

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

April 1, 2004

1:35 p.m.

TAPE(S) 04-14, 15

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

CS FOR HOUSE BILL NO. 93(FIN)

"An Act relating to boating safety, registration, and numbering; extending the sunset date of changes in ch. 28, SLA 2000; and providing for an effective date."

MOVED SCSCSHB 93(TRA) OUT OF COMMITTEE

SENATE BILL NO. 382

"An Act relating to replat approval; relating to the platting of right-of-way acquired through eminent domain proceedings; and providing for an effective date."

MOVED CSSB 382(TRA) OUT OF COMMITTEE

SENATE BILL NO. 371

"An Act relating to the powers and duties of the Department of Transportation and Public Facilities; relating to a long-range program for highway construction and maintenance; repealing a requirement that public facilities comply with energy standards adopted by the Department of Transportation and Public Facilities; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 93

SHORT TITLE: BOATING SAFETY, REGISTRATION, NUMBERING
SPONSOR(s): REPRESENTATIVE(s) WEYHRAUCH

02/12/03 (H) READ THE FIRST TIME - REFERRALS
02/12/03 (H) TRA, STA
02/18/03 (H) TRA AT 1:30 PM CAPITOL 17
02/18/03 (H) -- Meeting Canceled --
02/25/03 (H) TRA AT 1:30 PM CAPITOL 17
02/25/03 (H) Heard & Held
02/25/03 (H) MINUTE(TRA)
03/27/03 (H) TRA AT 1:30 PM CAPITOL 17
03/27/03 (H) Scheduled But Not Heard
04/01/03 (H) TRA AT 1:30 PM CAPITOL 17
04/01/03 (H) Moved CSHB 93(TRA) Out of Committee
04/01/03 (H) MINUTE(TRA)
04/02/03 (H) TRA RPT CS(TRA) NT 1DP 2DNP 2NR
04/02/03 (H) DP: HOLM; DNP: KOHRING, MASEK;
04/02/03 (H) NR: OGG, FATE
04/03/03 (H) STA AT 8:00 AM CAPITOL 102
04/03/03 (H) Heard & Held
04/03/03 (H) MINUTE(STA)
04/08/03 (H) STA AT 8:00 AM CAPITOL 102
04/08/03 (H) Moved CSHB 93(TRA) Out of Committee
04/08/03 (H) MINUTE(STA)
04/09/03 (H) STA RPT CS(TRA) NT 6DP
04/09/03 (H) DP: SEATON, GRUENBERG, HOLM, LYNN,
04/09/03 (H) DAHLSTROM, WEYHRAUCH
04/09/03 (H) FIN REFERRAL ADDED BEFORE RLS
04/14/03 (H) FIN AT 1:30 PM HOUSE FINANCE 519
04/14/03 (H) Heard & Held
04/14/03 (H) MINUTE(FIN)
01/22/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
01/22/04 (H) Heard & Held
01/22/04 (H) MINUTE(FIN)
01/29/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
01/29/04 (H) Moved CSHB 93(FIN) Out of Committee
01/29/04 (H) MINUTE(FIN)
02/02/04 (H) FIN RPT CS(FIN) NT 4DP 6NR
02/02/04 (H) DP: MEYER, FATE, FOSTER, WILLIAMS;
02/02/04 (H) NR: HAWKER, STOLTZE, JOULE, CROFT,
02/02/04 (H) CHENAULT, HARRIS
02/04/04 (H) TRANSMITTED TO (S)
02/04/04 (H) VERSION: CSHB 93(FIN)
02/06/04 (S) READ THE FIRST TIME - REFERRALS
02/06/04 (S) TRA, STA, FIN
03/25/04 (S) TRA AT 1:30 PM CAPITOL 17
03/25/04 (S) -- Meeting Postponed to 4/1/04 --

04/01/04 (S) TRA AT 1:30 PM CAPITOL 17

BILL: SB 382

SHORT TITLE: EMINENT DOMAIN/REPLAT OF BOUNDARY CHANGES

SPONSOR(S): TRANSPORTATION

03/31/04 (S) READ THE FIRST TIME - REFERRALS
03/31/04 (S) TRA, CRA
04/01/04 (S) TRA AT 1:30 PM CAPITOL 17

BILL: SB 371

SHORT TITLE: POWERS/DUTIES DOTPF

SPONSOR(S): STATE AFFAIRS

03/19/04 (S) READ THE FIRST TIME - REFERRALS
03/19/04 (S) TRA, FIN
03/30/04 (S) TRA AT 1:30 PM CAPITOL 17
03/30/04 (S) Senate Bill:
04/01/04 (S) TRA AT 1:30 PM CAPITOL 17

WITNESS REGISTER

Ms. Linda Sylvester
Staff to Representative Weyhrauch
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on HB 93 for the sponsor.

Ms. Sue Hargus
Coast Guard
Juneau AK

POSITION STATEMENT: Commented on HB 93.

Mr. Jeff Ottesen
Department of Transportation &
Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898

POSITION STATEMENT: Supports SB 382 and SB 371.

Mr. Peter Putzier
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Commented on SB 382.

Senator Gary Stevens

Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 371.

Ms. Susan Yurig
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on SB 371.

Mr. Mark Hickey
Lake Peninsula Borough
Juneau AK
POSITION STATEMENT: Supports SB 371.

ACTION NARRATIVE

TAPE 04-14, SIDE A

CO-CHAIR THOMAS WAGONER called the Senate Transportation Standing Committee meeting to order at 1:35 p.m. Present were Co-Chairs Cowdery and Wagoner, Senators Olson and Lincoln. Senator Therriault arrived at 1:45. The first order of business to come before the committee was CSHB 93(FIN).

^#HB93

CSHB 93(FIN)-BOATING SAFETY, REGISTRATION, NUMBERING

REPRESENTATIVE BRUCE WEYHRAUCH, sponsor, asked the committee to reject the two amendments that were proposed at the last hearing saying that adhesion of the sticker could be dealt with technically and the other amendment with another exemption really wasn't necessary.

1:40 - 1:44 - at ease

CO-CHAIR COWDERY moved to adopt Amendment 1.

23-LS0230\S.2
Luckhaupt
12/14/04

A M E N D M E N T 1

OFFERED IN THE SENATE

TO: CSHB 93(FIN)

Page 2, line 12, following "boat":

Insert "operated on the freshwater lakes and inland waterways of the state that is under 17 feet in length and"

SENATOR OLSON said Amendment 1 addresses the Coast Guard's concern about motorized vehicles, but wanted to know why it addressed fresh water lakes only. He said this amendment relates to hand-crafted umiaqs with walrus skin coverings and, "Between Diomedea and Wales, you're not going to be up there rowing with a current at 3 to 5 knots."

CO-CHAIR WAGONER asked for a roll call. Senator Olson, Co-Chair Cowdery and Co-Chair Wagoner voted yea; Senator Lincoln voted nay.

CO-CHAIR COWDERY moved to rescind the vote, as Senator Therriault just arrived.

CO-CHAIR WAGONER noted for him that the sponsor's statement said Amendment 1 wasn't necessary.

CO-CHAIR COWDERY moved Amendment 1 again.

SENATOR OLSON said his main concern is that:

I want to make sure that if someone has a canoe out there that - maybe they use it only once in the last 10 years, but I want to make sure they have the liberty to go ahead and use that for whatever necessary.... If something starts to drift away and they have an emergency on their hands... and someone comes up and says that you've got a canoe that's not registered. I've got a problem with that.

SENATOR LINCOLN directed the committee to page 2, line 12, which exempts boats that are not equipped with mechanical propulsion. Adding the amendment might make the language more cumbersome.

CO-CHAIR WAGONER asked for the roll call vote. Senators Olson, Therriault, Lincoln and Co-Chair Wagoner voted no; Co-Chair Cowdery voted yea; and Amendment 1 failed.

SENATOR OLSON moved Amendment 2. He thought putting decals on umiaqs was shortsighted. That is why he asks that all native crafts with animal hide coverings be exempt.

23-LS0230\S.1
Luckhaupt
12/14/04

A M E N D M E N T 2

OFFERED IN THE SENATE

BY SENATOR OLSON

TO: CSHB 93(FIN)

Page 2, line 21, following "government":

Insert ";

(6) a handmade umiaq with a walrus or sealskin covering"

SENATOR LINCOLN said she strongly supported Amendment 2.

MS. LINDA SYLVESTER, staff to Representative Weyhrauch, said the problem with the amendment is that currently the federal standard is that any boat equipped with motorized propulsion has to be registered. Amendment 2 would be violating the federal standard; Alaska would lose motor fuel taxes coming into the state and its boater safety program that they fund.

SENATOR LINCOLN asked if she knows for sure that the state would lose the boater safety funding with that single exemption.

MS. SUE HARGUS, Coast Guard, explained that one of the few federal requirements is that within the boating safety program the state provide for registration. This has been very contentious for some reason in Alaska. Registering umiaqs with motors is still required under federal law even if state law exempts them. The intention of the law is that if the umiaq washes up on some shore a hundred miles away, the Coast Guard knows who to look for.

SENATOR THERRIAULT explained the reason to have a registration attached to a vessel is because motorized vessels can travel a great distance. He asked how many search and rescue efforts the Coast Guard performs in western and northern Alaska.

MS. HARGUS replied since 1990, the Coast Guard has spent a couple of million dollars searching for boats on the northwest coast.

SENATOR OLSON asked if the state would lose all of the approximately \$350,000 for an exemption like this.

MS. SYLVESTER answered that the program has to match the federal minimum requirements. She related an anecdotal story about how this situation happened in Montana.

SENATOR OLSON said he found it hard to rationalize that people have been paying a gas tax of three to four percent to fund that program and then the federal government puts stipulations on

getting the money back. He also noted that they are just discussing extending a sunset, not passing a new law.

MS. SYLVESTER explained that they are changing existing law that includes all paddleboats that are over 10 ft. The first uprising about this bill came from Fairbanks where it didn't make sense to register paddleboats.

SENATOR LINCOLN asked if there isn't a federal helmet law and Alaska was threatened for years if it didn't pass a helmet law it would lose some DOTPF federal dollars.

SENATOR THERRIAULT responded that Alaska is in compliance with that federal requirement where a passenger on a motorcycle is required to have a helmet. The federal law doesn't require a driver to have one.

SENATOR LINCOLN pointed out that the umiaq is unique to Alaska and that just because the federal government requires it doesn't mean that Alaska needs to jump.

CO-CHAIR WAGONER responded that the helmet law was passed and it requires anybody 18 years old or under who is riding a motorcycle to wear a helmet. Once you get to be 18, you can take your chances. Secondly, a bill just passed on seatbelt requirements with the same stipulation. He personally has a 26 ft. fiberglass boat that looks like an umiaq and he is required to have identification on it if he uses it on the water.

It is very important for the Coast Guard to have the ability to either track or identify floating debris or an abandoned vessel or a sunken vessel. In my case they do it electronically with a beeper. I don't know why it is so important that you don't put an identification plaque on the seat....

SENATOR OLSON said the people who are sitting in an umiaq are not sitting on seats that are attached to the frame of the boat. "They are sitting on cans and things like that because it's cold and wet." Putting a sticker onto something like fiberglass will stick, but putting a sticker onto a skin that is not completely cured - which they aren't so that the oil provides waterproofing - it's going to shed the decal. He suggested a conceptual amendment to Amendment 2 to add "nonmotorized umiaqs".

MS. HARGUS said that would be acceptable to the Coast Guard.

CO-CHAIR WAGONER said it would be okay with him.

SENATOR OLSON formally moved the conceptual amendment to Amendment 2. There were no objections and it was amended.

CO-CHAIR WAGONER asked if there were any further objections to Amendment 2 am. There were none and it was adopted.

CO-CHAIR COWDERY moved to pass SCS CSHB 93(TRA) from committee with individual recommendations. There were no objections and it was so ordered.

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^#SB382

SB 382-EMINENT DOMAIN/REPLAT OF BOUNDARY CHANGES

CO-CHAIR WAGONER announced SB 382 to be up for consideration.

2:15 - 2:17 - at ease

CO-CHAIR COWDERY moved to adopt the CS to SB 382, version /D. There were no objections and it was so ordered.

MR. JEFF OTTESEN, Department of Transportation and Public Facilities (DOTPF), said that two lawsuits have erupted using the same legal argument, both regarding bonded projects that voters approved two years ago. If the lawsuits are upheld by the courts, it has the potential to shut down and delay projects all across the state.

The issue before you is a statute that has been on the books for a long time - since '75. It's never been litigated before until now. AS 09.55.275 requires the platting authority, which is basically borough or city governments, to require the state, on a condemnation related lawsuit, to go through that plat as if it were a private landowner. Inherently, a replat involving condemnation is going to be different than a replat that's done voluntarily... By it's very nature condemnation is not a voluntary act. You can't get the landowners to put a signature on the application for replat. They are simply not ready to do that; they're in no mood to do that. The argument being held up in the courts is that we have to go through exactly the same procedure as a voluntary subdivision.

To give you some idea of the magnitude of the problem - the project at Kenai River, Soldotna, that is slated to go to construction this summer - is now in litigation. We think it will be held up. The C Street extension in Anchorage would also be held up; it's in litigation. The North Pole interchange in Fairbanks, our right-of-way staff believe is at risk. Even a project in Bethel - about a year ago the city attorney saw this conflict and had the Bethel City Counsel pass an ordinance that exempted that particular project... so this can be a rural problem as well.

SENATOR LINCOLN asked how the CS is different from the original bill and how does it prevent further litigation.

CO-CHAIR COWDERY explained the original bill was just a beginning and that further DOT research provided the update.

MR. OTTESEN said the intent of the earlier draft has not changed, but the language is better.

MR. PETER PUTZIER, Department of Law (DOL), said that most of the changes were in style and he reviewed those.

In a real nutshell, AS 09.55.275 has a sentence that says that the platting authority typically in a municipality shall apply the standards in the same manner between DOTPF and private landowners. The conflict or the problem is what "in the same manner" means. The argument is being made in court that essentially in '75 there's a legislative intent to put what I would describe as a legislative straight jacket on municipalities to require a particular procedure.... For instance someone who wants to subdivide property and a right-of-way acquisition - the two proceedings as Mr. Ottesen pointed out - a right-of-way acquisition is quite a different animal than what goes on with respect to your typical subdivision....

SENATOR THERRIAULT asked if the 1975 language actually said there would be one uniform standard.

If we fix this problem for DOTPF, do the municipalities still have a problem that they've got a variety of standards... or are we fixing it for DOTPF and the municipalities at the same time?

MR. PUTZIER explained that the fix intends to say that municipalities can apply a variety of standards in their discretion to how they want to treat the requests for replat approval. The legislature is not demanding a particular process, but is giving local governments discretion to deal with it in a variety of ways.

SENATOR THERRIAULT asked if the state and a private landowner have to go through the same process to subdivide and sell under this bill.

MR. PUTZIER said that would be a different analysis. Section 3 only applies this bill to right-of-way acquisitions only.

TAPE 04-14, SIDE B

CO-CHAIR WAGONER asked if these projects had been on the books for 10 years or more and if someone is trying to obstruct them.

MR. PUTZIER replied with an explanation of the process. When DOTPF is unable to come to an agreement with a particular landowner, the project will file a condemnation action. The landowner then has the right to file an authority and necessity challenge, which says the DOT didn't follow the steps it was supposed to and, therefore, can't take the property.

SENATOR LINCOLN asked if this legislation is retroactive, would that help communities go forward with their projects.

MR. PETZIER replied that both cases are in Superior Court now. One has an oral argument scheduled for next week and a decision could come out at any time; the other one has yet to be scheduled for briefing and argument. This legislative clarification would be presented to the court as additional evidence as to what legislative intent was. "Our hopes is that both of the lawsuits would be defused...."

SENATOR OLSON asked if this bill passes, how will the public be protected from the government acting as a bully to go ahead and take property that may have been in a family for centuries or property that most people would want to stay were it is.

MR. PUTZIER answered that the eminent domain process has stood on its own for years. It has a myriad of restrictions and hoops that DOTPF always has to jump through - a design process with public notice and an environmental process with public notice.

The municipal role is to have input. "This isn't in any way diminishing existing eminent domain rights that are already on the books and followed by DOTPF."

SENATOR OLSON wanted to make sure that a public individual who has to hire an attorney to represent him is protected against eminent domain proceedings that may be used unduly against him.

MR. OTTESEN reiterated that eminent domain is a very heavy-handed power of government. Consequently, both state and federal law heavily regulate the application of that power. He spoke with the right-of-way chief in the northern region who was in the department when this was passed in 1975 who said that DOT was being heavy handed with its replats at that time. It was taking property; it wasn't filing the paperwork with local governments or replacing monuments and property stakes that were officially installed by registered land surveyors. The analysis was a reaction to the wrongs of the department 30 years ago. "We don't want to do away with those protections...."

SENATOR OLSON said his last concern is if there is any resistance from the municipalities on the proposed legislation.

MR. OTTESEN replied that this legislation literally started 10 days ago and this is its first public hearing.

CO-CHAIR COWDERY moved to pass CSSB 382(TRA) from committee with individual recommendations and accompanying fiscal note and asked for unanimous consent. There were no objections and it was so ordered.

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2:45 - 2:47 - at ease

^#SB371

SB 371-POWERS/DUTIES DOTPF

CO-CHAIR WAGONER announced SB 371 to be up for consideration.

SENATOR GARY STEVENS, sponsor, said this bill cleans up an obsolete statute at the request of the DOTPF and Attorney General. An Executive Order (EO) created an Alaska Transportation Council in the 1970s, which directed the DOT commissioner to consult with the council on all transportation projects, but the council never was appointed. The state is not complying with this old statute and it could be the basis for

litigation. SB 371 amends the statute and makes it retroactive as well. Other changes allow the commissioner to study alternative fuels for use in state vehicles and changes annual requirements to periodic, which will allow the commissioner discretion in choosing sensible times.

SENATOR LINCOLN asked what projects are being held up because of litigation on this issue.

SENATOR GARY STEVENS answered the Iliamna bridge project is being held up for one.

MR. OTTESEN elaborated that the EO became law years ago when the legislature did not take action to keep it from becoming law - by default. It never underwent an approval process. The bridge lawsuit has three issues: the council was not formed, DOTPF didn't consider cost and benefits at the time the project was selected and that the project was baselined [this project was treated as on-going in the Southwest Alaska Transportation Plan and it shouldn't be subject to additional planning]. The court found in favor for the state on two of those arguments - having no council and baselining, but the cost and benefits had to be fully evaluated. He explained that the department didn't feel at that time that rural projects would ever measure up to urban projects if they were measured by the same test, simply because rural projects serve far fewer people. Rural and urban projects didn't have the same set of questions on the department's scoring criteria. This is the fault the court found.

The department is backing up in its Southwest Transportation Plan and selecting this bridge and one other that was also under construction. It is reconsidering costs and benefits for both projects, which will cost about \$50,000.

Our fear is that this particular legal theory, which now has been upheld by the courts, can be used on many other projects, including projects that are under construction right now, projects that are in the design pipeline and will soon be under construction.

He explained that his major concern was that selecting only the most cost effective projects would leave out all rural projects and would make 40 percent of Alaska's population transportation orphans.

SENATOR LINCOLN said she didn't want to see the state without performance standards for rural Alaska facilities in reference to language on page 3, line 24.

MR. OTTESEN answered that years ago the department was the architect of school district facilities in rural Alaska, but authority was transferred typically to the local governments, rural education attendance areas or boroughs 15 years ago.

SENATOR LINCOLN said that thankfully there were not a lot of boroughs out there, but she didn't know if anyone was identified as the responsible party to accomplish what the bill is deleting.

MR. OTTESEN replied that he understood her concern, but the bill before the committee is truly housekeeping and isn't at the heart of what the department is doing to try to save rural transportation projects. "We're really concerned about the cost and benefit language and how that may be applied to projects all across the state."

SENATOR THERRIAULT asked if the same result could be accomplished by just passing a letter of intent with the legislation.

MS. SUSAN YURIG, Department of Law (DOL), said that the language in the bill protected regulations from being exposed.

SENATOR LINCOLN moved Amendment 1 to reinsert the deleted section on page 3, line 24, through page 4, line 19. The sponsor didn't object. There were no objections and it was so ordered.

MR. MARK HICKEY, representing the Lake and Peninsula Borough, supported SB 371 and said the focus of the lawsuit is on a project that has been this borough's number one priority for over 10 years. It completes a road connection between three communities that has tremendous benefits in terms of saving transportation costs and lives. He said the goal of the Executive Order was to give DOT a strong presence working on public facilities. After the change in planning authority, the department has not had the facilities technical expertise for the last 15 years. It has had all federally funded and no state funded projects.

CO-CHAIR WAGONER commented that often the cost benefit analysis overshadows issues of loss of life and safety and the socio-

economic impact of a project. "I think that should have just as much weight as the cost benefit analysis in some cases."

MR. JEFF PARKER, representing Bob Gillam and Trout Unlimited presented the other side of the issue, which is whether a cost benefit analysis needs to be present in statute for all projects or amended. He said this legislation would not block every project under construction, because the requirement to consider cost and benefits applies only to new projects.

The second issue is that the current statute does not require a positive cost benefit ratio; it only requires the department to consider it. He referenced attachment D in his letter, the Southwest Regional Transportation Plan that gives the cost effectiveness data on five proposed projects in the Lake and Peninsula Borough, and it shows the Williams Port to Pyle Bay road coming out as paying for itself. He asked the committee why a project like Iliamna Nondalton should be funded, with a cost benefit ratio of 0.26 instead of a project that comes out with a favorable cost benefit ratio.

He said there has been only one reported fatality in the last 15 years of someone drowning in the Nondalton area. The state trooper's report on that fatality says a snow machine went through the ice and the driver was inebriated. There is no evidence that the person was trying to cross the river from Nondalton to Iliamna. Mr. Ottesen conceded that was the only death. A much more effective use of dollars from a safety point of view would be to build a bridge between old and new Naknek.

I am convinced you will end up funding projects that will not be well justified if you abandon this requirement from state law. It simply makes sense, particularly in times of budgetary constraint....

He referred the committee to section (1)(b) of the bill that affirms the validity of the State Transportation Planning process and asked, "Affirmed with respect to what?" He didn't think that question was answered at all. Further, he pointed out that Mr. Hickey was commissioner when portions of that money was spent, but the project didn't get completed before his successor found that it was economically unjustified. "If you want to continue that process of wasting money on poorly justified projects, then go for the bill."

TAPE 04-15, SIDE A

MR. PARKER noted copies of cost benefit analysis that he had sent the committee and asked if it didn't make sense for the department to have that kind of information.

CO-CHAIR WAGONER said he just received the information today and wanted to hold the bill for further review. There being no further business to come before the committee, he adjourned the meeting at 3:35 p.m.

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