

**ALASKA STATE LEGISLATURE**  
**SENATE TRANSPORTATION STANDING COMMITTEE**

March 24, 2009

1:10 p.m.

**MEMBERS PRESENT**

Senator Albert Kookesh, Chair  
Senator Linda Menard, Vice Chair  
Senator Bettye Davis  
Senator Kevin Meyer  
Senator Joe Paskvan

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 148

"An Act relating to limitation of state liability on certain federal highway programs; and providing for an effective date."

MOVED SB 148 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 148

SHORT TITLE: LIABILITY FOR TRIBAL ROAD CONSTRUCTION

SPONSOR(S): TRANSPORTATION BY REQUEST

03/13/09	(S)	READ THE FIRST TIME - REFERRALS
03/13/09	(S)	TRA, JUD
03/24/09	(S)	TRA AT 1:00 PM BUTROVICH 205

**WITNESS REGISTER**

DOROTHY SHOCKLEY, Staff  
to Senator Albert Kookesh  
Alaska Capitol Building  
Juneau AK

**POSITION STATEMENT:** Introduced SB 148 on behalf of the sponsor.

MARK O BRIEN, Chief Contracts Officer  
Department of Transportation & Public Facilities  
Juneau AK

**POSITION STATEMENT:** Testified that the administration supports SB 148.

KAY GOUWENS, Attorney  
Chickaloon Native Village  
Anchorage AK

**POSITION STATEMENT:** Testified in support of SB 148.

GORDON JACKSON, Director  
Roads and Transportation  
Tlingit Haida Central Council  
Juneau AK

**POSITION STATEMENT:** Testified in support of SB 148.

MIKE SMITH

Tanana Chiefs Conference, Inc.,

**POSITION STATEMENT:** Testified in support of SB 148.

#### **ACTION NARRATIVE**

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**CHAIR ALBERT KOOKESH** called the Senate Transportation Standing Committee meeting to order at 1:10 p.m. Present at the call to order were Senators Davis, Menard, Meyer and Kookesh. Senator Paskvan arrived soon thereafter.

#### **SB 148-LIABILITY FOR TRIBAL ROAD CONSTRUCTION**

SENATOR KOOKESH announced the consideration of SB 148.

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DOROTHY SHOCKLEY, Staff to Senator Albert Kookesh, said SB 148 will reduce intergovernmental disputes about liability and will enable tribes in Alaska to focus on transportation projects. She noted that in 2008 tribes in Alaska received about \$36.6 million in Indian Reservation Road (IRR) funds. Additional funds are anticipated from the stimulus. As the Department of Transportation & Public Facilities prepares the next Statewide Transportation Improvement Program (STIP), tribes for the first time can bring both matching and maintenance funds.

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MARK OBRIEN, Chief Contracts Officer, Department of Transportation & Public Facilities (DOTPF), said the administration supports SB 148. IRR funds that are available to tribes in Alaska can be combined with funds from other state and federal agencies to accomplish projects that might not otherwise be possible. The department has successfully partnered with tribes on a number of projects to maximize transportation

dollars in Alaska, but in each instance there has been difficulty with the issue of liability. When the tribe is responsible for design, construction and delivery of the project, the state may be acting as nothing more than a funding pass-through. The state isn't on scene for those projects so when there is an issue of liability, the question arises about how to protect the state's interest. This bill addresses that by shifting the primary responsibility for liability to the tribe in projects where the tribe is responsible for design, construction and delivery. For that reason DOTPF supports the bill, he said.

SENATOR KOOKESH summarized that tribal IRR funds are increasing each year and federal dollars coming to the state are decreasing. This bill defines liability and thus allows partnerships to go forward between the state and the tribes.

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KAY GOUWENS, Attorney, Anchorage, said she is testifying on behalf of the Chickaloon Native Village in support of SB 148. Chickaloon is a member of a consortium of Alaska Native village tribes that her law firm represents in connection with IRR program activities. The IRR program benefits the entire state, not just Alaska Native villages. It brings in significant amounts of federal dollars for the tribe to use to design, build and maintain roads that provide access to Native communities.

Both the tribes and DOTPF support and are working to maximize the IRR program. However, the issue of the extent to which the state might be liable for activities that the tribes undertake relative to IRR programs has been and continues to be a sticking point. This legislation is clearly needed and it is needed quickly because deadlines associated with the federal stimulus are approaching. There is a provision that the funds can be reallocated to other tribes across the nation if they aren't obligated by February 2010.

MS. GOUWENS said that shielding the state from this liability won't leave the traveling public without a remedy in the event of injury by tribal activities associated with these projects. Under the IRR Program and federal law, when the tribes undertake these projects pursuant to the Indian Self Determination Act, they are treated as if they are an agency of the federal government and their employees are treated as if they are federal employees for purposes of court claims that may be brought. If someone is injured, they would bring suit against

the federal government. That remedy is very important to tribes because they don't have to secure liability insurance.

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SENATOR PASKVAN joined the meeting.

GORDON JACKSON, Director of Roads and Transportation, Tlingit Haida Central Council, mentioned liability issues in putting together projects. He said there are a lot of IRR funds coming into the state; \$320 million is available under the federal stimulus, but timing is critical. Getting rid of the liability question and speeding the permitting situation will make it possible to get on to the business of building roads and trails and bridges. SB 148 is a good bill that opens a completely new line of communication, he said.

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MIKE SMITH, Tanana Chiefs Conference, Inc. (TCC), said TCC is comprised of 42 Interior communities, all of which get IRR road money. TCC strongly supports SB 148 in order to facilitate coordination of projects with DOTPF. Timeliness is of essence. This is a win-win situation for the state and TCC communities, he said.

SENATOR KOOKESH closed public testimony and asked for the will of the committee.

SENATOR MENARD moved to report SB 148 from committee with individual recommendations and attached fiscal note(s). There being no objection, SB 148 moved from the Senate Transportation Standing Committee.

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There being no further business to come before the committee, Chair Kookesh adjourned the meeting at 1:24 pm.