

**ALASKA STATE LEGISLATURE**  
**SENATE TRANSPORTATION STANDING COMMITTEE**

April 24, 2003

1:37 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. 125

"An Act relating to protests of state contract awards, to claims on state contracts and to hearings under the State Procurement Code; making conforming amendments in the State Procurement Code; and providing for an effective date."

SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 81

"An Act relating to motor vehicle emissions; and providing for an effective date."

SCHEDULED BUT NOT HEARD

CS FOR HOUSE BILL NO. 127(STA)

"An Act relating to roadside memorials within the right-of-way of a state highway."

MOVED SCS CSHB 127(TRA) OUT OF COMMITTEE

SENATE BILL NO. 112

"An Act increasing the motor fuel tax and repealing the special tax rates on blended fuels; and providing for an effective date."

MOVED CSSB 112(TRA) OUT OF COMMITTEE

**PREVIOUS ACTION**

SB 112 - See Transportation minutes dated 4/3/03, 4/15/03  
HB 127 - No previous action to record.

**WITNESS REGISTER**

Ryan Colgan  
Staff to Representative Jim Whitaker  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Introduced HB 127

Barbara Dowdy  
1041 Steele Creek Road  
Fairbanks, AK 99709  
**POSITION STATEMENT:** Testified on HB 127

John MacKinnon  
Department of Transportation &  
Public Facilities  
3132 Channel Dr.  
Juneau, AK 99801-7898  
**POSITION STATEMENT:** Answered questions on HB 127 and SB 112

Sandy Gilespe  
521 W. 20th Ave  
Anchorage, AK 99503  
**POSITION STATEMENT:** Testified on HB 127

Rachelle Dowdy  
521 W. 20th Ave  
Anchorage, AK 99503  
**POSITION STATEMENT:** Testified on HB 127

Kevin Jardell  
Assistant Commissioner,  
Department of Administration  
PO Box 110200  
Juneau, AK 99811-0200  
**POSITION STATEMENT:** Testified on SB 112

Paul Fuhs  
Horizon Shipping Lines  
No address provided  
**POSITION STATEMENT:** Testified on SB 112

Wendy Lindskoog  
Director, External Affairs  
Alaska Railroad Corporation  
P.O. Box 107500  
Anchorage, AK 99510-7500

**POSITION STATEMENT:** Testified on SB 112

John Binkley  
Chairman of the Board  
Alaska Railroad Corporation  
P.O. Box 107500  
Anchorage, AK 99510-7500

**POSITION STATEMENT:** Testified on SB 112

Phyllis Johnson  
Legal Counsel  
Alaska Railroad Corporation,  
No address provided

**POSITION STATEMENT:** Answered questions on SB 112

Landa B. Baily  
Special Assistant to the Commissioner  
Department of Revenue  
PO Box 110400  
Juneau, AK 99811-0400

**POSITION STATEMENT:** Testified on SB 112

**ACTION NARRATIVE**

**TAPE 03-16, SIDE A**

**CHAIR JOHN COWDERY** called the Senate Transportation Standing Committee meeting to order at 1:37 p.m. Senators Thomas Wagoner, Gene Therriault, Georgianna Lincoln, Donny Olson and Chair John Cowdery were present. The first order of business was HB 127.

**HB 127-ROADSIDE MEMORIALS**

RYAN COLGAN, staff to Representative Jim Whitaker, introduced HB 127. He explained the genesis of the bill was a public notice of regulation change issued by the Department of Transportation and Public Facilities (DOTPF) to address their perception that:

- Road sign memorials were in conflict with the outdoor advertising statutes
- The state might lose federal highway funds if memorials were placed in highway rights-of-way - although West Virginia has a memorial program and has not lost funding.

HB 127 exempts personal roadside memorials from the outdoor advertising statutes and restricts them to those that are safe and that don't interfere with the right-of-way. The person

placing the memorial must post contact information on the memorial and provide that information to the department along with the location of the memorial. If DOTPF asks that the memorial be changed or moved, the contact person would be required to do so at no cost to the state. If a memorial doesn't meet the requirements set forth in HB 127, they may be considered an illegal encroachment and treated as such.

SENATOR GEORGIANNA LINCOLN expressed support for the bill, but was concerned about limiting the program to those who had died in a traffic accident as set forth on page 1, line 8. She was aware of and didn't want to exclude memorials to people that have died on roadways, but not as a result of a traffic accident.

MR. COLGAN said he didn't know whether that had been considered. He acknowledged there are different types of memorials in rights-of-way that were erected for a variety of reasons and that people use them as a way to grieve the loss of someone.

SENATOR DONNY OLSON noted there are federal highway funds and federal funds and asked whether other states have been exempt from both types of funding cuts.

MR. COLGAN advised they aren't exemptions. The federal government simply hasn't withheld federal highway funding from the state with a roadside memorial program. The concern arises as a result of the Highway Beautification Act that allows the federal government to withhold federal highway funds if there is an encroachment on the right-of-way.

CHAIR COWDERY stated the Highway Beautification Program resulted from Lady Bird Johnson's efforts to reduce the number and size of billboards erected along highways.

SENATOR LINCOLN asked if the sponsor would consider deleting "in a traffic accident" from page 1, line 8 because it wouldn't detract from the intent of the bill, but would allow others to be included. She cited an incident where a man's family erected a roadside memorial after he was shot and killed at an intersection on a Fairbanks highway. Current wording would exclude that memorial.

MR. COLGAN replied he hadn't discussed that with the sponsor, but was aware of the circumstance.

SENATOR GENE THERRIAULT said he wasn't sure he would support broadening the language.

SENATOR LINCOLN advised she would present an amendment for consideration to delete, "in a traffic accident" and didn't believe doing so would be too inclusive.

SENATOR THERRIAULT pointed out that anyone killed in the general vicinity could be included if that language were deleted.

CHAIR COWDERY agreed that broadening the language too much had adverse implications.

SENATOR THOMAS WAGONER opined cemeteries are the place for memorials. This is an emotional issue to which he is sympathetic, but he is not in favor of roadside memorials.

SENATOR LINCOLN said she was appreciative of the concern and she would try to develop language that would not be unreasonably inclusive.

SENATOR THERRIAULT noted they should always be aware of the law of unintended consequences.

SENATOR LINCOLN agreed.

BARBARA DOWDY read a statement from Sheryl Riley into the record relating Heather Dowdy's story. She was a vibrant, productive 17-year-old student who was ready to graduate from high school when she was hit and killed by a drunk driver.

BARBARA DOWDY, Heather's mother, testified she is a member of the MADD chapter in Fairbanks and she fully supports passage of HB 127. She and her family have erected a memorial on the Old Steese Highway that is very personal to them and represents the essence of Heather's life. A DOTPF sign could never adequately express those personal sentiments. Roadside memorials let people know that a loved one is remembered and their passing is noticed. She received a letter from the Lady Bird Johnson's staff stating that the highway beautification program was never intended to become an issue to grieving families. Junkyards and billboards should not be compared to and considered with roadside memorials.

**2:00 p.m.**

SENATOR THERRIAULT advised Ms. Dowdy that activity that is conducted on private property, such as the junkyard she mentioned, is different than the issue of memorials placed in the road right-of-way.

SANDY GILESPIE said she was Heather's sister-in-law. She read a statement supporting HB 127 and specifically noted a number of memorials in the Anchorage and Fairbanks areas.

RACHAEL DOWDY, Heather's sister, outlined the last day of Heather's life. After the accident, family and friends placed a roadside memorial in her memory to help in their healing process. Roadside memorials remind people that driving fatalities are personal and they have anecdotal evidence that Heather's memorial has changed at least one person's drinking and driving behavior. They are sure the standard DOTPF sign would not have the same affect.

**2:10 p.m.**

SENATOR OLSON asked how DOTPF stood on the issue.

JOHN MACKINNON, Deputy Commissioner of the Department of Transportation and Public Facilities, stated the department worked with the sponsor and they did not oppose the bill.

SENATOR THERRIAULT asked the sponsor to comment on changing language on page 1, line 8 to read "as a result of a traffic accident" rather than "in a traffic accident" because a person might die on the way to the hospital of in the hospital.

MR. COLGAN stated the sponsor would likely support that amendment.

SENATOR THERRIAULT made a motion to adopt a conceptual amendment to make it clear that the memorials were for individuals who died as a result of a traffic accident.

Conceptual amendment 1 was adopted with no objection.

SENATOR LINCOLN said she would work with legislative legal to expand the scope somewhat, but didn't object to the bill moving to the next committee.

She made a motion to move CSHB 127(STA) as conceptually amended [SCS CSHB 127(TRA)] from committee with individual recommendations. There being no objection, it was so ordered.

SB 112-MOTOR FUEL TAX:GOVT AGENCY REFUNDS

CHAIR JOHN COWDERY stated SB 112 was a governor's bill. He noted there was a committee substitute (CS) \Q version and a proposed amendment relating to tax refunds for government agencies that purchase fuel.

KEVIN JARDELL, Assistant Commissioner of the Department of Administration (DOA), said the State of Alaska began using a single credit card last year, which allows the state to receive itemized statements. He explained that fuel retailers pay a motor fuel tax to wholesalers, but they are eligible to recoup those taxes on any fuel they sell to a government agency. The proposed CS is a technical adjustment that would allow the credit card issuer to apply for the fuel tax rebate in a lump sum and repay the various fuel retailers. This would save the state administrative costs and would allow flexibility in where fuel is purchased.

CHAIR COWDERY asked for a motion to adopt the proposed CS.

SENATOR THOMAS WAGONER made a motion to adopt CSSB 112 \Q version. There being no objection, it was so ordered.

CHAIR COWDERY asked for a motion to adopt the proposed amendment relating to tax refunds for government agency purchases of fuel.

SENATOR GEORGIANNA LINCOLN pointed out the proposed amendment refers to the original bill and not the CS that was just adopted.

SENATOR GENE THERRIAULT added the amendment could be moved conceptually and the drafters could insert the language into the CS where it was appropriate.

**TAPE 03.16 SIDE B**  
**2:23 p.m.**

SENATOR LINCOLN asked if the amendment included the Alaska Railroad.

SENATOR THERRIAULT said the amendment is specifically related to the issue to which Mr. Jardell spoke.

MR. JARDELL agreed and said the specific section with the railroad would overrule any inclusion in the subsection. The CS wouldn't change the manner that the railroad is taxed or the fee charged; the railroad would pay the tax.

SENATOR THERRIAULT made a motion to adopt conceptual amendment 1 to the CSSB 112 \Q to insert "and relating to tax refunds for government agency purchases of fuel" where the drafters deem it to be appropriate. There was no objection to the amendment.

PAUL FUHS, Horizon Shipping Lines representative, stated they are closely associated with truckers and are concerned about the overall impact of all the fees that are currently proposed on the transportation industry. Individual truckers in the state are losing business to the outside and they also find they are in direct competition with the Alaska Railroad, which is a state agency that also receives subsidies from the federal government. All the fees will make it more and more difficult for Alaskan truckers to remain competitive.

CHAIR COWDERY said the Railroad previously testified that they have no way of recouping the 20 cents per gallon increase [levy] on their fuel. He didn't disagree, but everyone was faced with paying more.

MR. FUHS agreed that everyone rides fuel costs up and down, but they are speaking to the differential that all the new fees create on the Alaska trucking industry compared to outside truckers and the railroad.

SENATOR THERRIAULT asked if he supported the railroad paying the fuel tax.

MR. FUHS said he wasn't authorized by Horizon Shipping Lines to support the imposition of taxes on any other entity.

SENATOR DONNY OLSON asked if it was correct that Horizon Shipping did not support the bill.

MR. FUHS said he was asking the committee to consider the new and increased fees in totality because they will ultimately be passed on to the consumer.

SENATOR THOMAS WAGONER said it's standard to pass fees on to the end user.

MR. FUHS agreed and said the fees could really be viewed as sales taxes or income taxes, but their real concern is that it makes them less competitive as Alaskan businesses.

SENATOR THERRIAULT questioned whether this precluded the state from levying a tax on rail operations above and beyond what other modes of transportation pay.

WENDY LINDSKOOG, Director of External Affairs of the Alaska Railroad Corporation, said Phyllis Johnson and John Binkley were available on line to give testimony and answer questions.

JOHN BINKLEY, Chairman of the Board for the Alaska Railroad Corporation, said he didn't hear the specific question, but he had testimony he would like to offer.

SENATOR THERRIAULT asked about the reported restriction that federal law imposes on states as far as levying taxes on rail operations.

MR. BINKLEY deferred to Ms. Johnson.

PHYLLIS JOHNSON, legal counsel to the Alaska Railroad Corporation, said she didn't have the act in front of her, but she thought he was referring to the 4 R Act. That is the Railroad Revitalization and Regulatory and Reform Act of 1976. She advised that they portray the act in more black and white terms than the specific provision indicates because it has been construed from a number of court decisions from jurisdictions across the country. In effect it means you cannot impose a more restrictive or burdensome tax on one mode of transportation than on another mode of transportation. She said she could provide court decisions if that was desirable.

SENATOR THERRIAULT said he would appreciate receiving the court decisions.

CHAIR COWDERY stated this was raised previously and the legal opinion he received was that it doesn't apply because the Alaska Railroad is a state owned entity and not federal. He asked Ms. Johnson if she had a copy of the opinion presented at the last hearing.

MS. JOHNSON replied she had an opinion from Mr. Utermohle.

CHAIR COWDERY asked if she disagreed.

MS. JOHNSON advised the Utermohle opinion doesn't address the whole question. It is certainly true that the state owns the railroad and there is considerable latitude in terms of intrastate activity. However, when it comes to activity that does or can affect interstate commerce, federal acts come into play. The federal position would probably be that if the railroad were to operate in interstate commerce then it must adhere to nationwide rules. That is where imposing a higher tax on a railroad than competing forms of transportation comes into play.

CHAIR COWDERY advised he met with Governor Murkowski and Jim Clark recently and he is under the assumption that the administration supports SB 112 and believes the state is within its rights.

SENATOR LINCOLN stated she had the April 3, 2003 legal services opinion from Kathryn Kurtz, but she didn't have anything from Mr. Utermohle.

CHAIR COWDERY said he would see she got a copy.

**2:40 p.m.**

MR. BINKLEY reported there are two issues on SB 112. First is a policy issue that the Legislature should review and the second is the legal issue spoken to earlier.

The purpose of the transportation tax is to ensure that those entities that use the facilities pay their fair share for the cost of construction and maintenance over time. In terms of aviation, the state has an extensive airport system and air carriers benefit tremendously through the use of the airports. It's appropriate that they pay a tax on the fuel they consume to help offset the costs. The same reasoning applies to marine use of state facilities. With respect to highways, it's certainly appropriate that a fuel tax is levied to offset the millions of dollars that DOTPF spends constructing and maintaining highways.

In contrast, the State of Alaska pays nothing toward the construction, maintenance or operation of rail facilities or any of the facilities that contribute to maintaining the fleet of railroad equipment. In addition, railroad transportation saves the state millions of dollars in construction and maintenance costs. For instance, the railroad has hauled about 4 million tons of gravel between Palmer and Anchorage so far this year. It would have taken 400,000 trips for the typical 20-ton belly-

dumper trucks to have moved that amount of gravel in a 150 day span. That translates to over 2,600 trucks going back and forth to Palmer every day.

CHAIR COWDERY interjected the comment that they would charge the fuel tax on the trucks if they didn't use rail.

MR. BINKLEY said the state would reap a tremendous amount in terms of fuel tax if that were the case, but it's likely that the highway would not only need more maintenance, it would need to be expanded by several lanes to accommodate the increased traffic.

He pointed out the railroad builds, maintains and uses its facilities without state input. As a matter of policy, he sees no reason that the railroad should be taxed to use their own facilities and equipment unless the state is willing to contribute as well.

When the government agreed to sell the railroad to the State of Alaska at a price that was well below its value, they did so because they felt there was greater value in doing so than in liquidating the line. There is however, a provision under the federal Alaska Railroad Transfer Act that requires that all the earnings from the railroad go back into the line to ensure that the federal government continues to have a viable transportation system to use in Alaska.

CHAIR COWDERY announced he voted against purchasing the railroad. He then asked if the railroad couldn't have operating costs because he understood fuel costs to be operating costs.

MR. BINKLEY said that could be argued but, it could be construed as simply a taking of the revenue of the Alaska Railroad. The state could conceivably raise the tax on the railroad to any level and take all the earnings, but the federal government wouldn't agree that that was simply a cost of doing business. He said that is a legal question and the railroad certainly wants to comply with both state and federal law.

With regard to Mr. Fuhs' complaint that the railroad is a competitor, he reminded everyone that the federal government heavily subsidizes the shipping industry in terms of dredging Cook Inlet and docks and harbor development.

CHAIR COWDERY asked whether he thought the same applied to the railroad.

MR. BINKLEY replied it did.

SENATOR OLSON asked Mr. Binkley whether he would consider SB 112 to be unconstitutional.

MR. BINKLEY said it wasn't unconstitutional, but there were federal statutes that would question whether it could be done.

MR. OLSON asked if it is correct that case law would not be on the side of the bill.

MR. BINKLEY said that is correct according to the railroad's legal counsel.

CHAIR COWDERY said he understood that attorney Jim Clark [Chief of Staff] and Governor Murkowski supported the bill.

SENATOR LINCOLN asked him to speak to the April 2, 2003 memo from legislative counsel, George Utermohle, that said, "Also it would be worth checking with bond council to determine whether the tax would have adverse consequences on the ability of the Alaska Railroad to issue bonds and whether the tax would create problems with respect to bonds that may have already been issued."

MR. BINKLEY said they are concerned about that, but they need to borrow money to expand and grow the railroad the same as private corporations. To the extent that financial institutions rely on their corporate earnings and to the extent that the state might have changed the covenants that the railroad signed, there could be implications to those financial institutions.

They fully support current legislation to expand the Alaska Railroad to provide more economic opportunity in the state. However, it is inconsistent for the state to expect the railroad to spend a great deal of capital to expand while the state cuts the dollars they have for the expansion. The railroad has an operating budget and a capital budget. The capital budget is financed with earnings so they must make a profit or they won't have money to spend on capital projects the following year.

**2:52 p.m.**

SENATOR LINCOLN said the Senate Resources Committee recently heard and passed a bill urging the Alaska Railroad to expand the rails from Fairbanks north to the Canadian rail line. She asked

if the \$1.2 million per year for fuel costs was still accurate and based on what he said about bonding, would that have an impact on the expansion of the railroad to Canada.

MR. BINKLEY replied he thought the fuel calculations were still accurate and the ability to bond would impact potential expansion. Anything that pulls earnings from the Railroad Corporation and into the general fund restricts their ability to expand and grow the railroad to provide for economic development in Alaska. The extent is difficult to gage, but it does make them less profitable and less able to do the expansion projects that everyone thinks are important.

CHAIR COWDERY advised he had a note from the Department of Revenue that said the attorney general and Governor Murkowski support a tax on the railroad and believe they have the right to support the tax.

SENATOR LINCOLN said she would like to hear from someone from the administration.

CHAIR COWDERY said no one from the administration was available.

SENATOR LINCOLN asked if the Chair understood the note to say that the administration supported the amended version of CSSB 112.

CHAIR COWDERY said, "... I'm not using just the note. I talked to Jim Clark and everybody Monday, in the Governor's office in Anchorage, and they indicated to me and she just reaffirmed what I was told." Furthermore, they think they have the right to implement a fuel tax.

He asked Ms. Baily to comment.

LANDA BAILY from the Department of Revenue clearly stated she was not speaking for the Department of Law. She understood that the Governor heard and understood the legislative message that the railroad had to participate in the state's current fiscal state of affairs and be a part of the solution. She couldn't be more specific than to say that the Governor and his full cabinet were looking at the various ways that might happen.

She said Assistant Attorney General, Mike Barnhill, was available to answer questions as well.

CHAIR COWDERY said they were out of time and asked for the will of the committee.

SENATOR LINCOLN asked Ms. Baily if she understood that the administration supported the committee substitute as presented.

MS. BAILY said she was unable to make that interpretation at that time.

SENATOR THERRIAULT noted the packet on the federal 4 R Act had annotations on different state litigation and he appreciated the attorney general's office sending someone over to respond to questions. However, because the motor fuel tax issue is the primary focus of the bill and he wanted the bill to go to the Finance Committee, he was willing to advance the bill with the question unanswered. He asked that the attorney general's office give a full review of the federal act and the implications for restriction that it would or would not place on the State of Alaska.

SENATOR WAGONER stated the same reservation then made a motion to move CSSB 112\Q version as amended from committee with individual recommendations and attached fiscal notes.

SENATOR LINCOLN objected to the motion.

She said she didn't realize the committee was hearing the bill that day and a copy of Mr. Utermohle's memo was not included in her packet. There were too many unanswered questions from the railroad, the truckers association and others. Although the bill has associated finance questions, it is a transportation bill and the committee didn't do all the work it should have, which is why she was maintaining her objection to moving the bill from committee.

CHAIR COWDERY called for a roll call. The motion passed with Senators Therriault, Wagoner and Cowdery voting yea and Senators Lincoln and Olson voting nay. CSSB 112(TRA) as amended moved from committee.

CHAIR COWDERY announced SB 125 and HB 81 would be heard at the next meeting. He adjourned the meeting at 3:03 p.m.