

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

February 18, 2003

1:43 p.m.

MEMBERS PRESENT

Senator John Cowdery, Chair
Senator Thomas Wagoner, Vice Chair
Senator Gene Therriault
Senator Georgianna Lincoln
Senator Donny Olson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE CONCURRENT RESOLUTION NO. 1

Relating to economic development generated by new road construction and to the design and construction of the Hot Springs Loop Road to connect Chena Hot Springs and Circle Hot Springs.

MOVED CSSCR 1(STA) OUT OF COMMITTEE

SENATE BILL NO. 40

"An Act relating to construction of highways by the Department of Transportation and Public Facilities."

HEARD AND HELD

SENATE BILL NO. 53

"An Act relating to disposition of a traffic offense involving the death of a person; providing for the revocation of driving privileges by a court for a driver convicted of a violation of traffic laws in connection with a fatal motor vehicle or commercial motor vehicle accident; amending Rules 43 and 43.1, Alaska Rules of Administration; and providing for an effective date."

MOVED SB 53 OUT OF COMMITTEE

SENATE BILL NO. 54

"An Act exempting flight crew members of certain air carriers from overtime pay requirements."

MOVED SB 54 OUT OF COMMITTEE

PREVIOUS ACTION

SCR 1 - See State Affairs minutes dated 2/11/03.
SB 40 - No previous action to record.
SB 53 - No previous action to record.
SB 54 - See Labor and Commerce minutes dated 2/27/03.

WITNESS REGISTER

Senator Gary Wilken
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SCR 1

Mr. Merrill Hakala
140 Front St.
Fairbanks, AK 99701
POSITION STATEMENT: Opposes SCR 1

Mr. Ralph Swarthout, Regional Director
Department of Transportation and Public Facilities (DOTPF)
Northern Region
2301 Peger Rd
Fairbanks, AK 99709-5316
POSITION STATEMENT: Testified on SCR 1 and SB 40

Paul Nathaniel, First Chief
Circle Village Council
P.O. Box 89
Circle, AK 99733
POSITION STATEMENT: Testified on SCR 1

Senator Donny Olson
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 54

Mr. Richard Schmitz
Staff to Chair Cowdery
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced SB 40

Mr. Kevin Ritchie
Alaska Municipal League
217 2nd St.
Juneau, AK
POSITION STATEMENT: Opposed to SB 40

Mr. John Brown, Field Representative
Operating Engineers Local 302
Fairbanks, AK

POSITION STATEMENT: Testified on SCR 1 and SB 40

Ms. Eden Larsen, Executive Director
Associated Builders and Contractors, Inc.
Alaska Chapter

POSITION STATEMENT: Supports SB 40

Ms. Judy Martinson
Northcoast Construction
P.O. Box 1089
Nome, AK 99762

POSITION STATEMENT: Supports SB 40

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

POSITION STATEMENT: Testified on SB 40

Mr. Mark O'Brien
Chief Contracts Officer
Department of Transportation and Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898

POSITION STATEMENT: Answered questions on SB 40

Mr. Frank Richards
Statewide Maintenance Engineer
Department of Transportation and Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898

POSITION STATEMENT: Answered questions on SB 40

Senator Scott Ogan
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 53

Ms. Nancy Campbell
No address provided

POSITION STATEMENT: Supports SB 53

Ms. Anne Carpeneti, Assistant Attorney General
Criminal Division
Department of Law (DOL)
P.O. Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Answered questions on SB 53

ACTION NARRATIVE

TAPE 03-02, SIDE A

CHAIR JOHN COWDERY called the Senate Transportation Standing Committee meeting to order at 1:43 p.m. Senators Wagoner, Therriault, Olson and Chair Cowdery were present. SCR 1, SB 40, SB 53 and SB 54 were before the committee.

SCR 1-SUPPORT ROADS/HOT SPRINGS LOOP ROAD

SENATOR GARY WILKEN, sponsor of SCR 1, explained the purpose of SCR 1 is to consider road construction projects in the State of Alaska. It originally focused on a road connection between two hot springs in Interior Alaska. The Senate State Affairs added three additional roads and its committee substitute (CS) is before the Senate Transportation Committee. Senator Wilken endorsed the addition of roads to the resolution.

SENATOR WILKEN referred to a map of the proposed Hot Springs Loop Road. Circle Hot Springs is on a spur road off the Steese Highway 130 miles from Fairbanks. Chena Hot Springs is 60 miles from Fairbanks on the Chena Hot Springs Road. The 50 to 60 miles "as the crow flies" between Chena Hot Springs and Circle Hot Springs crosses the Fairbanks North Star Borough and Steese Wilderness Area, an area of rolling hills with a valley configuration conducive to road construction. Senator Wilken said the Hot Springs Loop Road would benefit the residents of Fairbanks and visitors by allowing access to the hot springs in a loop. The road would provide access to resources and aid in the development of Alaska.

The Senate State Affairs Committee amended SCR 1 to include the addition of three potential roads that would benefit residents, visitors and industry:

- Bradfield Canal Road connecting Southeast Alaska to British Columbia
- Knik Arm Crossing in Anchorage
- Iliamna Bay to Pile Bay

The SCR 1 packet contains the resolution as amended by the Senate State Affairs Committee, the sponsor statement, a letter of support from the Fairbanks Chamber of Commerce, a Fairbanks Daily News Miner editorial dated February 16, 2003 and the attached zero fiscal note.

SENATOR OLSON asked the type of landownership along the Hot Springs Loop Road.

SENATOR WILKEN said he did not know but it is mixed. The Steese Wilderness Area is state land. This corridor was first drawn around 1982 and there is a search underway for the information gathered at that time.

SENATOR OLSON asked the width of the corridor.

SENATOR WILKEN said he did not know but said he encourages the addition of roads that will provide economic development.

MR. MERRILL HAKALA, Fairbanks resident, stated he was 100 percent against a road between Chena Hot Springs and Circle Hot Springs. It would destroy a lot of wilderness country and the connection is not needed. He added that people with remote sites accessible by snow machine would be happy to see the road built.

MR. HAKALA said the funds could be better spent in other places. He proposed the following projects.

- The planned road connection to Rampart.
- Installation of a public boat landing at Rampart.
- Installation of a public boat landing at Circle.
- Rebuild and straighten the road from Birch Creek Bridge to Circle. Money was designated for this project in 1989 but the Department of Transportation and Public Facilities (DOTPF) transferred those funds elsewhere.
- Rebuild the road from Central to Circle to make it a safer road.
- Build a road 1 mile north of and parallel to the Chena Hot Springs Road. This 20 to 25 mile long road should have connections to Chena Hot Springs Road. This property could then be subdivided and would greatly enhance the Fairbanks area.

MR. JOHN BROWN, field representative, Operating Engineers Local 302, said he was present on another matter but was in favor of building roads as they are a foundation for the Alaskan economy. He stated:

I leave it up to the Legislature to prioritize that and I think we need a lot of input on this particular project but any kind of infrastructure helps our economy in the long term and I'm sure this one would too.

MR. RALPH SWARTHOUT, Regional Director, DOTPF Northern Region, stated support for the construction of the Hot Springs Loop Road because it would bring significant tourism, recreational and economic development opportunities to the Fairbanks area. He added:

There seems to be a lot of issues with the Steese White Mountain Recreational Area, the Birch Creek Wild and Scenic corridor - who owns the land, what is its geo-technical conditions, how would a road be sited here. If we do a reconnaissance type study, it would take about a year to do, we could look at all of these problems or perhaps problems in the future and come up with some alternate solutions and make a decision on whether it would be wise to proceed or not. So that is my suggestion to the commissioner and I am supportive at this time on this road.

SENATOR OLSON asked if Mr. Swarthout had looked at this from DOTPF's standpoint. He asked how he saw the construction of this road competing with dollars for maintenance of other roads. Senator Olson added that DOTPF has not been maintaining the roads in his district.

MR. SWARTHOUT perceived this road as a capital fund project that could compete priority-wise with other projects. DOTPF's maintenance and operations activities are funded out of the general fund budget. The maintenance dollars are different from capital dollars.

SENATOR OLSON understood the difference between the operating and capital budgets. He said his question was how does DOTPF expect to maintain this road after it has been built when other roads lack maintenance.

MR. SWARTHOUT said he hoped the Legislature would support both a new roadway and the operation costs. He added he had long been a proponent for tying maintenance costs to capital projects and said, "If they are not going to maintain them, don't build them."

MR. PAUL NATHANIEL, First Chief, Circle Village Council, explained the Circle Village Council position on the road project between Chena Hot Springs and Circle Hot Springs. When something important occurs, like the Yukon Quest International Dog Race or a visit from the Governor, the Steese Highway is maintained. Otherwise, the highway has not been maintained through the winter for the past four or five years. The 35 miles from Circle to Central is rough and hard on vehicles. Mr. Nathaniel suggested those funds should be spent to maintain, redesign, straighten and reconstruct the highway between Circle and Central. [Parts of Mr. Nathaniel's testimony were indiscernible due to poor transmission.]

CHAIR COWDERY said SCR 1 would be scrutinized as it moves through Senate and House Committees. He thought Governor Murkowski had appointed new people to DOTPF and attitudes will change from what they were in the past.

SENATOR THERRIAULT moved CSSCR 1(STA) from committee with individual recommendations and the accompanying zero fiscal note. Without objection, the motion carried.

SB 54-OVERTIME PAY FOR AIRLINE EMPLOYEES

SENATOR OLSON presented the following sponsor statement.

I introduced SB 54 to bring certainty to the interpretation of existing federal and state wage and hour statutes as they pertain to payment of overtime in the air transportation industry. Because of the uniqueness of their working conditions, flight crews have been considered professionals that are exempt from the standard 8-hour workday; 40 hour week and associated overtime pay requirements [AS 23.10.055(9)]. In conjunction with the maximum flight hours requirements set by the Federal Aviation Administration [FAA], these exemptions, at both the state and federal level, have allowed the industry to structure wage and hour schedules best suited to the work requirements of their flight crew personnel.

Several Alaska court decisions have raised a question about the correct application of state wage and hour laws and the application of overtime exemptions. Indeed, the confusion has stimulated other court challenges.

SB 54 explicitly adds flight crews to the list of occupations and employment situations that are exempt from Alaska's overtime wage and hour requirements. The bill cites the provisions of the federal Railway Labor Act that governs air carriers in order to provide consistency between federal and state applications of the exemption.

CHAIR COWDERY asked if these flight crews are considered professional.

SENATOR OLSON explained flight crews at this point are not listed as professionals however their interpretation in the past has been that they are professionals because of the uniqueness of their working conditions. The attorney general's long-standing opinion has been that they are professionals. SB 54 specifically lists flight crews as professionals so there will be no question.

SENATOR OLSON moved SB 54 from committee with individual recommendations. There being no objection, the motion carried.

2:02 p.m.

CHAIR COWDERY announced that Senator Lincoln joined the committee.

SB 40-CONSTRUCTION OF HIGHWAYS BY DOTPF

MR. RICHARD SCHMITZ, staff to Chair Cowdery, introduced SB 40. He told members that the Department of Transportation and Public Facilities (DOTPF) uses force accounts for sole source contracts. These are usually small contracts and enable the work to be done by temporary state employees. Other state departments occasionally use force accounts for projects costing small amounts.

SB 40 would insure that the competitive bid process be used for state road projects. Competitive bidding allows transparency and provides the lowest and best bids. Force accounts could be used for projects under \$250,000 while projects above \$250,000 would

be competitively bid. An advantage of the competitive bid process is that Davis-Bacon wage determinations are paid; this is the set union wage scale. Under the force account system, temporary state employees do not necessarily receive Davis-Bacon wages.

CHAIR COWDERY clarified that if something was overlooked in the initial bid, a force account can be used to take care of the unforeseen problem rather than shut down the project. Force accounts are a necessary tool in the construction business but they have been abused in the past. He thought SB 40 was needed to stop the abuse.

CHAIR COWDERY said both rural and urban labor on contract or force account should be paid the same Davis-Bacon wages. This legislation had support from most labor unions last year but the bill was killed in the House.

SENATOR OLSON said last year the bill started with a \$250,000 limit but was changed to a \$1 million limit as it progressed through the legislative process. He asked why SB 40 went back to the \$250,000 limit.

CHAIR COWDERY said, "The bill didn't pass so we're going to start at the same place." He said he has no control of the limit when the bill reaches the Finance Committee.

SENATOR LINCOLN said Chair Cowdery's aide told her the meeting started at 2:00 p.m. and that she had not been informed the meeting was starting at 1:30 p.m. She had prepared to talk about SCR 1 as it involves her district. She asked if Chair Cowdery would allow the individual on line from Circle to be heard after the committee finished with SB 40.

CHAIR COWDERY said he would extend that courtesy.

SENATOR LINCOLN appreciated that very much.

CHAIR COWDERY apologized that she was not notified of the time change. He thought everyone had been notified.

MR. SCHMITZ said he was responsible for the lack of notification.

SENATOR LINCOLN addressed SB 40 and said the Rural Construction Work Group had several meetings and made a number of recommendations as a result of the administrative order (AO) dated October 1, 2002. She wanted to hear from that group because the members represent a very broad group from across Alaska.

CHAIR COWDERY said the work group members had been notified of the hearing.

SENATOR LINCOLN asked if anyone was present to testify for the Rural Construction Work Group.

CHAIR COWDERY thought there was someone present.

SENATOR LINCOLN said she would postpone her questions because the Rural Construction Work Group would likely cover a number of the points she planned to raise.

MR. KEVIN RITCHIE, Alaska Municipal League, apologized for not having submitted a letter but said one would follow. He explained that concerns brought a broad group of people together over the summer who had a great deal of discussion. Two obvious concerns were apparent:

- The level of wages, fairness and competitiveness on the part of contractors.
- The ability to hire and train local people to a greater extent and the cost of getting the work done on the local side.

The group included contractors, labor representatives, municipalities and state agency representatives and resulted in Administrative Order 199 (AO 199). Mr. Ritchie felt AO 199 is a compromise that addresses ways to stop abuse, overtime and new wage rates. Those abuses are identified as the purpose for SB 40. He suggested finding out if AO 199 is being implemented and how it might reflect on the need for SB 40.

CHAIR COWDERY disclosed this issue was brought to his attention when a \$3.5 million road project in Saint Mary's went out to bid and was then withdrawn a couple of years ago. Fairbanks contractors complained because they wanted to bid on the job. DOTPF chose to hire people as state employees, train them and build the road with state equipment rather than conform to Davis-Bacon Act wages. He was told by DOTPF the road is excellent, however SB 40 is needed to stop this type of abuse.

Projects costing over \$250,000 should go through the competitive bid process.

SENATOR OLSON said Saint Mary's is in his district. He reported that not only is the road excellent, it came in under budget thanks to city manager Walton Smith, project engineer Dave Schaffer, and the rest of the group working on it. It was a very good experience.

CHAIR COWDERY said he had not been out to see the road but had asked for an audit.

SENATOR LINCOLN asked if Mr. Ritchie was a member of the Rural Construction Work Group.

MR. RITCHIE responded that he was.

SENATOR LINCOLN said representatives of Native corporations, nonprofit organizations, private contractors, organized labor, affected state agencies, the Association of Village Council Presidents (AVCP), Kawerak, the Tanana Chiefs Conference, Inc. (TCC), and the Bering Straits Native Corporation (BSNC) were all represented in the group. She understood the group made a number of recommendations that AO 199 closely follows. She asked, in representing the Alaska Municipal League, whether Mr. Ritchie might have wanted to change anything in AO 99 in hindsight.

2:16 p.m.

MR. RITCHIE answered the process was a good one and, as far as making major changes, members came to a good compromise. It creates a more progressive wage rate for people hired through a force account; they are hired at essentially Davis-Bacon training wages, which is a good thing. Part of the group's philosophy was to allow the use of force accounts for amounts over \$250,000 but to create a competitive situation between force accounts and contracting. If wages approximating Davis-Bacon wages are paid, then the choice can be made on a completely competitive basis and the laborers win either way. Preserving the concept of the force account is really important in some rural areas. He said there might be a number above which force accounts should not be used but \$250,000 may be low because of the cost of doing business.

MR. RITCHIE felt it made sense for the new administration to review AO 199 and see how it would recommend its implementation. He noted, "Just for the record, our public works and

infrastructure committee did review the bill recently and did recommend that in its present form to not support the bill, just the Municipal League alone."

MR. RITCHIE added the Associated General Contractors (AGC) was also a member of the working group.

CHAIR COWDERY noted he was anxious to talk to the new administration on this issue.

MR. JOHN BROWN, field representative, Operating Engineers Local 302, pointed out that Alaska's policy on public construction has been to use the bid process, which makes sure the work is done in an efficient manner. The people in rural Alaska should receive Davis Bacon wages. He said he did not believe SB 40 would affect the ability of rural people to do force account work. He explained SB 40 limits DOTPF to the competitive bid process to make sure innovative methods and the best current practices are used.

CHAIR COWDERY said when he was in the contracting business he worked in rural Alaska and found it beneficial to hire as many local people as possible because he didn't have to pay transportation, per diem, or housing. When building an airport, precise grades were needed and workers had to be imported that could cut the grade required by the specifications. His construction company paid everyone Davis-Bacon wages. He hired about 60 people on one project in Kotlik and had about everyone who wanted to, work on the project.

MR. BROWN encouraged Senator Lincoln and Senator Olson to talk to the people in Arctic Village who just finished a project. The Operating Engineers trained people from the local community and the project was force account work.

MS. EDEN LARSEN, Executive Director, Associated Builders and Contractors, Inc. (ABC Alaska), stated ABC Alaska supports SB 40. The state should not be in competition with the private sector. ABC contractors working in rural Alaska are looking for trained people who can work on projects. The issue is largely one of training rather than wages. Contractors are required to pay a prevailing wage hiring locally wherever possible provides a competitive advantage.

She said it is interesting to see that AO 199 brings the whole force account argument full circle. Initially the argument was that force accounting was more cost effective because local

people could be hired the prevailing wage would not have to be paid. That argument is used to avoid federal open and competitive bid requirements. AO 199 now imposes a prevailing wage rate, which brings the argument full circle but does not eliminate competition with the private sector or the people directly performing the work.

MS. JUDY MARTINSON, Northcoast Construction, said Northcoast Construction is a general contracting company that works in northwest Alaska villages and has exclusively hired local workforces for the past 22 years. State DOTPF forces have eroded Northcoast Construction's work. The Saint Mary's project was not put out to bid but was done by DOTPF and the costs are unknown. DOTPF paid less than the Davis-Bacon wages that contractors are required to pay and include in their bids. There is little work in Northwest Alaska and state DOTPF forces were working when private enterprise was not. Northcoast Construction is making payments for equipment that sits idle and gross revenues have gone from a high of \$2.5 million down to about \$20,000 per year. They are selling equipment and letting local people go while DOTPF is gearing up with more equipment and more forces. The state and city forces are getting stronger and the private sector is being put out of business. She concluded, "We are looking at going to war to preserve our democracy." Northcoast Construction supports SB 40 to stop this problem.

TAPE 03-02, SIDE B

2:30 p.m.

CHAIR COWDERY asked Ms. Martinson the smallest dollar amount and [pay] range that Northcoast Construction had ever competitively bid on a job.

MS. MARTINSON answered Northcoast has bid jobs from \$1000 to \$3 million.

CHAIR COWDERY asked if Northcoast was required to post a bond for the larger jobs.

MS. MARTINSON said it was.

CHAIR COWDERY asked if smaller jobs were exempt from bonding.

MS. MARTINSON said some projects require bonds and some do not, it depends on the funding. Northcoast had a small maintenance project that was bonded. Northcoast hires and trains local

people and uses anywhere from 80 to 100 percent local forces for a project.

SENATOR OLSON asked her to mention some of the places where Northcoast had done construction projects.

MS. MARTINSON said Northcoast had been to just about every village out in Northwest Alaska, Teller, Brevig, Savoonga, Gamble, Unalakleet, Kiwalik, Nome, and Wales (three additional villages were listed that were indiscernible).

SENATOR LINCOLN appreciated Ms. Martinson's testimony and the fact Northcoast Construction hires all local people. Senator Lincoln said she came from a very small community and represents 129 communities. Local people are concerned that locals do not receive the work when a job is put out to bid. An Anchorage contractor brought all of his employees, food, materials and equipment to Rampart. Rampart worked hard to get the project but received absolutely no benefits in terms of jobs. She added that many companies do not follow the local hire policy. Local people are watching jobs leave the community and, in some cases, leave the state.

MS. MARTINSON said after living in Nome for 30 years they are compassionate and love the villages and village people. Life is very hard; without funds coming in it is hard to eat. She suggested the loss of jobs could be eliminated if a specific number of hours required for apprentices could be placed in the bidding process. People need to be trained on the job and the state participates and helps with that through the competitive bidding process and through the union apprenticeship program.

Northcoast has had a project agreement with the union. The union came in and helped to train people, and made sure the people were happy. She thought the bidding process needs more teeth so that village people are accommodated.

CHAIR COWDERY said he hired as many locals as possible because it was more profitable. Qualified people are needed to run the equipment to meet specifications when close tolerances are required and these people have to be brought in. He hired locals on erosion control contracts that were hard working who caught on fast and worked up to 12 hours per day. Contractors will hire locally if they can save money.

CHAIR COWDERY said Frank Richards and Chris Kepler are on line in Anchorage to answer questions.

MR. DENNIS POSHARD, Legislative Liaison/Special Assistant, DOTPF, said Mark O'Brien, Chief Contracts Officer, is present to help answer questions because this is a complex subject.

CHAIR COWDERY asked if he had talked to the new heads of DOTPF.

MR. POSHARD said they were introduced while waiting for this hearing to start and Commissioner Barton had been acting Commissioner for some time. He stated DOTPF has no position on SB 40 and explained:

We are currently reviewing Administrative Order 199 and this administration is trying to determine their approach to dealing with the issue of force account. First though, I would like to clarify a few things. One thing, I think that it's really important to note up front, is we agree that we ought not be in competition with the private sector. I mean we believe the private sector is a partner with us to do the job that we need to do to improve transportation in Alaska. That's why over 97 percent of our current, you know, construction program ends up getting bid out.

CHAIR COWDERY asked how much of the remaining 3 percent represents in dollars.

MR. POSHARD said a little less than 3 percent was spent by force account in 2002, which totaled about \$11.2 million.

CHAIR COWDERY asked if that was in all areas of Alaska.

MR. POSHARD said yes. The lion's share of force account funding was for projects that department maintenance crews did for line item projects in the capital budget. Some of those projects include preventative maintenance on roads, road surface treatments, crack sealing and bridge repair. The total amount was \$11.2 million; about 2.2 percent of the total construction program in 2002. That included the projects DOTPF gave to other local agencies such as the Bureau of Indian Affairs (BIA) or other state agencies. SB 40 is directed at that 2.2 percent and not the \$350 to \$400 million that is contracted every year. DOTPF agrees it should not be in competition with the private sector and that is why it contracts most of the work that is done.

CHAIR COWDERY asked the reason force accounts began.

MR. POSHARD said the answer depends on the type of force account. DOTPF sometimes force accounts roads to local governments or agencies such as the BIA and the Indian Health Service (IHS) at their request.

CHAIR COWDERY asked if DOTPF ever uses force account when an unforeseen situation arises during a project; for instance, hydrocarbons were found and were not included in the bid but DOTPF does not want to stop the job.

MR. POSHARD said he thought Chair Cowdery was referring to a change order. If the contractor is on-site doing the work and an unforeseen situation is discovered that calls for some change to the bid specifications, DOTPF issues what is called a change order. DOTPF negotiates directly with the contractor to go ahead and complete the additional work above and beyond the original specifications in the bid.

CHAIR COWDERY asked if that is the same as a force account.

MR. POSHARD asked Mark O'Brien, who reviews all the "best interest findings" and determines whether or not force account projects can be done, to explain force account because.

MR. MARK O'BRIEN, Chief Contracts Officer, DOTPF, explained that two different definitions of force accounting cause confusion. He told members:

One is force account, which is usually called 'time and materials' and that's where a contractor is paid on a time and materials basis. The description that Dennis gave of the change order could well be that that change order would be done on time and materials [basis] so they would call that force account. But, what the statute is looking at in this definition of force account is where the department uses its own forces to accomplish the work, so it's different. Those are the different definitions for force account.

CHAIR COWDERY asked how DOTPF budgeted for force accounting.

MR. O'BRIEN asked if he was referring to a force account for the contractor under a change order.

CHAIR COWDERY asked if they had a budget for unforeseen problems and asked if that was the same as force account.

MR. POSHARD said that is not the same type of force account SB 40 is referring to. DOTPF builds contingency funds into projects and Chair Cowdery was referring to a force account due to a change order. The amount is not the same on every project and depends on the level of certainty and comfort with the information the specifications were based on. Sometimes it is as much as 10 percent and sometimes it is less.

CHAIR COWDERY said an example would be when a contract provides so much per ton for unusable excavated material to be hauled off and then an unexpected peat bog is encountered and has to be removed at additional cost. He asked if the unit price in the original bid was standard for the additional pay to the contractor.

MR. O'BRIEN said that is correct. If it was simply an overrun in quantities for which there were unit prices then the unit prices would continue to apply and DOTPF would pay for the total quantities actually moved.

CHAIR COWDERY said if, in fact, the peat bog proved to be more difficult to remove than the original unit price, a new price would be negotiated.

MR. O'BRIEN said yes, equitable adjustment is allowed under contract for circumstances where the contract did not contemplate the series of events discovered on the project.

SENATOR WAGONER asked when the state highway maintenance is involved in a force account job and state equipment is used against an account, whether that equipment is billed against the account by an hourly charge.

MR. FRANK RICHARDS, Statewide Maintenance Engineer, DOTPF, said the question is how state equipment is administered under the force account project done by DOTPF forces. The Federal Highway Administration allows DOTPF to build a federal usage rate for the cost of equipment usage it is able to charge to the project. Use rates and costs for the state equipment fleet is developed on an annual basis. The state/federal usage rate goes through a federal audit and determines that the cost associated and charged to the projects are. As the equipment is used, it is being charged at that rate to the project.

SENATOR WAGONER asked where those funds revert to and what account do they go into.

MR. RICHARDS said under a force account the project is set up with a specific description; the personnel services and equipment costs are charged directly to the project.

MR. POSHARD asked if the question was do the funds that go towards equipment somehow go back into the highway capital working fund and offset the annual cost for that equipment in a capital force account project.

SENATOR WAGONER said yes, or an equipment maintenance fund of some kind. He said otherwise, the equipment is being worn out for nothing.

MR. POSHARD said essentially the answer is yes. He explained:

When we purchase a piece of equipment, we do that through the state equipment fleet. We have set up by statute what's called the Highway Capital Working Fund and it's a separate fund that's used to acquire equipment. And your lease rates are established in such a way that they take into account the maintenance of that equipment and the capital acquisition of new equipment at some foreseen point in the future. And so, the capital funding that goes to pay for equipment during the time it's being used on that project, that's that much less general fund that we would be using to pay for that equipment on an annual basis. Does that make sense or answer your question?

SENATOR WAGONER said it did if DOTPF projects how much it is going to have from that type of income and puts that into the budget.

CHAIR COWDERY asked if a \$75 thousand engine blew up in a grader on the Saint Mary's project, how the cost of replacement would fit in the maintenance budget.

MR. POSHARD said DOTPF used almost no state equipment on the Saint Mary's project. The equipment was leased from the local government.

CHAIR COWDERY asked if DOTPF used any state equipment.

MR. POSHARD said they might have used a piece or two.

CHAIR COWDERY asked how the replacement cost of a blown engine was accounted for.

MR. SWARTHOUT, Regional Director of the Northern Region, DOTPF, explained almost all of the equipment used on the Saint Mary's project was leased from the City of Saint Mary's. The state had a few pieces of equipment; a roller and a dump truck were used from time to time. He answered the question as follows:

Some of that would depend on what the cause of that engine being blown was. If it was normal wear and tear, there was some problem with the engine, we'd go back to the manufacturer, perhaps where we'd absorb that out of the Highway Working Capital Fund which would drive the rates up in the future for that piece of equipment. If it was an operator problem where he over revved the engine or we've run it out of water, the Highway Working Capital Fund would not pay for that, it would not come out of the project. I mean basically it would come out of our general fund budget to repair that equipment.

MR. POSHARD said the Saint Mary's project is complete and the total cost was \$2.47 million.

CHAIR COWDERY asked for a breakdown of those costs. He said he had requested an audit earlier.

MR. POSHARD said DOTPF would be happy to provide that information. He added this bill would affect a few types of force account projects:

- Projects that DOTPF force accounts through local governments or agency partners like the BIA or Indian Health Service.
- The Saint Mary's type project, which is essentially a force account project that DOTPF did. The department sent its construction managers to Saint Mary's and hired local temporary state employees to complete that work.

CHAIR COWDERY interjected and asked if the employees worked for the state prior to the project.

MR. POSHARD said not to his knowledge. He continued:

- The third type is the maintenance work normally done every year with the DOTPF capital program. The maintenance general fund budget has been cut over the years. DOTPF managed to make up a lot of the difference by establishing some types of maintenance activities that can use DOTPF maintenance employees like pavement preservation and safety kinds of issues.

MR. POSHARD clarified that DOTPF maintenance forces do a portion of the capital budget line item projects, such as preventive maintenance, road surface treatment and bridge repair. Every spring or early summer a number of maintenance employees will shift over to a capital project. They are no longer plowing snow, they are out crack sealing, repairing bridges or doing whatever their specialty is. They work throughout the summer and in the fall get converted to the general fund maintenance budget.

DOTPF is concerned that some of those activities could not continue if this bill passes. Converting state employees and state maintenance employees to work on capital projects for the summer saves a portion of DOTPF's general fund for personnel services that can be used for overtime in the winter for plowing snow and weather related activities. If DOTPF is unable to do that, a management decision must be made to either stop some maintenance activity, bid it out to the private sector, lay off employees to maintain that small cushion of overtime or maintain those employees and have less time to deal with weather events in the winter.

CHAIR COWDERY asked if DOTPF had a detailed description of maintenance versus construction work.

MR. POSHARD said there is a statutory definition of maintenance and construction work.

CHAIR COWDERY asked if DOTPF owns machines to lay down asphalt.

MR. RICHARDS answered DOTPF contracts out for the lay down of asphalt. DOTPF does not own a lay down machine.

MR. POSHARD reiterated that DOTPF does not have a position on SB 40 but has concern about the management decisions DOTPF must face should the bill pass. It takes away flexibility to plan for unexpected weather events and stretches its general fund maintenance budget a little further.

SENATOR OLSON said the difficulty he sees is the polarization between the private sector and the state through force account. This bill uses the amount of the project as the dividing line to try and separate the two. The United States was built on the capitalistic system and a dislike of seeing public moneys used against people from the private sector. He asked if Mr. Poshard could see any other mechanism or way that would make it less of a divisive issue.

MR. POSHARD said that was a difficult question to answer. Different ideas have been tossed around but DOTPF has no position on the ideas. He explained:

But other approaches could be maybe limiting the force account work that's done by the department to the work that's done with the existing state forces. So it would prevent maybe us from going out and hiring new state employees to do that work. I think that might give us anyway the ability to continue doing some of the budget shifting that we do to manage the maintenances as effectively as possible. It might maybe take away the ability of the department to do a Saint Mary's type project, which is really the one that seems to have been the camel's nose under the tent for the Associated General Contractors and some of the other agencies or organizations out there.

SENATOR LINCOLN asked if she understood correctly that three percent of the overall budget was spent on construction and maintenance force account projects.

MR. POSHARD answered that is correct. Less than three percent of DOTPF's total capital construction program actually is force accounting.

SENATOR LINCOLN asked how much of the three percent was used for BIA and Indian Health Service projects.

MR. POSHARD said he did not have that information with him but it could be provided.

SENATOR LINCOLN asked for an estimate.

MR. O'BRIEN answered that it is a very small portion of the amount listed. In 2002, with a total amount of \$11 million, \$8.8 million plus another \$500 thousand were spent on

maintenance type activities. The other agencies totaled just over \$1 million of the \$11 million.

SENATOR LINCOLN said ten percent.

MR. O'BRIEN answered ten percent of the amount that was force accounted.

SENATOR LINCOLN said she would appreciate having the breakdown. She said they were talking about a very minimal amount when talking about force accounting, three percent.

CHAIR COWDERY said \$11 million.

SENATOR LINCOLN said 2.2 percent of the total capital budget. It is very small in those terms and important in terms of the benefits the local people derive. She thought they had to look at the overall big picture. "I guess I'm a little puzzled by the 'no position on the bill' because isn't this the same bill that we had last year with the exception of the amount?"

MR. POSHARD said this is essentially the same bill as it was introduced last year and the previous administration pretty strongly opposed the legislation. This administration is reviewing AO 199, which was the result of the Rural Construction Working Group and has yet to conclude exactly how it is going to approach the force account issue.

SENATOR LINCOLN read a statement from former Governor Knowles in regard to AO 199:

After the various agencies and those groups involved in employment and training for rural construction shall provide the Governor with a joint report one year from the effective date of this order that evaluates the results to date of this order and shall report annually thereafter.

She asked what that meant now with the new administration coming on and looking at AO 199.

3:05 p.m.

MR. POSHARD said he was not sure exactly how the administration would approach that language and not sure what that language meant initially because he had not participated in the process.

Mr. O'Brien participated and could possibly explain what that language meant and what was intended.

SENATOR LINCOLN said since Mr. O'Brien participated she had another question. The Department of Labor was in fact represented on the Rural Construction Working Group and the recommendations of that group resulted in AO 199. She asked if that is correct.

MR. O'BRIEN said that is correct.

SENATOR LINCOLN asked, "What do you now find offensive or that you would report back to a new administration that they should change?"

MR. O'BRIEN said he was not sure it is an issue of something being offensive. He thought at that point, the working group did not know how the current administration would handle the particular requirements of AO 199. Since it is a new administrative order, they do not know how the reporting requirements are going to be handled.

CHAIR COWDERY said he intended to hold the bill in committee and talk about it with the new commissioners in DOTPF and perhaps they will be present at the next hearing.

MR. RICHARDS said the cost of equipment is about 15 percent of that 2.2 percent and the remainder of the money is spent in the private sector contracting for aggregate, materials and rented equipment. This money does not all go to the state; it is spread out among the private sector.

CHAIR COWDERY said he appreciated that but was concerned about how the state is doing it.

MS. MARTINSON said a basic democratic principle is that the public should not compete with the private sector. The City of Saint Mary's is a public organization that bought the equipment for the project and the state paid the city for that equipment. The amount of 3 percent might seem small but it has a big impact.

CHAIR COWDERY announced his intent to hold SB 40 until he has an opportunity to meet and discuss it with the new people in DOTPF.

SB 53-REVOKE DRIVER'S LIC. FOR FATAL ACCIDENT

SENATOR SCOTT OGAN, sponsor of SB 53, explained he introduced similar legislation about four years ago. Former Governor Knowles introduced the same legislation two years ago, which died in the last moments of the legislature last year so he is reintroducing the measure. He explained:

What motivated me to do this was literally having to take my knife and dig the dirt out from underneath my fingernails from burying a couple of my friends' kids. And two kids were killed in the same car wreck. They were killed by a young man who was basically charged with a traffic violation of speeding. The young man received a very light sentence, just a few points off his drivers license and a few hundred dollar fine and some community service. And it was the maximum that the judge could give and the judge actually apologized to the parents for not being able to do more. Since then he was involved in another vehicle accident that, I'm not sure of the exact tickets of that accident, but I've been told that individual was involved in an accident that killed two more kids and had he lost a license maybe that might not have happened.

When we first introduced the bill, six years ago I think it was, we had one woman that testified that a person ran a red light in Anchorage, a woman ran a red light and killed her daughter, she got a \$50 fine. And I think the families of these victims of accidents feel that justice is not being served. There's certainly civil recourse that they could take to, the one family that lost the two boys, both families decided not to litigate in civil court. They just felt it wasn't something they wanted to do but they would have liked to have had the young man held accountable. There was another accident recently, earlier this winter, where two people died, and a young gal was driving, another young person....

Situations where there is alcohol involved or something like that they can be charged with manslaughter or face some criminal charges. Right now the way our law is written, you get a traffic ticket you get a slap on the wrist and your on to, back to your bad driving habits. So anyway, this bill attempts to clarify that.

There are a lot of technical issues here, legal technical issues, I think Annie Carpeneti is here to answer questions if anybody has some on those. But basically this is a policy change that the Alaska Legislature is saying: if you're not paying attention, you're talking on your cell phone, you run a red light, you run a stop sign, you speed, you kill somebody, you know it's going to be a little bit more than just a traffic ticket. I think the value of human life is worth more than a traffic ticket in those cases.

MS. NANCY CAMPBELL informed the committee her son was killed in the accident Senator Ogan spoke about. A number of lawyers were involved because six teenagers were in the car. Her lawyer tried to pursue a misdemeanor conviction but Alaska laws are written with no ramifications for this type of accident because the driver was not on drugs or alcohol. The case went to traffic court and the judge apologized and said his hands were tied. Witnesses to the accident said the young man was speeding, but because it was viewed through a rearview mirror the testimony could not be considered. This man also almost ran into a couple and they came to traffic court but were not allowed to testify because of the way the laws are written. The young man was given 300 hours of community service. Two months later, that young man was involved in another accident in which two more teenagers were killed. She said to her knowledge this young man is still driving.

MS. CAMPBELL and her husband support SB 53 and feel the legislation is appropriate. They have lobbied to change the law in Alaska since 1994. The local newspaper in Eureka, California reported a non-fatal accident involving two teenagers. One young man pulled up next to another and shot him in the face with a squirt gun. The accident that followed involved injury but was not fatal, however the driver's license was immediately revoked and a fine was imposed by the State of California. This shows that the problem is the way Alaska laws are written.

CHAIR COWDERY how Ms. Campbell would place the responsibility if a person was driving down the road in a residential area at 25 miles per hour and hit and killed a child who darted out from a driveway on a tricycle.

MS. CAMPBELL said that is a different situation because the child ran out into the road and the driver didn't see the child coming.

TAPE 03-03, SIDE A

3:18 p.m.

SENATOR OGAN explained if the person in Chair Cowdery's scenario didn't violate any traffic laws he or she would not be charged. That type of case is a terrible thing but it is an accident and nobody is really at fault.

SENATOR LINCOLN said she thought SB 53 was a fine bill. She asked if the bill covers 4-wheelers, 3-wheelers and snow machines. She asked how a vehicle is defined.

SENATOR OGAN said he would like Annie Carpeneti to back him up on the question but a traffic law must be violated. Operating a 4-wheeler on a highway would be a violation of a traffic law.

SENATOR LINCOLN said she was thinking of a situation where somebody in a village, driving erratically with a 4-wheeler and not paying attention, caused a fatal accident. She asked if this bill addresses that type of situation.

MS. ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law, testified the department had worked with Senator Ogan on SB 53. She said in answer to Senator Lincoln's question it would depend on the circumstances but it could very well apply. The bill is limited; it requires a citation for a traffic violation and a conviction on the citation. Then it requires the judge to find by clear and convincing evidence that the traffic violation was a significant cause of the accident that killed a person. The scenario raised by Chair Cowdery would not apply at all.

SENATOR LINCOLN presented an example that had occurred a year earlier. A young man was working on a new snow machine and could not get it going. He put a tool on the accelerator and the snow machine took off and ran over and killed an individual. She asked if the legislation would apply in that case.

MS. CARPENETI asked if he was cited for a traffic violation. She said sometimes people get killed in accidents and it is really nobody's fault. She said SB 53 addresses incidences where a person hasn't acted in a criminally negligent manner but has violated a traffic law. Senator Lincoln's example would depend on the circumstances in the situation: where the snow machine was, whether it was on a vehicular way, or whether the

young man was cited for some sort of traffic violation. She said she would need more information.

SENATOR THERRIAULT said Ms. Carpeneti worked with the Senate Judiciary Committee last year on changes to this legislation. He had reviewed the minutes from last year and had a copy of that bill. He noted Senator Ogan had said his starting point was the last version of the bill and it appears to be except for the omission of an additional section in last year's bill that dealt with the definition of traffic laws.

MS. CARPENETI pointed out the definition on page 3, line 7 was in the prior iterations of the bill.

SENATOR THERRIAULT said she was correct. The form of the bill is just a little bit different.

SENATOR THERRIAULT referred to scenarios given by Chair Cowdery that Ms. Carpeneti had said did not apply. The Judiciary Committee discussed another scenario last year.

A mother picks up her two children, driving down the road hits an icy spot, hits a telephone pole, kills one of the children. There was some testimony last year that the trooper responding to the accident scene is going to cite a cause for the accident, driving too fast for the conditions. Now is that mother then going to be subject to losing her license where she's already lost her child?

MS. CARPENETI answered it would depend. If the mother was cited for driving too fast for the conditions and the judge concluded that her behavior was a significant contributing factor to the death, then losing her license is a possibility.

SENATOR THERRIAULT asked if such a situation would provide for a lot of prosecutorial discretion.

MS. CARPENETI said yes. The person has to be convicted of the citation beyond a reasonable doubt. A person has a right to court appointed counsel and a jury trial for the citation itself and then the judge would have to be convinced by clear and convincing evidence that the bad driving was a significant contributing factor to the death. There are several steps along the way that have to be met before the license would be revoked and it would be for the judge to determine. She thought that was why the Senate Judiciary Committee added the clear and

convincing evidence standard and that it would be a significant factor in causing the death.

MS. CARPENETI explained beyond a reasonable doubt is a higher standard. Clear and convincing is between preponderance of the evidence and beyond a reasonable doubt but it is a high standard.

SENATOR OLSON said last year's bill included the reasonable doubt standard; the standard in this bill has been changed to clear and convincing evidence. He asked her why that change was made.

MS. CARPENETI said she believes the citation has to be proven beyond a reasonable doubt but said she could be mistaken and would check. The citation must be proven beyond a reasonable doubt and, after the person is convicted of the traffic violation, the court must find by clear and convincing evidence that the bad driving was the significant factor in causing the death.

SENATOR OLSON stated:

As you look at this transgressing driver that was out there causing all this mayhem and certainly the fatalities we certainly empathize with the families that were affected. And I think, with all due respect Senator Ogan, your words as I remember them on the floor were that 'You cannot legislate common sense.'

He asked if the driver that caused the two accidents had a driver's license.

SENATOR OGAN said he did not recall making that statement and added, "But you probably can't legislate common sense, but you can punish bad judgment. And, you know we legislate morality all the time. That's the most common thing we do." He stated as an example that when someone three years older has sexual relations with a child who is 15 years and 364 days old, that is child molestation but, the next day, when the child turns 16, it is not. That is a moral judgment call. He applauded the Campbells for not taking the driver to civil court, but they felt justice was not served. This legislation would provide a sense of justice. The Campbell's son and their friend's son died and, because there was nothing on the books the judge could use, a subsequent accident occurred and two other children died.

This young man did not learn his lesson the first time so there has to be some consequences for bad judgment.

SENATOR OLSON said his heart goes out to the people that suffered through the tragedy.

SENATOR OLSON referred to case 1 from the Actual Cases Supporting SB 53 in which a man driving along Glenn Highway into Anchorage one summer afternoon fell asleep at the wheel and violated a traffic regulation by driving onto the bike path. His car struck and killed a woman riding her bicycle. Senator Olson said a fair number of the people even within this room have at sometime fallen asleep in undue circumstances. He said to put them in the same category as the driver talked about earlier is somewhat unfair.

SENATOR OGAN responded:

With all due respect, through the chair, Senator Olson, I guess you would say that it wouldn't be fair for those people to sue that person. They would be held liable in civil court as well.... You know life isn't fair. We make judgment calls all the time and yea, I've fallen asleep, or you know caught myself falling asleep at the wheel before and I've been in a car with somebody that falls asleep with their eyes open.

He said he did not think it was unreasonable to have some ramifications. He said he told his kids a car is a 4 thousand pound missile and do not mess around, driving is life and death stuff. Unfortunate things happen to good people, some good people make some bad judgments that kill people, and those people cannot be brought back. He asked if people should get off with a \$50 fine for running a red light. He did not think so.

MS. CARPENETI said, in further response to Senator Therriault, that in last year's bill, the Senate Judiciary Committee gave the court discretion to suspend the license for up to three years under these limited circumstances. Up to that point, suspension was mandatory for one year.

SENATOR THERRIAULT asked if the current bill gives the court that discretion.

MS. CARPENETI answered it does.

SENATOR THERRIAULT said he remembered the discussion last year. That discretion was added to recognize the person who is "hot-rodding" and acting egregiously.

SENATOR THERRIAULT recounted a discussion last year on the issue of license revocation. He noted that the police blotter in any paper contains DWIs (driving while intoxicated) that involve people driving with revoked licenses. He said he did not know if the laws really impact people's behavior because people drive with suspended licenses anyway. A lot of people drive to and from work without a license. People have to drive in this state with the extreme temperatures and distances and no mass transit. He asked if Senator Ogan had given thought to what the penalty is when people are caught driving with a revoked driver's license. He asked what the impact would be on the Department of Law and the public defenders.

SENATOR OGAN said the bill gives the judge discretion. He hoped, in the case Senator Olson mentioned where the woman hit a patch of ice and killed a child, the judge would take that into consideration. The bill allows for a limited amount of discretion so that an offender can go to work or take care of someone with a medical condition or those kinds of things. He said a man in his neighborhood got in an accident without insurance and lost his license. He gives this neighbor a ride to town, as the closest store is 12 miles away.

SENATOR THERRIAULT said he wanted to bring the committee's attention to the fact that the bill has picked up very modest and indeterminate fiscal notes.

SENATOR THERRIAULT moved SB 53 from committee with individual recommendations and the four attached fiscal notes. Without objection, the motion carried.

3:26 p.m.

SCR 1-SUPPORT ROADS/HOT SPRINGS LOOP ROAD

CHAIR COWDERY invited Senator Lincoln to make her comments on SCR 1.

SENATOR LINCOLN thanked Chair Cowdery for taking up SCR 1 again. She stated:

I understand that the individual that was on line is no longer there. But I do want to say that the community, there was some testimony earlier that there was kind of a unanimous support for the resolution and in fact there - Circle has taken a position that they want to see the Circle to Central roads improved and maintained before they support a new road going into their community. And I know that the Tanana Chiefs Conference hasn't taken a position on the piece of legislation yet. But there's a real concern that if we're going to put more money out there for new roads that we should look first to those that are in really bad shape. And I will tell you that I was in Circle last year and went from Circle to Central and that road is an awful road.

CHAIR COWDERY interjected, "A trail, it's not a road really."

SENATOR LINCOLN continued:

A trail, and they have to get folks sometimes to the larger airport to get them out for medical reasons. So I just - I want that on the record that the folks up there are not endorsing this resolution as it stands now because they've just got terrible road conditions presently. And I thank you for going back to that Mr. Chairman.

With no further business to come before the committee, Chair Cowdery adjourned the meeting at 3:38 p.m.