

ALASKA STATE LEGISLATURE
SENATE RESOURCES COMMITTEE

May 6, 2002
5:15 p.m.

MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Gary Wilken, Vice Chair
Senator Rick Halford
Senator Robin Taylor
Senator Ben Stevens
Senator Kim Elton

MEMBERS ABSENT

Senator Georgianna Lincoln

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 302(FIN)

"An Act establishing the Alaska Gas Corporation, a public corporation, and providing for its structure, management, responsibilities, and operation, and requiring the development of a project plan to evaluate whether construction and operation of a natural gas transmission pipeline project by the corporation is feasible."

HEARD AND HELD

CS FOR HOUSE BILL NO. 382(FIN)

"An Act relating to the evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored; and providing for an effective date."

MOVED SCS CSHB 382(RES) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 474(CRA) am

"An Act relating to public rights-of-way and easements for surface transportation affecting the Anchorage Coastal Wildlife Refuge."

MOVED SCS CSHB 474(RES) OUT OF COMMITTEE

PREVIOUS SENATE COMMITTEE ACTION

HB 302 - See Resources minutes dated 4/29/02.

HB 382 - See Resources minutes dated 4/29/02.

HB 474 - No previous action to record.

WITNESS REGISTER

Representative Jim Whitaker
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 302.

Representative Gretchen Guess
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 382.

Ms. Laura Achee
Staff to Representative Joe Green
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on HB 474 for the sponsor.

Mr. Dick Bishop
Alaska Outdoor Council
1555 Gus's Grind
Fairbanks AK 99601
POSITION STATEMENT: Supported HB 474.

Mr. Dennis Poshard, Legislative Liaison
Department of Transportation &
Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898
POSITION STATEMENT: Opposed HB 474.

Representative Joe Green
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 474.

ACTION NARRATIVE

TAPE 02-27, SIDE A

Number 001
#HB302

CSHB 302-ALASKA GAS CORPORATION

CHAIRMAN JOHN TORGERSON called the Senate Resources Committee

meeting to order at 5:15 p.m. and announced CSHB 302(FIN) to be up for consideration. He said that he intended to take testimony on the bill today but would hold it in committee since the committee would be making a policy call.

REPRESENTATIVE JIM WHITAKER, sponsor of HB 302, said the bill establishes the Alaska Gas Corporation. The intent of the legislation is to keep a range of options available to the state with regard to the eventual taking of natural gas to market. The private sector is interested in that project but the sincerity of that effort has been questioned from time to time. He believes it would be advantageous for the state to keep this option viable and to progress it.

CHAIRMAN TORGERSON asked Representative Whitaker if he intends to replace the initiative with this legislation.

REPRESENTATIVE WHITAKER said it is not his intent to use this bill to replace the initiative. That subject is under the purview of the Lieutenant Governor. He introduced this bill several months prior to the initiative. However, once the initiative was filed, he asked for a legal opinion about whether the bill and initiative are substantially similar. According to the legal opinion, they are, so whether or not it replaces the initiative would be the Lieutenant Governor's call. He said he has not contacted her about the matter.

CHAIRMAN TORGERSON questioned why there is no fiscal note from the Legislative Affairs Agency (LAA) because the Commission would be set up by the Legislature.

REPRESENTATIVE WHITAKER said it would, but assuming the Joint Committee on Natural Gas Pipelines remains viable, it can be argued that there would be no attendant fiscal note. However, keeping that committee in place for this specific purpose would require a fiscal note from LAA.

CHAIRMAN TORGERSON said that, in general, all of the Joint Committee on Natural Gas Pipelines hired experts will be finished at the end of session. He said the committee might need to take a different direction and have engineering staff on board for this proposal.

CHAIRMAN TORGERSON told members that Representative Whitaker has submitted an amendment to extend the Joint Committee on Natural Gas Pipelines until January 31, 2004.

SENATOR WILKEN asked if the Alaska Gas Corporation is analogous

to anything that exists today.

REPRESENTATIVE WHITAKER replied an analogy could be made to the existing port authority, although that is a rough one, since the subject matter is the only similarity. He said a better analogy is to the operations of the Alaska Permanent Fund Corporation. The Corporation functions in an ownership role. He did not envision the maintenance, operation, building, and engineering functions being attendant to state functions. He envisioned them as private sector functions under contract to the Alaska Gas Corporation.

SENATOR WILKEN asked how it would differ from the Alaska Railroad Corporation (ARRC).

REPRESENTATIVE WHITAKER replied that ARRC is far beyond what he would envision. The ARRC has been subject to criticism for being somewhat cumbersome, bureaucratic and inefficient. Those criticisms may have merit. On the other hand, the Permanent Fund Corporation's ownership role provides a much more efficient model.

SENATOR WILKEN asked him to explain why a copy of the Petrie Parkman Report is in members' packets and what it means in relation to the sentence on page 2.

REPRESENTATIVE WHITAKER replied that he found the report interesting for a number of reasons. Different participants wrote it in sections. Those sections written by the Administration seemed to be quite negative with regard to state ownership, but he came to the conclusion that state ownership would result in a substantial return to the state, the magnitude of which is indeterminate. He also concluded that an 8 to 18% reduction in tariff is possible, if not probable, given state ownership and its ability to provide for financing as well as tax relief relative to the determination of the tariff.

SENATOR TAYLOR asked when the bill was filed.

REPRESENTATIVE WHITAKER said it was filed at the beginning of the first session of this legislature. He extrapolated that the reason it is moving now is because it is being viewed as the lesser of two evils, meaning it and the initiative.

SENATOR TAYLOR asked how it differs from SB 221.

REPRESENTATIVE WHITAKER replied that he hadn't read that bill.

CHAIRMAN TORGERSON asked if the bill still called for design, construction, operating and maintenance to be vested within the powers of the corporation.

REPRESENTATIVE WHITAKER replied that is correct.

CHAIRMAN TORGERSON asked Commissioner Condon, Department of Revenue, if he had any comments.

COMMISSIONER CONDON indicated that he would answer questions. [There were none.]

CHAIRMAN TORGERSON thanked Representative Whitaker and held CSHB 302(FIN) in committee.

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#HB382

CSHB 382(FIN)-CLEANUP OF ILLEGAL DRUG SITES

CHAIRMAN TORGERSON announced CSHB 382(FIN) to be up for consideration.

SENATOR TAYLOR moved to adopt Amendment 1, which reads as follows.

22-LS1105\S.2
Lauterbach
1/10/03

A M E N D M E N T 1

OFFERED IN THE SENATE

TO: SCS CSHB 382(), Draft Version "S"

Page 2, line 4, following "made.":

Insert "The owner of the property may appeal the determination to the superior court for review of whether the determination was made in compliance with this subsection. In the appeal, the burden of proving by a preponderance of the evidence that the determination was made in compliance with this subsection is on the law enforcement agency that employed the officer who made the determination."

Page 2, line 6:

Delete "by certified mail, return receipt requested,"

Insert "given in a manner that is consistent with the rules of civil procedure for the service of process in a civil action in this state"

Page 5, line 29:
Delete "or"

Page 6, line 2, following "met":
Insert "; or

(3) a court has held that the determination that the property was an illegal drug manufacturing site was not made in compliance with AS 46.03.500(a)"

Page 6, line 30:
Delete "a reasonably clear possibility"
Insert "reasonable cause to suspect the existence"

Page 7, line 3:
Delete "occurs"
Insert "has occurred"

CHAIRMAN TORGERSON objected to the motion for the purpose of hearing an explanation.

REPRESENTATIVE GUESS, sponsor of HB 382, said Amendment 1 makes her bill a much better one. The first part of the amendment sets up an appeal process available to the residential owner if a drug lab is determined to be an illegal lab site. It also makes the notification process consistent with the civil procedure for service so that a person can also be physically served with certified mail. Language on page 6, line 2, states that the property can be fit for use if the court determines that it was not an illegal lab site. Finally, it changes the phrase, "a reasonably clear possibility," which is language used in another state, to "reasonable cause to suspect," a phrase used in this state.

SENATOR TAYLOR called for the question. There were no further objections and Amendment 1 was adopted.

CHAIRMAN TORGERSON referred to language on page 3, lines 16 and 17, "occupy the property at any time after the fourth day following the day that the property was posted" and asked if committee members were comfortable with the four day provision.

REPRESENTATIVE GUESS indicated that was okay.

SENATOR TAYLOR explained that the time frame was shorter in some states and longer in others.

SENATOR WILKEN moved to report SCS CSHB 382(RES) from committee with individual recommendations and attached fiscal notes. There

were no objections and it was so ordered.

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#HB474

CSHB 474(CRA)am-ANCHORAGE COASTAL WILDLIFE REFUGE

CHAIRMAN TORGERSON announced CSHB 474(CRA)am to be up for consideration.

MS. LAURA ACHEE, staff to Representative Joe Green, said in 1971 the Alaska State Legislature created the Potter Point State Game Refuge in an area along the southwest coastline of the Municipality of Anchorage. She offered:

In 1988 the legislature expanded it to form the Anchorage Coastal Wildlife Refuge. This particular piece of land is important because in Cook Inlet, as the ice pack moves in and out, it scours the shoreline and roughs up the habitat or the areas where there would be habitat in the wintertime as it moves. Fire Island creates a natural break that keeps that ice from scouring this section of shoreline so it is unique in the section of Cook Inlet. It provides habitat for a lot of shorebirds that otherwise wouldn't have a place to build nests in the area. A lot of these birds move on to other parts of the state. Also, there's a lot of moose, lynx, coyotes and other wildlife that use this section of land.

The reason that this has all come about is because the Anchorage Coastal Trail, which is very popular in Anchorage, is in the process of being extended and, during the extension process, a lot of the constituents in South Anchorage felt very disenfranchised. They felt like their voice wasn't heard; they felt like a lot of the reasons they had for the trail not going through the Refuge were ignored. Every time proposed routes would come out, the routes that they suggested wouldn't be on the maps, only the routes that go along the coastline. To exacerbate the problem, the Governor of our state, for whom the first section of the trail is named, has stated a preference that he really wanted the trail to go along the coastline. The Department of Transportation was following along with that. ADF&G was objecting and after a while the fish and game biologists who were doing the objections suddenly weren't heard from any more. They weren't coming back and saying they approved of the trail, but we just

weren't hearing anything from them anymore and they weren't willing to speak to us anymore.

MS. ACHEE said that a lot of folks have suggested that this is a local issue that should be solved at the Anchorage level and the state shouldn't be involved. But she thinks there are a few reasons the state should be involved. One is that the oversight of this project has been removed from the Municipality of Anchorage (MOA) and is strictly at the state level and, because the legislature created this Refuge, it seems that ultimately it should be allowed to have the final say in how it's managed. It also seems like the public process has broken down. This bill simply says that if there are any new rights-of-way or easements through the refuge, the Department of Transportation and Public Facilities (DOTPF) must notify the legislature by February 1. The legislature would then have 45 days to respond before DOTPF would take the next step to create or acquire that easement or right-of-way.

CHAIRMAN TORGERSON said he found some of the language confusing, especially the language on the 45-day notice. He asked if it says the railroad right-of-way, realignment and utility corridor is okay, but everything else has to come back [to the legislature].

MS. ACHEE replied that those rights-of-way existed before the refuge was created.

CHAIRMAN TORGERSON asked if DOTPF must wait to take action until 45 days have passed beyond February 1.

MS. ACHEE said that is correct.

CHAIRMAN TORGERSON asked what will happen if the Legislature responds in opposition.

MS. ACHEE said she imagines the Legislature would have the opportunity to provide direction to DOTPF.

MR. DICK BISHOP, Alaska Outdoor Council (AOC), stated support for CSHB 474(CRA)am because it will provide some oversight in the development of the Anchorage Coastal Wildlife Refuge. The trail's integrity is important from the standpoint of its biological systems and the existing uses of the trail. He added:

It's kind of unique in that it provides for hunting and viewing and shooting through the Rabbit Creek Rifle Range. That mutually satisfactory arrangement has coexisted for going on almost 30 years now. The various alternatives that have been proposed for the development of the trail access in that area has raised

serious questions about whether that would persist if a new cohort of recreationists on a developed path would be in conflict with those uses and also raise some potential questions about the integrity of the swamp, itself. And I have to admit I have a personal bias in favor of swamps. You can take that into account there. They're great places.

I think it's really appropriate because state refuges in general are a creature of the legislative expression of its oversight on the management of natural resources in the state for the public's interest, the so-called public trust issue. I think it's very appropriate for the legislature to have the opportunity for oversight on situations like this where there may be significant changes proposed in a refuge that could impact very satisfactory, very popular existing uses...

MR. DENNIS POSHARD, legislative liaison, DOTPF, gave the committee a map of the proposed routes and said:

The Department opposes this legislation for a couple of reasons. First, we don't believe it's necessary. We are actively following a federally mandated environmental process that is quite time consuming and requires a substantial amount of public involvement. In fact, tonight we're unable to have the two leaders from the Department of Fish and Game and Department of Transportation here because there is a public meeting going on in Anchorage as we speak but we don't believe that this is necessary. We think that there's an active process in place on this particular project, and the process is working.

Secondly, we believe that the establishment of the refuge, giving the authority to manage the refuge and access into the refuge to Fish and Game was adequate and we think they're doing a good job with that mandate. I think that much of testimony that you heard is regarding specific trail routes. You'll notice that there's no orange route on the map. That was the one that was most contentious. It was the most coastal route and it was one that Fish and Game just flat out said they would not permit. So, we have removed it from the list of alternatives that are going to be forwarded in a draft environmental impact statement. We have added a future route at the request of the Department of Fish and Game and that will be one of the

alternatives that will be forwarded in the draft environmental impact statement. And that's out of direct response to the agency responsible for managing the refuge. It's also out of response to listening to the public and their concerns also.

Finally, I would say again, we don't believe that this is a necessary step. I think our biggest concern is if we do choose a route that requires us to go through the refuge and we have to come back to the legislature for your approval and the legislature should choose to not approve that particular route, that's going to be quite a difficult challenge, because we would come to you at the end of the federal environmental process when there's been a preferred alternative selected that the feds have bought off on and to go back then and change the route is one that I don't know that they would participate in in funding an alternative route at that point. And that's something that is of concern to the department also. But we certainly have heard the concerns of the sponsor and of folks who have testified in the past, and we're trying very hard to take those into account in the process. With that, Mr. Chairman, I'd be happy to answer any questions.

CHAIRMAN TORGERSON said DOTPF's solution is to do nothing and leave the law as it stands. However, the sponsor's staff said there appears to be a problem with how this has been handled in the past. Apparently, DOTPF is not doing a good job of responding. He asked, "So, what are we supposed to do with this?"

MR. POSHARD responded that this has been a very difficult project in that it's very contentious. A lot of vocal people support various routes of the trail. Some are upset with DOTPF for removing the orange route (the most coastal) as an alternative. He said:

I believe that the process is working and that the outcome of the process is going to be a route that a majority of the people can support and a route that is ultimately the best solution for that trail segment.

SENATOR TAYLOR asked, "Why in the world are we wasting the legislature's time on what I think should be an Anchorage problem conducted by their planning and zoning?" He said the Anchorage Metropolitan Area Transportation Study (AMATS) spends \$40 million of federal road money in Anchorage every year yet legislation is required to build a bike path.

MR. POSHARD said this is an AMATS project funded through the Trails and Recreation Access for Alaska (TRAAK) program. The state has expertise in dealing with the federal environmental process that the City of Anchorage doesn't have, "especially when it became part of the merge process and requires concurrence from all of the various resource agencies, both federal and state. That's why we agreed to take the lead on the project."

REPRESENTATIVE GREEN, sponsor of HB 474, said the coastal trail has been an on-going project for over two years. When it began, the Governor said it should be a city project but the response from Anchorage was less than desirable. The Governor then decided it should be a state project. Representative Green said his concern is that he's hearing that the orange trail that runs through the middle of the habitat area has been withdrawn because ever since Chip Dennerlein has been involved, he realized they would not have been able to permit that trail anyway. He added:

But it took them two years and another threat to decide that. My concern is that unless we keep their feet to the fire, it could revert back. Right now the alternative route, the fuscia route, looks good. There are three points of concern, but the fuscia route looks good. The fuscia route could have been done two years ago. And no way no how would they consider that. So, I'm concerned that unless we keep this pressure on, it could drop back.

CHAIRMAN TORGERSON asked if they could insert a reference to some sort of interaction with the MOA instead of the state.

REPRESENTATIVE GREEN replied it is the refuge that he is concerned about because that is where the habitat is. It's not the city part.

CHAIRMAN TORGERSON said they have coastal zone management powers.

REPRESENTATIVE GREEN pointed out they don't have it in the state area and that's the area of the biggest concern.

MR. POSHARD said he believes it is up to the state to manage the state wildlife refuge. State law specifically tasks the Department of Fish and Game to manage this particular refuge.

CHAIRMAN TORGERSON said he sort of agrees with Senator Taylor's concern about the legislature being involved in a local issue. He asked if there is a way to make it a local issue and suggested language that would prevent DOTPF from going forward with a route without approval by the MOA.

REPRESENTATIVE GREEN said he wasn't sure if that would even be necessary because if they stay with the fuscia route, it is outside of the refuge and the habitat area.

CHAIRMAN TORGERSON asked Mr. Poshard why DOTPF objects to the bill if the route is outside of the refuge now.

MR. POSHARD replied that there are a few sections where the fuscia route juts into the coast. In those sections, the route could go around the wildlife refuge or cut across it. Experts say those particular sections are not critical habitat areas. Being able to cross a couple of those segments would be very helpful in terms of bridge approaches that are going to have to go across Campbell Creek and a couple of other areas. ADF&G has indicated that it would be able to cross the refuge in "small, small parcels."

REPRESENTATIVE GREEN said the legislature would probably have no problem with that.

6:00 p.m.

SENATOR ELTON told members that a process is in place to manage the Mendenhall Wetlands wildlife refuge in Juneau. A local board manages for competing uses among duck hunters, hikers, wildlife viewers, and others. The management of those uses would have been complicated if, in fact, there was a trigger mechanism by which any aggrieved party could have come to the legislature and say it didn't like a decision. He stated, "That's what worries me about this bill. We could have people who liked the orange route coming back in and asking the legislature to review."

REPRESENTATIVE GREEN said the legislature would be involved only in the route selection, not the management. If the fuscia route is selected, there will be no problem but if it goes back to the orange route, there will be a major problem because it goes right through the critical habitat area. That is the major issue.

SENATOR ELTON said this bill provides an avenue for an advocate of the orange route to make the selection process a legislative issue.

CHAIRMAN TORGERSON suggested that they "bless the fuscia route in this bill and [have] any deviations from it come back to the legislature."

REPRESENTATIVE GREEN said he has two concerns: one is the outfall of Campbell Creek, and the route that comes back to the trail from inland. Users will be a prohibited from being able to get off the route at the dam. The concern is that dogs will run off of the trail and into the private lake area or be able to get

into the critical habitat area. He said, "If the fuscia route stays where it is and there is this protection at the dam, then I don't think it is a problem."

CHAIRMAN TORGERSON said that could be put in there, too.

MR. POSHARD responded that would pose a problem for DOTPF because according to the federal environmental process, NEPA, DOTPF is supposed to be weighing the alternatives with equal merit. If the legislature blesses a particular route, that could be viewed as biasing the study.

TAPE 02-27, SIDE B

SENATOR TAYLOR said he agrees with Mr. Poshard that this process should be continued into the future and added:

I really believe that many of us in the state should have direct input on the Anchorage AMATS process and we should assist those people in figuring out how to spend that \$40 million and, if we can, continue to keep needless studies and plans rolling. I can't imagine a single new road or trail ever being built in Anchorage as long as we do this. That would probably be fine and leave more money in the DOT budget and we might actually get a road paved in my district. This seems like an excellent process and I didn't realize how enthused I was about it until you explained it all to me.

SENATOR STEVENS asked what the subject of tonight's hearing will be.

MR. POSHARD replied that it will be an unveiling of the alternatives that are going to be forwarded in the draft environmental impact statement and public comment will be taken.

SENATOR STEVENS asked how long the fuscia plan has been available for public inspection.

MR. POSHARD replied that he thought the fuscia plan had been out in written form for a couple of months; in map form - about three or four weeks.

SENATOR STEVENS asked how long the other routes had been considered.

REPRESENTATIVE GREEN replied the orange and the red routes had been considered for 2 to 3 years.

MR. POSHARD said there is still quite a bit of time left in the process. They are at the point of releasing the alternatives for the draft environmental impact statement, which will be published and then public comment will be taken. It should be completed by late summer.

SENATOR STEVENS asked when the actual site will be selected.

MR. POSHARD answered some time next fall or winter.

CHAIRMAN TORGERSON suggested letting DOTPF go ahead with its planning process and then bring the site selection back to the legislature for approval before money is expended.

SENATOR STEVENS asked Representative Green, "What's your pulse on this fuscia route?"

REPRESENTATIVE GREEN replied that he likes it but he is concerned about the Campbell Creek dam and the ability to come from the interior back to the coast without going through private property and the danger of putting a trail next to the railroad tracks. The embankment is very steep and it would be hard to put a trail in there. DOTPF suggested using retaining walls and putting in a chain link fence to keep users off of the tracks.

SENATOR STEVENS asked for a description of the approval process on the first portion of the Tony Knowles Coastal Trail.

MR. POSHARD replied that he wasn't here when that occurred approximately 15 years ago.

REPRESENTATIVE GREEN said that it makes sense that it was done by the MOA since the trail was within the city limits. The difference is it didn't include the habitat area.

SENATOR STEVENS asked if Earthquake Park is a city park.

MR. POSHARD replied it is.

CHAIRMAN TORGERSON asked what DOTPF is spending on this.

MR. POSHARD replied that DOTPF has spent \$2 to \$2.5 million on the environmental document. Completion of the trail is estimated to cost \$16 million to \$50 million, depending on the route.

CHAIRMAN TORGERSON asked if they could put the money into roads instead and not build the trail.

MR. POSHARD said it is up to the AMATS policy committee to decide whether to do it or not.

SENATOR HALFORD moved to delete, on page 2, line 1, "45 days after the agency has submitted notice of the proposed action to the legislature; the notice must be submitted to" and to delete on line 3 "before February 1". [Amendment 1] It would then read:

...a state agency may not take final action to acquire or create a right-of-way or other easement for surface transportation within the refuge until approved by the legislature during the regular legislative session.

MR. POSHARD said DOTPF would still object, because it doesn't think it's necessary to bring the trail routing back to the legislature for approval. DOTPF doesn't do that with other projects and other wildlife refuges in the state don't have the same standard.

SENATOR ELTON said he reads Amendment 1 to mean that instead of leaving it to the legislature's discretion about whether or not to take it up, legislative approval would be required on an AMATS project. He thought that is a significant breach in the concept of AMATS and said he would be interested in knowing the MOA's reaction to this kind of legislative oversight on its project.

SENATOR STEVENS asked if the Municipality has taken a position on this legislation.

REPRESENTATIVE GREEN said it has not.

CHAIRMAN TORGERSON asked if there were any objections to Amendment 1.

SENATOR ELTON objected.

CHAIRMAN TORGERSON asked for a roll call vote. SENATORS TAYLOR, STEVENS, HALFORD, WILKEN and TORGERSON voted yes; SENATOR ELTON voted no.

SENATOR TAYLOR moved to pass SCS CSHB 474(RES) out of committee with individual recommendations.

SENATOR ELTON objected.

CHAIRMAN TORGERSON asked for a roll call vote. SENATORS TAYLOR, STEVENS, HALFORD, WILKEN and TORGERSON voted yes; SENATOR ELTON voted no, therefore SCS CSHB 474(RES) moved from committee.

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CHAIRMAN TORGERSON adjourned the meeting at 6:16 p.m.