

444

57

# HOUSE COMMITTEE REPORT

File

(11)

Date Referred: March 22, 1990

FURTHER REFERRALS:

Date of Committee Action: 4/23/90

The FINANCE Committee considered:

HB 578

HOUSE BILL NO. 578

ADVISORY COUNCIL TRANSP. OIL/HAZARD SUBS.

"An Act creating a citizens' oversight council on oil and other hazardous substances and regional advisory committees."

### RECOMMENDATIONS:

[X] be replaced with CS HB 578 (FIN) [ ] the same title  
[X] a new title

[ ] have attached amendment(s)

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

[X] fiscal impact LAA

[ ] fiscal note(s) \_\_\_\_\_

[ ] zero fiscal note \_\_\_\_\_

[ ] zero fiscal note(s) \_\_\_\_\_

[ ] zero with analysis \_\_\_\_\_

[ ] zero fn/analysis \_\_\_\_\_

### SIGNING DO PASS:

### SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

Swackhammer Swackhammer

Hoffman Hoffman

Brown Brown

Carson Larson

Koponen Koponen

Barnes Barnes

Ulmer Ulmer

Rieger Rieger

Phillips Phillips

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\_\_\_\_\_

Hoffman Hoffman  
Chairman's Signature  
Carson Carson

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Affected Agency: Legislative Affairs Agency  
 Title: "An Act creating a citizen's oversight council on oil & other hazardous..." BRU: Legislative Council  
 Sponsor: H. Resources Components Council & Subcommittees  
 Requestor: H. Finance

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
Personal Services	96.5	96.5	96.5	96.5	96.5	96.5
Travel	18.9	18.9	18.9	18.9	18.9	18.9
Contractual	108.6	108.6	108.6	108.6	108.6	108.6
Supplies	2.0	2.0	2.0	2.0	2.0	2.0
Equipment	10.7	0	0	0	0	0
Land & Structures						
Grants, Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>236.7</b>	<b>226.0</b>	<b>226.0</b>	<b>226.0</b>	<b>226.0</b>	<b>226.0</b>

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other	236.7	226.0	226.0	226.0	226.0	226.0
<b>TOTAL</b>	<b>236.7</b>	<b>226.0</b>	<b>226.0</b>	<b>226.0</b>	<b>226.0</b>	<b>226.0</b>

POSITIONS:

Full-Time	2	2	2	2	2	2
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

CSHB 578(Res) establishes a Citizen's Oversight Council on Oil and Other Hazardous Substances. Funding will be from the Oil & Hazardous Release Response Fund. The following is requested to adequately support the Council:

Prepared By: Pamela A. Stoops, Director *Pamela A. Stoops* Phone: 465-3850  
 Division: Administrative Services Date: 4/20/90

Approved By: Warren Endicott, Executive Director *Warren Endicott*  
 Agency: Legislative Affairs Agency Date: 4/20/90

DISTRIBUTION (BY PREPARER)  
LEGISLATIVE FINANCE  
LEGISLATIVE SPONSOR

REQUESTOR  
OFFICE OF MANAGEMENT & BUDGET  
AGENCY (IES)

**CONTINUATION OF FISCAL NOTE: CSHB 578(Fin)**

**PERSONAL SERVICES**

Staff is requested as follows to assist the Citizens Oversight Council on Oil & Other Hazardous Substances:

Administrative Officer - Range 21A			
\$3,831 x 12 months =	\$45,972		
\$45,972 x 36% benefits =	\$16,550		
	<u>\$62,522</u>		62.5
Secretary - Range 12A			
\$2,082 x 12 months =	\$24,984		
\$24,984 x 36% benefits =	\$8,994		
	<u>\$33,978</u>		34.0
			<u>96.5</u>

**TRAVEL**

It is anticipated there will be 6 meetings of the Council.

6 meetings x 5 members at 3 days each			
airfare - 6 meetings x 5 members = 30 airfares			
30 airfares x \$390 =	\$11,700		
per diem - 6 meetings x 5 members = 30			
30 x 3 days per diem = 90			
90 x \$80 =	\$7,200		
	<u>\$18,900</u>		18.9

**CONTRACTUAL**

Professional services for contracts to investigate compliance with environmental laws and regulations relating to production, transport and storage of oil and other hazardous substances - \$75,000		75.0
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Lease office space - 1,000 sq. ft x \$2.00 sq. ft. = \$2,000; \$2,000 x 12 months = \$24,000		24.0
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Phones & postage - \$800 a month x 12 months = \$9,600		9.6
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**SUPPLIES**

Office supplies - paper, stationery, etc. - \$2,000		2.0
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**EQUIPMENT**

Initial office setup - 2 desks, 2 chairs, 1 computer, 1 printer, phones, filing cabinets, bookcases - \$10,700		10.7
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Original sponsor(s): Resources Committee

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 578 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating a citizens' oversight council on oil  
7 and other hazardous substances; and authorizing  
8 funding of the council through the oil and hazardous  
9 substance release response fund."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 \* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

12 (1) a pervasive contributing factor to the Exxon Valdez disaster  
13 was the complacency of the oil industry and the federal and state agencies  
14 responsible for monitoring the operation of the Valdez oil terminal and oil  
15 tanker traffic in Valdez Arm and Prince William Sound;

16 (2) it is essential to involve local citizens to help ensure  
17 compliance with environmental laws and regulations relating to the produc-  
18 tion, transport, and storage of oil and other hazardous substances in order  
19 to overcome this complacency;

20 (3) a state oversight council will provide a valuable mechanism  
21 for citizen participation and an opportunity for citizens to express their  
22 concerns to the legislature and the governor about environmental safety in  
23 production, transport, and storage of oil and other hazardous substances.

24 \* Sec. 2. AS 24.20 is amended by adding new sections to read:

25 ARTICLE 4. CITIZENS' OVERSIGHT COUNCIL ON  
26 OIL AND OTHER HAZARDOUS SUBSTANCES.

27 Sec. 24.20.600. CITIZENS' OVERSIGHT COUNCIL ON OIL AND OTHER  
28 HAZARDOUS SUBSTANCES. (a) There is created in the legislature the  
29 Citizens' Oversight Council on Oil and Other Hazardous Substances.

1 The council consists of five members appointed by the Alaska Legisla-  
2 tive Council. The Alaska Legislative Council shall notify members of  
3 the public throughout the state that nominations for membership are  
4 being sought. Members of the council serve without compensation but  
5 are entitled to per diem and travel expenses authorized for boards and  
6 commissions under AS 39.20.180.

7 (b) The council shall elect a chair and other officers that the  
8 council finds necessary to carry out its responsibilities.

9 (c) Members of the council serve staggered terms of four years  
10 and, upon expiration of their terms, continue to serve until their  
11 successors qualify and are appointed. A member may serve no more than  
12 two consecutive terms.

13 (d) A member of the council may not be employed by the state or  
14 by a person engaged in the production, transport, or storage of oil or  
15 other hazardous substances, may not be an elected official of the  
16 state or of a political subdivision of the state other than those  
17 established under AS 14, and may not work as an independent contractor  
18 for a person engaged in the production, transport, or storage of oil  
19 or other hazardous substances, or for a state agency charged with  
20 regulating the production, transport, or storage of oil or other  
21 hazardous substances. The Alaska Legislative Council shall appoint  
22 members who have a demonstrated interest in and commitment to prevent-  
23 ing oil and hazardous substance releases in the state.

24 (e) The council shall make a formal request to the Alaska Legis-  
25 lative Council for funds it considers necessary for the staff, per  
26 diem, travel, and contractual expenses of the council. Funds distri-  
27 buted to the council are to be disbursed and accounted for under  
28 procedures required by the Legislative Affairs Agency. The council  
29 chair shall approve all expenditure documents.

1           Sec. 24.20.610.   POWERS AND DUTIES OF THE COUNCIL.   (a)   The  
2   council shall

3           (1)   determine whether state and federal agencies responsi-  
4   ble for the prevention of the release of oil and other hazardous  
5   substances, and for responding to releases, are carrying out their  
6   duties in these areas;

7           (2)   recommend to the legislature, the governor, agencies of  
8   the federal government, and private entities appropriate policies and  
9   actions to prevent releases of oil and other hazardous substances;

10          (3)   assist the legislature and the governor in the develop-  
11   ment of interstate compacts and policy recommendations to the federal  
12   government regarding the prevention of releases of oil and other  
13   hazardous substances;

14          (4)   file an annual report with the legislature and the  
15   governor assessing the status of major areas of risk, the performance  
16   of state and federal regulatory agencies, and changes in the long-term  
17   options for improving environmental safety;

18          (5)   request the attorney general to bring or move to inter-  
19   vene in legal actions in order to ensure compliance with state laws  
20   and regulations regarding the release of oil and other hazardous  
21   substances;

22          (6)   make recommendations to the legislature, the governor,  
23   and the federal government on the creation, funding, and composition  
24   of regional or local advisory committees and on the relationship  
25   between the council, local advisory committees, and other citizens'  
26   oversight groups on oil and other hazardous substances; and

27          (7)   schedule regular meetings with local and regional  
28   advisory committees as they are created to make sure that they comple-  
29   ment each other and avoid overlap in oversight and advisory functions.

1 (b) The council may

2 (1) hire a council administrator and additional administra-  
3 tive staff, and enter into contracts for personal services that the  
4 council finds necessary to carry out its responsibilities under this  
5 section; all employees of the council are in the exempt service under  
6 AS 39.25.110;

7 (2) subpoena witnesses, administer oaths, take testimony,  
8 and require the production for examination and copying of books or  
9 papers relating to matters within the responsibility of the council;  
10 and

11 (3) conduct investigations, studies, and analyses necessary  
12 to enable the council to carry out its duties under (a) of this sec-  
13 tion; and

14 (4) appoint advisory panels in specialized areas to include  
15 representatives of appropriate groups such as state and municipal  
16 regulatory agencies; oil spill prevention and response authorities,  
17 fishing and environmental groups, residents of areas of risk, scien-  
18 tists, and shippers and owners of oil and other hazardous substances  
19 produced or transported in the state.

20 Sec. 24.20.620. COOPERATION BY STATE AGENCIES. Each agency of  
21 the executive branch of state government shall, to the extent permit-  
22 ted by state or federal law, cooperate fully with the council by  
23 providing information and assistance, including disclosure of records  
24 relating to the agency's enforcement of laws and regulations for the  
25 prevention of and response to releases of oil and other hazardous  
26 substances.

27 Sec. 24.20.630. DEFINITIONS. In AS 24.20.600 - 24.20.630,

28 (1) "council" means the Citizens' Oversight Council on Oil  
29 and Other Hazardous Substances;

(2) "hazardous substance" has the meaning given in

1 AS 46.08.900; and

2 (3) "oil" has the meaning given in AS 46.08.900.

3 \* Sec. 3. AS 46.08.040 is amended by adding a new subsection to read:

4 (b) The commissioner shall use money from the fund to reimburse  
5 the Alaska Legislative Council for expenditures made by the council  
6 for the operation of the Citizens' Oversight Council on Oil and Other  
7 Hazardous Substances, established under AS 24.20.600, upon a request  
8 from the Alaska Legislative Council.

9 \* Sec. 4. INITIAL APPOINTMENTS. Notwithstanding AS 24.20.600(c), as  
10 enacted by sec. 2 of this Act, one initial member of the council shall be  
11 appointed to a term of one year, one initial member shall be appointed to a  
12 term of two years, one initial member shall be appointed to a term of three  
13 years, and two initial members shall be appointed to terms of four years.  
14 The members appointed to terms of one and two years are eligible to serve  
15 two full terms following the completion of their initial shortened terms.  
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A M E N D M E N T #1

OFFERED IN THE HOUSE

BY REP. DAVIDSON

TO: CSHB 578 (Resources)

Page 4, line 2:

Delete "an executive director"

Insert "a council administrator"

March 20, 1990

Senate Conferees  
Senate Bill 686  
U.S. Senate  
Washington, D.C. 20510

Dear Senate Conferee,

The Alaska State Legislature is currently working on legislation to create a Citizen's Oversight Council on Oil and Hazardous Substances. In testimony before the House Resources Committee there has been some discussion that this legislation may duplicate provisions in Title 8 of HR 1465/S 686. We do not believe this to be the case. In fact, we believe that federal and state legislation will complement each other to provide the highest degree of citizen oversight possible.

House Bill 578 was introduced in the Alaska State Legislature at the request of the Alaska Oil Spill Commission. After eight months work, the Commission identified citizen oversight as an essential component of any oil spill prevention program. Our legislation creates a five member state council primarily to oversee and monitor state and federal regulatory agencies. As currently written, the Citizen's Oversight Council will be an arm of the Alaska State Legislature.

The role of the Council will be to ensure vigilance on the part of government. As a statewide entity, it will also have a role in coordinating among any regional citizen councils created by state federal or local governments.

Both the federal and the state government have a compelling interest in ensuring that a disaster such as the Exxon Valdez never again occurs. We encourage you to continue with your efforts to create strong regional citizen's groups in Cook Inlet and Prince William Sound.

Thank you for your efforts.

Sincerely,

Representative Cliff Davidson  
Co-Chair

Representative Curt Menard  
Co-Chair

ROBERT C. BYRD, WEST VIRGINIA, CHAIRMAN

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JIM SASSER, TENNESSEE  
DENNIS D'CONCINI, ARIZONA  
DALE BUMPERS, ARKANSAS  
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THAD COCHRAN, MISSISSIPPI  
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PETE V. DOMENICI, NEW MEXICO  
CHARLES E. GRASSLEY, IOWA  
DON NICKLES, OKLAHOMA  
PHIL GRAMM, TEXAS

JAMES H. ENGLISH, STAFF DIRECTOR  
J. KEITH KENNEDY, MINORITY STAFF DIRECTOR

## United States Senate

COMMITTEE ON APPROPRIATIONS  
WASHINGTON, DC 20510-8026

April 05, 1990

The Honorable Curt Menard  
The Honorable Cliff Davidson  
Co-Chairs  
House Resources Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Curt and Cliff:

Thanks for your letter explaining the State Legislature's proposed legislation to create a Citizens' Oversight Council on Oil and Hazardous Substances. I support provisions in the federal oil spill legislation that would create citizen advisory groups.


It would seem that the Alaska State Legislature's proposed legislation would not duplicate the federal provisions. Rather, it would act more as a watch dog to state and federal agencies, not to the industry which is the purpose of the federal legislation.

I agree that a combination of the federal and state legislation would create the ultimate level of citizen involvement to ensure that every step is taken to protect against another tragedy like The Exxon Valdez.

Thanks again for writing.

With best wishes,

Cordially,

  
TED STEVENS

ATTACHMENT: INTERFACE CHART

	<u>HB566</u>	<u>HB578</u>	<u>NATIONAL</u>
	RESPONSE	OVERSIGHT	
STATE	SERC	COUNCIL (5 members)	
REGIONAL	NA	COMMITTEES	RCAC/CI (substitute)
LOCAL	LEPC	NA	

SERC: Statewide Emergency Response Commission  
 LEPC: Local Emergency Planning Committee  
 RCAC: Regional Citizen's Advisory Committee  
 CI: Cook Inlet

Note that regional advisory committees established under federal legislation (RCAC/CI) would be substituted for appropriate regional committees in HB578.

ROBERT C. BYRD, WEST VIRGINIA, CHAIRMAN

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BENNY F. HOLLINGS, SOUTH CAROLINA  
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DENNIS DUNCAN, ARIZONA  
DALE BUMPERS, ARKANSAS  
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TOM HARTIN, IOWA  
BARBARA A. MIKULSKI, MARYLAND  
HARRY REID, NEVADA  
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PETE V. DOMINICK, NEW MEXICO  
CHARLES E. GRASSLEY, IOWA  
DON NICKLES, OKLAHOMA  
PHIL GRAMM, TEXAS

## United States Senate

COMMITTEE ON APPROPRIATIONS  
WASHINGTON, DC 20510-8025

JAMES H. ENGLISH, STAFF DIRECTOR  
J. KEITH KENNEDY, MINORITY STAFF DIRECTOR

April 05, 1990

The Honorable Curt Menard  
The Honorable Cliff Davidson  
Co-Chairs  
House Resources Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Curt and Cliff:

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It would seem that the Alaska State Legislature's proposed legislation would not duplicate the federal provisions. Rather, it would act more as a watch dog to state and federal agencies, not to the industry which is the purpose of the federal legislation.

I agree that a combination of the federal and state legislation would create the ultimate level of citizen involvement to ensure that every step is taken to protect against another tragedy like The Exxon Valdez.

Thanks again for writing.

With best wishes,

Cordially,

  
TED STEVENS

University of Alaska Fairbanks  
Sea Grant College Program

DRAFT  
Position Paper Number One

An Analysis of Community Empowerment  
as a Vehicle for Maintaining  
Regulatory Vigilance

Submitted by  
Harry R. Bader

April 13, 1990

Chairperson Walt Parker skillfully maneuvered the Alaska Oil Spill Commission through seven months of turbulent seas to a successful conclusion with a masterful report. From a body of 59 separate recommendations drafted by the Commission, a central theme may be gleaned: the oil spill was the product of institutional complacency. To combat this complacency, and to maintain proper vigilance, the centerpiece of the Commission's efforts was the establishment of a formal mechanism of community empowerment. The purpose of this Sea Grant Position Paper is not to advocate or reject this recommendation, for that is a judgment which properly rests with the state legislature. Rather, the intent of this paper is to articulate the mechanisms of public participation that are essential for effective community empowerment if the legislature does choose this recommendation to serve as the vehicle for vigilance. It would be unfortunate if the legislature chose to adopt this salient attribute of the Commission's report, yet crafted it so as to leave it impotent.

The emetic event of the Exxon Valdez oil spill was not the consequence of insidious intent nor malevolent motive. It happened as a result of a malaise grown from a successful record of safe shipping. No party desired an oil spill, yet a spill obviously occurred. The efforts of the principal state agency, the DEC, as well as those of the Coast Guard and private industry, were enervated by a decade of relatively safe shipping. "In government as well as industry, enforcement zeal declined, alertness sagged,

and complacency took root in the years preceding the Exxon Valdez disaster."

Today, we have witnessed an invigorated commitment to oil spill prevention. Industry and state have made admirable strides, in partnership, to provide a high degree of monitoring and preparedness. Alyeska, for example, has voluntarily embarked upon a process which is transforming the port of Valdez into the nation's safest oil shipping terminal. Also, the potential establishment of PIRO, on the national front, is another development which deserves praise.

Viewed from the perspective of the Commission's report, the reforms, energy, and commitments to enhance oil spill prevention and response are welcome. Yet, the Commission's report would observe that no formal mechanism for assured long-term vigilance has been established to date. The oil spill of March 1989 occurred despite the best of intentions, it will occur again if the problem of institutional complacency is not directly addressed.

## II. EFFICACY OF COMMUNITY EMPOWERMENT TO ENSURE REGULATORY VIGILANCE

The community must be imbedded in the bureaucracy because this is the only way oversight is going to happen. It is the only way that continued community involvement is going to happen. And it is the only way to guard against apathy if you don't have another spill for 20 years.

Public Testimony  
Alaska Oil Spill Commission  
Hearing 9/21/89

When the Commission heard testimony stating, "You work hard when you are protecting that which you love," the Commission was exposed to the basic premise which serves as the foundation of citizen participation theory. The reason behind citizen involvement is that if vigilance, powered "by citizen self-interest, could be

integrated into the decision-making process, then the chances of creeping compāacency would be reduced."

However, measures must be taken so as to assure that citizen involvement is not so great as to thwart the economic goals of the conduct subject to citizen oversight. Thus, community empowerment becomes a balance between substantive input and constrained impact. The goal is to provide sufficient opportunity for citizens to realize a return on their involvement (in order to maintain interest in the process), while ensuring that state agency flexibility and expertise is not eviscerated by unwarranted intrusion. Historically, the problem with citizen's committees has not been excessive power, but rather too little. Initially effective, "over time they lose their impetus" because they have not been vested with enough impact to sustain an interest sufficient for long-term involvement.

To guide them, the Commission turned to concrete examples of effective citizen's group participation in resource protection and management already found in the states of Oregon, Florida, Washington, and California. The recommendation adhered to the principles proffered by Professor Ralph Johnson. Prof. Johnson found that citizen participation formed an indispensable component in the states' policy which effectively enhanced state sovereignty when dealing with federal bureaucracies as well as having improved state regulatory conduct.

III. MECHANISMS FOR EFFECTIVE COMMUNITY INVOLVEMENT

The following two elements are those attributes which would raise citizen involvement from beyond a merely symbolic role to the level originally envisioned by the Commission. It is a vision which sees better agency decisions, an improved perception of state responsiveness to community needs and desires, and enhanced cooperation in the exchange of information relating to the transport of oil and hazardous substances.

(1) Formal Regulatory Petitioning

The Citizen Council must be empowered to conduct investigations and make findings. The Council should be authorized to make recommendations accompanied by a detailed explanation justifying that recommendation. It would be incumbent upon the Council (a) to identify what facts they considered in deriving the recommendation, (b) to demonstrate how the recommendation will achieve its intended goal, and (c) explain why the particular recommendation is the best possible option available to resolve the concern at hand.

Once the Council has met the justification burden, it may then petition a state agency directly to adopt the proposed recommendation or action. After the agency has received a petition from the Council, it would have to formally consider the recommendation. The agency would not possess the discretion to cavalierly ignore nor summarily reject a Council's request. The agency would be required to act promptly, within a reasonably stated period of time.

If the agency chose not to adopt the recommendation, it would have to explain, in writing, with fully developed reasons

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addressing each point of the Council's justifications, why the request was rejected. The explanation from the agency would be available to both the public and the legislature. This process for petitioning follows the existing Administrative Procedure in a number of states and in the federal government. (See sections 553(e) and 555(e) in the U.S. Administrative Procedures Act).

The petitioning techniques strikes the appropriate balance between empowerment and constraint. The obligation upon the agency is not overburdensome. The agency may reject any or all requests submitted to it by the Council; the agency would simply have to formally justify its reasons for doing so. Also, the Council would be constrained from making frivolous requests by its own obligations for reasoned justification. Finally, the Council would have no power to implement, unilaterally, any recommendation or request.

#### (2) Subpoena Power

In order to conduct effective investigations, the Council must have the power to subpoena specified documents and witnesses from agency and industry alike.

#### IV. CITIZEN EMPOWERMENT IN IMPENDING LEGISLATION

HB 558

This legislative proposal appears to be a bold and innovative stroke designed assist in achieving the type of citizen oversight contemplated by the Oil Spill Commission recommendation. Viewed from this perspective, the measure would certainly be effective in creating options for citizen involvement, and if the legislature desires to implement the goal of community empowerment, this bill should be

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adopted. However, it should be noted that citizen suit provisions are essential but insufficient by themselves as components for achieving the Commission's intent. Reliance upon the litigation avenue supposes a degree of sophistication and resources not readily available to the average citizen. This provision will assist the organized public interest group in correcting a situation once an agency has gone awry. It does not aid in infusing the citizen in the initial information and policy process. The role of an active Citizen Council as articulated in the Commission report cannot be achieved solely through this bill. Citizen suit provisions are companions to, not substitutes for, Citizen Councils.

HB 578

This legislative package comes the closest to the ideal articulated by the Commission. It is clearly aimed at the complacency which precipitated the Exxon Valdez tragedy. The vigilance vehicle contained in this proposal is the same as that which the Commission recommended, a state "citizen oversight council."

The powers and duties enumerated in the bill's language attest to the intent of this proposal to realize the full ambition of the Commission. The power to subpoena witnesses and documents, the authority to conduct investigations, and the ability to hire staff and consult auxiliary advisory groups are all essential for an effective citizen council.

However, its provisions for agency cooperation, monitoring agency conduct, and to make recommendations only carry political weight, and therefore the Council is substantively weak. It is essential if a council is to maintain its effectiveness, energy, and vigilance, to possess an action forcing recommendation/request process. Experience

has dictated that advisory panels whose effectiveness relies upon public disclosure alone, evolve into only atrophied forms of their former vision.

If the legislature makes the judgment that a citizen council is the appropriate vigilance vehicle, and if it adopts the goals of community empowerment as a continuing antidote to institutional complacency, as noted by the Commission, then HB578 would be the appropriate mechanism, given substantial changes in the recommendation/request process discussed above.

#### V. CONCLUSION

The legislature has labored long, with sincerity and zeal, in an effort to craft the appropriate responses to the Exxon Valdez tragedy. It is the hope of the Sea Grant team that this position paper will assist them in their decisions regarding effective citizen participation as a mechanism for combatting the principal cause of the oil spill in Prince William Sound: complacency.

HB 578

TESTIMONY TO THE  
HOUSE FINANCE  
COMMITTEE

BY

ESTHER WUNNICKE

VICE - CHAIR

ALASKA OIL SPILL COMMISSION

10 APRIL 1990

A fundamental conclusion of the Alaska Oil Spill Commission was that strong prevention regimes at every level are essential to protect oceans and coastlines from oil spills.

Elements of a strong prevention regime cited by the Commission were:

- 1) a shipping industry devoted to the environmentally safe shipment of oil;
- 2) alert, strong, fully-funded regulatory agencies, and
- 3) systematic research on hazards and resources at risk.

The 4th element was:

local, state and interstate watchdog organizations to guard against shipper and regulatory complacency.

Recommendation Number 12 of the Commission addressed this need at the State level by calling for a citizens oversight council for overseeing the safe transportation of oil, gas and other hazardous substances. You have responded in HB578 to meet this need

This is one of the most important prevention recommendations of the Commission and one that can be implemented by the State of Alaska at little cost but with profound benefits for the future.

The Commission found that shippers, federal and state regulators alike had many other objectives and duties than the environmentally safe transport of oil. As funding decreased and other obligations and duties took precedence the necessary oversight, redundancy of

command, attention to navigation guidance and other means by which the Exxon Valdez grounding could have been avoided received less and less attention. General complacency affected almost all those participating as shipper or regulator in shipping oil from the Port of Valdez.

No agency had as its primary mission the environmentally safe transport of oil.

Because many individuals and communities are placed at risk by modern transportation systems, citizens should be involved in oversight arrangements at every level of government. A statewide citizens oversight council will go far toward meeting this recommendation and should not be seen as a duplication of industry supported or federally created citizen groups but rather as a means of coordinating and focusing the attention and concern of those groups at the highest state levels.

As pointed out in testimony submitted to the Senate Finance Committee on SB503 which expands the current Alaska Emergency Response Commission we emphasized that adding citizen members to that planning group of agency representatives was not a substitute for a small public council reporting to the Governor or the Legislature to provide a focused oversight on all aspects of oil and gas transportation.

The Citizens Oversight Council addressed in House Bill No. 578

would give this primary mission to a State council which had no competing program or conflicting duties. Such a council would be the beacon to the Governor, the Legislature and the Citizens of Alaska of the State of oil transport now and in the future.

An ounce of prevention is worth a pound of cure.

# METRO

FRIDAY  
SECTION B March 9, 1990

## Lawmakers want spill watchdog committee

### House Democrats say citizens' group should oversee government agencies, oil industry

By DAVID POSTMAN  
Daily News reporter

JUNEAU — A group of House Democrats wants to create a powerful citizens' commission with broad authority to oversee oil industry and government efforts to prevent and clean up oil spills.

In its efforts to make sure state laws covering spills are

being followed, the five-member citizens' council would be given the power to subpoena witnesses, take testimony under oath and force government agencies and oil companies to produce records.

The council could also file lawsuits to make sure state spill laws are being followed. The five members of

the council would be appointed by the governor and be given the authority to hire an executive director and other staff.

"This fills the gap of apathy that sets in when you have 10 or 12 years with no problems and in the meantime budgets and contingency plans are being cut, cut, and then everybody is

caught with their pants down when there is a disaster," said Rep. Curt Menard, D-Wasilla, co-chairman of the House Resources Committee.

The Citizens' Oversight Council on Oil and Gas and other Hazardous Substances was a top priority of the Alaska Oil Spill Commission, a panel appointed by

Gov. Steve Cowper to investigate the wreck of the Exxon Valdez. The commission said that no single state agency had authority over transportation of oil and other hazardous substances, including by pipeline and tanker.

"Regulatory authority over such transportation is spread among several agen-

cies that do not always coordinate information or resources," according to the spill commission's report.

Cowper, though, did not include the recommendation in his package of spill bills introduced last month. Instead, the administration is considering establishing a

Please see Page B-3, SPILL

## SPILL: House bill would form citizen's group

Continued from Page B-1

state environmental advisory board and increasing public participation in planning for spill prevention and cleanup, according to its written response to the spill commission report.

Cowper spokesman David Ramseur said he could not find out Thursday why the administration did not follow the commission's recommendation.

At a hearing Thursday,

spill commission member John Sund encouraged the House Resources Committee to push for citizen councils.

"Bureaucrats come and go, legislators come and go, the companies are usually there for the long haul," he said. "I think the informed citizenry is a very critical component of the state (oil) transportation system."

Sund also said the committee should look at other spill commission recommendations not followed by

Cowper. "I'd rather see some action in the House side on these bills than see an \$800,000 report become a nice bookshelf item."

"I call this our vigilance bill," said Rep. Cliff Davidson, D-Kodiak, co-chairman of the House Resources Committee.

"This is not meant to be petro-punitive," said Davidson, who stressed the council would look at government's role as well as that of the oil industry. "We need to watch the watchers, regulate the

regulators and maybe then we have a chance to overcome malaise."

Sen. Drue Pearce, R-Anchorage, chairwoman of the Senate Special Committee on Oil and Gas, said she wants to talk to the spill commission members before deciding whether the citizen's group is a good idea. Pearce's committee and the House Resources Committee are holding hearings on Cowper's package of spill bills.

department's small staff was overwhelmed by technical licensing and permitting activities, leaving no opportunity for the agency to perform its role as overall environmental policy watchdog. Though the state retained certain powers over water quality, the overall effect of preemption through the federal courts was to reduce or eliminate the state presence in the oversight of oil industry affairs and demoralize state personnel engaged in such activity.

In the absence of the state presence, the already weak federal regulatory presence declined further. In 1990 Congress is likely to adopt legislation that would eliminate any presumption of federal preemption in actions taken by the state with respect to safety and response. Thus the way is open for the state to reassert its historic role in resource protection.

*A citizens' advisory council should be established in the office of the governor and given responsibility for overseeing the safe transportation of oil, gas and other hazardous substances.*

No state agency has as its primary mission oversight of environmentally safe transportation of Alaska's resources. Regulatory authority over such transportation is spread among several agencies that do not always coordinate information or resources. The only overall view of the system is exercised by the governor, but he has no single designated officer or council to provide information or maintain consistent oversight.

The state should establish a citizens' advisory council, supported by a full-time executive director and small staff, to provide focus to state oversight. Members should be chosen from among the general public, selected for their concern for environmental safety. The council should have power to subpoena information and witnesses, to inspect facilities, to conduct investigations, and to collect information and statistics on safety.

The council's duties should be to:

- Advise the governor and legislature on the environmental safety of the transportation of Alaska oil, gas and other substances posing environmental risks;
- Advise on potential initiatives in state and federal regulations and at the governor's request, represent the state's interests in the development of multistate compacts and national and international policy;

**Recommendation 12  
Oversight council**

*"What we have is a system driven by the fact the pipeline is pumping 2 million barrels of oil into the sound, and they have to get it out of here. They choose not to restrict it, turn it off, or anything else. The decision to sail or not to sail is not a dispassionate decision based on weather or traffic."*

*Rep. George Miller, California  
House Committee on Interior and  
Insular Affairs hearing, May 1989*

*"What tends to happen is DEC will get dragged into a septic tank argument and it will drain away as many resources as fighting, for instance, the Alyeska ballast water treatment plant. There's a real problem with priorities within DEC."*

*Sue Liberson, Executive Director  
Alaska Center for the Environment  
Alaska Oil Spill Commission  
hearing, 9/21/89*

**Recommendation 13**  
**Enhanced regulatory strength**

*The state should expand and exercise its regulatory authority over environmental safety. Measures voluntarily adopted by industry should be backed up by state regulation. Federal technical standards and safety requirements should not preclude more stringent state standards.*

The State of Alaska currently does not exercise its full power under the U.S. Constitution to regulate environmental safety. Recent congressional enactments and judicial decisions make it clear that Congress does not intend that states should hesitate to protect local environments with greater stringency than the minimums established under federal law. The state should have the power, for example, to prohibit vessels from entering or departing Alaska ports and waters under unsafe circumstances.

Regulatory effectiveness also should be improved through assessment of administrative and civil penalties to encourage prevention, no preven-

- Identify unmet needs and recommend priorities, strategies and obstacles to achieving them;
- Encourage coordination of spill prevention and response programs currently spread among several agencies that cumulatively deserve high priority;
- Make budget and resource allocation recommendations;
- Evaluate programs and recommend elimination of marginal activities;
- Recommend changes based on new technologies and scientific impacts;
- Designate advisory panels, if deemed necessary, including appropriate representation, ex-officio, of appropriate departments of the state and municipalities, regional oil spill authorities, representatives of fishing and environmental groups, and shippers, owners and residential groups on the pipeline route; and
- Issue an annual report and safety assessment. Reports to the governor should include regular statistical and special reports on accidents and near-misses, the status of major risks, the performance of state and federal agencies, and long-term options for improving safety.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Affected Agency: Legislative Affairs Agency  
 Title: "An Act creating a citizen's oversight council on oil & other hazardous...  
 BRU: Legislative Council  
 Sponsor: H. Resources Components: Council & Subcommittees  
 Requestor: H. Resources

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
Personal Services	17.8	117.8	117.8	117.8	117.8	117.8
Travel	18.9	18.9	18.9	18.9	18.9	18.9
Contractual	300.0	300.0	300.0	300.0	300.0	300.0
Supplies	0	0	0	0	0	0
Equipment	0	0	0	0	0	0
Land & Structures						
Grants, Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>436.7</b>	<b>436.7</b>	<b>436.7</b>	<b>436.7</b>	<b>436.7</b>	<b>436.7</b>

CAPITAL						
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REVENUE						
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other	436.7	436.7	436.7	436.7	436.7	436.7
<b>TOTAL</b>						

POSITIONS:

Full-Time	2	2	2	2	2	2
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

CSHB 578(Res) establishes a Citizen's Oversight Council on Oil and Other Hazardous Substances. Funding will be from the Oil & Hazardous Release Response Fund. The following is requested to adequately support the Council:

Prepared By: Pamela Stoops, Director *Pamela Stoops* Phone: 465-3850  
 Division: Administrative Services Date: 3/20/90

Approved By: Warren Endicott, Executive Director *Warren Endicott*  
 Agency: Legislative Affairs Agency Date: 3/20/90

DISTRIBUTION (BY PREPARER)  
LEGISLATIVE FINANCE  
LEGISLATIVE SPONSOR

REQUESTOR  
OFFICE OF MANAGEMENT & BUDGET  
AGENCY (IES)

CONTINUATION OF FISCAL NOTE: CSHB 578

PERSONAL SERVICES

Staff is requested as follows to assist the Citizens Oversight Council on Oil and Other Hazardous Substances

Executive Director - Range 24A		
\$4,687 x 12 months =	\$56,244	
\$56,244 x 36% benefits =	<u>\$20,247</u>	
	\$76,491	76.5
Secretary - Range 15A		
\$2,531 x 12 months =	\$30,372	
\$30,372 x 36% benefits =	<u>\$10,933</u>	
	\$41,305	41.3
		<u>117.8</u>

TRAVEL

It is anticipated there will be 6 meetings of the Council.

6 meetings x 5 members at 3 days each		
airfare - 6 meetings x 5 members = 30 airfares		
30 airfares x \$390 =	\$11,700	
per diem - 6 meetings x 5 members = 30		
30 x 3 days per diem = 90		
90 x \$80 =	<u>\$7,200</u>	
	\$18,900	18.9

CONTRACTUAL

Professional services for contracts to investigate compliance with environmental laws and regulations relating to production, transport and storage of oil and other hazardous substances.	\$300,000	300.0
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