

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

April 29, 2003

1:39 p.m.

TAPE(S) 03-17

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Georgianna Lincoln

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 81(STA)

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

MOVED CSHB 81(STA) OUT OF COMMITTEE

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."

MOVED CSSB 125(TRA) OUT OF COMMITTEE

PREVIOUS ACTION

HB 81 - No previous action to record.

SB 125 - No previous action to record.

WITNESS REGISTER

Representative Kevin Meyer
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor HB 81

Ron King
Program Manager
Air Non-Point & Mobile Sources

Department of Environmental Conservation
410 Willoughby
Juneau, AK 99801-1795

POSITION STATEMENT: Testified on HB 81

James Armstrong
Anchorage Metropolitan Area Transportation Coordinator
P.O. Box 19665
Anchorage, AK 99501

POSITION STATEMENT: Testified on HB 81

Mark O'Brien
Department of Transportation &
Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898

POSITION STATEMENT: Testified on SB 125

Richard Monkman
Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Testified on SB 125

ACTION NARRATIVE

TAPE 03-17, SIDE A

CHAIR JOHN COWDERY called the Senate Transportation Standing Committee meeting to order at 1:39 p.m. Present were Senators Thomas Wagoner, Donny Olson and Chair John Cowdery. Senator Gene Therriault arrived shortly. The first order of business to come before the committee was CSHB 81(STA).

HB 81-MOTOR VEHICLE EMISSIONS INSPECTION

REPRESENTATIVE KEVIN MEYER, sponsor of HB 81, explained the bill streamlines the motor vehicle emission statutes to improve compliance and enforcement, to provide consistency between departments that oversee the emission program and to cut down on extraneous testing requirements.

The bill is technical and addresses a program that is applicable to just Anchorage and Fairbanks. The bill increases the fine for non-compliance to \$500. Because the purpose of the \$300 increase

is to improve compliance, the judge may use discretion to waive or reduce the fine.

The bill removes the exemption from alternative fuel vehicles because they too pollute if not properly maintained. In addition, it addresses loopholes in the registration program by requiring that the registration not extend beyond the expiration period on the emission certificate. Under current statute, when the title of a pre-1987 vehicle is transferred the emissions inspection cannot be more than a year old. HB 81 provides that the inspection may not be more than two years. This doesn't lessen the requirements for older vehicles it removes extraneous testing requirements for vehicle transfer.

The bill is a consumer protection bill in that Anchorage and Fairbanks residents can be assured that the car they're buying is compliant. Inspection decals must be displayed on windshields and the inspection record must be on file at DMV. If a car isn't compliant, the dealer must be able to explain why it is not. Finally, the bill expands enforcement of the emission standards to include DMV, DEC and the municipalities of Anchorage and Fairbanks so consumers may report emission offenders to any of those agencies.

CHAIR JOHN COWDERY asked whether the sponsor had a year certain date because antique cars would likely not be able to conform.

REPRESENTATIVE MEYER deferred to the AMATS [Anchorage Metropolitan Area Transportation Solutions] representative.

SENATOR DONNY OLSON asked what it would typically cost to correct emissions deficiencies in a ten year old car and a forty year old car.

REPRESENTATIVE MEYER replied the average emission repair cost is \$250, but the bill could run as high as \$2,000 if a new catalytic converter was needed.

SENATOR OLSON asked about cars built before there were catalytic converters.

RON KING, program manager of Air Non-Point & Mobile Sources with the Department of Environmental Conservation (DEC), explained that Anchorage has a test on vehicles built in 1968 and after and the vehicle is judged according to the standards under which it was manufactured. A car built in 1968 isn't held to the same standard as a car built in 2002.

SENATOR OLSON asked if there were no inspection requirements for pre 1968 cars.

MR. KING said the oldest car inspected in either Anchorage or Fairbanks was built in 1968 so there is no set standard on cars built before that year.

He said DEC supports the legislation. The program has helped both Anchorage and Fairbanks achieve health based air standards for carbon monoxide and is designed to continue to operate efficiently with minimal impact to citizens.

CHAIR COWDERY asked about buying older vehicles for parts.

MR. KING explained there is a mechanism to allow title-only transfers, which means the vehicle could not be used on the road unless or until it meets emission requirements.

SENATOR OLSON asked about other equipment such as farm equipment.

MR. KING said vehicles that aren't required to be inspected because they aren't licensed for operation on the road aren't covered. Farm vehicles may use the road, but they aren't licensed for operation on the road.

SENATOR OLSON asked about motorcycles.

MR. KING replied motorcycles are exempt from the inspection program because they don't typically operate during the winter months.

JAMES ARMSTRONG, AMATS committee coordinator, pointed to the supporting letters in the packets. He expressed appreciation to Representative Meyer for sponsoring the bill on behalf of AMATS.

CHAIR COWDERY asked for the will of the committee.

SENATOR THOMAS WAGONER made a motion to move CSHB 81(STA) and zero fiscal note from committee with individual recommendations. There being no objection, it was so ordered.

SB 125-STATE CONTRACTS

CHAIR JOHN COWDERY, bill sponsor, read the bill title and stated that as a member of the construction trade, he has been frustrated with the claims process for a contract disagreement.

The purpose of the bill is to reform the claims process and restore the confidence of the private sector.

Specific provisions of SB 125:

- Permits a contractor to seek arbitration if a procurement officer's written decision isn't issued by its due date
- Provides that parties may agree to binding arbitration on all appeals
- Tightens timelines, and eliminates redundant requirements
- Holds hearing officers and arbitrators to their required deadlines; those who fail to be timely are disqualified for one year
- Entitles contractors to recover some claim costs
- Spells out in regulation specific qualifications for hearing officers and arbitrators

He explained that companion bill HB 250 was amended to address difficulties the Department of Administration (DOA) had regarding provisions in the procurement code. Because he didn't have a committee substitute (CS) prepared to address those concerns, he asked for a motion to adopt the amended companion bill as the working document.

SENATOR THOMAS WAGONER made a motion to adopt CSHB 250(L&C) \I version as a conceptual amendment. There being no objection, it was so ordered.

MARK O'BRIEN, chief contracts officer for the Department of Transportation & Public Facilities (DOTPF), advised that they have been working with the Associated General Contractors (AGC) to address revisions to the claims process. The AGC approached DOTPF in an effort to solve three regulatory problems in statute. They were looking for:

- Faster - The bill introduces specific timeframes and shortened timeframes. Arbitration is offered as an alternate to the hearing process and typically results in a quicker and less involved process to get to a decision. Under the process, arbitration is final and in most instances, less expensive.
- Fairer - Selection of a neutral arbitrator goes a long way toward providing a more fair and balanced decision.
- Less Expensive - Arbitration is less formal and more expeditious and therefore less costly.

The administration doesn't completely agree with the AGC on the Rule 79 and 82 provisions, which is the recovery of partial

costs and fees to the prevailing party. To see what this might mean to the department they looked at the last eleven years of claims history to calculate what the Rule 79 and 82 costs would have done to the payment of those fees. They calculated costs and fees would have amounted to an additional \$145,000 per year. This is significant because most claims are federal aid funded and fees are non-participating costs, which means they are general fund expenditures.

2:00 pm

CHAIR COWDERY said the way to keep those costs from coming out of the general fund is to negotiate in good faith. That's been the problem all along, because there was no incentive for the state to settle. He opined that knowing it would cost the state would be incentive for the state to step up and settle the conflict.

MR. O'BRIEN agreed and said it would encourage both sides to settle. The Rule 68 provision is also included and is an offer of settlement.

SENATOR WAGONER said this would make many of his constituents happy.

MR. O'BRIEN said Mr. Monkman was available to answer questions regarding Rules 68, 79 and 82 and how those offers are made.

RICHARD MONKMAN from the Department of Law (DOL) explained Rule 82 is unique to Alaska and allows the prevailing party to get a percentage of their attorney's fees on final judgment. It is designed to encourage settlement because there is cost associated with losing the judgment. The prevailing side is entitled to attorney's fees. If you're claiming, you get a percentage of your recovery of a money judgment; if you're defending, you get a percentage of the actual attorney's fees. The fees may be increased or decreased depending on what the judicial officer determines is appropriate and according to the list of 11 criteria that the court may consider. As a mechanism for fees and costs, DOL believes that using those rules is advisable and assumes the AGC attorneys agree.

Rule 79 is a list of costs that are partially recoverable by the prevailing party. Rule 68 is the meet or beat rule. At any time during litigation, a party may make a rule 68 offer of judgment. Once the offer is tendered, it is irrevocable for ten days and may be accepted at any time during that period. If the party

accepts the case it's over, but if it doesn't, the case moves to trial and a hearing. Then the claimant must meet that offer or they aren't considered the prevailing party for the purposes of attorney's fees and costs. Again, this rule is designed to encourage settlement.

CHAIR COWDERY asked if it was true, as some contractors have charged, that some attorneys use this as a ploy rather than a good faith effort to settle.

MR. MONKMAN said it probably is in some cases, but the offer is irrevocable for ten days and the rule allows multiple offers so a higher offer could be made and accepted.

CHAIR COWDERY asked how the state determines attorney fees.

MR. MONKMAN replied they are based on actual cost and overhead. If a contractor wins, it wouldn't matter whether his attorney was paid \$100 per hour or twice that, the fees would be based on recovery.

CHAIR COWDERY asked Mr. O'Brien whether money had to be escrowed until settlement when a claim was large and lengthy.

MR. O'BRIEN said there is no escrow requirement. As with any other judgment, the money would be collected from the owing party.

CHAIR COWDERY said he was interested in who would collect the interest on the claim until settlement time and whether they receive federal funds for the size of a project on an engineer's estimate or the actual costs.

MR. O'BRIEN said they are reimbursed for the actual cost by the federal aid system excluding any interest they would have to pay on a claim. Any interest owed would be taken from the general fund portion of their capital budget rather than from the federal aid portion.

CHAIR COWDERY questioned who gets the interest on bonded projects.

MR. O'BRIEN said the interest generally goes back into the projects that are funded by the bond.

CHAIR COWDERY asked what would happen if the project was of less value than the bond value.

MR. O'BRIEN said he didn't know.

CHAIR COWDERY asked if DOTPF didn't use the interest on the money for a project during the course of the project.

MR. O'BRIEN said there are a number of projects packaged within a bond and some of them cost more than estimated and some cost less. If the bond structure provides that interest may be expended on the capital project then it is applied to the overruns and shortfalls within the total bond project. He said he didn't know what happens to any money that isn't spent over the course of the project.

CHAIR COWDERY asked if you could mix money from different bond sales.

MR. O'BRIEN said no.

SENATOR OLSON asked if any other departments had the same type of provision for recovery of attorney fees.

MR. O'BRIEN replied this would cover any agency within the executive branch that receives the delegation of authority of construction from DOTPF.

SENATOR OLSON asked if the Department of Corrections would be entitled to recovery of fees.

MR. O'BRIEN said they would. The calculation they made based on the estimate of attorney fees included claims from all agencies with construction contracts that were adjudicated through DOTPF.

SENATOR OLSON asked how he justified the zero fiscal note.

MR. O'BRIEN explained the fiscal note was asterisked as indeterminable. The analysis showed it was an estimate based on historical amounts and they listed the formula for arriving at an estimate.

SENATOR OLSON said there could be a budget draw under the bill provisions.

MR. O'BRIEN agreed. They estimated up to \$145,000 per year.

CHAIR COWDERY commented that gives DOTPF incentive to not go to the Legislature because they were unable to settle a claim.

MR. O'BRIEN replied that point could be argued.

SENATOR WAGONER made a motion to move CSSB 125(TRA) and attached fiscal note from committee with individual recommendations. There being no objection, it was so ordered.

There being no further business to come before the committee, Chair Cowdery adjourned the meeting at 2:20 pm.