

ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE

March 14, 2006
1:30 p.m.

MEMBERS PRESENT

Representative Jim Elkins, Co-Chair
Representative Carl Gatto, Co-Chair
Representative Vic Kohring
Representative Mark Neuman
Representative Bill Thomas
Representative Mary Kapsner

MEMBERS ABSENT

Representative Woodie Salmon

COMMITTEE CALENDAR

HOUSE BILL NO. 434

"An Act authorizing the commissioner of transportation and public facilities to participate in certain federal highway programs and relating to that authorization; relating to powers of the attorney general to waive immunity from suit in federal court related to those programs; and providing for an effective date."

- MOVED HB 434 OUT OF COMMITTEE

HOUSE BILL NO. 491

"An Act authorizing the Alaska Railroad Corporation to issue revenue bonds to finance rail transportation projects that qualify for federal financial participation; and providing for an effective date."

- MOVED HB 491 OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 26

Requesting the United States Senate to ratify Annex VI of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978.

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 434

SHORT TITLE: AUTHORIZE HWY PROGRAM PARTICIPATION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/08/06 (H) READ THE FIRST TIME - REFERRALS
02/08/06 (H) TRA, JUD, FIN
03/14/06 (H) TRA AT 1:30 PM CAPITOL 17

BILL: HB 491

SHORT TITLE: ALASKA RAILROAD REVENUE BONDS

SPONSOR(S): TRANSPORTATION

03/08/06 (H) READ THE FIRST TIME - REFERRALS
03/08/06 (H) TRA, FIN
03/14/06 (H) TRA AT 1:30 PM CAPITOL 17

WITNESS REGISTER

JOHN MACKINNON, Deputy Commissioner
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska
POSITION STATEMENT: Presented HB 434.

PETER PUTZIER, Senior Assistant Attorney General
Department of Law (DOL)
Juneau, Alaska
POSITION STATEMENT: Answered questions regarding HB 434.

PAT GAMBLE, President and Chief Executive Officer
Alaska Railroad Corporation
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 491.

ACTION NARRATIVE

CO-CHAIR CARL GATTO called the House Transportation Standing Committee meeting to order at 1:30:59 PM. Representatives Kohring, Neuman, Elkins, and Gatto were present at the call to order. Representatives Thomas and Kapsner arrived as the meeting was in progress.

HB 434-AUTHORIZE HWY PROGRAM PARTICIPATION

1:36:33 PM

CO-CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 434, "An Act authorizing the commissioner of transportation and public facilities to participate in certain federal highway programs and relating to that authorization; relating to powers of the attorney general to waive immunity from suit in federal court related to those programs; and providing for an effective date."

1:37:19

JOHN MACKINNON, Deputy Commissioner, Department of Transportation & Public Facilities (DOT&PF), referred to HB 434 as a National Environmental Policy Act of 1969 (NEPA) delegation bill. He said the passage of the Safe, Accountable, Flexible and Efficient Transportation Equity Act—a Legacy for Users (SAFETEA-LU) highway bill in August included a six-year pilot program for five states to assume NEPA delegation. He paraphrased from the following [original punctuation provided]:

SAFETEA-LU includes a NEPA delegation pilot program for five states - Alaska, California, Oklahoma, Ohio, and Texas. Under the program, the five states are eligible to apply for delegation of the Secretary of Transportation's (Secretary) NEPA responsibilities for one or more highway projects within the state. The state may also apply for delegation of some or all of the Secretary's review and consultation responsibilities under other Federal environmental laws. The scope of delegation will be determined through application to the Secretary and execution of a Memorandum of Understanding (MOU).

Time Frame:

Duration of the pilot program is six years from enactment of SAFETEA-LU. Unless extended by statute, the pilot terminates on August 10, 2011.

The Secretary is required to promulgate regulations to establish delegation application requirements. Rulemaking is required to be complete within 270 days of the Act. Rulemaking is currently behind schedule.

The State may not submit its application until:
Rulemaking is complete, and
The State must advertise the application and solicit public comment.

After application is accepted, the State and Secretary will enter into an MOU.

Once the MOU is executed, delegation may proceed.

Delegation Options:

NEPA delegation is limited to highway projects. The term includes roads, streets, and parkways, rights-of-way, bridges, and protective structures.

NEPA delegation may be programmatic, or for specific, identified projects. The State has broad latitude to determine the FHWA environmental responsibilities it would like to assume (i.e. Ces, Eas, EISS, Section 4(f)).

The State intends to request delegation for all of the Secretary's environmental review and consultation responsibilities under other Federal environmental laws (examples include Section 106 of the National Historic Preservation Act, and Section 7 of the Endangered Species Act).

NEPA delegation is limited to environmental decision-making. It does not extend to engineering decisions.

Requirements and Responsibilities:

Under delegation, the State would assume sole responsibility and liability for its NEPA actions and decisions and would be subject to Federal court jurisdiction. To receive delegation, the State is required to waive its 11th Amendment sovereign immunity from suits in Federal court for decisions under NEPA.

The State will be required to comply with all applicable Federal laws, Executive Orders, regulations, policies and guidance for the responsibilities it assumes.

The State's delegation programs will be audited, twice annually for the first two years, annually thereafter. The audits will be available for public comment.

The Secretary is required to submit an annual report to Congress on the pilot program.

The Secretary may terminate any state's participation in the pilot program at any time for cause.

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CO-CHAIR ELKINS asked if it will make the process faster and cheaper because it's all contained within the state.

MR. MACKINNON said it is easier to move a piece of paper on a state desk. The state has a great relationship with the Federal Highway Administration, "but we can also improve the process."

CO-CHAIR ELKINS asked how this applies to the ferry system.

MR. MACKINNON said for any federal dollar spent on the ferries, the state has to go through NEPA documentation, usually a simple one. New vessels require a NEPA process, as does brush cutting along roads when done by the federally-funded SAGA program. He said he doesn't know all the rules, but the state is serious about taking over the program, and this will allow it to happen.

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REPRESENTATIVE NEUMAN asked about the state assuming liability for NEPA actions.

PETER PUTZIER, Senior Assistant Attorney General, Transportation Section, Department of Law, said the waiver is required, and it means the state would be subject to suit in federal court and would have to defend its actions. The waiver could be made on a case or project basis, or it could be done more broadly.

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REPRESENTATIVE NEUMAN asked if the sovereign immunity has to do with lawsuits against the state and the implications.

MR. PUTZIER said the state will be standing in the shoes of FHWA—taking the same actions and being subject to the same standards. A lawsuit over a poor EIS could occur, he noted.

CO-CHAIR GATTO asked how much money the federal government will send to the state because of the bill.

MR. MACKINNON said it will be paid for out of project funds. The state's environmental staff will be charging out to each project, as is done currently. There is a state match as in all federal highway funds, he stated. "These are all federal receipts to pay for the program," he said.

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CO-CHAIR GATTO asked about the six-year pilot program.

MR. MACKINNON said the state averages one to two environmental impact statements, ten environmental assessments, and about a hundred categorical exclusions. There are a "couple" top-level positions required in the department, he stated. Some would be contracted out, "but we need to have them on staff as a firewall between the department and the department." This will be the same function "as fed highways." Judgments on NEPA lawsuits have been very, very small, he said. NEPA is a procedural law and a violation would be for failure to follow a particular procedure, "in which case a judge would order us to go back and hold a couple of meetings or conduct another study."

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REPRESENTATIVE NEUMAN said the fiscal note for FY07 through FY11 is \$637.4 million, "and it doesn't increase." [He later corrected that figure to \$637,400.] He noted that the costs of business always go up and he asked if more will be needed later.

MR. MACKINNON said, "This would not be general fund; we would not be coming back for more state money on this." He said these are federal program receipts that will pay for the positions and added there probably ought to be a cost-of-living adjustment.

REPRESENTATIVE THOMAS asked if the money is from Shakwak funds.

MR. MACKINNON said it would be all federal funds.

REPRESENTATIVE THOMAS asked about liability immunity.

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MR. MACKINNON said it refers to projects "where we started and finished the environmental documentation. Any ongoing EIS would continue to be in fed highway's hands."

REPRESENTATIVE THOMAS said if it includes the [Juneau to Haines] road project, he doesn't like the bill, because "I got communities that are all against it and it doesn't make sense to me to build this road, and I don't want to sit here in a committee voting for a bill that does exactly what the people don't want right now."

MR. MACKINNON said, "That particular project, a couple of bridge projects we know about, I can think of dozens of projects where the environmental document has already started under the hands of federal highways and will continue in their hands, and continue in their court, not in the state's."

REPRESENTATIVE THOMAS surmised that the bill won't keep people from suing. "I don't like Shakwak money taken out of the marine highway budget to build the road."

MR. MACKINNON said that road started under federal oversight and will continue that way.

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REPRESENTATIVE NEUMAN moved to report HB 434 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 434 was reported out of the House Transportation Standing Committee.

HB 491-ALASKA RAILROAD REVENUE BONDS

[1:56:05 PM](#)

CO-CHAIR GATTO announced that the final order of business would be HB 491, "An Act authorizing the Alaska Railroad Corporation to issue revenue bonds to finance rail transportation projects that qualify for federal financial participation; and providing for an effective date."

PAT GAMBLE, President and Chief Executive Officer, Alaska Railroad Corporation, said state railroad transfer statute requires the approval of the legislature for selling bonds. The bill is a package for bond approval, he explained.

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CO-CHAIR GATTO asked what the bonds will be used for.

MR. GAMBLE said the bill is to accelerate an effort that began in 1996 to recapitalize the Alaska Railroad infrastructure, which is the main track. Over the last ten years there has been a work program to incrementally improve the main line, and now a mechanism through SAFETEA-LU [Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users] allows the improvements to be accelerated with the use of bonding.

CO-CHAIR GATTO asked if wooden ties are being replaced with concrete ties.

MR. GAMBLE said yes, where needed. He said these are capital grant receipt revenue bonds in aggregate not to exceed \$165 million. The project is to rehabilitate substandard or potentially unsafe tracks, which is the railroad's core work effort using federal dollars since 1996. He said, "We began receiving federal railroad administration dollars through appropriations from Senator Stevens, and we went on to the federal formula fund process...because we move passengers on a regularly-scheduled year-round basis." He said the entitlement has increased over the years, and between those and net earnings, "we have put this money in a very concerted way into that mainline track." He added that about \$220 million have been put "into that one specific area...primarily from Anchorage to Fairbanks, but, secondarily, from Seward to Anchorage."

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MR. GAMBLE showed a graph of the derailments between 1996 and 2005, which is primarily due to poor track condition. There are huge costs associated with derailments on the main track, but the trend is going in the right direction, he stated. The train accident rate is [decreasing] as a result of mainline investments. He said the money will allow the welding of rail and "the click clack will be gone" as well as the battering to the joints, which can cause dangerous breaks and derailments.

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CO-CHAIR GATTO asked why the rail is not welded.

MR. GAMBLE said the rails weren't welded until four years ago when an expert was hired who debunked the idea that rails could not be welded in cold climate conditions.

REPRESENTATIVE NEUMAN asked if the need to haul freight for the gas line created this priority.

PAT GAMBLE said that has been a goal of the Alaska railroad for the five years that he has been there.

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CO-CHAIR GATTO said he thought wooden ties were better but was told concrete ties are more effective in preventing derailments.

MR. GAMBLE said he is not proposing eliminating wooden ties; concrete ties are not needed everywhere, but they are a benefit on the curves where accidents occur. Concrete ties and welded rails provide stability preventing the flux that causes wheels to pop off. Wooden ties will be replaced cyclically, he said.

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MR. GAMBLE said there are 3,200 ties per mile. The project also includes replacing river rock with granite ballast for a more stable roadbed. He said gas pipe will be heavy—620 pounds per foot, so “we’re moving up to 140-pound rail.” There will also be a collision avoidance program to reduce human error, he said.

CO-CHAIR GATTO said the size of the pipe is unknown, but he asked if the heaviest pipe will be heavier than a load like rocks, for example.

MR. GAMBLE said he is predicting the size of the pipe, and the track will be capable of handling a least one piece.

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MR. GAMBLE said bonding will allow for faster improvements. He said 300,000 carloads of hazardous material traverse “some pretty sacred country,” so he believes the public would demand this work. This debt “actually creates a financing structure that puts some real rigor and discipline into our capital program.” The program will not vary each year as it has because of the percentage of revenue going to paying the debt service.

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REPRESENTATIVE NEUMAN said a Wasilla realignment project has been discussed, and he asked if any of those funds are included. The people in Wasilla want the track moved west to go around town, and he said it is an excellent way to get it near Pt. McKenzie for coal shipping.

MR. GAMBLE said the Knik Bridge is not part of this funding.

REPRESENTATIVE NEUMAN asked for clarity of costs for track upgrades and if some of that money could be used for a spur.

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MR. GAMBLE said the track realignment between Anchorage and Wasilla has been done. The Wasilla bypass will take up to \$200 million and the route is still being chosen. A feasibility study is underway, and for the last four years there has been no consensus. Prices of land in that area are going up and the railroad is running out of options, he noted. Engineering solutions may need to be employed that don't move the railroad outside of Wasilla but raises it over the roads. Representative Don Young told him he supports putting the railroad on the [proposed Knik] bridge even though it is unaffordable. Senator Ted Stevens would like to see the rail go across the bridge, he said, and the railroad is looking at that possibility.

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REPRESENTATIVE THOMAS said people create a community around the railroad and now they don't want the railroad nearby.

CO-CHAIR ELKINS asked if the [proposed Knik] bridge has to be built to handle the railroad now.

MR. GAMBLE opined that now is the time to do the planning.

CO-CHAIR GATTO noted that there is very little room for cars at the Wasilla depot, and the population is out of control. One thought is to elevate the track, which is right in front of a condominium, but he asked about tunneling instead.

MR. GAMBLE said it can be done, depending on the soil and water.

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CO-CHAIR GATTO said it is only one intersection that is such a problem in Wasilla.

MR. GAMBLE said there are water table problems so it can't go underground. If all the freight went across the [proposed] bridge, then Wasilla would only have the less frequent passenger trains, which may solve the problem.

CO-CHAIR GATTO said the gas line is at least six years away, "and I can't imagine what that intersection will look like."

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MR. GAMBLE said the railroad will continue the feasibility study of that intersection, but surmised it will take "an ugly scene at that crossing to trigger some action." It is a city problem and a borough solution, and things are stymied. He said SAFETEA-LU allowed the railroad a 6-fold increase in federal entitlements. The federal funds are guaranteed in perpetuity, so the full faith in credit of the Alaska Railroad is not at risk. He said the railroad will spend that money, "whether we spend it on debt service or whether we spend it incrementally over an extended period of time." The cost of materials are going up, so the purchases can be made in bulk and stored. He said passenger service is increasing, requiring the line to be safe and smooth. There will be no impact to other capital programs, he stated.

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REPRESENTATIVE THOMAS said, so this won't extend the railroad?

MR. GAMBLE said no.

CO-CHAIR GATTO asked the distance to any Canadian rail line.

MR. GAMBLE said it is about 1,000 miles to their railroad.

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MR. GAMBLE said the proposed financing is up to \$165 million, with three bond sales over the next six years. Each would have to be approved by the railroad board of directors. The year with the largest debt service would be 49 percent of available funds. He said if Senator Ted Stevens gives the railroad another earmark, "we would see the need for that \$165 million to come down to a lower number; the debt service would reflect that." He sees no event that would have the railroad coming back to the legislature for more money.

CO-CHAIR GATTO said the Europeans have been using welded railroads since he learned how to walk, and they have bullet trains. He predicted a savings for using welded railroads.

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MR. GAMBLE said the railroad workers are local, "and there's a momentum there...that is not refreshed from the outside." There was a resistance to going to welded rails. Now there are experienced outside workers with a host of new ideas, he said.

CO-CHAIR ELKINS asked if the rails are longer when welded.

MR. GAMBLE said yes; they are built to half-mile lengths, and the curve is put into it. The concrete tie holds it. The acuteness of the curves has been reduced, he added. Therefore the average velocity has gone up steadily.

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MR. GAMBLE said the railroad gets very little homeland security money. It all goes to the state, he noted.

REPRESENTATIVE NEUMAN referred to the mainline density history and the million gross tons from Portage to Anchorage and to Matanuska-Susitna. He asked if that would change if there was a line to Pt. Mackenzie, "assuming that we would be doing coal down through there." He asked about the economic development opportunities.

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MR. GAMBLE said he can provide that information.

REPRESENTATIVE THOMAS moved to report HB 491 out of committee with individual recommendations and with no accompanying fiscal notes. There being no objection, HB 491 was reported out of the House Transportation Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at [2:39:11 PM](#).