

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

March 26, 2004

8:03 a.m.

MEMBERS PRESENT

Representative Bruce Weyhrauch, Chair
Representative Jim Holm, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Paul Seaton
Representative Ethan Berkowitz

MEMBERS ABSENT

Representative Max Gruenberg

COMMITTEE CALENDAR

HOUSE BILL NO. 496

"An Act creating the Youth Vote Ambassador Program and relating to that program; authorizing the members of the program to be appointed to serve on election boards; relating to qualifications for appointment to election boards; and providing for an effective date."

- MOVED CSHB 496(STA) OUT OF COMMITTEE

HOUSE BILL NO. 327

"An Act relating to the powers and duties of the Department of Transportation and Public Facilities; and repealing a requirement that public facilities comply with energy standards adopted by the Department of Transportation and Public Facilities."

- HEARD AND HELD

HOUSE BILL NO. 527

"An Act relating to the Alaska Securities Act, including reports, proxies, consents, authorizations, proxy statements, and other materials, civil penalties, refunds of proceeds from violations, restitution, and investment adviser representatives; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 496

SHORT TITLE: YOUTH VOTE AMBASSADOR PROG/ELECTION BDS

SPONSOR(S): REPRESENTATIVE(S) DAHLSTROM

02/16/04 (H) READ THE FIRST TIME - REFERRALS
02/16/04 (H) STA
03/24/04 (H) STA AT 8:00 AM CAPITOL 102
03/24/04 (H) Heard & Held
03/24/04 (H) MINUTE(STA)
03/26/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: HB 327

SHORT TITLE: POWERS/DUTIES DOTPF

SPONSOR(S): REPRESENTATIVE(S) HOLM

05/16/03 (H) READ THE FIRST TIME - REFERRALS
05/16/03 (H) TRA, STA
02/19/04 (H) TRA AT 1:30 PM CAPITOL 17
02/19/04 (H) Heard & Held
02/19/04 (H) MINUTE(TRA)
02/26/04 (H) TRA AT 1:30 PM CAPITOL 17
02/26/04 (H) Moved CSHB 327(TRA) Out of Committee
02/26/04 (H) MINUTE(TRA)
03/01/04 (H) TRA RPT CS(TRA) NT 4DP
03/01/04 (H) DP: MASEK, OGG, STEPOVICH, HOLM
03/16/04 (H) STA AT 8:00 AM CAPITOL 102
03/16/04 (H) Heard & Held
03/16/04 (H) MINUTE(STA)
03/26/04 (H) STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

KELLY HUBER, Staff
to Representative Nancy Dahlstrom
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 496, noted the changes made by Version H, on behalf of Representative Dahlstrom, sponsor.

LEONARD JONES
Elections Special Assistant
Division of Elections
Office of the Lieutenant Governor
Juneau, Alaska

POSITION STATEMENT: Responded to questions on behalf of the division, during the hearing on HB 496.

JEFF OTTESEN, Director
Division of Program Development
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska

POSITION STATEMENT: Outlined the sectional analysis for HB 467.

JAMES CANTOR, Chief Assistant Attorney
Transportation Section
Civil Division (Anchorage)
Department Of Law

POSITION STATEMENT: Answered questions during the hearing on HB 467.

JEFF PARKER, Attorney at Law
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 327.

DEE ESSERT

Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of Sand Lake Community Council in opposition to amending the state's transportation statute, AS 44.42.050, during the hearing on HB 327.

MARY WHITMORE

Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of herself to address two sections in HB 327 regarding the issues of cost benefits and retroactivity.

BOB DOLL

Juneau, Alaska

POSITION STATEMENT: Testified on behalf of himself to ask the committee to withhold support from those portions of HB 327 that would delete the cost benefit analysis in transportation planning.

ACTION NARRATIVE

TAPE 04-47, SIDE A

Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 8:03 a.m. Representatives Holm, Seaton, Coghill, and Weyhrauch were present at the call to

order. Representatives Lynn and Berkowitz arrived as the meeting was in progress.

HB 496-YOUTH VOTE AMBASSADOR PROG/ELECTION BDS

Number 0043

CHAIR WEYHRAUCH announced that the first order of business was HOUSE BILL NO. 496, "An Act creating the Youth Vote Ambassador Program and relating to that program; authorizing the members of the program to be appointed to serve on election boards; relating to qualifications for appointment to election boards; and providing for an effective date."

Number 0088

REPRESENTATIVE SEATON moved to adopt the committee substitute (CS) for HB 496, Version 23-LS1766\H, Kurtz, 3/25/04, as a work draft.

CHAIR WEYHRAUCH objected for discussion purposes.

Number 0095

KELLY HUBER, Staff to Representative Nancy Dahlstrom, Alaska State Legislature, discussed the changes made by Version H, on behalf of Representative Dahlstrom, sponsor. She said Version H deletes legislative findings. It clarifies that poll workers will be from their registered precinct. However, if there are not enough qualified individuals in the precinct, then the [Division of Elections] will select people from the district. As a last choice, if there are not enough people from the district to work at the polls, then the division will select people statewide.

MS. HUBER said [Version H] clarifies that the two youth ambassadors will be in addition to the three "adult board election members." She noted that at the previous hearing on HB 496, there had been a question regarding whether the youth ambassadors will be compensated. She said they will, because the way the system works is that they will also serve on the election board, which is a compensated position. However, if they choose to do outreach on behalf of the division, that would be in a volunteer capacity.

MS. HUBER turned to another concern stated at the previous hearing, regarding whether a youth would be put in a position to

make decisions on challenges at the poll. She said that she spoke with people from the division and the answer is no, because in training, there is a chairman of the board, and that chairman would be an adult. The chairman is the only one at the poll who would make those decisions regarding challenges.

Number 0230

REPRESENTATIVE SEATON remarked that although there will be compensation given to the two [youth ambassadors] added to each polling place, there is no fiscal note reflecting that fiscal impact.

MS. HUBER said she is not certain there would be two added to each. She said she would defer that question to a representative from the division, and she reported that a fiscal note was "on the way."

Number 0265

CHAIR WEYHRAUCH asked why the language couldn't provide that the youth ambassadors "may" be compensated.

MS. HUBER concurred. She noted that she had asked the division that question and the director's response indicated that the youth will be working, and the idea is to bring the youth into the system and let them learn; therefore, in some way, being compensated is fair.

Number 0300

REPRESENTATIVE COGHILL, in response to Chair Weyhrauch, confirmed that [Version H] dealt with his previous concerns.

Number 0333

LEONARD JONES, Elections Special Assistant, Division of Elections, Office of the Lieutenant Governor, in response to a question from Representative Seaton, said the rate of compensation for "the individual" would be \$7.50 an hour, which is currently identified in 6 AAC 25.035. He said the division believes that with the reduction of older workers, there will be a zero fiscal note "on this impact." He noted that [the youth ambassadors] will be paid in training status. He estimated, "It will probably be no more than 16 hours for this compensation."

MR. JONES, in response to a question from Representative Seaton, explained that [the two youth] would be in addition to the three qualified poll workers. He said the division thinks it has sufficient funds for the positions. He said the regional supervisors will make the determinations based on their budgets. He reiterated that the division doesn't think this will have a significant impact, "especially to the division."

Number 0472

REPRESENTATIVE SEATON asked how many poll workers would typically be in a downtown precinct. He asked if HB 496 would change the number from five adult poll workers, for example, to three [adult poll workers], with two youth workers.

MR. JONES said that customarily there would be a minimum of three [poll workers] in each precinct. He said he didn't think there would be a youth poll worker in all precincts, but in those with them, that would increase the number by one or two.

REPRESENTATIVE SEATON said he's getting conflicting messages and wants to "get this straight as to the effect of this bill on the poll workers that we're currently using."

Number 0592

MS. HUBER explained that there is a group of poll workers whose number is dwindling, as its members get older. She stated that is why the program was suggested, to teach the youth about the election process and bring them in. Those youth won't replace "the ones you're talking about" right away. She described [HB 496] as a pilot program for the youths until they become adults. She stated, "I think what the division is saying is because in some places we just don't have the number of poll workers that we used to, the numbers are fluctuating a bit; ... therefore, they can absorb it [in] our budget." She indicated that the youth would not become "person for person" replacements, but would learn the process over time and, hopefully, continue with their involvement in the years to come.

REPRESENTATIVE SEATON stated that if [the youths that would be hired] would be in addition to the current number of workers, then there would be a fiscal note of \$7.50 an hour times how many hours and workers. However, if the older people who stop working are being replaced, then perhaps there wouldn't be a fiscal note. He clarified that he is trying to find out which situation it would be. He said he doesn't have a conflict with

it being either way, or with a training program, but just wants to understand the situation. He asked if, for example, there are currently five workers in an urban area, and if, [with the passage of HB 496], that might turn into three regular workers and two youths.

MR. JONES answered that that scenario could happen. He said pay scales would vary, and he offered examples. He reminded the committee that the regional supervisors will consider their budgets when deciding whether to [hire] someone. He reiterated that the division feels that it has the resources available to cover the \$7.50 an hour, with possible combinations of three to six [workers] at each polling place, and didn't see the need to project additional resources in a fiscal note. He added that the division can't predict how many [youths] will be taking part in the program.

Number 0829

REPRESENTATIVE HOLM stated his understanding that the reason for [HB 496] is to increase awareness of the election process and to get the youth of Alaska interested in voting. He noted that the legislature doesn't get paid a lot and he is not a legislator because of the money. He opined, "Because we have requirements as to being a member of society, it's inherent upon us to do these things for the right reasons." He questioned why the youth would be paid to learn to be responsible citizens. He turned to [the bottom of page 4 of a handout entitled, "New Millennium Best Practices Survey," included in the committee packet], which shows that 74 percent of states have laws that allow for election day workers under the age of 18. He asked if they are paid.

MR. JONES answered that, based on the information he has reviewed from "a few of the other states," the youth are paid at the minimum rate established of the state. He added that he can't speak to every state that has a program.

REPRESENTATIVE HOLM suggested that the youth not be paid, not that he thinks they shouldn't get money, but because it's important that they do this for the right reason. He defined the right reason as understanding that they have a duty to help society. He indicated he may offer that as an amendment.

Number 0980

REPRESENTATIVE SEATON said he would like to ask the state if there would be any liability problems if the youth are not compensated.

Number 1002

MS. HUBER noted that there is [language] in the bill that would allow the youth to be volunteers in an outreach capacity. She stated her assumption that if they can be a volunteer in outreach for the division, then the division would be all right in having them as volunteers on the board. She stated her only concern regarding not paying the youth is that the youth ambassadors are members of the election board for the precinct, which is why the division felt that they should be compensated. She stated it is the committee's decision.

Number 1048

REPRESENTATIVE LYNN asked if any coordination has been made to ensure that the youth involved can get time off from school to participate.

MS. HUBER answered no. She said she thinks that any students chosen for the program would work with their school to get a day off during Election Day. She posited that it is one of those decisions that would first be made between the parent and child, and then be negotiated between the student and the school.

REPRESENTATIVE LYNN stated he has philosophic problems with underage people being on an election board. He said, "This is the very bedrock of our society - the voting process."

Number 1131

REPRESENTATIVE COGHILL revealed that, as someone who has taught civics to students who get totally bored with the subject, one of the more exciting things that happens to him as a teacher is to see the light go on in the students eyes that "this is really about our country, about our life." He said he thinks [HB 496 would provide] a good opportunity. Furthermore, he stated that if he had a student that was going to leave his class to participate in [this program], he might consider giving that student an A for effort and a little extra credit. Regarding the issue of payment, he opined, as long as the election board feels that it can absorb the cost, he certainly doesn't have a problem with [the youth getting paid]. He indicated that it would be a little encouragement and "the others" are going to be

paid anyway. He stated that he is ready for the bill to move out of committee.

Number 1187

CHAIR WEYHRAUCH said he agrees with "participation in the process." In regard to the issue of money, he said he thinks it would be fine [to pay the youth] as an incentive and to be on equal footing with the other paid workers. He added, "If they have the money to pay them, if they don't they don't." One way to deal with that, he suggested, would be to say that they "may" be compensated. He stated that he doesn't have strong feelings on the issue one way or another and it's up to the committee [to decide].

REPRESENTATIVE COGHILL stated that he thinks the youth should be compensated.

Number 1230

REPRESENTATIVE BERKOWITZ concurred with Representative Coghill. He said, "It just seems to me that if we're asking people to do a job, we ought to pay for it. It's capitalism at its best."

Number 1244

REPRESENTATIVE SEATON stated that, notwithstanding his support of the program, he would like the clarification made regarding how the program will work - whether the numbers of workers will be an addition or a replacement.

Number 1267

MR. JONES, in response to a question from Chair Weyhrauch, explained that the fiscal note was called for this morning at 7:30 a.m. and [is not yet available].

Number 1275

CHAIR WEYHRAUCH said the committee would set HB 496 aside until a fiscal note is available.

Number 1284

REPRESENTATIVE COGHILL indicated that the words "shall" and "may" [are both used in regard to the appointments made by the election supervisors]. He noted, "That would be optional for

the youth." He offered his understanding that the issue of pay may be addressed in the bill; therefore, he said he would be considering that when he receives the fiscal note.

[HB 496 was taken up again later in the meeting.]

HB 327-POWERS/DUTIES DOTPF

[Contains brief mention of SB 371.]

Number 1312

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 327, "An Act relating to the powers and duties of the Department of Transportation and Public Facilities; and repealing a requirement that public facilities comply with energy standards adopted by the Department of Transportation and Public Facilities."

Number 1335

REPRESENTATIVE HOLM asked if the committee had previously adopted [CSHB 327(TRA)].

Number 1350

CHAIR WEYHRAUCH responded, "So moved, and I'll object for discussion purposes."

REPRESENTATIVE HOLM, speaking as sponsor of HB 327, invited a representative from the Department of Transportation & Public Facilities to address the sectional analysis for the committee.

Number 1372

JEFF OTTESEN, Director, Division of Program Development, Department of Transportation & Public Facilities, noted that Jim Cantor from the Department of Law is available to answer any legal questions that may arise. He stated his belief that the proposed legislation is important to the state; it potentially could ensure that transportation projects are accomplished in the coming years that otherwise might be subject to litigation.

MR. OTTESEN, speaking to the prepared sectional analysis, noted that he would not address Sections 3, 6, and 7, which he described as housekeeping sections that are "the first look at DOT&PF's power and duties in 30 years" and the changes that have

taken place in that time. He stated that the substantive portions of the bill have two purposes: One is to ensure that a specific road and bridge project known as the Iliamna to Nondalton is not subject to endless planning and litigation. He told the committee that this project has been started and stopped since the mid 1970s and currently is under a preliminary injunction, because the judge found that the state had not "followed a particular aspect of the planning of statute in question." The second [purpose], he noted, is to make the planning process more efficient by eliminating duplication between federal and state law and to [remove] provisions that subject other projects to the same type of litigation surrounding the Iliamna to Nondalton project.

MR. OTTESEN stated that Section 1 is recommended to DOT&PF by the Department of Law. Section 1, particularly coupled with Section 8, ensures that "the law will directly apply to the subject project currently before the superior court in Anchorage." Section 2, he noted, applies to the statutory requirement that existed when [DOT&PF] was the Department of Highways, prior to the merger of "highways and public works." He said [Section 2] clarifies that the requirement for a program of projects is a piece of the overall program of projects now required at AS 44.42.050. Furthermore, it would change the timing from annual to periodic.

MR. OTTESEN said Section 4 of the bill applies to the state's requirement for a multi-modal transportation plan and clarifies that the plan is comprised of many different documents - perhaps as many as 80 or 100. He emphasized that this is a key point. He offered examples. Furthermore, he noted that [Section 4] sets the standard for planning to be the federal standard, "primarily at [23 U.S.C. 135]." He noted that the committee packet includes "several documents that help describe just how significant those steps are." He noted one of the documents is from a Power Point presentation and describes the federal process. He offered his understanding that there is also a chart that describes the growth in federal law that applies to transportation planning. He stated that the transportation planning process is not static, but continues to become more cumbersome and process-driven.

Number 1555

REPRESENTATIVE HOLM said Mr. Ottesen mentioned something to him yesterday that he thought may be of interest to the committee: He recollected that Mr. Ottesen had indicated that [the

Transportation Equity Act: a Legacy for Users] (TEA-LU), which was recently passed through the [House Transportation Standing Committee] was over 500 pages in length.

MR. OTTESEN replied yes. He explained that TEA-LU is the House version of the reauthorization of the transportation program at the federal level and is over 500 pages in length. The companion bill on the Senate side, known as [the Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2004] (SAFETEA) is also over 500 pages in length. He said that he has read both bills from cover to cover and there are "hardly ten pages in them that [are] in common."

Number 1592

REPRESENTATIVE BERKOWITZ asked how the permissive "may" in the language of state statute intersects with the requirement of 23 U.S.C. 135 and the supremacy clause of the U.S. Constitution. He said it seems to him that [the legislature] cannot optionally decided whether or not to follow federal law.

MR. OTTESEN replied that the name was chosen because 23 U.S.C. 135 applies to surface transportation, primarily ferries, transit, highways, and trails. It does not apply to aviation, ports and harbors, and "some of the other modes that we're also responsible for." He stated, "We could not find comparable sections in federal law for those modes not covered by 23 U.S.C. 135." He explained as follows:

Saying "shall" would then lead to the conclusion that we must apply the surface transportation (indisc. - paper shuffling) programs to modes of transportation which they are not directed to do. The truth is, if this entire section was extinguished from the state law, we would still have to comply with 23 U.S.C. 135, where it is applicable; it's simply a requirement of our federal funds.

REPRESENTATIVE BERKOWITZ asked what would happen if 23 U.S.C. 135 is amended subsequently. He asked, "Aren't we adopting, by reference, the possibility of future changes?"

MR. OTTESEN answered that's true. He said he thinks changes are anticipated. He said, "I know the bill that's in [U.S. Congress] right now will almost undoubtedly have changes in it from the current statutes at the federal level. I'd have to go

back and look at that. I thought we'd said, 'as amended', or 'as modified'."

REPRESENTATIVE BERKOWITZ stated for the record that he is uncomfortable with "adopting by reference" federal statutes or any other statutes that are subject to change. He added, "It seems to me it's an abrogation of our legislative power."

MR. OTTESEN returned to his coverage of the sectional analysis. Section 5 of the bill, he noted, applies to eliciting a project slated to be set up for design and construction. He noted that those projects are called: the Statewide Transportation Improvement Program (STIP), regarding highways; the Transportation Improvement Program for urban areas (TIP), regarding programs prepared by Metropolitan Planning Organizations (MPOs) in Fairbanks and Anchorage; and the Aviation Improvement Program (AIP), regarding the use of aviation funding. He said the department basically wants to set up state law to comply with the several aspects of federal law.

MR. OTTESEN turned to Section 8, which he said makes HB 467 retroactive to the time that AS 44.42 was first adopted. He explained that this section of statute was adopted by executive order, not as a matter of a legislative Act. He stated that Section 9 makes the effective date immediate.

Number 1743

MR. OTTESEN pointed to a write-up regarding why the section on cost and benefits should not be mandatory. He returned to the Power Point presentation and the examples in the growth of laws that have applied to the federal side since 1977 "and earlier." He also indicated a matrix of "the requirement, the consultation, and public outreach in the transportation planning process." He noted that there are about seven or eight different laws that [the department] has to comply with, and virtually all of them apply to the STIP process. Many of the laws are new since 1977. He concluded, "Pointing to the federal process, or simply even extinguishing this particular law, would not leave us without a significant public process and planning requirement that we have to live with."

Number 1775

CHAIR WEYHRAUCH stated his understanding that a specific case "brought [DOT&PF] here." Notwithstanding that, he observed that HB 467 is a broad bill that would change a lot of DOT&PF's

policies. He asked, "If we're worried about the bridge or the road on that case, why don't we just deal with that?"

MR. OTTESEN explained that he thinks the department fears that there are many other projects that are currently at risk.

CHAIR WEYHRAUCH indicated that people have expressed concern to him that "this is abrogating the public involvement in a process that [DOT&PF] is engaged in." He mentioned cost benefit analysis and a broad array of projects.

MR. OTTESEN, regarding cost benefit analysis, stated that the current law requires the department to do a cost benefit analysis for any new project or facility. He said, "It unfortunately leads to the law of unintended consequences." For example, he said last week the department considered vans for the elderly and the disabled. Every community has a different set of facts and costs and the department will have to do a cost benefit analysis in order to issue the vans to "those 12 report-paying communities." He explained that [doing the cost benefit analysis] will slow down the process, as well as cost more money. He said the department knows that whether there are 10, 100, or 1,000 seniors in a community, vans will be needed to transport them to various activities. He said, "Those are the kinds of projects that simply don't lend themselves to cost benefit analysis." He continued as follows:

Trails, transit, ferries are never undertaken with cost benefit analysis. If we were to compare ferries to roads - where it's possible to build roads - we would almost inevitably come up with a completion that the road is the right solution, or that the ferry ... in Southeast is not warranted because a new road in another part of the state would have more benefits. So, it's a slippery slope we walk on when we require cost benefit [analyses] in all cases.

Number 1862

REPRESENTATIVE BERKOWITZ said he would like to know more about the need for retrospectivity.

MR. OTTESEN deferred to Mr. Cantor.

JAMES CANTOR, Transportation Section, Civil Division (Anchorage), Department Of Law, told Representative Berkowitz

that retrospectivity addresses a couple of issues. He continued as follows:

One is on the Iliamna [to] Nondalton road, where costs were not ignored, but there was not a cost benefit weighing, because it's a rural project where it may not be susceptible to that kind of analysis. And the court said, "No, the state law says you must use cost benefit analysis."

Now, the type of analysis that was done on that case was through the federal process - which ... is the 500 pages of ISTEA [Intermodal Surface Transportation Efficiency Act of 1991] or TEA-21 [Transportation Equity Act for the 21st Century - 1998], and now TEA-LU - that sends us through an inordinate amount of analysis and public process, but not cost benefit analysis. The cost benefit analysis is left over from this executive order, during the [Governor] Hammond administration, that became law. And so, part of the retrospectivity is addressed specifically to that case, to essentially overrule the judge and continue proceeding with that project.

The remainder of the retrospectivity looks at projects that we thought were appropriately and legally conducted using federal money over the last 20 years, or so, and other ones that are still in the pipeline. It's kind of similar to what Mr. Ottesen was saying, [regarding] the types of incidences that are not susceptible to cost benefit analysis.

REPRESENTATIVE BERKOWITZ asked Mr. Cantor to review the status of "the case that necessitates these actions."

MR. CANTOR offered his understanding that the superior court issued a preliminary injunction on the basis of this cross benefit language, and the state has "gone back to comply with the order to conduct that analysis."

Number 1968

JEFF PARKER, Attorney at Law, informed the committee that he is representing the plaintiffs in Trout Unlimited and Bob Gillam v. ADOT&PF. He noted that the state has advised the court "in its papers" that it will complete its cost benefit analysis by July.

REPRESENTATIVE BERKOWITZ asked, "Why are we jumping in the middle of a court case?"

MR. CANTOR offered his understanding that [DOT&PF] is concerned that "this case could be litigated forever." He noted, "This is the second piece of litigation on this project - it was first litigated in about 1996 or 1997." He indicated that there is concern that even the department's attempts to comply will be litigated. He stated, "The department believes that even its attempts to comply - and it hopes to comply fully - are ones that are unnecessary to the planning process, which is why they've backed up and taken kind of a broader view." In response to questions from Representative Berkowitz, he said the first case was a federal case and the second case has not yet reached the supreme court. He said there is not an appeal pending, because currently the case is still in court. He proffered that there was a preliminary injunction motion and there could be further proceedings, "depending on the next steps."

REPRESENTATIVE BERKOWITZ asked how long the second case has been proceeding.

Number 2053

MR. PARKER said the case has been pending for approximately 18 months, for discovery and pretrial practice. In response to a follow-up question from Representative Berkowitz, he noted that the motion was issued January 6, 2004, about two months after argument. He announced he would like to fully address the question of project delays. He noted that Mr. Ottesen had previously stated that the project has been delayed since the 1970s. In fact, he said, the department suspended the project in 1986 after doing a cost benefit analysis and concluding that [the project] was not economically justified. He indicated that the benefit cost ratio [from that analysis] "worked out at 0.26" and the department judged that it is not "normal" to build a project with a benefit cost ratio of less than one. He noted, "The costs were in excess of \$12 million to complete the project; the benefits were calculated at \$3 million."

MR. PARKER CONTINUED as follows:

Now also, in response to the large picture of what Mr. Cantor and Mr. Ottesen just said, if you look in a regional Southwest transportation plan, you'll see that the defendants, [DOT&PF], did cost effectiveness

[analyses] on every ... new road project that is proposed in that plan, including the Williams Port, West side Cook Inlet to ... King Salmon and King Salmon to the Chignik (ph). And you can calculate and see the cost effectiveness dollars right there.

What caught them up in this case was that they excluded this project from that cost effectiveness analysis. And if you read the court's opinion with a decision, which I think you have in front of you, you'll see that the court says that [the department] did cost effective [analyses] for every other project in the Southwest regional transportation plan. It similarly did it for projects - all new facilities - in the Prince William Sound regional transportation plan and in the Southeast Alaska regional transportation plan. And Mr. Ottesen can correct me, but I think it also did them for marine-improved new facilities and new vessels, when you look at those plans.

So, the information has been put in front of you for many projects, and it is an excellent basis upon which to make decisions. And what this bill is: this bill eliminates putting that information in front of you. And what caught [the department] up in the [Iliamna to Nondalton] case is its affirmative decision not to do cost benefit [analyses], and I surmise it so decided because there was such a negative determination made in 1986 - that it had a 0.26 and you never build at less than one.

Number 2207

DEE ESSERT testified on behalf of Sand Lake Community Council in opposition to amending the state's transportation statute, AS 44.42.050, which would eliminate the state's obligation to review the cost of improvements to existing roads and the cost and benefits to new roads. She explained the opposition was due to her experience with Anchorage Metropolitan Area Transportation Solutions (AMATS), the local MPO. She stated that the cost of AMATS projects have escalated because engineers and project managers have failed to consider hidden costs [resulting from] soils, environmental impacts, and property impacts.

MS. ESSERT continued as follows:

Why is the state seeking to eliminate a key statutory requirement at state level that would control costs, when it has initiated policies at the local level to address costs? The cost overruns for Anchorage projects initiated a change by state [DOT&PF], whereby the policy committee of AMATS is now required to provide quarterly obligation reports. As a project increases funding for a phase by more than \$500,000, or 50 percent of the project phase, the city must approve the change. At the March 11 policy committee, members were asked to approve approximately \$3 million to cover additional construction costs for C Street - phase three - due to extensive peat deposits in the right-of-way. If there had been a better cost benefit analysis of C Street, would the initial design or right-of-way have changed to allow for greater economy?

I am also among many who oppose the coastal trail extension below the buffer in the refuge. The project has risen from \$12 million to \$37 million as the cost of the environment and private property is escalated. The [Draft Environmental Impact Statement] (DEIS) is an example of a politically motivated document and does not reflect accurate billable costs, because there is no objective cost benefit analysis. Engineers and attorneys who have considered the legal and construction costs estimate the cost in the \$60-million to \$80-million-range.

House Bill 327 eliminates the public claim that costs and benefits must be considered. Projects in remote areas are subject to greater cost overruns. When federal dollars are declining and state resources are limited, it makes no sense to eliminate the only objective criteria applicable to transportation planning. With the new administration that is emphasizing resource development, transportation planning in remote areas must be cost-effective and accountable. Transportation projects in metropolitan areas must emphasize traffic flow, air quality, and safety, and serve vehicular traffic, public transit, and pedestrians; it must not be based on Bush's entrails exclusively.

The state must allocate scarce resources for those projects that provide the greatest benefit for the most reasonable cost. With appropriate cost benefit criteria, a change in administration won't mean a bridge to nowhere In a time of declining revenues, the state must retain all statutory requirements that preserve an orderly transportation system by subjecting all subjects to a cost benefit analysis. I oppose HB 327 and its companion SB 371.

Number 2345

CHAIR WEYHRAUCH asked Ms. Essert if there is any part of HB 327 that she does not oppose.

MS. ESSERT replied that it is a complex bill. She said that when she began studying the bill, she thought it was about energy requirements, but when she got into it, she became more confused about certain sections of it. She indicated that she would [limit] her comments [to those parts of the bill regarding] cost benefit analysis. In response to a follow-up question from Chair Weyhrauch, she clarified where the Sand Lake Community Council area is.

Number 2348

MARY WHITMORE testified on behalf of herself to address two sections in the bill regarding the issues of cost benefits and retroactivity. She stated her belief that HB 327 is really a "slap in the face to American tax payers," because it removes the economic analysis, [which is how] projects should be evaluated.

TAPE 04-47, SIDE B

Number 2378

MS. WHITMORE opined that economic competitive analyses of projects is really a driving force in how projects should be done, and also "it's the way our economy works." She explained, "You have to look at the competitive basis of projects." Ms. Whitmore said HB 327 is insulting and detrimental to every Alaskan, because it means that projects will not be considered for benefits and costs to the community, but will be influenced by whim and political clout. She said she'd like to know what the justification is for this.

MS. WHITMORE continued as follows:

I find that HB 327 is offensive, because it raises my suspicions of why a bill would be retroactive to 1977 - 27 years. This means that any person who's raised any objection to a transportation plan over the last 27 years is cut out if the basis of that dispute is based on cost. There's something very wrong with this approach. I think that HB 327 gives the green light to any project. No matter how poorly conceived it is, it could go forward. If it has political backing or clout, you never have to look at the measure [of] the project, as far as its benefits to the community and how much it's going to cost.

MS. WHITMORE urged the committee not to pass HB 327 but, conversely, to bury it.

Number 2302

BOB DOLL told the committee that although he is a former director of the Southeast region of [DOT&PF] and speaks from that viewpoint, he is testifying on behalf of himself. He asked the committee to withhold support from those portions of HB 327 that would delete the cost benefit analysis in transportation planning. He continued reading his testimony as follows:

I make this request with some understanding of the dilemma you face. You're being asked, in this bill, to endorse bad government. You're being asked to lend your support to enshrining the terms "arbitrary" and "capricious," not as accusations to be avoided but as the standard for government decision-making. I have appeared before the committee only recently in connection with another such arbitrary and capricious decision, and my apprehension of such events is all too clear.

And what is it that the bill seeks to avoid? I cannot imagine an economist with an ounce of imagination who could not make a positive cost benefit conclusion for a marginal project, if that were his tasking. Such "taskings" are accomplished routinely. Only with the most worthless proposals would he fail, and properly so.

The current statute does not provide us with certainty regarding the value of a project, but it does offer

some objective criteria for us to use in examining how our tax dollars are being spent. And given the general deference of courts to executive agencies which have complied with their own regulations and the statutes in effect at the time, it is difficult to understand why this requirement is so onerous. Federal dollars pay for the work and the time required is measured in months. In the timeline for most transportation projects that's inconsequential. As a transportation professional, I would not want to spend my time, or that of my staff, on a project which could not meet this simple test. As a citizen, I hope that public money will not be thus squandered on a project which could not meet that test.

Number 2226

MR. DOLL pointed out that federal dollars pay for "this whole thing"; there is no imposition on the state for it. He continued reading his testimony as follows:

The dilemma that I mentioned earlier arises because there are transportation projects currently under consideration that may not meet this test. Those projects represent some of the most cherished hopes and dreams of the residents of the locations where they're contemplated. If their ambitions are not realized, they would be, to say the least, disappointed.

I would suggest to you that you could measure the value of the project inversely to the protest at having it examined closely. In fact, if a positive cost benefit ratio is as easily achieved as I've suggested to you, you may well wonder why anyone would object to the requirement, particularly since it does not require that the project be positive in its cost benefit analysis. It only requires that that information be produced so that the public and you, as members of the legislature, can see it as well. HB 327 endorses bad government and ... should not receive the committee's approval.

Number 2150

CHAIR WEYHRAUCH asked Mr. Doll if he conducted cost benefit analyses for projects when he was director.

MR. DOLL answered, "Yes, Mr. Chairman, with the exceptions that Mr. Ottesen has mentioned, we did, routinely. ... I believe that whatever difficulty [DOT&PF] may have with this, they have ample opportunity to overcome it." He suggested that if the department were to encounter a project that obviously doesn't require a cross benefit analysis - such as Mr. Ottesen's previously stated example of "the transit case" - it would be a simple matter to provide a two-page statement explaining that the analysis is unnecessary. He surmised that is all that would be required.

Number 2128

CHAIR WEYHRAUCH observed that although part of the Southeast transportation plan indicated that it would be less expensive to have a road than a ferry, "we didn't move forward too quickly on the road north from Juneau."

MR. DOLL responded that writing a cost benefit analysis for that project would be a task. He stated that he is not certain that anyone should ever do a cost benefit analysis that compares water transportation with land transportation, because the two are so different that the conclusions reached would be questionable. He added, "But I'm sure we could do it, and have done it."

Number 2090

REPRESENTATIVE HOLM asked Mr. Doll why he didn't testify on this issue before the House Transportation Standing Committee.

MR. DOLL responded that he had been unaware of [that committee's meeting].

Number 2074

REPRESENTATIVE SEATON told Mr. Ottesen that the second point made in the handout from Mr. Parker [available in the committee packet] states that passage of HB 327 would increase the likelihood that the state will have to refund money to the federal government. He asked Mr. Ottesen if he is familiar with that argument and would address it.

Number 2053

MR. OTTESEN replied, "I don't know the reason he's making that statement, so no, I don't ... see the connection."

REPRESENTATIVE SEATON suggested that Mr. Ottesen could review the handout from Mr. Parker and respond to the question at a later date.

Number 2030

CHAIR WEYHRAUCH, in response to a question from Representative Berkowitz, stated his intention for the bill is to not take action on HB 327 until the next time the committee hears the bill. He revealed that a lot of people have voiced their concerns about the bill with him. He said he wants to air those concerns and "talk about how sensitive the sponsor is to amending it."

Number 2006

REPRESENTATIVE BERKOWITZ noted that he has amendments in mind, as well. He stated his intent is to basically strip [the bill] down to "just the housekeeping."

[HB 327 was heard and held.]

HB 496-YOUTH VOTE AMBASSADOR PROG/ELECTION BDS

CHAIR WEYHRAUCH returned to HOUSE BILL NO. 496, "An Act creating the Youth Vote Ambassador Program and relating to that program; authorizing the members of the program to be appointed to serve on election boards; relating to qualifications for appointment to election boards; and providing for an effective date."

Number 1981

CHAIR WEYHRAUCH said he believes that Representative Seaton had made the motion to move CSHB 496, Version 23-LS1766\H, Kurtz, 3/25/04, [from committee]. He asked if Representative Seaton wanted to maintain his motion.

REPRESENTATIVE SEATON expressed concern that the fiscal note isn't accurate because he didn't see how there could be additional employees in many places and have a zero fiscal note. Therefore, Representative Seaton withdrew his motion.

Number 1954

REPRESENTATIVE COGHILL moved to report CSHB 496, Version 23-LS1766\H, Kurtz, 3/25/04, out of committee with individual recommendations and the accompanying zero fiscal note.

REPRESENTATIVE BERKOWITZ pointed out that if the committee doesn't agree with the fiscal note, it can move to amend it.

REPRESENTATIVE COGHILL opined that the permissive language doesn't demand that new people are hired. He further opined that there is a lot of flexibility, and therefore he accepted the zero fiscal note.

CHAIR WEYHRAUCH inquired as to the difference between a zero fiscal note and an indeterminate fiscal note.

REPRESENTATIVE BERKOWITZ interjected, "An indeterminate fiscal note goes to the Finance Committee."

Number 1907

CHAIR WEYHRAUCH asked if it's possible that since it's discretionary to pay [for the members of the youth ambassador program], the fiscal note may be indeterminate.

LEONARD JONES, Elections Special Assistant, Division of Elections, Office of the Lieutenant Governor, stated that the division, in talking with its regional supervisors, believes the cost of these workers can be absorbed. Furthermore, the division doesn't foresee any additional impact.

REPRESENTATIVE SEATON said that he didn't see at all that this is discretionary with regard to whether these [youth ambassadors] are compensated. He pointed out that page 2, lines 10-12, read: "(d) A member of the program who is appointed under (c) of this section is compensated as provided in AS 15.15.380 only for service on the election board of the precinct." Therefore, the discretion is with regard to whether any [youth ambassadors] are hired or not.

CHAIR WEYHRAUCH said he understood. However, he understood Representative Coghill to be referring to the language on page 2, line 26, which specifies "may appoint". Therefore, there seems to be a conflict between the "is compensated" language and the "may appoint" language. He related his understanding that the election board is given the discretion to do this if the funds are available. If the funds are available, the election board "may appoint" these individuals and will compensate them.

REPRESENTATIVE BERKOWITZ withdrew his objection.

Number 1825

CHAIR WEYHRAUCH announced that there being no objection, CSHB 496(STA) was reported out of the House State Affairs Standing Committee.

The committee took an at-ease at 9:05 a.m. to set up for the overview on the Department of Military & Veterans' Affairs. See 9:09 a.m. minutes for this date.