

ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE

February 25, 2010

1:09 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Craig Johnson, Vice Chair
Representative Cathy Engstrom Munoz
Representative Tammie Wilson
Representative Pete Petersen

MEMBERS ABSENT

Representative Kyle Johansen
Representative Max Gruenberg

COMMITTEE CALENDAR

HOUSE BILL NO. 329

"An Act relating to the transportation infrastructure fund, to local public transportation, to motor fuel taxes, and to the motor vehicle registration fee; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 322

"An Act relating to winter tires; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 329

SHORT TITLE: DEDICATED TRANSPORT FUND/PUB TRANSPORT

SPONSOR(s): TRANSPORTATION

02/05/10	(H)	READ THE FIRST TIME - REFERRALS
02/05/10	(H)	TRA, FIN
02/09/10	(H)	TRA AT 1:00 PM CAPITOL 17
02/09/10	(H)	Heard & Held
02/09/10	(H)	MINUTE(TRA)
02/11/10	(H)	TRA AT 1:00 PM CAPITOL 17
02/11/10	(H)	Heard & Held

02/11/10 (H) MINUTE(TRA)
02/18/10 (H) TRA AT 1:00 PM BUTROVICH 205
02/18/10 (H) Heard & Held
02/18/10 (H) MINUTE(TRA)
02/25/10 (H) TRA AT 1:00 PM CAPITOL 17

WITNESS REGISTER

REBECCA ROONEY, Staff
Representative P. Wilson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the committee substitute on behalf of the prime sponsor, the House Transportation Committee.

FRANK RICHARDS, Deputy Commissioner
Office of the Commissioner
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 329.

JIM CANTOR, Chief Assistant Attorney General; General -
Statewide Section Supervisor
Department of Law
Anchorage, Alaska

POSITION STATEMENT:

TOM GEORGE, Alaska Representative
Aircraft Owners and Pilots Association
Fairbanks, Alaska

POSITION STATEMENT: Testified during the discussion of HB 329.

WHITNEY BREWSTER, Director
Division of Motor Vehicles (DMV)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 329.

ACTION NARRATIVE

[1:09:47 PM](#)

CHAIR PEGGY WILSON called the House Transportation Standing Committee meeting to order at 1:09 p.m.

[1:09:52 PM](#)

Representatives Munoz, Johnson, T. Wilson, Petersen, and P. Wilson were present at the call to order.

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HB 329-DEDICATED TRANSPORT FUND/PUB TRANSPORT

CHAIR P. WILSON announced that the only order of business would be HOUSE BILL NO. 329, "An Act relating to the transportation infrastructure fund, to local public transportation, to motor fuel taxes, and to the motor vehicle registration fee; and providing for an effective date."

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REPRESENTATIVE JOHNSON made a motion to adopt a proposed Committee Substitute for HB 329, labeled 26-LS1307\K, Kane, 2/25/10 as the working document.

There being no objection, Version K was before the committee.

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REBECCA ROONEY, Staff, Representative P. Wilson, Alaska State Legislature, on behalf of the prime sponsor, explained the changes contained in Version K. She referred to page 2, lines 4-8, which is a change made to address a concern that the Fisheries Business Tax had been singled out as a source to fund the Municipal Harbor Facilities Grant Fund (MHFGF). She offered that since the MHFGF can receive appropriations from other sources of funds, references to the Fisheries Business Tax were deleted. Thus, the specific source of funding for the MHFGF is not listed in the bill.

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MS. ROONEY referred to page 3, line 8, and explained that the committee held discussions on the previous bill language, which read, "An appropriation from the fund may not be made to a project..." Thus, the sponsor changed the language "may not" to "shall not" to clarify that the appropriations would not be made to projects covered by this subsection for which federal money has been allocated unless certain conditions were met. She commented that the change conflicts with the drafting manual,

but "shall" was preferred by the bill sponsor. She referred to page 3, lines 15-31, and page 4, lines 1-8. The goal for this change is provide descriptions that identify specific modes of transportation, but also keep the descriptions flexible so future legislatures have adequate discretion for appropriation. One additional change was to add "major maintenance" to each mode since considerable committee concern was expressed that "major maintenance" was not included in this proposed Section.

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REPRESENTATIVE T. WILSON asked whether the percentages the DOT&PF currently expends for each mode were considered or if perhaps expenditures over a five-year period between modes were considered.

MS. ROONEY referred to the 2030 Transportation Plan, which was reviewed and considered. However, the decision to limit the allocation to current expenditures seemed too constrictive. Thus, to provide more flexibility for allocation between modes, the total allocation adds up to more than 100 percent. Basically, this means the allocation may not exceed the percentage, but does not need to reach the specific percentage assigned to each mode.

MS. ROONEY referred to page 5, lines 2-7, to the issue of defining "rural" versus "urban" districts in order to allow for diverse representation on the proposed Transportation Infrastructure Fund Advisory Council (TIFAC). Version K provides diversification by identifying legislators to serve on the TIFAC into two groups: those legislators who represent an election district with a city with population of more than 35,000, and those legislators who represent an election district with a city less than 35,000. Thus, the more densely populated and less densely populated districts would have two legislative representatives to serve on the proposed TIFAC.

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REPRESENTATIVE MUNOZ inquired as to whether any structure exists that is similar to this one in terms of legislators having the ability to provide input on capital appropriations.

MS. ROONEY said she did not know.

REPRESENTATIVE JOHNSON thought there may be current examples, such as the Mental Health Trust Board, in which legislators serve and make decisions on capital projects.

REPRESENTATIVE P. WILSON offered that the purpose for the legislative participation on the TIFAC is to ensure the DOT&PF would not solely make its decisions. She pointed out that many constituents complained the DOT&PF came to the community and held meetings but ultimately did not listen to community comments and instead the capital projects were prioritized internally by the DOT&PF.

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REPRESENTATIVE MUNOZ asked whether the proposed plan would be approved by the governor.

MS. ROONEY agreed. She stated that the plan would be similar to the capital budget process.

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REPRESENTATIVE JOHNSON recalled a court case in Anchorage which was related to legislators participating in the AMATS. He recalled that legislators were ultimately not allowed to participate. He asked whether this court case would apply to the proposed legislative participation on the ATIFAC.

FRANK RICHARDS, Deputy Commissioner, Office of the Commissioner, Department of Transportation & Public Facilities (DOT&PF), stated that Jim Cantor, Assistant Attorney General is available to address the issue.

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JIM CANTOR, Chief Assistant Attorney General; General - Statewide Section Supervisor, Department of Law, stated that over time the attorney general has issued opinions to cover the issue of legislators serving on boards. The line is somewhat unclear, but it is all right for legislators to serve on an advisory board which is "purely advisory" in nature. However, in reviewing some boards, such as the Land Use Advisory Board, or the Amateur Sports Authority which seemed to be advisory in nature, it was found that the legislators in these instances would carry more weight than purely advisory, and having the legislators participate may be unconstitutional. He did not know where the line would be drawn between a legislator

performing substantive executive branch work and performing advisory work. He said, "I think you phrased it in terms of risk and it does create risk."

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REPRESENTATIVE JOHNSON asked which party would come forward and challenge the ATIFAC composition.

MR. CANTOR said he was not aware of any present controversy. He thought dissent could come from someone disappointed with future ranking of a project or a future dispute between the governor and the legislature.

CHAIR P. WILSON related that she has "flagged" this item for further review.

REPRESENTATIVE JOHNSON offered his support to have legislative participation since legislators could provide a conduit and communication between the proposed ATIFAC and the public. He suggested that the issue would be a separation of powers issue.

MR. CANTOR agreed that it is a separation of powers issue.

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REPRESENTATIVE JOHNSON asked whether there would be a difference between an ex-officio member and an appointed member serving on the proposed ATIFAC.

MR. CANTOR recalled that one legal opinion previously issued related to an ex-officio arrangement in which members considered capitol development in Juneau, which was considered fine. He stated the Knik Arm Bridge and Toll Authority has non-voting legislative members and the attorney general's office did not issue an opinion, but thus far no one has challenged the matter.

CHAIR P. WILSON speculated that more controversy would likely result over a specific project or town.

REPRESENTATIVE JOHNSON asked for an "off the cuff" legal opinion to gain a sense of the matter.

MR. CANTOR responded that he is not prepared to answer, but the factors the Department of Law would review would be whether the legislator would "carry more weight" in the executive function. The Department of Law would look at the composition and duties

of the proposed advisory council, and whether the legislators would "carry more weight" on the proposed advisory council than they currently do in the legislature.

REPRESENTATIVE MUNOZ commented that this is an area of the bill that troubles her.

REPRESENTATIVE JOHNSON asked for a formal legal opinion based on the discussion and to consider if the legislators serving on the proposed ATIFAC were ex-officio members, what effect that might have on the legal opinion. He said he thought that may be a solution to provide input to the legislature without "running afoul" of the constitutional issues.

CHAIR P. WILSON commented that she is not planning on moving HB 329 today.

MS. ROONEY related that the drafters raised the issue, but the bill drafters were comfortable since the report was reviewed by the governor. She agreed that the formal opinion would be useful.

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TOM GEORGE, Alaska Representative, Aircraft Owners and Pilots Association, offered his support for the concept of the proposed dedicated transportation fund. He expressed concern with the allocation between modes and the current proposed composition of the council. He stated that his organization prefers not to have legislators serve on the proposed advisory council (ATIFAC). He said he would also like to probe whether the proposed ATIFAC is comprised of too many state employee members. He suggested the sponsor hold HB 329 in committee. He further suggested that the committee conduct a series of stakeholder meetings during the legislative interim to work through some of the issues. He thought that the process would result in a plan that could be used to get the proposed constitutional amendment passed.

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WHITNEY BREWSTER, Director, Division of Motor Vehicles (DMV), Department of Administration (DOA), stated that conceptually the Division of Motor Vehicles does not oppose HB 329 in any way. She pointed out that almost all of the DOT&PF appropriations are funded through receipts supported services, which means the DMV is supported by its fees, and any additional funds are deposited

to the General Fund (GF). She cautioned if all of revenues collected from vehicle registration fees were transferred to the proposed dedicated transportation fund that the DMV could not operate. She said the DMV does not want to inhibit the DMV's revenue collection or jeopardize its ability to carry out the DMV's statutory obligations. She suggested the committee consider funding the DMV's costs first, and deposit the remainder of the funds to the proposed dedicated transportation fund.

CHAIR P. WILSON related she has held some conversations with the Department of Revenue and expressed her willingness to amend the bill to address the concern raised by the DMV.

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REPRESENTATIVE JOHNSON asked whether the DMV uses the same process for capital budget items that everyone else uses.

MS. BREWSTER responded yes, that the DMV uses the typical capital budget process for capital expenditures.

REPRESENTATIVE JOHNSON asked whether the DMV's capital expenditures would entail software and hardware, but not typically buildings.

MS. BREWSTER answered yes. She stated that the DMV's projects are primarily requests for hardware and software and similar types of products.

REPRESENTATIVE P. WILSON related that the department has requested \$13 million in the CIB to upgrade computers.

REPRESENTATIVE JOHNSON stated his desire to have the request clarified for the record since he serves on the finance subcommittee.

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CHAIR P. WILSON stated she would hold public testimony open on HB 329.

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REPRESENTATIVE PETERSEN referred to Section 3, and asked whether vehicle registration fees would be appropriated to the DMV or how that would be handled.

CHAIR P. WILSON related her intention to amend the bill to provide for the DMV operating funds to be extracted from the fees.

MR. RICHARDS said he did not have any comments at this time.

[HB 329 was held over.]

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ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 1:38 p.m.