

HB

147

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMUNITY

April 28, 1977

Present: Chairman Orsini, Senators Hackney, Sumner and Willis; Bruce Erinson, Dept. of C&RA; Marge Gorsuch, League of Women Voters; Patty Ann Polley, Division of Elections; and Ed Hildebrand, Elections Official.

Absent: Senator Ferguson

Chairman Orsini began the hearing with an explanation of the proposed CS for HB 147. He stated that the difference between the Committee substitute and the original bill is the clarification of the discrepancy with respect to villages having disapproving authority regarding the construction of a public project by the state as manifested in the bill. The villages do not have the authority to disapprove a public project because they are unincorporated communities. Otherwise, Senator Orsini stated, Section 1 of the bill is the same.

With regard to Sec. 2, Senator Orsini pointed out that this section pertains to the hiring of Alaska residents for construction and pre-construction projects, including engineering studies, surveys and consulting.

To emphasize the problem with the practice of hiring "outside" professionals, Senator Orsini made refered e to a memo dated Sept. 9, 1975, from the Governor to the Department Commissioners stressing his concern over the hiring of outside agencies when there are agencies within the state who can do the job.

Chairman Orsini added that he wrote to all the Commissioners a year ago asking them what their position was regarding Alaska hire, and the response was not very supportive. The Department of C&RA did provide the committee with a list of outside agencies who had entered into a contract with the Department of C&RA, the contracts consisting primarily of impact studies on the state.

Senator Orsini stated that it was his contention that the 1972 amendments to AS 36.10.010 were intended to be broader than has been interpreted by the Attorney General's Office. The intent of Sec. 2 of the SCS CSHB 147 was to insure that

contracts for services that may eventually lead to public construction, such as planning studies, impact assessments, and feasibility studies, would also be covered by the resident preference concept.

Bruce Erinson, Dept. of C&RA, provided the following for the committee to consider. He asked who would provide review of a proposed public project in a borough or city that did not have a planning commission. Chairman Orsini understood this to mean that the municipality should have some sort of review and approval if they don't have a planning commission that perhaps the Council or Assembly could act as a planning commission. Mr. Erinson suggested deleting the words "the planning commission of" on page 1, line 15. The members agreed on this change to the proposed SCS for CCHB 147. Senator Sumner moved that SCS CSHB 147 as amended pass with a "do pass". There were no objections.

Chairman Orsini then explained that HB 84 is not in the Senate CRA Committee, but in the Finance Committee. His intention is to divide the "housekeeping" changes of the election code from the controversial issue of registering on election day.

Senator Orsini asked Ed Hildebrand, Elections Official, Juneau, to testify on CSHB 188 and CSHB 84. He stated that he objected to registering and voting on the same day due to the additional cost for extra people working at the polls and because of the added confusion that would be inevitable at the polls. Senator Sumner asked how residency would be determined at the polls if registration did occur on election day. Mr. Hildebrand stated that the only way would be a challenge or question ballot, which would later be investigated before the final canvass was conducted. Senator Orsini asked how registration takes place at this time, and Mr. Hildebrand explained that when a person signs the registration certificate they are attesting to the fact that they are residents of the state. He added that the form requires the residence and mailing address of the voter, then the registration goes back to the state and goes through the registrations listing which then goes down for each precinct and is distributed out to the precinct workers. That is one of the reasons why the poll workers are chosen from the precinct so they can tell whether a person resides in that place or not.

Senator Orsini then asked for comments. He asked Mr. Hildebrand what he thought of the polls being open for another hour. He added that he had called the municipal clerk in Anchorage, and she had stated that the Municipal Association

is opposed because no matter how long the polls are open there are always people who wait until the last minute. Senator Sumner stated that whoever wants to vote can get there by 8:00.

Mr. Hildebrand also commented in regards to AS 15.13.060(c). He suggested that each candidate for municipal office file the name and address of the campaign treasurer with the commission not later than the date of filing the declaration of candidacy or his nominating petition and shall file a duplicate of the commission's filing with the municipal clerk not later than the last day on which he would file the declaration of candidacy and nominating petition. He stated that he would like to see this filing in the hands of the municipal clerk in addition to the commission.

Marge Gorsuch from the League of Women Voters then testified in regards to Section 10. She stated that the issue is not whether the name of the campaign treasurer is filed but rather if the candidate is filing his campaign financing report. The League believes there should be some mechanism for making the public aware of the non-compliance of candidates before they vote. She offered wording to this effect, but Senator Orsini stated that at this time, the Committee would not address this issue.

Ms. Gorsuch stated that she had no objection to HB 84. She felt that there should be a standard time that the polls are open throughout the state so the voter wouldn't be confused. She added that an additional hour probably wouldn't increase voter turnout, and the League of Women Voters doesn't take a strong position on this issue, but they did not want to leave the decision up to the discretion of the municipality.

The League supports the election day registration. According to Ms. Gorsuch, the voter registration system will encourage maximum voter participation. Ms. Gorsuch referred to other states who have election day registration, and used the following statistics to support the League's position: Minnesota, 68%-75% voter increase; Wisconsin, 62%-65%; and Maine, 61%-65% voter increase. She added that many people don't get around to registering otherwise.

She stated that the major criticism against this concept is fraud. There has been no fraud in the states of Minnesota, Wisconsin, Maine or North Dakota documented. She added that there was some confusion because of heavy voter turn-out, but no fraud reported. She stated that if there was concern over fraud, then those who registered and voted on election day, could have their ballots designated as question ballots and the question ballot would be put in a separate category

to be checked and counted later. Some concern exists that this would hold up the returns of the election, but the League feels it is more important to give the people a chance to vote. She also stated that when a person registers to vote, they swear under oath that they live at their address, and could perhaps also sign an additional statement that they are voting only once and are subject to penalty if violating that statement.

She stated that in answer to Mr. Hildebrand's concerns regarding the extra cost, that a bill has been introduced, providing a subsidy which would initiate the system. The League does not feel that the extra expense is a valid objection, but that the issue is whether or not people have a right to vote.

In regards to the confusion at the polls expressed by Mr. Hildebrand, Ms. Gorsuch pointed out that at the present time, registration is going on during an election although the voter registration is not effective until 30 days hence.

Her final statement was in regards to the fraud which might occur, and she stated that they would question the validity of this argument, as opposed to the democratic right to vote.

Senator Orsini then asked Ms. Gorsuch if she attributed the percentage of voter increase in those other states totally to registration at the polls and for no other reason, and Ms. Gorsuch said she would find out for sure if there were any other possibilities for the voter increase. She added that she feels this is a very effective method and that she has been very impressed with the number of people who register at the polls even though at the present time, they cannot vote.

Senator Hackney then stated that he is not opposed to people voting but that it is so easy for people to register now, that all they have to do is exert themselves a little ahead of time, and that's not an imposition on the voter.

Regarding HB 188 and HB 84, Senator Orsini pointed out that the intent was to incorporate those proposed amendments by the Lt. Governor's Office into CSHB 188, take out the issue of the registration on election day and put that into CSHB 84.

Patty Ann Polley, Director of the Division of Elections stated that Sec. 6 of CSHB 188 could be changed by making a "sliding scale" in regards to the number of registration

officials per number of voters. She suggested perhaps three officials per 250-500 voters. She concurred with Sections 7, 8, 9 and 10 and stated that sec. 11 could perhaps state that both the voter and official could drop the ballot into the ballot box.

In regards to CSHB 84, she stated that they are opposed to registration on election day. She stated that people will put off registering until then and then confusion will certainly result at the polls. People have enough trouble now finding out which precinct to vote in, and often end up at the wrong places. They would have no way to cancel a registration from another state, so a voter could have an absentee ballot from a previous state, walk into the polls with an Alaskan drivers license that they've had for 30 days and vote. She went on to give instances of fraud and dual registration, and the time involved in investigating registration. She stated that if people register on election day, they would probably never be checked out.

Senator Orsini asked how often fraud occurs and she answered that about 100 occur per year.

DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS

Out of State Contracts
FY 75 thru FY 77

<u>FY</u>	<u>CONTRACTOR</u>	<u>DOLLAR AMOUNT</u>	<u>DESCRIPTION</u>
76	Robert R. Nathan, Inc. Washington, D.C.	\$ 8,846	Report on effect of Federal poverty guidelines as applied to programs in Alaska
76	The Jacobs Company Chicago	325,000	Juneau Indemnification - base year assessment
76	The Jacobs Company Chicago	20,000	Coordination of Juneau Indemnification Assessment efforts
76	Dornbusch and Company California	35,000	Develop management guide for OCS related industrial Development study
77	The Jacobs Company Chicago	20,500	Update and reprint appraiser's Cost Manual for Alaska assessors
77	Rudolph and Peck Seattle	10,000	Design and graphics for Gulf of Alaska OCS booklet
77	Woodward, Clyde & Wright San Francisco	50,000	Study Marine facility development in Kodiak
77	Cramer, Chin & Mayo Seattle	60,000	Study OCS impact - Kodiak

OFFICE OF THE GOVERNOR

TO: All Commissioners

DATE: September 9, 1975

FROM: Jay S. Hammond
Governor

SUBJECT: State Contracts

I have been receiving disturbing communications from the business community indicating a distress with what some believe to be a flagrant disregard for utilization of talent to be found within Alaska. There, of course, have been instances of contracts going to "outsiders". The current headliner is the Tourism Advertising Contract.

While there may well be justification in most if not all such instances for utilizing the services of outside agencies, I want this Administration to bend every effort to improve upon the utilization of Alaskan agencies for such contractual activities.

Specifically, this Administration is being criticized for failure of State agencies to respond to letters of inquiry regarding such contracts without even calling for bids or proposals from Alaskans.

While aware that little can be done regarding contracts already tendered, a number of members of the business community want to know how to approach the problem and "make the bureaucraties at least consider the spectrum of services that are located around the State." I am advised that some members of the business community have considered forming an association in order to combat what they feel to be a severe deficiency on the part of the State Administration.

Henceforth, I would ask that all agencies increase their diligence in responding to inquiries from within the State and bend every effort possible to utilize Alaskan talent when such is available.

JSH/mlp

Low 1/5

MEMORANDUM

State of Alaska

RECEIVED
Department of Law
Juneau, AlaskaTO: Dickerson Regan
Assistant Attorney General
AGO-Juneau

DATE: March 24, 1977

FILE NO:

APR - 1 1977

TELEPHONE NO:

PM
1:00:00 1:12:00 1:24:00 1:36:00 1:48:00FROM: Hal P. Gazaway *HPS*
Assistant Attorney General
AGO-AnchorageSUBJECT: CSHB No. 147
Coordination of Public
Projects With
Municipalities

The Division of Aviation has informally expressed some concern as to the applicability of CSHB No. 147. The concern expressed has been whether or not proposed AS 35.30.020 would require formal subdivision plats for the Division of Aviation lands included in state airports.

In an attempt to resolve that question I have reviewed the bill and have certain questions of my own. They are as follows:

1. The definition "public project" appears to be out of order. That definition goes from the specific to the general to the specific. Furthermore, that definition does not indicate whether or not airports are to be included in the definition of public projects. Generally they would be considered public projects.

2. This is an amendment of the title dealing with public works. But the majority of the provisions involve coordination by the Department of Highways. I would suggest a section governing coordination by the Department of Highways and a second section dealing with coordination by the Department of Public Works. Although this would be duplication of effort, it would clarify what appears to in its present form to be an incomplete amendment of the statutes. However, with the impending consolidation of the two agencies this problem might soon be mute.

3. As far as the Division of Aviation is concerned to the extent projects are constructed under the aid to developing airports program administered by the Federal Aviation Administration coordination with the municipality is presently required. See 49 U.S.C.A. 1716(c)(1), (3); (d)(1); (f)(2). The proposed bill, however, would require such coordination in those instances where the airport is not one covered by the ADAP program. However, those non ADAP projects are in

communities that do not have planning commissions and in many instances are not municipalities as such but are no more than settlements or unincorporated villages. Therefore, there would be a considerable question in those instances with whom the Division of Aviation would be required to coordinate.

4. In its present form the bill is so vague as to be meaningless as to what constitutes a public project. In the instance of airports, would a public project be where (a) new airport is designed and constructed, (b) construction of a taxiway, (c) the addition of an apron, (d) the addition of a runway extension, and (e) the resurfacing of a runway. In its present form the bill does not provide guidelines as to when a project is a public project requiring such coordination. In its present form the bill would require coordination with the municipality for any project. The question is should coordination be required for example when a runway extension project or resurfacing project of the runway at Emmonuk is contemplated. The necessity of the supplemental project would far exceed any technical knowledge or expertise on the part of any municipal entity that might be in existence in that community. The requirement might well be imposed due to factors totally unknown to such community. Yet as I read the proposed bill such coordination would be mandated and possibly subject to veto by the municipality.

In practice some aspects of the statute could very well be unenforceable due to federal preemption of aviation. Were they to be applicable to airports the proposed AS 35.30.010(a) and AS 35.30.020 could be unenforceable due to federal preemption. The standards for airport construction are set forth in detail in 14 C.F.R. To the extent the review of a municipal planning commission or zoning ordinance conflicts with these requirements the federal regulation would probably govern. I base my conclusion on the following line of cases:

1. Federal preemption of airspace Alleghany Airlines, Inc. v. Village of Cedarhurst, 132 F.Supp. 871 (1955), 238 F.2d 812 (1956).
2. Invalidated maximum altitude ordinance American Airlines, Inc. v. City of Auburn, 297 F.Supp. 207, aff'd. 407 F.2d 1306 (7 969) cert. denied 396 U.S. 845 (1969).
3. Invalidated noise abatement ordinance American Airlines, Inc. v. Town of Hempstead, 272 F.Supp. 226, aff'd. 398 F.2d 369, cert. denied 393 U.S. 1017. Burbank v. Lockheed, 411 U.S. 624 (1973).

4. Regulation of navigable airspace U.S. v. New Haven, 367 F.Supp. 1338 (1973) aff'd 469 F.2d 452 (1974).

However, the issue is not that clear inasmuch as some aspects of aviation have not been preempted:

1. Entire field of air commerce not preempted Braniff Airways v. Nebraska, 347 U.S. 590; Colorado v. Continental Airlines, 372 U.S. 714.
2. Airport regulation Aircraft Owners Asso. v. New York, 305 F.Supp. 93 (1969).
3. Airport construction Windsor v. Ronan, 329 F.Supp. 1286, 1290-91 aff'd. 481 F.2d 450; Boston v. Volpe, 464 F.2d 254, 259.
4. Authority of municipality to enact ordinance banning taxing-off and landing of aircraft reorganized and not preempted by federal and state control of airspace. Garden State Farms, Inc. v. Boublis, 136 N.J. Super. 1, 343 A.2d 832 (1975).

This is not meant as an objection to the desirability of encouraging public agencies, in particular, the Department of Highways and Division of Aviation, from holding public hearings to gain input as to their projects effect upon any given community. But, merely to point out in the present form the bill does not adequately address certain problems raised by imposing such requirements upon an agency which constructs projects in communities so small as to not even have post offices. An agency whose projects are subject to detailed federal regulation. Furthermore, so many of the airport projects requiring substantial expenditures of public funds are ones which have little if any impact upon the municipality or the inhabitants of that community off of the airport. If such a bill is to be passed by the legislature, I would suggest that these questions and issues be clarified and guidelines established.

cc: Paul Wild, Chief
Lands and Leasing
Division of Aviation

Wendell P. Miller
Technical Service Coordinator
Engineering Section
Division of Aviation

Municipality of Anchorage

MEMORANDUM

DATE: February 7, 1977

TO: Ted Berns, Legal

FROM: Tom Nelson, Planning

SUBJECT: House Bill No. 147

274-2525

This is just a brief outline of our concern over actions taken by the Alaska State Highway Department that do not comply with Municipal land use regulations such as the Zoning Ordinance and Subdivision Regulations which everyone else must and do comply with. Specific cases of Highway Department actions that have created problems and conflicts will be presented at a later date when more time is available to gather the information together.

The primary cause of most land use problems created by the Highway Department is the creation of non-conforming lots following land acquisition for additional right-of-way. In several instances the Highway Department acquired a portion of a lot or tract and left the owner with a relatively useless parcel. In doing so, resulting land use patterns are ignored. Thus, access problems develop; either normal access is shut off on the front of the lot and thenca, alleys become thoroughfares, or every little non-conforming lot remaining has its own access onto the arterial being up-graded. The end result is additional traffic circulation and safety problems.

In several instances the Highway Department has split lots, but filed no plat, thus leaving no record after land was taken. Land is subdivided without filing a plat. The Highway Department may know better, but as long as they can ignore local land use regulations they'll try to get by with it.

These types of actions present problems to land owners and developers. Tax inequities result when owners are taxed for useless land, and Municipal government loses tax revenue when relief is given to the owner because of the non-conformity-- all or most of which could have been prevented through adherence to local regulations. In addition, developers are severely limited by problems with access and setbacks for structures.

Another problem that has arisen in regard to highway projects is the Highway Department's source of gravel materials. They have had a practice to buy gravel from private landholders. The private landholder in that case is responsible for getting a Special Exception to extract gravel. However, the Highway Department may not always inform the landholder of that when entering an agreement for the gravel. If the Highway Department decides to extract gravel itself, it can presently do so, without any regulations on such operations. This may be a possibility in the Eagle River/Chugiak area where the Highway Department plans to utilize gravel resources for the construction of Minnesota Drive Extension. In such an instance there is no way the neighboring residents could be protected from noise, dust, traffic, or hazards from such activity.

The purpose of having Special Exceptions, platting procedures, along with all the other land use regulations is to "protect the health, safety and welfare of the public." This responsibility is entailed to the Anchorage Municipality, yet little protection can be offered from actions taken by the Highway Department.

These problems also create unnecessary and costly administration problems with requests for zone changes and variances, not to mention the litigation that has been leveled against the Municipality.

These problems will continue until the Highway Department is forced to abide by the same rules as everyone else. It is this department's firm belief that the Highway Department does not deserve to have any privilege status in regard to local land use regulations. As with other State agencies, if there is a clearly demonstrated over-riding State interest, a waiver from the local compliance requirements may be granted by the governor.

Dave Doris, a member of the Platting Board, is quite familiar with the practices of the Highway Department here in Alaska and similar problems in other states. I would suggest having him testify on this Bill. He would strongly support our stand and has indicated a willingness to help.

PUBLIC WORKS/HIGHWAY PROJECTS--PLANNING

Current Law

AS 35.10.020, as amended by the Ninth Legislature, requires that the construction of a "public works" be commenced only after consultation with municipal planning and zoning authorities and compliance with local planning and zoning ordinances. However, this statute is ambiguous in terms of its affect on highway construction projects and the Department of Highways. The construction or modification of a state highway often poses serious problems for municipal planning programs and should therefore be commenced only after consultation with local planning authorities. Of course, if an overriding state interest in a highway project is demonstrated, a state agency should possess the ability to override local planning and zoning ordinances. This, however, does not detract from the need to incorporate local planning and zoning review into the design and construction of state highway projects.

Proposed Bill

The proposed legislation would clarify the scope of AS 35.10.020 to require consultation with municipal planning authorities and compliance with local planning and zoning ordinances prior to the construction of "any building,

structure, public works, or highway project and prior to commencement of extraction activities in a municipality".

In addition, the bill would maintain the state's present authority to override local planning and zoning ordinances to serve overriding state interests in construction projects.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUGH K - STATE CAPITOL
JUNEAU 99811

April 14, 1977

Honorable Joseph Orsini
Chairman
Senate Community &
Regional Affairs

Re: CSHB No. 147 am - Coordina-
tion of Public Projects
with Municipalities

Dear Chairman Orsini:

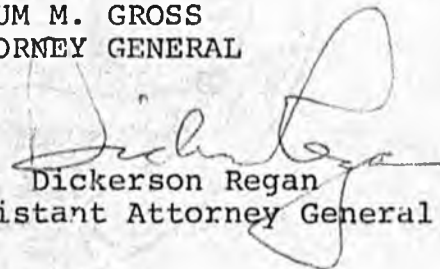
Enclosed is a memorandum sent to us by Hal Gazaway,
the Assistant Attorney General who handles the legal work
for the Division of Aviation, Department of Public Works.

We have compared CSHB 147 and CSHB 147 am and see
that Mr. Gazaway's comments apply as well to the amended
version of the bill, except the amended bill clarifies what
local body need be contacted in rural locations.

Please note Mr. Gazaway's comment that the bill
may be unconstitutional in part as it applies to aviation
facilities.

Very truly yours,

AARUM M. GROSS
ATTORNEY GENERAL

By: 
Dickerson Regan
Assistant Attorney General

DR:jeh

cc: Bud Saylor
Dept. of Public Works

TO: Joe Orsini

DATE: April 13, 1977

FROM: Paul Conger

RE: CSHB 147 am

Guess who I saw again, and wants us to move on a bill in our Committee, Ted Berns. Ted is quite interested in CSHB 147 am, basically because it would eliminate a lot of potential lawsuits. He stated that this bill would provide that before the State could come in and start condemning a lot of property for the purpose of constructing a highway, ~~that~~ they would have to check with the local planning authority to determine if this construction would cause any hardship on the municipality.

Ted relayed the following example which has prompted this bill. Approximately eight years ago when the Spenard Highway was widened in the Anchorage area, the state was condemning property right and left to provide for the expanded highway. The state condemned a substantial amount of this one property owner's land and paid him for this land. However, this individual retained a strip of property that is currently situated along the highway. The State did pay him a "remainder compensation" because this "strip" of property would be worth less because of the highway running by it.

Now, apparently, this guy wants to develop this strip adjoining the highway for commercial purposes. He applied to the city and the city rejected his request because this area in question is zoned as a residential area. Now the individual is suing the city to a tune of 1/2 million, because the city is depriving him of utilizing this land for commercial purposes.

Ted's point is that if the state would have checked with the city before they initiated buying the land, then they would have been informed that this abutting area was "residential" and they could have just gone ahead and purchased this additional strip of land from the property owner and they, the city, could have certified that this "strip" could not be used for commercial purposes and would have avoided the litigation that has arisen.

PC/js