

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

February 4, 2010

1:01 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

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 114(TRA) AM

"An Act relating to availability of state transportation facilities and state-owned or state-operated transportation modes for delivering compassionate aid."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 114

SHORT TITLE: USE STATE TRANS FACILITY FOR DISASTER AID

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

02/04/09	(H)	READ THE FIRST TIME - REFERRALS
02/04/09	(H)	TRA, FIN
02/17/09	(H)	TRA AT 1:00 PM CAPITOL 17
02/17/09	(H)	Heard & Held; Assigned to Subcommittee
02/17/09	(H)	MINUTE(TRA)
03/12/09	(H)	TRA AT 1:00 PM CAPITOL 17
03/12/09	(H)	Moved CSHB 114(TRA) Out of Committee
03/12/09	(H)	MINUTE(TRA)
03/13/09	(H)	TRA RPT CS(TRA) NT 3DP 2NR
03/13/09	(H)	DP: MUNOZ, JOHNSON, GRUENBERG
03/13/09	(H)	NR: JOHANSEN, WILSON
04/07/09	(H)	FIN RPT CS(TRA) NT 6DP 1NR
04/07/09	(H)	DP: THOMAS, AUSTERMAN, FAIRCLOUGH, JOLE, HAWKER, STOLTZE
04/07/09	(H)	NR: SALMON
04/07/09	(H)	FIN AT 8:30 AM HOUSE FINANCE 519

04/07/09 (H) Moved CSHB 114(TRA) Out of Committee
04/07/09 (H) MINUTE(FIN)
04/15/09 (H) TRANSMITTED TO (S)
04/15/09 (H) VERSION: CSHB 114(TRA) AM
04/16/09 (S) READ THE FIRST TIME - REFERRALS
04/16/09 (S) TRA, FIN
02/04/10 (S) TRA AT 1:00 PM BUTROVICH 205

WITNESS REGISTER

REPRESENTATIVE RAMRAS
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of HB 114.

JANE PIERSON, Staff
to Representative Ramras
Alaska State Legislature
Juneau, AK

POSITION STATEMENT:

MCHUGH PIERRE, Deputy Commissioner
Alaska Department of Military and Veterans Affairs
Fort Richardson, AK

POSITION STATEMENT: Testified in support of HB 114.

MIKE NAVE, Assistant Attorney General
Civil Division, Natural Resources Section
Alaska Department of Law
Anchorage, AK

POSITION STATEMENT: Highlighted potential statutory conflict related to HB 114.

ACTION NARRATIVE

[1:01:55 PM](#)

CHAIR ALBERT KOOKESH called the Senate Transportation Standing Committee meeting to order at 1:01 p.m. Senators Paskvan, Meyer, and Kookesh were present at the call to order. Senators Menard and Davis arrived soon thereafter.

HB 114-USE STATE TRANS FACILITY FOR DISASTER AID

[1:02:00 PM](#)

CHAIR KOOKESH announced the consideration of HB 114. [CSHB 114(TRA) AM was before the committee.]

1:03:40 PM

SENATOR MENARD and SENATOR DAVIS joined the committee.

REPRESENTATIVE RAMRAS, Alaska State Legislature, sponsor of HB 114, described HB 114 as a compassionate aid bill to allow this and future governors to use state transportation assets to deliver aid to Alaska communities in times of eminent disaster without having to first declare a disaster.

REPRESENTATIVE RAMRAS explained that he introduced HB 114 in early 2009 after struggling to access state transportation assets to deliver 40,000 pounds of emergency food and \$25,000 in cash to villages in Western Alaska that were facing economic disaster. This proved to be very difficult. State transportation assets could not be used to move the supplies and much of the money that had been raised had to be used for transportation.

HB 114 is forward looking; it seeks to provide a path for this and future governors to be able to find a course of action that doesn't require a declaration of emergency, Representative Ramras stated.

1:07:12 PM

SENATOR MEYER questioned why the fiscal notes are zero rather than indeterminate, since the bill proposes to use state transportation assets.

REPRESENTATIVE RAMRAS cited a transcript of a statement by Mr. McHugh when he was director of communications for Department of Military and Veterans Affairs (DMVA).

The language gives the DMVA emphasis and directions on how to proceed when the department responds to emergencies. He explained that the change would not impact the DMVA's operating budget. He offered that the disaster relief fund is funded by the Legislature. When the fund reaches a certain threshold cost, which he said is between \$500,000 and \$1 million depending on the situation, the DMVA requests additional funds to accomplish the mission and rescue Alaskans.

1:09:23 PM

SENATOR PASKVAN said he believes that the bill in well meaning, but he questions why it includes reference to "gross negligence or reckless or intentional misconduct." Including this clause absolves the state of any responsibility if someone is hurt.

REPRESENTATIVE RAMRAS explained that the provision was offered as an amendment on the House floor. He didn't necessarily support it, but wanted to move the bill.

SENATOR PASKVAN said he understands that from a management level that there should not be liability if someone says they are going to get a charitable product to a village. That is an insulated decision, but if someone on the ground runs someone over with a motor vehicle that has insurance, why wouldn't that insurance be responsible. It's a fundamental question as to which state policy is more pressing - the state's motor vehicle policy that mandates coverage for that type of act or the state's policy to distribute emergency aid. Understand, I fully support that, but it's the policy issues that are at odds, he said.

JANE PIERSON, Staff to Representative Ramras, explained that the language is usually consistent with AS 26.20.140 - Immunity of government, employees, and authorized volunteers or other persons. The Representative who offered the Floor amendment thought there should be some liability threshold for gross negligence and things done outside the normal course of business.

[1:12:55 PM](#)

SENATOR PASKVAN responded he understands it is outside the scope of ordinary and usual activity, but that's what governments are best positioned to do. They respond in times of emergency. That decision to respond should be an immune decision that carries through to the boots on the ground. If the state responds and then somebody runs someone over with a car, does the state just tell the person who was run over that the state doesn't care?

[1:14:42 PM](#)

REPRESENTATIVE RAMRAS reiterated that it was a specific accommodation to Representatives Gruenberg and Kerttula; he believes the amendment is superfluous to the legislation.

CHAIR KOOKESH referenced page 1, line 7, and asked why it says the governor "may" make state transportation.

REPRESENTATIVE RAMRAS opined that "may" is indicative that the governor has an appropriate judgment call to make; the word "shall" would unnecessarily encumber the executive and its transportation assets.

He added that last year it was frustrating to hear the governor's staff say it was against the law to move food to rural Western Alaska. His response was that "there happens to be a higher moral code in the blue statute book." Having created the supply chain he and his staff then made a decision to allocate much of the \$25,000 to transportation that hadn't been otherwise donated. He reported that very generous transportation donations had come in from Carlile, Alaska Airlines, and smaller commuter carriers, but often the per-pound cost to transport the food was nearly as much as the food itself. He noted that after delivering 40,000 pounds of food to 11 villages, others followed that lead and delivered an additional 44,000 pounds of food to Western Alaska. This not only fed hungry people it helped smooth the divide between urban and rural Alaska, he said.

[1:18:55 PM](#)

CHAIR KOOKESH asked how the former governor moved the 44,000 pounds

REPRESENTATIVE RAMRAS replied he believes that private aircraft was used. He spoke of the difficulties he had encountered and reiterated that he prefers to look forward; HB 114 puts another tool in the governor's toolbox.

SENATOR PASKVAN observed that the federal government does not have the level of immunity that's offered in subsection (b) when it declares a state of emergency and responds. He asked the sponsor if he would mind if the committee amended the bill to its original form, which did not include that immunity.

[1:21:27 PM](#)

REPRESENTATIVE RAMRAS replied he would be comfortable with the change, but it would create a concurrence conflict in the House. Thus, it would be more accommodating to the success of the bill if it were to remain unchanged.

SENATOR MENARD said she appreciates the clarification.

[1:24:23 PM](#)

MCHUGH PIERRE, Deputy Commissioner, Alaska Department of Military and Veterans Affairs, said the administration is not opposed to HB 114, but the specific language is important. It's necessary to include the word ["may"] to give the administration latitude in making the decision to take action or not.

HB 114 addresses immunity before a disaster is declared. "This is addressing when a state department such as DOT or DMVA or DPS

gives a plane or a boat or a car to somebody. It's not the state's responsibility then when that person wrecks the car. It is the person and the person's nonprofit organization - it's their responsibility," Mr. McHugh said. It's important to ensure that the nonprofit is properly insured so that if someone does wreck the car and hurt somebody, that the nonprofit can take care of the injured person.

[1:26:59 PM](#)

MR. MCHUGH said the sponsor has a heart for service; he really did step up to respond to the disaster in Western Alaska. However, "It was found that there could have been more action taken. The governor does have power to use state equipment for virtually anything - pre disaster or post disaster. It's just a matter of how we pay for it." He clarified that a National Guard asset is a federal rather than state asset. Thus the use of equipment in that realm is narrowed. "We support Representative Ramras and ... we hope that this is another tool in the governor's tool chest," he said.

[1:28:13 PM](#)

CHAIR KOOKESH asked if the administration supports the bill if it moves forward with the word "may."

MR. PIERRE thanked him for the clarification; "may" is the appropriate word.

SENATOR PASKVAN asked why the state should not be liable in tort if it is delivering compassionate aid and someone is injured. "Why shouldn't we just stick with Alaska's general operational planning distinction?"

MIKE NAVE, Assistant Attorney General, Civil Division, Natural Resources Section, Alaska Department of Law, said that's a good question. He suggested the committee review AS 26.23.020 (c) and (g). It supports Mr. Pierre's statement that the governor already has the authority to commit state resources to a disaster response. The problem is that it's not clear how this new grant of immunity will mesh with the existing statutory immunity provided in AS 26.23. DOL is somewhat concerned that it might be less broad and strong and could lead to a new immunity standard that is not summary judgment capable.

[1:32:27 PM](#)

SENATOR PASKVAN summarized that the state already has a statutory structure to deal with governor declared disasters. He asked the standard for liability under AS 26.23.020 and assuming

there is a governor declared disaster or emergency. He added that he's trying to figure out if there is a distinct standard for liability that is separate from the state's general planning operational test that's included in Title 45.

[1:33:43 PM](#)

MR. PIERRE clarified that during a declared disaster only a state employee would be operating a state vehicle. "HB 114 as it stands would take it and move into a separate category that is not yet defined." How do we treat the situation where a state vehicle is operated by a nonprofit employee? The immunity section is included so that the state isn't held responsible for actions taken by an employee of a nonprofit or some other acceptable organization, he stated.

SENATOR PASKVAN asked Mr. Nave if he agrees that the bill is confusing as it relates to other state statutes.

MR. NAVE opined that the interplay between Chapter 26.23 in general and the immunity grant in HB 114 would be confusing in the event of litigation. It is then that it would matter how these sections fit together because it will have specific impact on individual defendants and their potential liability. DOL can see arguments coming that lead it to believe that there could be confusion about who is granted immunity and who is not.

[1:36:39 PM](#)

SENATOR PASKVAN noted that Alaska has pure apportionment under AS 09.17.080. His understanding of what Mr. Pierre said is that if the state was reasonably providing a vehicle, then there would be no allocation of fault to the state under existing law; it would fall solely on the nonprofit driver.

MR. NAVE replied that may be an intention behind this proposed statute. But if the act of turning over control of a state vehicle was negligent, you might get different opinions. In one case with a disaster declaration there might be tort immunity for certain state decisions; perhaps not in another case.

[1:38:32 PM](#)

CHAIR KOOKESH questioned whether the state would ever turn over an airplane or vehicle to anyone that is not authorized.

MR. PIERRE responded that's why the word "may" is so critical. "So we have the ability to discern from someone who is competent and someone who is not. That way when we are faced with the

situation, we will be in the right position of making a sound judgment call," he said.

REPRESENTATIVE RAMRAS said it wasn't his intention for nonprofits to operate state assets. It would be possible for members of nonprofits to participate in loading and unloading airplanes. The scope of liability discussed in the House went to volunteer church members loading a state van and what would happen should a state employee drive over a volunteer. "We don't anticipate church group leaders flying state airplanes or marine craft," he said.

CHAIR KOOKESH commented that he has driven boats of various sizes all over Southeast waters and he's sure he wouldn't be allowed at the wheel of a state ferry.

MR. PIERRE responded that the sponsor has a good idea and we support the expansion of the governor's toolbox.

SENATOR PASKVAN stated his concern, which is that it's easy to lose sight of the innocent who might be injured. He wonders if the state's policy should be, "We're in a disaster we don't care." That walks all over the innocent, he said.

MR. PIERRE said he hopes that will never happen.

SENATOR PASKVAN responded, "Your hope conflicts with language."

[1:42:55 PM](#)

SENATOR MEYER asked Mr. Pierre to comment on the fiscal note.

MR. PIERRE explained that the fiscal note should be zero. The agency should be able to absorb certain expenditures and if necessary it will ask for a supplemental to take care of an extraordinary expense.

SENATOR MENARD said she appreciates Mr. Pierre's comments and the sponsor's Good Samaritan work.

CHAIR KOOKESH summarized that the administration supports the bill, the word "may" is important, and the fiscal note can be addressed further in the finance committee.

MR. PIERRE said yes.

CHAIR KOOKESH closed public testimony and asked the will of the committee. He said he doesn't have a problem moving the bill.

1:45:40 PM

SENATOR PASKVAN said he has a problem with subsection (b) and at a minimum it should be discussed. Representative Ramras didn't let the lack of a state law stand in the way of accomplishing a magnitude of good and he made the state look great in the process. It's clear that a law is needed to get rid of the barriers he encountered, but given the testimony from Mr. Nave and Mr. Pierre, subsection (b) is at best confusing and misapplied.

SENATOR PASKVAN moved to strike subsection (b) from HB 114.

SENATOR MEYER said he would prefer that the judiciary committee address the question because it appears to be legal in nature, but if it doesn't have a referral to that committee then this committee should give it consideration.

CHAIR KOOKESH noted that the bill next goes to finance.

MS. PIERSON explained that last year Mike Mitchell with DOL said he saw no problem with the concept of the bill. However, torts arising from gross negligence or reckless or intentional misconduct are a concern because that is not contained under AS 26.20.140, the state's liability and disaster statute. That is where HB 114 would fall if subsection (b) is not included. Mr. Mitchell's point was that if subsection (b) is included the state would be able to get past any claim with summary judgment. This gives more liability to a person who is hurt, which was the intent of the amendment.

CHAIR KOOKESH asked Mr. Nave if he could alleviate the committee's concern regarding subsection (b).

1:49:36 PM

MR. NAVE replied he can foresee problems because it is outside the scope of the more detailed disaster statutes. In the case of individual accidents, the chance of state employees and officers obtaining summary judgment would go down. Subsection (b) reads as if it is intended to increase potential state liability in lawsuits over what exists in other statutes that pertain to disasters. That gives DOL pause.

1:50:49 PM

SENATOR PASKVAN cited AS 26.20.140 (a). "The state, a district of the state, and the employees, agents, or representatives of the state or district are not liable for personal injury or

property damage sustained by any person appointed or acting as a civilian defense worker." He expressed concern about the potential unintended consequence if a volunteer were to be hurt.

He further observed that subsection (b) says that the state is not liable if it is "reasonably attempting to comply with this chapter." This appears to be an ordinary negligence standard, he said.

MR. NAVE said that in contrast, HB 114 subsection (b) purports to grant broader immunity to a larger class of people, but on a narrower substantive basis. The interplay between the statutory grants of immunity or limitations on state immunity is almost certain to raise arguments in one accident about which statute should apply to whom. The answers could be different and have unintended consequences for different people involved in the same accident.

MR. NAVE further pointed out that the language in subsection (a) is somewhat different than had been described.

[1:54:50 PM](#)

SENATOR PASKVAN asked if AS 26.20.140 (b) is a reasonableness standard for liability with respect to death or injury.

MR. NAVE replied it's a fair summary.

SENATOR PASKVAN asked if the conclusion would be that HB 114 subsection (b) would expose an innocent, injured person to non-recovery for their injuries even if state were unreasonable.

MR. NAVE replied it would depend on the circumstances. If subsection (b) were enacted into law it's difficult to predict how a judge would or would not apply it to a particular accident. The standard in subsection (b) is different and the bar is higher; it's basically gross negligence. How those statutes will work together in a future lawsuit is a concern.

CHAIR KOOKESH asked Senator Paskvan if he maintains his motion.

[1:57:03 PM](#)

SENATOR PASKVAN summarized his understanding of Mr. Nave's statement. Subsection (b) sets a higher bar for the innocent to overcome to be compensated for negligence of the state.

CHAIR KOOKESH announced he would hold HB 114. He asked the sponsor to work with Senator Paskvan and DOL to try to resolve the differences and he would ask for a judiciary referral.

SENATOR PASKVAN said that is most satisfactory. We're all in favor of a law change, but I don't want to hurt the innocent, he said.

[1:58:59 PM](#)

There being no further business to come before the committee, Chair Kookesh adjourned the meeting at 1:58 p.m.