

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

March 25, 2003

1:39 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 BILL NO. 103

"An Act increasing certain motor vehicle registration fees; and providing for an effective date."

MOVED SB 103 OUT OF COMMITTEE

SENATE BILL NO. 153

"An Act authorizing a long-term lease of certain Alaska Railroad Corporation land at Anchorage; and providing for an effective date."

MOVED SB 153 OUT OF COMMITTEE

PREVIOUS ACTION

SB 103 - See Transportation minutes dated 3/11/03 and 3/18/03.

SB 153 - No previous action to record.

WITNESS REGISTER

Mr. Dwayne Bannock
Division of Motor Vehicles
Department of Administration
PO Box 110200
Juneau, AK 99811-0200

POSITION STATEMENT: Answered questions about SB 103

Mr. Mark Marlow
Alaska Franchise Facilities
No address provided

POSITION STATEMENT: Explained the purpose of SB 153

Mr. Tom Pease
Government Hill Community Council
PO Box 100018
Anchorage, AK 99510-0018

POSITION STATEMENT: Opposed to SB 153

Ms. Wendy Lindskoog
Director of External Affairs
Alaska Railroad Corporation
PO Box 107500
Anchorage, AK 99510-7500

POSITION STATEMENT: Answered questions about SB 153

Ms. Phyllis Johnson
Counsel
Alaska Railroad Corporation
PO Box 107500
Anchorage, AK 99510-7500

POSITION STATEMENT: Answered questions about ARRC's lease process

Mr. George Utermohle
Legislative Counsel
Legal and Research Services Division
Legislative Affairs Agency
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions on SB 153

ACTION NARRATIVE

TAPE 03-10, SIDE A

CHAIR JOHN COWDERY called the Senate Transportation Standing Committee meeting to order at 1:39 p.m. All members were present. The first order of business to come before the committee was SB 103.

SB 103-MOTOR VEHICLE REGISTRATION FEES

CHAIR COWDERY told members that SB 103 was heard in committee last week but was held over to provide time to get answers to questions from Senators Lincoln and Olson. Those questions were answered so it is his intention to pass this legislation out of committee today.

SENATOR LINCOLN said she didn't receive one of the documents other members received. She said she only received responses to her individual questions and she was interested in the responses to other members' questions. She asked for the response to Senator Olson's question about whether the Anchorage School District's school buses would be exempt from registration.

The committee took a brief at-ease.

CHAIR COWDERY noted that Mr. Dwayne Bannock was available to answer questions via teleconference.

SENATOR OLSON asked Mr. Bannock whether school buses owned by private schools must pay a registration fee and, if so, how much that fee would increase.

MR. DWAYNE BANNOCK, Director of the Division of Motor Vehicles (DMV), Department of Administration (DOA), told members that school buses fall under a number of classifications. A school district that owns school buses falls under Class 5G. The school district pays a form of exempt registration fees. Private schools or church schools that own buses fall under the "Exempt Bus Charitable" classification. They pay \$10. If a school district contracts for bus service with a private company, the private contractor pays traditional commercial fees.

SENATOR OLSON asked about the increase in fees.

MR. BANNOCK said there is no proposed increase in fees for the exempt buses.

SENATOR LINCOLN noted that Senator Therriault asked whether the Alaska State Constitution grants local governments the option of charging a vehicle license fee.

MR. BANNOCK told members that DMV has a formula called MVRT (Motor Vehicle Registration Tax). That tax can be exercised at the option of a local municipality or borough. He provided a list of communities that participate in the MVRT schedule. That cost is added to the state registration fee and then returned to the local government.

SENATOR THERRIAULT noted the list on pages 2 and 3 contains the names of all the communities that require no vehicle licensure or insurance.

MR. BANNOCK replied, "I can't speak to the insurance side of it Senator, but I can only tell you that those are exempt from the registration portions."

SENATOR OLSON asked Mr. Bannock if he is familiar with AS 28.10.011(a) and (b), which address vehicles exempt from registration.

MR. BANNOCK said he is.

SENATOR OLSON said a number of communities within his district are listed in that statute. He asked if those communities do not have roads that were built or are maintained by the state.

MR. BANNOCK apologized for not having good information about the compilation of that list. Its effective date was July 1, 2001 and he is not aware of what was involved in making that list.

SENATOR THERRIAULT referred to item 10 on page 1 of the memo - vehicles operated on the roadway not connected to the land highway system or to a highway with an average daily traffic volume greater than 499 - and said he believes that is where the list originated.

SENATOR OLSON pointed out neither Nome nor Kotzebue is on that list and they are not connected to the land highway system.

SENATOR THERRIAULT said Nome is not connected to the land highway system, but would fall under a highway with an average daily traffic volume greater than 499.

SENATOR OLSON asked Mr. Bannock if it is restricted to state built or maintained roads.

MR. BANNOCK said Senator Olson is correct in that the list contains things that allow a community to file for that exemption. Nome would be greater than 499 units.

SENATOR OLSON asked about Barrow.

MR. BANNOCK said he believes the registration records will reflect that Barrow has more than 499 vehicles.

There being no further questions, Senator Therriault moved SB 103 from committee with individual recommendations and attached zero fiscal note. He then asked for unanimous consent.

CHAIR COWDERY announced that without objection, the motion carried.

2:00 p.m.

SB 153-LONG-TERM LEASES OF ALASKA RR LAND

CHAIR COWDERY informed members that HB 97 is the companion bill to SB 153 and that staff from the House was available to answer questions. He asked Mr. Marlow to testify.

MR. MARK MARLOW, Alaska Enfranchise Facilities (AEF), told members that SB 153 is about AEF's desire to apply for next fiscal year's 202 grant from the Department of Housing and Urban Development (HUD). To obtain 202 grant funds, the land leased for a building must have a lease duration of at least 75 years.

CHAIR COWDERY asked Mr. Marlow to explain why SB 153 is necessary.

MR. MARLOW explained that the Section 202 grant program is designed to serve the housing needs of very low income and independent-living elderly people of at least 62 years of age.

CHAIR COWDERY added that SB 153 would extend the Alaska Railroad Corporation (ARRC) lease for this project.

MR. MARLOW said that is correct and noted the piece of property in question is approximately 2 acres on Government Hill. He said at least a portion of that acreage is the former site of the Hollywood Vista Apartments. That building was razed some years ago and the property is in ARRC's inventory.

CHAIR COWDERY asked how long a lease extension AEF would need in order to get the 202 funds.

MR. MARLOW said last year the Legislature extended ARRC's ability to lease its land for duration of 55 years. The statute allows ARRC to lease land for longer duration with legislative approval. The 202 grant funds require the lease to be at least 75 years so AEF needs a 20 year extension.

CHAIR COWDERY asked if the proposed building would last 75 years.

MR. MARLOW said he believes modern buildings that are well maintained should last at least 75 years. The HUD contract

requires that the building be kept available for senior housing for at least 40 years.

SENATOR LINCOLN said she was asked whether SB 153 violates the constitutional prohibition against local or special acts in art. 11, sec. 19 of the Alaska Constitution, which says the Legislature shall pass no local or special act if a general act can be made applicable. She questioned why not pass legislation that increases all ARRC leases to 75 years.

MR. MARLOW said he could not answer that question. He simply read the statute that allows ARRC to lease its land and found that legislative approval is required for leases longer than 55 years.

CHAIR COWDERY said if the legislature passes SB 153, AEF would still need ARRC board approval.

MR. MARLOW said that is correct. SB 153 will give ARRC the authority to extend the lease but does not require ARRC to do so. Once the legislation becomes law, it will become incumbent upon him to petition the ARRC board of directors to write a lease of long enough duration to qualify for the 202 grant.

SENATOR LINCOLN asked if the Government Hill Community Council is opposed to SB 153.

MR. MARLOW said the council has not directly communicated that to him but it would not surprise him, although he could not say why.

SENATOR LINCOLN read from a letter dated March 21 from the Government Hill Community Council:

The community voted ... unanimously to oppose this bill because they believe that the bill is focusing on a single piece of real property, is narrow, special interest legislation, is unsound public policy and is not in the best interest of our neighborhood, the Alaska Railroad [Corporation] or the State of Alaska.

MR. MARLOW said he has not seen that letter but it is hard for him to imagine how this type of project could be detrimental to the community.

CHAIR COWDERY asked Mr. Marlow if AEF plans to move forward with another project if SB 153 does not pass.

MR. MARLOW said that is correct. He has already leased the land with the intent of positioning the property on behalf of AEF to be able to apply for this year's 202 grant. If that is not possible, he will build a different multi-family type property on that land with the 55-year lease. He said the land lease would be transferred to the non-profit organization at the appropriate time. Therefore, in any event, a multi-family property will be built on that land. It is zoned R-4 and comes under the direct oversight of the Municipality of Anchorage (MOA) planning department. He said his first objective is to position the property on behalf of AEF so that 202 housing could be built there.

CHAIR COWDERY asked Mr. Marlow about property taxes.

MR. MARLOW said he began paying the taxes when he leased the property late last year.

CHAIR COWDERY asked the estimated value of the completed project.

MR. MARLOW said he believes that 202 projects are exempt from local property taxes because of the population served.

SENATOR THERRIAULT asked Chair Cowdery, as prime sponsor of SB 153, if legal counsel produced a memo advising that this legislation violates the single subject rule.

CHAIR COWDERY said he did not receive such a memo. He pointed out that SB 153 is identical to the House companion bill. He assumed the legal drafter would have alerted him of any constitutional problems.

SENATOR OLSON asked if anyone was available from the Government Hill Community Council to testify.

CHAIR COWDERY said he has never been convinced that a community council actually represents the community.

MR. TOM PEASE, Government Hill Community Council, told members the council unanimously opposed SB 153 at its last meeting. The council views SB 153 as special interest legislation that extends a railroad lease to a single individual on a single parcel of land in the heart of the Government Hill neighborhood. He pointed out that no legislator representing Government Hill

has signed on to this legislation. He also noted that ARRC has remained neutral on this legislation.

MR. PEASE said last May, the community met with the leaseholder to discuss development plans on this parcel. The community asked about the design, use, and size of the footprint, financing, etcetera. The developer had no answers to those questions at that time, other than to report that he planned to build low-income housing on the parcel. The community was assured that he would maintain an open line of communication but no one has heard from the developer in nearly a year. The developer declined an invitation to attend the Council's February meeting, at which time the Council planned to discuss HB 97. He said last year the Legislature enacted legislation extending the lease on the same ARRC property from 35 to 55 years to meet HUD financing requirements. HUD then extended its leasing requirements to 75 years. At the time, two applicants were vying for the ARRC lease and the playing field was level. One applicant withdrew knowing that HUD funding would not be available because of the duration of the lease. The current developer pursued the lease anyway. Now that same leaseholder is pursuing a second extension after the fact. He offered to answer questions.

CHAIR COWDERY asked if the community council supported the 20 year lease extension last year.

MR. PEASE believed the council took no position but voiced some concerns to the ARRC board.

CHAIR COWDERY said that even if SB 153 is enacted, the ARRC Board must still approve the project.

MR. PEASE agreed the ARRC Board has the final word.

SENATOR THERRIAULT asked if ARRC or the developer had to go to the MOA to get a waiver from zoning requirements or whether this land was already zoned for this type of activity.

MR. PEASE said he believes it falls within the zoning for that area.

MR. MARLOW added the property is zoned multiple family. He then asked to make one correction to Mr. Pease's testimony. He explained that last year's bill had nothing to do with this project. That was a general piece of legislation to update ARRC's policies to be in step with the needs of the people seeking to lease any of ARRC's lands.

MR. PEASE said he believes this project was probably the impetus for introducing that legislation.

MR. MARLOW said that is incorrect.

CHAIR COWDERY agreed that is incorrect because lessees in the railroad yards raised the lease extension issue at least two years ago. The Coca-Cola Company had a building partly located on leased land and wanted to straighten up that situation.

SENATOR OLSON asked Mr. Pease if he participated in the ongoing discussion between ARRC and AEF.

MR. PEASE said the other co-president of the Community Council went to the ARRC Board with certain concerns and requests but at no time were council members invited to any meetings between those two entities.

SENATOR OLSON said that one does not need an invitation to attend a public meeting.

MR. PEASE said it is hard to attend a meeting you don't know about.

2:17 p.m.

SENATOR OLSON asked what ARRC's response was to the community council's concerns.

MR. PEASE said he was told that two members of the ARRC Board opposed the action; the remainder of the board was in favor. However, several members acknowledged that ARRC's leasing practices, particularly on land within high-density neighborhoods, needs to be addressed. Currently, ARRC has one leasing policy that it applies to all of its lands, whether those lands are remote or urban. ARRC members realized the need to take neighborhood plans and concerns into account.

SENATOR OLSON asked which legislators represent Government Hill.

MR. PEASE replied, "Representative Les Gara, Representative Nancy Dahlstrom, Senator Johnny Ellis - and I believe Senator Fred Dyson represents a very small piece of the neighborhood."

CHAIR COWDERY asked how many residents live in the Government Hill area.

MR. PEASE said maybe 3,000.

CHAIR COWDERY asked how many people attended the meeting during which the letter was written to the committee.

MR. PEASE said about 25, which is a relatively high number. He pointed out the Government Hill Community Council is one of the most active and well attended of the community councils in Anchorage.

SENATOR THERRIAULT asked if the council's position on extending the lease to 55 years for this project last year was mixed so the council decided not to take a stand for or against the project.

MR. PEASE said the council did not take a position on the legislation itself.

MR. MARLOW said that he had applied to ARRC to lease the property through its real estate department before it was known that HUD extended its lease requirement to 75 years. ARRC had its real estate committee take up the issue. The committee recommended to the ARRC Board of Directors that the lease be granted. The board took up the issue and the Government Hill Community Council opposed the lease. ARRC approved the lease by a 7 to 1 vote.

SENATOR THERRIAULT said what he was trying to get at is that the community council decided not to take a position on last year's decision to extend the lease to 55 years, but now it opposes an additional 20 years for the same project in the same neighborhood on a piece of property that is currently zoned for multifamily housing. He said he does not understand why the community council is now viewing it differently.

MR. PEASE explained that from one perspective, the lease extension does not seem like a significant difference. However, from another perspective, what began as a 35 year lease is now being doubled in one year. Although the footprint remains the same, the community does not know what that footprint is. The council asked the developer for specific information about the plans but all of those questions have gone unanswered. That is after he agreed to maintain communication.

SENATOR THERRIAULT said if he owned the property and Mr. Marlow was leasing it from him, Mr. Marlow would not be required to

meet with the council. He would only have to meet the local zoning requirements and building codes. He questioned why, if the project meets all codes, the council should direct what does or does not take place on his piece of property.

MR. PEASE said if it were privately owned, the council would hope that the developer would act responsibly and be a good neighbor. However, this is railroad land, which is essentially public land and the time it will be locked up for a single use is now being doubled.

SENATOR THERRIAULT agreed that makes a big difference, but in that case, everyone owns the land. The Legislature has made a policy call that directs the railroad to develop those lands to develop a revenue stream from them. He asked if Mr. Pease feels there is anything suspect about the project regarding the rate of return that ARRC will receive. ARRC is trying to get its land into active use and on the tax roles.

MR. PEASE responded by saying that ARRC is not pursuing the highest and best use of this piece of property. He stated if pursuing the highest and best use, ARRC would try to generate more interest before awarding the lease. Regarding the tax role, this project will not generate tax revenue if it is a HUD 202 project.

SENATOR THERRIAULT asked a representative from ARRC to tell members whether this project will be leased at the market rate.

CHAIR COWDERY interjected to ask Mr. Pease whether he believes it is fair to expect Mr. Marlow to provide anything other than a conceptual design until he is assured the project is approved. He pointed out that detailed plans are expensive.

MR. PEASE said he does not believe expecting detailed plans would be reasonable, but he does believe someone entering into a 55 year lease should be able to answer questions about what will be put on that property. He added that good business practice dictates that one maintain good communication with the neighborhood after offering to do so.

MR. MARLOW said the fact of the matter is that there has been no activity with this project during the last year because the nature of 202 projects is to hurry up and wait. He said there simply has not been any information to convey.

CHAIR COWDERY noted that he spoke with Mr. Gamble of ARRC last week and he said this issue was basically in the Legislature's hands at this time. The project would then have to be approved and there is no guarantee the board would approve it.

MS. WENDY LINDSKOOG, Director of External Affairs, ARRC, asked Senator Therriault to repeat his question.

SENATOR THERRIAULT said he was wondering, in terms of the lease, whether it is at market rate or, because it is longer term, it falls in the "middle of the pack." He said he wanted to make sure that ARRC is granting no special favors to Mr. Marlow and that ARRC is getting good value for the long-term use of this property.

MS. PHYLLIS JOHNSON, Chief General Counsel for ARRC, told members that this lease is being handled like any other commercial lease under the terms of the statute and the board's long-term lease policy. She noted that lease value is set using an appraisal of the property. The appraiser is required to use standards, which include highest and best use. She said she could not say whether the length of the lease would make a difference in the appraisal. She did not believe so because appraisers appraise the full fee simple interest in the property at the time of the appraisal. Then ARRC applies what is known as the capitalization rate each year, which she guessed to be eight percent. She said that rate is determined by a periodic survey of rental properties in the area. She pointed out that whether or not competition is involved, highest and best use is what appraisers consider when determining value. She said the across the board fair market rental rate is being charged.

SENATOR THERRIAULT indicated the City of Fairbanks negotiated a lease on a piece of property in the 1940s or 1950s and is currently getting a pittance for it. He asked if ARRC has something that protects the state down the line.

MS. JOHNSON said typically, ARRC does a reappraisal every five years and so the value is subject to new fair market value but is also subject to caps and floors. The ARRC board instituted the cap and floor provision in its long-term lease policy rule in 1988 in response to testimony from long-term leaseholders in Anchorage. Those leaseholders felt it was fair to have an increase but also needed stability to run their businesses so asked for a cap. She said the cap is usually 135 percent for the five-year increase while the floor is the prior period rent.

TAPE 03-10, SIDE B

SENATOR THERRIAULT asked Mr. Marlow if he has entered into a lease on this property and is currently paying taxes on it so the issue before the Legislature today is whether it allows modification of the lease to get the HUD 202 financing.

MR. MARLOW replied, "That is absolutely correct."

SENATOR THERRIAULT said Mr. Marlow's intent is to put a multi-family dwelling on that piece of property and the question is what financing package he can apply.

MR. MARLOW said that is correct.

CHAIR COWDERY informed members that he requested Mr. Utermohle, legal counsel, to answer questions. He should arrive momentarily.

SENATOR WAGONER said, regarding the 5-year lease, the City of Kenai operates in the same way as ARRC. At the end of 5 years, the property value is reappraised and the interest rate is adjusted. He pointed out the property is always appraised without improvements. Therefore, an improvement that may not be the highest and best use may not have anything to do with the property value.

SENATOR LINCOLN indicated that Senator Therriault succinctly stated the committee mission. She then noted that Mr. Marlow listed one of AEF's seven goals as involving local and regional leadership in the entire process. She asked Mr. Marlow how he interprets local, and whether that means ARRC and the MOA or the community council.

MR. MARLOW said he is not a board member of AEF but, on all of the buildings that AEF has successfully constructed in Anchorage, AEF has worked with the community planning department at the MOA to achieve an outcome so that anyone would say it is a good neighbor to the pre-existing properties. He said in response to Senator Lincoln's question, he would say local means Anchorage, but his experience with the AEF Board is that it would consider any thoughts the Government Hill Community Council wanted to share.

SENATOR LINCOLN asked Mr. Marlow if the proposed facility is for seniors only and, if the lease extension does not pan out, he could build a McDonald's restaurant on the property.

MR. MARLOW said the property is zoned R-4 so, if this legislation does not pass, it is his intent to utilize the property to build a different multifamily project. His goal is to facilitate this legislation so that AEF can build on this property with 202 funds.

SENATOR LINCOLN asked Mr. Pease to define the Government Hill Community Council objection to building a senior housing facility on that property if it meets all government requirements.

MR. PEASE said the council has no objection to development of that land. In fact, the neighborhood has been listed in MOA's 2020 plan for increased density so it is not an issue of whether the land gets developed. The issue is how it gets developed and whether the developer will take the community's concerns into consideration. So far, the council has not seen that occur.

CHAIR COWDERY asked if the senior housing project would be for all Alaskans, not just Anchorage seniors.

MR. MARLOW said that is correct provided those seniors meet the income qualifications.

SENATOR LINCOLN asked if it is common language to extend the lease beyond 55 years without including a provision that reserves ARRC's right to terminate the lease.

MS. JOHNSON answered that by statute, ARRC must get legislative approval if it wants to lease land for more than 55 years, unless ARRC reserves the right to terminate. She said the same rule applied when the maximum lease term was 35 years. ARRC has rarely leased for longer than the statutory maximum term and, when it has, it includes the right to terminate. About two or three years ago, ARRC requested legislative approval for a lease longer than the maximum term for the Tri-Valley subdivision near Healey because of individual mortgage requirements. She noted this is the second time that a lease has come up for legislative approval.

SENATOR THERRIAULT noted, in response to the charge that SB 153 is special legislation, this kind of legislative approval is exactly what the statute requires. Passage of legislation is the only means for legislative approval.

MS. JOHNSON said that is correct.

CHAIR COWDERY noted his intent to move the legislation out of committee.

SENATOR LINCOLN asked Mr. Utermohle if SB 153 violates the provision that prohibits local or special acts in art. II, sec. 19 of the Alaska Constitution.

MR. GEORGE UTERMOHLE, legal counsel, Legislative Legal and Research Division, explained that a statute does provide that ARRC may enter into certain kinds of land transactions only with the prior approval of the Legislature. That creates a situation whereby there is no other general law that's applicable. This is also a case where the standard applied to determine whether legislation prohibits local or special acts is whether a legitimate public purpose is being pursued. If the state has a reasonable reason for dealing with site or lease specific legislation, the legislation would be upheld under the prohibition against local and special acts.

SENATOR THERRIAULT said a generic piece of legislation would give ARRC the power to lease all of its properties for up to 75 years and that is not a public policy call the Legislature wants to make.

MR. UTERMOHLE said that is correct.

SENATOR WAGONER motioned to move SB 153 from committee with the zero fiscal note and asked for unanimous consent.

CHAIR COWDERY announced that without objection, the motion carried. He then adjourned the meeting at 2:49 p.m.