

**ALASKA STATE LEGISLATURE
CONFERENCE COMMITTEE ON HB 127**

May 4, 2001
1:35 p.m.

HOUSE MEMBERS PRESENT

Representative John Harris, Chair
Representative Con Bunde
Representative Beth Kerttula

HOUSE MEMBERS ABSENT

All members present

SENATE MEMBERS PRESENT

Senator Rick Halford, Chair
Senator Robin Taylor
Senator Donald Olson

SENATE MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 127

"An Act relating to emergency equipment to be carried on aircraft."

- MOVED CCS HB 127 OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 127

SHORT TITLE: AVIATION & AIRCRAFT EMERGENCY EQUIPMENT

SPONSOR(S): REPRESENTATIVE(S) HARRIS

Jrn-Date	Jrn-Page		Action
02/14/01	0317	(H)	READ THE FIRST TIME - REFERRALS
02/14/01	0317	(H)	TRA
02/22/01		(H)	TRA AT 1:00 PM CAPITOL 17
02/22/01		(H)	Moved CSHB 127(TRA) Out of Committee

02/22/01		(H)	MINUTE(TRA)
02/23/01	0423	(H)	COSPONSOR(S): MORGAN
02/26/01	0434	(H)	TRA RPT CS(TRA) 6DP
02/26/01	0435	(H)	DP: KAPSNER, OGAN, SCALZI, WILSON,
02/26/01	0435	(H)	KOOKESH, MASEK
02/26/01	0435	(H)	FN1: ZERO(DOT)
03/09/01		(H)	RLS AT 1:15 PM BUTROVICH 205
03/09/01		(H)	Moved CSHB 127(RLS) Out of Committee
03/09/01		(H)	MINUTE(RLS)
03/12/01	0540	(H)	RLS RPT CS(RLS) NT 3DP 1NR 1AM
03/12/01	0540	(H)	DP: PORTER, KOHRING, KOTT; NR: JOULE;
03/12/01	0540	(H)	AM: BERKOWITZ
03/12/01	0540	(H)	FN1: ZERO(DOT)
03/12/01	0540	(H)	RETURNED TO RLS COMMITTEE
03/15/01	0609	(H)	RULES TO CALENDAR 3/15/01
03/15/01	0609	(H)	READ THE SECOND TIME
03/15/01	0610	(H)	RLS CS ADOPTED UNAN CONSENT
03/15/01	0610	(H)	ADVANCED TO THIRD READING UNAN CONSENT
03/15/01	0610	(H)	READ THE THIRD TIME CSHB 127(RLS)
03/15/01	0610	(H)	PASSED Y33 E4 A3
03/15/01	0614	(H)	COSPONSOR(S): DYSON, BUNDE
03/15/01	0615	(H)	TRANSMITTED TO (S)
03/15/01	0615	(H)	VERSION: CSHB 127(RLS)
03/16/01	0691	(S)	READ THE FIRST TIME - REFERRALS
03/16/01	0691	(S)	TRA
03/16/01	0691	(S)	CROSS SPONSOR(S): OLSON
04/26/01		(S)	TRA AT 1:30 PM BUTROVICH 205
04/26/01		(S)	Moved SCS(TRA) Out of Committee
04/26/01		(S)	MINUTE(TRA)
04/27/01	1299	(S)	TRA RPT SCS 1DP 3NR SAME TITLE
04/27/01	1300	(S)	DP: COWDERY; NR: TAYLOR, WILKEN, WARD
04/27/01	1300	(S)	FN1: ZERO(DOT)
04/28/01	1329	(S)	RULES TO CALENDAR 4/28/01
04/28/01	1333	(S)	READ THE SECOND TIME
04/28/01	1333	(S)	TRA SCS ADOPTED UNAN CONSENT
04/28/01	1333	(S)	AM NO 1 ADOPTED UNAN CONSENT
04/28/01	1334	(S)	AM NO 2 ADOPTED UNAN CONSENT

04/28/01	1334	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/28/01	1335	(S)	READ THIRD TIME SCS CSHB 127(TRA) AM S
04/28/01	1335	(S)	PASSED Y19 N- A1
04/28/01	1338	(S)	TRANSMITTED TO (H) AS AMENDED
04/28/01	1338	(S)	VERSION: SCS CSHB 127(TRA) AM S
04/28/01		(S)	RLS AT 2:00 PM FAHRENKAMP 203
04/28/01		(S)	MINUTE(RLS)
04/29/01	1352	(H)	HELD UNDER UNFINISHED BUSINESS
05/01/01	1448	(H)	BROUGHT UP FOR CONSIDERATION
05/01/01	1449	(H)	RETURNED TO UNFINISHED BUSINESS
05/02/01	1490	(H)	FAILED CONCUR (S) AM N39 E1
05/02/01	1491	(H)	CONFERENCE COMMITTEE APPOINTED
05/02/01	1491	(H)	*HARRIS, BUNDE, KERTTULA
05/02/01	1428	(S)	FAILED RECEDE (S) AM Y- N20
05/02/01	1429	(S)	CONFERENCE COMMITTEE APPOINTED
05/02/01	1429	(S)	*HALFORD, TAYLOR, OLSON
05/04/01		(H)	127 AT 1:00 PM CAPITOL 124
05/04/01		(S)	127 AT 1:00 PM CAPITOL 124

WITNESS REGISTER

CAROL CARROLL, Director
Division of Support Services
Department of Natural Resources
400 Willoughby Avenue 5th floor
Juneau, Alaska 99801-1724

POSITION STATEMENT: Testified in support of a proposed amendment.

JULIE LUCKY, Staff
to Senator Halford
Alaska State Legislature
Capitol Building, Room 107
Juneau, Alaska 99801

POSITION STATEMENT: Answered questions.

ACTION NARRATIVE

TAPE 01-1, SIDE A
Number 001

CO-CHAIR RICK HALFORD called the Conference Committee on HB 127 to order at 1:35 p.m. Representatives Harris, Bunde, Kerttula and Senators Halford, Taylor, and Olson were present at the call to order.

HB 127-AVIATION & AIRCRAFT EMERGENCY EQUIPMENT

CO-CHAIR HALFORD announced that the only order of business before the committee would be HOUSE BILL NO. 127, "An Act relating to emergency equipment to be carried on aircraft." [Before the committee are CSHB 127(RLS) and SCS CSHB 127(TRA) am S.]

CO-CHAIR HALFORD also announced that the committee has been informally reviewing a draft amendment.

SENATOR TAYLOR noted that the proposed amendment would be on page 5, line 18. He suggested deleting the language on page 5, line 18, "or landing area" and replacing it with language to the effect of "or that is closed". Perhaps that language should be inserted after "private land". However, he pointed out that there would be two "except" clauses -- a double negative -- and thus seems to equate a positive.

Number 0097

CO-CHAIR HALFORD related his reading of the sentence in Section 12 (b) as follows:

A natural person who is the owner or operator of an aircraft runway airfield, or landing area that is located on private land is not civilly liable, except for intentional misconduct, for the injury or death of a person or for damage to an aircraft, resulting from attempted use of the runway, airfield, or landing area to take off, land, or operate an aircraft while the runway, airfield, or landing area is

SENATOR TAYLOR remarked that gross negligence and recklessness are almost the same as intent. With intent one would have to prove that the individual intended to cause the damage that was incurred.

REPRESENTATIVE BUNDE posed a situation in which an owner of a landing strip strings a cable across because the owner has experienced theft from his mining operation.

CO-CHAIR HALFORD said that such would be intentional misconduct.

SENATOR TAYLOR refuted Co-Chair Halford's remark and reiterated that it must be proven that the intent was to catch or hurt a person when the landing strip owner put up the cable. He noted that the cable could have been left up after being used to pull out some heavy equipment. Senator Taylor felt that the current language was appropriate.

Number 0278

REPRESENTATIVE OLSON related his experience of landing at a mining strip that had a trench across it. Later, he discovered that the trench was being dug in order to lay pipe to have better drainage.

SENATOR TAYLOR remarked that such would probably be gross negligence.

REPRESENTATIVE OLSON noted that there were no "Xs" indicating closure.

CO-CHAIR HALFORD said that this is a fairly high standard because there must be action taken to list and mark it closed.

REPRESENTATIVE KERTTULA commented that one would land at their own risk when landing on a closed runway.

SENATOR TAYLOR said, "And you are, but you're not ... landing there ... with the assumption that somebody could do something that was grossly negligent. Gross negligence is just short of a criminal act."

REPRESENTATIVE KERTTULA asked if recklessness is a higher [standard].

REPRESENTATIVE BUNDE related his understanding that intentional misconduct is a criminal activity, if it is proven, while gross negligence is close to a crime. He asked where recklessness fits in.

CO-CHAIR HALFORD inquired as to the hierarchy of the three charges.

Number 0507

SENATOR HALFORD indicated that recklessness is the highest and then there is negligence. In regard to liability, Senator Taylor explained that gross negligence implies something beyond recklessness. Therefore, he placed the charges in the following order [lowest to highest]: recklessness, gross negligence, and intentional misconduct.

CO-CHAIR HALFORD inquired as to the possibility of dropping recklessness.

REPRESENTATIVE KERTTULA related her belief that the hierarchy is [lowest to highest]: negligence, gross negligence, recklessness, and then intentional misconduct.

SENATOR TAYLOR agreed and pointed out that gross negligence requires an affirmative action.

REPRESENTATIVE KERTTULA pointed out that recklessness is a willful disregard.

REPRESENTATIVE BUNDE inquired as to the possibility of leaving out gross negligence.

SENATOR TAYLOR related his belief that the standards are high enough that it will be difficult for anyone to meet them.

CO-CHAIR HALFORD remarked, "As much as I disagree with Senator Taylor, I have to say that we probably wouldn't have gotten this far with this provision in the bill had it not been for a compromise made within one on this section. ... I don't agree with the outcome, but I probably have to stick with the compromise."

Number 0619

SENATOR TAYLOR moved that the committee adopt the following amendment:

*Sec.6. AS 02.20.050 is amended by adding a new subsection to read:

(d)Unless closed for public safety reasons by a notice to airmen (NOTAM) provided to the Federal Aviation Administration or by publication in the appropriate aeronautical charts and publications published by the Federal Aviation Administration, or closed under the authority provided in AS 38.04.200 or AS 41.21.020(e), navigable water in the state or a suitable landing

site on public land that is not subject to a surface lease, easement or permit issued by the Department of Natural Resources is presumed open for operation of fixed-wing aircraft.

REPRESENTATIVE KERTTULA informed the committee that she had received a phone call that related the Department of Law's preference for "or closed" to say "or restricted" because there are abilities to restrict under Title 38 and Title 41.

Number 0728

CAROL CARROLL, Director, Division of Support Services, Department of Natural Resources (DNR), said she wasn't aware of that preference. Ms. Carroll testified in support of the amendment. She explained that DNR requested this because there are times when the department closes public land for certain activities under both Title 38 and 41. Also under Title 38, the department can close a surface area if the [department] has a lease easement or a permit on it and thus the [department] would like to continue to have that ability. Usually surface land isn't closed if someone has a subsurface right and thus the department wanted to keep it limited to the surface.

MS. CARROLL, in response to Senator Taylor, answered that the fixed-wing language was already present.

After discussion of the order in which to proceed, Senator Taylor withdrew his motion to amend the amendment.

CO-CHAIR HALFORD asked if there was objection to the original amendment. There being no objection, the amendment was adopted subject to the granting of the conference powers necessary to adopt the amendment.

Number 0860

SENATOR TAYLOR moved that the committee amend the aforementioned amendment by deleting "fixed-wing" from Section 6 as it read in the adopted amendment.

MS. CARROLL said that the department has no objection to deleting "fixed-wing" from Section 6.

CO-CHAIR HALFORD asked if there was objection to the deletion of "fixed-wing" from Section 6. There being no objection, "fixed-wing" was deleted from Section 6.

CO-CHAIR HALFORD then directed attention to the terminology.

REPRESENTATIVE KERTTULA moved that the committee delete "closed" and replace it with "restricted" per the Department of Law's preference.

REPRESENTATIVE BUNDE objected for the purposes of discussion. Representative Bunde wondered whether the language could read "closed or restricted".

REPRESENTATIVE KERTTULA accepted Representative Bunde's suggestion as a friendly amendment.

SENATOR TAYLOR suggested leaving in "closed" and including in the record that the only places "we" want closed are those that are [closed]. He felt that inserting "restriction" allows [the department] to "play" with people as they have in the past.

CO-CHAIR HALFORD related his belief that "closed" would include "restricted".

Number 1010

REPRESENTATIVE BUNDE reiterated the notion that "restricted" could be less onerous than a closure and thus less of a hindrance on the public.

CO-CHAIR HALFORD pointed out that the statutes referenced in the amendment, AS 38.04.200 and AS 41.21.020, refer to both "closed" and "restrict". Therefore, both option are included by reference.

Number 1112

SENATOR TAYLOR related his belief that "they" could close down the Gastineau Channel or it could be restricted to certain hours of operation. Under the adopted amendment, Senator Taylor interpreted "Unless closed" to mean that if it isn't closed it would be open. This [language] is saying that only certain things can be closed in a certain way otherwise it is considered open. Senator Taylor related his belief that the law was attempting to open more water and land.

CO-CHAIR HALFORD indicated his belief that the legislation was attempting to avoid and make clear the ongoing situation.

REPRESENTATIVE BUNDE pointed out that there is restricted airspace in the Kenai Peninsula as there are restrictions from the Moose Range that don't allow landing during a certain time of the year. Therefore, he asked if that airspace is "closed" or "restricted."

Number 1197

CO-CHAIR HALFORD remarked that with regard to airspace, the two terms are almost interchangeable and thus he felt that Representative Bunde's amendment changing the language to "restricted or closed" would be appropriate. Co-Chair Halford explained that the friendly amendment changing the language to read "restricted or closed" is the question before the committee.

SENATOR TAYLOR said, "We're only affecting, for public safety reasons by notice to airmen. Are we restricting their authority only to, by doing so only through that median and only through these statutes?"

CO-CHAIR HALFORD replied no and pointed out that those are three different things. One is the statute regarding general land, one is regarding park land, and one is the provision referring to public safety. The first two [references] include public safety but also have other restrictions.

Number 1318

REPRESENTATIVE BUNDE remarked that he is thinking in terms of the ease of the pilots. He pointed out that the term "restricted airspace" is a term of art and is more common and thus may be easier to communicate with the pilots in language that they are accustomed.

CO-CHAIR HALFORD agreed.

REPRESENTATIVE OLSON remarked that the term ["restricted"] seems to imply that there is an authority that can grant one the ability to use it versus the term "closed".

CO-CHAIR HALFORD explained that before the committee is an amendment inserting "or restricted" to the previously adopted amendment so that it would, in part, read "or closed or restricted under the authority provided in AS 38.04.200 or AS 41.21.020(e),". There being no objection, that amendment to the previously adopted amendment was adopted.

CO-CHAIR HALFORD explained that this all results in an amendment that would be incorporated into a Conference Committee Substitute that would be dependent upon the granting of [limited powers of free conference] relating to Section 6. He asked if anyone had any problems with signing off on such a conference report and requesting limited powers of free conference.

Number 1432

REPRESENTATIVE KERTTULA informed the committee that the Department of Law is concerned about liability to the state in areas where the property hasn't been identified as an airport or landing area by the appropriate FAA aeronautical chart and/or publication. Although this would make some sense, Representative Kerttula said that she wasn't wedded to the language.

CO-CHAIR HALFORD surmised that this would provide the same benefit to a private property owner as it would to the state.

SENATOR TAYLOR interjected that this [provides] immunity to the state.

CO-CHAIR HALFORD questioned, "The state or a private property owner?"

REPRESENTATIVE KERTTULA said, "I think it's public land so, I think it's just the state."

REPRESENTATIVE BUNDE commented that it sounds superfluous.

REPRESENTATIVE KERTTULA noted that there have been suits regarding trails.

REPRESENTATIVE BUNDE said, "We're talking about a beach, or a mud flat, or sandbar."

REPRESENTATIVE KERTTULA said that she didn't really take a position on the issue, but wanted to inform the committee.

CO-CHAIR HALFORD remarked that he would need the context in order to determine whether [the language] applies to all lands or public lands. He noted that he could support it if it applies to all lands.

SENATOR TAYLOR pointed out that as long as someone could stay off FAA aeronautical charts, then that person would have immunity.

CO-CHAIR HALFORD asked if someone knows what it applies to.

Number 1636

JULIE LUCKY, Staff to Senator Halford, Alaska State Legislature, said that she had discussed this issue with the drafter and the Majority council. She explained, "The concept is that if we say in statute that we can close some lands for public safety reasons, it could imply to others that we're checking all lands for public safety. So, what they said was it can be used as kind of a plank in someone's tort suit." For instance, if someone chooses to land somewhere that is unsafe, that person could point to this language and say that DNR is checking lands for public safety. The Majority council felt that likelihood slim. The Department of Law brought it up with DNR. The drafter didn't take a position. However, Ms. Lucky agreed with Senator Taylor that [the state] hasn't actually dealt with any civil liability suits against anyone when someone lands in a location of their choosing.

REPRESENTATIVE BUNDE asked if there is any correlation between the "attractive hazard."

REPRESENTATIVE KERTTULA recalled that with unimproved land there isn't a problem, but once there are improvements there could be problems even with this language. Again, she reiterated that she wasn't taking a position on this.

CO-CHAIR HALFORD asked if it would apply to all private land, public land, or all land.

MS. LUCKY pointed out that this [language] is going under the obstruction of runway section and thus she felt that it would apply to everything because it isn't in the public lands section of the statute. Since there is no mention of public land, she felt that there would be more problems with this "because what we are talking about in the civil liability sections were basically, somebody making, probably a temporary runway" Ms. Lucky noted that this is something that could be reviewed over the interim.

Number 1822

SENATOR TAYLOR remarked that the purpose of the bill was to let the public know that "unless it's closed, it's open." However, now the language says "unless it's closed or restricted, it's open." Therefore, this probably leaves everything at status quo in the department's view. However, it doesn't seem to establish any legislative policy regarding having more [landing strips] open.

REPRESENTATIVE BUNDE commented that this legislation appears to send [a message] to anyone with a [landing] strip that it would be advisable to place an "X" on it and note it as closed.

REPRESENTATIVE OLSON said if Representative Bunde's interpretation is correct, then he believes this should be revisited. There are many strips that don't have "Xs." He expressed concern if this is involuntarily making them liable.

SENATOR TAYLOR emphasized that the [legislature] isn't making them liable, but he pointed out that there is a perceived liability.

Number 1903

CO-CHAIR HALFORD explained that this limits liability if the owner/operator wants to "X" their runway, but liability isn't being limited if there is no "X."

REPRESENTATIVE BUNDE pointed out, "This bill does not change that. You are liable now and I'm just suggesting, this puts a little brighter light on it."

SENATOR TAYLOR explained the lodge owner situation in which the lodge owner wants the landing strip used in the summer, but not in the winter when the property is closed.

Number 1973

REPRESENTATIVE OLSON informed the committee that most miners in his area need some type of landing strip in order to operate. However, these people don't have the sophistication to advise the FAA. Representative Olson felt that the miner should be protected. Even if the miner is found not to be liable for a problem, the miner still has to defend himself. Representative Olson posed a situation in which a commercial operator with paying customers lands at a strip that has an "X" on it in order to drop off mail, which may include medications, before going to the next village. During the drop off a tire is blown and a

passenger says he has a back injury. With that possibility in mind, Representative Olson said that [pilots] would probably choose not to land at such a strip.

SENATOR TAYLOR moved that the committee adopt the report that will include a CS from this Conference Committee as well as the request for the powers necessary to adopt it. [There being no objection, CCS HB 127 was adopted pending granting of limited powers of free conference].

ADJOURNMENT

There being no further business before the committee, the Conference Committee on HB 127 meeting was adjourned at 1:55 p.m.