

ALASKA STATE LEGISLATURE  
**SENATE TRANSPORTATION COMMITTEE**

April 26, 2001  
1:43 p.m.

**MEMBERS PRESENT**

Senator John Cowdery, Chair  
Senator Jerry Ward, Vice Chair  
Senator Robin Taylor  
Senator Gary Wilken

**MEMBERS ABSENT**

Senator Kim Elton

**COMMITTEE CALENDAR**

SENATE BILL NO. 130

"An Act establishing the Alaska Marine Highway Authority; and providing for an effective date."

MOVED SB 130 OUT OF COMMITTEE

SENATE BILL NO. 195

"An Act relating to the operation of the Anton Anderson Memorial Tunnel and related toll facilities by the City of Whittier; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 196

"An Act relating to the toll for the use of the Anton Anderson Memorial Tunnel and the Portage Glacier Highway; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 197

"An Act prohibiting the imposition of a toll or other fee for use of the Anton Anderson Memorial Tunnel and the Portage Glacier Highway; annulling certain regulations of the Department of Transportation and Public Facilities relating to tolls for use of the Anton Anderson Memorial Tunnel and the Portage Glacier Highway; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 127(RLS)

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

MOVED SCS CSHB 127(RLS) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

SB 130 - No previous Senate committee action.

HB 127 - No previous action to record.

SB 195 - No previous action to record.

SB 196 - No previous action to record.

SB 197 - No previous action to record.

**WITNESS REGISTER**

Captain George Capacci  
Director, Alaska Marine Highway System  
Department of Transportation &  
Public Facilities  
3132 Channel Dr.  
Juneau, AK 99801-7898

**POSITION STATEMENT:** Opposed to SB 130.

Mr. John Manley  
Aide to Representative Harris  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Testified for the sponsor of HB 127.

Ms. Juli Lucky  
Aide to Senator Halford  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Explained the changes made in SCS CSHB 127(TRA).

Senator Donny Olson  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Testified in favor of SCS CSHB 127(TRA).

Mr. Paul Bowers  
Director, Statewide Aviation  
Department of Transportation &  
Public Facilities  
PO Box 196900  
Anchorage, AK 99519

**POSITION STATEMENT:** Discussed problems with implementing SCS CSHB 127(TRA).

Mr. Carl Siebe

Department of Transportation &  
Public Facilities  
411 Aviation Drive  
Anchorage, AK 99502

**POSITION STATEMENT:** Discussed enforcement problems with Alaska's aviation statutes.

Mr. Butch Halford  
Address not provided

**POSITION STATEMENT:** Commented on SCS CSHB 127(TRA).

Mr. Tom Crafford  
Alaska Miners' Association

**POSITION STATEMENT:** Discussed problems with SCS CSHB 127(TRA) regarding the use of public runways used in mining operations.

Brad Thompson, Director  
Division of Risk Management  
Department of Administration  
PO Box 110218  
Juneau, AK 99811-0200

**POSITION STATEMENT:** Discussed the current and proposed insurance requirements of air carriers under SCS CSHB 127(TRA).

Mr. Kip Knudson  
ERA Aviation  
6160 Carl Brady Drive  
Anchorage, AK 99502

**POSITION STATEMENT:** Commented on the insurance provisions related to SCS CSHB 127(TRA).

Mr. Matt Rowley  
City of Whittier  
PO Box 608  
Whittier, AK 99693

**POSITION STATEMENT:** Commented on SB 195, SB 196, and SB 197.

Mr. Ben Butler, Mayor  
City of Whittier  
PO Box 608  
Whittier, AK 99693

**POSITION STATEMENT:** Commented on SB 195, SB 196, and SB 197.

Mr. Dennis Poshard  
Special Assistant  
Department of Transportation &  
Public Facilities  
3132 Channel Dr.  
Juneau, AK 99801-7898

**POSITION STATEMENT:** Commented on DOTPF's concerns with SB 195, SB 196, and SB 197.

**ACTION NARRATIVE**

**TAPE 01-14, SIDE A**

Number 001

**CHAIRMAN JOHN COWDERY** called the Senate Transportation Committee meeting to order at 1:43 p.m. Present were Senators Taylor, Wilken and Cowdery. He announced the committee would hear the resolution at another time; the first bill to come before the committee would be SB 130. Chairman Cowdery asked the sponsor to address the committee.

#SB 130

**SB 130-ALASKA MARINE HIGHWAY AUTHORITY**

SENATOR ROBIN TAYLOR, sponsor of SB 130, gave the following explanation of the measure.

SB 130 is essentially the same measure that he introduced about 10 years ago when he was a member of the House. Senator Lloyd Jones introduced a companion bill in the Senate. The concept originated from studies done on Southeast Alaska transportation over the last 25 years. Those studies have concluded that transportation issues should be removed from the influence of politics by establishing an autonomous board that would hire staff. An autonomous board would also provide for continuity and hopefully develop an intermodal system of transportation to interconnect the expanding road system of Southeast Alaska. None of that has occurred in the last 37 years. Unfortunately, that operation, in the words of Jim Ayers, "is in a death spiral."

SENATOR TAYLOR said that without continuity in transportation, he doesn't believe the ferry system will continue to exist, even as a shadow of what it was in the past. The entire economy of Southeast Alaska depends upon a certain level of service that may or may not be available. If those communities are going to survive and have a viable transportation link, this bill is crucial. This matter always come down to a confrontation between the legislative and executive branches. Every governor wants to be able to appoint the people who will run the Alaska Marine Highway System (AMHS). This administration has been no more successful in that effort than has any previous administration. Senator Taylor expressed concern that the head of the entire transportation system and the people who run it change every four years and the replacements have no background

in that system. That has led to a lack of continuity, a lack of expertise, and wildly vacillating concepts.

SENATOR TAYLOR noted he is not aware of any marine highway system in the world that is building high speed ferries for normal runs. High speed ferries are being built for critical runs where the existing system has no capacity left. Passengers are paying two to three times the cost to get to their destination quicker.

Number 467

CHAIRMAN COWDERY asked if the high speed ferries are capable of running in big seas.

SENATOR TAYLOR said that every system he has contacted does not operate fast ferries in adverse weather conditions. In addition, staff from the Department of Transportation and Public Facilities (DOTPF) have said they would not be able to operate a fast ferry several days each year; high seas are a major factor, as well as cost and maintenance. High speed ferries are probably an innovative idea that will develop over time to where they will be less expensive to operate. He pointed out that issue should be resolved by a board of directors with expertise in public transportation, and specifically marine transportation.

CHAIRMAN COWDERY noted that Senators Ward, Taylor, Wilken were present and that Senator Elton was ill. He then took public testimony.

Number 664

MR. GEORGE CAPACCI, General Manager of the Alaska Marine Highway System, read the following prepared statement to the committee.

It is important that I be here today to express my concerns about the proposed marine highway authority contained in SB 130. These concerns are essentially the same as Commissioner Perkins presented in 1997, with some important updates about the management and direction of the Alaska Marine Highway.

Let me begin with a review of why the Alaska Marine Highway Authority is not in the best interest of our customers, the citizens of Alaska, and the Alaska Marine Highway employees.

First off, the authority creates more problems than it solves. SB 130 diminishes public accountability. Under

the present system, the marine highway system management is accountable to the public. Concerns and requests are responded to quickly and completely. They have to be. Elected officials are responsible for the management of the marine highway and elected officials have to be responsive to the public they serve. Sometimes that is a time consuming and cumbersome process but it is the most responsive way to handle the people's business. The establishment of an authority would diminish the public's accountability of marine highway management by inserting an appointed board between management and the people. Marine highway management will no longer answer directly for the elected governor or for any other elected representatives. The board, and not the governor nor the legislature, will make management decisions. Once appointed, board members will not be accountable to the public. A board member may be removed only for cause. The accountability of the marine highway management to the communities they serve will be substantially reduced. We believe this is not desirable.

SB 130 diminishes public influence on decision making. Alaskans know who is in charge of the marine highway system. When things are running well, they know who to compliment. When things aren't going so well, they know who to contact. Believe me, they know who to contact. This bill changes all of that. When accountability of elected officials changes, public access to the decision making process also changes. Although a person or a community may ask the board of directors of the system for a schedule change or a special run, there may be little or no pressure to respond. The CEO is insulated from the effect of public pressure.

Current community input to the fleet's schedule is an ongoing effort. Annually we solicit this input and adjust our schedule as much as possible to meet those demands. We believe Alaskans appreciate direct access to the public systems that most affect their lives, and this bill will have a substantial negative impact on that access.

The Alaska Marine Highway System is not broken. The marketing and pricing study was recently completed. There is a lot that is right about the Alaska Marine Highway System. The ships have an enviable safety record, they generally run on time, they provide safe, economical, comfortable and reliable transportation

service to our traveling public. The currently completed, back in September of last year, marketing and pricing study, found that 93 percent of our customers rate their AMHS experience as good or very good. The study also concluded of the top ten locations visited by summer of 1999 visitors, five locations - Anchorage, Mat-Su/Denali, Fairbanks, Valdez and the Kenai Peninsula are not even in Southeast Alaska. So five of the top ten locations are not even in Southeast Alaska. This points out that we are carrying visitors and passengers throughout the state of Alaska. The entire state's economy therefore benefits from the marine highway's passengers.

Of course, I'll be the first to admit some problems occur. They are inevitable in an operation that is as vulnerable to as many variables as the marine highway system is. It is a system that has a large and varied constituency, and everyone has an opinion as to what should be done and how it should be operated. But, overall, the system is doing what it was designed to do in the mid-60s - transporting people and vehicles throughout coastal Alaska in the context of an intermodal transportation network. It is a credit to the hard working crewmembers and dedicated staff that we operate as well as we do.

SB 130 adds another administrative layer. This bill would set up another administrative layer over which neither the governor nor the legislature will have control. We believe that is bad public policy. But, even worse, it doesn't fix anything. There is nothing in the bill that encourages stability or financial support by the legislature. There is nothing in the bill that addresses the increasing capital needs of an aging fleet.

There are major challenges at marine highways that we are addressing with strong leadership and action. One of the biggest problems that you can help relieve is the time and energy that now is being spent controlling the damage caused by anxiety over our future. That is a problem that you can materially affect by telling the whole story in this very successful state adventure by demonstrating your support for its future and helping us fix the problems that we have. The system is nearly 40 years old. The ships are aging, the system is running the same type of operation it did 38 years ago with more public service. In 1976, for example, Sitka was provided with

268 trips and in 1999 that number was 325 trips. Today we are responding to the challenges of shrinking funding and increasing regulatory demands.

I'd like to talk a little bit about AMHS maritime experience. Although it isn't specifically stated in the proposed legislation, an implicit purpose for an authority is apparently to insulate the marine highway system from inexperienced managers appointed through the political patronage process. The 1989 "Acres Report" recommended that additional experienced mariners should be hired as managers to better understand the operation of the maritime vessels. AMHS has done that and more. From myself, the director of the Southeast region, through the vessel operations managers, the marine engineering manager, the port captain, assistant port captain, the ISM/STCW coordinator, the three port engineers, the eight vessel construction managers, and the state's only naval architect and our safety officer, the Alaska Marine Highway System is staffed with marine professionals with over 500 years of vessel operation and maintenance experience. Most of my staff, my senior level staff, have the title "captain" in front of their names and we can refer to them because of their master mariners documents. This staff exists to support the Alaska Marine Highway vessels and conducts its daily business to that end.

The Southeast Transportation Plan and the Prince William Sound Transportation Plan point toward the future. The Southeast Alaska Transportation Plan was a comprehensive plan that was developed through extensive public participation. The basic tenant of the SATP is a series of shuttle vessels connecting Southeast communities coupled with a version of the exiting mainline vessels to improve the overall transportation system for our customers. The same holds true for the Prince William Sound Transportation Plan. A vessel capable of 30 plus knots is needed to solve the elemental time and distance equation to provide daily service in Southeast Alaska and Prince William Sound. The residents of Prince William Sound communities strongly support our transportation planning efforts. The residents of Southeast Alaska have uniformly supported a Southeast transportation plan. The Southeast Transportation Plan and the Prince William Sound Transportation Plan are not perfect but they are good plans and the best our public process can produce for essential transportation improvements. These plans

have wide public support and endorsement. We need your support to implement these transportation plans.

I believe a firm foundation is being laid for future statewide transportation services including the essential Alaska Marine Highway System. Vessels are being upgraded to comply with ever increasing international and federal safety regulations. Our crews are undergoing standardized training mandated by the international regulations to be the most professional mariners possible.

An authority would further isolate the marine highway system from capital funds. The marine highway system is presently managed by DOT/PF personnel as an integral part of Alaska's intermodal transportation system. The majority of the routes have been designated by Congress as part of the national highway system. As an operating arm of the department, the system receives federal highway funds from the department. By separating the system from DOT, as an authority, operating independently from the rest of the Department of Transportation, the debate for funding the marine highway system capital improvement projects could conceivably shift more toward the legislature for resolution. This will force the marine highway system to compete more aggressively with individual communities throughout the state, other DOT regions, and other agencies for its share of the federal highway funds, rather than sharing them as one component of Alaska's intermodal transportation system.

While the commissioner of DOT would serve on the board of directors of this new authority, it is unrealistic to think that an organizational component, which is separate from the rest of the agency, and for which the commissioner no longer has primary responsibility, will receive the same level of consideration for federal highway funds as it receives as a line agency within the department.

The authority itself provides no mechanism to reduce subsidies. The marine highway system presently derives about 55 percent of its operating funds from revenues, with the remaining 45 percent of its operating budget appropriated from the general fund by the legislature. The marine highway provides an essential public good, transportation, that cannot be provided by the [private] sector. As such, providing a state operating subsidy is

an appropriate role for government. This subsidy is essential for continuing service year round at a reasonable price. Nothing in this proposed legislation is directed toward changing that funding relationship. The proposed authority is not designated to be self-sufficient. It will continue to require annual legislative appropriations for operations and capital improvements. What then is the justification for establishing it as a state corporation? An authority will require additional subsidy to fund its increased overhead costs.

Additionally, administrative costs are likely to increase. The marine highway system is already unfairly criticized for its large size of central office staff. In truth, the Juneau office staff has diminished in recent years despite extensive additional international and national safety and training regulations, which need implementation, monitoring, and oversight. If the marine highway system is split from the rest of DOT into a quasi-independent authority, it will lose the administrative support presently provided by the department, and the administrative costs for the marine highway system will certainly increase. Personnel and accounting services, which are now provided in part by headquarters, would fall entirely on the authority itself, so would engineering services now being provided by the Southeast region. The system would further be removed from the Federal Highway Administration. The relations with DOT and the Federal Highway Administration would be complicated since our CFR Title 23 for the administration of the Federal Highway funding programs is the responsibility of the state highway agency, which is the Department of Transportation.

Separate accounting and data processing systems would almost certainly be necessary. That authority would not be exempt from the Executive Budget Act, state procurement code, and other state mandated rules and regulations.

Finally, and thankfully, in summary, the proposed marine highway authority would be a move in the wrong direction as far as transportation in Alaska is concerned. We all recognize that the marine highway system cannot continue to operate as if it were still in the 1960s. Times have changed and the needs of Alaska's communities and the traveling public have changed. The transportation

network along Alaska's coastline has changed. The changes needed in the marine highway system are evolutionary as the system adapts to meet the demands of our varied customers. However, SB 130 takes us in the wrong direction. With the help of the legislature, we will continue to work to ensure the marine highway system truly functions as an integral system and element in a well designed state transportation system. I am working to bring about this evolutionary change to improve the marine highway system but this transition must be well thought out and have the support of the people of Alaska. This takes time and the worst action we can take now is to create another level of unneeded bureaucracy as this bill proposes to do. Thank you for allowing that many pages and I would be happy to answer any questions you might have.

Number 1400

CHAIRMAN COWDERY asked if the ferry systems in other states are privately owned and, if so, how they deal with federal subsidies.

MR. CAPACCI said there are a number of ferry systems throughout the country, both publicly and privately owned. Most of the publicly owned ferry systems get federal dollars to improve and construct their vessels. Their operating funds come from their own revenues and from their state legislatures. Those systems are very different from Alaska's. Alaska has passenger ships that also carry cars and are not used as commuter systems. Most other state ferry systems do not have to deal with long distances.

SENATOR WARD asked for a copy of Mr. Capacci's written comments. He also asked if any other ferry systems are run by an authority.

MR. CAPACCI said he is not aware of all the authorities, but a number of bodies advise the Washington Legislature and do studies for it, such as tariff pricing studies. He does not believe that Washington State has a true authority that directs the CEO of that ferry system.

SENATOR WARD asked if the existing authorities are port authorities.

MR. CAPACCI said he would have to do more research on that question.

SENATOR WARD commented that he asked because Mr. Capacci said he was not in favor of authorities. He then noted the Governor has proposed new regulations on cruiseships to deal with waste. He asked if the ferry system is already complying with the Governor's

proposed regulations.

MR. CAPACCI replied, "Through the Chair, yes - Senator Ward there are a number of different ...."

SENATOR WARD responded, "Okay, that's fine, thank you."

MR. CAPACCI said, "...but yes."

SENATOR WARD asked if the AMHS has the ability to acquire state lands so that it can develop, sell or lease those lands in order to supplement its operations, similar to the Alaska Railroad Corporation (ARRC).

MR. CAPACCI said he did not know what possibilities exist along that line.

SENATOR WARD asked if Mr. Capacci has read Sec.19.55.210, regarding acquisition of land and easements, on page 6 of SB 130. He noted that one of the cornerstones of this bill is to transfer 1.4 million acres of state land to this new authority to offset some of the operational costs. He again asked if the AMHS has the authority to accept land now.

MR. CAPACCI said he did not see that section in the previous edition of the bill. He repeated that he is not sure whether the AMHS can accept land at this time. He noted that is an intriguing idea.

SENATOR WARD said, regarding Mr. Capacci's comment, that an authority would separate the people from the operations, that he believes an authority would bring the two into closer contact. He asked if that would be eliminated if the members of the authority are elected rather than appointed.

MR. CAPACCI said he would have to give that question more thought.

SENATOR WARD said to serve on other authorities, candidates must fit certain criteria, such as geographic location. He felt that should solve the public input problem and asked Mr. Capacci if that is what he is proposing.

Number 1693

MR. CAPACCI said he does not know that the Port of Bellingham's authority runs a maritime transportation system. DOTPF deals with the facilities in Bellingham but he is only aware of the terminal facilities that they operate.

SENATOR WARD asked Mr. Capacci if he is familiar with that authority.

MR. CAPACCI said he is aware they have an authority with elected officials.

SENATOR WARD again asked if that would alleviate Mr. Capacci's concern about public participation.

MR. CAPACCI said he is not sure how that authority relates to the public and how responsive it is to the public. He noted that authority is not developing a transportation system. It makes decisions about the shore side facilities.

CHAIRMAN COWDERY said he is glad the marine highway system is already conforming to the proposed cruiseship regulations on waste disposal.

MR. CAPACCI said there will be expenses.

CHAIRMAN COWDERY said the marine highway system must not be conforming then.

MR. CAPACCI said, "We do conform with the outflows but the testing requirements and the reporting requirements and the monitoring requirements are going to be additional administrative and additional costs if the periodicity is changed. The sampling that we do - we weren't initially sampling effluent, we had other measures of whether the systems are effective or not, but we took it upon ourselves to sample those outflows and found that they were within specifications so, if a lot of those bills get enacted, there's going to be some expenses involved in that, yes sir."

There being no further testimony or questions, SENATOR TAYLOR moved SB 130 from committee with individual recommendations. There being no objection, the motion carried.

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#HB 127

**HB 127-AVIATION & AIRCRAFT EMERGENCY EQUIPMENT**

CHAIRMAN COWDERY announced that the committee discussed the Senate version [SB 100] of HB 127 at a previous hearing.

SENATOR WARD moved to adopt SCS CSHB 127(TRA), Version F, as the working document of the committee. There being no objection, the motion carried.

The committee took a brief at-ease.

CHAIRMAN COWDERY called the meeting back to order and took public testimony.

MR. JOHN MANLEY, staff to Representative Harris, prime sponsor of HB 127, told committee members that Representative Harris's original intention was to make it easier for private pilots who take off from Alaska and land in Canada to do so legally. According to recent federal legislation in Canada, a person must get a permit to bring in a firearm, meaning a rifle or shotgun. Handguns are not allowed. Alaska statutes require private pilots to carry a firearm to take off from Alaska. The new Canadian legislation creates a situation where Alaskan pilots would be acting illegally if they took off without a firearm and illegally if they landed in Canada with one.

HB 127 exempts private pilots flying under an FAA flight plan into Canada from carrying a gun. A few other changes regarding emergency equipment to be carried were made in the House.

MS. JULI LUCKY, staff to Senator Rick Halford, sponsor of SB 100, explained that most of the provisions of SB 100 were added to SCS CS HB 127(TRA) but it differs from SB 100 in the following ways. A section regarding survival rations was removed; provisions related to communications were removed as no reference to communications was made in the title of HB 127; and new language was added to the civil liabilities section (Section 11), which Senator Taylor worked on.

Number 2005

SENATOR TAYLOR expressed concern about lessening the life, health, and safety aspects of the law. He pointed out that a flight from Fairbanks to Dawson covers a significant distance and pilots will be less well-equipped to deal with difficulties with this bill. He said he understands the reasons for the compromise but he is frustrated that it has to be done.

SENATOR DONALD OLSON told the committee that this bill will affect two air taxi businesses he owns. He has been a pilot since 1969 and has had to make about 14 or 15 forced landings during his flying career; he has needed the emergency gear he carries various times. He noted that during the past 30 years, the air taxi business has changed. Airlines used rudimentary Cessna 180s whereas now multi-engine turbine aircraft are used. Regarding searches, emergency locator transmitters were not required in the early 1970s so searches could take months. Now that they are required for air taxi businesses and private aircraft, search time has been dramatically reduced. For those reasons, he supports this bill. Senator Olson pointed out that some pilots are reluctant to carry all required emergency gear, such as handguns, because of vandalism.

MR. PAUL BOWERS, Director of State Aviation for DOTPF, agreed that vandalism is a problem. He said that requiring pilots in Nome to

carry firearms onboard a flight might cause problems if Russian airspace is opened up to private flights. He suggested making the firearm requirement an optional part of emergency equipment or rewording the bill so that it applies to any international flight instead of Canada only. Mr. Bowers also suggested exempting large airlines from Section 1 as they are already exempted by the FAA. Regarding signaling devices, he suggested listing a small mirror as an alternative device.

CHAIRMAN COWDERY announced that an error was made when adopting the previous committee substitute and asked that a member move to adopt the correct version.

SENATOR TAYLOR moved to adopt SCS CSHB 127(TRA), Version L, as the working document of the committee. There being no objection, the motion carried.

CHAIRMAN COWDERY continued to take public testimony.

MR. CARL SIEBE, airports engineer for the Statewide Aviation Division of DOTPF, made the following comments. The current statutes create enforcement problems for DOTPF by requiring it to do selective enforcement. Foreign pilots fly into Alaska every year and try to get their book rating, yet under federal law foreign visitors to the United States are prohibited from carrying weapons. In addition, licensed pilots with a felony conviction are prohibited by other statutes from carrying weapons. Last, business aircraft often stop in Alaska for a "pit stop" on their way to other countries.

TAPE 01-14, SIDE B

MR. SIEBE said an aircraft cannot land in those countries with a weapon so they typically do not carry weapons. He noted that clarification of the original legislative intent of that provision would help DOTPF to administer the statute. Regarding the survival gear statutes in general, he pointed out the U.S. Air Force survival school has excellent guidelines for survival gear, many of which differ from Alaska's statutes. The Air Force requires that survival gear be simple enough to be carried on the person. He informed the committee the revised [1999] Canadian aviation regulations require pilots to carry shelter, signaling equipment and equipment to make potable water. He asked that whatever is put forth in statute be reasonable and enforceable.

CHAIRMAN COWDERY said when he was flying in Alaska he carried a sealed metal container filled with survival gear that could only be used, under penalty, for an emergency. He asked if that same concept could be applied to this bill.

MR. SIEBE said his first concern with that approach would be

enforceability. DOTPF aviation staff are extremely limited and the State Troopers are also limited as far as what they can do.

CHAIRMAN COWDERY said most pilots want to conform so a random check should suffice.

MR. SIEBE said the FAA doesn't want to get into the requirement for carrying survival gear on small aircraft. If an annual inspection was required, someone in DOTPF would have to enforce that statute.

CHAIRMAN COWDERY asked the next testifier his opinion of the concept of a sealed packet of survival gear.

MR. BUTCH HALFORD said he is not well-versed on that element of the proposed legislation.

SENATOR TAYLOR asked Mr. Halford to comment on the need for a proposed amendment regarding occupancy related contracts and leases at airports.

MR. HALFORD said the issue is one of liability. The Division of Risk Management has recently required that anyone who enters into an agreement with the state, whether it be through a contract or a lease, must indemnify the state against any liability less than 100 percent of sole responsibility of the state. He pointed out if the state was 99 1/2 percent responsible for a problem, the person who entered into the lease would have to assume 100 percent of the liability. He felt that is not reasonable and it is not common. It would be far more reasonable to adopt a position of comparative fault so that each party shares in the liability to the degree of fault.

Number 1984

SENATOR TAYLOR informed committee members he has submitted a proposed amendment (Amendment 1) to take care of part of that problem. The amendment does not cover as broad a scope as Mr. Halford would like on all liability issues, but it does adopt a comparative fault policy on DOTPF-owned airports with lessees, permittees and concession owners. He moved to adopt Amendment 1. There being no objection, the motion carried.

CHAIRMAN COWDERY proposed to delete on page 5, line 17, of SCS CSHB 127(TRA) the reference to AS 02.35.110(b).

SENATOR TAYLOR so moved Chairman Cowdery's proposed amendment as Amendment 2. There being no objection, the motion carried.

MR. TOM CRAFFORD, representing the Alaska Miners Association (AMA), made the following comments about the civil liability provisions in SCS CSHB 127(TRA). He noted he is a geologist by training. The

concerns of the AMA relate to the civil liability exposure of a miner who, out of necessity, maintains an airstrip to support his operations in rural Alaska. Under existing law, the miner may not close the airstrip for public use, even though it is intended solely for the support of the mining operations. As a consequence, this opens the miner up to certain liability issues. The provisions of Section 11 seek to provide some limitations of that liability exposure to the operator of the airstrip but it still leaves a paid employee, perhaps a grader operator, open to liability. He pointed out that section does extend liability protection to damage to an aircraft, which was suggested by the AMA. He felt it would be appropriate to further extend that protection to the contents of the aircraft.

MR. CRAFFORD explained that Section 11(b) extends the right to the owner or operator of an airstrip located on private land to close that airstrip by placing a large X on it that is readily visible from the air. The AMA supports the concept but would like that provision to apply to airstrips on public land also. Most miners operate on mining claims and leases from either the federal government or the state so the airstrips associated with those operations are not located on private land. In addition, the limitation on liability in subsection (b) should also be extended to the contents of the aircraft.

Number 1730

SENATOR TAYLOR commented that, in his opinion, there is no risk of liability whatsoever because no one has ever been sued in the history of the state for negligence on the maintenance of one of these remote airstrips. He explained that one lawsuit was brought against a person who parked a large vehicle in the middle of a runway and did not move when told to do so. A pilot had to make a landing and damaged the aircraft. The pilot sued the vehicle owner and won.

SENATOR TAYLOR said that since there is no risk of liability, he structured this section so that it would only apply to a person who had grossly acted. That section applies to the boss and any employees, even though an employee was paid. The boss was not being compensated for operating the airfield. Regarding the ability to close the runway, that subsection was structured to be limited to private landowners with the understanding that there are operators who work off of public land that do not have the authority to close a runway on public land. That is why two separate subsections were created.

CHAIRMAN COWDERY asked Mr. Crafford if Senator Taylor's explanation satisfied his concerns.

MR. CRAFFORD said it does in large part but the AMA is also

concerned about whether painting an X on a runway is sufficient to close a runway. He noted the placer miners want to be able to restrict access to a runway when they are absent during the winter season to prevent vandalism. He agrees that it is arguable that closing a runway with an X will be an effective deterrent.

SENATOR TAYLOR responded that litigation against private landowners on access roads and trails did not occur until private landowners tried to close them off. Instead of closing them off in a reasonable fashion, 99 percent of those landowners strung a 1/2 inch diameter steel cable across the road and someone hit the cable. He suggested that putting an X on the runway should keep 99 percent of pilots from landing. He added that this section will not provide protection if a runway operator set up a "booby" trap.

MR. CRAFFORD said the AMA does not believe any operators should obstruct a runway in a dangerous fashion but with this bill a miner is prohibited from closing a runway with an X because the runway is not on private land.

CHAIRMAN COWDERY asked if this bill has a referral to another committee.

MS. LUCKY answered this is the last committee of referral before the Senate Rules Committee. She explained that the previously mentioned topics were considered by the sponsor. Regarding closing a runway on public lands, the public's right to access must be balanced with the problem of private property being vandalized. The problem with obstructing runways on public lands is that they may need to be used for emergency access. Another concern is that people are not charting these runways because of the fear of liability. Senator Halford wanted to give those people who are maintaining runways but have not charted them because of the fear of liability a little more incentive to do so.

SENATOR TAYLOR said he knows there was some concern about Amendment 1 and he hopes it does not burden the problem.

MS. LUCKY said the sponsor has no problem with Amendment 1.

SENATOR TAYLOR said one issue remains that could be addressed by this legislation, and that is the Lake Hood/DOTPF problem of who gets tie-downs. He hopes that Commissioner Perkins will address that problem through regulation but, if not, this would be an appropriate vehicle to deal with it.

SENATOR WILKEN noted that Amendment 1 seems to be a common sense thing that people take at face value. He asked that someone from the Division of Risk Management address Amendment 1 and tell the committee why it has not been done before. He also asked to hear from aircraft owners on Amendment 1.

CHAIRMAN COWDERY said due to a lack of time, he would hold the bill and asked Mr. Thompson to address the committee.

MR. BRAD THOMPSON, Director of the Division of Risk Management, said his division advises DOTPF as to contract terms of insurance and indemnity. He noted he has been involved in negotiations for the user agreement at the Anchorage international airport, as well as the rural airports. Many discussions have taken place over the allocation of fault. Comparative fault was a term used at the Anchorage international airport negotiations. The state attempted to revise and follow a form that was used by other airports in other jurisdictions. The insurance requirements are very difficult in Alaska today because of problems with the availability and affordability of insurance for air carriers. The state has negotiated a user agreement with comparative fault at the Anchorage international airport and he intends to do the same at the rural airports. SCS CSHB127(TRA) will force the state to do so.

The second section of the bill will require the state to evidence, in regulation, the type and limit of insurance coverage required of each class of aviation-related lease, permit and concession contract. That's a difficult challenge. It is not something he is trying to avoid, but the differences and disparity between the users of the Anchorage international airport and lessees at the rural airports is large. The state has tried to use general terms in the past on comprehensive public liability so that it can tailor the specific lease contract or the certificate of insurance used as evidence for public liability to respond to individual activities. There is no such animal as a comprehensive public liability insurance policy. That term was used in a prior regulation but the diversity of operations at a state airport in Alaska is so great that it is a difficult challenge to put into regulation something that will apply to everyone.

Number 960

SENATOR WILKEN asked if some airports in Alaska are maintained by DOTPF.

MR. THOMPSON said they are.

SENATOR WILKEN asked if a grader was left on a runway and caused an accident, whether DOTPF would be responsible for any portion of the liability under current law.

MR. THOMPSON said it would.

SENATOR WILKEN asked for clarification as he thought Amendment 1 allowed for apportionment of liability where there is none today.

MR. THOMPSON explained that the former use agreement at the Anchorage international airport did have a comparative fault allocation as a term of the contract. Typically, the state does not identify in detail in statute or regulation the terms and conditions that will be used in negotiated contracts. The state has responded to events when it is legally liable. If the state has a contract with comparative fault, the state will participate to the extent of its fault. He noted the state did suggest and propose language so that the state would not begin to participate unless it was at least 60 percent at fault. Many times the proximate cause of an accident is the use and operation of aircraft. Often, through creative pleading, allegations are made against any party involved, including the state.

SENATOR WILKEN asked if Amendment 1 will have a fiscal impact.

MR. THOMPSON said any change to the state's risk is incorporated into the overall state risk management program. The Division of Risk Management does not submit a fiscal note when it has a slight variation. The division is funded on a pay-as-you-go basis on its self insured program because it too speculative to suggest a fiscal note.

SENATOR WILKEN asked Mr. Thompson if he would like more time to analyze the impact of Amendment 1.

MR. THOMPSON said Amendment 1 will create a significant challenge since the Division of Risk Management will have to specify, in regulation, the type and limit of insurance coverage required of each class of aviation-related lease, permit and concession contract.

SENATOR WILKEN questioned the need for Amendment 1.

Number 564

SENATOR TAYLOR asked if the lessee is now asked to indemnify the state for all risk.

MR. THOMPSON answered that in a rural airport lease, the language in regulation in the past required the lessee to assume liability for certain things resulting from or arising out of any act, commission, or omission by the lessee, his agents, employees, or customers arising from or out of lessee's occupation or use of the premises or privileges granted.

SENATOR TAYLOR asked if the lessee had to indemnify the state against any liability for any of his activities.

MR. THOMPSON said yes, for any activities arising from the lessee's use and operation.

SENATOR TAYLOR clarified that this legislation will only require the Division of Risk Management to identify levels of risk against levels of aircraft, users or lessees and to provide that the division provide for apportionment of fault, as opposed to saying the state will only step up to the plate and be responsible if, after the lessee has gone to court, the lessee can prove that the state is more than 60 percent liable.

MR. THOMPSON said the 60 percent apportionment was a proposed allocation method in a contract negotiation that was not adopted. He noted that most international airports require the users to have strict indemnity and that major airlines that land in Alaska sign similar terms and conditions in other locations. That is why the division tried to pattern the proposed language in the Anchorage international airport use agreement with provisions used in other locations.

Number 295

SENATOR WILKEN said his concern lies with the smaller airports, such as Fort Yukon.

MR. THOMPSON said if there is a loss involving the use of aircraft arising from the state's responsibility, the state has paid for its responsibility. The state is liable for activities performed by its own employees and its contractors.

SENATOR TAYLOR noted the real issue is what the division requires users of state airports to have in insurance policies regarding state indemnification. He noted the state is self-insured while the users have to buy an insurance policy. He said the level of the risk the state is requiring the user to indemnify the state for is what is in question.

MR. THOMPSON said the state does purchase airport insurance. It self-insures for the first \$250,000, but purchases excess liability coverage to protect the state's assets and operations for a large loss in excess of that amount. In the past, the regulation for a lessee at a rural airport required: property damage coverage arising from one accident in a sum of not less than \$50,000; and personal injury or death liability insurance not less than \$100,000 per person and \$300,000 per accident. Those sums were revised in a regulation requiring limits of \$1 million for each occurrence. He pointed out there is subjective language for additional limits to be required, depending upon the level of activity and the location.

MR. THOMPSON said the division is asking for a greater sum at the Anchorage international airport. The insurance required in 1986 for all users was characterized on a per seat basis and was set at \$1,000,000. Minimum limits for propeller aircraft were set at \$10

million and for jet aircraft at \$20 million. Those requirements were for Anchorage only.

SENATOR WILKEN asked if this bill with the amendment will help the small air carriers and, if so, whether it will cost the state anything to help them.

MR. THOMPSON said he does not think it will significantly affect the state's risk or the state's cost. It may in the future with a comparative situation. Regarding whether it helps the small operator, he thought the division will be challenged with the task of developing a matrix to address, in regulation, all of the types and varied operations.

SENATOR WILKEN asked if an air cargo business will be able to show this new law to its insurance company and expect its rates to be lowered.

MR. THOMPSON said he does not believe any relief will be provided to the aircraft owner/operator because of this bill. The division checked with the markets as to the difference in rates depending upon the use agreements; the users will get no extra premium or relief if they sign something with a less favorable location.

SENATOR TAYLOR said with the exception of those that may be large enough to be self insured.

MR. THOMPSON responded that is true of anyone who insures for the first layer.

SENATOR TAYLOR said what they are talking about is that the state self insures to \$250,000, but it is requiring the other parties it is dealing with to indemnify the state to \$1 million. That also provides another layer between the state and the liability. He asked if that becomes another step between the state and the potential claimant that the state will have to pay.

MR. THOMPSON said he thought Senator Taylor was confusing the indemnity and the insurance. The indemnity is the hinge pin as to allocating responsibility between two defendants. Whether one of the defendants does or does not have the ability to pay their obligation is a separate issue.

TAPE 01-15, SIDE A

MR. KIP KNUDSEN, ERA Aviation, informed the committee he sat on the negotiating committee for the operating agreement at the Anchorage and Fairbanks international airports. He said the issue of comparative versus sole proximate cause has been an ongoing one. The airlines that operated at those two airports up until now have benefited from a comparative fault clause, which is fair. During

the negotiations, the state's position has been that it will transfer all of its contracts over to a sole proximate cause standard.

SENATOR WILKEN asked if all airports, other than Anchorage and Fairbanks, will be excluded.

MR. KNUDSEN said regarding the rest of the state's airports, the same language, regarding sole proximate cause, is contained in draft regulations for Title 17. If those regulations are promulgated, an operator working out of Venetie, for example, will have to bear the financial burden of sole proximate cause if the state is 99 percent responsible for that airport. Currently, most leases contain an apportioned or comparative fault clause. He explained that the Anchorage and Fairbanks airports are self-financed; airlines pay the fees to pay the bill. If going to a comparative fault system costs the airport system more money, the airlines will pay it. Every one of the airlines involved in the negotiations has come to the table saying it wants comparative fault and will pay the burden because it will give them a break on their insurance rates. Some airlines sign sole proximate cause contracts at other airports but a majority of them have comparative fault contracts.

Number 322

SENATOR WILKEN asked if the state will change the contracts from comparative fault to sole proximate cause, which is the reason for Amendment 1.

MR. THOMPSON said his role with DOTPF is advisory. His understanding is that the state is trying to be consistent in both the rural and Anchorage and Fairbanks airports. The state did attempt to move to a stricter indemnity standard but he was told the state is now moving to a comparative standard, which is effectively the same standard that is proposed in the bill.

SENATOR WILKEN questioned whether the state will have to use the apportioned standard under Amendment 1.

MR. THOMPSON said that is correct.

There being no further testimony, SENATOR TAYLOR moved SCS CSHB 127(TRA) as amended from committee. There being no objection, the motion carried.

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#SB 195

#SB 196

#SB 197

**SB 195-OPERATION OF WHITTIER TUNNEL BY WHITTIER**  
**SB 196-EXEMPTION FROM TOLL FOR WHITTIER TUNNEL**  
**SB 197-PROHIBIT TOLL FOR WHITTIER TUNNEL**

CHAIRMAN COWDERY announced that he would hear SB 195, SB 196, and SB 197 simultaneously as they all have to do with the City of Whittier.

MR. MATT ROWLEY, City of Whittier, said he will address two issues related to the tunnel toll. The first is the impact of the toll on the residents of Whittier and the second is the impact the toll will have on Whittier's business community. Mr. Rowley commented that Governor Knowles observed that the Whittier tunnel is the city's lifeblood of commerce. Concerning the impact on Whittier's residents, this is the only toll road in Alaska. The imposition of this toll is unprecedented in Alaska and creates a potential burden that is not imposed on any other community on the state highway road system. Anyone who travels into or out of Whittier on a regular basis under the current toll structure will pay \$3,000 to \$4,000 per year in toll fees.

Regarding Whittier's economy, which relies on a 100-day season, the Whittier business community is in direct competition with other business communities around Anchorage, the Kenai Peninsula and the rest of the state. The Whittier business community will be bearing the added cost unfairly, which will adversely affect the business community's ability to compete in an open market. Visitors who travel down the Seward Highway only have so many discretionary dollars to spend. If those travelers are faced with the prospect of spending \$15 to \$40 to travel to Whittier, it is questionable whether they will opt to come to Whittier. If they do spend the \$40, in the case of motor homes, that \$40 will not be spent at local businesses.

MR. ROWLEY said a second issue is the effect on passengers arriving in Whittier via the marine highway system. Passengers coming to Whittier to get on the ferry will be penalized because they will have to pay the full round trip tunnel fare. Although the tunnel has a different set of maintenance operation circumstances than the highway, he believes it is the responsibility of the state to maintain the tunnel as it does the highways.

MAYOR BEN BUTLER of the City of Whittier made the following comments about SB 195. The City of Whittier believes it would make good sense for the State of Alaska to give the city the ability to control the tunnel to help with the operational expenses. The city feels it impacts Whittier more than any other place in the state so the city should have a voice in the matter. The city assembly has discussed setting up an authority to operate the tunnel. An authority would provide the ability to bring everybody to the table to discuss the fee structure and it would prevent any one entity

from being in control of the tunnel.

Number 872

MR. DENNIS POSHARD, Special Assistant with DOTPF, made the following comments on SB 195, SB 196, and SB 197. Regarding SB 195, the effective date of July 1, 2001 is problematic. Currently, the design-build-operate contract signed by DOTPF for the construction and operation of the tunnel runs through May of 2002. Should DOTPF have to cancel that contract by July 1 of 2001, DOTPF would be liable to the contractor for lost profits and other expenses incurred. In addition, the design-build-operate contract contains a warranty because it is a one-of-a kind new tunnel system with a lot of complicated computer software programs, tunnel controls, ventilation systems, and other features. Under the two year operation agreement, the contractor has two years to identify and correct any problems before DOTPF agrees to take over the ownership. Should DOTPF cancel the contract in order to enter into a contract with the city, that would pose a problem with the warranty.

CHAIRMAN COWDERY asked if Mr. Poshard is suggesting changing the effective date.

MR. POSHARD said he cannot say that there is a certain time at which this bill makes sense, but he repeated the effective date of July 1, 2001 causes problems for DOTPF. At a minimum, DOTPF would request delaying the date until after the current contract expires. Delaying the effective date will also allow time for a prospective contractor to get the training required to operate a tunnel. Anyone who works on the tunnel must be trained and qualified as a firefighter and must take safety training that is unique to the tunnel. Workers will also have to learn about the operations, scheduling, and other matters related to the tunnel. That training will take time. He maintained that the July 1, 2001 effective date is not realistic.

MR. POSHARD said his next point is that although SB 195 requires DOTPF to enter into a contract with the city, it does not speak to what reasonable terms and limitations should be included. This approach puts the state in a poor negotiating position as it will give a potential contractor a lot of leverage. Although DOTPF would contract with the City of Whittier to operate the tunnel, DOTPF's contract with the Alaska Railroad Corporation (ARRC) for the use of the tunnel might be problematic also. He was not sure whether DOTPF could abrogate that responsibility to the contractor. As a part of that contract, DOTPF has assumed a substantial amount of liability for anything that occurs within the tunnel. DOTPF will retain that contractual liability whether it contracts for the operation of that facility or not. Therefore, DOTPF would be forced to contract with the city for the operations of the tunnel

but still be on the hook for any liability, including liquidated damages that might arise out of a delay of the train.

MR. POSHARD said DOTPF's biggest concern with both SB 196 and SB 197 is that the provisions related to tolls will cause problems with federal agencies. He anticipates that federal agencies will not allow a specific class of people to be exempted from paying tolls. DOTPF pursued charging one rate on the marine highway system for residents of Alaska and another rate for non-residents but was prevented from doing so by the federal agencies because federal money is used. In the case of the marine highway system, the federal agency said charging different rates could trigger pay back provisions associated with federal highway projects. He anticipates that the same pay back provision would apply to the toll collection portion of the tunnel. DOTPF expects to collect \$2.5 million in tolls during its first full year of collections. That money was slated to cover the state's cost for maintaining the tunnel. If SB 197 does move forward, those funds will have to come from elsewhere and a fiscal note would reflect those changes.

CHAIRMAN COWDERY asked if any of the tolls that are collected go to the ARRC now or are slated to in the future.

MR. POSHARD said he does not believe so.

SENATOR WARD asked Mr. Poshard to supply the committee with the warranty language for the tunnel and an explanation of the specific problems with that warranty if the operators are changed.

MR. POSHARD agreed to do so.

CHAIRMAN COWDERY commented that the City of Whittier has trained firefighters and some Whittier residents currently work at the tunnel. He announced that he would hold all three bills until some of the concerns expressed today are resolved. He then adjourned the meeting.

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