

**ALASKA STATE LEGISLATURE  
HOUSE TRANSPORTATION STANDING COMMITTEE**

March 30, 2010

1:05 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. 333

"An Act directing the Department of Transportation and Public Facilities to develop and implement standards and operating procedures allowing for the use in the construction and maintenance of transportation projects and public facilities and in the construction of projects by public and private entities of gravel or aggregate materials that contain naturally occurring asbestos, and authorizing use on an interim basis of those materials for certain transportation projects and public facilities; and relating to certain claims arising out of or in connection with the use of gravel or aggregate materials."

- MOVED CSHB 333(TRA) OUT OF COMMITTEE

HOUSE BILL NO. 313

"An Act relating to the maintenance and repair of railroad crossings and rights-of-way within railroad crossings."

- BILL HEARING RESCHEDULED TO 4/01/10

**PREVIOUS COMMITTEE ACTION**

BILL: HB 333

SHORT TITLE: NATURALLY OCCURRING ASBESTOS IN GRAVEL

SPONSOR(S): REPRESENTATIVE(S) JOULE

02/10/10 (H) READ THE FIRST TIME - REFERRALS  
02/10/10 (H) TRA, FIN  
03/30/10 (H) TRA AT 1:00 PM CAPITOL 17

**WITNESS REGISTER**

REPRESENTATIVE REGGIE JOULE  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified as prime sponsor of HB 333.

DEWEY HOFFMAN, Staff  
Representative Reggie Joule  
Alaska State Legislature  
Juneau, Alaska.

**POSITION STATEMENT:** Testified on behalf of Representative Reggie Joule, the prime sponsor of HB 333.

CHRISTINE HESS, Staff  
Representative Reggie Joule  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified on behalf of Representative Reggie Joule, the prime sponsor of HB 333.

LANCE MILLER, Vice-President, Resources  
NANA Regional Corporation  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 333.

MARY SIROKY, Legislative Liaison  
Office of the Commissioner  
Department of Transportation & Public Facilities (DOT&PF)  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of HB 333.

LORI VERBRUGGE, Toxicologist  
Department of Health and Social Services  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of HB 333.

WILDA LAUGHLIN  
Special Assistant  
Department of Health and Social Services (DH&SS)

Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of HB 333.

MARIT CARLSON-VAN DORT, Legislative Liaison  
Office of the Commissioner  
Department of Environmental Conservation (DEC)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of HB 333.

#### **ACTION NARRATIVE**

[1:05:02 PM](#)

**CHAIR PEGGY WILSON** called the House Transportation Standing Committee meeting to order at 1:05 p.m. Representatives P. Wilson, Gruenberg, Petersen, and T. Wilson were present at the call to order. Representatives Munoz, Johnson, and Johansen arrived as the meeting was in progress.

#### **HB 333-NATURALLY OCCURRING ASBESTOS IN GRAVEL**

[1:05:06 PM](#)

CHAIR P. WILSON announced that the only order of business would be HOUSE BILL NO. 333, "An Act directing the Department of Transportation and Public Facilities to develop and implement standards and operating procedures allowing for the use in the construction and maintenance of transportation projects and public facilities and in the construction of projects by public and private entities of gravel or aggregate materials that contain naturally occurring asbestos, and authorizing use on an interim basis of those materials for certain transportation projects and public facilities; and relating to certain claims arising out of or in connection with the use of gravel or aggregate materials." [Before the committee was Version E.]

[1:06:13 PM](#)

REPRESENTATIVE T. WILSON moved to adopt the proposed committee substitute (CS) for HB 333, labeled 26-LS1248\S, Chenoweth, 3/16/10, as the work draft. There being no objection, Version S was before the committee.

[1:06:50 PM](#)

REPRESENTATIVE REGGIE JOULE, Alaska State Legislature, explained that HB 333 would authorize and regulate use of naturally occurring asbestos (NOA), which is due to minerals present in the soil and rocks. This has become problematic in Ambler since there are many projects that need aggregate material, such as the airport or sewage lagoon. He offered that he is working towards resolution of the issue. He introduced his staff, Dewey Hoffman, who is working on the issue of NOA, and asked him to provide more details on HB 333.

DEWEY HOFFMAN, Staff, Representative Reggie Joule, Alaska State Legislature, on behalf of the sponsor, Representative Reggie Joule provided an overview on the bill. He stated that HB 333 would put policies in place to mitigate the difficulties associated with construction in areas of the state with naturally occurring asbestos (NOA). He stated that NOA occurs in mineral deposits throughout Alaska and our state has large known deposits of ultramafic and serpentine mineral ore. These deposits often contain NOA, which is similar to the asbestos we are familiar with and that is known to cause fibrosis or malignancies of the lungs and other major organs. Asbestos is defined in the bill as gravel, rock, sand and similar materials that are determined to have a content of at least 0.25 percent asbestos by mass, setting the threshold for NOA at 0.25 percent.

MR. HOFFMAN said the Department of Transportation & Public Facilities (DOT&PF) hired Nortech, Inc. and the Institute of Northern Engineering, University of Alaska, Fairbanks, to research the issues and recommend solutions. He referred to a series of maps in members' packets which show mineral occurrences in Alaska that likely contain NOA. He also referred to pages 29-32 of the full report titled, Naturally Occurring Asbestos in Alaska and Experiences and Policy of Other States Regarding its Use. This report concludes that NOA can be used in most circumstances without harmful side effects so long as proper procedures are implemented and followed, he stated.

MR. HOFFMAN explained that there are documented cases of NOA being found in several areas of the state, including at a rock quarry in Juneau, along the Dalton Highway at material site 105, and in local gravel pits in Ambler. The NOA was discovered during routine soil testing and has delayed or halted, as in Ambler's case, construction projects for years. Current projects in Ambler that are affected include the Ambler Airport Runway Extension Project, construction of a new sewer lagoon and access road, and housing construction. Some experts believe

that over time more NOA will be documented, particularly in the very areas that are rich in minerals and likely to be developed. Some localities do not have gravel materials nearby that are free of NOA, yet several large projects will require the use of large amounts of gravel. How to handle NOA should be resolved before it becomes an issue during the actual preconstruction or construction process of one of these projects. He referred members to page 27 of the Nortech, Inc. report for more detailed information. He stated that the use of NOA is not currently regulated by the federal government and only a few states, such as Virginia and California have addressed it.

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MR. HOFFMAN reported that Virginia and California have been regulating NOA for many years and several other states are in the process of addressing the issue. California uses a threshold for asbestos concentration, below which the material is not considered NOA. Regulation controls are put into place for safety reasons if the material is above the established threshold. This bill has adopted a similar approach. He summarized that the purpose of the bill is to define the measures that must be developed and established in order to safely use gravel or materials containing NOA. After procedures and standards are adopted and a site-specific plan is approved for a construction project, HB 333 would protect the suppliers and users from liability so long as the plan is appropriately followed. The bill would remove the doubt and fear of liability associated with use of NOA, which would encourage suppliers and landowners to offer gravel for sale. This would ensure that work could safely proceed in Alaska while using gravel that has some NOA. This would also help keep construction costs down, he stated.

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CHAIR P. WILSON related her understanding that health problems are caused by direct contact with asbestos. She asked what causes the concern if the NOA is contained within the rock.

[1:14:48 PM](#)

CHRISTINE HESS, Staff, Representative Reggie Joule, Alaska State Legislature, explained that the biggest concern comes from all-terrain vehicles (ATVs) use, which substantially raises dust levels during the summer months. She explained that the Department of Environmental Conservation (DEC) and the

Department of Health and Social Services (DHSS) have conducted tests in Ambler to identify health issues. The DHSS chest X-ray monitoring only found several people with an indication in their lungs, but the health problems could be attributed to other factors such as smoking. The departments are discussing dust control measures to mitigate health risks.

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LANCE MILLER, Vice-President, Resources, NANA Regional Corporation testified in support of HB 333. He stated that currently there is and will continue to be a critical need for gravel for projects throughout Alaska and some gravel may contain asbestos. He recalled that Mr. Hoffman previously mentioned the issues that arose in the 70s on the Dalton Highway project and in 2005 with a Juneau gravel project. He mentioned a chronology of projects exist, but without some protocols in place for gravel containing trace amounts of NOA, many projects will come to a standstill with all the notoriety that asbestos has received nationwide. Asbestos comes from magnesium silicate minerals associated with ultramafic rocks. Interestingly, a lot of the mineral deposits that have formed are located near geologically dynamic area, where the ultramafic rocks have been brought up along the sea floor. Thus, it is not a random coincidence that mineral deposits contain magnesium-rich rocks that contain NOA minerals. In fact, many parts of the state from Juneau to the Arctic region contain mineral deposits and asbestos, but not necessarily at a level to cause any alarm. He referred specifically to the mountains behind Ambler, to Jade Mountain, which is comprised of serpentine. He remarked that the state gem is jade, which also comes from ultramafic rock. California's geology has similar problems to the ones encountered in Alaska's geology. The state rock of California is serpentine, which is the main asbestos bearing rock. California adopted regulations to address NOA, which are similar to the process reflected in HB 333. He commented that California has a record of being protective of health and the environment.

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MR. MILLER related that within the Ambler region about \$10 million in projects are currently on hold. He offered his belief that not moving forward with projects, such as the planned sewer lagoon and water projects, would affect the health and safety of the residents of Ambler. Using the California standards, some sites in the Ambler area are asbestos free.

Adopting the standards in HB 333, which are basically the California standards, would allow projects to move forward and would provide protection so long as the standard operating procedures are adhered to by landowners and contractors.

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REPRESENTATIVE MUNOZ asked for examples of how California is mitigating their asbestos issues.

MR. MILLER offered his understanding that much of the mitigation has occurred by adopting methods of handling material, such as wearing respirators when crushing rock that contains NOA or wetting down the material. The mineral is fibrous and when dry will float in the air, but NOA has water-absorbing properties will not float in the air when wet. California has addressed NOA by developing specific procedures quarries or gravel pits to protect workers. In Alaska, such as at Stabler Point in Juneau, the material is contained within rock so crushing the rock can liberate the NOA. In other locations, such as in Ambler, the natural forces have crushed the rock and released the NOA into streams. Thus, the NOA is contained in gravel.

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REPRESENTATIVE PETERSEN referred to HB 333 and asked for the reference to any language that mandates masks be used to protect workers who may be exposed to NOA.

MR. MILLER explained the process for handling NOA would be developed as part of the standard operating procedures (SOP) that would be developed under the bill.

REPRESENTATIVE P. WILSON suggested that the procedures would likely be developed in regulation.

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REPRESENTATIVE MUNOZ asked whether "fear of asbestos in the air" would generally cause agencies to "shut down" a project and if such action would be undertaken by the Environmental Protection Agency (EPA).

MR. MILLER responded that usually a project would be shut down by the landowner since SOPs are not currently in place to protect the landowner from risk.

REPRESENTATIVE MUNOZ related her understanding that if the SOPs were in place the landowner would be afforded some legal protection.

MR. MILLER agreed that the SOPs would provide some immunity.

[1:24:44 PM](#)

MARY SIROKY, Legislative Liaison, Office of the Commissioner, Department of Transportation & Public Facilities (DOT&PF), explained that three agencies have been working to resolve the issues surrounding NOA in Ambler. The agencies have arrived at some short-term solutions. Thus, HB 333 will not be needed since the three agencies have agreed to develop the SOP for operations on state land. The three agencies, the Department of Transportation & Public Facilities (DOT&PF), Department of Health and Social Services (DH&SS), and Department of Environmental Conservation (DEC) have committed to work with Representative Joule to formulate an agreed upon plan for the projects in Ambler by June 1. The departments have committed to work during the legislative interim to develop the standard operating procedure (SOP) for other sites. She restated that by June 1, 2010, the DOT&PF will develop a plan, in conjunction with DH&SS and DEC, to address the Ambler project sites and during the rest of the year plans to develop the SOP for other state-owned sites. She stated that the departments will also develop recommendations for third-party sites. In response to Chair P. Wilson, she restated the department's goals to address NOA.

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REPRESENTATIVE P. WILSON asked for the DOT&PF to report to the committee next legislature.

MS. SIROKY agreed to do so.

[1:28:34 PM](#)

REPRESENTATIVE T. WILSON asked whether the departments' plans would also address the issue for private properties.

MS. SIROKY answered that she was unaware of any projects with delays due to NOA that are not state projects.

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REPRESENTATIVE JOHNSON asked for an indication of the past success rate for cooperation between the DOT&PF, DH&SS, and DEC.

MS. SIROKY related that most of the difficulties have surrounded procedures for third-party aspects of NOA. She related that the three departments have agreed that solutions can be found for state-owned properties.

1:30:07 PM

REPRESENTATIVE JOHNSON related he has not observed much inter-agency cooperation to give him optimism that June 1, 2010 is a realistic date. He said he is not certain that HB 333 is not needed.

MS. SIROKY, in response to Representative Johansen, stated that the Ambler issue has been "on the radar screen for about a year." She recalled the DOT&PF previously worked on NOA issues on the Dalton Highway in the 70s. This is the first issue in recent history that she could remember. In further response to Representative Johansen, she related that the interagency agreement between the three departments was reached yesterday.

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REPRESENTATIVE JOHANSEN asked to hear from the sponsor at some point.

MS. SIROKY, in response to Chair P. Wilson, with respect to NOA, offered her belief that the DEC has been involved for some time on the issues of NOA.

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REPRESENTATIVE T. WILSON asked whether the DOT&PF will be able to solve the issue without the \$355,000 shown in the fiscal note

MS. SIROKY answered that since the departments have agreed they can resolve the issues without the bill, that the DOT&PF will not need the funding. She explained that the fiscal note assumed that certain accounting and regulation's projects would be needed. Under the current plan, the DOT&PF will not develop databases and regulations for third-party ownership. In further response to Representative T. Wilson, she explained that the state does not need to develop regulations to address methods the state will follow. The process that will be used is the

three commissioners will set mandates for their respective departments to implement.

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REPRESENTATIVE T. WILSON asked whether the DOT&PF will develop regulations for private parties.

MS. SIROKY related that under the agreement the departments reached, the DOT&PF will address the state-owned sites in Ambler. Secondly, the DOT&PF will develop policies and procedures for other state-owned sites, and finally, the DOT&PF will develop recommendations for other parties to proceed. In further response to Representative T. Wilson, she gave an example of third parties, such as a tribal organization who may wish to use naturally occurring asbestos (NOA) to build a road on tribal property. Additionally, she anticipated some municipalities may encounter similar issues. She pointed out that her expertise is not in asbestos and the EPA does not currently regulate NOA. The current federal regulations for asbestos are limited to worker safety. Thus, NOA, which becomes a fiber in the natural environment and poses a serious health threat poses a different situation than the normal issues encountered, such as during removal of asbestos insulation. She explained some difficulties in Alaska that are not present in California. In California, their roads connect so paving may be a solution to eliminate NOA issues. The problem is more complex in Alaska, with its remote areas and gravel roads or runways in villages.

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REPRESENTATIVE PETERSEN referred to the fiscal note analysis which estimated it would take a year and a half to complete the SOP. He asked how the departments would be able to accomplish the work by June 1, 2010.

MS. SIROKY answered that the fiscal note anticipated the development of regulations to address third parties would take time, as well as time necessary to identify the scope of institutional controls. The issue is very complicated, but when the NOA oversight is limited to state sites, the state can better monitor and track the management of NOA. In further response to Representative Petersen, she agreed that the departments believe they can find solutions to the issues at the Ambler airport. In response to Chair P. Wilson, she affirmed

DOT&PF is not aware of any sites other than state-owned entities in which projects have been halted.

CHAIR P. WILSON restated that the DOT&PF will work with the other agencies to develop policies and will come back to the legislature with suggestions for procedures when the NOA involves third parties.

MS. SIROKY agreed.

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REPRESENTATIVE JOHNSON asked whether the fiscal note could be zeroed out if the public portion was removed from HB 333 and the bill only applied to the state.

MS. SIROKY stated that she did not know for certain. However, she offered her belief that is the argument she is currently making on this issue. In further response to Representative Johnson, she said she thought that the fiscal note could be a zero fiscal note, but would need to re-read the bill to see if any other implications were in the bill that would necessitate additional funding.

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REPRESENTATIVE JOHNSON asked for the reason that the DOT&PF has not already addressed this issue if it is so easy to fix.

MS. SIROKY related that the DOT&PF has held "pointed conversations" on this topic with the other agencies. The departments found that when third parties were removed that they could reach agreement. The departments experienced the most difficulty over determining the "final regulator" for third parties. The main stumbling block surrounded who would ultimately regulate the NOA. Since the NOA issues at Ambler are limited to the state, the departments felt they could reach an agreement for the standard and the SOP. She offered her belief that once the SOP is in place, the departments can work through the issues to regulate third parties. In further response to Representative Johnson, she clarified that the "pointed conversations" were held with the "sister agencies."

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MS. SIROKY, in response to Representative Johnson, reiterated that the DOT&PF believes it can develop the methodology for

addressing the issue at Ambler and can develop SOPs for other state-owned sites.

MARIT CARLSON-VAN DORT, Legislative Liaison, Office of the Commissioner, on behalf of the Department of Environmental Conservation (DEC), agreed the department has held conversations with the bill sponsor, the DOT&PF, and the DH&SS. The three departments agreed to find interim solutions for the issues at Ambler. She further agreed that "it did get a little bit stickier" when the agencies discussed regulating third parties and where the authority would ultimately lie. She explained that DEC does not have authority over asbestos, although it does have authority over ambient air quality. The EPA does not regulate ambient air asbestos, but regulates asbestos in Title V, which is the asbestos related to demolition and the related human health issues. Thus, the problem surrounded who would develop the standards, whether the standards should be in statute or in regulation, and the role of the DH&SS in developing health standards for NOA. The DOT&PF responsibility would determine the material specifications and usage. During the legislative interim, the DEC, in conjunction with the other departments will review asbestos product usage, whether it can be used as fill or if a cap of clean material would be required. She maintained her belief that a solution for Ambler can be found and solutions could be arrived at during the legislative interim, which may also result in suggestions for statute changes to present to the legislature.

[1:45:12 PM](#)

MS. CARLSON-VAN DORT, in response to Representative T. Wilson, answered that the DEC wants to ensure that Ambler can complete its current project. Any additional project not currently slated will become part of the discussion during the legislature interim with respect to use of NOA materials. In further response to Representative T. Wilson, she responded that removing third parties from HB 333 does not resolve other issues, such as determining and setting the standard in regulation. Additionally, the DEC will review the 0.25 threshold identified in the bill to determine whether it is the appropriate standard.

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REPRESENTATIVE PETERSEN asked whether the DEC believes the standard is too high or too low or if the DEC has had time to consider the standard.

MS. CARLSON-VAN DORT stated that she did do not know at this time. The standard in HB 333 was modeled after the California standard. California caps and paves most of their roads, which removes the ambient air and dust issue. While communities in rural Alaska also have ambient NOA air and dust issues, paving is very expensive so other solutions must be found.

[1:47:30 PM](#)

LORI VERBRUGGE, Toxicologist, Department of Health and Social Services, stated she has been involved in Ambler issue since 2004 or 2005. She offered that the DH&SS is enthusiastic to work on these issues with the other departments.

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WILDA LAUGHLIN, Special Assistant, Department of Health and Social Services (DH&SS), offered her belief that the three departments can work together as Ms. Siroky outlined. In response to Representative T. Wilson, she related her understanding that this has primarily been an issue between the DOT&PF and the DEC. She stated that the DH&SS may need to weigh in on the health aspects and is willing to do so. She offered that the Division of Public Health is working to define the DH&SS's role with respect to NOA.

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CHAIR P. WILSON recalled some testing has been conducted in Ambler to find out if residents are experiencing health issues, primarily associated with their lungs.

MS. LAUGHLIN stated that Ms. Verbrugge is better able to assess that question. In response to Representative Johnson, she related that the commissioners are discussing the NOA issues.

REPRESENTATIVE JOHNSON stated he wanted to hear that the commitment is coming from the top level.

MS. LAUGHLIN stated she has briefed Commissioner Hogan.

MS. SIROKY related that Deputy Commissioner Frank Richards is supportive of the plan, as is Roger Healy, the Director of Statewide Design & Engineering Standards. In further response to Representative Johnson, she indicated that the NOA issue

falls under the responsibility of Mr. Richards. She offered to call Commissioner von Scheben for his approval.

MS. CARLSON-VAN DORT related recent conversations she held with Deputy Commissioner Dan Easton and Acting Director of the Division of Air Quality Alice Edwards. She further reported she held discussions last week with Commissioner Hartig and all three are supportive of the NOA agreement.

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CHAIR P. WILSON asked Ms. Verbrugge to report on investigations and decisions made with respect to NOA in Ambler.

MS. VERBRUGGE explained during the 2004-2005 period, some reports were made to the community. A medical epidemiologist reviewed charts and X-Rays to determine the extent of asbestos diseases, but the outcome was inconclusive. The epidemiologist did not find direct cause and effect for Mesothelioma, which is a type of lung disease directly linked to asbestos. The epidemiologist found some evidence of lung diseases was consistent with asbestos lung disease, but the final results were not definitive. Thus, the question is still open as to whether health effects in Ambler were due to contact with NOA. In 2005, the federal Agency for Toxic Substances and Disease Registry (ATSDR) collected samples and determined that the exposure by simply walking across the side of the road or along the street would constitute a health hazard for residents of Ambler. The DH&SS has not eliminated the potential for concerns in Ambler, she stated.

CHAIR P. WILSON, after first determining no one else wished to testify, closed public testimony on HB 333.

[1:57:15 PM](#)

REPRESENTATIVE JOULE stated that the people in the community of Ambler have pushed for a change. Mayor Morgan Johnson of Ambler has observed the capital projects languish in the community and has worked hard to find solutions to the project delays. In addition to the efforts taken by the DOT&PF, and DEC, the tribal health personnel in NANA, Manilaq, and the Alaska Native Tribal Health Consortium (ANTHC) have all worked together to attempt to move this issue forward.

REPRESENTATIVE JOULE remarked the tendency to "shoot the messengers," but this issue predates today's testifiers. He

said he thought that "we can get there." The appropriate department commitments have been made on the record and to him personally. First and foremost, this issue is about the health and safety of the citizens of Ambler. Further, this issue is about economic development in an area that would benefit from it. In 2003, this issue was initiated, but if a road to Nome is ever undertaken NOA regulations will need to be adopted. He offered his belief the agencies understand and recognize the issue and if this can be accomplished it will happen. He stated he would also appreciate it if the committee could move the bill forward.

REPRESENTATIVE JOULE, in response to Representative Johnson, answered that any liability to the state would be considered as part of the bill and be addressed in the SOP.

2:02:19 PM

REPRESENTATIVE MUNOZ moved to report the proposed committee substitute (CS) for HB 333 labeled, 26-LS1248\S, Chenoweth, 3/16/10, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 333(TRA) was reported from the House Transportation Standing Committee.

2:03:19 PM

#### **ADJOURNMENT**

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:03 p.m.