

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

January 16, 2008

1:04 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Max Gruenberg

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 139

"An Act repealing a limitation on the liability of certain airfield owners or operators."

- MOVED HCS SSSB 139(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 139

SHORT TITLE: LIABILITY FOR AIRPORTS AND AIRSTRIPS

SPONSOR(S): SENATOR(S) OLSON

03/28/07	(S)	READ THE FIRST TIME - REFERRALS
03/28/07	(S)	TRA
04/12/07	(S)	TRA AT 1:30 PM BUTROVICH 205
04/12/07	(S)	-- MEETING CANCELED --
04/18/07	(S)	SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
04/18/07	(S)	TRA
04/26/07	(S)	TRA AT 1:30 PM BUTROVICH 205
04/26/07	(S)	Moved SSSB 139 Out of Committee
04/26/07	(S)	MINUTE(TRA)
04/27/07	(S)	TRA RPT 5DP
04/27/07	(S)	DP: WIELECHOWSKI, COWDERY, KOOKESH, OLSON, WILKEN,
05/02/07	(S)	TRANSMITTED TO (H)
05/02/07	(S)	VERSION: SSSB 139
05/03/07	(H)	READ THE FIRST TIME - REFERRALS

05/03/07	(H)	TRA
05/10/07	(H)	TRA AT 1:30 PM CAPITOL 17
05/10/07	(H)	Moved Out of Committee
05/10/07	(H)	MINUTE(TRA)
05/11/07	(H)	TRA RPT 5DP
05/11/07	(H)	DP: JOHNSON, KOHRING, FAIRCLOUGH, SALMON, JOHANSEN
05/14/07	(H)	BEFORE THE HOUSE
05/14/07	(H)	REFERRED TO JUDICIARY
01/16/08	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

SENATOR DONNY OLSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SSSB 139.

DAVID GRAY, Staff
to Senator Donny Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of SSSB 139, provided comments on behalf of the sponsor, Senator Olson.

TOM GEORGE, Alaska Regional Representative
Aircraft Owners and Pilots Association (AOPA)
Fairbanks, Alaska

POSITION STATEMENT: Provided comments during discussion of SSSB 139, Version E, and suggested a change.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:04:37 PM](#). Representatives Coghill, Samuels, Lynn, Holmes, Dahlstrom, and Ramras were present at the call to order.

SB 139 - LIABILITY FOR AIRPORTS AND AIRSTRIPS

[1:06:33 PM](#)

CHAIR RAMRAS announced that the only order of business would be SPONSOR SUBSTITUTE FOR SENATE BILL NO. 139, "An Act repealing a limitation on the liability of certain airfield owners or operators." [Included in members' packets was a proposed House

committee substitute (HCS) for SSSB 139, Version 25-LS0792\E, Bailey, 1/16/08.]

[1:08:32 PM](#)

SENATOR DONNY OLSON, Alaska State Legislature, sponsor, relayed that SSSB 139 addresses the issue of aviation, which is very important to Alaska, and spoke of his experiences as a pilot experiencing engine trouble. The thrust of the bill is to encourage private landowners in rural parts of the state to create aircraft landing areas. He noted that there is the temptation by new, oftentimes young, pilots to test the limits of themselves and their aircraft. This has resulted in many landowners refraining from creating landing areas. Referring to AS 09.65.093(b)(1)-(2)'s requirements that to be exempt from civil liability one must mark - per Federal Aviation Administration (FAA) guidelines - the landing area as closed and list it as closed in FAA publications, he offered his belief that most people don't even know how to go about doing the latter and can't be bothered to maintain the aforementioned mark. The current statute is meant to apply to private, non state-maintained airports.

SENATOR OLSON said that it came to his attention that because of how the current statute reads, a man working in the insurance industry has been unable to get liability insurance for his landing area even though it is on his own land; SSSB 139 is meant to address these issues.

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DAVID GRAY, Staff to Senator Donny Olson, Alaska State Legislature, added on behalf of Senator Olson, sponsor, that because of concerns regarding SB 139, the sponsor introduced SSSB 139, which went so far as to simply delete subsection (b) altogether from AS 09.65.093, but it later became obvious that the bill still needed further work and so was referred to the House Judiciary Standing Committee.

CHAIR RAMRAS acknowledged that a conflict of interest could be perceived by some as applying to Senator Olson because he is a pilot.

The committee took an at-ease from 1:15 p.m. to 1:16 p.m.

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REPRESENTATIVE DAHLSTROM made a motion to adopt the proposed House committee substitute (HCS) for SSSB 139, Version 25-LS0792\E, Bailey, 1/16/08, as the work draft. There being no objection, Version E was before the committee.

REPRESENTATIVE SAMUELS - noting that Version E is in part proposing to change the word, "closed", as currently used in AS 09.65.093(b)(2), to the word "private" - questioned whether a liability would still exist under Version E if a private landowner doesn't designate his landing area as private.

MR. GRAY noted that subsection (a) of existing AS 09.65.093 provides that a person who without compensation constructs, maintains, or repairs an aircraft runway, airfield, or landing area can enjoy limited liability, whereas subsection (b) speaks about an owner or operator of an aircraft runway, airfield, or landing area. He surmised that the owner or operator of such a landing area would have to mark it and list it as directed via existing subsection (b)(1)-(2).

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REPRESENTATIVE SAMUELS, remarking on a possible conflict between subsections (a) and (b) of AS 09.65.093, surmised that subsection (a) would not apply to someone who did not construct the landing area but simply bought the land it was situated on at a later date. He asked what would happen with regard to liability in such a situation. Referring to AS 09.65.093(c) - which says, "The immunity from civil liability under (a) of this section does not limit the liability of an owner or operator of an aircraft runway, airfield, or landing area to a provider of flight services or its passengers under contract with the owner or operator" - he then asked what would happen with regard to liability in situations wherein one entity owns the landing area and another entity contracts to use it.

SENATOR OLSON, regarding the first question, offered his understanding that such a situation would be addressed via subsection (a). He said that the intent of the bill is to ensure that one would not have to mark a runway as closed or list it as closed in order to be eligible for limited liability.

REPRESENTATIVE SAMUELS noted, however, that if he were attempting to sue an owner of a landing area who did not list it as private, he would argue that subsection (b) overrides subsection (a). Currently subsection (a) simply grants limited liability, but subsection (b) has certain stipulations that must

be complied with in order for one to enjoy limited liability. Thus he is not sure, he relayed, which subsection would apply and how that would be determined.

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REPRESENTATIVE HOLMES referring to Version E's proposed subsection (b), posited that as it's currently written, it might also apply to the Ted Stevens Anchorage International Airport because currently subsection (a) grants limited liability only if one does not charge for using a landing area. Furthermore, unlike subsection (a), subsection (b) doesn't reference subsection (c) as an exception; therefore, she questioned, couldn't one have a very active runway and just mark it as private in order to enjoy the limited liability provided for in proposed subsection (b)? She said she wants to ensure that those who should have some duty to take care of a landing area because they are actually running a business and charging people for using the landing area are not being let off the hook with regard to liability.

MR. GRAY offered his recollection that subsection (c) was added to specifically address those who charge for the use of their private landing area, and acknowledged that the committee may wish to address this point further.

SENATOR OLSON, in response to a question, offered that the original intent of providing limited liability was to encourage people to build airstrips on their private land, but since current statute is making it hard for people to even obtain liability insurance, the intent of the bill now is to enable people to acquire such insurance for their private landing areas.

CHAIR RAMRAS surmised that at issue is what specific language would actually accomplish that goal.

REPRESENTATIVE HOLMES suggested that since subsection (b) is being changed to refer to private landing areas as opposed to closed landing areas, then perhaps simply adding a reference to subsection (c) as an exception would suffice.

SENATOR OLSON suggested also altering subsection (c) such that it then references subsection (b).

REPRESENTATIVE SAMUELS pointed out, however, that subsection (a) still only refers to one who constructs, maintains, or repairs a

landing area, whereas subsection (b) only refers to one who owns or operates a landing area. He then questioned what the difference is between such persons.

SENATOR OLSON offered that a person under subsection (a) could simply be someone who comes in with heavy equipment one time and does something to the landing area, whereas a person under subsection (b) [has an ongoing relationship] with the landing area. He offered his belief that all mines operating out in the Bush have some sort of landing area on the property.

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TOM GEORGE, Alaska Regional Representative, Aircraft Owners and Pilots Association (AOPA), after noting that the AOPA serves about 4,200 Alaska members, offered that in addition to the airports that are operated by the Department of Transportation & Public Facilities (DOT&PF), there are many other runways, airstrips, and landing areas [in Alaska], all of which are very important to the AOPA's members because they provide safety in cases of emergency, access to public lands, and "reliever space" for municipal- and state-operated airports. Although existing statute is intended to put some limits on civil liability for people who are willing to support such facilities, either on public or private land, the current language in subsection (b) has led to confusion and has left some people feeling that they must close their airport in order to enjoy limited liability.

MR. GEORGE offered his understanding that the original intent of subsection (b) was to deal with the issue of landing areas that are used seasonally and that may not have anyone maintaining them throughout the year; the thought at the time was that if "you 'X' the runway and if you had it listed in the publications," then that exemption from liability would protect a person, but the reality is that with regard to the FAA, landing areas cannot simply be switched on and off, and so the solution attempted via subsection (b) is unworkable. He said that as he reads Version E, one can only enjoy limited liability if one lists or charts a landing area as private. However, the FAA won't guarantee that it will chart an airstrip as private because it will only do so if there is room on the chart. In other words, although Version E is attempting to provide a protection, that protection will only apply if one can get the FAA to take a particular action - an action that the FAA may not be willing to take.

MR. GEORGE suggested that a solution, therefore, would be to simply delete AS 09.65.093(b) and add to AS 09.65.093(a) language that says "owner-operator". He added, "I believe the intent is ... to say that people who are operating their airports without compensation ... should be exempt."

SENATOR OLSON offered his understanding that such a change would also require adding a majority of the language currently in subsection (b) to subsection (a).

MR. GEORGE offered his belief, though, that simply changing subsection (a) such that it would then in part read, "a person who without compensation owns, operates, constructs, maintains, ..." would be sufficient.

SENATOR OLSON said that such a change would be fine with him as long as it addresses the committee's concerns.

REPRESENTATIVE SAMUELS surmised that the suggested change would ensure that an owner or operator of a non-commercial landing area would not be liable except in cases of gross negligence [or recklessness or intentional misconduct].

REPRESENTATIVE HOLMES, in response to a question, offered her belief that such a change would address members' concerns.

The committee took an at-ease from 1:40 p.m. to 1:53 p.m.

[1:53:01 PM](#)

REPRESENTATIVE HOLMES made a motion to adopt Conceptual Amendment 1, to add a new section to the bill amending AS 09.65.093(a) such that after the word, "compensation", the words, "owns, operates," are added; to delete all of AS 09.65.093(b); and to [re-letter] the statute accordingly.

CHAIR RAMRAS objected for the purpose of discussion.

SENATOR OLSON characterized Conceptual Amendment 1 as a good amendment.

MR. GEORGE indicated that Conceptual Amendment 1 would address the AOPA's concerns.

CHAIR RAMRAS removed his objection. [Although nothing further was said, Conceptual Amendment 1 was treated as adopted.]

REPRESENTATIVE DAHLSTROM moved to report the proposed HCS for SSSB 139, Version 25-LS0792\E, Bailey, 1/16/08, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS SSSB 139(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:56 p.m.