

ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE

February 26, 2004

1:33 p.m.

MEMBERS PRESENT

Representative Jim Holm, Chair
Representative Beverly Masek
Representative Dan Ogg
Representative Nick Stepovich

MEMBERS ABSENT

Representative Vic Kohring
Representative Mary Kapsner
Representative Albert Kookesh

COMMITTEE CALENDAR

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."

- MOVED CSHB 327(TRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

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

WITNESS REGISTER

TODD LARKIN, Staff
to Representative Jim Holm
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: During hearing on HB 327, provided information and answered questions.

JEFF OTTESEN, Statewide Planning Chief
Division of Statewide Planning
Department of Transportation & Public Facilities
Juneau, Alaska

POSITION STATEMENT: Testified on HB 327; provided information and answered questions.

SUSAN URIG, Assistant Attorney General
Transportation Section
Civil Division
Department of Law
Anchorage, Alaska

POSITION STATEMENT: During hearing on HB 327, answered legal questions.

ACTION NARRATIVE

TAPE 04-8, SIDE A

Number 0001

CHAIR JIM HOLM called the House Transportation Standing Committee meeting to order at 1:33 p.m. Representatives Holm, Masek, Stepovich, and Ogg were present at the call to order.

HB 327-POWERS/DUTIES DOTPF

CHAIR HOLM announced that the only order of business would be 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 0068

REPRESENTATIVE MASEK moved to adopt the proposed committee substitute (CS), labeled 23-LS1135\I, Utermohle, 2/24/04, as the work draft. There being no objection, Version I was before the committee.

Number 0116

TODD LARKIN, Staff to Representative Jim Holm, Alaska State Legislature, provided the following testimony:

Long ago, [an] executive order ... found it's way into statute through the lack of legislative action; when you fail to take action it goes into statute. ... Essentially, it was outside the practices of the department and the state; the statute that's mentioned here. ... A gentlemen who had some conflicts with one of the projects that DOT [Department of Transportation & Public Facilities (DOT&PF)] was doing, was very industrious and dug through the statutes and found out that we weren't complying with this statute and therefore stopped one of our state projects.

MR. LARKIN said the thrust of the bill is the same and the changes are technical. He said DOT&PF has reviewed this section of statute extensively, so it can be matched up with standards and practices that are currently being done. Mr. Larkin remarked, "We still endorse the goal; we're happy to discuss the ... specific policy points of the bill."

Number 0301

JEFF OTTESEN, Statewide Planning Chief, Division of Statewide Planning, Department of Transportation & Public Facilities, testified that he had been the state's lead on the lawsuit that Mr. Larkin had mentioned, and had been doing a lot of work with the Department of Law (DOL). He said he is fairly knowledgeable about the lawsuit and of the recommended changes. Mr. Ottesen said he thought this could be some of the most important legislation considered this year because it potentially could preserve the abilities to continue building transportation projects. Mr. Ottesen explained Sections 3,6, and 7 are strictly housekeeping measures that reflect the current powers and duties of the department.

Number 0391

MR. OTTESEN further explained that the substantive sections of the bill are directed at the problem. One of the goals of this legislation is to ensure that the project between [Lake] Iliamna and Nondalton can continue to proceed with construction. The project has been stalled since 1977, although most of it, save a bridge and the last three miles of road, has been built. Mr. Ottesen said this legislation also tries to ensure that the same issues that are at hand in the aforementioned project don't

contaminate the entire state's transportation program, that is the state's ability to proceed on aviation projects, transit projects, highway projects all across the state. "This is not just a rural problem; this is potentially a rural and urban problem," he remarked. Section 1 of this legislation is an intent section, which was recommended by the Department of Law. The department believes that Section 1 in concert with Section 8, the retroactive clause, is critical if this law is to be viewed as applicable to the case before the court right now. Section 2 applies to a statutory requirement that existed in the late '70s. The statutory requirement said that the department would develop a program with highway projects and present it to the legislature over time. However, now the new section of [AS] 44 speaks to the same kind of requirement, and therefore this section was changed so that these provisions work in concert rather than potentially being perceived as two slightly different sets of requirements that have to be met.

Number 0530

MR. OTTESEN began discussion of what later became Amendment 1, he noted that [DOT&PF] had mistakenly sent a recommendation that the language of the legislation should refer to a 20-year program of projects. However, it should refer to about a 2-year program of projects.

MR. OTTESEN, in response to Chair Holm, specified that is on the top of the second page [of his written comments]. He explained:

The reason it's here is that the program of projects is being (indisc. - paper shuffling) what can you have found, what is the scope, how much money do you have available, and once you get beyond three or four years it's not practical to make those kind of predictions, you really are out there on the end of the limb, and so this is not the plotting product; this is the actual what are we going to do in the next couple of years with a known amount of money, ... so we think that should be two years.

CHAIR HOLM clarified that the language being discussed is on page 2, line 9.

MR. OTTESEN turned attention to Section 4, which he said applies to the state's requirement for a multi-modal transportation plan. Section 4 clarifies that the plan is comprised of many different documents adopted over time, he explained. The

transportation plan includes plans for aviation, marine highways, highways, borders, urban areas, and subsets of the department with many different distinctions. The singular language in current law really doesn't reflect what the planning process is all about.

Number 0641

CHAIR HOLM asked Mr. Ottesen to comment on page 4, line 25, with respect to why the language was changed from "shall" to "may".

MR. OTTESEN said the change is because of [23 U.S.C. 135] language being added, which refers to the federal statute for surface transportation planning; it does not speak to harbor, aviation, or transit planning. Furthermore, it is a law that already has to be followed. He remarked:

When it comes to something like aviation, we would not want to have a shall in front of it and say we have to consider highway provisions in federal law ... when designing an airport, for example.

CHAIR HOLM asked if it was not applicable.

MR. OTTESEN said there were no other federal statutes the [department] could find that would be applicable to the aviation aspect of the bill, which is the reason for "may" rather than "shall". He remarked:

The language starting at [line] 28, means and costs, and then ... beyond the next sentence about considering the views of the Alaska Transportation [Planning] Council. These are the exact issues that were before the court, and it's the means and cost language that the court found most compelling and granted a preliminary injunction on.

MR. LARKIN clarified that the council being referred to in the deleted section [page 4, lines 28-31, and page 5, lines 1-3] is the council that doesn't exist other than in statute.

Number 0794

MR. OTTESEN explained that the Alaska Transportation Planning Council was seated during the term of Governor Jay Hammond and has been unseated since then. He mentioned that it was very hard to find people who were familiar with [transportation

planning]. Mr. Ottesen said Section 5 applies to a listing of projects slated for design and construction; it is typically known as the STIP (Statewide Transportation Improvement Program) for surface transportation; the TIP (Transportation Improvement Program) for surface transportation within the metropolitan areas of Fairbanks and Anchorage; and the AIP (Aviation Improvement Program). He explained that the language essentially aligns this section of law to match up to various federal requirements the state must also follow, and it takes out some antiquated requirements that are no longer being conducted.

MR. OTTESEN explained that Section 8 provides that this law is retrospective or retroactive to the time that AS 44.42 was adopted as a matter of law. He said it was not adopted as a matter of legislative act, "it was adopted as a matter of nobody was paying attention ... to the administrative order that became law." He explained that Section 9 makes the effective date immediate. Mr. Ottesen specified that the consequences of not passing the legislation may be that the Iliamna to Nondalton [project] may continue to be delayed; the state's transportation planning process will remain in conflict with various federal requirements and the emphasis will be on process and not projects, which will produce more paper and less pavement; most importantly, many if not most other important projects in all areas of the state will be at risk for some litigation.

CHAIR HOLM turned attention to page 2, subsection (b), and he asked if there is the potential for a separation of powers by doing this.

MR. OTTESEN said there was a lot of discussion between DOL and DOT&PF on this matter. Essentially, DOL maintained its stance that this [section] is not only important to this particular project, but it is an important piece of language. Mr. Ottesen noted that several members of DOL are involved, but he is not the one to give advice on a legal matter.

Number 1001

SUSAN URIG, Assistant Attorney General, Transportation Section, Civil Division, Department of Law, testified. Ms. Urig said it was new to her too and she had discussed it extensively with Deborah Behr and James Cantor [also with the Department of Law]. She explained that the language comes from legislation that Ms. Behr worked on last session. She remarked:

There was discussion about whether, ... in general terms, the problem could be addressed without specific focus on this judge's decision in the case. ... The risk that's run is that there would be ... argument later on that the intent wasn't to be direct about this piece of litigation. ... Judges do have a healthy respect for ... not only the separation of powers but the functions of each of the different branches, and ... the function of the legislature is to enact the law the court must follow.

CHAIR HOLM remarked, "It just crossed my mind that we might be stepping on grounds where we might want not to go."

MS. URIG said [DOL] was very concerned about that too.

Number 1082

REPRESENTATIVE STEPOVICH asked how much money would be saved.

MR. OTTESEN said it was difficult to answer.

REPRESENTATIVE STEPOVICH asked if there will be savings.

MR. OTTESEN explained that the state has a "bucket" of federal money that can either be spent on process or projects. He said it's a finite amount of money that will not be changed. Mr. Ottesen said [DOT&PF] had not been doing the cost benefit studies, but will now have to start doing them in order to defend [the state] against potential litigation. He said a typical cost benefit study for a modest project can cost \$100,000, and there are a lot of projects in a year.

Number 1128

REPRESENTATIVE OGG asked if the language used on page 2, subsection (b), is currently standard when [the legislature] wants to statutorily affect a court decision.

MS. URIG said she has been told by Ms. Behr that it is, and it comes from her best efforts in putting something like this together.

REPRESENTATIVE OGG said it is a power of the legislature to change the rule of law that has been decided by a court. He said he was curious if that was the language that was generally used. Representative Ogg mentioned visiting Nondalton and

flying over the road [Mr. Ottesen had discussed]. The only thing that keeps the people in Nondalton from getting fire equipment and getting to the medical center is the [lack of a] bridge and the lawsuit by a fairly well-to-do individual who has property in that area. He said it was very nice of that individual, in pursuing this lawsuit, to bring up a problem in state statute that could have brought the state's transportation and construction program to a halt. Representative Ogg remarked, "So, I must thank that individual in his largess for helping the state move forward with our projects." He noted that he thought DOT&PF has done a very good job, and he appreciated its efforts in getting the bridge to the people in Nondalton.

REPRESENTATIVE STEPOVICH asked if the word "may" on page 4, line 25, gives too much leeway to not do anything.

MR. OTTESEN said he believed that change would be fine. He said the intention wasn't to not do it, but even without the statute [the state] would have to meet these requirements because the money comes from the federal government.

CHAIR HOLM pointed out that 23 U.S.C. 135 is a federal requirement. He said it was probably a moot point.

Number 1321

REPRESENTATIVE OGG moved to adopt [Amendment 1], to delete "0" following the "2" on page 2, line 9 [thus changing the "20" to "2"]. There being no objection, it was so ordered.

Number 1342

REPRESENTATIVE OGG moved to report CSHB 327, [Version 23-LS1135\I, Utermohle, 2/24/04], as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 327(TRA) was reported from the House Transportation Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 1:51 p.m.