

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

February 17, 2004

2:08 p.m.

TAPE(S) 04-3

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 260

"An Act relating to metropolitan planning organizations and to establishment of a metropolitan planning organization for the Anchorage metropolitan area; and providing for an effective date."

MOVED CSSB 260(TRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 260

SHORT TITLE: METROPOLITAN PLANNING ORGANIZATIONS/AREAS

SPONSOR(S): SENATOR(S) STEVENS B

01/12/04	(S)	READ THE FIRST TIME - REFERRALS
01/12/04	(S)	CRA, TRA
02/06/04	(S)	CRA AT 1:30 PM FAHRENKAMP 203
02/06/04	(S)	-- Rescheduled to 02/09/04 --
02/09/04	(S)	CRA AT 1:30 PM FAHRENKAMP 203
02/09/04	(S)	Moved SB 260 Out of Committee
02/09/04	(S)	MINUTE(CRA)
02/11/04	(S)	CRA RPT 3DP
02/11/04	(S)	DP: STEDMAN, WAGONER, STEVENS G
02/17/04	(S)	TRA AT 1:30 PM CAPITOL 17

WITNESS REGISTER

SENATOR BEN STEVENS
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 260.

MR. JEFF OTTESEN
Director of Program Development
Department of Transportation &
Public Facilities (DOT&PF)
3132 Channel Dr.
Juneau, AK 99801-7898

POSITION STATEMENT: Answered questions pertaining to SB 260.

MR. CRAIG LYON
AMATS Coordinator
Municipality of Anchorage
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 260.

ACTION NARRATIVE

TAPE 04-3, SIDE A

CO-CHAIR JOHN COWDERY called the Senate Transportation Standing Committee meeting to order at 2:08 p.m. Senators Wagoner, Therriault, Lincoln, Olson, and Co-Chair Cowdery were present. Also present was Senator Ben Stevens.

^#sb260

SB 260-METROPOLITAN PLANNING ORGANIZATIONS

The committee took up SB 260.

CO-CHAIR THOMAS WAGONER moved to adopt the [proposed] CS, version Q, [labeled 23-LS1493\Q, Utermohle, 2/17/04] for discussion purposes.

SENATOR BEN STEVENS, sponsor of SB 260, said that the CS was an improved version of the original bill; he began his testimony by explaining that the bill itself relates to metropolitan planning organizations (MPOs) for urbanized areas of at least 50,000 in population. Essentially this bill adds two members to the policy committee of the Anchorage Metropolitan area transit system, which is the Anchorage MPO. Those two members, one person from the House and one from the Senate, would each have at least 50 percent of his/her district residing within the

Anchorage metropolitan area boundary. He emphasized that this was the third attempt at getting this through the Legislature. The first attempt passed this body and ran into a time constraint in the House; the second attempt passed both bodies and was vetoed by the prior administration.

SENATOR STEVENS continued that the intent and language of the bill is to open up the AMATS (Anchorage Metropolitan Area Transportation Study) policy process. The existing AMATS policy committee consists of five people: three from the municipality and two from the state. The committee oversees the expenditure of federal and state money within the Anchorage metropolitan area for the maintenance, upgrade, and re-surfacing of both state and local roads. The process is convoluted and obscure and "neither the public nor we understand how that process works very well." Legislators receive a transportation improvement plan (TIP) approved by the policy committee and can either approve of it or not. Motivation behind supporting SB 260 is to enable the Legislature to have a better understanding of projects, to further Anchorage area residents to have a better understanding of the prioritization of projects, and for the Legislature to possibly express a wider view of the prioritization process within the AMATS policy committee. SB 260 comes with a great deal of opposition from the people currently on the policy committee. He remarked, "That doesn't surprise me at all because they control that process." He noted that although it's been said that this is an attempt to take over control, "that's not what this intent is at all."

SENATOR STEVENS referred to the graph - included in committee packet - as he outlined the changes in the [proposed] CS, beginning with Section 1, AS 19.20.200. The CS eliminates language from the original bill that requires the Legislature to establish each MPO. This allows the MPO to be established when required by FHWA (Federal Highway Administration, "Federal Highways") with no involvement by the Legislature. He added that this is a conforming change with FHWA regulation.

SENATOR STEVENS continued that the next change adds "policy board" under Section 1 [AS 19.20.210] to clarify the membership of the MPO decision-making body for a metropolitan area with more than 200,000 residents. Again, this is consistent with federal code. The third change adds language to expand the makeup of the policy board to include additional members representing other agencies operating major modes of transportation, to be appointed by the governor. Again, this is consistent with federal code. This gives the ability, if other

modes of transportation are created or come into play in the future to "have a seat at the table." The fourth change adds language to expand the makeup of the policy board to include additional non-voting members to be appointed by the governor. Again, this conforms to DOT and federal policy. The fifth change adds language allowing the governor to approve of the TIP or TIP amendment that is prepared by the MPO policy board, organized in accordance with [AS] 19.20.210. Senator Stevens pointed out that this was a major change to the bill.

SENATOR STEVENS said the next [sixth] change in language reflects the policy board makeup of an MPO. It also maintains the intent language in the original version that the changes implemented by this bill do not constitute a re-designation of the MPO. The last change extends the effective date from October 1, 2004 - which corresponds to the federal fiscal year - to now coincide with the introduction or the adoption of the next TIP [July 1, 2005].

SENATOR GENE THERRIAULT asked if Anchorage Municipal Assembly's resolution [AR No. 2004-37], which refers to this legislation as a re-designation, was passed prior to the drafting of the CS. He also referenced Senator Stevens' indication that this was not a re-designation.

SENATOR STEVENS acknowledged this issue as one of the conflicts in interpretation of the language; the MPO states that this is a re-designation while we (as the sponsor of the bill) are saying that this is not a re-designation. He said he understood from FHWA that this does not constitute a re-designation as long as there's an agreement between the two entities. The Assembly and the Municipality are saying "it does" and that's the reason why they are not going to agree with it. "So, it's an interpretation."

SENATOR THERRIAULT referred to the stated concern that passage of this legislation would potentially jeopardize federal funds, and said, "You don't believe that this jeopardizes federal funds, and if there was any credibility to that argument, it would be something that they would control. If they refused to agree, that would be a decision that they would make. And if that caused any problem with the federal funds, that would be something that they would control." He asked if this was correct.

SENATOR STEVENS responded that an MPO was established between the municipality and the administration, DOT. The TIP is

developed by the MPO and submitted to DOT; DOT can either approve it or not, then sends it to us, and we either approve it or not. The language to add legislative members to the MPO, from FHWA's perspective, will not jeopardize funding. Section 1, AS 19.20.220 - the fifth change - gives the governor the authority to approve or disapprove of the TIP amendment developed by the MPO, as long as there is compliance with this piece of legislation. He said his answer to Senator Therriault's question of whether this would jeopardize funding from the FHWA, was no. But does it give authority to DOT to approve of a TIP developed by an MPO that does not include the makeup [suggested in] this bill? The answer is yes. He asked Mr. Otteson if this was correct and received confirmation that it was.

SENATOR GEORGIANNA LINCOLN said she had a number of questions and asked if there would be other testimony today. CO-CHAIR COWDERY responded that one person [Mr. Craig Lyon] was online. Senator Lincoln stated that she had just received the CS [version Q]. She commented that the previous member had asked if the resolution - which she noted had been in her folder but other members didn't have - referred to SB 260 and not the amended version because the resolution was passed on February 3, [2004]. She referred to the seven outlined changes in the [proposed] CS, and wondered about Anchorage Assembly's concerns or the concerns of the Anchorage Chamber of Commerce's one committee that had expressed opposition. In looking at the resolution and the attachment from the Municipality of Anchorage, concern regarding local control had been mentioned. She said she would like to hear the sponsor's response to tilting the balance away from local control, "and if anything in the amended language has changed that aspect."

CO-CHAIR COWDERY offered a response, "I'm locally elected there too. In fact, in my district, I got more votes than the mayor got - considerably more votes - and so I figure that I'm just as much local as anybody on the AMATS or anybody else." He said when he goes back to his district, he hears complaints about the decisions made by AMATS, and "we have no say in it."

SENATOR STEVENS responded to Senator Lincoln by saying first of all, the issue - taken up by the subcommittee of the Chamber of Commerce - elected not to endorse the resolution to the full chamber. Unless something has changed in the last week, the executive committee of the Chamber has not taken this up.

SENATOR LINCOLN directed attention to page two of the "Municipality of Anchorage, Position on State Senate Bill 260 [2/6/04]" and referred to the heading of "Municipal opposition."

SENATOR STEVENS mentioned that Mr. Lyon had been at the meeting and could speak to this. He reiterated that this involved a subcommittee of the Chamber of Commerce; the full Chamber of Commerce did not endorse this.

SENATOR LINCOLN read, "...the State and Local Government Committee of the Anchorage Chamber of Commerce voted for the board of directors not to support SB 260."

SENATOR STEVENS said, "That's correct, but it was not the full chamber or the executive committee of the Chamber." He said it was referred to the Chamber's subcommittee on Transportation and Government Policy, and "that's where it's been, that's where it sits." He said he didn't want to argue semantics with Senator Lincoln, but the executive committee of the Anchorage Chamber has not voted on this issue.

SENATOR LINCOLN said she understands that, she was just pointing out "this committee was the one that voted no."

SENATOR STEVENS said, moving to the issue of local control, "We're not asking Senator Olson from Nome to serve on a local, a decision-making body within the Anchorage MPO. We're not asking Senator Wagoner from Kenai to serve on a local management body within the Municipality of Anchorage. Nor does the bill say that somebody from Anchorage will serve on the Fairbanks MPO. This is a local issue." It is an issue pertaining to locally elected officials within the MPO, or within the Anchorage boundary. As Co-Chair Cowdery stated, he has to answer questions about AMATS that have been approved by the Legislature, yet there is no understanding of that prioritization process.

SENATOR STEVENS continued, "It's all done with five people on an obscure board that meets once a month, and the agenda has already been determined, and the outcome and the tables are already approved before the board meets." He agreed that it's a local issue, adding, "I'm representing the constituents from my locality who are asking me to go into that policy committee and say, 'show us how it works. How do they come up with these prioritization processes? Why are these projects ranked? Why do they go through a ranking process where a project can be on the list for seven years and in one meeting, have it knocked off?"

And then another project is funded instantaneously.' So it is a local issue, Senator Lincoln, and I'm from that locality and so are the people that I represent."

SENATOR LINCOLN suggested that Senator Stevens look at the Municipality of Anchorage's position on this issue, reiterating that she was solidly behind local control. She then asked about the suggestion that SB 260 would be inconsistent with federal regulations that govern MPOs, and questioned whether it was in compliance.

SENATOR STEVENS replied that he had answered this earlier. The Municipality and the Assembly, and Mr. Lyon - who works for AMATS - stated all along that this constitutes a re-designation. Senator Stevens said it was his understanding from meeting with FHWA that it does not constitute a re-designation as long as the two entities having the bylaws of the MPO agree that it doesn't constitute a re-designation. "It's difficult to understand, but the MPO and the state have an agreement, and then the FHWA says yes or no to the agreement." If both of those parties agree to the change, then the FHWA says it's not a re-designation. From FHWA's perspective, if there is an agreement, there won't be a re-designation; it would be an amendment to the MPO. "They have to be in agreement."

SENATOR LINCOLN asked, "Who has to be in agreement?"

SENATOR STEVENS replied, "The Municipality and the state."

SENATOR LINCOLN asked, "The state, being us?"

SENATOR STEVENS replied, "DOT." He remarked that before this bill was even heard in Senate CRA [meeting of 2/9/04], the Assembly had passed resolution [AR No. 2004-37, February 3, 2004]. He said that things change as they go through the process, and before there was even a public hearing, this position had been taken. He drew attention to the sentence on page 2 of Mr. Lyon's testimony and read as follows: "In a January 2004 conversation between U.S. Transportation Secretary Norm Mineta and Mayor Mark Begich, Secretary Mineta expressed support for retaining the current composition of AMATS." Senator Stevens said, "I've asked Mr. Lyon for support documenting that statement, and he hasn't ... and this is not, in my mind, support of that documentation."

2:30 p.m.

SENATOR LINCOLN commented that it is not unusual for organizations or government entities to have resolutions on legislation as a way to have input into amended versions. She asked how the bill's amended version conforms to AMAT's objections.

SENATOR STEVENS stated that the [amended version] does not address those concerns and that "they will not like the changes." He added, "they may like one of them, but my money will be that they will not like the changes. They didn't like it from the beginning, and they won't like it now."

SENATOR LINCOLN said, "Well it's your community, Senator Stevens and it's something you're going to have to deal with." She said her other question was the objection that adding legislators "confuses, politicizes the process" and it had been mentioned that legislators would not be there for five months of the year to attend meetings.

SENATOR STEVENS responded that if involving more elected officials with the spending of public money is politicizing the process, then "that's an oxymoron." He said the intent is to open the system up for involvement, to determine how this process works. He said he didn't think of this as politicizing the process, but of opening it up to more public input and public debate.

CO-CHAIR WAGONER pointed out that legislative representatives would be away for four months, not five, and that there's no reason why participation couldn't take place via teleconference. For the record, he brought the committee's attention to the previous CRA meeting during which three or four people from the public testified on SB 260 who were fairly upset with AMATS; all testified in support of SB 260 because of the desire for more equitable representation. One woman testified that it was difficult to track the projects because things jumped around too much. He pointed out that it was interesting that the public testified in favor of the bill while people from the municipality opposed the bill.

2:35 p.m.

SENATOR DONNY OLSON asked if adding two members would bring the committee from five to seven [members].

SENATOR STEVENS indicated confirmation.

SENATOR OLSON asked about the qualifications of new members.

SENATOR STEVENS replied that this information was in the bill.

SENATOR OLSON asked about legislators who own property and pay taxes in Anchorage.

SENATOR STEVENS referred to the language on page 2, lines 7 - 18: "elected from a district," emphasizing the word "elected."

SENATOR OLSON asked if owning property and paying taxes would make one eligible.

SENATOR STEVENS reiterated, "You have to be an elected official from that area." Senator Stevens distributed a letter in response to Senator Lincoln's concern. He said the letter pertained to the piece of legislation that passed out of both bodies but was vetoed by the prior administration. He referenced the last three lines of the letter from FHWA [February 22, 2001] [original punctuation provided], "...Federal regulations do not preclude the participation of State legislators on the AMATS Policy Board." He said this doesn't trigger a re-designation.

SENATOR LINCOLN said, "To that point, but you failed to read the whole sentence." She read: "Providing the provisions of Title 23 [CFR] Section 450 are followed," [Federal regulations do not preclude...].

SENATOR STEVENS suggested that Mr. Otteson address the requirements under which an MPO must operate, "which we are in full compliance with."

MR. JEFF OTTESEN, Director of Program Development, Department of Transportation & Public Facilities (DOT&PF), told members he wanted to point out what the U.S. code says about MPOs. He said, "MPOs are the creation of the federal government. In Title 23, Section 134, and very briefly, the designation of an MPO shall be done by agreement between the governor and units of local government." There will be a signature from the governor and a signature from key members of local government, which in Anchorage's case is the Municipality of Anchorage. He said, as an aside, that throughout the country MPOs are often very complex, sometimes having hundreds of different local governments involved, and in some cases crossing state boundaries, like St. Louis and Portland, Oregon, etc. "So we've got a fairly simple one by comparison."

MR. OTTESEN continued, "They also shall be done in accordance with procedures established by applicable state or local law." Clearly state law can have an influence on the structure of the MPO. "The structure of the MPO board, the policy board, shall have three classes of membership: local, elected officials; officials of public agencies that administer or operate major modes of transportation in the metropolitan area - and that might be a transit agency, DOT, a railroad, airport or seaport - and there's provision here for all of those possibilities to be included; and finally, appropriate state officials." He said there is no definition of whether that's an appointed or an elected state official, adding that "it does not say who should have the lion's share of the seats in the federal law, it just says three classes of membership, all to be determined by agreement between the governor and local elected officials, subject to state law."

SENATOR LINCOLN asked if he referenced Section 134.

MR. OTTESEN said "Yes, of the U.S. code." He clarified that [FHWA's] letter referenced the CFR, the regulations and not the U.S. code.

SENATOR LINCOLN referred to the letter of February 22, 2001, which mentions Title 23 CFR Section 450, and said, "Providing the provisions of that section are followed, federal regulations do not preclude the participation of state regulators on AMATS policy board." She asked if this was consistent with what Mr. Ottesen had just read regarding the three classes of membership.

MR. OTTESEN replied that the CFR are the regulations promulgated by the U.S. DOT and have to be promulgated under the authority of the U.S. code. One is statute and one is regulation. He said, "So yes, I believe the statute really is a governing body of law, and I would add that other MPOs around the country do have elected state legislators as a part of their organization." He pointed to Honolulu as an example.

SENATOR LINCOLN asked Mr. Ottesen if Title 23 CFR [Section] 450 was consistent with what he had just read.

MR. OTTESEN replied that he would like to have a copy of "450" to be absolutely certain, but believed that what was being said was that providing 450 was followed, it seems consistent with the overarching Title 23 in U.S. code. He added that it seems consistent with practices of MPOs around the country, noting

that Honolulu has had legislators on its board since the mid-70s.

SENATOR LINCOLN said she would like Mr. Ottesen to take a look at this and get back to [her].

MR. OTTESEN said that at the right time, he would be happy to do that.

MR. CRAIG LYON, AMATS (Anchorage Metropolitan Area Transportation Study) Coordinator, Municipality of Anchorage, testified via teleconference that he had not received a copy of the [proposed] CS so it was difficult to comment on all of the changes.

AMATS was established in 1976 as a multi-agency team set up to work together to plan and fund the transportation system in the Anchorage and Chugiak-Eagle River areas when federal funds are being used. Federal funding accounts for about 90 percent of public monies being spent to develop Anchorage's transportation system and averages about \$40 million a year in Anchorage.

Basically the metropolitan planning organizations were established by the federal government for the purposes of prioritizing the expenditures of these federal dollars. And the idea was to tilt the balance toward local controls so that the local officials would be able to determine what they thought was best for the local communities.

The current process allows local citizens the opportunity to discuss transportation issues with their local representatives, in opposition I guess, to what some people have said. While you yourself and all the members of the committee are locally elected officials, it's our understanding in the federal government's eyes, the Federal Highway Administration's eyes, a state legislator is not a local representative. They are a state representative, though they may be locally elected. That's our understanding from Federal Highways ... as I've said in the past, Federal Highways has stated in the past, both in writing and in testimony that the actions suggested in the bill would be inconsistent with federal regulations that govern MPOs.

I do have the letter that's dated October 29th that talks about whether or not legislators can serve on a policy committee. And we have stated in the past that there's absolute truth that legislators can do that, they've done that in Hawaii for quite some time. The question is how do they get on there, and if a Legislature unilaterally decides that they should be on there, that's when you get the sticking point. And the April 5th, 2001 letter from the director of the Office of Metropolitan Planning and Programs from the Federal Highways says they have been asked to comment on similar legislation in other states and in each case they bring the same general observation. An action by the Legislature without the consent and support of local officials and the governor would appear to be inconsistent with the federal regulations. And it would then indeed be a re-designation.

So it's not whether they can be on there, it's how they actually get on there that is the key. In the past I have - in the CRA Committee I mentioned a meeting with a conversation between [indisc.] for Norm Mineta and Mayor Mark Begich - where the [U.S. Transportation] Secretary expressed support for the current composition of AMATS. Senator Stevens has asked for documentation of that. And we are working on that. As soon as we have information from the Secretary, we will forward that on.

So I just want to clear up the part about the municipal Assembly. The Anchorage Assembly did vote on February 3rd to oppose this particular bill - they did not see the CS obviously because it just came out. And the Anchorage Chamber of Commerce, their board of directors asked the State and Local Government Committee to look at this piece of legislation and to decide whether or not they should pass it on to the full board for their support. The vote was 6 to 4 at that State and Local Government Committee, not to forward it on to the board of directors for support. I guess the executive committee or the board - I'm not sure exactly how they're made up - but they asked if they could look at that piece of legislation again. The State and Local Government Committee formed an ad hoc committee to deal with transportation issues.

They have not, we have not met yet to discuss that bill or to discuss any transportation-related issues at all. So Senator Stevens is correct in that ... that it was just the State and Local Government Committee.

In conclusion, it's our understanding from Federal Highways, and we haven't seen anything to suggest otherwise, that re-designation, which is what this bill would do, in the form we looked at it, which is the original version of SB 260, a re-designation would be inconsistent with their statutes, their federal regulations, and if a re-designation occurs, then they would consider that there was not a functioning MPO process in Anchorage. If there's not a functioning process, then federal dollars are in jeopardy. I believe that it might have been Senator Therriault who suggested that if the local Assembly just agrees to it then the non-agreement would not be there. They just accepted it. I guess the key is that what we're looking for is local control and I'm sure we can all agree that your local control ... people from different sections of the state may not be the best to decide on these prioritizations of federal dollars, but the local groups should be.

The Federal Highways have determined, as far as we can tell, that a locally elected and state representative or state Senator is not a local official, they're a state official ... I haven't had a chance to look at the CS and I guess I would request that at the very least to hold the bill over until we get a chance to take a peek at it and see if any of our concerns have been addressed.

CO-CHAIR COWDERY asked Mr. Lyon if his position as AMATS Coordinator was an elected position.

MR. LYON responded that the mayor had appointed him. He said he was the division manager of a group of three transportation planners.

CO-CHAIR COWDERY asked if he lived in Anchorage.

MR. LYON replied, "Born and raised here."

SENATOR STEVENS asked if the three transportation planners were elected.

MR. LYON said he believed they were not elected, but were all municipal workers.

SENATOR STEVENS asked, "Appointed by the mayor?"

MR. LYON replied, "No they aren't, actually. They've been there, collectively, for about 60 years."

SENATOR OLSON asked, "Why can't a state official also be a local official?"

MR. LYON replied, "As far as we've been told, someone who has been elected to a state body, in the Federal Highway's eyes, is considered a state official and not a local official." A person would need to serve on a local council or be mayor of the municipality to be considered a local official.

SENATOR OLSON said this seemed to be somewhat restrictive and asked, "Who indeed does make this edict that you can't be both? It is like someone telling me that I can't be a pilot and a ... reindeer herder at the same time."

MR. LYON said that he understood this was Federal Highway's view and suggested that testimony from the Federal Highway could clear this up.

SENATOR OLSON ascertained that there didn't seem to be a problem with legislators being on the committee, "but your main objection is the way it's chosen, is that correct?"

MR. LYON said there were two main disagreements. One was that it's true that legislators can be on the board, the policy committee of an MPO. The concern is that adding 'x' number of legislators would tilt the balance so that the majority of the board would be made of state rather than of local officials. This would take away from a majority of the board being locally oriented, and take away control of planning how to spend local dollars. As stated earlier, Hawaii's MPO has state legislators; however, Lance Wilber, director of traffic for the Municipality of Anchorage, was asked to go to Hawaii because it's MPO was so fraught with problems. It may not be the best solution when there isn't a majority of local [officials.]

TAPE 04-3, SIDE B

CO-CHAIR COWDERY said, "I take offense that I'm not a local official...but I think I am, anyway."

SENATOR THERRIAULT remarked that perhaps criticism of Hawaii's system was a function of the contentious aspect of trying to meet the general public's demands for traffic and highway construction. He said he's heard criticism over the years that Anchorage has traffic problems that don't seem to get corrected, that a lot of money goes into street beautification, trails, and so forth, and yet "you can't get across town in your car sometimes." He questioned the truth of Hawaii's perception of Alaska's process as being ideal. He then asked if FHWA has put anything in writing indicating that the inclusion of elected officials would cause problems, that it "would, in fact be interpreted by them as causing difficulties."

MR. LYON replied that he does not have a recent letter from FHWA and certainly does not have comment on the [proposed] CS, but has a letter from 2001 that applies because of SB 260's similarity to SB 88 that previously passed; the letter comments specifically that an action by the Legislature without the consent and support of local officials and the governor would appear to be inconsistent with the intent of [Title] 23 U.S.C. [Section] 134. Also, there is an earlier letter indicating that there is no problem with having legislators on MPOs. He responded to Senator Therriault's question, stating that he wasn't sure why the process in Hawaii wasn't working. Mr. Lyon mentioned that at the recent CRA hearing, Mr. Tremain of the Anchorage Assembly commented that when he was on AMATS, an attempt was made to open up the process to the citizens of Anchorage to improve upon it. Mr. Lyon said attempts toward improvement continue, and alluded to the MPO process as a "Byzantine, archaic, brutal process."

SENATOR THERRIAULT asked Mr. Lyon what basis of his concern was regarding an elected legislator from within the boundaries of the municipality not being as sensitive to the wishes of the local people in reference to building and improving the transportation infrastructure.

MR. LYON responded that he wasn't necessarily saying that legislators wouldn't be sensitive to the needs of their constituents. He maintained that FHWA was differentiating between state and local officials, and if the majority of members were state representatives, the balance would not be

leaning towards the local officials "which is what MPOs were set up to be."

SENATOR THERRIAULT commented that the letter indicates that if the local entity was in agreement with the change, there would not be a problem. He said he hadn't yet heard a justification as to why "you would not be in agreement that a locally elected official wouldn't be just as interested in satisfying the transportation wishes of the community...." He said members of [Anchorage's] Assembly - unlike Fairbanks North Star Borough's - are elected from districts, elected by a subset of the community's population. Senators and Representatives elected from Anchorage are likewise elected by a subset of the local constituency. "Why would one be more preferable than the other?"

3:00 p.m.

MR. LYON responded this was due to the Assembly's indication that there wouldn't be agreement, which is part of what's needed to change an MPO. The other reason is the Federal Highway's rule regarding state versus local officials.

CO-CHAIR WAGONER wondered if this legislation passed and legislators from the House and Senate were appointed, would the Assembly not approve of those additions to the MPO, thereby jeopardizing the receipt of federal transportation funds.

MR. LYON said that this particular Assembly indicated non-support by passing the resolution opposing SB 260.

CO-CHAIR WAGONER said this wasn't his question, and re-stated by asking if the Assembly would "cut off their nose despite their face."

MR. LYON said the only information he had was the Assembly's resolution.

SENATOR STEVENS said he wanted members to understand that during previous attempts at passing this legislation, prior municipal administrations supported this bill and this concept. He said he didn't believe that any other Assembly has passed a similar resolution, adding that the prior municipal administration supported this concept, which is why it went through so rapidly in 2001.

SENATOR LINCOLN asked Mr. Lyon if it was just the administration that was in opposition to this.

MR. LYONS said the Anchorage Assembly had passed resolutions in the past, opposing SB 88 [2001], which was the previous form of SB 260. He said he believed Senator Stevens was correct regarding there being support by the previous administration, but he didn't know about prior to that.

SENATOR LINCOLN said she wasn't only talking about the administration, as she had heard that it was also the Assembly that had been supportive - but she didn't recall exactly - from last year. She asked if the intent was to move the bill.

CO-CHAIR COWDERY said yes.

SENATOR LINCOLN continued that that she had further questions, noting that this was the last committee of referral.

CO-CHAIR COWDERY said he would like to first introduce amendments to the bill.

CO-CHAIR WAGONER moved to amend HB 260 [version Q] with the following changes:

Page 2, line 18, delete "shall" and insert "may".

Page 2, line 20, delete "public agency" and insert "private entity".

Page 2, line 21, following "metropolitan area" insert a period "." and delete the remainder of the sentence.

SENATOR THERRIAULT said he wasn't sure what the intent was of dropping "public agency" and inserting "private entity."

SENATOR STEVENS responded that the changes recommended by DOT make it consistent with federal code and provide for additional members who represent a private industry administering a major mode of transportation within a metropolitan planning area. This "what if" situation is in compliance with federal codes and says that if there is a privately managed light rail or transportation system, the governor could appoint a member from that system to the board. Some metropolitan areas have privately managed transit systems that are used on a for-fee

basis and are part of the MPO, contributing to the transit system within that MPO.

CO-CHAIR WAGONER asked if the Knik Arm Bridge [Toll Authority] would qualify.

SENATOR STEVENS confirmed that it would qualify, asking for verification from Mr. Otteson.

MR. OTTESON agreed, "That's correct." He said there are other transportation providers already in Anchorage such as the Port of Anchorage, the airport, transit authority, and the railroad; all four are subdivisions of either state or local government and have representation through the mayor and the governor's appointees. In the future, if one of these were privatized or if the Knik Bridge Authority took over a mode of operation, it could ask for and be provided a seat on the board.

CO-CHAIR WAGONER said, "I think we're all out of order in discussing this ... I move to adopt the amendment."

SENATOR LINCOLN objected.

SENATOR THERRIAULT questioned language referring to an agency not being a subordinate of or under the direct authority of a state or municipal agency, and asked, "Are we precluding somebody who is currently participating or are we just expanding the language for what may happen?"

MR. OTTESON replied, "It's the later circumstance." A provision is being created for the future. The railroad has asked to be a voting member of the MPO and "the folks in Anchorage have opposed that for the same reason they're opposing the bill today; it would dilute local control." The thought is that governor's appointees can represent the railroad - a state entity - and likewise the Port of Anchorage and/or Anchorage's transit authority are under the mayor's control, so the mayor's appointees can represent those interests. But a private entity does not have that representation, and [with this] it could, in the future, gain representation.

SENATOR LINCOLN asked that Mr. Lyon stay on the teleconference line because she had not finished with her previous questions. She reviewed that with this amendment there would be four state officials and three local government officials; two would be appointed by the governor (one from the Senate, one from the House, designated by the President and the Speaker of the

House). She asked for clarification of use of the permissive word "may" and asked, "What if the governor chooses not to appoint these - b and c - you then have one from the Senate and one from the House and two local?"

SENATOR STEVENS said this was not how he read it, but maybe Mr. Ottesen could explain further.

MR. OTTESEN explained that these were extra seats in addition to the seven that are actually named in statute. According to AS 19.20.210 paragraph (a), the municipalities will designate three voting members. In addition, there will be two voting members appointed by the governor, and then two members appointed by the House and Senate, making seven. Then 'b' refers to additional appointed members - meaning eight or nine or whatever the number might be - representing a major mode of transportation that is privately operated. The last paragraph adds ex-officio members.

3:12 p.m.

SENATOR LINCOLN asked, "So you've got a seven-member board for sure, that's a 'shall'. Then the governor decides whether he or she wants to make it a nine-member board. Is that right?"

MR. OTTESEN responded, "More than seven. It could be eight."

SENATOR LINCOLN said, "Mr. Lyon, I know your concern is that there be four state officials and three municipal members to this board. But now you've heard the discussion that there could be five or six state officials and three municipal governmental [officials]. Could you respond to that?"

MR. LYON responded that the same concern exists, that of tilting the balance away from local officials and diluting local control, while this pertains to dollars the federal government has set up to be in local hands.

SENATOR LINCOLN said that although she was speaking to the amendment, she still had questions regarding the body of the bill. She maintained her objection.

A roll-call vote was taken. Senators Therriault, Olson, Wagoner, and Cowdery voted in favor of the motion; Senator Lincoln voted against it. Therefore the amendment [Amendment 1] passed by a vote of 4 to 1.

SENATOR LINCOLN returned to [version Q] and directed her comment to Mr. Lyon saying that she wanted to understand the Assembly's concerns. She stated she would not vote for passage of the bill because of the due process, "I just got the amended version as well, and I know you don't have it in hand. And I think it would be prudent for us to at least allow the community to comment on it." Senator Lincoln stated, "If you feel so certain that the Transportation Secretary would support your objection to these additional state officials, I mean, this letter or resolution was written or passed February 3rd and knowing that it was going to be heard in just two committees, why haven't you all pursued that aggressively?"

MR. LYON replied, "We have pursued. We have a letter that is already there, and we're just waiting for an answer from the Secretary."

SENATOR LINCOLN suggested that Mr. Lyon had run out of time and requested, "I would like to see that letter that you wrote." She pointed out that the committee did not have a copy of the resolution or the justification, and asked if it had been submitted to the CRA and TRA Committees.

MR. LYON said it had been submitted to CRA but he wasn't certain if it was submitted to TRA.

CO-CHAIR COWDERY said TRA did not receive it.

SENATOR LINCOLN asked, "Why do you think that regardless of who they appoint from - and I know it's been asked in other ways - but, if the designee from the Senate and the designee from the House - why would you think that they would do bad things?"

MR. LYON responded, "It's not that we think that they'll do bad things. It's not that we think they're not going to be responsive to the public." He reiterated that Federal Highways doesn't view state officials as local officials; the majority of MPO members are supposed to be local officials, otherwise "it's against what the MPOs were set up for."

SENATOR LINCOLN said she didn't have any documentation to verify what he was saying.

MR. LYON said, "As soon as I dig out the federal regulations and find that specific part, I will send it to you."

SENATOR LINCOLN suggested that it be forwarded to all committee members, and thanked him.

SENATOR STEVENS said, "I think Senator Lincoln just made the point for me. I don't believe there is something that designates a balance, by local officials." He asked Mr. Ottesen for confirmation.

MR. OTTESEN responded, "Certainly in the U.S. code there is no mention [that] a majority of the members should come from one of those three groups that I talked about - local officials, elected officials or state officials, or other providers of transportation - it just says that all three of those groups should be represented. The exact structure is wide open."

SENATOR THERRIAULT moved to report CSSB 260, version Q as amended, with zero fiscal notes and individual recommendations out of committee.

SENATOR LINCOLN objected. For the record, she said, "We just received the amended version that the community that we're speaking of has not had an opportunity to see that amended version, and it goes to the Floor next, and I think that it would be prudent for us to just allow them the courtesy to see that version before we passed it out. It doesn't go anywhere after this. It goes to the Floor."

A roll-call vote was taken. Senators Therriault, Wagoner, Cowdery voted in favor of the motion; Senators Olson and Lincoln voted against it. Therefore, CSSB 260(TRA) moved from the Senate Transportation Standing Committee by a vote of 3 to 2.

There being no further business to come before the committee, CO-CHAIR COWDERY adjourned the meeting at 3:20 p.m.

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