

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

May 15, 2021

1:36 p.m.

MEMBERS PRESENT

Senator Robert Myers, Chair
Senator Peter Micciche
Senator Jesse Kiehl

MEMBERS ABSENT

Senator Mike Shower, Vice Chair
Senator Click Bishop

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 160 (TRA) AM

"An Act relating to the state procurement code; establishing the construction manager general contractor procurement method; and providing for an effective date."

- MOVED CSHB 160 (TRA) AM OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 63 (STA)

"An Act relating to the duties of the Department of Transportation and Public Facilities; renaming the Alaska Marine Transportation Advisory Board the Alaska Marine Highway Operations Board; relating to the membership and duties of the Alaska Marine Highway Operations Board; and relating to the comprehensive, intermodal, long-range transportation plan for the state."

- MOVED SCS CSHB 63 (TRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 160

SHORT TITLE: PROCUREMENT; CONSTRUCTION; CONTRACTS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/31/21	(H)	READ THE FIRST TIME - REFERRALS
03/31/21	(H)	TRA
04/15/21	(H)	TRA AT 1:00 PM BARNES 124

04/15/21 (H) Heard & Held
 04/15/21 (H) MINUTE(TRA)
 04/27/21 (H) TRA AT 1:00 PM BARNES 124
 04/27/21 (H) Moved CSHB 160(TRA) Out of Committee
 04/27/21 (H) MINUTE(TRA)
 04/28/21 (H) TRA RPT CS(TRA) 4DP 3NR
 04/28/21 (H) DP: HANNAN, SPOHNHOLZ, MCKAY, MCCABE
 04/28/21 (H) NR: DRUMMOND, CRONK, HOPKINS
 05/13/21 (H) TRANSMITTED TO (S)
 05/13/21 (H) VERSION: CSHB 160(TRA) AM
 05/14/21 (S) READ THE FIRST TIME - REFERRALS
 05/14/21 (S) TRA
 05/15/21 (S) TRA AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 63

SHORT TITLE: ALASKA MARINE HIGHWAY OPERATIONS BOARD

SPONSOR(s): REPRESENTATIVE(s) STUTES

02/18/21 (H) PREFILE RELEASED 1/15/21
 02/18/21 (H) READ THE FIRST TIME - REFERRALS
 02/18/21 (H) TRA, STA
 03/11/21 (H) TRA AT 1:30 PM BARNES 124
 03/11/21 (H) Heard & Held
 03/11/21 (H) MINUTE(TRA)
 03/18/21 (H) TRA AT 1:30 PM BARNES 124
 03/18/21 (H) Moved CSHB 63(TRA) Out of Committee
 03/18/21 (H) MINUTE(TRA)
 03/20/21 (H) TRA RPT CS(TRA) NEW TITLE 4DP 2NR
 03/20/21 (H) DP: DRUMMOND, HANNAN, SPOHNHOLZ,
 HOPKINS
 03/20/21 (H) NR: MCCABE, CRONK
 03/30/21 (H) STA AT 3:00 PM GRUENBERG 120
 03/30/21 (H) Heard & Held
 03/30/21 (H) MINUTE(STA)
 04/06/21 (H) STA AT 3:00 PM GRUENBERG 120
 04/06/21 (H) Heard & Held
 04/06/21 (H) MINUTE(STA)
 04/15/21 (H) STA AT 3:00 PM GRUENBERG 120
 04/15/21 (H) Heard & Held
 04/15/21 (H) MINUTE(STA)
 04/22/21 (H) STA AT 3:00 PM GRUENBERG 120
 04/22/21 (H) Moved CSHB 63(STA) Out of Committee
 04/22/21 (H) MINUTE(STA)
 04/26/21 (H) STA RPT CS(STA) NEW TITLE 6DP
 04/26/21 (H) DP: CLAMAN, STORY, KAUFMAN, VANCE,
 TARR, KREISS-TOMKINS
 05/05/21 (H) TRANSMITTED TO (S)

05/05/21	(H)	VERSION: CSHB 63 (STA)
05/07/21	(S)	READ THE FIRST TIME - REFERRALS
05/07/21	(S)	TRA
05/11/21	(S)	TRA AT 1:30 PM BELTZ 105 (TSBldg)
05/11/21	(S)	-- Invited & Public Testimony --
05/13/21	(S)	TRA AT 1:30 PM BELTZ 105 (TSBldg)
05/13/21	(S)	Heard & Held
05/13/21	(S)	MINUTE (TRA)
05/15/21	(S)	TRA AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

ANDY MILLS, Special Assistant to the Commissioner
 Department of Transportation and Public Facilities (DOTPF)
 Juneau, Alaska

POSITION STATEMENT: Presented HB 160 on behalf of the administration; during the hearing on HB 63, commenting on the separation of powers question regarding legislative appointments.

KERRY CROCKER, Staff
 Representative Louise Stutes
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Testified that the sponsor supports Amendments 1 and 2 to CSHB 63 (STA).

SUSAN POLLARD, Chief Assistant Attorney General
 Statewide Civil Division
 Legislation and Regulations Section
 Department of Law
 Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 63, commented on separation of powers question regarding legislative appointments.

ACTION NARRATIVE

[1:36:00 PM](#)

CHAIR ROBERT MYERS called the Senate Transportation Standing Committee meeting to order at 1:36 p.m. Present at the call to order were Senators Kiehl, Micciche, and Chair Myers.

HB 160-PROCUREMENT; CONSTRUCTION; CONTRACTS

[1:36:42 PM](#)

CHAIR MYERS announced the consideration of CS FOR HOUSE BILL NO. 160(TRA) am, "An Act relating to the state procurement code; establishing the construction manager general contractor procurement method; and providing for an effective date."

CHAIR MYERS welcomed Andy Mills to highlight the differences between CSHB 160(STA) and SB 117, the companion bill that the committee passed several days ago.

[1:37:19 PM](#)

ANDY MILLS, Special Assistant to the Commissioner, Department of Transportation and Public Facilities (DOTPF), advised that HB 160 is substantively similar to SB 117, the companion bill that this committee previously passed from committee. He highlighted the following differences in HB 160 that reflect the changes made in House committees and on the House floor:

Page 1, line 9, following "request for proposals":
Insert: "issued under this paragraph"

MR. MILLS advised that some in the contracting community requested this change to clarify that the requests for proposals relate to that paragraph:

Page 2, line 1:
Delete: "exclude price as an evaluation factor"
Insert: "include factors in addition to price as evaluation factors"

MR. MILLS said this change was the House floor amendment. The agency believes it still allows the flexibility needed during the evaluation portion of preconstruction services. DOT&PF initially had that price exclusion language because the preconstruction services' price is a relatively small evaluation factor compared to the other criteria. He added that it is important to understand that preconstruction services and initial services are different from the project's cost.

Page 2, lines 5-6, following "The Department of Transportation and Public Facilities may award"
Insert: "by competitive sealed proposals"

MR. MILLS explained that the phrase was relocated from farther down in the paragraph to clarify that the first phase uses the competitive sealed proposal process for contractor selection. The award of the contract for the second phase was with the selected contractor before negotiations.

[1:40:31 PM](#)

MR. MILLS pointed out the last change:

Page 2, line 11:

Delete: "shall"

Insert: "may"

MR. MILLS explained that "may" is more often used in the construction manager general contractor (CMGC) contracting method because it helps to avoid the potential for contract disputes. The regulations will help specify the conditions for awarding a contract under negotiations.

CHAIR MYERS found no questions or comments.

[1:41:49 PM](#)

CHAIR MYERS opened public testimony on HB 160; finding none, he closed public testimony. He asked Mr. Mills if he had any closing comments.

MR. MILLS thanked the committee for hearing the bill and explained that he did not ask the parties that provided testimony on the companion bill to testify again today since their testimony was already part of the public record.

CHAIR MYERS solicited a motion.

[1:42:51 PM](#)

SENATOR MICCICHE moved to report [CSHB 160(TRA)am, work order 32-GH1579\B.A, from committee with individual recommendations and attached fiscal note(s)].

CHAIR MEYERS found no further objection and SCS HB 160(TRA)am, was reported from the Senate Transportation Standing Committee.

[1:43:12 PM](#)

At ease

HB 63-ALASKA MARINE HIGHWAY OPERATIONS BOARD

[1:46:18 PM](#)

CHAIR MYERS announced the consideration of CS FOR HOUSE BILL NO. 63(STA), "An Act relating to the duties of the Department of Transportation and Public Facilities; renaming the Alaska Marine Transportation Advisory Board the Alaska Marine Highway Operations Board; relating to the membership and duties of the

Alaska Marine Highway Operations Board; and relating to the comprehensive, intermodal, long-range transportation plan for the state."

CHAIR MEYERS asked Mr. Crocker to provide opening comments before the committee considered the two amendments.

[1:46:38 PM](#)

KERRY CROCKER, Staff, Representative Louise Stutes, Alaska State Legislature, Juneau, Alaska, summarized that HB 63 modifies the system of governance in the Alaska Marine Highway. He said this had been an issue since 1982. He said he hoped that the committee will move the bill forward.

CHAIR MYERS noted who was available to answer questions.

[1:47:36 PM](#)

CHAIR MYERS moved Amendment 1, work order 32-LS0286\N.1.

32-LS0286\N.1
Fisher
5/14/21

AMENDMENT 1

OFFERED IN THE SENATE
TO: CSHB 63 (STA)

BY SENATOR MEYERS

Page 4, lines 12-26:
Delete all material.

Renumber the following bill sections accordingly.

[1:47:45 PM](#)

SENATOR MICCICHE objected for discussion purposes.

CHAIR MYERS explained that Amendment 1 removes Section 7. It provides that a regional development organization representing a region of the state containing a community dependent upon the Marine Highway System may recommend a person to fill a vacancy on the board. He said regional development organizations are vital resources, but this section elevates one organization over other people or organizations that may also want to nominate people to the board.

He asked Mr. Crocker for the sponsor's view of the amendment.

[1:49:05 PM](#)

MR. CROCKER reported that the sponsor supports Amendment 1 to narrow the board's scope.

[1:49:35 PM](#)

SENATOR MICCICHE removed his objection.

SENATOR KIEHL asked for the reason to remove both paragraphs.

CHAIR MYERS replied he was asked to offer this amendment and that language seemed superfluous.

[1:50:21 PM](#)

CHAIR MYERS found no further objection, so Amendment 1 passed.

[1:50:28 PM](#)

CHAIR MYERS moved to adopt Amendment 2, work order 32-LS0286\N.2.

32-LS0286\N.2
Fisher
5/14/21

AMENDMENT 2

OFFERED IN THE SENATE BY SENATOR MEYERS
TO: CSHB 63 (STA)

Page 2, line 24, following "attained":
Insert ", must include recommendations for the state operating and capital budgets,"

SENATOR MICCICHE objected for discussion purposes.

CHAIR MYERS explained that Amendment 2 makes it explicit that the short-term plan must include recommendations for the state operating and capital budgets. This matches what the committee added to SB 103.

He asked Mr. Crocker if he had any comment.

[1:51:35 PM](#)

MR. CROCKER stated that the sponsor supports Amendment 2.

[1:51:43 PM](#)

SENATOR MICCICHE removed his objection.

[1:51:48 PM](#)

CHAIR MYERS found no further objection and Amendment 2 passed.

[1:52:00 PM](#)

CHAIR MYERS asked Mr. Mills and Susan Pollard to comment on the separation of powers question related to legislative appointments.

[1:52:30 PM](#)

ANDY MILLS, Special Assistant to the Commissioner, Department of Transportation and Public Facilities (DOTPF), Juneau, Alaska, noted earlier comments about giving the board "more teeth." He stated that based on the composition of the board and the legal memos that talk about the advisory nature of the board not creating a separation of powers issue, the department looks at that as an indication that this board is to be advisory.

[1:54:33 PM](#)

SUSAN POLLARD, Chief Assistant Attorney General, Statewide, Civil Division, Legislative and Regulations Sections, Department of Law, Juneau, Alaska, referred to the legal memo dated April 6, 2021, by Mr. Fischer with Legislative Legal Services. That memo points out that because this board provides advice and recommendations of an advisory nature, that avoids the separation of powers issue that would arise if the board's recommendations were implemented differently. Given that, the bill adds clarity to the robust advisory nature of this particular board, she said.

[1:56:22 PM](#)

SENATOR MICCICHE said he supports HB 63. He said he views the board as advisory. Further, he hopes it will have the expertise to recognize the inefficiencies of the current system yet find affordable "outside the box" solutions, so the system will survive. He said he was sorry the restructuring skillset was removed from the original bill. He said that as the Senate President, he would find that requiring the specific skillset as important when appointing board members. People who restructure failing businesses are very good at analyzing the problem and coming up with solutions to restructure the business model. He compared it to the skillsets used in corporate America and some municipal and state business models. He restated support for the bill. The bill provides an element of separation and

independence for the board. He said it will take the system to the next step if the right people are appointed.

[1:58:43 PM](#)

CHAIR MYERS said he tended to agree. To the point about looking for an expert in restructuring, he said he believes the House member responsible for removing that provision was trying to prevent hamstringing the board if they could not find somebody with that expertise who was willing to serve. He said that the intent was to have that expertise even if it is not in the statute.

[1:59:38 PM](#)

SENATOR KIEHL said he believes it will be helpful to have the Senate President and Speaker of the House make some of the appointments with an eye out for people who have the expertise to evaluate what needs to change with the Marine Highway System. He said he believes that the restructuring expert that Senator Micciche mentioned will have an easier job than usual because 30 years of study outline the things that need to change with the model. As Mr. Mills and Ms. Pollard noted, this board is advisory, so it will remain the executive branch's job to take the recommendations and put them into action. It will come down to whether the executive branch makes the changes and uses the board. If that happens, he said there is potential for great success, but if it doesn't happen, the committee will be looking at a very different bill next time.

[2:01:19 PM](#)

CHAIR MEYERS discerned that Mr. Crocker had no closing comments and solicited a motion.

[2:01:52 PM](#)

SENATOR MICCICHE moved to report CSHB 63, work order 32-LS0286\N as amended, from committee with individual recommendations [and attached fiscal note(s).]

CHAIR MYERS stated that without objection, SCS CSHB 63(TRA) was reported from the Senate Transportation Standing Committee.

[2:02:32 PM](#)

There being no further business to come before the committee, Chair Meyers adjourned the Senate Transportation Standing Committee meeting at 2:02 p.m.