

**ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE**

March 11, 2010

1:32 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Craig Johnson, Vice Chair
Representative Kyle Johansen
Representative Cathy Engstrom Munoz
Representative Tammie Wilson
Representative Max Gruenberg
Representative Pete Petersen

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 354

"An Act relating to eligibility for loans from the Alaska capstone avionics revolving loan fund."

- MOVED OUT OF COMMITTEE

HOUSE BILL NO. 366

"An Act relating to indemnification agreements that relate to motor carrier transportation contracts."

- MOVED CSHB 366(TRA) OUT OF COMMITTEE

HOUSE BILL NO. 267

"An Act relating to travel by snow machine within five miles of the right-of-way of the James Dalton Highway."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 354

SHORT TITLE: AK CAPSTONE AVIONICS REVOLVING LOAN FUND

SPONSOR(S): REPRESENTATIVE(S) KELLER

02/19/10	(H)	READ THE FIRST TIME - REFERRALS
02/19/10	(H)	L&C

02/23/10 (H) TRA REFERRAL ADDED AFTER L&C
03/08/10 (H) L&C AT 3:15 PM BARNES 124
03/08/10 (H) Moved Out of Committee
03/08/10 (H) MINUTE(L&C)
03/10/10 (H) L&C RPT 4DP
03/10/10 (H) DP: BUCH, NEUMAN, CHENAULT, OLSON
03/11/10 (H) TRA AT 1:00 PM CAPITOL 17

BILL: HB 366

SHORT TITLE: MOTOR CARRIER INDEMNIFICATION AGREEMENTS
SPONSOR(S): REPRESENTATIVE(S) JOHNSON

02/23/10 (H) READ THE FIRST TIME - REFERRALS
02/23/10 (H) TRA, JUD
03/11/10 (H) TRA AT 1:00 PM CAPITOL 17

BILL: HB 267

SHORT TITLE: SNOW MACHINE USE IN DALTON HWY CORRIDOR
SPONSOR(S): REPRESENTATIVE(S) KELLY, NEUMAN

01/08/10 (H) PREFILE RELEASED 1/8/10
01/19/10 (H) READ THE FIRST TIME - REFERRALS
01/19/10 (H) TRA, RES
03/11/10 (H) TRA AT 1:00 PM CAPITOL 17

WITNESS REGISTER

MATTHEW JOHNSON, Staff
Representative Wes Keller
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 354, on behalf of the prime sponsor, Representative Wes Keller.

GREG WINEGAR, Director
Division of Investments
Department of Commerce, Community, & Economic Development
(DCCED)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 354.

CATHY JEANS, System Branch Manager
Division of Investments
Department of Commerce, Community, & Economic Development
(DCCED)
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 354.

JEANNE OSTNES, Staff
Representative Craig Johnson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 366.

AVES THOMPSON, Executive Director
Alaska Trucking Association
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 366.

CHUCK ONSTOTT, General Manager; Midnight Sun Transportation
President, Alaska Trucking Association
Kenai, Alaska

POSITION STATEMENT: Testified during the discussion of HB 366.

JAMES DOYLE, Owner
Weaver Brothers Trucking
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 366.

REPRESENTATIVE MIKE KELLY
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as the prime sponsor of HB 267.

REPRESENTATIVE MARK NEUMAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as a joint prime sponsor of HB 267.

THOR STACEY
Juneau, Alaska

POSITION STATEMENT: Testified in opposition HB 267.

GEOFF CARROLL
Barrow, Alaska

POSITION STATEMENT: Testified in opposition of HB 267.

TODD CLARK
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 267.

RANDY QUINCY, Board Member

Alaska Outdoor Council (AOC)
Willow, Alaska

POSITION STATEMENT: Testified in support of HB 267.

JACK REAKOFF
Wiseman, Alaska

POSITION STATEMENT: Testified in opposition to HB 267.

NICOLE FLIPS
Fairbanks, Alaska

POSITION STATEMENT: Testified during the discussion of HB 267.

ACTION NARRATIVE

[1:32:58 PM](#)

CHAIR PEGGY WILSON called the House Transportation Standing Committee meeting to order at 1:32 p.m. Representatives P. Wilson, Munoz, Gruenberg, and T. Wilson were present at the call to order. Representatives Johansen, Johnson, and Petersen arrived as the meeting was in progress.

[1:33:04 PM](#)

HB 354-AK CAPSTONE AVIONICS REVOLVING LOAN FUND

CHAIR P. WILSON announced that the first order of business would be HOUSE BILL NO. 354, "An Act relating to eligibility for loans from the Alaska capstone avionics revolving loan fund."

[1:33:57 PM](#)

MATTHEW JOHNSON, Staff, Representative Wes Keller, Alaska State Legislature, paraphrased from the sponsor statement, which read as follows [original punctuation provided]:

In 2008 the Alaska Legislature commissioned the Capstone Avionics Loan Program. It was designed to provide access to a new generation of avionics for Alaskan aircraft owners and operators. The impetus for the program was an FAA pilot program that confirmed the substantial value and effectiveness of the technology. The results of the pilot program revealed a 47 percent decrease in accident rates in the trial

area, and the FAA estimates that full implementation will result in 33 percent fewer fatalities statewide. HB 354 is being proffered to amend existing statute in order to carry out the mission and original intent of the Capstone Avionics Program more effectively.

As initially conceived, the program was intended to provide loans that would allow in-state operators and carriers to upgrade their avionics. However, there is an unforeseen gap in eligibility standards precluding significant portions of the target market from participation. Because the threshold for eligibility is predicated upon ownership of aircraft, an owner or carrier that chooses to lease its aircraft or fleet is deemed ineligible to access the program. This bill seeks to redress this deficiency by allowing for maximal participation.

HB 354 is being offered only as an improvement to the Capstone Avionics Program because we believe it is in the interest of public safety, especially as it pertains to flights in and out of rural Alaska.

MR. JOHNSON commented on the zero fiscal note attached to the bill.

[1:37:17 PM](#)

CHAIR P. WILSON recalled that Capstone Avionics assist pilots by providing the next generation of technology to improve flight safety.

MR. JOHNSON offered that the "Automatic Dependent Surveillance - Broadcast (ADS-B)" allows aircraft equipped with the avionics to interact with ground infrastructure and satellite stations to provide pilots their exact location, airspeed, rate of ascent and descent, surrounding terrain, other aircraft and real time weather, which is essential data needed for a safe flight.

[1:38:53 PM](#)

GREG WINEGAR, Director, Division of Investments, Department of Commerce, Community, & Economic Development (DCCED), introduced himself.

CATHY JEANS, System Branch Manager, Division of Investments, Department of Commerce, Community, & Economic Development (DCCED), introduced herself.

[1:39:29 PM](#)

REPRESENTATIVE GRUENBERG referred to the sponsor statement and related his understanding that owners who lease their planes are excluded from participating in the Capstone Avionics Program.

MR. WINEGAR explained that the lessee cannot obtain a state loan for the Capstone Avionics equipment. In further response to Representative Gruenberg, he clarified that the state can only make loans to owners from the Alaska Capstone Avionics Revolving Loan Fund.

CHAIR P. WILSON explained that some companies buy aircraft for the purpose of leasing. The owners are not willing to purchase the Capstone Avionics equipment, but the lessees want the safety equipment installed in the planes. Thus, the lessees desire to participate in the Capstone Avionics Loan Program.

[1:40:50 PM](#)

REPRESENTATIVE GRUENBERG asked whether any law currently would prevent an owner who leases a plane from qualifying for the loan.

MR. WINEGAR clarified that the Division of Investments can make a loan to an owner, but HB 354 would allow lessees to also qualify for the Capstone Avionics loans. In further response to Representative Gruenberg, he agreed that owners are not willing to take out loans for the Capstone Avionics equipment for planes the owners lease out.

[1:41:55 PM](#)

REPRESENTATIVE GRUENBERG asked whether the loans are collateralized by the planes.

MR. WINEGAR agreed that the Capstone Avionics loans would require collateral, but the division might also need other collateral.

REPRESENTATIVE GRUENBERG expressed his concern that if an owner refused to take out a loan he/she may also not allow the plane to be used as collateral.

MR. WINEGAR agreed. He explained that unless the lessee has some way to collateralize the Capstone Avionics loan the division would not make the loan. This bill would provide the legal authority to make loans to lessee/operators. He provided a scenario in which a commercial carrier owned a hangar free and clear, but leased a plane from a company in Sweden. The company would offer the deed of trust on the hangar to secure the loan. In further response to Representative Gruenberg, he answered that he doubted that a long-term lease would be allowed.

[1:43:15 PM](#)

REPRESENTATIVE GRUENBERG asked whether the lessee/operator would have the ability to collateralize.

MR. WINEGAR stated he was unsure. He explained that some people expressed interest to do so and in those instances, the potential lessees/operators have the ability to collateralize. He was unsure whether all operators who may be interested in the Capstone Avionics loans have sufficient collateral to qualify for the loans.

[1:43:57 PM](#)

REPRESENTATIVE GRUENBERG asked for the typical amount needed for Capstone Avionics loans.

MR. WINEGAR answered that the average Capstone Avionics loan would be \$87 thousand for commercial aircraft. He stated that general aviation loans are less expensive, typically ranging from \$12,000-\$18,000.

[1:44:34 PM](#)

REPRESENTATIVE PETERSEN asked whether the loans ranging from \$12,000 to \$100,000 are to retrofit existing aircraft.

MR. WINEGAR agreed that the typical loan would be to add Capstone Avionics to existing aircraft.

REPRESENTATIVE PETERSEN asked whether new aircraft already are equipped with Capstone Avionics technology.

MR. WINEGAR answered probably not. He said that the Capstone Avionics technology is relatively new technology currently being tested in Alaska. The technology will subsequently be used in the Lower 48 since the Federal Aviation Administration (FAA) is currently implementing Capstone Avionics infrastructure at airports. Additionally, the FAA is currently working on regulations that will likely allow for additional manufacturers. The proposed regulations are anticipated to be finalized in April 2010. Thus, as new manufacturers enter the market, the price of the Capstone Avionics technology should also go down.

[1:46:10 PM](#)

REPRESENTATIVE PETERSEN inquired as to whether Alaska is testing this equipment since it is a rugged environment and if it works well in Alaska the prediction is that Capstone Avionics will work anywhere.

MR. WINEGAR agreed. He related that testing Capstone Avionics technology was initiated about six years ago and was found to be "the way to go." Thus, the Capstone Avionics technology will be implemented throughout the country, he stated.

[1:46:46 PM](#)

CHAIR P. WILSON asked whether the FAA will provide any funding.

MR. WINEGAR answered yes. He stated that the FAA is providing a "huge amount of money" for the ground infrastructure. He characterized the FAA's involvement as a very large capital investment. The FAA has been working on portions of the state. He said the federal government has signaled that it would like Alaska to also invest. He related that it does not make a lot of sense to equip airports if the aircraft cannot take advantage of the Capstone Avionics technology. He offered that Southeast Alaska and the Anchorage-Fairbanks corridor are now completed and the FAA has a plan in place for the remainder of the state.

[1:48:23 PM](#)

MR. WINEGAR, in response to Representative Munoz, reported that the Alaska Capstone Avionics Revolving Loan Fund started out at \$4.8 million and current fund balance is \$4.3 million. In further response to Representative Munoz, he related that the \$4.3 million balance represents the state funds in the Alaska Capstone Avionics Revolving Loan Fund. The funding for airport infrastructure will be all FAA funds. He recalled that the federal contribution would be in the \$50 to \$100 million range to cover Alaska.

[1:49:26 PM](#)

REPRESENTATIVE JOHNSON asked whether the Capstone Avionics loan would cover the installation of the Capstone Avionics technology in aircraft.

MR. WINEGAR answered yes. He noted that certified installers must install the Capstone Avionics, but the costs of installation can be part of the loan.

REPRESENTATIVE JOHNSON related his understanding that the installation could not be collateralized so the lessee/operator must provide additional collateral.

MR. WINEGAR agreed.

[1:50:07 PM](#)

REPRESENTATIVE GRUENBERG referred to page 1, lines 8-10, of HB 354. He opined the definition for applicant is vastly superior to the general definition contained in Title 1. He offered, for the benefit of members serving on other committees, that he thought this definition should be used as the model for other statutory definitions for a person.

[1:51:23 PM](#)

CHAIR P. WILSON reported that no public member wishes to testify during public testimony.

REPRESENTATIVE JOHNSON remarked he has been familiar with the Capstone Avionics program since its inception. He offered his belief that Alaska is in the forefront on this issue. He professed that he is proud the state is encouraging Capstone Avionics installations in aircraft.

He predicted that the sooner airplanes are equipped with Capstone Avionics, the sooner lives will be saved. He said, "I wholeheartedly encourage the passage of this legislation."

REPRESENTATIVE JOHNSON moved to report HB 354 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 354 was reported from the House Transportation Standing Committee.

[1:52:46 PM](#)

The committee took an at-ease from 1:52 p.m. to 1:53 p.m.

[1:53:28 PM](#)

HB 366-MOTOR CARRIER INDEMNIFICATION AGREEMENTS

[1:53:53 PM](#)

CHAIR P. WILSON announced that the next order of business would be HOUSE BILL NO. 366, "An Act relating to indemnification agreements that relate to motor carrier transportation contracts."

[1:54:12 PM](#)

REPRESENTATIVE JOHNSON as prime sponsor of the bill presented HB 366. He provided a brief history of the genesis of HB 366. The need for this bill came from within the trucking and shipping industry. He characterized the indemnification contained in HB 366 as similar to indemnification language the legislature considered last year that applied to government and university agencies. He related that some large transportation companies are forcing small transportation companies to take complete responsibility and liability for transporting goods. This bill basically says, "You are responsible for yourself and your own mistakes and you cannot hold someone else responsible for your mistakes and enter that into a contract."

REPRESENTATIVE JOHNSON paraphrased from the sponsor statement which read as follows:

The purpose of this legislation is to promote safety in the carriage of goods by motor carrier.

A motor carrier must generally comply with the Federal Motor Carrier Safety Regulations while it is transporting goods, and is also subject to additional common law or statutory duties or responsibilities. Likewise, shippers or other parties frequently have legal duties and responsibilities to fulfill when they provide goods for transportation. More and more frequently, however, shippers are pressuring motor carriers to provide transportation under contracts in which the motor carrier contractually agrees to indemnify and hold harmless the shipper for the shipper's own failure to meet its legal duties and responsibilities.

The effect of these indemnification clauses is to eliminate the incentive for the shipper to meet its responsibilities and duties in a prudent and reasonable manner. In essence, such a clause makes the motor carrier the shipper's insurer. Such a shifting of liability through contract completely contradicts sound public policy. One of the primary reasons for assigning legal liability is to persuade the offending party to regulate its behavior. However, where the shipper is at fault but is nevertheless indemnified by the motor carrier, there is nothing the motor carrier can do to change its own behavior to make things safer. That ability lies solely with the shipper.

A similar problem with respect to public construction contracts has already been addressed by the legislature in AS 45.45.900.

This legislation voids contractual provisions in motor carrier transportation contracts that indemnify a shipper for the shipper's own negligent or intentional acts or omissions which lead to claims. It maintains the incentive for a shipper that is a party to a motor carrier transportation contract to perform its legal obligations and duties in a prudent and reasonably safe manner. This legislation now includes an indemnification clause for the shippers and excludes the parties to the Uniform Intermodal Interchange and Facilities Access Agreements.

[1:55:09 PM](#)

JEANNE OSTNES, Staff, Representative Craig Johnson, Alaska State Legislature, on behalf of the prime sponsor, Representative Craig Johnson, stated the shippers agreed to the bill with an amendment that was handed out in committee today.

[1:55:51 PM](#)

REPRESENTATIVE JOHNSON made a motion to adopt Amendment 1, labeled 26-LS1434\R.2, Bannister, 3/10/10, which read as follows:

Page 1, line 5:

Delete "**by motor carrier**"

Page 1, line 7, following "that":

Insert "(1)"

Page 1, line 10, following "person":

Insert "; or

(2) the shipping person will indemnify, defend, or hold the motor carrier harmless, or agree to a provision that has the effect of indemnifying, defending, or holding a motor carrier harmless, from claims or liability for the negligence, intentional acts, or intentional omissions of the motor carrier"

Page 2, line 2, following "carrier":

Insert "if the agent, employee, servant, or independent contractor provides services in connection with the particular transportation services contract to which (a) of this section is being applied"

Page 2, line 8, following "person":

Insert "if the agent, employee, servant, or independent contractor provides services in connection with the particular transportation services contract to which (a) is being applied"

Page 2, line 17, following "person":

Insert "or a motor carrier"

Page 2, line 18:

Delete "has the meaning"

Insert "and "motor carrier" have the meanings"

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

[1:56:15 PM](#)

MS. OSTNES characterized Amendment 1 as a "win-win situation" which represents an agreement between shipping and motor carriers that will indemnify and hold harmless actions that happen during transportation. In response to Chair P. Wilson, she related a scenario in which a person transports china that was appropriately packed by the shipper and was broken during transport. The question arises who is the responsible party to pay the damages and whether it would be the shipper/packer who may not have improperly packed the item or if the truck rolled over due to the driver. Since the shipper and trucker is held harmless under the bill, deciding the responsible party depends on what actually happened.

[1:57:41 PM](#)

CHAIR P. WILSON asked whether the matter would be decided by the courts. She commented that the person in possession would likely be held responsible.

MS. OSTNES answered no. She stated that the party who created the problem is responsible for the damage.

MS. OSTNES restated that Amendment 1 is a "win win" situation since both parties' actions are evaluated to determine the responsible party.

[1:58:56 PM](#)

AVES THOMPSON, Executive Director, Alaska Trucking Association, related another scenario for members to illustrate responsible parties. In his scenario, a motor carrier has agreed to transport fuel. If the fuel truck pulled in to the loading dock and the shipper's employee turned the wrong valve and spilled the fuel, the shipper would be held responsible for any damages. He pointed out the issue the bill addresses is because some contracts are being written to indemnify the shipper and require the carrier to pay for the damages. He described an instance in which a piece of equipment is shipped, but must be offloaded by forklift. He related that the carrier pulled into the shipper's yard and the shipper used his/her employee and forklift to transfer the equipment and the load broke free and was damaged. Currently, some contracts are written that the carrier is responsible if the freight breaks free, regardless of fault. This bill would place the responsibility on the employee who is

negligent, whether the negligent employee is the motor carrier's employee or the shipper's employee.

[2:00:41 PM](#)

REPRESENTATIVE JOHANSEN related a scenario in which the warehouseman takes the pallet off the truck and the pallet tips and breaks the pallet contents. The warehouseman may say the load was not secure, but the trucker may insist the load was a secure load. He asked who would make the determination of fault.

MR. THOMPSON offered his belief that the matter would be adjudicated and the respective insurance companies would review the situation. He related that HB 366 would not change the system of assigning responsibility, acknowledging that often a mishap is not solely due to the negligence of one party. However, one party cannot contractually demand the other party must assume liability for issues that arise outside of his/her responsibility.

[2:02:54 PM](#)

REPRESENTATIVE GRUENBERG referred to page 2, line 12 of HB 366. He suggested that language could be added to include storage since a third party could also be involved. Third parties should not be allowed to escape from negligence if the third party did not properly pack the item, he stated.

REPRESENTATIVE JOHNSON offered his support for Amendment 1. He offered his belief that the intent of the bill and Amendment 1 is "to do what is fair." He related instances in which trucking companies are often required to sign contracts in order to obtain work. These contracts shift the responsibility for liability solely to the truckers, which could also result in increased insurance and shipping costs. The purpose of this bill is to protect both the transporter and the shipper since neither should be held liable for damage that he/she did not cause to happen. The result of Amendment 1 is that when goods are damaged, the person who caused the damage would be held liable for the damage.

[2:07:25 PM](#)

CHAIR P. WILSON related her understanding that Amendment 1 is the result of an agreement between the trucking industry and the shipper.

REPRESENTATIVE JOHNSON answered that the language is an attempt to share the joint and several liability.

[2:07:56 PM](#)

REPRESENTATIVE GRUENBERG removed his objection.

There being no further objection, Amendment 1 was adopted.

[2:08:17 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, to add language on page 2, line 12, after, "the" to add "packing and storage." Thus, subparagraph (C) would read, "providing a service, including the packing and storage of property, incidental to (A) or (B) of this paragraph."

CHAIR P. WILSON objected for the purpose of discussion.

REPRESENTATIVE JOHNSON said he did not think he had a problem with the intent of Amendment 2, but he asked for clarification on third parties. He related a scenario in which a person shipping antlers took the antlers to a packing store, but the packing store subsequently contracted with yet another company to pack the antlers.

CHAIR P. WILSON related her understanding that HB 366 relates to transportation services and not to packaging services.

REPRESENTATIVE GRUENBERG clarified that the process would begin at the time the goods are loaded until the goods are delivered. He stated that packing is an integral part of the shipping process. The purpose of Amendment 2 is to ensure that each party is only responsible for his/her own negligence, but not for anyone else's negligence. In this context, "including means including, but not limited to." He related that if a situation arose in which an intermediate packer was involved, that the third party would also be held responsible. He reported that this responsibility is called comparative negligence and can be apportioned so each party is held responsible, and may be held responsible for a portion of the damage. He characterized Amendment 2 as a "clear and simple amendment" to ensure that each party is responsible for only his/her own negligence.

[2:11:26 PM](#)

MS. OSTNES referred again to page 2, line 12 and to the placement of the "," after "service." Thus, packing could be considered part of the service.

REPRESENTATIVE GRUENBERG agreed.

[2:12:01 PM](#)

REPRESENTATIVE JOHNSON stated that he did not currently have a problem with Amendment 2. He asked to work with the maker of the amendment in the next committee of referral if any additional issue arises.

REPRESENTATIVE GRUENBERG committed to work with the sponsor if an issue was discovered.

[2:12:37 PM](#)

CHAIR WILSON removed her objection.

There being no further objection, Amendment 2 was adopted.

[2:12:57 PM](#)

CHUCK ONSTOTT, General Manager; Midnight Sun Transportation, President, Alaska Trucking Association, stated that he had not yet reviewed the amendments being discussed, but the from the discussions, he thought that is what is needed. He said, "In a nutshell the legislation is to help protect the small trucking companies from the larger businesses that are not willing to take on their responsibilities."

[2:14:20 PM](#)

JAMES DOYLE, Owner, Weaver Brothers Trucking, stated that he has been in business 50 years. He offered his wholehearted support for the bill. He stated that he personally has been asked to sign agreements to take on other people's responsibilities. He must have insurance, but did not believe that he should have to supply insurance for his company as well as someone else's company.

[2:15:26 PM](#)

MR. DOYLE recalled an instance in which a trucking company delivered fuel to a gas station. Several days later a customer came in filled up a small gas can and static electricity caused

a fire, which caused damage to the vehicle and the person. The trucking company had signed one of the previously mentioned agreements and was held liable for the damages in the amount of \$1 million. This bill will "make things right" so that each party takes care of their own liability. He urged the committee to vote yes.

[2:16:48 PM](#)

CHAIR P. WILSON, after first determining no one else wished to testify, closed public testimony on HB 366.

[2:17:02 PM](#)

REPRESENTATIVE JOHANSEN recalled the original bill as introduced and the issues. He asked if the issues had been resolved.

MS. OSTNES stated that HB 366 was initiated at the request of the motor carriers. She related that within the last several days the shippers discussed the bill. She surmised that some large oil companies are interested in the bill and British Petroleum reviewed the language. In further response to Representative Johansen, she agreed that the truckers worked with the shippers and the issues have been resolved in the bill.

[2:19:14 PM](#)

REPRESENTATIVE JOHNSON thought the attorneys would not have problems with the bill since they will always try to protect their clients.

[2:19:51 PM](#)

REPRESENTATIVE T. WILSON moved to report HB 366, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, the CSHB 366(TRA) was reported from the House Transportation Standing Committee.

[2:20:14 PM](#)

The committee took a brief at-ease from 2:20 p.m. to 2:26 p.m.

HB 267-SNOW MACHINE USE IN DALTON HWY CORRIDOR

[2:26:35 PM](#)

CHAIR P. WILSON announced that the final order of business would be HOUSE BILL NO. 267, "An Act relating to travel by snow machine within five miles of the right-of-way of the James Dalton Highway."

[2:26:38 PM](#)

REPRESENTATIVE MIKE KELLY, Alaska State Legislature, explained that HB 267 is the Dalton Highway Access Bill. He paraphrased from his sponsor statement, which read [original punctuation provided]:

Since 1980, state law has prohibited virtually all off-road vehicle use within five miles of the Dalton Highway north of the Yukon River. Miners and oil workers are allowed to cross the corridor for business use and local resident snowmachine use is permitted. HB 267, as introduced, ended the prohibition on Alaskan's right to travel by snowmachine on this public land corridor during the winter months.

Many Alaskans believe that travel by snowmachine in the Dalton Corridor is prevented by federal law. Wrong. The problem is state law.

A February 20, 2010 *Fairbanks Daily News Miner* editorial stated (excerpt):

Some argue that the state must prohibit snowmachines in the corridor to protect wildlife from renegade hunters. If this is a reasonable argument, shouldn't the state apply the same five-mile buffer to the rest of its remote road system? Most of our highways traverse lightly populated areas where law enforcement is spotty.

The Dalton Highway is more remote, yes, but that actually argues against more stringent regulation. Its remoteness, lack of services and unpaved surface discourage most Alaskans from venturing up it - fewer people, fewer enforcement problems

The blanket prohibition north of the Yukon River is overkill.

REPRESENTATIVE KELLY stated that HB 267 would allow snowmachine use on the Dalton Highway corridor from October

1 to April 30 when soil is frozen and covered in snow. The resulting impact on surface vegetation should be minimal. If HB 267 passes, the prohibition on other off-road vehicles would remain. This bill applies strictly to snow machines. He pointed out that hunting methods and means are strictly controlled by the Alaska Department of Fish & Game regulations and laws. This bill would not change their laws. In response to Chair Wilson, he agreed that this bill would not change any restrictions on vehicles used for hunting.

[2:30:59 PM](#)

REPRESENTATIVE PETERSEN asked whether any mechanism exists to close the Dalton Highway Corridor during a year with extremely late snowfalls and insufficient snow existed for snowmachine use.

REPRESENTATIVE KELLY imagined that an emergency closure would apply. He stated that would apply to other areas. He opined that he personally rides snowmachines but does not ride without snow since it is so difficult. He surmised that during the timeframe affected by the bill, north of the Yukon it would be chilly and snowy.

[2:32:15 PM](#)

REPRESENTATIVE JOHNSON referred to page 1, line 13, which read, "(3) the use of a snow machine to travel across the highway..." and asked for an explanation.

REPRESENTATIVE KELLY related that travel from West to East is permitted, but travel along the corridor is limited. In further response to Representative Johnson, he agreed a person could pull alongside the road, unload their snowmachine, and access to property within and outside of the five miles on either side of the Dalton Highway.

[2:33:26 PM](#)

REPRESENTATIVE KELLY, in response to Chair Wilson, guessed that from the Yukon River to the Arctic Ocean is about 357 miles. In further response to Chair Wilson, he agreed that snowmachines are not allowed in the Dalton Highway Corridor north of the Yukon River with a buffer zone five miles along the Dalton Highway.

REPRESENTATIVE KELLY related that this bill would be similar to other roads in Alaska. Currently the five-mile corridor on either side of the Dalton Highway is a "no zone."

[2:34:31 PM](#)

REPRESENTATIVE JOHNSON asked how snowmachines would gain access to areas outside the five miles along the Dalton Highway Corridor.

REPRESENTATIVE KELLY agreed. He stated people can fly or hike. In further response to Representative Johnson, he agreed that except for flying and hiking land outside the ten-mile corridor is "shut off."

CHAIR P. WILSON related that some exceptions exist for off-road vehicles necessary for oil and gas exploration, development, production, or transportation; a person with mining claims in the vicinity of the highway and who must use land within five miles of the right-of-way of the highway to gain access to the mining claim, and the use of a snow machine to travel across the highway corridor from land outside the corridor [page 1, line 8-14.]

[2:36:03 PM](#)

REPRESENTATIVE JOHNSON stated his perspective is for people to "put meat on the table" for the purposes of hunting and also for recreation. He stated that current law excludes people from using their snowmachine and hunting beyond the corridor.

REPRESENTATIVE KELLY related that hunting would not be unrestricted, since currently the hunting is limited and this bill would not change that aspect. The ADF&G controls the methods and means and this bill does not change the fish and game laws. In response to Representative Petersen, he identified that the land is state land.

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REPRESENTATIVE MARK NEUMAN, Alaska State Legislature, testifying as joint prime sponsor of HB 267, related his understanding that an overabundance of caribou exists in the area of about 75,000 to 80,000 animals while then optimum herd size is 37,500. Thus, the herd is at risk of overgrazing since the primary food source is lichen.

REPRESENTATIVE NEUMAN stated that lichen could take 50 years to grow. Managing the herd is critical. He said that ultimately 3,000 to 3,500 animals should be harvested annually, but the take is less than 800. Thus, the herd is increasing, which creates concern of overgrazing and could cause the herd to crash. He related that crashes have happened in some areas of the state. His goal is to use this bill as a management tool to put more meat in Alaskans' freezers. He said the Nelchina herd has changed from Tier I to Tier II since so many people want to apply for the permits.

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CHAIR P. WILSON said she thought this bill would not make changes on any hunting.

REPRESENTATIVE NEUMAN related that the Alaska Board of Game would have the ability and opportunity to manage the herd.

CHAIR P. WILSON asked whether the Board of Game could make management decisions in a different way if the Dalton Highway corridor was opened.

REPRESENTATIVE NEUMAN agreed the Board of Game would make determinations on the allocation of game. He said he is interested in ensuring long-term sustainable food products for Alaskans.

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THOR STACEY stated that he is attending school in Juneau at the University of Alaska. For the past seven years he has lived at Wiseman. He is a registered hunting guide holding permits in the Arctic National Wildlife Refuge. His family has significant mining interests in the area in question. He has personally frequently traveled the road, well over 100 times during the winter and summer. He said he is in opposition to the bill. He said he has suggestions for the committee. He pointed out that the intent of the road is to provide support for Prudhoe Bay. The infrastructure is in place for truckers, including the pullouts for truckers to chain up their vehicles or take rests. The winter transportation time is the only time that heavy winter loads, over a certain weight limit, are allowable. Much of the road is gravel and allowing additional recreational use places this use in direct competition with the trucking industry. The proposed future gas line will demand additional infrastructure. All the recreational use facilities are not

maintained during the winter. He related that few Alaska State Troopers are available for wildlife or state highway enforcement. He was unaware of any medical emergencies except for the Alyeska Pipeline Services.

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MR. STACEY offered his belief that it would be difficult to handle an accident in an expedient manner in Atigun Pass. He related that there is not a fiscal note attached to this bill. He expressed concern over where people would park, and blocking roadways that require regular inspections of pipe. He stated this is the most critical time for industry, but not for recreational use. He requested the committee hold the bill since the road is needed for the potential gasline and due to a lack of clear understanding of the impact on industry and due to the lack of support on the public highway.

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GEOFF CARROLL, speaking on behalf of himself, described his background as a wildlife biologist. He testified in opposition to HB 267. He related that when the decisions were being made over whether the "haul road" would be built, the North Slope residents were assured the road would not be open to the public. The road was opened to the public. Another promise was that wildlife resources would be protected by not allowing off-road vehicles to access the land. This bill poses a threat to that promise. If the state wants credibility on the North Slope, the legislature should not pass this bill. Another reason not to open the Dalton Highway Corridor to snowmachines is that it would result in user conflicts with local hunters. He recalled earlier testimony on the Central Arctic herd and offered his belief that the numbers were overblown. Evidence does not indicate any overgrazing, he stated. The Teshekpuk Caribou Herd numbers about 62,000 and provides an important subsistence resource to the North Slope residents. Most of the range of the Teshekpuk herd is in the central and western North Slope. During the period 2002-2008, a substantial portion of the herd wintered in the Dalton Highway area. Recently, the Board of Game increased the bag limit in that area from two to five caribou.

MR. CARROLL predicted that HB 267 passes and the Board of Game allow hunters to use snowmachines in the area the harvest would increase substantially. The harvest rate on that herd is high enough that if harvest increases along the Dalton Highway, it

would decrease the harvest somewhere else. This would create a major user conflict, pitting sport hunters against North Slope subsistence hunters. Even if there is no increase in hunting, increase snowmachine use would impact wildlife. Part of the strategy for animals in the winter is to become somewhat sedentary to conserve energy. With increased activity animals use up their energy reserves and often starve before winter is over. Muskoxen are particularly vulnerable to this. When people see muskoxen in the Dalton Highway Corridor, they drive up for a closer look, which will result in the animals moving and use up their energy reserves. This activity can scatter the herd and make them more vulnerable to predation and abandonment of calves. Muskoxen numbers have seriously declined in recent years. The last thing the Muskoxen need is harassment, particularly when the animals should be sedentary. He urged members to honor their promise, minimize impact on subsistence hunters and the land, and vote down HB 267.

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TODD CLARK spoke in support of HB 267. He pointed out that the state constitution provides for the development of land and water for the maximum benefit of the people. The Dalton Highway Corridor acts as a fence and the general user does not have access to the millions of acres beyond the corridor. He suggested viewing the state over a 20 year period. He speculated that twenty years from now twice as many people will want to access the state's resources. The state's current mode seems to be restrictive. This bill would allow an opportunity to create additional access with minimal impact. He related that snowmachines are allowed on lands managed by the Department of Natural Resources, Division of State Parks. He related that the division seems to agree the impact by snowmachines has been minimal. Currently, the lands and resources are available to pilots, mining and other commerce, and people who live in the Dalton Highway Corridor. However, the land is not available to the average Alaska resident. He suggested members drive the highway to sense the vastness of the area. He characterized residents as essentially "locked out" of the Dalton Highway Corridor area.

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RANDY QUINCY, Board Member, Alaska Outdoor Council (AOC), stated that the AOC consists of 2,300 members in 48 clubs, with over 10,000 collective members. He said that the AOC supports HB 267.

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JACK REAKOFF said he is not in support of HB 267. He stated that the Board of Game wrote a letter in November 2009 in support of the pre-bill at its meeting in Nome, Alaska. He stated that "it's a given that there will be hunting pressure exerted on the resources near the Dalton Highway in the winter. He recalled a similar bill was previously offered in the Senate. He further recalled the Senate Resources Committee held hearings in Fairbanks, Wiseman, and Barrow. He offered that everyone expressed concern about disturbing or "outright killing of these animals." As of March 1, the latest Board of Game increased the bag limit by 150 percent. Twenty-five percent of the hunters are nonresident hunters. The harvest time has increased by two months for cow caribou. He said, "I'm very concerned. I'm the Chair of the Western Interior Regional Advisory Council, Co-Chair of the Koyukuk River Advisory Committee. The people of this area are very concerned about the additional harvest opportunity." He recalled that some people submitted to the Board of Game that the herd is imminently in danger of crashing. However, the reality is the ADF&G did not provide any documentation that the herd is declining. Productivity is high and two-year old caribou have calves, which he believed is an indication of a healthy herd. The Central Arctic herd is using areas on the south side of the Brooks Range that has not been used by caribou in 35 years. There are lots of resources available for the caribou to use. The reality is the five caribou limit is allocated for nonresident hunters. He anticipated a huge increase by non-Alaskans.

MR. REAKOFF offered his belief that this bill is not for residents. Currently, the area experiences a high-level of nonresident using boats, dog teams, and aircraft. The Mulchatna Caribou herd, with primary access by aircraft access went from 200,000 to 28,000 animals over a 12-year period. This represents an 86 percent decline, while the wolf population had one adult wolf per 100 cows. The herd did not have any breeding capacity, he stated. Snowmachine access is so efficient that it would allow access to cow caribou as they cross over the Brooks Range and move across the coastal plain since the area does not "break up" until mid-May. Thus, year-round hunting access to cow caribou would subject the caribou to high harvest. He offered his belief that snowmachine access would need to be curtailed in a short time period. He said, "Caribou do not recover."

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MR. REAKOFF stated the caribou cannot sustain this level of harvest. Dall Sheep have critical wintering habitat and high marking on the sides of the mountains. He predicted that "chasing Dall Sheep off their wintering habitats will kill the Dall Sheep." This is the most northerly wild sheep population in the world. The oil industry will be required to have additional restrictions once the herd is decimated. The oil industry has enjoyed the growing population of caribou, which implied that the industry could cohabitate with the resource. The reality is once this herd is decimated by overharvest, encouraged by snowmachine access, the industry will incur additional expenses. This bill basically is fraught with numerous problems, he stated. He suggested that ice truckers encounter steep roads and pickups with heavy trailers will inevitably jackknife and have accidents. He said, "There will need to be large fiscal note attached to the bill for [Emergency Medical Services] EMS, additional troopers." He stated that the [AST] Trooper at Coldfoot has not been present since September, yet the area encompasses a 78,000 square miles. He offered that currently the AST does not have a Trooper present. He stated that additional funding would be needed for AST, a MEDIVAC helicopter, and the bill is flawed. He offered his belief that the entire caribou harvest was 2,000, including the village harvest. He cautioned that the five caribou limit will attract hundreds of nonresident hunters and air carriers to support their access.

MR. REAKOFF said, "The reality is this bill would have huge detrimental effects to the caribou herds and the managers and people of Alaska will be looked at as slaughterers of the resource that inhabits the Arctic Coastal Plain, which is under high spotlight." He urged members not to adopt HB 267. In response to Chair P. Wilson, he stated that he is from Wiseman, Alaska, half-way between Fairbanks and Prudhoe Bay. He stated he has lived in the Central Brooks Range since before the Dalton Highway was built. He said, "I'm very concerned as an Alaskan resident that we are reallocating our resource to nonresidents and not actually doing what this bill is proposing to do."

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NICOLE FLIPS stated that she is property owner in Wiseman, but her primary residence is in Fairbanks. She said she hunts for Dall Sheep and caribou outside the Dalton Highway Corridor by foot and dog team. There is no need to change the law as it is

currently written prohibiting off-road vehicles on the land in the Dalton Highway Corridor. She said, "Only the lazy and uninspired would claim the current law denies their access to the public lands along the Dalton." She asked members to consider the overwhelming evidence that this bill will threaten the sensitive wildlife and subsistence uses along the Dalton Highway Corridor. She asked members to also consider that allowing snowmachines along the Dalton Highway Corridor will cost money through the increased demand and need for emergency services, public safety, and wildlife protection. Secondly, allowing snowmachines in the Dalton Highway Corridor will increase accidents, medical emergencies, search and rescue operations, and trespass. She expressed concern over the potential for increased vandalism of mining equipment, private property, tourism facilities, oil company facilities, and university research facilities. She reiterated that emergency services do not currently exist. Finally, allowing snowmachines in the Dalton Highway Corridor will require road improvements, pullouts, outhouses, and trash receptacles. She asked for the fiscal note to reflect the impact that HB 267 will have on the local residents, businesses, and miners who are left insecure and unsafe. She concluded, "I want myself and my property protected."

CHAIR P. WILSON related that several committee members traveled on the Dalton Highway this summer. She explained that members rode in the commercial trucks. She stated that she could not imagine traveling the Dalton Highway in the winter. She agreed the pullouts are necessary for emergency purposes.

[HB 267 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 3:07 p.m.