

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

March 15, 2004

3:43 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Carl Gatto, Vice Chair
Representative Nancy Dahlstrom
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

Representative Bob Lynn

COMMITTEE CALENDAR

HOUSE BILL NO. 464

"An Act extending the termination date of the Board of Certified Real Estate Appraisers."

- MOVED HB 464 OUT OF COMMITTEE

HOUSE BILL NO. 329

"An Act relating to retirement incentive programs for the public employees' retirement system, the judicial retirement system, and the teachers' retirement system; relating to separation incentives for certain state employees; and providing for an effective date."

- MOVED CSHB 329(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 529

"An Act relating to the performance of railroad track construction work for the Department of Transportation and Public Facilities by the Alaska Railroad Corporation."

- MOVED HB 529 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 464

SHORT TITLE: EXTEND BOARD OF REAL ESTATE APPRAISERS

SPONSOR(S): RULES BY REQUEST OF LEG BUDGET & AUDIT

02/16/04 (H) READ THE FIRST TIME - REFERRALS
02/16/04 (H) L&C
03/03/04 (H) L&C AT 3:15 PM CAPITOL 17
03/03/04 (H) Heard & Held
03/03/04 (H) MINUTE(L&C)
03/05/04 (H) L&C AT 3:15 PM CAPITOL 17
03/05/04 (H) -- Meeting Canceled --
03/15/04 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 329

SHORT TITLE: RETIREMENT INCENTIVE PROGRAM

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE

05/21/03 (H) READ THE FIRST TIME - REFERRALS
05/21/03 (H) STA, L&C, FIN
01/13/04 (H) STA AT 8:00 AM CAPITOL 102
01/13/04 (H) <Bill Hearing Postponed>
01/29/04 (H) STA AT 8:00 AM CAPITOL 102
01/29/04 (H) Heard & Held
01/29/04 (H) MINUTE(STA)
02/05/04 (H) STA AT 8:00 AM CAPITOL 102
02/05/04 (H) <Bill Hearing Postponed>
02/17/04 (H) STA AT 8:00 AM CAPITOL 102
02/17/04 (H) Heard & Held
02/17/04 (H) MINUTE(STA)
02/19/04 (H) STA AT 8:00 AM CAPITOL 102
02/19/04 (H) Moved CSHB 329(STA) Out of Committee
02/19/04 (H) MINUTE(STA)
02/23/04 (H) STA RPT CS(STA) NT 2DP 5NR
02/23/04 (H) DP: GRUENBERG, LYNN; NR: SEATON,
02/23/04 (H) BERKOWITZ, HOLM, COGHILL, WEYHRAUCH
02/26/04 (H) CORRECTED CS(STA) NT RECEIVED
03/03/04 (H) L&C AT 3:15 PM CAPITOL 17
03/03/04 (H) Heard & Held
03/03/04 (H) MINUTE(L&C)
03/05/04 (H) L&C AT 3:15 PM CAPITOL 17
03/05/04 (H) -- Meeting Canceled --
03/15/04 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 529

SHORT TITLE: ALASKA RAILROAD TRACK WORK

SPONSOR(S): LABOR & COMMERCE

03/03/04 (H) READ THE FIRST TIME - REFERRALS
03/03/04 (H) L&C
03/05/04 (H) L&C AT 3:15 PM CAPITOL 17

03/05/04 (H) -- Meeting Canceled --
03/15/04 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

WENDY LINDSKOOG, Director of External Affairs
Alaska Railroad Corporation (ARRC)
Department of Community & Economic Development (DCED)
Anchorage, Alaska

POSITION STATEMENT: Explained the necessity for HB 529 and answered questions.

MARK O'BRIEN, Chief Contracts Officer
Contracting, Procurement and Appeals
Office of the Commissioner
Department of Transportation & Public Facilities
Juneau, Alaska

POSITION STATEMENT: Voiced support for HB 529 and answered questions.

TOM BROOKS, Chief Engineer
Alaska Railroad Corporation
Department of Community & Economic Development
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 529, answered questions.

ACTION NARRATIVE

TAPE 04-26, SIDE A

Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 3:43 p.m. Representatives Anderson, Gatto, Dahlstrom, and Rokeberg were present at the call to order. Representatives Crawford and Guttenberg arrived as the meeting was in progress.

HB 464-EXTEND BOARD OF REAL ESTATE APPRAISERS

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 464, "An Act extending the termination date of the Board of Certified Real Estate Appraisers."

Number 0083

CHAIR ANDERSON withdrew the amendment he had offered on behalf made of Rick Union discussed at the 3/3/04 hearing since a different amendment would be proposed at a later date in the House Finance Committee. He noted that therefore, there were no amendments to HB 464 before the committee.

Number 0127

REPRESENTATIVE DAHLSTROM moved to report HB 464 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 464 was reported from the House Labor and Commerce Standing Committee.

HB 329-RETIREMENT INCENTIVE PROGRAM

Number 0173

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 329, "An Act relating to retirement incentive programs for the public employees' retirement system, the judicial retirement system, and the teachers' retirement system; relating to separation incentives for certain state employees; and providing for an effective date."

CHAIR ANDERSON stated that the proposed committee substitute (CS), Version U, was before the committee and had been adopted.

Number 0217

REPRESENTATIVE DAHLSTROM moved to report CSHB 329, Version 23-LS1109\U, Craver, 3/3/04, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 329(L&C) was reported from the House Labor and Commerce Standing Committee.

HB 529-ALASKA RAILROAD TRACK WORK

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 529, "An Act relating to the performance of railroad track construction work for the Department of Transportation and Public Facilities by the Alaska Railroad Corporation." [HB 529 was sponsored by the House Labor and Commerce Standing Committee.]

Number 0269

WENDY LINDSKOOG, Director of External Affairs, Alaska Railroad Corporation (ARRC), Department of Community & Economic Development (DCED), came forward at the request of Chair Anderson to explain HB 529, noting that Tom Brooks, chief engineer, was on teleconference to answer questions. She said HB 529 fixes a problem ARRC is having in terms of what happens in relation to some Department of Transportation & Public Facilities (DOT&PF) projects that involve track work. Currently, no subcontractors are interested in bidding on track work for DOT&PF projects if a crossing is involved in a road project. The goal of the bill is to create a solution that will allow those projects to move forward.

MS. LINDSKOOG referred to the written sponsor statement provided by ARRC and said HB 529 amends the procurement code so DOT&PF can work directly with ARRC on track work through a reimbursable services agreement (RSA), similar to other utilities. If there is a line for water or power, for example, DOT&PF can go directly to a utility under an RSA or utility agreement and have the utility do the work and then get reimbursed for the cost.

MS. LINDSKOOG reported that prior to 1996, ARRC could conduct track work for DOT&PF under utility agreements. Then the procurement code was amended, requiring DOT&PF to contract for track work under the competitive bid process. For a time, contractors bid for and won such work, but they now show less interest. They don't have the specialized, expensive equipment, and costs are high to meet the specifications required for rail work. She remarked about the high cost of mobilizing the specialized, large rail equipment from the Lower 48, where many subcontractors have come from.

MS. LINDSKOOG said HB 529 tries to remedy the situation by allowing DOT&PF the flexibility to either use the competitive bid process or go directly to ARRC under a utility agreement to do the work. She offered her belief that DOT&PF will realize some cost savings from this, as well as streamlining in how a project gets done, and said ARRC feels there is a quality issue at stake. "That's what we do for a living," she pointed out. "We work on track." She concluded by saying ARRC believes this is good bill.

Number 0466

REPRESENTATIVE GUTTENBERG noted that this is an agreement between DOT&PF and ARRC. He asked whether this allows any level of contract work to be done or whether there is a monetary

point, under statute elsewhere, at which something must go out to bid.

MS. LINDSKOOG answered that this leaves the discretion up to DOT&PF. She said although this issue had been discussed with AGC [Associated General Contractors], which has voiced support for this bill, it was decided it would be worthwhile to get together in a task force arrangement that includes AGC members, DOT&PF, and ARRC to discuss parameters for when projects would or wouldn't be put out to bid, for example. As for coming up with a dollar figure, they'd tried initially to do that, but couldn't figure one out. "The railroad, in particular, is not interested in really large projects like the Whittier tunnel was," she noted, saying it would take away so much from ARRC's efforts in terms of needed maintenance each summer. She concluded by predicting that there would be a determination, but not necessarily a hard-and-fast dollar amount.

REPRESENTATIVE GUTTENBERG asked whether this proposed task force was part of an agreement for supporting the bill.

MS. LINDSKOOG replied that she thinks it is a "gentleman's agreement" and that other issues have been discussed with regard to doing track work.

Number 0599

REPRESENTATIVE GATTO observed that the sponsor statement indicates this could possibly result in lower costs. He asked whether that also means it could possibly result in higher costs. He pointed out that this says there could be a competitive or noncompetitive bid process, and said it strikes him that this has just eliminated the competitive bid process.

MS. LINDSKOOG disagreed that this eliminates the competitive bid process, and said it's up to DOT&PF's discretion whether to go that route. She suggested perhaps DOT&PF could address Representative Gatto's concern from its perspective. She added that she doesn't think it would result in higher costs for DOT&PF, and indicated ARRC has the equipment in Alaska and won't have to mobilize it [from the Lower 48]; has the workforce; has the know-how; and is familiar with the industry standards, which ARRC works with every day. She acknowledged that she couldn't provide any guarantee.

CHAIR ANDERSON said he thinks the assumption is that it will save money.

Number 0682

REPRESENTATIVE DAHLSTROM asked whether a particular incident spurred this legislation.

MS. LINDSKOOG replied that she believes DOT&PF has had some trouble finding subcontractors for this type of work in the last couple of years. This at least provides a tool and lets DOT&PF work directly with ARRC when the department has run into that situation. She conveyed her understanding that one of the companies that used to do rail work in Alaska had demobilized its equipment, gone back to the Lower 48, and "basically told us they are no longer interested in bidding the small jobs." Thus no one is bidding on the work, and yet ARRC has the right equipment and workforce, and can do it. As for ARRC's not using the competitive bidding process, she explained, "We're not set up to pay prevailing wages and get into the federal contracting business. We're not set up to act as a contractor, so that's why the railroad has not ... acted as a contractor to do the work in the past."

Number 0758

REPRESENTATIVE ROKEBERG inquired about AGC's support of the bill, pointing out that it isn't documented in the bill packet. He asked whether AGC was planning to write a letter or testify.

MS. LINDSKOOG replied that she could certainly ask AGC to do that, but didn't have a letter. She offered her understanding that Thyes Shaub, lobbyist for AGC [of Alaska], had talked to a few committee members, but then she said maybe that hadn't happened yet.

CHAIR ANDERSON asked whether she'd been told [of AGC's support].

MS. LINDSKOOG answered in the affirmative.

Number 0826

MARK O'BRIEN, Chief Contracts Officer; Contracting, Procurement and Appeals; Office of the Commissioner; Department of Transportation & Public Facilities, began by voicing support for HB 529. He commended Ms. Lindskoog for doing a great job of characterizing the difficulties that DOT&PF has been having with these projects. He also pointed out that ARRC buys a lot of its supplies and materials, including railroad ties, in quantity,

and thus is probably able to offer better pricing than some contractors; this will benefit the state, he suggested.

REPRESENTATIVE GUTTENBERG asked whether discussions had included a "casual labor contract" whereby a contractor bids on something, for any scope of work under some definition up to a certain level. He said this is done on the North Slope and on [military] bases, for example, so that everything doesn't have to be bid on incrementally. For instance, it could be done for the maintenance of track crossings up to a certain level. He asked whether that had been part of the dialog.

MR. O'BRIEN said no. He surmised that Representative Guttenberg was referring to what is typically called a "term contract" or "indefinite quantity/indefinite delivery" contract whereby a contractor is, in essence, on retainer to provide those services on an as-needed basis. Mr. O'Brien added that he doesn't know that it would help here because of the need for a contractor to tie up expensive, heavy, difficult-to-mobilize equipment in order to be able to respond on an as-needed basis. He surmised that this might actually account for some of the reasons that local contractors haven't been able to survive in that industry; there isn't enough consistent, repetitive track work outside of what ARRC does for them to stay in business.

Number 1017

REPRESENTATIVE GATTO asked what ARRC's connection is to [state] government.

MR. O'BRIEN replied that it's a public corporation under the [Department of Community & Economic Development].

REPRESENTATIVE GATTO surmised that ARRC is charged with making a profit. He remarked that he'd always thought it did its own work. Citing an example, the new interchange between the Glenn Highway and the Parks Highway, he said the railroad is at grade right there; the new interchange will now have the railroad pass underneath an overpass. He asked whether that's the kind of work ARRC will contract for [with DOT&PF] now or whether a [private] contractor will do it.

MR. O'BRIEN replied that it would depend on the scope and extent of the project. He explained:

In our conversations with the railroad, they're not prepared to tie up all of their resources for a large

project. For instance, you may have seen on Bird Flats, where they relocated the railroad further out into the inlet, that that was a significant piece of work. And it's a discussion we'd have to have with the railroad as to whether they would have taken that whole piece on themselves. ... And, as [Ms. Lindskoog] mentioned, the Whittier tunnel is another example. ... There are some projects they just will not take on because they're not equipped to, in which case those projects are large enough to mobilize equipment in, and we can get bids on that kind of work.

REPRESENTATIVE GATTO surmised, then, that ARRC is more into maintenance. He asked about realignment.

MR. O'BRIEN answered:

It depends on who is driving the contract. If it's ... a federal-aid highway job where the realignment is part of our highway job, then our contractor is going to do all of the relocation and all of the [preparation] work, up through sub-base. And then the railroad would simply come in and do tracks, ties, and ballast over our realignment.

Number 1138

REPRESENTATIVE ROKEBERG related his understanding that typically DOT&PF retains a general contractor and that other work is [performed] by subcontractors. He asked if DOT&PF would rely on the contractor or it would be drafted in the specifications, depending upon whether it's a major or minor project.

MR. O'BRIEN answered, "That's correct." He explained that if the project will include ARRC's doing the work, that portion of the work will never see the department's bid specifications. However, on larger projects for which ARRC can't do the job in-house, ARRC will provide the plans and specifications, as has been the case since 1996, to DOT&PF to place in the solicitation to be bid by the contractor. In the aforementioned situation, ARRC would subcontract that rail work with the contractor.

Number 1222

REPRESENTATIVE ROKEBERG inquired as to where ARRC fits in the scheme of the contract when ARRC has a problem with the work done on a major realignment.

MR. O'BRIEN explained that placing ARRC in charge of developing and executing the specifications it relieves DOT&PF of all responsibility in terms of warranting the product because [ARRC] is responsible for it from beginning to completion. Therefore, DOT&PF views the aforementioned as an advantage. He noted that under the previous arrangement, if the subcontractor failed to properly put in the ties, railroad, or alignment, then ARRC would've turned to DOT&PF to enforce against its prime contractor. The aforementioned would subsequently result in the prime contractor's [going to] the subcontractor for the fix for the failed work.

REPRESENTATIVE ROKEBERG posed a situation in which the subcontractor under the general [contractor], under the department's specifications, didn't perform properly on the "road bed" underneath the tracking of the railroad. He asked if the aforementioned would be resolved under normal dispute-resolution methods. He surmised that there will be a separate entity that will be involved in the general scope of work, while DOT&PF will have an agreement directly with ARRC.

MR. O'BRIEN agreed, noting that even under the new scenario there are several parties involved. He explained that the prime contractor will be responsible for the project, while the subcontractor will be responsible for up through sub-base and ARRC will be responsible for track ties and ballast. A failure in the sub-base could be the result of a number of things. A design error would potentially return to ARRC as a design failure in the sub-base. Mr. O'Brien explained, "If it was a failure in having ... installed or ... the gradations being handled correctly through the subcontractor, then there's a liability on the prime [contractor] who's working for the sub[contractor]. And it depends on why it fails, and how it fails, and who's responsible."

REPRESENTATIVE ROKEBERG surmised that all the plans and specifications will come from ARRC. He asked if that has been the case in the past.

MR. O'BRIEN replied yes.

Number 1375

REPRESENTATIVE ROKEBERG asked if currently all the [DOT&PF] contracts fall under the prevailing wage Act or the Little Davis-Bacon Act [AS 36.05].

MR. O'BRIEN replied yes. In further response to Representative Rokeberg, he specified that ARRC isn't subject to the same wage requirements. If the department enters into an agreement with ARRC as a utility, as envisioned in HB 529, ARRC would be a government entity contracting with DOT&PF. Therefore, ARRC wouldn't be considered a contractor under the Little Davis-Bacon Act and thus wouldn't be required to take prevailing wages.

CHAIR ANDERSON announced that a letter from the AGC had just been provided to the committee. He noted that the letter relates AGC's support of HB 529.

REPRESENTATIVE ROKEBERG continued, and asked if money is being saved by utilizing a governmental entity to do the work rather than a private contractor.

MR. O'BRIEN said that wasn't mentioned as one of the savings. He deferred to ARRC.

CHAIR ANDERSON related his understanding that part of the reason for HB 529 is that no one is bidding on these projects.

MR. O'BRIEN responded, "That is, in part, correct." He informed the committee that for one of the last contracts [DOT&PF] had on the Bird Flats, ARRC had to step in for the subcontractor and finish the project.

Number 1500

REPRESENTATIVE ROKEBERG asked if there is a particular type of ballast material that couldn't be provided by a contractor other than ARRC.

MR. O'BRIEN deferred to ARRC.

REPRESENTATIVE ROKEBERG related his understanding that the legislation doesn't provide a provision for a break point between a major and minor scope of work. He asked if Mr. O'Brien wanted to make a statement with regard to the policy in terms of the commissioner's discretion.

MR. O'BRIEN responded:

As a result of the meetings with the task force that we've established (indisc.) Associated General Contractors, we will be establishing guidelines for

the use of the railroad for this work, and that it is our intent that major projects - and I can't define that because we were unable to agree on either a length of track segment or a dollar amount to try to put [a] box around - but for major projects where the railroad is just not staffed to handle those for us, those will be put out to competitive bid.

REPRESENTATIVE ROKEBERG surmised, then, that if ARRC can't perform the work, the department will have to go to the private sector to find someone to do the work. Therefore, ARRC would be in the default position to perform the work unless ARRC doesn't want to do the work.

MR. O'BRIEN replied no, and specified that this is a negotiation process between the department and ARRC. If DOT&PF felt that it couldn't reach an agreement on the cost and it was of a size that could entice a contractor to enter, then [a competitive bid process] could be used. He further specified that competitiveness and the size of the work could be reasons to [do a competitive bid process].

REPRESENTATIVE ROKEBERG inquired as to Mr. Brooks' impression of today's testimony. Specifically, he requested that Mr. Brooks comment on ARRC's position on the prevailing wage Act and how those labor costs compare.

[Chair Anderson passed the gavel to Vice Chair Gatto.]

Number 1646

TOM BROOKS, Chief Engineer, Alaska Railroad Corporation, Department of Community & Economic Development said, generally speaking, folks have covered everything accurately. In terms of wages, Mr. Brooks said he hasn't reviewed a comparison between ARRC's wages and the Little Davis-Bacon Act wages. However, he noted that ARRC's wage structure through ARRC's union agreement is quite different from AGC's wage structure through its agreements. In the broad sense, he said, he believes [the wages for ARRC wages and AGC] would be in the same ballpark.

REPRESENTATIVE ROKEBERG asked if, because [ARRC's employees] are under collective bargaining agreements, [its employees] would be exempt from the prevailing wage Act.

MR. BROOKS related that ARRC is under a collective bargaining agreement. He further related his understanding that under

utility agreements ARRC wouldn't be subject to [Little Davis-Bacon Act] because it would be [a contract] between state entities. If ARRC were to be subject to the [Little Davis-Bacon Act], ARRC would look at trying to become a contractor. However, he viewed that as impediment because ARRC's wage agreements are so different [from AGC's], and therefore it would require negotiation with ARRC's union. Additionally, it's difficult to envision ARRC, as a state-owned entity, competing in the private sector against another railroad contractor.

REPRESENTATIVE ROKEBERG surmised that the scope of the work seems to be the key point with regard to whether the work would be competitively bid or not.

MR. BROOKS, in response to Representative Rokeberg, clarified that if ARRC performs work as a utility, then ARRC wouldn't be subject to the Little Davis-Bacon Act.

[Vice Chair Gatto returned the gavel to Chair Anderson.]

MR. BROOKS related his belief that the [determining] question is regarding whether ARRC acts as a subcontractor to the general contractor or whether ARRC has a utility agreement directly with DOT&PF.

Number 1778

REPRESENTATIVE GUTTENBERG noted that it seems that one of the issues is the availability of contractors who are able to perform the work. Therefore, he inquired as to how much specialty and technical knowledge would be necessary to lay the track and set the ballast.

MR. BROOKS explained that the equipment used to lay tracks and ballasts are the tamper and ballast regulator, both of which cost between \$300,000 and \$500,000. The tamper is fairly sophisticated controlled by a computer. He informed the committee that ARRC has the only equipment of that type in the state.

MR. BROOKS, in response to Representative Gatto, explained that as the chief engineer he sets the engineering standards and works with those within the railroad's right-of-way. In further response to Representative Gatto, Mr. Brooks confirmed that it's in the scope of his position to see that ARRC prospers.

REPRESENTATIVE GATTO inquired as to how the cost [of projects] could be controlled when ARRC is the only entity available to perform the work. He further inquired as to whether ARRC would have the privilege of making a substantially higher bid since there is essentially no competition.

MR. BROOKS informed the committee that the work ARRC does for DOT&PF under a utility agreement is strictly a cost-reimbursable arrangement. The audit rates don't allow any profit to be included in the rate.

CHAIR ANDERSON, upon determining no one else wished to testify, closed public testimony.

Number 1892

REPRESENTATIVE ROKEBERG moved to report HB 529 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HB 529 was reported from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:15 p.m.