

**ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS
STANDING COMMITTEE**

May 1, 2001
8:07 a.m.

MEMBERS PRESENT

Representative Kevin Meyer, Co-Chair
Representative Carl Morgan, Co-Chair
Representative Andrew Halcro
Representative Drew Scalzi
Representative Lisa Murkowski
Representative Gretchen Guess

MEMBERS ABSENT

Representative Beth Kerttula

OTHER LEGISLATORS PRESENT

Representative Sharon Cissna

COMMITTEE CALENDAR

SENATE BILL NO. 88

"An Act relating to metropolitan planning organizations and to establishment of a metropolitan planning organization for the Anchorage metropolitan area; and providing for an effective date."

- MOVED SB 88 OUT OF COMMITTEE

PREVIOUS ACTION

BILL: SB 88

SHORT TITLE: METROPOLITAN PLANNING ORGANIZATIONS

SPONSOR(S): SENATOR(S) PHILLIPS

Jrn-Date	Jrn-Page		Action
02/13/01	0356	(S)	READ THE FIRST TIME - REFERRALS
02/13/01	0356	(S)	TRA, CRA, FIN
02/20/01		(S)	TRA AT 1:30 PM BUTROVICH 205
02/20/01		(S)	Moved Out of Committee
02/20/01		(S)	MINUTE(TRA)
02/21/01	0451	(S)	TRA RPT 3DP 1DNP 1AM

02/21/01	0451	(S)	DP: COWDERY, WARD, WILKEN; DNP: ELTON;
02/21/01	0451	(S)	AM: TAYLOR
02/21/01	0451	(S)	FN1: ZERO(DOT)
03/07/01		(S)	CRA AT 1:30 PM FAHRENKAMP 203
03/07/01		(S)	Moved Out of Committee
03/07/01		(S)	MINUTE(CRA)
03/09/01	0596	(S)	CRA RPT 2DP 1NR
03/09/01	0596	(S)	DP: TORGERSON, PHILLIPS; NR: AUSTERMAN
03/09/01	0596	(S)	FN1: ZERO(DOT)
03/22/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/26/01		(S)	FIN AT 6:00 PM SENATE FINANCE 532
03/26/01		(S)	Moved Out of Committee
03/26/01		(S)	MINUTE(FIN)
03/27/01	0819	(S)	FIN RPT 3DP 2DNP 2NR
03/27/01	0819	(S)	DP: DONLEY, GREEN, LEMAN;
03/27/01	0819	(S)	NR: KELLY, WILKEN; DNP: HOFFMAN, OLSON
03/27/01	0819	(S)	FN1: ZERO(DOT)
04/04/01	0933	(S)	RULES TO CALENDAR 1OR 4/4/01
04/04/01	0943	(S)	READ THE SECOND TIME
04/04/01	0944	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/04/01	0944	(S)	READ THE THIRD TIME SB 88
04/04/01	0944	(S)	PASSED Y15 N4 E1
04/04/01	0944	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
04/04/01	0944	(S)	OLSON NOTICE OF RECONSIDERATION
04/04/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
04/04/01		(S)	MINUTE(RLS)
04/05/01	0960	(S)	RECON TAKEN UP - IN THIRD READING
04/05/01	0961	(S)	PASSED ON RECONSIDERATION Y12 N7 E1
04/05/01	0961	(S)	EFFECTIVE DATE(S) Y19 N- E1
04/05/01	0962	(S)	TRANSMITTED TO (H)
04/05/01	0962	(S)	VERSION: SB 88
04/06/01	0875	(H)	READ THE FIRST TIME - REFERRALS
04/06/01	0875	(H)	TRA, CRA
04/17/01		(H)	TRA AT 1:00 PM CAPITOL 17
04/17/01		(H)	Heard & Held

04/17/01		(H)	MINUTE(TRA)
04/19/01		(H)	TRA AT 1:00 PM CAPITOL 124
04/19/01		(H)	Heard & Held MINUTE(TRA)
04/24/01		(H)	TRA AT 1:00 PM CAPITOL 17
04/24/01		(H)	Moved Out of Committee MINUTE(TRA)
04/25/01	1200	(H)	TRA RPT 1DP 2DNP 1NR 1AM
04/25/01	1200	(H)	DP: KOHRING; DNP: SCALZI, KOOKESH;
04/25/01	1200	(H)	NR: MASEK; AM: WILSON
04/25/01	1200	(H)	FN1: ZERO(DOT)
05/01/01	1426	(H)	CRA RPT 6NR
05/01/01	1426	(H)	NR: GUESS, SCALZI, HALCRO, MURKOWSKI,
05/01/01	1426	(H)	MEYER, MORGAN
05/01/01	1427	(H)	FN1: ZERO(DOT)
05/01/01		(H)	CRA AT 8:00 AM CAPITOL 124

WITNESS REGISTER

SENATOR RANDY PHILLIPS

Alaska State Legislature

Capitol Building, Room

Juneau, Alaska 99801

POSITION STATEMENT: Testified as the sponsor of SB 88.

BILL CUMMINGS, Assistant Attorney General

Transportation Section

Civil Division (Juneau)

Department of Law

PO Box 110300

Juneau, Alaska 99811-0300

POSITION STATEMENT: Discussed the department's opinion that legislators sitting on the AMATS Policy Committee would be in violation of the dual office holding provision of the Alaska Constitution.

ANNA FAIRCLOUGH, Member

Anchorage Assembly

Municipality of Anchorage

PO Box 771112

Eagle River, Alaska 99577

POSITION STATEMENT: Testified that the Anchorage Assembly opposes SB 88.

DICK TRAINI, Chair

Anchorage Assembly
Municipality of Anchorage
2020 Dimond Drive
Anchorage, Alaska 99507

POSITION STATEMENT: Testified that SB 88 is bad public policy.

TOM BRIGHAM, Director
Division of Statewide Planning
Department of Transportation & Public Facilities
3132 Channel Drive
Juneau, Alaska 99801-7898

POSITION STATEMENT: Announced that the administration does not support SB 88.

ALLAN TESCHE, Member
Anchorage Assembly
Municipality of Anchorage
1032 G
Anchorage, Alaska 99501

POSITION STATEMENT: Urged the committee to oppose SB 88.

DENNIS POSHARD, Legislative Liaison/Special Assistant
Office of the Commissioner
Department of Transportation & Public Facilities
3132 Channel Drive
Juneau, Alaska 99801-7898

POSITION STATEMENT: Testified in opposition to SB 88.

DOUG VAN ETTEN, Member
Anchorage Assembly
Municipality of Anchorage
3052 North Circle
Anchorage, Alaska 99507

POSITION STATEMENT: Testified on SB 88.

DICK TREMAIN, Member
Anchorage Assembly
Municipality of Anchorage;
AMATS representative
16251 Chasewood Lane
Anchorage, Alaska 99516

POSITION STATEMENT: Testified that the problem is there is not enough funding coming to Anchorage.

DAVID MILLER, Division Administrator
Alaska Division
Federal Highway Administration

U.S. Department of Transportation
PO Box 21648
Juneau, Alaska 99802-1648

POSITION STATEMENT: Answered questions regarding SB 88 and the consequences of redesignation.

ACTION NARRATIVE

TAPE 01-25, SIDE A
Number 0001

CO-CHAIR KEVIN MEYER called the House Community and Regional Affairs Standing Committee meeting to order at 8:07 a.m. Representatives Morgan, Meyer, Scalzi, and Guess were present at the call to order. Representatives Halcro and Murkowski arrived as the meeting was in progress.

SB 88-METROPOLITAN PLANNING ORGANIZATIONS

CO-CHAIR MEYER announced that the only order of business before the committee would be SENATE BILL NO. 88, "An Act relating to metropolitan planning organizations and to establishment of a metropolitan planning organization for the Anchorage metropolitan area; and providing for an effective date."

Number 0089

SENATOR RANDY PHILLIPS, Alaska State Legislature, testified as the sponsor of SB 88. Senator Phillips informed the committee that this is "Round 6" for this bill. He explained that this would only apply to Anchorage for now, although Fairbanks and the Mat-Su Valley may be impacted in the future. The Anchorage Metropolitan Area Transportation Study (AMATS) has two components, one of which is the technical committee that makes recommendations to the policy committee. This bill, SB 88, only refers to the policy committee, which consists of two appointed positions by the governor, the Department of Environmental Conservation (DEC), and the Department of Transportation & Public Facilities (DOT&PF), and three [municipally] elected officials, two assembly members, and one mayor. This legislation will add two additional members, one will be appointed by the Speaker of the House of Representatives and the other by the President of the Senate. Those two legislators have to be from the [Anchorage] community. Senator Phillips expressed the hope that there would be an understanding between the Speaker and the President so that these two legislators will

represent all of Anchorage not just a select portion of Anchorage.

Number 0239

SENATOR PHILLIPS pointed out that the committee packet includes a letter from the Mayor of Anchorage in support of the concept put forth in SB 88. Senator Phillips explained that he introduced SB 88 out of frustration. Having a Representative and a Senator on the committee compliments the AMATS process. Senator Phillips said that he has watched the AMATS process over the years and, for him, it came to a head last Fall when two of [Anchorage's] projects moved down. Since the legislature appropriates 10 percent of the funds for AMATS, he felt that the people in "our" district should have a direct say on that policy committee in regard to the ranking of the road projects within the AMATS process. Senator Phillips pointed out that those outside the Anchorage area don't have to deal with the AMATS process, which is just another layer to proceed through in order to get projects to DOT&PF. Those outside of Anchorage deal directly with DOT&PF.

SENATOR PHILLIPS mentioned that there will be testimony asserting that SB 88 is dual office holding and thus is contrary to the Alaska State Constitution. He pointed out that Hawaii has similar provisions in its state constitution and they have allowed legislators to be on their version of AMATS. Furthermore, Senator Phillips pointed out that the Alaska [Commission on Postsecondary Education] has two elected officials on its 14-member commission, which is similar to AMATS. In conclusion, Senator Phillips reiterated that having two Anchorage legislators on the AMATS Policy Committee compliments the policy committee.

Number 0511

CO-CHAIR MEYER noted that SB 88 has an effective date of July 1, 2002.

SENATOR PHILLIPS explained that he wants to have about a year's transition in order to give the Speaker and the President time to confer with the members of the Anchorage caucus so that the best representatives are chosen. Furthermore, it would provide the policy committee time to adjust to the idea of having two legislators.

REPRESENTATIVE HALCRO asked if Senator Phillips had considered making the legislative members ex officio members in order to circumvent the problem of dual office holding.

SENATOR PHILLIPS replied no. He reiterated that Hawaii already does this. Furthermore, the committee packet should include a letter from the Federal Highway Administration (FHWA) saying that there is nothing wrong with having two legislators on the AMATS Policy Committee.

Number 0637

REPRESENTATIVE HALCRO directed attention to a letter from George Schoener, Director, Office of Metropolitan Planning and Programs, Federal Highway Administration, U.S. Department of Transportation, that is included in the committee packet. Mr. Schoener's letter includes the following statement: "An action by the legislature without the consent and support of local officials and the governor would appear to be inconsistent with the intent of 23 USC 134." Therefore, Representative Halcro asked if this is the letter Senator Phillips was referencing.

SENATOR PHILLIPS replied no. He provided the committee with a letter from David Miller, Division Administrator, Federal Highway Administration, U.S. Department of Transportation, dated February 22, 2001.

Number 0742

REPRESENTATIVE GUESS noted her amazement that no public members sit on AMATS but that all members are elected officials or employees of elected officials. She asked if Senator Phillips had given any thought to having members from the Anchorage community.

SENATOR PHILLIPS replied no and noted that he would entertain such. However, he wasn't sure whether that would be in opposition to FHWA rules and regulations or state laws. He asked if Representative Guess was suggesting placing a public member on the policy committee and allowing that member to have a vote. He said that he would entertain such, but he recommended asking DOT&PF, the Municipality of Anchorage, and FHWA how they feel about a public member.

CO-CHAIR MEYER remarked that theoretically, the public is represented on AMATS through their elected representative.

Number 0890

REPRESENTATIVE HALCRO returned to the FHWA letters, which seem to be contradictory.

SENATOR PHILLIPS informed the committee that the administration, DOT&PF, and the Municipality of Anchorage have been opposing this legislation, which is why this [has been heard six times] and there will probably be a few more times before this is over. Senator Phillips felt that it is up to the legislature to make this policy decision. Additionally, he pointed out that eight out of nine Senators voted for SB 88. Senator Phillips said, "I just think that we make the policy decisions, we appropriate the dollars. I think, as directly elected officials, we should have some say on those priorities. This is not meant to take anything away from the policy committee; it's to add something." He wasn't sure where the fear is coming from.

Number 1063

REPRESENTATIVE SCALZI noted that the House Transportation Standing Committee heard SB 88 and fleshed out many points. In regard to the dual office holding argument, he pointed out that Article II, Section 5, Disqualifications, of the Alaska Constitution says: "No legislator may hold any other office or position of profit..." He informed the committee that before he became a legislator he confirmed that his membership on the International Pacific Halibut Commission would not be in violation of this provision because it is not for profit. Therefore, Representative Scalzi disagreed with the Department of Law's conclusion with regard to dual office holding.

REPRESENTATIVE SCALZI turned to the comment that DOT&PF doesn't have a problem with an official sitting on this policy committee, which was confirmed in testimony to the House Transportation Standing Committee. However, he recalled a possible conflict with SB 88 due to the regulations saying that the board has to nominate or vote on these members. Representative Scalzi said that the board could choose to place elected officials as members.

SENATOR PHILLIPS remarked, "That's not going to happen, that's why the bill was introduced." He expressed his frustration with being "beat up" from constituents regarding actions from a board that consists of non-elected state officials. Beyond attending meetings, Senator Phillips has no avenue. He indicated that he

would be amenable to the AMATS Board being directly elected by the people in Anchorage.

REPRESENTATIVE GUESS related her understanding that it would be acceptable for the policy committee to include two legislators, but it's not acceptable for the legislature, without consent, to put legislators on the policy committee. She asked if there has been a legal opinion in regard to whether Alaska's federal dollars would be at risk.

SENATOR PHILLIPS said that he hadn't asked Legal Services such a question but rather he had asked Legal Services whether there was anything in the constitution, state statutes, federal regulations, et cetera that would address having a legislator on this policy committee and the answer was no. Senator Phillips didn't have anything in writing to that respect. Senator Phillips offered to pursue that question.

Number 1420

REPRESENTATIVE HALCRO informed the committee that his community council includes a very outspoken AMATS representative. This representative has shared many stories in which she has arrived at AMATS meetings and the meeting has been canceled or the agenda has been changed.

SENATOR PHILLIPS said that he has experienced that first hand. Senator Phillips expressed the need for these policy committee meetings to be held when it's convenient for the public not for the committee.

Number 1536

BILL CUMMINGS, Assistant Attorney General, Transportation Section, Civil Division (Juneau), Department of Law, confirmed the Department of Law's position that SB 88 violates the constitution's prohibition against dual office holding by legislators. He explained that in the department's review of this matter over the last 20 years, it doesn't matter whether the person is paid a wage or not but rather it matters that the person is holding a second office under state law. This legislation will mark a fundamental change in how business is done in regard to AMATS. Currently, AMATS is a municipal creature, but SB 88 would change AMATS to be a state agency. Therefore, he felt there should be some concerns regarding what this does to local government, which is addressed in the more recent FHWA correspondence [dated April 5, 2001]. He related

his understanding that, after review of "that statute" and the more recent FHWA correspondence, the Metropolitan Transportation Planning process under 23 USC 134 is to provide local input and local control in regard to how these federal dollars are spent, which would be changed by SB 88.

Number 1680

REPRESENTATIVE SCALZI asked then if he would be in violation of the dual office holding provision by being on the International Pacific Halibut Commission.

MR. CUMMINGS said that he didn't know. He specified that he didn't know the nature of the policy body Representative Scalzi is on. It matters what is actually being done, that is whether the legislator is collecting and disseminating information or is the legislator making policy and managing activity.

REPRESENTATIVE SCALZI asked if a legislator would be in violation of this provision if he/she is a member of the Chamber of Commerce or the Board of the Volcano Interpretive Center.

MR. CUMMINGS answered that if the membership was a matter of collecting and disseminating information or a citizen's board relating to a particular facility, then it [probably] wouldn't be a problem. However, if the legislator holds a position in which he/she is hiring and firing executive directors and making capital budget decisions, there would likely be a problem. Again, it is based on the specifics and thus is viewed on a case-by-case analysis.

Number 1776

REPRESENTATIVE SCALZI inquired as to who checks this for legislators because legislators are members of various organizations.

MR. CUMMINGS noted that this was addressed in his [March 14, 2001] letter to Senator Ward to which there were three formal attorney general opinions attached. One of those opinions was in regard to Christopher Cooke, a member of the Board of Regents, and whether Mr. Cooke could continue to be a regent during his appointment to Superior Court. The opinion said that Mr. Cooke could not hold both positions because it would be dual office holding because the University of Alaska is an organ of the state. Mr. Cummings indicated that the attorney general might take action in an appropriate case, which would be a

public spectacle. Therefore, such a situation can be avoided by not having legislation that places legislators at risk. In an extreme case, it could be argued that a legislator has forfeited their legislative position and thus the legislator has to choose whether he/she wants to maintain a seat in the legislature or on AMATS. In further response to Representative Scalzi, Mr. Cummings agreed that this would be complaint driven.

MR. CUMMINGS turned to previous comments regarding the Alaska Commission on Postsecondary Education (ACPE) and indicated that the department objected to (indisc.-static). He noted that ACPE is a different type of board because it is such a large board. However, AMATS, under SB 88, is very small and the impact of the legislative members could be quite profound in the way that it operates in comparison to its current [operation] under current law.

Number 1940

ANNA FAIRCLOUGH, Member, Anchorage Assembly, Municipality of Anchorage, testified via teleconference. She said that the committee should have the Anchorage resolution opposing this action, SB 88. The Anchorage Assembly believes that AMATS is a local process and should be maintained at the local level. Ms. Fairclough noted that AMATS meetings are noticed as are all assembly meetings so that people know the location. In the six months that Ms. Fairclough has served on AMATS, she said that the meetings have always been the Mayor's conference room. Although the AMATS work sessions may experience time changes, the major meetings occur at the same time and everyone is welcome to testify at that time. Ms. Fairclough pointed out that AMATS has to make some difficult decisions, and certainly doesn't please everyone all the time.

MS. FAIRCLOUGH turned to the Hawaiian Metropolitan Planning Organization (MPO), which was hailed by Senator Phillips as a good working MPO. She informed the committee that the [AMATS] director, Lance Wilbur(ph) was sent to the Hawaiian MPO in order to show them how to do a better job. She interpreted the federal government's perspective to be that Alaska's process was functioning and producing projects and road work improvements more quickly than the Hawaiian process. In Hawaii, Mr. Wilbur pointed out that because leadership is based on an elected body that changes over the course of time, so does the priority level. Therefore, as more elected officials were added to the process, it became more parochial.

MS. FAIRCLOUGH addressed Representative Guess' comments regarding citizen participation. She pointed out that at every meeting of the AMATS Policy Committee, people can speak on every agenda item at the time that item is heard. Although that doesn't mean that each idea is incorporated, it does mean that the committee listens and is receptive.

Number 2117

MS. FAIRCLOUGH inquired as to how the legislature believes that it can improve the process. She mentioned that she appreciated the 10 percent contributed by the state. Ms. Fairclough emphasized that assembly members that serve on the AMATS Policy Committee cannot seek their own political interest because they have to answer to the Anchorage Assembly as a whole. She explained that the Anchorage Assembly actually directs the votes of the two assembly members that sit on the AMATS Policy Committee.

MS. FAIRCLOUGH then turned to the issue of separation of power. She reiterated appreciation for the 10 percent funding given by the state to match the FHWA dollars. However, she related her belief that there is a separation of power issue that is not necessarily the dual office holding issue. She specified that those appropriating the money [legislators] are now stepping into the process politically and directing how the money is spent.

Number 2238

DICK TRAINI, Chair, Anchorage Assembly, Municipality of Anchorage, testified via teleconference. Mr. Traini began by saying that SB 88 is bad public policy and thus he opposes SB 88. He asked Co-Chair Meyer how many legislators he appointed when he was Chair of the Assembly to AMATS.

CO-CHAIR MEYER answered that he didn't appoint any legislators.

MR. TRAINI turned to the sponsor statement which says, "Legislators have a direct link to the constituents and community councils where many of the needs are initiated, and therefore, should have more input into the AMATS Policy Committee." Mr. Traini took exception to that statement because the people that attend the community council meetings are the assembly members and "believe me, ..., if you don't listen to the community council, they would knock on your doors and let you know their opinion on AMATS-related issues." Mr. Traini

said, "When you take a look at this in total, the process works now." Therefore, he didn't believe that the process should be disturbed. Furthermore, he felt that "we" have a more direct relationship with constituents than individuals in Juneau. In conclusion, Mr. Traini expressed his desire that SB 88 would not move forward because it is bad public policy.

Number 2338

TOM BRIGHAM, Director, Division of Statewide Planning, Department of Transportation & Public Facilities, testified via teleconference. Mr. Brigham announced that the administration does not support SB 88 and "we" agree with the Anchorage Assembly that this is bad public policy. Mr. Brigham pointed out that since the creation of AMATS, there has always been one more municipal vote than state vote. Therefore, the municipality has the ability to out vote the state. However, SB 88 would shift the balance of power because there would be four state votes and three municipal votes, which he believes results in diminished local control.

MR. BRIGHAM informed the committee that the MPO is charged with reviewing areawide transportation problems and developing solutions, it is not a parochial body. "With all due respect to Senator Phillips, that is the kind of problem he's been talking about and this is not the body to get that problem solved," he said. Mr. Brigham then turned to the letters from the FHWA. The first letter [from Mr. Miller] says there is no problem with having legislators on AMATS. However, Mr. Schoener's letter says that the legislature can't simply unilaterally appoint them to AMATS but rather AMATS has to vote to have additional representation. Passing legislation that places two legislators on AMATS creates a train wreck because a redesignation is created. He pointed out that a redesignation is something that is done by the governor and local elected officials. Senate Bill 88 says, "It is the intent of the legislature that the membership of the current metropolitan planning organization for the Anchorage metropolitan area (known as AMATS) be restructured in accordance with this Act in a manner that does not constitute a redesignation of the metropolitan planning organization under federal law." However, Mr. Schoener's letter says that is not possible. Mr. Brigham concluded by addressing the concerns regarding public meeting times. He informed the committee that AMATS has a federal grant to improve its public process, which he believes AMATS is doing.

Number 2532

ALLAN TESCHE, Member, Anchorage Assembly, Municipality of Anchorage, testified via teleconference. Mr. Tesche underscored the importance of this matter because roads and transportation systems are the backbone of neighborhoods. Mr. Tesche commended the sponsors of SB 88 for their dedication to public service and their willingness to take on additional responsibilities at a local level. However, Mr. Tesche noted the temptation in government to do someone else's job. For instance, Mr. Tesche wondered how the legislature would view a long-range fiscal plan for the state by the municipalities. He felt that one should guard against one level of government taking on the work of another level of government.

MR. TESCHE emphasized that SB 88 will shift the balance of power and responsibility for decisions on local roads from Anchorage to Juneau. Furthermore, merely because these legislative members reside in Anchorage doesn't necessarily mean they are local residents because these legislators are physically absent from the community for half the year. These legislators would not have the direct contact with private citizens that members of the local governing body have on a constant basis. Mr. Tesche said if the desire is to delegate the process of how local roads in Anchorage are built and by whom, then SB 88 should be forwarded. However, the people of Anchorage need access to the people that make these decisions.

Number 2733

MR. TESCHE turned to Mr. Schoener's letter and the advice of the assistant attorney general and suggested that the committee carefully review those. Mr. Tesche framed the issue as follows: "Is this issue so important to the legislature that you're willing to take the risk of a major restructuring of our local policy on roads in Anchorage or run the risk of a confrontation with the federal government?" In regard to Mayor Wuerch's letter supporting SB 88, Mr. Tesche felt that Mayor Wuerch is out of step because this is a legislative matter that is not vested with the executive branch. Furthermore, Mr. Tesche felt that Mayor Wuerch is out of touch with the Anchorage Assembly. Although the committee could ignore the concerns of the Anchorage Assembly and hold on to Mayor Wuerch's letter, he urged the committee to proceed with caution because the presence of five assembly members and the resolution in opposition to SB 88 illustrate Anchorage's strong sentiment that nothing needs to be fixed with SB 88. Therefore, Mr. Tesche urged the committee to oppose SB 88.

CO-CHAIR MEYER mentioned that this isn't the first issue on which the assembly and the mayor have not agreed.

Number 2831

REPRESENTATIVE HALCRO related his belief that there is a high level of frustration. Furthermore, he expressed his amazement at Anchorage's lack of planning as it relates to roads. There is no reason why there shouldn't be more north-south corridors. Although Representative Halcro agreed with the need to respect local control, he said that he hears from constituents as well as assembly members. Representative Halcro's constituents are frustrated with the lack of decent roads as well as the fact that it takes a person longer to drive between Sand Lake and Muldoon than it does between Muldoon and Palmer. Therefore, this is something that deserves serious consideration. Representative Halcro said that he didn't believe the process is working. Perhaps there should be discussion regarding the need for the municipality to take responsibility for all of the state-owned and maintained roadways in Anchorage. Representative Halcro related his belief that there is a place for the legislature in this process, although he wasn't sure this was it.

Number 2965

DENNIS POSHARD, Legislative Special/Special Assistant, Office of the Commissioner, Department of Transportation & Public Facilities, began by explaining why MPOs are here in the first place. Twenty-some odd years ago at the federal transportation appropriation process, large municipalities and urban areas across the country wanted ...

TAPE 01-25, SIDE B

MR. POSHARD continued, "...large, many millions of dollars of federal funds trying to get that money directly." The federal government and the FHWA didn't want to establish relationships with a thousand or more governmental entities and to have to oversee and account for those relationships. Therefore, the federal government developed the MPO as a compromise. He explained that basically, the federal government would maintain its relationships with the 50 states and the money will be given to the states through the state DOTs and through the state governments who can determine the amount of money the local government will receive. However, once the money is given to

the MPO, the MPO determines how that money will be spent within its boundaries.

MR. POSHARD stated that the department recognizes the frustration that has been mentioned. He believes that AMATS and the local assembly also recognize the problem and thus AMATS sought and received a federal grant, a local planning grant, of \$250,000. That grant was used to perform a study of public processes in order to develop suggestions regarding ways to improve their own public process and communications. That study is in the completion phase. He offered to provide members with a copy of the draft study, which he believes contains some excellent recommendations that the policy committee will likely implement.

Number 2894

MR. POSHARD turned to the conflicting letters from the FHWA. He agreed with earlier comments that it's not necessarily that legislators can't serve on AMATS, "it's how they get there that's the problem." Mr. Poshard concluded by saying that the department feels that SB 88 is bad public policy and thus opposes this legislation. He suggested that the committee thoroughly research this and speak with the FHWA in order to ensure that the federal funds aren't jeopardized before voting for SB 88.

REPRESENTATIVE MURKOWSKI related her understanding that Mr. Poshard feels that SB 88 is ill-advised because how the legislators would get on the AMATS committee. Therefore, she surmised that Mr. Poshard, DOT&PF, is in agreement with Mr. Schoener's letter in that SB 88 would be a redesignation of the MPO.

MR. POSHARD replied yes. He recalled that Mr. Miller, FHWA, had testified at the House Transportation Standing Committee meeting that the FHWA agrees with Mr. Schoener's letter that the legislators adding themselves to AMATS would not be consistent with federal law and thus there could be some consequences to those actions.

Number 2735

DOUG VAN ETTEN, Member, Anchorage Assembly, Municipality of Anchorage, testified via teleconference. Mr. Van Etten related his understanding that the AMATS process seeks local input and constitutes local control, "local" being the operative word. He

also noted that AMATS is a year-round process. Mr. Van Etten said that he would hate to have legislators who spend almost half their year in Juneau to have to spend any more time than necessary on the public process in Anchorage. There are already many things that the local [government] can't deal with and appreciate that the state does.

MR. VAN ETTEN said that if appropriations is the issue in that 10 percent of AMATS funding comes from the state, then perhaps AMATS should ask if the federal representatives want to sit on the committee since 90 percent of the money is from the federal government.

MR. VAN ETTEN pointed out that the AMATS process has to be consensus building. The more voices there are, the more difficult it is to build consensus. Furthermore, those representatives that represent particular constituent issues rather than broad overall community issues make it more difficult to build consensus. As Ms. Fairclough pointed out earlier, she can't alone represent Eagle River but rather she, as do other AMATS members, has to represent the overall best interest of the community.

MR. VAN ETTEN then turned to an Anchorage Assembly resolution, 2001-79S, in which the assembly has asked DOT&PF to re-evaluate its ranking criteria in order to more effectively reflect the volume of traffic needs in Anchorage. Therefore, Anchorage would actually be allocated more money, which would provide AMATS with greater flexibility to make decisions on various projects.

MR. VAN ETTEN noted his appreciation of Representative Halcro's comment regarding local control versus state control on the roads in Anchorage. Mr. Van Etten informed the committee that the transfer of control is currently being researched and he predicted that the transfer of responsibility agreements will be forthcoming within the next few weeks or months. Such agreements would outline the transfer of control from the state to the municipality. Mr. Van Etten concluded by saying:

I think that AMATS, the assembly, and their workings with the Department of Transportation have very effectively shown that we're working for the best interest of the overall community here and I don't think that (indisc.) the balance of power [within] AMATS needs to be shifted, as has previously been pointed out, from the municipality to the state.

There's an adequate job being done here and a very proactive job.

Number 2434

DICK TREMAIN, Member, Anchorage Assembly, Municipality of Anchorage; AMATS representative, testified via teleconference. Mr. Tremain identified the problem as there not being enough funding coming to Anchorage. When there is a shortage in resources, there is conflict over their use. Additionally, it is a seven year process to build federal roads, which is a federal problem not a state or local problem. Mr. Tremain informed the committee that Anchorage has about 40 percent of the people in the state, while only receiving about 20 percent of the dollars. He agreed that there is congestion and he suggested that "congestion is not a linear function of population and vehicles, that there is something exponential involved, especially when you have a community that is geographically spread out as Anchorage is." Therefore, one could argue that even more money is necessary because there are more travel miles per vehicle per capita.

MR. TREMAIN noted his appreciation of the legislative intent to help, but perhaps that should be focused on assisting [the municipality] in obtaining more federal dollars and providing Anchorage with a more equitable distribution of funds within the state as well as upgrading roads. In regard to the notion of transferring road responsibility from the state to the city, Mr. Tremain pointed out that a large transfer of dollars will be required to bring them up to snuff. Furthermore, there would need to be ongoing operations and maintenance funding. Mr. Tremain mentioned the numerous unfunded legislative mandates, which have hurt the municipality tremendously.

Number 2272

MR. TREMAIN turned to the issue of legislative participation on AMATS and pointed out that such is already sought as agenda notices are sent out via e-mail. Mr. Tremain recalled a statement by Senator Phillips when he was informed that [AMATS] is having meetings every two weeks and that comment was, "I have a life, I can't just show up at meetings in the middle of the day." Mr. Tremain agreed that legislators are stretched thin. Furthermore, Mr. Tremain said that membership on AMATS may not be the way [for the legislature] to participate. On a lighter note, Mr. Tremain informed the committee that he represents South Anchorage, which has 52,000 people in that district. In

the worst case scenario, Mr. Tremain suggested that his district could separate itself from Anchorage and thus would be the second entity in the state eligible for a Metropolitan Transportation group and four legislators could come to Anchorage to discuss roads.

CO-CHAIR MEYER asked if there was anyone else who wished to testify. There being no one, the public testimony was closed.

Number 2165

SENATOR PHILLIPS noted that many of the committee members are from Anchorage and represent a constituency every two years. Furthermore, "we" live there. Although Anchorage legislators are in Juneau for four months, they are in constant contact with their constituency. Senator Phillips said that legislators are essentially "camping out" in Juneau to represent the best interest of Anchorage.

Number 2045

DAVID MILLER, Division Administrator, Alaska Division, Federal Highway Administration, U.S. Department of Transportation, acknowledged that the letters from the FHWA have caused confusion and thus he offered to answer any questions.

REPRESENTATIVE MURKOWSKI related her understanding that Mr. Miller's letter dated February 22, 2001, indicated that participation by state legislators on the board is not precluded by the federal regulations. However, there is the proviso, "following Title 23 CFR Section 450." Mr. Schoener's letter dated April 5, 2001, indicated that allowing state legislators to sit on the AMATS board would constitute a restructuring and a redesignation [without] a change in the by-laws to allow such. Therefore, Representative Murkowski asked Mr. Miller to provide his opinion regarding whether these letters are inconsistent.

MR. MILLER answered that he didn't believe the letters to be inconsistent. The letter dated February 22, 2001, was in response to a specific question regarding whether there is anything in federal law that precludes the participation of legislators on the AMATS Policy Committee. To that question, he replied, "No there isn't." He continued, "The question is how you get there." The letter dated April 5, 2001, addresses the question of how the legislators come to be on AMATS. Mr. Miller said:

If ... local units of government representing 75 percent of affected population and the governor agreed and welcomed, invited the ... legislature to participate in some part of the AMATS process is one thing. To impose against their objections, is another, in our view.

MR. MILLER, in response to Representative Murkowski, said that Title 23 CFR Section 450 specifies the process. He agreed with Representative Murkowski that the aforementioned provision says that there must be consent from the local governing body. The provision is specific in that the formation of the MPO is a decision of units of local government representing 75 percent of the population, such as the assembly, and the governor.

REPRESENTATIVE MURKOWSKI asked whether there would be any ramifications from the FHWA, U.S. Department of Transportation, if the consent of the local government is not obtained.

Number 1830

MR. MILLER said that it is difficult to speculate on the various scenarios that could occur due to SB 88. Normally, the local government and the governor would work with the board. However, in this case it would be a top-down approach. Mr. Brigham's reference to [SB 88 creating] a train wreck is exactly what would happen, in Mr. Miller's opinion. For instance, if SB 88 passes and the governor signs the bill, then [the federal government] could interpret that as the governor agreeing on part of the redesignation. However, if the governor vetoed SB 88, it would be an indication that he is not in agreement. Mr. Miller reiterated the difficulty in speculating what the legislature or the assembly would do.

MR. MILLER remarked that it would be fair to say that the MPO and the planning process established in federal law would need to continue in order for federal aide funds to be spent in Anchorage. At what point it is determined that the process has failed, he was unsure. Furthermore, he wasn't sure that would even happen. Mr. Miller pointed out that it is interesting that the [FHWA] would consider SB 88 to be a redesignation under federal law. Under that federal law, the funds would continue to flow into AMATS under the existing Transportation Improvement Program (TIP) until the redesignation occurred. However, in another scenario, the governor and the assembly could abolish AMATS, which would result in the termination of the federal funds.

Number 1636

REPRESENTATIVE MURKOWSKI posed a situation in which SB 88 passes both bodies and the governor signs it and the assembly approves it. She surmised that it would not be considered a redesignation and things would be okay. However, if the assembly did not approve, then it would be construed as a redesignation and federal highway funds could be jeopardized.

MR. MILLER stated, "We would consider passage of this legislation as a redesignation, under federal law." In further response to Representative Murkowski, Mr. Miller specified, "If all parties consented after the fact, our process is in tact [and thus] we'd continue on."

REPRESENTATIVE MURKOWSKI inquired as to the consequences attached to a redesignation. She again asked if federal highway funding would be jeopardized because [FHWA] determined this to be a redesignation.

MR. MILLER replied, "Yes." If the redesignation occurs and there is no formal action to the existing MPO, [the FHWA] would proceed with the existing TIP and transportation plan, both of which have a shelf life. At some point, something has to happen. Depending upon the circumstances, federal funds could continue or discontinue.

REPRESENTATIVE MURKOWSKI asked if the CFR contains anything specific regarding the [possibility] that a redesignation without consent could have financial consequences to the state.

MR. MILLER answered that he didn't believe the CFR contemplated such and thus doesn't specifically address redesignation without consent, to his knowledge. He explained that if SB 88 passes and there is no agreement, then there is no redesignation and the MPO is not functioning.

Number 1409

REPRESENTATIVE HALCRO requested that Mr. Miller comment on the process in Hawaii.

MR. MILLER said that he didn't have any knowledge of the situation in Hawaii.

Number 1364

REPRESENTATIVE GUESS posed a situation in which AMATS decided to place legislators on AMATS. Would such be considered a redesignation, she asked.

MR. MILLER replied yes and said that 23 CFR accepts redesignation.

REPRESENTATIVE GUESS related her understanding then that redesignation is okay. However, there is nothing in regulation regarding a redesignation that doesn't have unanimous consent.

MR. MILLER explained that it is acceptable for the MPO to add membership when the local government units and the governor agree. Typically, a redesignation wouldn't be a redesignation. In this case, the additional members are [being implemented] from the state legislature and there is at least the appearance that the legislature's will is being imposed on the MPO. Therefore, such action would be viewed as a redesignation and everyone would need to be in agreement. Without agreement, then there isn't a functioning metropolitan planning process in the state, which would have to be resolved. He noted the preference for the legislature, the governor, and the assembly to resolve the issues. Without resolution, the process is broken and doesn't comply with Title 23 CFR. At that point, the funds for Anchorage are in jeopardy.

Number 1151

REPRESENTATIVE HALCRO turned to Mr. Tremain's comment that Anchorage doesn't receive its fair share of federal highway money. He then informed the committee that he had received a copy of a letter on that point from Commissioner Perkins to Senator Donley. He suggested that committee members read Commissioner Perkins' response to [Mr. Tremain's comment]. Commissioner Perkins pointed out that there could be the argument that Anchorage receives a smaller portion of federal highway funds. However, there are projects outside the municipality that directly improve traffic flows and the quality of life in Anchorage. For instance, the proposed Palmer-Wasilla Interchange helps people in Anchorage and the Valley.

CO-CHAIR MEYER inquired as to the wish of the committee.

Number 1023

REPRESENTATIVE HALCRO moved to report SB 88 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, SB 88 was reported from the House Community and Regional Affairs Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at an unspecified time.