

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

February 20, 2024

1:34 p.m.

MEMBERS PRESENT

Senator James Kaufman, Chair
Senator David Wilson, Vice Chair
Senator Löki Tobin
Senator Jesse Kiehl
Senator Robert Myers

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 199 (TRA)

"An Act relating to access roads; relating to state land; relating to contracts for the sale of state land; relating to the authority of the Department of Education and Early Development to dispose of state land; relating to the authority of the Department of Transportation and Public Facilities to dispose of state land; relating to the acceptance of gifts, donations, and grants by the Department of Natural Resources; relating to accounting for certain program receipts; relating to the authority of the Department of Natural Resources over certain state land; relating to the state land disposal income fund; relating to the sale and lease of state land; relating to covenants and restrictions on agricultural land; and providing for an effective date."

- MOVED CSSB 199 (TRA) OUT OF COMMITTEE

EO 131 REORGANIZING THE ALASKA MARINE HIGHWAY OPERATIONS BOARD (AMHOB)

- HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 199

SHORT TITLE: STATE LAND: DISPOSAL/SALE/LEASE/RESTRICT

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/22/24 (S) READ THE FIRST TIME - REFERRALS
01/22/24 (S) TRA, RES, FIN
02/13/24 (S) TRA AT 1:30 PM BUTROVICH 205
02/13/24 (S) Heard & Held
02/13/24 (S) MINUTE(TRA)
02/20/24 (S) TRA AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

EMMA TORKELSON, Staff
Senator James Kaufman
Alaska State Legislature
POSITION STATEMENT: Explained the summary of changes for SB 199.

CHRISTY COLLES, Director
Division of Mining, Land and Water
Department of Natural Resources (DNR)
Anchorage, Alaska
POSITION STATEMENT: Answered questions on SB 199.

RACHEL LONGACRE, Chief of Operations
Division of Mining, Land and Water
Department of Natural Resources (DNR)
Anchorage, Alaska
POSITION STATEMENT: Answered questions on SB 199.

ANDY MILLS, Legislative Liaison
Department of Transportation and Public Facilities (DOTPF)
Juneau, Alaska
POSITION STATEMENT: Provided the sectional analysis for EO 131.

RYAN ANDERSON, Commissioner
Department of Transportation and Public Facilities (DOTPF)
Juneau, Alaska
POSITION STATEMENT: Testified in support of EO 131 on behalf of the administration.

PARKER PATTERSON, Assistant Attorney General
Department of Law
Juneau, Alaska
POSITION STATEMENT: Answered questions on EO 131.

MEGAN WALLACE, Chief Counsel
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on EO 131.

ACTION NARRATIVE

[1:34:38 PM](#)

CHAIR JAMES KAUFMAN called the Senate Transportation Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Myers, Tobin, Kiehl, Wilson, and Chair Kaufman.

SB 199-STATE LAND: DISPOSAL/SALE/LEASE/RESTRICT

[1:36:02 PM](#)

CHAIR KAUFMAN announced the consideration of SENATE BILL NO. 199 "An Act relating to access roads; relating to state land; relating to contracts for the sale of state land; relating to the authority of the Department of Education and Early Development to dispose of state land; relating to the authority of the Department of Transportation and Public Facilities to dispose of state land; relating to the authority of the Department of Natural Resources over certain state land; relating to the state land disposal income fund; relating to the sale and lease of state land; relating to covenants and restrictions on agricultural land; and providing for an effective date."

This is the second hearing of SB 199 in the Senate Transportation Committee.

[1:37:03 PM](#)

CHAIR KAUFMAN solicited a motion.

[1:37:09 PM](#)

SENATOR WILSON moved to adopt the committee substitute (CS) for SB 199, work order 33-GS2634\B, as the working document.

[1:37:20 PM](#)

CHAIR KAUFMAN objected for purposes of discussion.

[1:37:32 PM](#)

EMMA TORKELSON, Staff, Senator James Kaufman, Alaska State Legislature, explained the summary of changes for SB 199.

[Original punctuation provided.]

SB 199 Explanation of Changes, Version A to B

"An Act relating to access roads; relating to state land; relating to contracts for the sale of state land; relating to the authority of the Department of Education and Early Development to dispose of state land; relating to the authority of the Department of Transportation and Public Facilities to dispose of state land; relating to the acceptance of gifts, donations, and grants by the Department of Natural Resources; relating to accounting for certain program receipts; relating to the authority of the Department of Natural Resources over certain state land; relating to the state land disposal income fund; relating to the sale and lease of state land; relating to covenants and restrictions on agricultural land; and providing for an effective date."

Title Change. Page 1, Line 4: Adds "relating to the acceptance of gifts, donations, and grants by the Department of Natural Resources; relating to accounting for certain program receipts;" to the title.

Section 3. Page 4, Lines 11-19: Requires the Department of Transportation and Public Facilities to offer land they have determined fit for disposal to the DNR before they can dispose of the land themselves. The DNR has 45 days to accept, reject, or ignore the offer. If the offer is not accepted within 45 days, DOTP&F may dispose of the land according to standards established by the DNR commissioner.

[1:38:37 PM](#)

MS. TORKELSON continued explaining the summary of changes:

[Original punctuation provided.]

Section 4, Page 4, Lines 22-24 and Section 8 Lines 10-22: Authorizes the Department of Natural Resources to accept gifts, donations and grants to the department for the purpose of providing signage for an asset under the control of the department, in accordance with a memorandum of understanding agreed on by the donor and the department.

Section 13. Page 8, Lines 15-16: Clarifies that "if requested" refers to a requested hearing under (d) of this section.

Section 17, Page 14, Lines 1-12: Requires the DNR commissioner to prepare an report for each property deemed appropriate for commercial development that describes the municipal and state government services that the commissioner anticipates would be required and the municipal and state tax revenue that would be required to provide those services in the identified area, if the land is commercially developed.

Section 9, Page 7 Lines 1-2; Section 16, Page 9, Line 31; Section 17, Page 11, Lines 7-8, 9, 11, 21 and Page 12, Lines 22 and 25: Minor technical changes are made to conform the language to statutory drafting standards.

[1:40:04 PM](#)

SENATOR WILSON asked if the intent of Section 17, lines 1-12 is for DNR to prepare a property for commercial development prior to a land sale.

[1:40:29 PM](#)

MS. TORKELSON deferred the question, suggesting DNR or Senator Myers answer the question.

[1:40:39 PM](#)

SENATOR MYERS provided a hypothetical example in which economic development leads to increased demand for state and municipal services. He suggested that, in a Qualified Economic Opportunity Zone, there is the potential for less tax revenue to offset the increased cost of services. He said the purpose of the proposed report is to provide a prudent analysis that demonstrates the impact of commercial development in a community. The report would project the anticipated costs and tax revenue to show whether tax revenue is expected to meet the costs or not.

[1:42:05 PM](#)

SENATOR MYERS expressed concern about the language in Section 4, page 4, lines 22-24 and Section 8, lines 10-22, which states that the department can accept gifts and donations for signage. He asked about DNR's authority to name things and whether this language could create conflict when accepting donations for signage.

[1:42:53 PM](#)

CHRISTY COLLES, Director, Division of Mining, Land and Water, Department of Natural Resources (DNR), Anchorage, Alaska,

answered that DNR has limited authority to name things. DNR can name things it established such as subdivisions or trails. She stated she would get back to the committee regarding who has the authority to name things like mountains or lakes.

[1:43:29 PM](#)

SENATOR MYERS expressed concern that a private entity might, hypothetically, offer a donation and expect in return to be allowed to name a trail or other public facility.

[1:44:11 PM](#)

SENATOR WILSON responded that Department of Transportation and Public Facilities (DOTPF) does have the authority to accept donations for signage and the intent of Section 4, page 4, lines 22-24 and Section 8 lines 10-22 is that the Department of Natural Resources (DNR) would also have the authority to accept gifts from communities or private entities to replace damaged or lost signs. He said examples would be "No Dumping" or "No Trespassing" or other signs that have been vandalized or removed. He asserted that it is a good example of statute supporting public-private partnership at no cost to the state.

[1:45:31 PM](#)

SENATOR MYERS expressed support for the intent of the language in Section 4, page 4, lines 22-24 and Section 8, lines 10. He said he is concerned about creating a regrettable loophole.

[1:46:15 PM](#)

SENATOR WILSON expressed confidence that the Department of Natural Resources (DNR) would implement a reasonable and thoughtful process and develop regulations for accepting donations for signage and for naming things and that the public process would prevent potential abuse of this by the public.

[1:46:55 PM](#)

CHAIR KAUFMAN solicited comments from Department of Natural Resources (DNR).

MS. COLLES said Department of Natural Resources (DNR) does not have the authority to name major landmarks.

[1:47:18 PM](#)

SENATOR MYERS explained that he understands it would be up to the federal government to name a mountain or a lake, but opined there is a potential for problems when naming things that DNR creates and controls like a trail.

[1:47:36 PM](#)

SENATOR KIEHL asked Department of Natural Resources (DNR) if they have policies and procedures in place, especially in State parks, to govern the naming of things like cabins and trails. He assumes there are safeguards in place to prevent prank names.

[1:48:06 PM](#)

MS. COLLES said she does not have the rules in front of her, but she related an example of a public facility in the Knik River Public Use Area that was named for a community member in recognition of and expressing appreciation for his contributions to the community. When it comes to other larger projects, she would need to consult someone with more expertise.

[1:48:54 PM](#)

SENATOR KIEHL affirmed the value of the provision in Section 4, page 4, lines 22-24 and Section 8, line 10 and offered to follow up with the Department of Natural Resources (DNR) to ensure good processes for naming are in place. He cited several examples of community involvement in naming things, that it was a good thing, and expressed confidence about working with DNR to review naming policies.

[1:49:33 PM](#)

SENATOR MYERS said he is happy that the concern is on record and that it will be addressed in later committee hearings if necessary; and that it will be reflected either in SB 199 or in regulation.

[1:50:17 PM](#)

CHAIR KAUFMAN removed his objection; he found no further objection and CSSB 199, work order 33-GS2634\B was adopted as the working document.

[1:50:22 PM](#)

CHAIR KAUFMAN asked if there was further discussion on CSSB 199.

[1:50:26 PM](#)

SENATOR TOBIN asked that a representative from Department of Natural Resources (DNR) expound on points in its February 19th Memo to members, to alleviate concerns around potential shifts in transportation planning in and around Senate District I.

[1:51:16 PM](#)

RACHEL LONGACRE, Chief of Operations, Division of Mining, Land and Water, Department of Natural Resources (DNR), Anchorage,

Alaska, answered questions on SB 199 and expounded on: February 19, 2024 memo.

MS. LONGACRE said she provided both maps and documentation for District I, in particular. The areas of concern for the Qualified Economic Opportunity Zones and commercial development opportunity that are DNR property would have to go through a very public process to convey if they were under a lease-to-sale program. However, she said, there is no settlement land available for the DNR lease-to-sale program in District I, but there are lands that have been transferred and conveyed fully to the municipality of Anchorage that could be considered for commercial development under their authority. Those actions wouldn't involve the Department of Natural Resources (DNR) or the Department of Transportation and Public Facilities (DOTPF).

MS. LONGACRE further explained that land held by the Department of Transportation and Public Facilities (DOTPF) in District I would not be affected by SB 199 because SB 199 amends AS 35, which does not apply to right-of-way corridors.

SENATOR TOBIN expressed appreciation for the explanation on behalf of her constituents.

[1:52:26 PM](#)

SENATOR MYERS observed that land must be designated as "settlement land" to be eligible for conveyance. He noted that there are other classifications for land, including: "heritage resource land", "wildlife habitat land", "transportation corridor land", etc. He said he understood why the state would retain those, but asked why lands like agricultural land would not be available to sell. He said he thinks agricultural land would be at the top of the list to sell and get into use. He asked why land must be classified as "settlement land" first [prior to conveyance].

[1:53:15 PM](#)

MS. COLLES answered that agricultural land can be conveyed but must be used specifically for agricultural purposes. She said there are other classifications, such as "reserved use" that can be conveyed to municipalities or state agencies for specific uses. "Settlement land" is used to designate lands to be conveyed for residential use or personal use, where some of the others are for other specific uses that can be conveyed.

[1:54:03 PM](#)

SENATOR KIEHL sought to clarify language in SB 199. He referred to page 4, line 12 and suggested replacing "may" with a stronger non-discretionary word and stated he wanted to offer a conceptual amendment.

[1:55:26 PM](#)

CHAIR KAUFMAN asked if there was a motion.

[1:55:27 PM](#)

SENATOR KIEHL moved Conceptual Amendment 1 to CSSB 199, work order 33-GS2634\B:

CONCEPTUAL AMENDMENT 1

BY SENATOR KIEHL

Page 4, line 12 following "department"
Delete "may"
Insert "shall"

[1:55:28 PM](#)

CHAIR KAUFMAN objected for purposes of discussion.

[1:55:34 PM](#)

SENATOR WILSON asked for confirmation that the proposal is to change "may" to "shall."

CHAIR KAUFMAN asked Senator Kiehl to provide a description of Conceptual Amendment 1 for Legislative Legal Services.

[1:56:09 PM](#)

SENATOR KIEHL said on page 4, line 12, change "may" to "shall" to create a clear order of operations. He explained that when the Department of Transportation and Public Facilities (DOTPF) identifies land no longer needed for public works, they would offer it to DNR. If DNR accepts the land, the Department of Transportation and Public Facilities (DOTPF) would, without discretion, transfer the land to DNR. If DNR declines or allows the 45-day limit to expire, the Department of Transportation and Public Facilities (DOTPF) would have discretion to lease, sell or otherwise dispose of the land.

[1:56:48 PM](#)

CHAIR KAUFMAN maintained his objection for purposes of discussion and asked if DNR had any concerns about Conceptual Amendment 1.

MS. COLLES replied that DNR was neutral on Conceptual Amendment 1.

[1:57:12 PM](#)

CHAIR KAUFMAN removed his objection.

[1:57:22 PM](#)

At ease.

[1:57:51 PM](#)

CHAIR KAUFMAN reconvened the meeting.

[1:57:57 PM](#)

CHAIR KAUFMAN found no further objection and Conceptual Amendment 1 to CSSB 199 was adopted.

[1:58:18 PM](#)

At ease

[1:58:28 PM](#)

CHAIR KAUFMAN reconvened the meeting and authorized Legislative Legal Services to make technical and conforming changes to Conceptual Amendment 1.

[1:58:37 PM](#)

At ease

[1:59:23 PM](#)

CHAIR KAUFMAN reconvened the meeting and solicited a motion.

[1:59:32 PM](#)

SENATOR WILSON moved to report CSSB 199, work order 33-GS2634/B, as amended, from committee with individual recommendations and attached fiscal note(s).

[2:00:22 PM](#)

CHAIR KAUFMAN found no objection and CSSB 199 (TRA) was reported from the Senate Transportation Standing Committee.

[2:00:38 PM](#)

At ease

EXECUTIVE ORDER NO. 131

[2:02:43 PM](#)

CHAIR KAUFMAN reconvened the meeting and announced the consideration of Executive Order 131 Reorganizing the Alaska Marine Highway Operations Board.

CHAIR KAUFMAN announced invited testimony for EO 131.

[2:03:29 PM](#)

ANDY MILLS, Legislative Liaison, Department of Transportation and Public Facilities (DOTPF), Juneau, Alaska, said EO 131 seeks to modify and reorganize the Alaska Marine Highway Operations Board (AMHOB). AMHOB's members are currently appointed by the Senate President and the Speaker of the House, with two members appointed by each body. Under EO 131 the governor would appoint all members. He noted that the governor currently appoints all the members of the Aviation Advisory Board and other boards.

[2:04:56 PM](#)

RYAN ANDERSON, Commissioner, Department of Transportation and Public Facilities (DOTPF), Juneau, Alaska, introduced himself.

[2:05:21 PM](#)

MR. MILLS paraphrased the sectional analysis for EO 131:

Section 1:

Adds to the uncodified law of the State of Alaska.

That the governor finds it is in the interest of efficient administration to reorganize the Alaska Marine Highway Operations Board.

Section 2:

Modifies AS 19.65.120(a), which is the composition of the board and modifies the appointing powers to the governor.

Section 3:

Modifies AS 19.65.120 (c), which references membership of the board on staggered six-year terms. Modifications give the governor authority over appointments and handling vacancies.

Section 4:

Addresses uncodified law detailing the transition process if the Executive Order takes effect.

Section 5:

Provides an effective date of July 1, 2024.

[2:06:28 PM](#)

COMMISSIONER ANDERSON said the governor and the current administration support the Alaska Marine Highway System (AMHS). He said the administration's support is demonstrated in multiple ways; examples include operation budgets, capital budgets, and successful maritime union negotiations from the past year. The current administration recognizes the importance of Alaska Marine Highway Operations Board (AMHOB) noting it was established in Title 19; he said it is critical to Department of Transportation and Public Facilities (DOTPF) in establishing short- and long-term planning for the Alaska Marine Highway System (AMHS) and to improve AMHS in service and in reliability. He pointed out that EO 131 does not change the number of AMHOB members or the requirements to serve on the board. It simply requires that all members of AMHOB be appointed by the governor.

COMMISSIONER ANDERSON stated his belief and the belief of the governor that all Alaska would like to see AMHOB contribute meaningfully to improvements in the Alaska Marine Highway System. He asserted that the dynamics of the board have prevented them from meeting statutory expectations.

[2:08:44 PM](#)

He explained that one of the statutory duties of AMHOB is to provide a strategic plan for the AMHS. He said he sent a letter, around February 8th, 2023 to AMHOB, reminding board members of these duties, emphasizing the importance of those recommendations for Department of Transportation and Public Facilities (DOTPF). He said no recommendations were received.

COMMISSIONER ANDERSON said EO 131 does not denigrate the board's work to date or the board members who have worked to contribute on the board. He expressed respect for those members. He said EO 131 is intended to focus on the dynamics of AMHOB. He suggested AMHOB would function better if members were more aligned at a policy level, as is the case with the Aviation Advisory Board and the Governor's Advisory Board on Roads and Highways. He asserted those boards can offer more meaningful advice to the Department of Transportation and Public Facilities (DOTPF).

COMMISSIONER ANDERSON concluded, stating that his testimony represents the administration's policy perspective and he offered to provide a practical perspective for discussion if the committee so desired.

[2:10:04 PM](#)

SENATOR KIEHL said he looked at the Aviation Advisory Board website and did not see a short-term plan, long-term plan, or

strategic plan mentioned. He asked for clarification to understand how the Aviation Advisory Board is the example the administration suggests for the Alaska Marine Highway Operations Board (AMHOB) to follow if they haven't done two out of the three things AMHOB has done.

[2:10:38 PM](#)

COMMISSIONER ANDERSON answered that the different advisory boards have different statutory duties. He said EO 131 seeks to address the dynamics of how an advisory board functions and makes progress to fulfill the board's duties. He said the Aviation Advisory Board has met statutory expectations; Alaska Marine Highway Operations Board (AMHOB) has not.

[2:11:13 PM](#)

SENATOR KIEHL asked for clarification of the word "dynamics" in this discussion.

[2:11:26 PM](#)

COMMISSIONER ANDERSON said the word "dynamics" refers to the interpersonal interactions on the board; it refers to the work being done by the board and the way individual board members are contributing to the completion of the work. He said the word "alignment" occurs to him often and he suggested boards that are aligned can move things forward quickly.

[2:11:59 PM](#)

SENATOR KIEHL expressed appreciation for Commissioner Anderson's observations and said that, over the past two and half decades, Alaska Marine Highway leadership that appeared closely aligned made costly decisions that sometimes proved to be inefficient and sometimes proved to be failures. He asserted that quickly achieving alignment may not be in the best interest of the system.

[2:12:52 PM](#)

SENATOR MYERS wondered whether the word "advisory" is the correct word to describe the work DOTPF expects from AMHOB. He asked for more details about the way AMHOB and the Department of Transportation and Public Facilities (DOTPF) work together.

[2:13:55 PM](#)

COMMISSIONER ANDERSON deferred to Mr. Mills.

[2:13:57 PM](#)

MR. MILLS agreed the expectation of the work by AMHOB does exceed an advisory role and that is reflected in the board's

title: Alaska Marine Highway "Operations" Board. He recalled working with the Senate Transportation Committee as well as other legislative bodies to address the dynamics of AMHOB by working to define the duties of AMHOB in statute. He acknowledged that there is a line that they are at, if not over, with regard to DOTPF's expectations of AMHOB and with what DOTPF is coordinated to do with AMHOB. He said there is a strong belief that the function of AMHOB is and should be more than advisory and he acknowledged that the line is blurred. He noted that DOTPF had significantly more meetings with AMHOB than with other boards. He said that the number of meetings (24) represents a substantial amount of effort by DOTPF to work with AMHOB to meet the obligations set forth by statute.

[2:15:57 PM](#)

CHAIR KAUFMAN said AMHOB's role, according to statute, is not to prepare short-term and long-term plans. He recalled in previous session the Senate Transportation Committee worked with DOTPF to clearly expose what statute says are the duties of AMHOB. He described a detailed matrix, a "Responsible-Accountable-Consulted-Informed" (RACI) chart which clearly indicated and communicated the responsibility, authority, and accountability for DOTPF personnel and AMHOB members. He sought to re-direct the testimony and questions to the intent of Executive Order 131. He asserted that it is not the duties of AMHOB that are the subject of Executive Order 131; rather it is the composition of AMHOB.

[2:17:22 PM](#)

MR. MILLS maintained that the way members are appointed to AMHOB creates an additional layer of accountability to work with DOTPF. He characterized interactions between specific AMHOB members and DOTPF as adversarial rather than advisory, which is unfortunate. He said the reason for EO 131 is the governor does not have the ability to work with AMHOB when there are issues, including code of conduct issues, as he has been able to work with other boards. He asserted that board appointments directly affect the authority, accountability, and ability to deliver the items required of AMHOB by statute. He noted that AMHOB had not completed its statutory duties, as noted in the February 8th, 2023 memo from Commissioner Anderson to AMHOB.

[2:19:08 PM](#)

SENATOR TOBIN asked if the members of Alaska Marine Highway Operations Board (AMHOB) are subject to legislative confirmation.

[2:19:31 PM](#)

MR. MILLS answered they are not.

[2:19:35 PM](#)

SENATOR TOBIN said that her understanding of EO 131 is that it would cause AMHOB appointments to be under the purview of one person, the governor, and take away the voice of the people by removing the elected officials from the role of appointing AMHOB members. She emphasized the importance of community buy-in, provided for by the appointing power of the Senate President and the Speaker of the House.

[2:20:44 PM](#)

MR. MILLS said he understood the concern expressed. He said appointing powers has unfortunately and, hopefully, not intentionally, made things more political, not less, which, he acknowledged, was not intended. He asserted that appointments by the governor do not equate to political alignment because AMHOB members are appointed, per statute according to their experience and expertise. He said their opinions frequently differ from the governor's.

[2:22:23 PM](#)

SENATOR KIEHL expressed appreciation for the staffing of AMHOB and asked for a rundown of the history of the predecessor to AMHOB, the Marine Transportation Advisory Board (MTAB).

[2:22:50 PM](#)

MR. MILLS said the storied and extensive history of MTAB was before his time with DOTPF, however, he is aware that it was the dynamic of MTAB that led to HB 63, the sun-setting of MTAB and the formation of AMHOB. He said the structure of MTAB was largely constituent groups and others vying for scheduling on the ferries rather than a broader system-wide approach to advising and making recommendations to Department of Transportation and Public Facilities (DOTPF). He said the work between AMHOB and DOTPF with the help of contractors has been to widen the scope of AMHOB's work. He said it has been a big push by DOTPF and the contractors. He pointed to the AMHOB website for the history of MTAB and current progress of AMHOB.

[2:24:20 PM](#)

SENATOR KIEHL expressed appreciation for the perception of MTAB in the years immediately preceding the formation of AMHOB. He said MTAB was created by the Murkowski administration to advise DOTPF on the same sorts of things AMHOB was created to provide. He conveyed his observation that MTAB provided advice to several

commissioners that those commissioners were not interested in hearing and MTAB members changed quickly. It became a board that could have a public hearing on schedules or something but didn't have any meaningful input, because board members had been appointed by recommendation of a commissioner because they would tell the commissioner what the commissioner wanted to hear. So, all that was left was for members to vie for service for their particular community or constituency. He asserted that the lack of critical voices, third party perspectives and the ability to bring expertise without worrying about losing seats on the board is what led to MTAB becoming a fairly useless body.

[2:26:16 PM](#)

MR. MILLS suggested that MTAB was not useless but did have limited utility. He said there was unanimous agreement that meaningful input from AMHOB was necessary for DOTPF to have the support it needed from a strong board and that is what led to HB 63 and the formation of AMHOB. He said EO 131 is before the committee today because the administration does not believe AMHOB is providing meaningful input now.

[2:27:03 PM](#)

COMMISSIONER ANDERSON said he understands the comments regarding past commissioners and that Mr. Kiehl made key points. He said he has not received advice from AMHOB and that is a challenge. He reported that other boards, such as the Roads and Highways Board have made multiple resolutions regarding current concerns and topics that DOTPF could take and look for solutions. In the case of AMHOB, the department has not received advice.

[2:27:50 PM](#)

CHAIR KAUFMAN commented that his office, when he was in the Alaska House of Representatives, was quite involved in developing the content of statute that came from HB 63. He said it was important to introduce strong competency-based requirements for AMHOB and to make sure, in aggregate, the board had technical competencies around enterprise management, quality management and the different things that help make a board effective. He acknowledged that some of the content for AMHOB member requirements does differ from other DOTPF boards in terms of competency because of things like the marine elements and the hospitality elements of the AMHS. He said the content requiring long-term and short-term plans might be recognized as a hallmark of his office; but the intent was not for AMHOB to create those plans, rather that AMHOB would consult and advise DOTPF with the creation of those plans. He asked for an update on the progress

of the long-range and short-term plans as required by the same statute that created AMHOB.

2:29:23 PM

MR. MILLS reported that efforts by Alaska Marine Highway Operations Board (AMHOB), AMHS, and DOTPF in concert with consultants resulted in Phase 1 of the long-range plan, completed in August 2023. He said that, as a consequence of a reset from the first year with AMHOB, the effort to create the long-range plan did not yield the desired result. He said the plan right now is to have phase 2 in spring 2024 and the final long-range plan completed in August 2024. He said AMHOB's intention is that the short-term plan would be informed by and come from the long-range plan when the long-range plan has been established. He said there is a short-term plan in place but reiterated that the intent is for the short-term plan to be informed by the long-term vision.

MR. MILLS listed other powers and duties of AMHOB: the board shall provide advice and recommendations to the commissioner of DOTPF concerning the operations and management of AMHS, including advice and recommendations regarding business to enhance revenue and reduce costs, personnel management, commercial services operations.

2:31:15 PM

MR. MILLS referred to AS 19.65.180(e) and said these are specific examples of recommendations and advice for which the commissioner's office has not currently received advice from AMHOB. He reiterated that the focus on the long-range planning effort is key to avoiding fits and starts and efforts in different directions. He characterized the long-range plan as a durable path toward a quality product.

2:32:04 PM

SENATOR MYERS asked about the constitutionality of having a board with voting members appointed by the legislative branch and the executive branch of state government.

2:32:26 PM

PARKER PATTERSON, Assistant Attorney General, Department of Law, Juneau, Alaska, answered that the Department of Law's long-held opinion is that appointments to advisory boards by the legislative branch violate the separation of powers. He said such appointments allow a different branch of government to appoint individuals to staff units of the executive branch. He

said it is clear in Alaska Supreme Court decisions that the power to appoint is an executive power and not a legislative power. He further explained that when there is confirmation of appointments [by the legislature], it is because of a specific cross-delegation. He said Alaska has a system of limited mixed separation of powers, in which limited power is held by, or given to, another branch. In this case, the legislative branch is given the power to confirm the heads of departments and appointments to boards and some other specific circumstances. He said the legislature cannot expand the power to confirm to also include the power to appoint individuals to executive branch units. He continued to explain that the power to appoint is a core function of the executive branch. He said a board like AMHOB, as set forth in AS 19.65.180, does draft and submit the strategic plan for AMHS, and so AMHOB is at the heart, the center of the governor's policy-making operations regarding the Alaska Marine Highway (AMHS). He said, as a core entity within the governor's policy making function, AMHOB must be accountable to the governor. He concluded that this separation of powers argument is the basis for Department of Law's position.

[2:35:35 PM](#)

CHAIR KAUFMAN solicited follow up questions.

[2:35:38 PM](#)

SENATOR KIEHL asked if Mr. Patterson said "confirm." He asked to be directed to the executive branches power to confirm in AS 19.65.180.

[2:36:09 PM](#)

MR. PATTERSON explained that [the legislature has] a constitutional power to confirm certain individuals. Beyond that, the legislature is [constitutionally] not able to confirm, much less appoint. Confirmation is a lesser power [than the power to appoint]. The governor makes the appointment, then the legislature can say yes or no to the governor's pick. That [appointment and confirmation process] is in the state constitution regarding department heads. The power set forth in AS 19.65.180 gives the legislature the power to appoint, a greater power than the constitutional confirmation, onto an executive branch unit. From the Department of Law's point of view, AS 19.65.180 gives the legislature power to appoint members to an executive branch unit and goes far beyond that of the narrow scope of constitutional confirmation power. He said Department of Law's position is that the position to appoint individuals to executive branch boards is constitutionally

beyond the scope of the legislature's power under [the principle of] separation of powers.

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SENATOR KIEHL said that what the committee is looking at is an advisory board that can inquire and advise but does not independently exercise the powers of the executive branch. He said giving advice is the issue, not the executive power of the state.

[2:37:59 PM](#)

CHAIR KAUFMAN asked Megan Wallace to share her perspective on EO 131.

[2:38:18 PM](#)

MEGAN WALLACE, Chief Counsel, Legislative Legal Services, Juneau, Alaska, shared the legal opinion of the Legislative Legal Services office on AS 19.65.180 and AMHOB. She pointed out that AMHOB is not under litigation and has not been challenged in a court, and a court has not established that there is a separation of powers issue. She considered the hypothetical or speculative view of what a court might do. She said that the question of separation of powers would likely turn on the advisory nature of the board. She said the question would be whether AMHOB was exercising executive function within an executive branch unit or serving in a merely advisory capacity. She said it's important to consider that AMHOB is required to prepare and submit to DOTPF and the governor a strategic plan for review. She said those powers and duties set forth in AS 19.65.180 feel, in her opinion, advisory in nature as opposed to a substantive exercise of executive function. Ms. Wallace said that since AMHOB is arguably not exercising executive function, whether it is permissible for the legislature to appoint members to AMHOB as outlined in AS 19.65.180, will have to be looked at.

[2:41:09 PM](#)

MS. WALLACE concluded that the legislature may consider whether to approve or disapprove of EO 131 without there being a legal issue. She said that today's discussion of policy is sufficient for the legislature to decide whether the changes proposed by the governor are acceptable or not.

[2:41:52 PM](#)

SENATOR MYERS said he is aware that the legislature has had members on various task forces, for example the recent Alaska Food Security Task Force, as well as former legislators serving

as ex officio non-voting members. He said he is not aware of any other boards that have either a legislative member or legislative appointment for a long-term board. He asked if Ms. Wallace was aware of any other boards that have members appointed in that manner that have full voting powers with the other members.

[2:42:36 PM](#)

MS. WALLACE answered that during her research for her opinion, she identified the Citizens Advisory Commission on Federal Management Areas (CAFCA) in Alaska, which may have been repealed, used to be set up in that way, in that the presiding officers [of the legislature] appointed members to the commission. She said she also believes the Alaska Minerals Commission has members appointed by the legislature. As noted, there is a general understanding that members [of the legislature] sit on boards in an advisory capacity.

[2:43:36 PM](#)

SENATOR TOBIN shared fond memories of riding the AMHS between Juneau and Sitka as a young person. She prefaced her inquiry saying she did not wish to impugn members of the board or suggest they had not served with distinction. She noted that the current vice chair and chair of AMHOB are the members appointed by the speaker of the house and the senate president. She expressed consternation about changing the composition of AMHOB by removing the vice chair and chair, the leadership of AMHOB, that seem to be in those [legislative branch] appointed positions. She noted that there has been a lot of conversation by the Department of Transportation and Public Facilities (DOTPF) representative around a particular individual and some of the issues that are being experienced in other parts of DOTPF. She noted mention of issues with how AMHOB is operating currently. She asked how the function of the board will be improved by changing the current leadership of AMHOB, and with regard to another individual's particular performance.

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MR. MILLS explained that the appointing power change that would occur if EO 131 is approved is not a de facto change in the current AMHOB leadership. It's a change in the ability for the governor to bring accountability where there is not active participation or results. He opined that there is not a direct line to suggest that the members in those positions would need to change. He said AMHOB would still need to have its own election for chair and vice chair. He reported that during the February 2023 meeting of AMHOB, the dynamics in the room were

very awkward. He said it was very uncomfortable for the public and AMHOB members. He said DOTPF suggested changes procedurally to try to avoid that, but those suggestions were not acted upon. He opined that appointing power difference does change the dynamic and how people would act from an accountability standpoint. He asked Ms. Tobin to repeat the second part of her question.

[2:46:59 PM](#)

SENATOR TOBIN affirmed that Mr. Mills answered her question regarding EO 131's potential effect on AMHOB's leadership positions.

[2:47:09 PM](#)

CHAIR KAUFMAN opened public testimony on EO 131; He found none and closed public testimony.

[2:48:01 PM](#)

SENATOR KIEHL thanked Commissioner Anderson and the Department of Transportation and Public Facilities (DOTPF) for the work they have done with AMHOB. He expressed his view that it is materially different from past DOTPF leadership, by which, he said, he means better. He said this is a department that has been listening to a board that is working.

MR. KIEHL shared his story of riding the AMHS ferry with Secretary of Transportation, Pete Buttigieg. He described an unusual opportunity to spend significant time with Secretary Buttigieg, Senator Murkowski, Representative Stutes, and the head of Southeast Conference, during which Secretary Buttigieg asked many pointed questions. He said had the opportunity to assure Mr. Buttigieg that DOTPF would not be getting in a hole with maintenance of the ferries in the future. He told Secretary Buttigieg Alaska's DOTPF would not be making decisions that flip back and forth with the tides on \$100 million or \$120 million infrastructure investments. He reported to the Secretary that AMHOB would be exercising independent judgement and giving advice to DOTPF.

[2:50:05 PM](#)

SENATOR KIEHL continued and said DOTPF's commissioner seems to listen. He said that he doesn't always agree with AMHOB's recommendation to DOTPF and cited that as evidence AMHOB is working hard and thinking hard. He said, if in future this, EO 131, takes effect and we have a governor he doesn't have deep trust in, he doubted that he could make the same statement to the Secretary of Transportation, regarding an independent set of

people looking hard and working hard on issues affecting AMHS. He opined that the current structure is important to AMHOB's functioning at a high level. [AMHOB's function is important to] AMHS moving forward as the most effective and efficient system we can provide Alaskans.

[2:51:21 PM](#)

CHAIR KAUFMAN observed that the Alaska Marine Highway System represents opportunity and tremendous liability. He said we all have to think long and hard about its management and its future. There is significant risk in operating a ferry in the Gulf of Alaska and its other operating locations. He said giving consideration to the safe operation of the ferry system is worthwhile. He opined that the state has made great strides in the management of AMHS. He affirmed the appointment of the current director.

[2:52:38 PM](#)

COMMISSIONER ANDERSON said everyone wants improvements to service and reliability for the Alaska Marine Highway System (AMHS). We want to stay focused. We don't want to go back and forth on decisions. We want a steady way forward. He said DOTPF has the right people to make this happen. He said EO 131 is an effort to address the dynamics of the board and to accelerate progress. He said AMHOB has brought good ideas forward and DOTPF wants to move forward quickly, to take advantage of opportunities that are available now. He explained the DOTPF makes decision ahead of AMHOB because it must, even though it would prefer working together.

[2:53:46 PM](#)

CHAIR KAUFMAN held EO 131 in committee.

[2:54:33 PM](#)

There being no further business to come before the committee, Chair Kaufman adjourned the Senate Transportation Standing Committee meeting at 2:54 p.m.