

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

April 8, 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**

SENATE BILL NO. 152

"An Act relating to municipal transportation systems and to regional transit authorities."

- MOVED CSSB 152(TRA) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 366(JUD)

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

- MOVED CSHB 366(JUD) OUT OF COMMITTEE

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

**PREVIOUS COMMITTEE ACTION**

BILL: SB 152

SHORT TITLE: TRANSPORTATION; TRANSIT AUTHORITIES

SPONSOR(s): SENATOR(s) HUGGINS

03/18/09	(S)	READ THE FIRST TIME - REFERRALS
03/18/09	(S)	TRA, FIN
03/18/10	(S)	TRA AT 1:00 PM BUTROVICH 205

03/18/10 (S) Heard & Held  
03/18/10 (S) MINUTE(TRA)  
04/08/10 (S) TRA AT 1:00 PM BUTROVICH 205

BILL: HB 366

SHORT TITLE: MOTOR CARRIER INDEMNIFICATION AGREEMENTS

SPONSOR(S): REPRESENTATIVE(S) JOHNSON

02/23/10 (H) READ THE FIRST TIME - REFERRALS  
02/23/10 (H) TRA, JUD  
03/11/10 (H) TRA AT 1:00 PM CAPITOL 17  
03/11/10 (H) Moved CSHB 366(TRA) Out of Committee  
03/11/10 (H) MINUTE(TRA)  
03/12/10 (H) TRA RPT CS(TRA) 5DP 1NR  
03/12/10 (H) DP: JOHNSON, T.WILSON, GRUENBERG,  
PETERSEN, P.WILSON  
03/12/10 (H) NR: JOHANSEN  
03/19/10 (H) JUD AT 1:00 PM CAPITOL 120  
03/19/10 (H) Moved CSHB 366(JUD) Out of Committee  
03/19/10 (H) MINUTE (JUD)  
03/22/10 (H) JUD RPT CS(JUD) 7DP  
03/22/10 (H) DP: LYNN, GRUENBERG, HERRON, DAHLSTROM,  
HOLMES, GATTO, RAMRAS  
03/26/10 (H) TRANSMITTED TO (S)  
03/26/10 (H) VERSION: CSHB 366(JUD)  
03/29/10 (S) READ THE FIRST TIME - REFERRALS  
03/29/10 (S) TRA  
04/08/10 (S) TRA AT 1:00 PM BUTROVICH 205

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  
03/23/10 (H) Moved Out of Committee  
03/23/10 (H) MINUTE (TRA)  
03/24/10 (H) TRA RPT 5DP 1AM  
03/24/10 (H) DP: JOHANSEN, MUNOZ, T.WILSON,  
GRUENBERG, PETERSEN  
03/24/10 (H) AM: P.WILSON  
04/01/10 (H) TRANSMITTED TO (S)  
04/01/10 (H) VERSION: HJR 47  
04/02/10 (S) READ THE FIRST TIME - REFERRALS  
04/02/10 (S) TRA  
04/08/10 (S) TRA AT 1:00 PM BUTROVICH 205

**WITNESS REGISTER**

JODIE SIMSON

Staff to Senator Charlie Huggins  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Provided information on SB 125 on behalf of the sponsor.

JEFFERY C. OTTESEN, Director

Division of Program Development  
Department of Transportation and Public Facilities  
Juneau, AK (DOTPF)

**POSITION STATEMENT:** Testified that DOTPS should be part of the process to form an RTA.

BRAD SWORTS, Transportation and Environmental Manager

Mat-Su Borough  
Palmer, AK

**POSITION STATEMENT:** Testified in support of creating regional transit authorities.

JODY KAR CZ, Public Transportation Director

Municipality of Anchorage (MOA)  
Anchorage, AK

**POSITION STATEMENT:** Provided supporting information related to developing an RTA.

RALPH DUERRE, Assistant Attorney

Municipality of Anchorage (MOA)  
Anchorage, AK

**POSITION STATEMENT:** Testified that MOA supports the conceptual amendment that Senator Paskvan proposed related to SB 152.

JEANNE OSTNES

Staff to Representative Craig Johnson  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Presented HB 366 on behalf of the sponsor.

AVES THOMPSON, Executive Director

Alaska Trucking Association (ATA)  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of HB 366.

DEAN MCKENZIE, President

Alaska West Express  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of HB 366.

JAMES C. DOYLE, Vice President  
Weaver Brothers Trucking  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of HB 366.

REPRESENTATIVE KYLE JOHANSEN  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Sponsor of HJR 47.

DAVE SPOKELY  
Power Systems and Supplies of Alaska (PSSA)  
Ketchikan, AK

**POSITION STATEMENT:** Testified in support of HJR 47.

#### **ACTION NARRATIVE**

[1:01:10 PM](#)

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

#### **SB 152-TRANSPORTATION; TRANSIT AUTHORITIES**

[1:01:39 PM](#)

SENATOR KOOKESH announced the consideration of SB 152. The bill was heard previously.

JODIE SIMSON, Staff to Senator Charlie Huggins, informed the committee that a representative from the Department of Transportation and Public Facilities (DOTPF) was present and representatives from the Municipality of Anchorage and the MatSu Borough were online to respond to questions and concerns.

[1:02:35 PM](#)

JEFFERY C. OTTESEN, Director, Division of Program Development, Department of Transportation and Public Facilities (DOTPF), stated that the fundamental reason that DOTPF has not taken a position on the legislation is that the bill doesn't identify a role for DOTPF in either the formative stages or the operations of a regional transit authority (RTA).

MR. OTTESEN said DOTPF believes that it should be involved in any future RTA, and that there is also a need for metropolitan planning organizations (MPO) - the planning authority for transportation funding from the federal government. Any community with a population of 50,000 that meets a certain density standard becomes an MPO, he said. There are two in the state - the Anchorage Metropolitan Area Transportation System (AMATS) and the Fairbanks Metropolitan Area Transportation System (FMATS). It's likely that Mat-Su will become one after the 2010 census is calculated, he added.

MR. OTTESEN informed the committee that RTAs often span multiple local government boundaries. An RTA is likely to be partly within an MPO and partly outside and thus dealing with the state for funding decisions. He explained that RTAs may include rail and light rail transit and almost certainly rubber-tire transit. Even when the primary goal is to build a rail-based system, rubber-tire transit is necessary to bring people in from outlying areas to the rail system. There's a great deal of overlap and DOTPF needs to be included in operational agreements with respect to operating on rights-of-way, building bus stops, building park-and-rides, and signal preemption to give buses priority. He noted that buses already get priority at traffic lights in Anchorage.

He described Sound Transit in Seattle as one of the newer and more innovative RTAs in the nation. It is doing commuter rail, light rail, and has several rubber-tire transit routes. The Washington state transportation department saw an obvious need to be a part of that RTA and it has a commissioner-level voting member on that transit board.

[1:06:33 PM](#)

MR. OTTESEN explained to the committee that if an RTA were to straddle a borough and the unorganized borough, DOTPF's role might be useful because the unorganized borough has no local government at the borough level. In that case, the Legislature would act as the borough assembly and the state would act as the local government. He cited a potential RTA in Fairbanks with routes to Delta Junction or Nenana as an example. These are the reasons for the need for both MPOs and DOTs to have a role in RTAs, he said. Whether it's permissive or mandatory is up to the Legislature, but it ought to at least be allowed.

SENATOR KOOKESH observed that that isn't part of this bill.

MR. OTTESEN agreed the bill is silent on that point, which in the future would lead to a question about the intent.

CHAIR KOOKESH asked DOTPF's position on the bill as currently written.

MR. OTTESEN replied DOTPF believes that RTAs are necessary and appropriate in Alaska.

CHAIR KOOKESH asked if DOTPF believes that this is a first step.

MR. OTTESEN said yes and it would be better if the role of MPOs and DOTPF were clarified in the formation of the RTA.

1:08:48 PM

SENATOR DAVIS asked if he brought an amendment or language to clarify the role of DOTPF.

MR. OTTESEN offered to provide language. Responding to a further question, he said he prefers to have the intent clear from the outset.

SENATOR MENARD asked if he is suggesting that someone from DOTPF should be on the RTA board.

MR. OTTESEN replied it's probably appropriate for each DOTPF regional director to be in that role.

SENATOR MENARD asked him to clarify the priority issue.

MR. OTTESEN explained that bus prioritization works much the same as it does for emergency vehicles. Priority is always given to the emergency vehicle at intersections while priority is given to a bus if it is full. If the bus is empty, it would not receive priority.

1:11:47 PM

SENATOR MENARD mentioned the stimulus money and said she supports the bill.

MR. OTTESEN said there will be additional money and most of it will run through the MPO or state DOT. That's why RTAs want those representatives on their board, he said. At the federal level MPOs are the planning authority. The best example in Alaska is AMATS and the Knik Arm Bridge and Toll Authority (KABATA) Board, he said. He related that KABATA was established by the Legislature, yet the AMATS MPO is driving whether or not that project proceeds. Recently there

was a vote to potentially shut that project down for a decade and although that didn't happen, the message is that MPOs and other regional transportation organizations need to collaborate.

1:14:12 PM

SENATOR PASKVAN asked if he is saying that the bill is a first step, but that DOTPF needs to be involved at some point in time.

MR. OTTESEN replied it's appropriate because of the way the federal funding works and it would increase the likelihood of a successful RTA.

SENATOR PASKVAN asked if a conceptual amendment would be appropriate that says, "A regional transit authority created in this section may participate with a RTA created by this act."

MR. OTTESEN agreed that permissive language would be fine. DOTPF controls the funding strings to a degree so there is impetus for having it at the table.

MR. OTTESEN suggested the amendment language also include "a representative from any coincident metropolitan planning organization." He noted that the draft transportation bill in Congress sends money directly to the MPOs so it would no longer run through the state DOT or be appropriated by the Legislature.

1:17:03 PM

BRAD SWORTS, Transportation and Environmental Manager, Mat-Su Borough, stated support for creating regional transit authorities. He related that Mat-Su Borough has been working closely with the Municipality of Anchorage on the matter. He related that transit operations within the borough and between the borough and Anchorage continue to increase. It's increasingly clear that the management and coordination of improved transit operations should be carried out through an RTA, he said. Municipalities and communities in Alaska would benefit from passage of SB 152.

JODY KARCZ, Public Transportation Director, Municipality of Anchorage (MOA), pointed out that when the Mat-Su Borough and the MOA began talking about the process to establish an RTA, DOTPF was brought to the table and it continues to be a strong player.

Referring to the "Opticom" transit priority bus project that Mr. Ottesen mentioned, she explained that the municipal assembly approved a one-year pilot program for two bus routes. Just 20 of

the 217 traffic signals within Anchorage are equipped to accept bus priority during peak hours in peak directions, she said. So far there has been minimal impact on cross streets.

[1:21:32 PM](#)

SENATOR PASKVAN asked if she would have any problem with the conceptual amendment to include DOTPF and coincident metropolitan planning organizations in the RTA created by the Act.

MS. KARCZ replied it's a good amendment.

SENATOR MENARD said she would like the language to say "shall" instead of "may" to ensure that DOTPF is included.

CHAIR KOOKESH clarified that this is a conceptual amendment.

SENATOR PASKVAN said he has no problem with that if DOTPF agrees.

[1:22:52 PM](#)

RALPH DUERRE, Assistant Attorney, Municipality of Anchorage (MOA), said MOA supports the conceptual amendment that Senator Paskvan proposed. He related that SB 152 is flexible to allow a variety of transportation plans. There is no question that DOTPF and MPOs will play vital role in the success of the RTA and their participation is most welcome. However, DOTPF and MPO participation should be on a permissive basis.

SENATOR KOOKESH closed public testimony.

[1:25:46 PM](#)

SENATOR PASKVAN moved conceptual Amendment 1 to add a new section (b)(3) to read as follows:

The Department of Transportation and Public Facilities may participate and/or a representative of a coincident metropolitan planning organization may participate with a regional transit authority created by this Act.

SENATOR MENARD objected to the word "may" because it is too permissive.

CHAIR KOOKESH asked Mr. Ottesen to provide his perspective.

MR. OTTESEN stated a preference for the permissive language.

SENATOR KOOKESH agreed with that position.

[1:28:01 PM](#)

SENATOR MENARD removed her objection.

CHAIR KOOKESH found no further objection and announced that conceptual Amendment 1 was adopted. He asked the will of the committee.

[1:28:28 PM](#)

SENATOR PASKVAN moved to report SB 152, as conceptually amended, from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 152(TRA) moved from the Senate Transportation Standing Committee.

At ease from 1:29 p.m. to 1:30 p.m.

**HB 366-MOTOR CARRIER INDEMNIFICATION AGREEMENTS**

SENATOR KOOKESH announced consideration of HB 366. [CSHB 366(JUD) was before the committee.]

[1:30:54 PM](#)

JEANNE OSTNES, Staff to Representative Craig Johnson, said HB 366 places a provision in statute to clarify that both shippers and motor carriers are responsible for their own negligence or omissions.

[1:32:03 PM](#)

AVES THOMPSON, Executive Director, Alaska Trucking Association (ATA), stated support for HB 366. He related that one priority of ATA this year is to achieve tort reform with regard to indemnification agreements in motor carrier transportation contracts. Motor carriers must comply with the federal motor carrier safety regulations when transporting goods as well as common law or statutory duties or responsibilities. Likewise, shippers and other parties have legal duties and responsibilities to fulfill when providing goods for transportation. However, it's becoming more common for shippers to include language in motor carrier contracts requiring the motor carrier to indemnify and hold harmless the shipper even when the shipper fails to meet its legal duties and responsibilities.

The CS for HB 366 provides statutory language that voids contractual provisions in a motor carrier transportation

contract that indemnifies either the shipper or the motor carrier for their own negligent or intentional acts or omissions that lead to claims. This levels the playing field and makes everyone responsible for their own actions without establishing new duties or responsibilities. The bill doesn't limit the freedom to contract and each party can control its employees or agents to improve unsafe practices. Industry groups that support the legislation include BP, ConocoPhillips, Association of General Contractors, Alaska Miners Association, Alaska State Chamber of Commerce, and the Ocean Carriers Equipment Management Association. He noted that twelve states have similar laws and eight states have legislation pending.

[1:35:28 PM](#)

SENATOR PASKVAN stated that HB 366 advances good social policy and will promote safety; each person should be responsible for his or her own conduct. To allow private parties to say that someone else will pay for their omissions or negligence is a troubling concept, he said.

SENATOR MENARD said she imagines he has heard the input from the Alaska Insurance Company about shifting responsibility.

MR. THOMPSON said he isn't aware of that.

MS. OSTNES said Linda Hall, the division director for insurance, looked at the bill and had no problem with it. Ms. Ostnes added that the intent of the legislation is not to void a whole contract, just the portion dealing with omissions or neglect.

[1:37:35 PM](#)

DEAN MCKENZIE, President, Alaska West Express (AWE), stated support for HB 366. He noted that he submitted a letter to the sponsor citing an unresolved issue with a company that does drilling work in Alaska, nationally, and internationally. Currently AWE is working with two more companies that have similarly lopsided language in their master service agreements, which takes a lot of time. Smaller contractors or carriers may not have the ability to devote this much time, he said. As others have stated, we should all be responsible for our own actions; we should not be forced to take responsibility for the actions of others over whom we have no control, he said.

[1:39:00 PM](#)

JAMES C. DOYLE, Vice President, Weaver Brothers Trucking, stated support for HB 366. He cited an example of a situation that this legislation would prevent. Four or five days after a trucking

company delivered fuel to a gas station, a customer was burned while filling a portable gas tank because of an arc. The trucking company had to pay the claim even though it had nothing to do with the actual incident because it had signed an agreement indemnifying the gas station from any type of loss. HB 366 would correct this type of wrong, he said.

[1:40:39 PM](#)

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

SENATOR PASKVAN moved to report CS for HB 366 from committee with individual recommendations and attached fiscal note(s). There being no objection, CSHB 366(JUD) moved from the Senate Transportation Standing Committee.

At ease from 1:41 p.m. to 1:42 p.m.

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

SENATOR KOOKESH announced the consideration of HJR 47.

[1:42:46 PM](#)

REPRESENTATIVE KYLE JOHANSEN, sponsor of HJR 47, said the resolution asks the U.S. Coast Guard to amend regulations to allow small vessels to transport concurrently fuel, cargo, and passengers. He related that constituents of his are trying to fill a niche market to deliver supplies to remote communities along the coast that are too large for a plane but too small to warrant delivery by barge. He explained that a father and son partnership designed and received certification to build and operate one vessel. They are not able to build a second vessel without a change in Coast Guard regulations, which has not been forthcoming.

HJR 47 asks the Coast Guard to consider the unique transportation challenges in Alaska and other coastal communities nationwide and change the regulations.

SENATOR MENARD stated support for the resolution and asked how much fuel oil the vessel carries.

REPRESENTATIVE JOHANSEN said he has someone online who can provide details.

SENATOR MEYER asked if the vessel was built in the Ketchikan shipyard.

REPRESENTATIVE JOHANSEN said no; he isn't sure where it was built, but this class of vessel would certainly interest the shipyards in Ketchikan, Sitka and others in Alaska.

[1:47:10 PM](#)

DAVE SPOKELY, Power Systems and Supplies of Alaska (PSSA), said that with the change in the timber industry there was a need for smaller vessels to deliver fuel and supplies to small remote communities. He and his partner designed the high-speed, 44-foot aluminum landing craft in conjunction with the Coast Guard and the Alaska Department of Environmental Conservation (DEC). It carries 3000 gallons of fuel and is a spill-response vessel. It was built in the Seattle area, but he owns the design and is prepared to build the vessels in Alaska.

SENATOR MENARD asked if Homeland Security has any issue with this type of vessel.

MR. SPOKELY said yes. Homeland Security didn't initially take issue, but their attorneys said the current regulations wouldn't allow aluminum vessels to commercially carry bulk fuel regardless of the quantity. Coast Guard Station Juneau started the process to write the regulations, but Homeland Security wouldn't authorize funding for development of the regulations. Without new regulations he is unable to expand his fleet.

REPRESENTATIVE JOHANSEN added that his office has been working with Alaska's congressional delegation and all three members are supportive.

[1:51:46 PM](#)

SENATOR MENARD asked if it is safe to say that new regulations in this regard could promote up to 100 jobs.

REPRESENTATIVE JOHANSEN replied he isn't sure how many jobs might result, but he understands that Mr. Spokely has been overwhelmed with requests for the vessel's services. He added that he and other Southeast legislators are trying to create a marine center in southern Southeast Alaska.

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

[1:53:15 PM](#)

SENATOR PASKVAN moved to report HJR 47 from committee with individual recommendations and attached fiscal note(s). There being no objection, HJR 47 moved from the Senate Transportation Standing Committee.

1:53:43 PM

There being no further business to come before the committee, Chair Kookesh adjourned the meeting at 1:53 p.m.