

**ALASKA STATE LEGISLATURE**  
**HOUSE TRANSPORTATION STANDING COMMITTEE**

March 23, 2010

1:03 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Representative Craig Johnson, Vice Chair

**COMMITTEE CALENDAR**

HOUSE JOINT RESOLUTION NO. 47

Urging the United States Coast Guard to amend its regulations relating to small vessels transporting fuel and supplies to remote communities and businesses in the state.

- MOVED HJR 47 OUT OF COMMITTEE

HOUSE BILL NO. 357

"An Act relating to the sale of land owned by the Alaska Railroad that is not needed for railroad purposes."

- MOVED CSHB 357(TRA) OUT OF COMMITTEE

SENATE BILL NO. 272

"An Act relating to charges for rented motor vehicles, including cost recovery fees, and making a violation of the rented motor vehicle charge provisions an unfair trade practice."

- MOVED SB 272 OUT OF COMMITTEE

HOUSE BILL NO. 257

"An Act relating to prohibiting the use of cellular telephones when driving a motor vehicle; and providing for an effective date."

- BILL HEARING CANCELED

**PREVIOUS COMMITTEE ACTION**

BILL: HJR 47

SHORT TITLE: SMALL VESSEL CARGO EXEMPTION

SPONSOR(s): REPRESENTATIVE(s) JOHANSEN

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

BILL: HB 357

SHORT TITLE: AK RAILROAD CORP. LAND SALES

SPONSOR(s): REPRESENTATIVE(s) STOLTZE

02/19/10 (H) READ THE FIRST TIME - REFERRALS  
02/19/10 (H) TRA  
03/16/10 (H) TRA AT 1:00 PM CAPITOL 17  
03/16/10 (H) Heard & Held  
03/16/10 (H) MINUTE(TRA)  
03/23/10 (H) TRA AT 1:00 PM CAPITOL 17

BILL: SB 272

SHORT TITLE: RENTAL CAR CHARGES

SPONSOR(s): SENATOR(s) HUGGINS

02/10/10 (S) READ THE FIRST TIME - REFERRALS  
02/10/10 (S) TRA, L&C  
02/23/10 (S) TRA AT 1:00 PM BUTROVICH 205  
02/23/10 (S) Moved SB 272 Out of Committee  
02/23/10 (S) MINUTE(TRA)  
02/24/10 (S) TRA RPT 4DP  
02/24/10 (S) DP: MENARD, MEYER, PASKVAN, DAVIS  
03/11/10 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
03/11/10 (S) Moved SB 272 Out of Committee  
03/11/10 (S) MINUTE(L&C)  
03/12/10 (S) L&C RPT 5DP  
03/12/10 (S) DP: PASKVAN, MEYER, THOMAS, BUNDE,  
DAVIS  
03/15/10 (S) TRANSMITTED TO (H)  
03/15/10 (S) VERSION: SB 272  
03/17/10 (H) READ THE FIRST TIME - REFERRALS  
03/17/10 (H) TRA, L&C  
03/23/10 (H) TRA AT 1:00 PM CAPITOL 17

**WITNESS REGISTER**

DAVID SCOTT, Staff  
Representative Kyle Johansen  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified on behalf of the prime sponsor during the discussion of HJR 47

DAVID SPOKELY  
Power Systems and Supply Alaska  
Ketchikan, Alaska

**POSITION STATEMENT:** Testified during the discussion of HJR 47.

REPRESENTATIVE BILL STOLTZE  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified and answered questions as prime sponsor of HB 357.

JIM KUBITZ, Vice President  
Real Estate and Facilities  
Alaska Railroad Corporation (ARRC)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 357.

PHYLISS JOHNSON, Vice-President and General Counsel  
Alaska Railroad Corporation (ARRC)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 357.

JOHN COAN, Staff  
Representative Bill Stoltze  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 357.

MARK STEARNS, Owner  
Alaska Wood Molding  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 357.

PAT GAMBLE, President and CEO  
Alaska Railroad Corporation (ARRC)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified and answered questions during the discussion of HB 357.

EDRA MORLEDGE, Staff

Senator Charlie Huggins  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented SB 272 on behalf of the prime sponsor of SB 272.

SHANE SKINNER, Controller  
Enterprise Rent-A-Car  
Seattle, Washington

**POSITION STATEMENT:** Testified during the discussion of SB 272.

#### **ACTION NARRATIVE**

[1:03:43 PM](#)

**CHAIR PEGGY WILSON** called the House Transportation Standing Committee meeting to order at 1:03 p.m. Representatives P. Wilson, Munoz, Petersen, and T. Wilson, and were present at the call to order. Representatives Gruenberg and Johansen arrived as the meeting was in progress.

[1:03:54 PM](#)

#### **HJR 47-SMALL VESSEL CARGO EXEMPTION**

CHAIR P. WILSON announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 47, Urging the United States Coast Guard to amend its regulations relating to small vessels transporting fuel and supplies to remote communities and businesses in the state.

[1:05:56 PM](#)

DAVID SCOTT, Staff, Representative Kyle Johansen, Alaska State Legislature, on behalf of the prime sponsor, explained that HJR 47 would urge the U.S. Coast Guard (U.S.C.G.) to amend its regulations relating to small vessels transporting fuel and supplies to remote communities and businesses in the state. A constituent brought this matter to Representative Johansen's attention. Mr. Spokely is on-line to testify today, he stated.

DAVID SPOKELY, Power Systems and Supply Alaska, stated that problems exist in delivering fuel and freight to Southeast Alaska and remote sites. He explained that twenty years ago logging barges were available in Southeast Alaska to help move

goods. He modified a vessel for fuel delivery. He then built a brand new vessel and worked with the Department of Environmental Conservation (DEC) to develop a spill response that meets the U.S. Environmental Protection Agency's (EPA) 2010 standards. The vessel he designed and built is a triple-hull high-speed landing craft. Although the local and state branches of the U.S.C.G. liked his system, when he applied for an exemption to the federal law, the national offices limited him to one vessel until the matter could be further investigated. He would like to have several ships in order to serve local communities, but has since been advised that due to cutbacks the U.S.C.G. would not develop any regulations to allow operation of his vessels.

1:09:15 PM

MR. SPOKELY restated that the local and state U.S.C.G. "liked what his company was doing." He explained that his spill response plan meets the EPA's 2010 standards that the state will implement for fuel delivery. His triple-hull lightweight vessel cruises at 23 knots and can navigate into shallow waters, which allows him to traverse bays and rivers. During its five years of operation his vessel has never "spilled any fuel". He detailed other aspects of his vessel's system, including the self-regulating pumping system. The state DEC and the local U.S.C.G. offices assisted him with the vessel design, certified, and inspected his vessel as a passenger vessel, a bulk fuel carrier, and a bulk cargo carrier. He reported that as of today his vessel is the only vessel in the U.S. that has obtained all three designations at once. The U.S.C.G. did not identify any issues or request any modifications or changes to his vessel. In fact, the state DEC office would like his company to expand throughout the state to serve coastal areas, he stated.

MR. SPOKELY, in response to Chair Wilson, replied that his vessel delivers fuel, cargo, and passengers. The difficulty is that the regulations that apply to his vessel were developed for supertankers. Thus, the U.S.C.G. has not addressed the requirements that apply to smaller vessels. So long as his vessel remains under 15 gross tons the bulk of the regulations do not really apply, but since his tanks are internal, he must meet the cargo tanker vessel regulations intended for large oil tankers. In order to obtain relief, the U.S.C.G. must create a new subchapter in regulation that would apply to smaller vessels transporting fuel, freight, and passengers. He said, "We addressed that through this exemption. They thought it was great. They loved what we did. They agreed we should be building more of these and supplying them everywhere. Maine has

been calling us and asking if they can get our boats." The limitation arises since his vessel is built from aluminum and the regulations require tankers to be built from steel. Thus, his issue requires the U.S.C.G. to create a new category of vessel. The U.S.C.G. was moving forward on regulations and then decided on other priorities to fund. Therefore, no funding or staff has been authorized to write the regulations.

[1:13:58 PM](#)

MR. SPOKELY reported that he has worked with the local U.S.C.G. office on draft regulations, but the Juneau office does not have resources to move forward, either. Meanwhile, he is "stuck" with one boat in Ketchikan while Alaska needs more boats like his to serve the small Alaskan communities. He pointed out the exemption would apply to all companies providing similar service, not just his company.

[1:14:57 PM](#)

CHAIR P. WILSON related her understanding that this resolution, HJR 47, would ask the U.S.C.G. to create a new category of vessel and separate it out from the requirements for larger vessels.

[1:15:47 PM](#)

MR. SCOTT, in response to Representative Gruenberg, explained that he had an expert witness lined up to testify but the person was not able to make the meeting. He explained that the U.S.C.G. personnel offered to answer any questions that are submitted in writing.

REPRESENTATIVE GRUENBERG offered his belief that it sounds like the statutory authorization exists but the U.S.C.G. must publish a regulation to cover vessels that carry fuel, cargo, and passengers concurrently at the same time.

MR. SCOTT agreed.

[1:17:08 PM](#)

REPRESENTATIVE GRUENBERG stated that he does not have any problem passing HJR 47 out of committee. He asked why the U.S.C.G. has not yet adopted regulations since not doing so makes it tough for Southeast Alaska businesses. He asked what needs to happen, whether a U.S.C.G. Admiral could come before

the committee or if the U.S. Congressional delegation would need to assist in addressing the issue.

REPRESENTATIVE JOHANSEN said he appreciated Representative Gruenberg's point of view. He would like to see the resolution keep moving through the process.

CHAIR P. WILSON said she would also like to pass the resolution out of committee. She asked the sponsor's staff to contact the U.S.C.G.

[1:18:36 PM](#)

REPRESENTATIVE MUNOZ related her understanding that the U.S.C.G. in Alaska is supportive but the matter just needs attention at the national level.

MR. SCOTT agreed.

CHAIR P. WILSON commented that she hoped this resolution would help alleviate the problem.

[1:19:17 PM](#)

REPRESENTATIVE PETERSEN asked whether the Ketchikan boat building facility could build boats of that size.

MR. SCOTT answered yes.

REPRESENTATIVE PETERSEN expressed support for using this type of vessel in Western Alaska. He offered his strong for HJR 47.

[1:20:21 PM](#)

REPRESENTATIVE GRUENBERG asked whether this vessel was built from the hull up.

MR. SPOKELY explained that his vessel is a one of a kind vessel. This vessel is 44 feet long and he plans to keep any future vessels under 65 feet and under 10,500 gallons. He stated that his company does not want to compete with "giant barges" but would like to deliver small quantities of fuel in a safe manner to rural areas. He envisioned using the 50 to 60 foot vessels as well as the 40-foot vessel designed specifically for shallow water navigation. It takes less than ten minutes to convert his vessel from a freight or passenger vessel to a fuel vessel.

Fuel transport operations cannot occur while passengers are on board, which he characterized as a good policy.

CHAIR P. WILSON related her understanding that Mr. Spokely has a "sister ship" waiting in the wings to be built.

MR. SPOKELY answered yes.

REPRESENTATIVE MUNOZ thanked Mr. Spokely for his investment and transportation in the Southeast Alaska region.

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CHAIR P. WILSON, after first determining no one else wished to testify, closed public testimony on HJR 47.

REPRESENTATIVE JOHANSEN remarked that the vessel Mr. Spokely designed is in demand. He characterized the vessel as an "amazing vessel" manufactured and designed in Alaska, with potential applications statewide. He said he is proud to represent District 1. He wants to "cut that red tape" and allow Mr. Spokely to move forward with his second ship. He said, "We should all get behind it and make it happen."

REPRESENTATIVE JOHANSEN removed his objection.

REPRESENTATIVE MUNOZ moved to report HJR 47 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HJR 47 was reported from the House Transportation Standing Committee.

[1:24:24 PM](#)

REPRESENTATIVE GRUENBERG added he was on a landing ship tank (LST) in Vietnam, which he thought was very similar to this vessel. He stated that the LSTs hauled cargo and people, but did not need a pier to unload.

**HB 357-AK RAILROAD CORP. LAND SALES**

[1:25:27 PM](#)

CHAIR P. WILSON announced that the next order of business would be HOUSE BILL NO. 357, "An Act relating to the sale of land owned by the Alaska Railroad that is not needed for railroad purposes."

[1:25:43 PM](#)

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, introduced his staff.

JOHN COAN, Staff, Representative Bill Stoltze, Alaska State Legislature, on behalf of the prime sponsor, related that two questions arose at the last hearing: whether the ARRC land is considered state land and if it is, whether any legal ramifications to in stating a right of first refusal on the land. He stated that the Alaska Railroad Corporation (ARRC) land is state land and the legislature approves any land sales and disposals. Thus, a right of first refusal is fine, he stated.

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REPRESENTATIVE STOLTZE offered that this bill really represents a policy call for the legislature. The purpose of the bill is captured by the letter from the Alliance in members' packets. The Alliance called the bill a "pro-business, pro-private sector, pro-investment, pro-jobs, and pro-Alaska Railroad" bill. He said he said he stumbled into this "unrest." He bill has spurred lots of discussion from the business community. Without the ability to have the opportunity to own the land, the business owners do not have the confidence to make the business investments. He remarked on the breadth of letters he received on this matter.

[1:29:44 PM](#)

REPRESENTATIVE T. WILSON asked whether the bill would give the Alaska Railroad Corporation (ARRC) the option to sell land.

REPRESENTATIVE STOLTZE answered that the bill provides the permission to do so. He remarked on what he termed as "arrogance" that the ARRC has shown to private businesses. He offered that the ARRC properties are taxable properties, which will likely only increase in value. He anticipated that lessees would be more likely to improve the property if they owned it, similar to how homeowners versus renters are more apt to invest and care for property.

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REPRESENTATIVE GRUENBERG referred to the sponsor statement, which read:

To spur economic development throughout the state, House Bill 357 adds a fourth clause to the existing language governing how the Alaska Railroad Corporation may dispose of land. House Bill 357 will enable the railroad to sell land that is not needed for essential railroad purposes. This bill does not ask for any irresponsible disposal of land, as the sale must be initiated by the board of directors on two conditions. The first condition is that the land is not essential to railroad operations, and the second condition is that the sale is in the best interest of the state of Alaska.

As support has shown, current leaseholders are very unhappy with the inability to purchase their leased properties from the railroad. In general real estate dealings, private purchases are made in mutually beneficial sales. House Bill 357 encourages these sales after determination by the board of directors of the railroad looks at each sale with the overall benefit to the state of Alaska as the key driver. Not only will the private sector benefit from this addition to state law, the railroad will also have increased ability to make decisions regarding their overall real estate portfolio.

The sale and relationship of private and public lands are vital to the economic growth of the state of Alaska. I ask for your consideration and support of House Bill 357 to promote Alaskan growth through the diversification of land ownership, increasing the tax base of the state, and encouraging responsible development of Alaskan land.

REPRESENTATIVE GRUENBERG stated that the sponsor statement outlines the first condition for sale would be that "the land is not essential to railroad operations..." He referred to page 1, lines 11-12, which read, "the land is not necessary for essential railroad purposes,..." He pointed out the language is not the same.

[1:33:09 PM](#)

REPRESENTATIVE STOLTZE asked members to refer to the bill and not his letter for the true meaning.

[1:33:28 PM](#)

REPRESENTATIVE GRUENBERG offered his belief that the bill would provide the Alaska Railroad Corporation (ARRC) a little more flexibility.

REPRESENTATIVE STOLTZE agreed that is his intent. He said he hoped the ARRC would not abuse the business owner's trust by being inflexible.

[1:33:51 PM](#)

REPRESENTATIVE MUNOZ asked whether the leases generate more money at eight percent interest than the ARRC would earn through investments, in practical terms if the ARRC would have a compelling case to sell the land.

REPRESENTATIVE STOLTZE again noted that this is a policy call. He suggested that the bill is not just about enhancing the state's revenue, but is about the ARRC's impact on jobs in the private sector. He characterized the provisions in the bill as "a balancing act" that the legislature must weigh in on. In terms of pure revenue, he considered that it is probably a better deal for the ARRC "to have a hammer over lessee," but the correspondence he received reflects that HB 357 may promote business and "spur" more activity.

[1:35:25 PM](#)

REPRESENTATIVE MUNOZ supported fostering business growth and opportunities for business. She wondered whether the language is strong enough. She asked whether the sponsor believes that HB 357 will lead to opportunities for individual businesses to acquire the properties.

REPRESENTATIVE STOLTZE said he hoped the bill would alert the ARRC that the legislature is interested in the ARRC developing a better working relationship with businesses operating on railroad property. He recalled anecdotal comments from lessees who would like to make investments but cannot due to the uncertainty of "dealing with the railroad." This is not just about the financial aspect but is also about how the ARRC will react to lessees in five years. He recalled the terms "arbitrary and capricious" have been used in relation to the ARRC. He related his understanding that lease terms are erratic. He has observed this first hand when working with the ARRC on other issues. He believed that fiscal certainty and right of first refusal is important to lessees, he stated.

[1:37:39 PM](#)

REPRESENTATIVE GRUENBERG referred to page 1, line 12, to the word "essential" yet the language on page 2, line 3 does not refer to "essential." He asked whether the sponsor would consider deleting "essential" from the provision on the first page.

[1:38:20 PM](#)

REPRESENTATIVE STOLTZE responded that the change may read better, although he would probably prefer adding "essential" to the language on page 2.

REPRESENTATIVE GRUENBERG suggested that he would prefer not to say "essential" in order to give ARRC more leeway.

REPRESENTATIVE STOLTZE offered his belief that the ARRC already has a lot of flexibility. He stated that "essential" was to protect the ARRC.

REPRESENTATIVE GRUENBERG asked whether the language was discretionary.

REPRESENTATIVE STOLTZE stated that he would leave the punctuation and grammar to Representative Gruenberg to consider.

[1:39:26 PM](#)

REPRESENTATIVE GRUENBERG referred to page 2, lines 8-11 to subsection (c). He asked whether the funds are deposited to general fund (GF) or to a separate account.

REPRESENTATIVE STOLTZE stated that the funds are not deposited to the GF, but are retained by the ARRC. Thus, the land proceeds are not used for the general ARRC operations.

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REPRESENTATIVE GRUENBERG referred to page 2, lines 10-11, which read, "Money in the account may be appropriated in accordance with 45 U.S.C. 1207(a) (5)(Alaska Railroad Transfer Act of 1982)." He inquired as to whether the legislature appropriates these funds.

REPRESENTATIVE STOLTZE did not recall. He stated that the state must comply with the Alaska Railroad Transfer Act of 1982. He

explained that the ARRC does not appear in the state budget. He thought the language referred to activities within the ARRC.

REPRESENTATIVE GRUENBERG asked whether "appropriated" is the correct term since that is generally reserved for legislative bodies.

REPRESENTATIVE STOLTZE responded that the legislature is at a disadvantage since the ARRC does not fall under the Executive Budget Act.

[1:42:48 PM](#)

JIM KUBITZ, Vice President, Real Estate and Facilities, Alaska Railroad Corporation (ARRC), introduced himself. He explained that "appropriated" is not likely the best term. He suggested that the ARRC's legal counsel is on-line.

REPRESENTATIVE GRUENBERG also asked the ARRC to comment on the word "essential" that he previously mentioned.

CHAIR P. WILSON opened up public testimony on HB 357.

PHYLISS JOHNSON, Vice President & General Counsel, Alaska Railroad Corporation (ARRC) introduced herself. In response to Representative Gruenberg, said she thought that deleting "essential" on page 1 would give the ARRC more flexibility.

REPRESENTATIVE GRUENBERG referred to page 2, line 10, and asked whether some other language than "appropriated" should be used. She recommended that "expended" be used.

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MS. JOHNSON, in further response to Representative Gruenberg, stated that she did not have any other recommended changes to the bill. In response to Chair P. Wilson, she responded that having the reference to the Alaska Railroad Transfer Act was a good to have in the bill, since "railroad funds be used for railroad and related purposes." She also recalled similar language in the state transfer act, as well. She stated that this language helps to clarify the continued use of railroad funds for railroad purposes.

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REPRESENTATIVE GRUENBERG referred to two fiscal notes. He pointed out that one fiscal note was approved on 3/23/10. He assumed that the fiscal note supersedes the one with an earlier signature date.

MR. KUBITZ answered yes. He believed that was correct.

[1:47:37 PM](#)

MR. KUBITZ referred to page 1, line 12, and read: "... (2) the sale of the land is in the best interest of the state." He explained that the determination must be made by the ARRC's Board of Directors in order to sell land. He offered his belief that what is in the best interest of the state may not mesh with what is in the best interest of the ARRC, since economic development and self-sufficiency are listed in the ARRC's mission statement. The state's historic properties group may have a best interest statement that may be contrary to the ARRC. He suggested that this may not be a huge problem but he related that this language would require the ARRC's Board to consider what is in the best interest of the state.

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REPRESENTATIVE GRUENBERG offered his belief that this is "the heart of the bill." The ARRC's board must make a finding. He Normally, when a court makes a finding it is not usually reviewable by a higher court unless it is clearly erroneous. That term means the court is left with a definite and firm conviction that the facts the lower body found were wrong or else the court misapplied the law. This forms the twin basis for determining an erroneous decision. He said he does not know whether that applies to a finding of the board, but the sponsor says that this is discretionary. Further, the use of the term "may" on line 11 makes it discretionary. He asked Ms. Johnson if she thought he was correct in his assessment.

[1:49:51 PM](#)

MS. JOHNSON said, "Certainly it's discretionary with the use of the word 'may.'" She agreed with Mr. Kubitz, that the ARRC Board's has a lack of familiarity in applying the state's best interest standard. She said to use this standard casts us "a little bit adrift in an area of expertise that previously the ARRC has not been called upon to consider. She offered that the best interest of the ARRC is more economically based than the state's best interest. She recalled that if the Department of

Natural Resources (DNR) was considering whether to lease land, the department must consider other things such as fish habitat or game management since the state is comprised of multi-use agencies. She suggested that the standard of appeal would generally be determined by the Superior Court.

[1:52:10 PM](#)

REPRESENTATIVE GRUENBERG related that the ARRC may tactfully be suggesting that on page 1, line 13 and on page 2, line 4, that the committee consider changing "state" to "railroad."

MS. JOHNSON answered yes. She thought the language would be more satisfactory.

REPRESENTATIVE MUNOZ asked to hear from the sponsor. She asked whether the sponsor intended that this language would apply to the best interest of the economic vitality of the area.

[1:53:11 PM](#)

JOHN COAN, Staff, Representative Bill Stoltze, Alaska State Legislature, on behalf of the prime sponsor, offered his belief that the intent of the specific language "in the best interest of the state" was multi-faceted. He suggested that the language would provide another vehicle for responsible sale of land, and for the ARRC to take a greater role in community development instead of being a hindrance. He further thought that the ARRC should facilitate a better level of contact between the quasi-public agency and the private sector. He related his understanding that replacing "state" with "railroad" might change the focus of the bill.

[1:54:28 PM](#)

MARK STEARNS, Owner, Alaska Wood Molding, stated that he has a business located at the Port of Anchorage. He said that he is a nine-year leaseholder and the ARRC has generally been supportive. He stated that one source of frustration that many have is the issue of uncertainty. He explained that the terms of his lease went from \$790 per month in 2001 to over \$1600 over a three-year period and then increased to \$3000 per month. He related that the terms contained in leases typically restrict any increases to 135 percent of the lease payment over a five year period. He pointed out that his business was not afforded similar terms or any official notification process. Changes to the terms of his lease have created a climate of uncertainty and

makes it difficult for him to consider any improvements. He recapped that having lease terms dramatically increase by nearly 400 percent over nine years without an explanation clearly created uncertainty. He described the situation as "random" and "a scary situation."

[1:58:17 PM](#)

MR. STEARNS explained that lessees do not have any process for relief. The ARRC "pretty much does what the railroad would like to do." He urged members to support HB 357 to afford businesses an opportunity to have some certainty.

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CHAIR P. WILSON asked for the length of his lease.

MR. STEARNS responded that he is in the process of extending their lease to 35 years, but he has not yet heard back from the ARRC. He said he hopes the lease will not allow the ARRC to increase payments more than 35 percent over a five-year period. In further response to Chair P. Wilson, he explained that he has read his lease but some question remains as to which is the valid lease. He pointed out that the potential to own the property would afford him greater flexibility to make investments.

CHAIR P. WILSON commented that the newer ARRC leases contain the language.

MR. STEARNS agreed that the provision limiting the increase is in the new lease.

[2:01:35 PM](#)

PAT GAMBLE, President and CEO, Alaska Railroad Corporation (ARRC), offered his belief that the dialogue is healthy. He referred to page 2, line 2, to the public notice, best interest of the state, and to the first right of refusal. He described a scenario in which a parcel is for sale and the current leaseholder makes an offer to purchase the property. If a member of the public makes a higher offer, he wondered if that would be considered as acquiring the best interest for the state or if some other determination would be made. He acknowledged that if the scenario arose that he would recommend the ARRC board take the higher offer. However, he was not certain how that would "square with the first right of refusal" or obtains

the best return for the state. He concluded that practical issues like this arise, but overall the discussion has been large healthy discussion.

2:03:30 PM

CHAIR P. WILSON asked whether first right of refusal refers to paying the "going rate" and when another offer is made that the "going rate" would prevail.

2:03:46 PM

REPRESENTATIVE GRUENBERG clarified that this raises issues that are addressed in the memorandum from the Division of Legal Services. He asked whether Ms. Johnson has reviewed the March 20, 2010 memo.

MS. JOHNSON answered no.

REPRESENTATIVE GRUENBERG suggested that the ARRC's lawyers should review the memo.

MS. JOHNSON agreed to do so.

REPRESENTATIVE GRUENBERG referred to a letter August 25, 2004, from Steve Van Sant, State Assessor, to Marty McGee, the Municipality of Anchorage's Assessor, and asked for its relevance to the bill.

MR. KUBITZ replied that he made copies of the letter for the committee. He explained the contention was that selling railroad land would increase local tax revenue. He acknowledged tenants are taxed following a somewhat complicated formula. Basically as the lease approaches the termination date, the actual value goes down. The letter of August 25, 2004 informed the MOA that it needed to tax the tenants as though they owned the land. Thus, this letter provided the justification for the lessee's taxes on ARRC leased land and the reason that the taxes will not go up.

2:07:15 PM

MR. KUBITZ, in response to Representative Gruenberg, related that the tenants understood the reason the leased property was being tax. He said that represents one reason that some tenants believe they "may as well" own the land since they must pay taxes on the land. In further response to Representative

Gruenberg, he agreed that the assessed amount is reduced as the lease draws closer to the end of the term.

REPRESENTATIVE GRUENBERG remarked that the property tax amount is less at the end of the lease than it would be if the lessee was a fee simple owner.

MR. KUBITZ agreed.

[2:07:59 PM](#)

CHAIR P. WILSON related that the committee must consider the reason the ARRC does not request state funding, which is that as a quasi-independent agency it owns land and has the ability to earn income.

MR. KUBITZ, in response to Representative T. Wilson, explained that the appraisal and appeal process is up to the tenants. Typically, tenants often appeal tax assessments and that is a relationship with the taxing agency. Some tenants are successful in their appeals and others are not.

[2:09:40 PM](#)

REPRESENTATIVE T. WILSON related a scenario in which the ARRC appraisal is set at \$500,000, but the borough assessment is set at \$400,000. She asked whether the tenant could appeal by furnishing the borough assessment.

MR. KUBITZ answered that the tenant has the right to obtain a third party appraisal and can present that to the ARRC for consideration. Per a mechanism in the lease, if the tenant and the ARRC cannot reach an agreement, the matter would go to binding arbitration for a decision. A third party appraisal must be performed by a "Member of the Appraisal (MAI)" appraiser.

[2:10:39 PM](#)

MR. KUBITZ, in response to Representative T. Wilson, he explained that the ARRC appraises its property every five years. He pointed out that Mr. Stearns will be operating under a new lease, which provides adequate protection. Previously, Mr. Stearns was operating under a 50-year old federal lease that did not contain any cap. Thus, any time an appraisal increased the property value, the lease also increased accordingly, as per the

lease terms. He pointed out that the ARRC's leases limit the term increases to 135 percent over a five-year period.

[2:11:34 PM](#)

CHAIR P. WILSON asked whether the amount of the lease increases applied to all tenants.

MR. KUBITZ explained that not all the leases are ARRC leases and a few leases remain that date back to the 60s, although little time remains on those leases. The old leases did not even contain environmental language. He assured Chair P. Wilson that the ARRC strives to have everyone under the new leases for everyone's benefit.

[2:12:13 PM](#)

CHAIR P. WILSON, after first determining no one else wished to testify, closed public testimony on HB 357.

[2:12:33 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 1, on page 1, line 12 to delete "essential."

REPRESENTATIVE T. WILSON objected for purpose of discussion.

REPRESENTATIVE GRUENBERG expanded Conceptual Amendment 1, on page 1, line 10 to delete "essential." He explained that removing the two references to "essential" would conform to the language on page 2, line 3. This would give the corporation more flexibility and would lower the standard in instances in which the ARRC board determines the land is necessary for ARRC purposes. He offered that this would avoid the discussion of deciding the whether the land is essential for railroad purposes. He commented that the sponsor does not oppose Conceptual Amendment 1 and the ARRC supports Conceptual Amendment 1.

REPRESENTATIVE T. WILSON removed her objection.

There being no objection, Conceptual Amendment 1 was adopted.

[2:14:28 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 2, on page 1, line 1, in the title, to replace "needed" with "necessary".

REPRESENTATIVE T. WILSON objected for purpose of objection.

REPRESENTATIVE GRUENBERG offered his belief that this change would be grammatically correct.

MR. COAN suggested that pending the legal drafter's consent that the change should be fine.

REPRESENTATIVE T. WILSON removed her objection. There being no further objection, Conceptual Amendment 2 was adopted.

[2:15:46 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 3, on page 2, line 10, to remove "appropriated" and insert "expended."

REPRESENTATIVE T. WILSON objected. She asked whether funds could be deposited so the ARRC could spend the interest instead of spending the principal.

REPRESENTATIVE GRUENBERG explained that Conceptual Amendment 3 provides a grammatical change, which is that the ARRC can "expend" only in accordance with federal law.

REPRESENTATIVE PETERSEN recalled that the federal definition in 45 U.S.C. 1207(a) (5) (Alaska Railroad Transfer Act of 1982) required that the funds be used for railroad purposes. Thus, the funds would be "expended" for railroad purposes. He agreed the term "appropriate" referred to legislative action.

REPRESENTATIVE MUNOZ suggested that "expend" means to spend so she thought it may be clearer to use "budgeted." She explained that the ARRC may want to invest the funds.

MS. JOHNSON offered that her first response is that using "may be expended" would also give the ARRC the latitude to save the funds in an account. She pointed out reference to "45 U.S.C. 1207 (a) (5) (Alaska Railroad Transfer Act of 1982)" was to ensure the funds are spent for railroad and related purposes. She recalled when another committee member summarized the federal law that the member left out "related purposes" which could be significant.

[2:19:00 PM](#)

REPRESENTATIVE T. WILSON stated that she preferred "invested" for the intent it implies since she would rather see the funds invested and "to send the ARRC a better message."

MR. COAN pointed out that he not an attorney, but he believed the drafter used the term "appropriated" since it is the term used in Alaska Railroad Act of 1982. He said, 45 U.S.C. 1207 (a) (5) reads, "Revenues generated by the state-owned railroad, including any amount appropriated or otherwise made available to the state-owned railroad should be retained and managed by the state-owned railroad for railroad and related purposes."

[2:20:18 PM](#)

MR. COAN, in response to Representative Gruenberg, re-read the federal law.

CHAIR P. WILSON said she thought that the language referred to an appropriation made to the legislature.

REPRESENTATIVE GRUENBERG agreed. He said this language seems to be just the opposite of the language in the bill.

MR. COAN related his understanding that the specific section in federal law references "appropriation" so using "appropriation" in the bill is correct.

[2:21:14 PM](#)

REPRESENTATIVE GRUENBERG offered his belief that the federal language the sponsor's staff read is correct, but he opined that it is not correct to use "appropriated" in the bill. He said he believes that a person can "budget money without spending it." He said he prefers not to use the term "budget" and that "expended" is the legal term.

CHAIR P. WILSON preferred the use of "expended."

REPRESENTATIVE T. WILSON disagreed, stating that the language "expended" sends the wrong message to the ARRC.

[2:22:14 PM](#)

REPRESENTATIVE GRUENBERG related that this provision sets out a limitation, which is that the funds could only be expended in accordance with the federal law. He asked Ms. Johnson for clarification.

MS. JOHNSON answered yes, that Representative Gruenberg is correct.

REPRESENTATIVE PETERSEN asked whether "money in account may be used" is a possible clarification.

MS. JOHNSON stated that "used" is acceptable.

REPRESENTATIVE GRUENBERG explained that a person does not "use" money in an account, but "spends it." He offered his belief that "spend" or "expended" is the normal legal term.

[2:24:37 PM](#)

REPRESENTATIVE PETERSEN made a motion to amend Conceptual Amendment 3, to delete "appropriated" and insert "used." There being no objection, the amendment to Conceptual Amendment 3 was adopted.

[2:25:01 PM](#)

REPRESENTATIVE T. WILSON removed her objection.

There being no further objection, Conceptual Amendment 3, as amended, was adopted. Thus, subsection (c) read:

(c) The corporation shall separately account for the proceeds from the sale of land under this section and shall report the earnings and balance in the account in the annual report required by AS 42.40.260. Money in the account may be used in accordance with 45 U.S.C. 1207(a)(5) (Alaska Railroad Transfer Act of 1982).

[2:25:25 PM](#)

REPRESENTATIVE T. WILSON moved to report HB 357, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, the CSHB 357(TRA) was reported from the House Transportation Standing Committee.

[2:25:40 PM](#)

**SB 272-RENTAL CAR CHARGES**

CHAIR P. WILSON announced that the final order of business would be SENATE BILL NO. 272, "An Act relating to charges for rented motor vehicles, including cost recovery fees, and making a violation of the rented motor vehicle charge provisions an unfair trade practice."

[2:25:54 PM](#)

EDRA MORLEDGE, Staff, Senator Charlie Huggins, Alaska State Legislature, paraphrased from the sponsor statement, as follows [original punctuation provided]:

SB 272 is a technical bill that would allow rental car companies to do in Alaska what they already do in thirty other states. Alaska law is currently silent on the issue of separately-listed charges on rental car statements for the recovery of fees. This bill would require those fees to be listed separately and clearly identified on the rental car agreement.

The industry standard is to turn over the rental car fleet every twelve months and to associate the costs of licensing the vehicles, concessions, and airport or facility-related costs with the vehicles themselves. In addition to government taxes and surcharges, rental car companies assess additional "cost recovery fees" to offset those costs. Consumers should be made aware, and be able to see the fees they are charged, on both the rental bill and in an online quote. This bill would provide full disclosure and transparency of "cost recovery fees" included in rental car agreements. In addition, this legislation would make violating the provision an unfair trade practice.

[2:27:32 PM](#)

MS. MORLEDGE explained that the bill passed the other body without any opposition. The Department of Law supports the bill, as does the industry, she stated.

[2:29:00 PM](#)

REPRESENTATIVE MUNOZ referred to the "Business Advisory" dated August 30, 2006 from the Department of Law and asked whether the bill is necessary.

MS. MORLEDGE explained that the "Business Advisory" resulted because complaints arose that fees were being charged that may be in violation of the federal Consumer Protection Act. However, it came to the attention of the Department of Law that the state did not have any enforceable laws.

[2:29:54 PM](#)

CHAIR P. WILSON passed the gavel to Representative Munoz.

[2:30:15 PM](#)

SHANE SKINNER, Controller, Enterprise Rent-A-Car, explained that he represents Enterprise Rent-A-Car in Alaska and Washington State. He concurred that the current Alaska statute is silent and this bill would create clarity since it would require full disclosure of all taxes and fees. The bill would limit the fee amounts to the amounts paid to government entities, including rental taxes, airport fees, or license and registration fees.

[2:31:13 PM](#)

REPRESENTATIVE GRUENBERG referred to Section 1, and related that the fees must be listed in the rental car agreement, which is a document people sign before "they take the keys to the car." He stated that if the intent is disclosure, that the fees should be clear in any advertising and quotes, not just be contained in the "fine print."

MS. MORLEDGE agreed the intent is full disclosure, which includes when potential customers are perusing quotes and at the time that the car is being returned to the car rental agency.

REPRESENTATIVE GRUENBERG suggested that it should be clear in the bill. He referred to page 2, line 1, which he suggested should read, "in the written car rental agreement" for better disclosure. He then referred to page 2, line 3, to "government tax, or government surcharge." He offered his belief that this language is broader than the sponsor's intent, since government taxes could include withholding or municipal property taxes. He related his understanding that the sponsor would like to limit the tax to certain types of taxes.

MS. MORLEDGE agreed that is the sponsor's intent.

[2:35:07 PM](#)

MR. SKINNER explained that the current statute allows car rental agencies to pass through property taxes or employment taxes but car rental companies do not currently assess those types of charges. Currently, a facility management charge (FMC) is assessed at the Anchorage airport, through an agreement with the concessionaire. He expressed concern that if the language is narrowed down that the effect may be to disrupt the agreement currently in place with the state.

[2:36:06 PM](#)

REPRESENTATIVE GRUENBERG said he did not intend to do so. He did not want additional government charges to be passed through to customers.

MS. MORLEDGE agreed that it is not the sponsor's intent to pass on superfluous taxes. She pointed out that the intent of the bill is to ensure that any taxes charged by a car rental company must be included in the quote and agreement so the consumer could make the choice.

[2:37:31 PM](#)

REPRESENTATIVE GRUENBERG clarified his understanding that this is a disclosure bill and a car rental company could "do what it wanted to do" but must disclose the fees.

MS. MORLEDGE answered yes.

REPRESENTATIVE GRUENBERG wanted the bill to provide clarity as to whether companies are allowed to pass through a variety of taxes, including corporate income taxes and employee withholding taxes. He suggested that the sponsor should define government taxes or surcharges.

MR. SKINNER reiterated that current Alaska statute provides "a blank check." The intent of SB 272 is to "tighten up" and create some foundation since no restrictions currently apply.

[2:39:23 PM](#)

REPRESENTATIVE T. WILSON related her understanding that this bill is not telling a car rental company how to run its company.

MS. MORLEDGE answered that is correct.

REPRESENTATIVE T. WILSON summarized that SB 272 would require a car rental company to disclose any charges to enable consumers the ability to compare the car rental fees to another company's fees. Thus, the consumer would have the information to make an informed decision on the rental vehicle's cost.

REPRESENTATIVE PETERSEN offered his belief that this bill is good idea for consumers. He related an anecdotal experience he had trying to figure out the car rental costs. He offered that Alaska has a tourism industry and his desire that it should be easy for consumers to decipher the taxes and fees charged.

[2:40:50 PM](#)

REPRESENTATIVE GRUENBERG referred to page 2, line 22, to the term "inspection" and he asked whether that term referred to annual emission inspections, brake inspections, or what type of inspection this would encompass.

MR. SKINNER related that the language in this bill or a close variation of it was passed in 18 states. Some states have initial inspection costs to put a vehicle on the road and that is the intent of this provision.

MR. SKINNER, in response to Representative Gruenberg, clarified that all fees are limited to what is paid to the government authority. Thus, the consumer can go on-line to see the extreme variations and this bill would disclose fees so the variations in fees are not profit centers for companies.

REPRESENTATIVE GRUENBERG clarified that the inspection does not refer to lubrication or brake inspections.

MR. SKINNER explained that this provision refers to government-mandated inspections. Thus, the provision would allow the car rental company to recoup fees and taxes it pays the government.

REPRESENTATIVE GRUENBERG suggested the language be clarified to refer to government mandated inspections.

MS. MORLEDGE referred to page 2, line 22, and explained that "inspection" refers to the "licensing cost" listed in line 21. She referred to AS 45.45.460, which is the section that defines vehicle licensing costs.

REPRESENTATIVE GRUENBERG related his understanding that some types of inspections are required in the business by the government and that is what is meant by licensing cost. He stated that provision is clearer to him.

REPRESENTATIVE GRUENBERG suggested that at least one definition could be eliminated from the bill. He offered that if the agreements were called rental motor vehicle agreements, that "car" would not need to be defined as "motor vehicle." He pointed out that consumers may rent trucks.

MS. MORLEDGE offered her belief that the reason the "car rental fees" was used is because it is the most common term and would apply to the broader term, that car would apply to all motor vehicles.

[2:46:19 PM](#)

REPRESENTATIVE GRUENBERG offered that this bill will be read as a "consumer protection" bill. The current language could be confusing for consumers and he hoped to make it "user friendly." He suggested that someone renting a motorcycle could interpret the language and may not think he/she was gaining the protections in the bill. He asked if "car" could be changed to "motor vehicle."

MS. MORLEDGE answered that she did not think the sponsor would object to the type of improvements and "clean up" language that Representative Gruenberg is suggesting. She offered her belief that the sponsor would like to move the bill along, noting the bill has another committee of referral.

[2:47:25 PM](#)

REPRESENTATIVE MUNOZ asked whether Representative Gruenberg would work with the sponsor if the bill moved from committee.

REPRESENTATIVE GRUENBERG agreed to do so.

[2:48:32 PM](#)

REPRESENTATIVE T. WILSON offered work to improve the bill in the next committee of referral in the House Labor and Commerce Standing Committee.

[2:48:51 PM](#)

REPRESENTATIVE MUNOZ, after first determining no one else wished to testify, closed public testimony on SB 272.

REPRESENTATIVE T. WILSON moved to report SB 272 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GRUENBERG objected.

[2:49:45 PM](#)

REPRESENTATIVE GRUENBERG explained that the statutes have percentages, perhaps ceilings, but the bill does not contain any ceiling or guidance for consumers. He wondered if some kind of ceiling, perhaps geographic, could be added. Otherwise, the marketplace is allowed to freely roam, he stated.

MS. MORLEDGE answered that a ceiling is not listed on the cost recovery fees since those fees are mandated by the government and varies between governments. Some of the fees are under local control so they are not state-mandated fees.

REPRESENTATIVE GRUENBERG suggested that Arizona is allowing for reimbursement of the licensing fees. He surmised that other states are going beyond just disclosure.

[2:52:44 PM](#)

MS. MORLEDGE referred to Hawaii and reported that car rental companies do not charge the licensing fees. The fees are not capped because the bill contains a good faith estimate clause under AS 45.45.460. That section explains how those fees are to be calculated. She commented that Ed Sniffen, DOL, was "comfortable with that." She explained that if an issue arose, Mr. Sniffen believes that this bill would give him "the teeth" to deal with the issue.

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REPRESENTATIVE GRUENBERG stated he was satisfied. He removed his objection. There being no further objection, SB 272 was reported from the House Transportation Standing Committee.

[2:54:14 PM](#)

## **ADJOURNMENT**

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:54 p.m.