

**ALASKA STATE LEGISLATURE  
HOUSE TRANSPORTATION STANDING COMMITTEE**

March 11, 2008

5:08 p.m.

**MEMBERS PRESENT**

Representative Kyle Johansen, Chair  
Representative Mark Neuman, Vice Chair  
Representative Anna Fairclough  
Representative Craig Johnson  
Representative Wes Keller  
Representative Mike Doogan

**MEMBERS ABSENT**

Representative Woodie Salmon

**OTHER LEGISLATORS PRESENT**

Representative Andrea Doll

**COMMITTEE CALENDAR**

CS FOR SENATE JOINT RESOLUTION NO. 12(STA)

Requesting that Alaska be exempt from changes to the interpretation of the Passenger Vessel Services Act of June 19, 1886, proposed by the United States Department of Homeland Security, Bureau of Customs and Border Protection, affecting cruise itineraries of foreign-flagged vessels transporting passengers to ports in Alaska; or, if Alaska is not exempted, opposing the proposed changes to the interpretation of that Act.

- MOVED CSSJR 12(STA) OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 294

"An Act establishing the division of marine transportation; establishing the Alaska Marine Transportation Authority Board and the position of director of the division of marine transportation, and assigning the powers and duties of each; making conforming amendments; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SJR 12

SHORT TITLE: CRUISE SHIP PORT TIMES: JONES ACT

SPONSOR(s): SENATOR(s) THERRIAULT

01/16/08 (S) READ THE FIRST TIME - REFERRALS  
01/16/08 (S) STA  
02/26/08 (S) STA AT 9:00 AM BELTZ 211  
02/26/08 (S) Scheduled But Not Heard  
02/28/08 (S) STA AT 9:00 AM BELTZ 211  
02/28/08 (S) Moved CSSJR 12(STA) Out of Committee  
02/28/08 (S) MINUTE(STA)  
02/29/08 (S) STA RPT CS 4DP NEW TITLE  
02/29/08 (S) DP: MCGUIRE, FRENCH, GREEN, BUNDE  
03/04/08 (S) TRANSMITTED TO (H)  
03/04/08 (S) VERSION: CSSJR 12(STA)  
03/05/08 (H) READ THE FIRST TIME - REFERRALS  
03/05/08 (H) TRA  
03/11/08 (H) TRA AT 5:00 PM CAPITOL 17

BILL: HB 294

SHORT TITLE: MARINE TRANSPORTATION: BOARD & DIVISION

SPONSOR(s): REPRESENTATIVE(s) WILSON, LEDOUX, SEATON

01/04/08 (H) PREFILE RELEASED 1/4/08  
01/15/08 (H) READ THE FIRST TIME - REFERRALS  
01/15/08 (H) TRA, FIN  
02/25/08 (H) SPONSOR SUBSTITUTE INTRODUCED  
02/25/08 (H) READ THE FIRST TIME - REFERRALS  
02/25/08 (H) TRA, FIN  
03/11/08 (H) TRA AT 5:00 PM CAPITOL 17

**WITNESS REGISTER**

HEATHER BRAKES, Staff  
to Senator Gene Therriault  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented the sponsor statement for SJR 12 on behalf of Senator Therriault.

JOHN BINKLEY, President  
Alaska Cruise Association  
Fairbanks, Alaska

**POSITION STATEMENT:** Supported CSSJR 12(STA).

RON PECK, President  
Alaska Travel Industry Association (ATIA)

Anchorage, Alaska

**POSITION STATEMENT:** Supported SJR 12.

CHRIS POAG, Assistant Attorney General  
Commercial/Fair Business Section  
Civil Division (Juneau)  
Department of Law (DOL)  
Juneau, Alaska

**POSITION STATEMENT:** During hearing on CSSJR 12(STA), answered questions.

REPRESENTATIVE PEGGY WILSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As co-prime sponsor, presented the sponsor statement for SSHB 294.

REPRESENTATIVE PAUL SEATON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As co-prime sponsor, presented information regarding SSHB 294.

CLIFF STONE, Staff  
to Representative Peggy Wilson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented the sectional summary for HB 294.

FRED YATES  
Juneau, Alaska

**POSITION STATEMENT:** During hearing on HB 294, suggested that developing a strategic plan for the Alaska Marine Highway System would be the way to fix the problems.

JERRY MCCUTCHEON  
Anchorage, Alaska

**POSITION STATEMENT:** Testified that HB 294 is not a good bill.

ALBERT JUDSON  
Juneau, Alaska

**POSITION STATEMENT:** Opposed HB 294.

#### **ACTION NARRATIVE**

**CHAIR KYLE JOHANSEN** called the House Transportation Standing Committee meeting to order at [5:08:02 PM](#). Representatives Fairclough, Johnson, Keller, Doogan, and Johansen were present at the call to order. Representative Neuman arrived as the meeting was in progress. Also present was Representative Doll.

SJR 12-CRUISE SHIP PORT TIMES: JONES ACT

[5:08:02 PM](#)

CHAIR JOHANSEN announced that the first order of business would be CS FOR SENATE JOINT RESOLUTION NO. 12(STA), Requesting that Alaska be exempt from changes to the interpretation of the Passenger Vessel Services Act of June 19, 1886, proposed by the United States Department of Homeland Security, Bureau of Customs and Border Protection, affecting cruise itineraries of foreign-flagged vessels transporting passengers to ports in Alaska; or, if Alaska is not exempted, opposing the proposed changes to the interpretation of that Act.

[5:08:15 PM](#)

HEATHER BRAKES, Staff to Senator Gene Therriault, Alaska State Legislature, presented the sponsor statement for SJR 12 on behalf of Senator Therriault. She stated that in November [2007], the U.S. Department of Homeland Security, Bureau of Customs and Border Protection, published a new interpretation of the Passenger Vessel Services Act of 1886. This new interpretation would require foreign-flagged cruise ships to spend [at least] 48 hours in foreign ports and that the period of time spent in foreign ports amount to more than 50 percent of the total time spent in U.S. ports of call. The interpretation would also [permit] cruise ship passengers to disembark at the foreign port.

MS. BRAKES said the cruise industry brings more than one million passengers to Alaska each year and provides over 40,000 jobs, a significant contribution to the state's economy. This new interpretation would have a devastating impact on many jobs and Alaskan-owned businesses in both coastal and inland communities throughout the state. According to the Department of Commerce, Community, & Economic Development, the expected impact to Alaska would be approximately 158 fewer voyages, approximately 349,000 fewer passengers, and an expected loss of \$222 million in direct spending. She said SJR 12 requests that Alaska be exempted from this new interpretation, and that the state opposes the interpretation if it is not exempted.

5:10:28 PM

REPRESENTATIVE FAIRCLOUGH inquired whether the ships currently servicing communities in Alaska can qualify for the exemption that is listed in the Federal Register, Volume 72, under III. Current Law and Policy, which states:

(2) has been issued a certificate of documentation with a coastwise endorsement or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

MS. BRAKES deferred to Chris Poag with the Department of Law.

5:11:45 PM

JOHN BINKLEY, President, Alaska Cruise Association, stated that the Alaska Cruise Association's membership is made up of cruise lines that bring visitors to Alaska, as well as Alaska business that rely on the cruise ship industry for their livelihood. He said the association supports CSSJR 12(STA) and thanks the committee for hearing the resolution and the sponsor for bringing it forward. The resolution would put the State of Alaska on record as opposing this proposed interpretation that would bring significant harm to many communities and businesses throughout the state. The economic impact from this rulemaking would be devastating to some Southeast Alaska communities. He urged the committee to support the resolution.

5:13:11 PM

REPRESENTATIVE FAIRCLOUGH reiterated her question about the Federal Register exemption.

MR. BINKLEY said the cruise lines' legal departments have studied this thoroughly and he has not heard any mention of an exemption that could be applied for. He related that the cruise lines are hopeful that one of the following actions will occur: 1) the rulemaking does not apply to Alaska and is only specific to Hawaii, 2) the rule does not occur, or 3) there is legislation clarifying that Alaska and other jurisdictions are exempt from the interpretation.

5:14:51 PM

RON PECK, President, Alaska Travel Industry Association (ATIA), informed the committee that ATIA is a trade association that advocates on behalf of its more than 1000 member businesses involved in the travel and visitor industry. He said ATIA wholeheartedly endorses SJR 12. The proposed reinterpretation would dramatically impact cruise itineraries in Alaska, the visitor experience in the state, and severely impact a multitude of independently-owned Alaska businesses throughout the state that work with the cruise industry in offering land-based experiences for cruise visitors. He read ATIA's unanimously-passed resolution opposing the proposed federal rule change.

[5:17:19 PM](#)

CHRIS POAG, Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Juneau), Department of Law (DOL), responded to Representative Fairclough's previous question about the Federal Register. He explained that what she is reading is the actual federal law. However, what is being reinterpreted, or formally interpreted by the proposed regulation packet, is the federal regulation. In the actual law the "or" being referred to does not modify the "and" that comes after (1), the first requirement.

[5:18:10 PM](#)

MR. POAG, in response to Representative Johnson, defined the term coastwise as meaning that when a ship stops at a U.S. port it is a coastwise stop. He said this is about foreign-flagged vessels stopping in U.S. ports and when they are allowed to stop under this federal law. This is a reinterpretation of a regulation that currently allows for these vessels to stop in Alaska because they return to the port they started from in Seattle, but made a stop in a nearby foreign port which is Vancouver [British Columbia, Canada]. However, the reinterpretation for the Hawaii ports is implicating, or arguably affecting, the Alaska vessels as well.

[5:19:22 PM](#)

CHAIR JOHANSEN closed public testimony.

REPRESENTATIVE NEUMAN moved to report CSSJR 12(STA) out of committee with individual recommendations and the accompanying fiscal notes. There being no objections, CSSJR 12(STA) was reported from the House Transportation Standing Committee. The committee took an at-ease from 5:20 p.m. to 5:22 p.m.

HB 294-MARINE TRANSPORTATION: BOARD & DIVISION

5:22:00 PM

CHAIR JOHANSEN announced that the next order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 294, "An Act establishing the division of marine transportation; establishing the Alaska Marine Transportation Authority Board and the position of director of the division of marine transportation, and assigning the powers and duties of each; making conforming amendments; and providing for an effective date."

5:22:34 PM

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, a co-prime sponsor of SSHB 294, paraphrased from the following portions of the written sponsor statement [original punctuation provided]:

The genesis of the Alaska Marine Highway System occurred in the late 40's when Steve Homer of Haines together with Robert Sommers and Associates started a commercial ferry service on Lynn Canal. Mr. Homer and Ray Gelotte, converted a surplus World War II, LCT-Mark 6 landing craft which they christened the *M/V Chilkoot*. The Chilkoot Motorship Lines operated from Tee Harbor in Juneau to Haines-Port Chilkoot and Skagway. Their business was purchased by the Territorial Board of Road Commissioners in 1951.

The *Chilkoot* continued to operate for another 6 years while the territorial government decided to build a new, but smaller ferry. Named the *M/V Chilkat*, this distinctive ferry was painted blue and gold and almost instantly dubbed the "Blue Canoe." This vessel began daily service between Juneau and the communities on the Lynn Canal in June of 1957. After Alaska became a state in 1959, voters approved bond issues totaling \$18 million to expand the ferry fleet. The first of the new ships to go into service was the *Malaspina* in January of 1963 when it sailed the Inside Passage to Ketchikan. That community and the rest of Southeast Alaska had been without regular passenger ship service for nearly a decade when the Alaska Steamship Company stopped such service in 1954. The Alaska Marine Highway System (AMHS) became official in 1963. The

system is under the auspices of the Alaska Department of Transportation and Public Facilities [DOT&PF].

Today there are a total of eleven vessels serving in the Alaska's Marine Highway fleet. Over the years this ferry system has expanded to include additional routes between Whittier and Valdez, to Kodiak, Seward, Homer, along the Aleutian chain, Prince Rupert in British Columbia, and between otherwise isolated Native villages.

The Alaska Marine Highway is part of the National Highway System (NHS), an interconnected system of routes that serve important national functions, e.g., security, commerce, and travel. The NHS is comprised of Interstate and defense routes, other principal arterial routes, and routes connecting to major intermodal facilities such as airports, ports, and ferry terminals. Our marine highway is an integral component of the intermodal system here in Alaska. The AMHS also falls under the mission and vision of the Federal Highway Administration (FHWA), in that this agency's goals include the protection and enhancement of the natural environment, and the communities affected by transportation which include mobility, safety, productivity, and national security.

The AMHS has historical significance as the main transportation link between many of Alaska's small, isolated coastal communities. Some consider the marine highway as their "life blood" to other areas of the state. This is particularly significant for those towns and villages that aren't connected by any roadway to the mainland. A healthy marine highway system has given every one of those communities the opportunity to expand the commerce of their region and provides a vital link for families, schools, and cultures to flourish.

During the past few years there has been an almost thoughtless erosion of service by the AMHS. This steady deterioration would almost seem a selfish or careless act if it wasn't so systematic in character. One of the problems with trying to manage a system like the marine highways is that typically every four years a new management team is established at [DOT&PF]. The appointed individuals have a varying degree of experience when it comes to managing an

organization of this nature. They are typically very enthusiastic and ask for indulgence while they learn the diverse nuances of the department. Unfortunately this evolution is sluggish and breeds mediocrity.

[5:28:18 PM](#)

In May of 2002, a study was released entitled: *Sustainability of the Alaska Marine Highway System*, which was prepared for the Southeast Conference by the McDowell Group. Two of the conclusions reached, speak volumes as to why AMHS is in trouble. One of the key issues expressed was that "the current operating model is outmoded and no longer adequately meets the needs of the users." Another conclusion stated that "the existing management structure may not be sufficient for the future..." The study also asserted that the AMHS had an economic impact statewide estimated at \$171 million in 1995. This lends credence to the arguments surrounding how important the AMHS is to local economies.

It is the intent of HB294 to solve this dilemma by establishing an Alaska Marine Transportation Authority Board. This Board will provide the steadfast command and control over the AMHS, the continuity if you will, that is essential throughout any transition of a new governor or any changes in the hierarchy at [DOT&PF].

REPRESENTATIVE WILSON pointed out that in the time she has been a legislator, four different people, and soon to be five, have controlled the Alaska Marine Highway System under three different governors. It is very difficult to have continuity when the person in charge keeps changing and this is one of the issues that HB 294 would change, she said. Under the bill an 11-member board would be appointed by the governor and one very unique duty of that board would be to select nominees for the position of director of the [Alaska Marine Highway System]. She quoted another statement from the McDowell Group's study:

Success over the long-term will require a carefully crafted combination of management, operations and funding strategies (and execution).

[5:29:17 PM](#)

REPRESENTATIVE NEUMAN moved that the committee adopt the proposed committee substitute (CS) for SSHB 294, labeled 25-LS1220\L, Kane, 3/10/08 ("Version L"), as the working document. There being no objection, Version L was before the committee.

[5:29:37 PM](#)

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, co-prime sponsor of SSHB 294, said the purpose of the bill is to ensure there is an effective marine highway system because it is a very integral part of all of coastal Alaska. He said the bill as originally introduced would have established an independent entity like the Alaska Railroad Corporation. However, because of the difficulty involved in that, a sponsor substitute was introduced to convert the Marine Transportation Advisory Board (MTAB) into an authority board. This board would select nominees for the marine highway director based on their expertise. Their names would then be submitted to the governor who would choose the new director. He said the hope is that this will get a long-range planning structure and provide a public advocate to the legislature for the Alaska Marine Highway System, things that are currently lacking.

[5:31:49 PM](#)

REPRESENTATIVE DOOGAN estimated there are roughly 10 coastal communities, of which 5 are included in the bill. He asked whether the excluded communities agree with the legislation.

REPRESENTATIVE WILSON responded that all of them do, although there may be a couple communities she has not yet talked to. By far and large, she has met with communities and discussed what should be put into the bill.

[5:32:38 PM](#)

REPRESENTATIVE DOOGAN drew attention to the legal opinion [from Brian Kane, Legislative Counsel, dated 3/10/08] regarding the bill's provision that board members "may only be removed by the governor for cause". He related that the opinion states this may constitute a usurpation of the executive power of appointment. He inquired whether the co-prime sponsors agree with the legal opinion and are agreeable to changing that provision to a way that does not cause constitutional problems.

REPRESENTATIVE SEATON replied the co-prime sponsors have an amendment to offer for resolving that problem, as well as a

second amendment to resolve problems in the section regarding contractual services. The second amendment clarifies that it is services, not goods, that are being talked about; this makes it clear that the board cannot go out and buy a ferry, docks, or buildings.

[5:34:07 PM](#)

REPRESENTATIVE JOHNSON asked whether SSHB 294 replaces an existing board.

REPRESENTATIVE SEATON answered yes. It is currently the Marine Transportation Advisory Board (MTAB) and the name would be changed to the Marine Transportation Authority Board. The bill gives this authority board the ability to select the nominees for director and to also have a direct say in working with the Department of Transportation & Public Facilities (DOT&PF) in creating ongoing plans and structure.

[5:35:01 PM](#)

REPRESENTATIVE JOHNSON inquired whether the current advisory board has funding and has the same meeting schedule as outlined in the fiscal note for the new authority board.

REPRESENTATIVE SEATON responded yes.

REPRESENTATIVE JOHNSON questioned the fiscal note given that one board is simply replacing another and the new board only has a few more duties than the old board.

[5:36:37 PM](#)

REPRESENTATIVE FAIRCLOUGH drew attention to the last paragraph of the aforementioned 3/10/08 legal opinion which states, "It seems that the Alaska Marine Transportation Authority Board does not fit into the category of being a regulatory or quasi-judicial agency ...." She requested that someone speak to this issue as she finds it concerning. She further asked whether a conflict is being created by the requirements for the composition of the authority board. In response to Chair Johansen, Representative Fairclough clarified that she is concerned the language on page 3 of Version L is too prescriptive and will create loggerheads.

REPRESENTATIVE SEATON replied that the makeup of the authority board would be somewhat similar to the makeup of the current

MTAB; for instance, a captain is presently serving on MTAB. Scheduling is a major problem, he said, so the hope is to get someone on the authority board with expertise in that regard. There needs to be a buy-in from all the communities that the Alaska Marine Highway System serves. He said he thinks all of the authority's members would serve as advocates for making the system work well and thus they would be working together and not be at loggerheads with each other. It is not prescriptive in a manner that will be detrimental to the system, he argued, rather it will bring expertise to the table. Without representation for both small and large communities, as well as western communities, people will not trust that they are being represented in the system. He said there is an amendment on the table that would delete the provision that the governor can only remove a board member for cause and replace it with the provision that members of the board serve at the pleasure of the governor.

CHAIR JOHANSEN informed the committee that the current MTAB was established by executive order under Governor Murkowski and initially had 11 members, but he believes Governor Palin pared the board to 9. He said it would be helpful if the sponsors would provide copies of the makeup of both of those boards so the committee can see how it was done from the governor's office.

[5:42:27 PM](#)

REPRESENTATIVE FAIRCLOUGH inquired what the intent is for the authority board and what its powers would be in regard to appropriations given that it would be neither a regulatory board nor a quasi-judicial board. While the board is sort of set up like an authority, it does not have the powers of an authority because the legislature is the appropriation body. According to a McDowell Group study, she related, authorities are based on predictable income that makes them relatively independent of annual appropriations. Thus, there is a conflict with the authority concept in HB 294 because it will not have a predictable revenue stream and is being asked to do something that it cannot.

REPRESENTATIVE WILSON answered that what is wanted is a board with the authority to search for [a director] that has the expertise for the job. This [director] would still have to be approved and appointed by the governor. The board would not have authority as far as money, rather it would have authority to make plans and ensure [the director] follows them. Thus, the

director would work with the board and the DOT&PF commissioner. The current system is obviously not working, she said, and this is an attempt to make it better by having continuity so that each time there is a new governor the person running the ferry system does not automatically change like what happens now. It takes a year or two for a newly appointed person to learn how everything works and frequent changes of the person in this position is causing problems. Constant changes cause everything to always be up in the air, said Representative Wilson. The schedule did not get done on time this year and in turn this created a scheduling mess for tourism businesses, plus the schedule changed constantly over the past year. She advised that a two-year schedule is needed.

REPRESENTATIVE FAIRCLOUGH noted that, for her, the issue for her is how to balance statewide regional and local transportation needs and how the ferry system integrates with other transportation modes and state-provided infrastructure.

[5:48:43 PM](#)

REPRESENTATIVE NEUMAN drew attention to the provision in Section 1 that would require the preparation of a comprehensive long-range plan. He assumed this would also involve a fiscal plan. He asked how the long-range plan would be developed given there is no fiscal plan for the state as a whole, and the unpredictability of future legislative decisions and federal funding.

REPRESENTATIVE WILSON responded that a plan must be made because the ferries are old and breaking down. The bill does not mandate how to do the planning, it just says to look at things and come up with a schedule and a way to replace these vessels. The unpredictability of federal funding is no different than for Medicare and Medicaid or any other part of the state's budget. Someone must look out for the ferry system as a whole, she said, and establish a goal and how that goal can be reached.

REPRESENTATIVE SEATON added that currently there are regional plans and the goal is to bring the board into the consultation process instead of having only the department doing the planning. It is not just money, it is also goals and visions for providing services in the future based on the needs of the communities.

CHAIR JOHANSEN interjected that a comprehensive long-range plan is already in current statute, and the only change would be the addition of input from the board.

[5:53:44 PM](#)

REPRESENTATIVE NEUMAN directed attention to page 5 [line 10] which states, "The board has the express authority to enter into contractual services." He said this provision causes him concern in terms of the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS).

REPRESENTATIVE SEATON replied that the committee should have a proposed amendment labeled 25-LS1220\L.2, Kane, 3/11/08, which would delete "contractual services" and insert "contracts for services that are within the scope of the board's powers, duties, and functions". This would allow the board to go out with requests for proposals (RFPs) for scheduling.

[5:55:09 PM](#)

REPRESENTATIVE NEUMAN said, in his opinion, it should be only the governor's choice for the selection of cabinet members and people serving the commissioners, which includes the directors. What would happen if the governor did not want to select any of the three people nominated by the board, he asked.

REPRESENTATIVE WILSON said the bill does not need to address this because the governor has the power not to choose one of the board's nominees. The board would then have to look at it again.

[5:56:23 PM](#)

REPRESENTATIVE NEUMAN asked whether Representative Wilson thinks the current director, who was approved by the legislature, is qualified.

REPRESENTATIVE WILSON said she did not know the current director's qualifications and that this is not anything against anyone in place now. It is to create continuity for the ferry system from one administration to the next. There have been four people in that position over the last eight years and this makes it difficult to run things smoothly.

REPRESENTATIVE NEUMAN requested the co-prime sponsors to get back to the committee regarding what would happen if the governor rejects the board's nominees.

REPRESENTATIVE SEATON pointed out that the joint boards of fisheries and game send nominees to the governor and the governor can choose to reject them and the boards can then bring forward other names. Another example is the Board of Education and Early Development and the commissioner for that department. There are a number of things like this that require expertise and for which boards select and nominate qualified individuals for submission to the governor.

CHAIR JOHANSEN said he is aware of situations where three names were submitted to the governor and all three were rejected. So, it is not a binding limit on those three because three more nominees can be brought forward.

REPRESENTATIVE SEATON said that is also his understanding.

[5:58:50 PM](#)

REPRESENTATIVE NEUMAN commented that in regard to the establishment of regional advisory committees [page 5, lines 2-5] he has recently been troubled by the lack of communication between advisory committees, the boards, and the departments, particularly as it pertains to the Board of Fisheries.

CHAIR JOHANSEN interjected that this is exactly the problem that HB 294 is trying to solve because right now the Marine Transportation Advisory Board is being treated in the same way that regional advisory committees are being treated by the boards of game and fisheries.

REPRESENTATIVE SEATON agreed.

[6:00:40 PM](#)

REPRESENTATIVE SEATON, in response to Representative Neuman, explained that the current MTAB is advisory and that the board established under HB 294 would have more powers than an advisory board. The new board would be able to nominate the individuals and go out for RFPs for scheduling should there be trouble getting the two-year scheduling done. Those RFPs would still have to be accepted and funded through the legislature, he said. So, there are more duties than an advisory board and those duties are listed on page 4 of the bill.

REPRESENTATIVE NEUMAN noted the board duties [from pages 4-5 of the bill] and asked whether that was the full extent of the board's powers, duties, and functions.

REPRESENTATIVE SEATON responded yes. He cited subsections (c) and (d) [page 5] and said the board's duties are broader than just sending recommendations to the governor.

[6:03:17 PM](#)

REPRESENTATIVE DOOGAN inquired who the director of marine transportation would work for.

REPRESENTATIVE WILSON replied the director would be paid by the Department of Transportation & Public Facilities and would take suggestions from the authority board.

REPRESENTATIVE SEATON said the director would be under the DOT&PF commissioner.

REPRESENTATIVE WILSON added that the board will have its goals for the [director] who would go to the Department of Transportation & Public Facilities. The commissioner could override the board because the board would not have full authority.

[6:04:46 PM](#)

REPRESENTATIVE DOOGAN commented that, typically, the governor appoints a commissioner and the commissioner hires everyone else; thus, the chain of command goes pretty straight up. It might be awkward to have the governor choose both the DOT&PF commissioner and the marine transportation director, yet the director would be working for the commissioner.

REPRESENTATIVE WILSON acknowledged it might be awkward, but said things are not working now so something must be tried.

[6:05:46 PM](#)

REPRESENTATIVE FAIRCLOUGH stated she sees a conflict in management ability when a board sets goals that are not approved by the head of the department. She said she is perplexed because there is other legislation moving that would eliminate

the deputy commissioner of marine transportation and HB 294 would, in essence, be bringing that position back.

REPRESENTATIVE DOOGAN said he believes that the position was put back.

REPRESENTATIVE FAIRCLOUGH responded that this means there would then be multiple layers: a commissioner, a deputy commissioner of marine highways, and now a director.

6:06:51 PM

CHAIR JOHANSEN understood the position has not been put back, but there is a fiscal note for that bill that would put the position back in. He said he has voiced his opinion to the bill sponsors that it would not leave this committee with that position put back in. If it is the will of the committee, the bill will not be brought back up again.

REPRESENTATIVE FAIRCLOUGH supported continuity in the Alaska Marine Highway System and understood the issue of scheduling. However, she expressed her concern that it is presently unknown whether there will be a deputy commissioner of marine operations and that HB 294 would create a position for a marine transportation director who would not have a clear line of authority under the commissioner because he or she would be reporting to a board. She said she will need clarity as things go along regarding this fragmentation in the organizational chart.

6:08:21 PM

CLIFF STONE, Staff to Representative Peggy Wilson, Alaska State Legislature, noted that HB 294 is a collaborative effort on the parts of several legislators to find somebody who could advocate on behalf of the Alaska Marine Highway System because these legislators feel this is not being done in the Department of Transportation & Public Facilities. Having more stakeholders involved is a good thing and this is why HB 294 would create regional advisory committees to provide input to the board and subsequently to the director.

MR. STONE began a sectional summary of the bill. He said Section 1 would require the Department of Transportation & Public Facilities to consult with the Alaska Marine Transportation Authority Board in preparing a comprehensive long-range plan. The department is currently mandated by AS

19.65.011 to create and update a plan every five years and under HB 294 the department would be required to this in consultation with the authority board. This could be done through the director because the authority board will have given the director its vision and the director can present this vision to the department. The board could also choose to present its vision directly to the department.

[6:12:09 PM](#)

REPRESENTATIVE FAIRCLOUGH requested a definition of consult because if consult just means suggesting ideas then there are no teeth and this will not get to consistency in management. What is the consequence if the department does not accept the board's recommendation, she asked.

MR. STONE responded he cannot speak to the legal aspect. He did not know what the consequences would be if the Department of Transportation & Public Facilities chose not to listen to the board, but said he thinks the department would pay attention to the board because it is an authority board and it is the intent of the bill sponsors.

REPRESENTATIVE FAIRCLOUGH disagreed. She said she thinks this is re-creating the MTAB with no teeth to make the Department of Transportation & Public Facilities do anything different. She does not oppose making a change that would empower the board in some way, but it is not a true authority board because there is no control of the revenue stream for expenses that will be incurred in the system.

[6:15:01 PM](#)

MR. STONE continued the sectional summary. He said Section 2 would add two new articles to AS 19.65 detailing the Alaska Marine Highway Organization and Operations [Article 3] and creating the Alaska Marine Transportation Authority Board [Article 4]. Section 19.65.110 of Article 3 would establish the division of marine transportation. This section is at the advice of Legislative Legal and Research Services in order to be consistent with all the statutes regarding directors and divisions, he related. The Alaska Marine Highway System would then just fit inside this division. He said the language might need to be scrubbed a little bit to make this happen.

[6:17:22 PM](#)

REPRESENTATIVE NEUMAN inquired whether this means there would be the Department of Transportation & Public Facilities, Division of Marine Transportation.

MR. STONE replied yes, HB 294 would establish a separate Division of Marine Transportation.

REPRESENTATIVE NEUMAN asked whether the Marine Transportation Authority Board would advise that division.

MR. STONE answered yes. The division would have a director who is in charge of the day-to-day operations of that division and thus the Alaska Marine Highway System because it would fall under that division.

REPRESENTATIVE NEUMAN inquired whether that director would be the person whose name is forwarded by the authority board.

MR. STONE responded yes.

[6:18:20 PM](#)

REPRESENTATIVE FAIRCLOUGH understood that right now the Alaska Marine Highway System is better than a division because it has a deputy commissioner which is a higher level. She questioned creating an additional layer of bureaucracy by establishing a division within a division that already has a head that reports more directly to the governor than does the Central Region of the Department of Transportation & Public Facilities. She said she would like to talk to the department in this regard.

CHAIR JOHANSEN requested both the Department of Transportation & Public Facilities and the bill sponsors to provide a flow chart of positions to clear up the confusion.

REPRESENTATIVE FAIRCLOUGH asked department staff in the audience to nod whether the Alaska Marine Highway System is a separate division. There not being a nod, she understood it to be a unique definition.

[6:20:30 PM](#)

MR. STONE resumed his explanation of Article 3. He said Section 19.65.120 would create the Alaska marine transportation director.

REPRESENTATIVE DOOGAN surmised that the director would have a couple of different kinds of duties - one to run the division and one to do planning through the Marine Transportation Authority Board. Would the director be working for the board in terms of planning, he asked.

MR. STONE related his own vision which he said is taken from conversations with several legislators. The authority board would meet at least four times a year and make recommendations to the director. The board might need to meet eight times the first year in order to get a handle on what is going on. The director would then go to the commissioner and the commissioner would take the recommendations under advisement as would any commissioner in state government. The commissioner, with guidance from the third floor, would then make either policy or monetary decisions.

6:23:18 PM

REPRESENTATIVE DOOGAN said he is asking about the director's responsibility to the board under Section 19.65.120 [page 2, lines 15-23]. Is the director's responsibility to the board discharged by the simple delivery of these planning documents and is there some kind of process by which the board gets involved in determining whether the plans are adequate, he asked.

MR. STONE said it is envisioned that once that nexus has been established between the board and the director, the director takes that under advisement, works hand-in-hand with the board to reach consensus, and then the director presents the plan to the commissioner. The director's position is very political, he allowed, so that director will advocate [the plan] as best as possible on behalf of the board. The commissioner could decide not to take the recommendations, but it would behoove the commissioner to listen to these marine highway stakeholders.

REPRESENTATIVE SEATON added that the director will have expertise in marine highways and will come forward with a draft plan to the authority board. The board will have its own expertise and a process to address the regional aspects and can modify the plan where needed. As directed under Section 1 of HB 294, the transportation department - in consultation with the authority board - shall prepare the comprehensive long-range plan. The department will then bring that plan and its updates to the legislature. Somebody has to start the planning process somewhere, he said, and the director will have this expertise.

6:28:12 PM

REPRESENTATIVE NEUMAN submitted that the authority board will be no different than the current advisory board because it still will not have the authority to appropriate or make decisions; it will only have the authority to offer advice to a director.

MR. STONE responded this was the best attempt at trying to elevate the status of the advisory board. He allowed that authority may be the wrong terminology and any number of names could be chosen. The prime sponsors were trying to get a board to advocate and be part of the process, to be another stakeholder for the Alaska Marine Highway System. It is born out of several years of frustration, he said, and he has personally watched it for 30 years. It may not be a perfect bill, but the sponsors are open to suggestions.

REPRESENTATIVE NEUMAN understood the frustration but said it is similar to just about any transportation project within the state. He said he was previously under the impression that HB 294 would be creating a separate department so that there would be two departments - one for marine transportation and one for road transportation.

6:31:26 PM

CHAIR JOHANSEN noted that the committee will be receiving composition lists for the authority board, one list will be from the Murkowski Administration's initial executive order and one will be from the Palin Administration.

MR. STONE addressed Representative Fairclough's previous question regarding page 3, lines 1-3, which states: (1) one member who has a significant level of experience in the private sector or local government, specializing in financing or economic development or marketing, from each of the following districts:". He noted that the districts are then described on lines 4-23 of the same page. While it is not common, there are some regulatory boards, such as the boards of fisheries, game, and education, where the quasi-qualifications for board members are spelled out in statute. Therefore, the language in HB 294 is not precedent setting, he said. The bill sponsors felt there needed to be a focus on where the expertise comes from.

REPRESENTATIVE FAIRCLOUGH said she agrees with trying to find a solution for the problem. However, she is concerned that being

prescriptive for who can be on the authority board makes it exclusive. Thus, she warned, the board would be a chasm of one interest that has no balance of other interests from the rest of the state. Other interests need to be engaged in the process in order to buy into the proposals that are brought forward, she advised. It sounds like what is being created is a paid lobbyist to advocate for the marine transportation system and it might be cheaper to hire a lobbyist than to develop a new system. Under HB 294, a voice is being created that will challenge what the administration might want to do, but the administration can fire the director because there is no teeth in the legislation. If a plan only has input from coastal communities it will be set aside when it is put before the rest of the state.

MR. STONE said the exclusive argument is valid.

[6:37:15 PM](#)

MR. STONE, in response to Chair Johansen, said the portion of the bill regarding terms, vacancies, officers, quorums, meetings, per diem, records, and legal assistance is mostly boilerplate from Legislative Research and Legal Services.

CHAIR JOHANSEN pointed out that page 4, lines 6-9, needed to be cleared up.

MR. STONE said yes.

[6:37:45 PM](#)

REPRESENTATIVE FAIRCLOUGH understood that the Alaska Marine Highway System has had too many changes and inconsistent schedules. However, she challenged the requirement on page 4, Section 19.65.270, that the director must have experience in marine engineering or maritime operations. She submitted that a better person would be someone with high communication skills that understands budgets, the legislative and administrative processes, and who can talk circles in front of committees. This person must be able to speak to the issues and legal challenges more than he or she needs to know how to operate a ship because the authority board will already have the maritime expertise.

MR. STONE explained that the sponsors did look at this and did have more language in the bill to clarify, but it was decided to take that additional language out and leave it up to the board,

through the interview process, to determine a candidate's communication skills and past experience.

[6:40:18 PM](#)

REPRESENTATIVE DOOGAN drew attention to page 4, line 6, and noted that the sponsors have a suggested amendment in terms of how the governor can remove members, which he said is okay. He asked whether the next provision on lines 7-9 where a board member can be removed for missing more than two meetings in a calendar year without being previously excused is currently applied to other boards and commissions. He noted he does not have a problem with the provision provided it is the common practice.

MR. STONE stated this is boilerplate language, but it is unique that the director would be appointed by the governor.

REPRESENTATIVE FAIRCLOUGH said she believes there are places in statute where people can be removed for lack of attendance.

REPRESENTATIVE DOOGAN commented he has heard of removal for misfeasance and other reasons, but not for failure to show up at meetings, which is a good reason.

MR. STONE said he got confused on the previous question when he referred to the director, and it is correct that there is language throughout statute that speaks to malfeasance and so forth.

[6:42:43 PM](#)

MR. STONE continued with the sectional summary. He read the route study language in Section 4, page 6, and noted that this language was previously in a different section of the bill and that it was revised to make it a little more innocuous. He said Section 5 is the effective date clause.

REPRESENTATIVE FAIRCLOUGH asked whether there is a fiscal note for the route study, but said she does not need it right now.

REPRESENTATIVE NEUMAN asked whether the Department of Transportation & Public Facilities conducts a route study now.

MR. STONE responded, "Not to our knowledge."

[6:44:16 PM](#)

CHAIR JOHANSEN opened public testimony.

[6:44:32 PM](#)

FRED YATES stated he has worked for the Alaska Marine Highway System since 1981 and is currently the Auke Bay ferry terminal manager. He said he is testifying on behalf of himself only and does not know the department's position on HB 294. He noted that the Alaska Marine Highway System has had three contradictory purposes for the entire time he has worked for the system. The primary purpose is to provide service for the roadless communities, but there are not too many travelers on that so it needs to be heavily subsidized. The other purpose is to bring independent travelers to Alaska and this is where the marine highway benefits the landlocked communities such as Anchorage and Fairbanks. Then there is the issue of revenues, he said. Depending on which way the wind is blowing, the goal is sometimes to make enough revenues for the entire system and sometimes it is not that strict. Always there is the political aspect or squeaky wheel theory, and adding a board of 11 people will make it even more political, not less.

MR. YATES submitted that the first goal of providing service to the roadless communities may work all right under HB 294, but the other goals will suffer and there will not be much revenue. The way this [authority] board is structured, each member will be trying to get more service to his or her communities and if this does not happen the communities will wonder why. This will put the board in a bad position, he cautioned, and does not allow for the other goal of bringing in independent travelers. An 11-member board seems unwieldy and it will be difficult to bring everyone together at one time. Contracting out seems vague, but the [sponsor's suggested] amendment seems to tighten that up so it might be okay, he said. The best thing in HB 294 is the strategic plan, which the marine highway has always seemed to be lacking. If something is to be fixed, the right approach would be developing a strategic plan that defines the minimum service to communities and then allows the system to earn more revenues once that minimum service is met. The two year scheduling cannot be done without knowing the funding situation for both years, he advised.

[6:49:53 PM](#)

REPRESENTATIVE FAIRCLOUGH asked whether Mr. Yates would support a biennial budget.

MR. YATES replied absolutely, this would be the way to do a two year schedule. However, he understood that this is unconstitutional in Alaska.

REPRESENTATIVE NEUMAN noted that the authority board makeup does not include a marine highway employee. He inquired whether having an employee on the board would be a good idea.

MR. YATES answered that could be beneficial, but he has issues with how the board is structured and is unsure how to make it better. For example, landlocked communities should be on the board so their interests in regard to bringing independent travelers to Alaska can be represented. It is hard to put something together without leaving someone out because the marine highway has so many constituencies.

REPRESENTATIVE NEUMAN asked whether Mr. Yates likes HB 294.

MR. YATES said when he first looked at the bill, he thought it had possibilities. But, other than the strategic plan, the rest is still like the current MTAB. He said he does not hate the bill, but he does not like it, and it needs improvement.

[6:52:49 PM](#)

JERRY MCCUTCHEON asked the rhetorical question of whether Representative Wilson would be willing to move the headquarters back to Juneau if it was in the best interest of the ferry system. He said he started out thinking HB 294 was a good bill, but not after listening to the testimony. The same people will be appointed to run the ferry system and all that is being done is blindly giving more authority and responsibility to those who cannot manage the ferries, he said. Building the road out of Juneau will cost \$1 billion and take two mainline ferries out of the ferry system. In this case, one might as well just forget the ferry system. The ferries break down not because they are old but because they are run too hard, he contended. What is being said is that five senators and eight representatives cannot go to Governor Palin and explain what is needed. He backs the statements made by Representatives Doogan and Fairclough, he said.

[6:55:44 PM](#)

ALBERT JUDSON testified that the issue today is lopsided because the offerers of the bill are not taking some things into

consideration. The Alaska Marine Highway System is broken. The Southeast Alaska Conservation Council (SEACC) is often blamed, he said. But they cannot be blamed because in the year 2000 people voted for improved services to Alaska. State officials cannot be blamed because they have been allocated only pennies to operate the system. Who had the duty to allocate that money? Only the legislature can come up with the money, not the people, he said. He suggested there be a McDowell Group study based on the 2000 vote as that vote for improved services should have meant more money for the Alaska Marine Highway System's budget. A \$1 million project cannot be managed on two cents, he submitted, and that is basically what is being asked of the marine highway. He said he empathized with the people running the ferry system and would not want to be in their shoes.

MR. JUDSON noted that not long ago the town of Homer received a \$44 million catamaran as the result of a [congressional] appropriation through U.S. Senator Lisa Murkowski. How did Homer get this while the Alaska Marine Highway System gets nothing and continues to go downhill? He said he would like to see three catamarans like this for the Alaska Marine Highway System - one to run between Cordova, Yakutat, and Haines; one to go between Haines, Juneau, Sitka, and Ketchikan; and one to go between Ketchikan and Bellingham. Why could a grant not be received by the marine highway to do this just as was done for Homer, he asked. Why was it not done? The state legislature has not made best efforts to ensure that the Alaska Marine Highway System works, he contended. While the ferry system went downhill there were no task forces and no community meetings, and this is why he disagrees with the bill's sponsors.

[7:01:56 PM](#)

MR. JUDSON stated that during the last few years there has been almost thoughtless erosion of service by the marine highway and this goes back to having two cents to operate a \$2 million project. How and why did this happen? The McDowell Group should be contracted to study the budget between the years 2000-2008 and see how that compares to the breakdowns, fires, and neglect of the marine highway. He said he opposes HB 294 because it does not match the will of the people which is improved service, service that was never received. The budget was cut in half after the people voted for better service and then it was cut again by Governor Murkowski. He disagrees with the board being appointed by the governor because the governor already has too much power, he said.

REPRESENTATIVE FAIRCLOUGH asked whether the 2000 vote was just in Southeast Alaska or statewide.

MR. JUDSON responded it was statewide.

REPRESENTATIVE FAIRCLOUGH said she does not remember that vote.

[SSHB 294 was held over.]

**ADJOURNMENT**

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at [7:05:25 PM.](#)