents have good rules to play by.

CHAIR GIESSEL invited Mr. Beans to tell them a little about himself and why he would want to serve on the board.

4:06:42 PM

ROBERT BEANS, nominee for private landowner member, Big Game Commercial Services Board, Palmer, Alaska, said he was born and raised in Alaska. In fact, he was born on a reservation when Alaska was a Territory. He would bring his vast experience on boards and commissions from the local, regional, state, and national levels to the board. He is pragmatic and listens to all sides before rendering a decision on an issue. He is interested

in serving the state in this position, because he currently sits on the Calista Regional Corporation of ANCSA and has experience on a local ANCSA Village Corporation Board.

CHAIR GIESSEL said she noticed that he also served as a Village Public Safety Officer and volunteer firefighter.

MR. BEANS added that he also was an Alaska State Trooper.

SENATOR COGHILL thanked him for being willing to serve and asked as a landowner what he expects from that seat on this board.

MR. BEANS answered as a landowner he would provide insight into how they perceive issues. Right now, there currently isn't a way for landowners to self-police their lands. Normally they rely on the state police to do that.

SENATOR COGHILL said one of the things the board will look at is the number of people going into certain areas. He remarked that elbow-room in Alaska when it comes to guiding and transporting can get crowded and intense and asked if he had been involved in issues where guides or transporters are struggling with a certain area of hunting.

MR. BEANS replied no; however, he was involved in village to village contention, which lead him and two other individuals to create what was called a "Moose Moratorium" for the Lower Yukon River. Because of that effort in 1987, there are now upwards of 5,000 moose in that region.

SENATOR COGHILL remarked that it sounds like he is a good problem solver.

[4:12:09 PM](#)

CHAIR GIESSEL, finding no questions from the committee, opened public testimony on all three appointees.

SAM ROHRER, President, Alaska Professional Hunters Association (APHA), Kodiak, Alaska, supported Mr. Joyce's appointment to the Big Game Commercial Services Board. He is a respected member of the hunting industry and his experience as both a guide and a transporter make him well suited to this appointment.

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CHAIR GIESSEL finding no further comments on the three appointees, closed public testimony and thanked them for being willing to serve. She read the committee report as follows: In

accordance with AS 39.05.080, the Resources Committee reviewed the following and recommends the appointees be forwarded to a joint session for consideration: Big Game Commercial Services Board: Robert Beans, Palmer; Michelle Heun, Palmer; and Cash Joyce, Wasilla. This does not reflect an intent by any of the members to vote for or against the confirmation of the individuals during any further sessions.

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CHAIR GIESSEL, finding no further business, adjourned the Senate Resources Committee meeting at 4:15 p.m.