

SB

16

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/1/05

FURTHER:

DATE TURNED
IN TO OFFICE:

REPORTED OUT

APR 15 2005

SENATE FINANCE
COMMITTEE

4 | 15 | 05

Finance Committee considered SPONSOR SUBSTITUTE FOR SENATE BILL NO. 16

SB 16 POWERS/DUTIES DOTPF/TRANSPORTATION PLAN

"An Act relating to the powers and duties of the Department of Transportation and Public Facilities; repealing the requirement for a long-range program for highway construction and maintenance; and repealing a requirement that public facilities comply with energy standards adopted by the Department of Transportation and Public Facilities."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS SSSB 16 (TRA)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#
DOT	3/21/05			✓	2
DPS	3/21/05			✓	1

APPROPRIATION - no fiscal notes

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓		✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

APR 15 2005

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSSSB 16(TRA)
(S) Publish Date: 4/1/05

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title: Powers and Duties DOT/PF RDU: Administration & Support
Component: Commissioner's Office
Sponsor: Sen. G. Stevens
Requester: Senate Transportation Component No.: 530

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Nona Wilson Phone: 465-2904
Division: Legislative Liaison, DOT&PF Date/Time: 3/21/05 11:52 AM
Approved by: Mike Barton Date: 3/21/2005
Agency: Commissioner, DOT&PF

APR 15 2005

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: GSSSSB 16(TRA)
(S) Publish Date: 4/1/05

Revision Date/Time (Note if correction): _____ Dept. Affected Public Safety
Title "An Act relating to the powers and duties of the RDU Alaska State Troopers Department of Transportation and Public Facilities..." Component AST Detachments
Sponsor Senator Gary Stevens
Requester Senate Transportation Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Passage of this bill is not anticipated to have a fiscal impact on the Department of Public Safety.

Prepared by: Lieutenant Todd Sharp Phone 907-465-3223
Division: Alaska State Troopers Date/Time: 3/23/05 9:52 AM
Approved by: Commissioner William Tandeske Date: 3/23/2005
Agency: Department of Public Safety

SESSION ADDRESS:
Alaska State Capitol
Juneau, Alaska 99801-1182
(907) 465-4925
Fax: (907) 465-3517
Toll Free: 1-800-821-4925

Senator Gary Stevens

Alaska State Legislature

INTERIM ADDRESS:
112 Mill Bay Road
Kodiak, Alaska 99615
(907) 486-4925
Fax: (907) 486-5264



Sponsor Statement for CS for SSSB 16 (Updated April 5, 2005)

CS for SSSB 16: "An Act relating to the powers and duties of the Department of Transportation and Public Facilities; repealing the requirement for a long-range program of highway construction and maintenance; and repealing a requirement that public facilities comply with energy standards adopted by the Department of Transportation and Public Facilities."

While CS for SSSB 16 is essentially a housekeeping bill, this important measure will update several statutes related to the Department of Transportation and Public Facilities (DOT&PF).

Passage of this bill will remove the requirement that the department consider cost & benefits for all projects, but will add language requiring a cost-effectiveness analysis when evaluating new highways, airports, terminals, ferries, and other major components except those that only serve local needs. In the recent past, opponents of DOT&PF projects vital to the health and wellbeing of Alaska's citizens have utilized some of these obsolete statutes to halt construction, costing the state valuable time and money in litigation, while significantly increasing project costs.

This bill also removes language restricting the department's ability to pass along other grant funding it receives, such as money for the transit and scenic byways programs. It further clarifies that only grants authorized through Legislative appropriation may be awarded, and requires the department to retain its eligibility to receive federal funding.

Additionally, CS for SSSB 16 changes statute by removing the department from participation in setting "thermal and lighting energy standards." With other national and local organizations now responsible for such standards, DOT&PF no longer has a role in establishing these standards.

Changes in other laws, technology, budgetary changes and governmental reorganization have intervened in such a way to make portions of the existing powers and duties language obsolete. This bill will change the powers and duties for DOT&PF to reflect the world in which it now operates. I urge your support of this important measure.

ALASKA STATE LEGISLATURE



SESSION ADDRESS
Alaska State Capitol
Juneau, AK 99801-1182
(907) 465-4925
Fax (907) 465-3517

INTERIM ADDRESS
112 Mill Bay Road
Kodiak, AK 99615
(907) 486-4925
Fax (907) 486-5264

Senator Gary Stevens

CS SS SB16 Section Analysis

Section 1:

This section contains two housekeeping measures concerning the department's powers. In AS 19.05.040(3) the word "it" is clarified by substituting the phrase "real property." In AS 19.05.040(13) the word "department" replaces the phrase "Highway Safety Planning Agency." The substitution of "department" for the phrase "Highway Safety Planning Agency" will broaden the department's ability to distribute and administer grant funds. The current language acts to restrict the department's ability to lawfully pass along other grant funding it receives, such as for the transit and scenic byways programs. It also clarifies that only grants authorized by appropriation by the Legislature may be awarded.

Section 2.

This section amends AS 44.42.020(a) and is largely a house keeping measure. The changes clean up sections of the powers and duties for DOT&PF to reflect the world in which it now operates. Changes in other laws, technology, budgetary changes and governmental reorganization have intervened in such a way to make portions of the existing powers and duties language obsolete. In addition it adds a duty to study, at least every four years, alternatives available to finance transportation systems in order to sustain and improve the state's transportation system.

Section 3.

AS 44.42.050(a) is amended to clarify the planning process and require the department to retain its eligibility to receive federal funding. The changes ensure that the State's transportation planning process will remain efficient and in line with current practice. The requirement for annual plan updates has been changed to "as the commissioner deems appropriate" in line with current funding, staffing levels available and federal requirements. Updating all transportation plans within the state on an annual basis would be wasteful of state and federal funds. Importantly, in response to a state court ruling, the section is amended to eliminate a mandatory consideration of costs and benefits that has been interpreted to require a formal process, significantly increasing planning and project costs.

Section 4.

This section amends AS 44.42.050(d) to bring the statute in line with current practice of the capital budget approval process and federal requirements. The requirement for a one-year capital budget instead of two years is consistent with current budget practice.

Section 5.

This section adds a new subsection (e) to AS 44.42.050 that requires a cost-effectiveness analysis when evaluating new highways, airports, terminals, ferries, and other major components for inclusion in the plan. It excludes a cost-effectiveness analysis for projects that involves rehabilitation and maintenance of an existing system or that primarily serve local transportation needs. This language replaces the cost benefit language to be deleted from AS 44.42.050(a) with a more practicable standard.

Section 6.

This section changes AS 46.11.900(8) by removing the department from participation in setting "thermal and lighting energy standards." DOT no longer has a role in establishing these standards; other national and local organizations are now responsible for such standards.

Section 7.

This section repeals duplicative language in AS 19.10.140, titled "Long-range program for highway construction and maintenance" and AS 46.11.010, titled "Thermal and lighting energy standards for public buildings. Repeal of AS 19.10.140 is consistent with the clarification of the planning process proposed in Section 3 of the bill. Repeal of AS 46.11.010 is consistent with the proposed language in Section 5 of the bill.

Section 8.

This section delays the effective date of Section 5 until July 1, 2006. The intent of the delay is to allow the department time to implement the requirement for cost-effectiveness analysis.

**Transportation CS SSSB16
Before Senate Finance Committee**

**Prepared by:
Alaska Department of Transportation and Public Facilities
April 13, 2005**

Thank you Mr. Chairman:

I believe the legislation before you is some of the most important you will consider this year. While the bill is long and tedious, it addresses something we can all agree with. Transportation is vital to the state, and many important projects must continue to be built to serve the state. As my testimony will show, without this legislation, many such projects may be in jeopardy or costs of "process rather than pavement" will be higher.

This bill contains both housekeeping and substantive measures.

Housekeeping:

To preserve time I will not address the house keeping measures other than to say they clean up sections of the powers and duties for DOT&PF to reflect the world we now operate within. Changes in other laws, technology, budgetary changes and governmental reorganization have intervened in such a way to make a part of our powers and duties language obsolete.

Specifically, I am referring to Sections 2, 4, 6 and 7 shown in grey as house keeping measures.

Substantive:

The remaining sections of the bill (Sections 1, 3, 5 & 8) are more substantive. They are directed at two specific goals:

- Ensuring that federal funds we receive for grant programs can lawfully be administered and awarded.
- Ensuring that the state's transportation planning process is efficient, in line with current practice and federal influence, and most importantly not subject to additional litigation using the same arguments used on the Iliamna to Nondalton project.

Section 1

The change to paragraph (13) is very important. Currently the department is operating without legal authority to issue grants other than from the Highway Safety Office. Yet we routinely receive federal funds for other purposes and award them in a grant process. The two most common examples of this occur in the area of Federal Transit funds for rural communities and transit vans for the elderly and disabled persons, and grants in the area of Scenic Byways.

Section 2

All but the last change in this section relates to natural evolution in the department's duties and technology. The department no longer has a building program that involves local governments. The department no longer sets energy standards; this is done by national standard groups and generally adopted by local government in their building codes. The addition of a new duty concerning the study of alternative financing mechanisms is important. There is a rapid change occurring in transportation finance nationally, and we believe it will become an increasingly important area of examination.

Section 3

From the department's perspective, this is the most important section in the bill. The language in this section has been the subject of litigation in state court. As now constructed it is both nearly impossible to fully comply with, and results in very expensive costs for project proponents.

The section now literally requires that the entire long-range transportation plan for the state, for all modes of transportation be updated annually. The department currently expends more than \$8 million annually on transportation planning but does not have the resources to meet even a five-year cycle of plan updating. The very lengthy process of plan preparation and the associated public process can take several years. We would not recommend enlarging the funding directed at planning nor adding the staff required to meet an annual cycle, thus we recommend the flexibility contained in this bill.

The removal of the requirement for "*consider means and costs of improving existing modes and facilities, state and federal subsidies, and the costs and benefits of new transportation modes and facilities.*" is also vital. This requirement has been at the heart of the litigation. A judge's ruling has now confirmed that a project selected for funding by the state must fulfill this requirement. Taken literally, this means:

- Every senior van, every bus, every repair to state ferries, every maintenance project to roads and every trail project must undergo a consideration of benefits and/or costs;
- No exceptions in current law apply to emergencies such as flood damage, or earthquake repairs;
- No exception can be applied to federally funded "projects" that are not easily measured, such as training, research, planning and bridge inspection;
- No exception in the current law permits projects that meet basic needs to be exempted, such as runway lights for small villages or a "make it black" project on rural subdivision roads; and,
- No exception exists for projects authorized by direct legislative appropriation, Congressional earmark or even by the voters through bond issues.

Due to the court ruling and the current language of the statute, the department recently adopted regulations that require a cost-effectiveness study for every project in the STIP scoring process. This requirement falls heavily on local governments, which must now undertake these studies before they request federal funds. But the legal advice of the

Department of Law was that we had no choice in this action. Should SB 16 pass as written we will immediately move to strike this provision from the regulations.

Section 4

The changes in this section are recommended. They update the process of submitting a capital budget including the STIP process to more closely follow both the practice of the Legislature and the federal agencies that fund the STIP.

Section 5

This section adds a new subsection (e) to AS 44.42.050 that requires a cost-effectiveness analysis when evaluating new highways, airports, terminals, ferries, and other major components for inclusion in the plan. It excludes a cost-effectiveness analysis for projects that involves rehabilitation and maintenance of an existing system or that primarily serve local transportation needs. This language replaces the cost benefit language to be deleted from AS 44.42.050(a) with a more practicable standard.

Section 6

This change is needed to reflect the changes in time that have caused the department to no longer have a role in the setting of thermal and lighting energy standards.

Section 7

This section assists the cleanup of statutes by dropping sections that are duplicative and thus confusing to the public and the department.

Section 8

This section delays the effective date of Section 5 until July 1, 2006. The intent of the delay is to allow the department time to implement the requirement for cost-effectiveness analysis.

Issues of Concerns with Mandatory Consideration of Costs and Benefits
Statement by Alaska DOT&PF
March 31, 2005

Statute is not clear as to what constitutes "*consideration of costs and benefits*"

- CBR (cost-benefit ratio) is but one method of engineering economics
- Other legitimate methods include NPW (net present worth), CEM (cost effectiveness measures) and EUAC (equivalent uniform annual cost)¹.
- Other societal mandates often left out of strict economic considerations including LEC (least environmental cost), (EJ) environmental justice and SCP (safety conscious planning).

Statute has little if no flexibility regarding consideration of costs and benefits

- Requires such consideration on every new project regardless of usefulness
- Puts at risk all projects currently in progress (even under construction) that were selected for capital budget without consideration the Superior Court believes is necessary.
- Effectively requires cost-benefit consideration for all projects since cost is required to be considered in all cases and must be put into some context.

Statute would divert public money to cost-benefit consideration even when not meaningful

- Many project categories are not well suited to C-B consideration:
 - Rural Alaska projects provided as a basic public service but serve a small population base such as airports or sanitation roads
 - Urban Alaska projects that serve non-traditional transportation needs such as buses, trails or beautification
 - "Projects" required to fulfill one or more federal or state mandates such as traffic data collection, or environmental mitigation

Statute applies to statewide transportation plan, prior to project selection for capital budget

- Strict interpretation may prevent the following methods of project selection unless added to the statewide transportation plan:
 - Projects nominated by local governments
 - Projects selected by members of Legislature or Congress (earmarks)
 - Projects that arise unexpectedly due to natural disasters or other external causes (example: new retail store needing access).

Statute does not apply to alternative selection during project development

¹ Fricker and Whitford, Fundamentals of Transportation Engineering, Pearson Prentice Hall, 2004

- C-B (or other engineering economic methods) are often used during project design to evaluate alternatives
- Such tools are often used to select among competing choices, even on projects with low overall economic benefits (example: airport layout for small village)
- Proposed change in statute does not affect this use of C-B consideration

Statute is being used to argue against projects with C-B ratio less than 1.0

- In Trout Unlimited lawsuit, the plaintiff's attorney argues state should not build projects with ratio less than 1.0
- Most rural and urban projects would be at risk of this interpretation
 - Ferry projects
 - Transit and bus
 - Trails and beautification
 - Environmental remediation
 - Low volume roads and bridges
 - Airport improvements and relocations
- While current statute does not mandate only projects with positive C-B ratio be selected, this appears part of the motive behind the lawsuit in question

Statute is not in touch with the reality of transportation needs in Alaska

- Alaska is inherently a place where low population and vast land area make transportation critical, but often requiring a subsidy.
- Ironically, the recent Congressional justification for Denali Commission funding for transportation argued that transportation in rural areas is vital to our future:

"... The majority of Alaskan communities remain unconnected. Alaska has been left far behind the rest of the Nation, with a road system that is no system at all. If the highway system is the Nation's skeleton, Alaska is still missing its arms and legs.

As a result, many Alaskan communities are punished with third-world conditions and an extraordinarily high cost of living, and the Nation as a whole is that much poorer because Alaska's tremendous natural wealth cannot be shared.
...²

Alaska has long-suffered the measure of costs versus benefits

Alaska has long suffered the punditry of being a place with high costs but low benefits. At the time of the Alaska purchase in 1867, Secretary of State, William H. Seward overcame national ridicule (the tag of "Seward's Folly was applied) and strenuous objections to persuade Congress to proceed with the purchase of

² Senator Lisa Murkowski, US Senate Floor speech on amendment to S1072, February 12, 2004

Alaska for \$7.2 million. Similarly, for nearly 40 years after the federal-aid highway program was started in the early 1900's, Congress denied Alaska access to this funding, because it felt the transportation needs in Alaska were so great the federal program could not be exposed to such costs. Now, as then, important transportation needs in Alaska often must be built as a public good, even where indicators such as cost-benefit analysis are used to oppose such projects. In 1867, those who sought to deny the purchase of Alaska spoke of 'folly' as to the value of the Alaska purchase. For Alaskans today, the age old 'folly' argument seems to never really die!

Case Status:
In the Superior Court for the State of Alaska
Third Judicial District at Anchorage

Alaska State Council of)
Trout Unlimited, Robert B.)
Gillam,)
)
Plaintiffs,)
)
vs)
)
State of Alaska, Alaska)
Department of Transportation)
and Public Facilities,)
)
Defendants.)
_____)

Filed: July 25, 2002

Case: 3AN-02-0763CI

July 25, 2002 - Plaintiffs filed suit seeking “injunctive and declaratory relief against the Alaska Department of Transportation and Public Facilities (DOT&PF) for having violated AS 44.42.020 and AS 44.42.050 by scheduling for construction in 2003 a proposed, approximately 19-mile rural road¹ and bridge project from Iliamna, Alaska to Nondalton, Alaska in Southwest Alaska...”

May 1, 2003 - Plaintiff’s filed for a preliminary injunction that defendants be restrained from constructing or contracting to construct the Iliamna – Nondalton project.

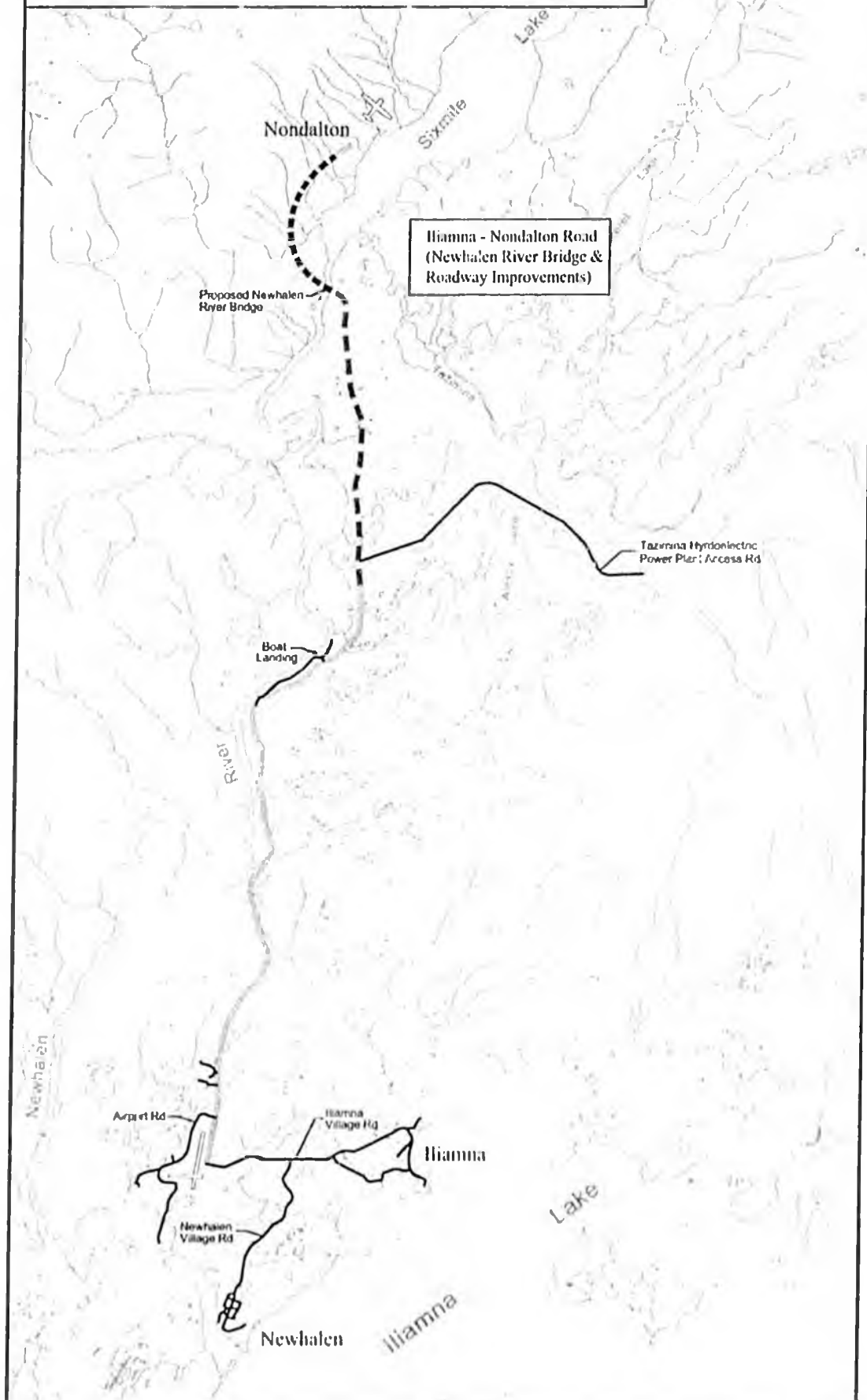
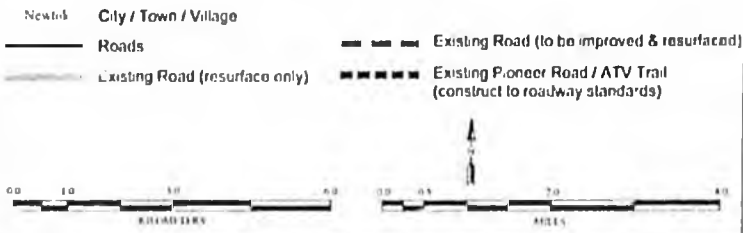
January 5, 2004 – Preliminary injunction granted to Plaintiffs. DOT&PF was ordered to cease any action to construct, contract to construct, or produce final design of the Iliamna–Nondalton road and bridge project until the economic costs of the project are considered in the next revision to the “Southwest Regional Transportation Plan” as required by AS 44.42.050, or until further order of this court. (Emphasis added.)

September 30, 2004 – “Southwest Alaska Transportation Plan” was revised. The revision consisted of extracting the Iliamna–Nondalton Road/Bridge project and the Aleknagik/Wood River Bridge project from the Plan baseline and subjecting them to the cost effectiveness methodology used to evaluate the other capital projects in the Plan. The two projects were subjected to an economic analysis that was incorporated into the Plan.

January 14, 2005 – The preliminary injunction was lifted. It is unclear at this time whether the remaining causes of action filed in the lawsuit will be litigated.

¹ The road already exists, in different forms and (absent the bridge), from Iliamna to Nondalton. Going north from Iliamna, roughly the first 11.5 miles is paved, the next 4.5 miles to the site of the proposed bridge is a gravel road and the remaining 2.5 miles from the other side of the river to Nondalton is in the form of a pioneer road.

Iliamna-Nondalton Proposed Road Improvements January 2005



Transportation CS SS SB 16
Before Senate Transportation Committee

Prepared by:
Alaska Department of Transportation and Public Facilities
March 22, 2005

Thank you Mr. Chairman:

I believe the legislation before you is some of the most important you will consider this year. While the bill is long and tedious, it addresses something we can all agree with. Transportation is vital to the state, and many important projects must continue to be built to serve the state. As my testimony will show, without this legislation, many such projects may be in jeopardy or costs of "process rather than pavement" will be higher.

This latest version of Transportation Committee Substitute for SB 16 contains both housekeeping and substantive measures.

Housekeeping:

To preserve time I will not address the house keeping measures other than to say they clean up sections of the powers and duties for DOT&PF to reflect the world we now operate within. Changes in other laws, technology, budgetary changes and governmental reorganization have intervened in such a way to make a part of our powers and duties language obsolete.

Specifically, I am referring to Sections 2, 4, 5 and 6 shown in grey as house keeping measures.

Substantive:

The remaining sections of the bill (Sections 1 and 3) are more substantive. They are directed at two specific goals:

- Ensuring that federal funds we receive for grant programs can lawfully be administered and awarded.
- Ensuring that the state's transportation planning process is efficient, in line with current practice and federal influence, and most importantly not subject to additional litigation using the same arguments used on the Iliamna to Nondalton project.

***Section 1**

The change to paragraph (13) is very important. Currently the department is operating without legal authority to issue grants other than from the Highway Safety Office. Yet we routinely receive federal funds for other purposes and award them in a grant process. The two most common examples of this occur in the area of Federal Transit funds for rural communities and transit vans for the elderly and disabled persons, and grants in the area of Scenic Byways.

Section 2

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Section 3

From the department's perspective, this is the most important section in the bill. The language in this section has been the subject of litigation in state court. As now constructed it is both nearly impossible to fully comply with, and results in very expensive costs for project proponents.

The section now literally requires that the entire long-range transportation plan for the state, for all modes of transportation be updated annually. The department currently expends more than \$8 million annually on transportation planning but does not have the resources to meet even a five-year cycle of plan updating. The very lengthy process of plan preparation and the associated public process can take several years. We would not recommend enlarging the funding directed at planning nor adding the staff required to meet an annual cycle, thus we recommend the flexibility contained in this bill.

The removal of the requirement for "*consider means and costs of improving existing modes and facilities, state and federal subsidies, and the costs and benefits of new transportation modes and facilities.*" is also vital. This requirement has been at the heart of the litigation. A judge's ruling has now confirmed that a project selected for funding by the state must fulfill this requirement. Taken literally, this means:

- Every senior van, every bus, every repair to state ferries, every maintenance project to roads and every trail project must undergo a consideration of benefits and/or costs;
- No exceptions in current law apply to emergencies such as flood damage, or earthquake repairs;
- No exception can be applied to federally funded "projects" that are not easily measured, such as training, research, planning and bridge inspection;
- No exception in the current law permits projects that meet basic needs to be exempted, such as runway lights for small villages or a "make it black" project on rural subdivision roads; and,
- No exception exists for projects authorized by direct legislative appropriation, Congressional earmark or even by the voters through bond issues.

Due to the court ruling and the current language of the statute, the department recently adopted regulations that require a cost-effectiveness study for every project in the STIP scoring process. This requirement falls heavily on local governments, which must now undertake these studies before they request federal funds. But the legal advice of the

Department of Law was that we had no choice in this action. Should SB 16 pass as written we will immediately move to strike this provision from the regulations.

Section 4

The changes in this section are recommended. They update the process of submitting a capital budget including the STIP process to more closely follow both the practice of the Legislature and the federal agencies that fund the STIP.

*Strike speaks to
a 2 year submitter*

Section 5

This change is needed to reflect the changes in time that have caused the department to no longer have a role in the setting of thermal and lighting energy standards.

Section 6

This section assists the cleanup of statutes by dropping sections that are duplicative and thus confusing to the public and the department.

Discussion on Why a Mandatory 'Costs and Benefits'
Consideration is Not Always Meaningful
Alaska Department of Transportation and Public Facilities
March 22, 2004

AS 44 42.050 (a) requires the department to: "...consider means and costs of improving existing modes and facilities, state and federal subsidies, and the costs and benefits of new transportation modes and facilities."

On the surface, this requirement seems both reasonable and valuable. However, there are many times the department undertakes new projects but does not spend the time or money to conduct such formal costs and benefits analyses. The most common examples are projects for rural areas where long distances and a small population base would make such efforts nonsensical—basic transportation elements are routinely needed regardless of their costs.

A recent court decision on a request for a preliminary injunction found the department at fault for not using a benefit-cost (B-C) analysis* on a project linking two rural villages (summary of lawsuit attached). It is typical of many other rural projects we have undertaken, in that it provides a basic transportation system, but would not benefit from a detailed benefit-cost analysis.

Categories of transportation projects not suited to selection using B-C analysis
Rural Alaska abounds in transportation needs that are provided as a basic public service. Virtually none of these would rise to a positive benefit-cost ratio because the small population base. Examples include:

- Ferries and ferry terminals
- Airports that meet minimum standards for length, width, adequate approaches, lighting and aprons/taxiways.
- Village roads to basic community services (e.g., sewage lagoons, water sources, airports, sanitary landfills, barge landing sites).
- Trail marking.

Even in the more populated regions of Alaska many categories of transportation projects would not be expected to present a positive benefit-cost ratio. Examples of such projects include:

- Rail-highway grade separation projects

* Technically, the statute requires consideration of only "means and costs" for projects improving existing transportation modes and facilities, and consideration of "costs and benefits" for new transportation modes and facilities. In practice it is very difficult to just consider "costs" unless there is some measure of what costs are achieving, thus the department has essentially been forced to use the same type of cost and benefit consideration for all projects.

- Paving of local (residential) roads
- Landscaping and beautification projects
- Trails and amenities
- Pollution and environmental mitigation features needed to meet legal and permit requirements
- Transit investments (buses, bus stops, transit centers)

Many other transportation "projects" are undertaken to fulfill one or more mandates, none of which can be readily quantified as to their "benefits."

- Projects undertaken to meet regulatory requirements (e.g., ferry modernization, data collection of truck weights and classes, bridge scour monitoring).
- Transportation "non-project" projects such as training, EEO compliance, bridge inspection, management systems and similar.
- Programs aimed at serving disadvantaged groups such as transit vans for elderly, disabled and other groups.

Finally, the department often undertakes projects because a member of Congress or the Legislature placed them in the capital budget. Such projects do not receive the normal prior planning or detailed evaluation. The state has very little choice but to accept the project funds for the stated purpose, or to not use the funding.

Why B-C analysis would continue to be used where it makes sense

Formal benefit and cost (B-C) analysis is a tool that is most often used to evaluate among and between different alternatives for a given project or range of options. In such cases, the tool helps to compare and contrast different choices in solving a transportation requirement. For example, in the development of the Southeast Alaska Transportation Plan, a number of different B-C analyses were prepared to better understand vastly different types of system options. Even in rural Alaska, the tool is used to help identify the most "cost-effective" solution, even if the costs still outweigh the benefits.

For the project at issue in the litigation, benefit cost analysis was prepared for the bridge crossing, considering different structural systems, pier options and span length. However, we did not perform an overall benefit-cost analysis, primarily because the project in question scored very highly on other considerations.

The department and two MPOs (AMATS and FMATS) maintain several different types of management systems, such as: Bridge, Pavement, Congestion, Safety and Maintenance. Each management system is a complex "B-C tool" aiding decision makers.

Summation

B-C analysis is a good technique and is routinely used in some circumstances even where not required by statute. However, under the current construction of the transportation planning statute, and the court's recent interpretation, every new project undertaken must receive this type of analysis, including projects already in the development stage. For the reasons stated it

is not meaningful nor a prudent use of project funds to routinely require these B-C analyses on every type and scale of project.

The real issue is whether we should perform B-C analysis where it is not practicable, nor a prudent use of public funds. With the current one-size fits all statute we have no discretion, as confirmed by the court. Without some relaxation of this requirement, delayed projects and higher project costs are unavoidable.

Case Status:
In the Superior Court for the State of Alaska
Third Judicial District at Anchorage

Alaska State Council of)
Trout Unlimited, Robert B.)
Gillar)
)
Plaintiffs,)
)
vs)
)
State of Alaska, Alaska)
Department of Transportation)
and Public Facilities,)
)
Defendants.)
_____)

Filed: July 25, 2002

Case: 3AN-02-0763CI

July 25, 2002 - Plaintiffs filed suit seeking "injunctive and declaratory relief against the Alaska Department of Transportation and Public Facilities (DOT&PF) for having violated AS 44.42.020 and AS 44.42.050 by scheduling for construction in 2003 a proposed, approximately 19-mile rural road¹ and bridge project from Iliamna, Alaska to Nondalton, Alaska in Southwest Alaska...."

May 1, 2003 - Plaintiff's filed for a preliminary injunction that defendants be restrained from constructing or contracting to construct the Iliamna – Nondalton project.

January 5, 2004 – Preliminary injunction granted to Plaintiffs. DOT&PF was ordered to **cease any action to construct, contract to construct, or produce final design of the Iliamna–Nondalton road and bridge project until the economic costs of the project are considered in the next revision to the "Southwest Regional Transportation Plan" as required by AS 44.42.050, or until further order of this court.** (Emphasis added.)

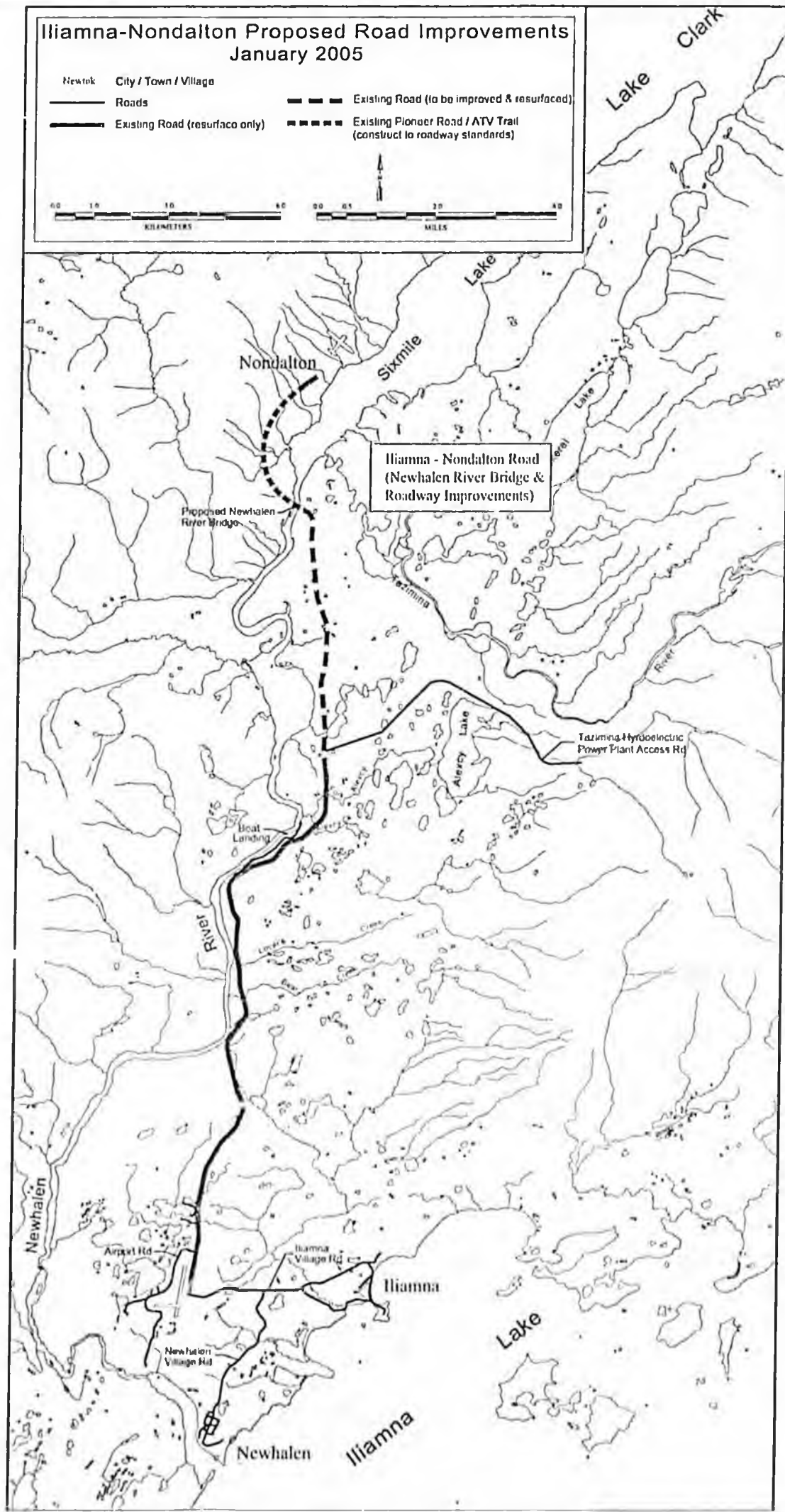
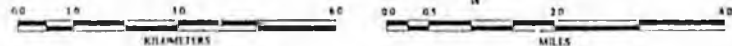
September 30, 2004 – "Southwest Alaska Transportation Plan" was revised. The revision consisted of extracting the Iliamna–Nondalton Road/Bridge project and the Aleknagik/Wood River Bridge project from the Plan baseline and subjecting them to the cost effectiveness methodology used to evaluate the other capital projects in the Plan. The two projects were subjected to an economic analysis that was incorporated into the Plan.

January 14, 2005 – The preliminary injunction was lifted. It is unclear at this time whether the remaining causes of action filed in the lawsuit will be litigated.

¹ The road already exists, in different forms and (absent the bridge), from Iliamna to Nondalton. Going north from Iliamna, roughly the first 11.5 miles is paved, the next 4.5 miles to the site of the proposed bridge is a gravel road and the remaining 2.5 miles from the other side of the river to Nondalton is in the form of a pioneer road.

Iliamna-Nondalton Proposed Road Improvements January 2005

- | | |
|---|--|
| <p>—●— City / Town / Village</p> <p>— Roads</p> <p>— Existing Road (resurface only)</p> | <p>— Existing Road (to be improved & resurfaced)</p> <p>— Existing Pioneer Road / ATV Trail (construct to roadway standards)</p> |
|---|--|



STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652
FAX: (907) 586-8365
PHONE: (907) 465-3900

March 17, 2005

The Honorable Gary Stevens
Alaska State Legislature
State Capitol, Room 103
Juneau, Alaska 99801-1182

Dear Senator Stevens:

Thank you for taking the time to meet with my staff on this important legislation. As you know, the state statutes governing transportation planning have recently been used in litigation to halt or at least slow down the accomplishment of strongly supported transportation improvements.

Tragically, the litigation induced delay of the project to build a road and bridge between Iliamna and Nondalton may have led to the drowning deaths of two young men who recently attempted to cross the Newhalen River and broke through the ice. A third person only narrowly averted his death by struggling back to shore.

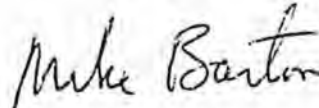
The state has spent more than \$200,000 in legal costs, and at least another \$100,000 in planning costs to comply with the court interpretation of the transportation planning duty found in AS 44.42.050(a). The current draft of CS SSSB 16 would modify this transportation planning duty to a more reasonable standard, and one that is not as readily used to halt important transportation projects. Of course, these state costs are trivial in comparison to the loss of life and physical dangers forced on Alaska citizens who must travel across thin ice in the dark of winter to seek basic consumer goods and services.

Aside from the obvious gravity of what might have been avoidable loss of life, the current statute language remains a tool available to any person or group seeking to halt or delay other needed transportation projects. This legislation is needed to ensure that the roads, buses, trails, airports, ferries and other basic transportation needs are not needlessly halted for reasons of process rather than substance.

My staff stands ready to discuss the specifics of this legislation and why we endorse its passage. I would also note that we have recently begun the administrative process to change the regulations (17 AAC 05.120-990) that govern the transportation project selection. This change, which is driven by the court ruling in question, has increased the costs of nominating projects for every community in the state. Should CS SSSB 16 become law, we will immediately take steps to remove this new and expensive regulatory burden on our communities.

I applaud your attention to this matter, and by copy of this letter to Senate leadership and committee chairs assigned to consider this legislation I hope to encourage its passage. I understand the Representative Elkins is considering introducing a companion bill, and have copied him on this letter to demonstrate our support and the statewide urgency for this legislation.

Sincerely,



Mike Barton
Commissioner

cc: Senator Ben Stevens, Senate President
Senator Charlie Huggins, Chair, Senate Transportation
Representative Jim Elkins, Chair, House Transportation
Kevin Jardell, Legislative Director, Office of the Governor
Linda Hay, Deputy Legislative Director, Office of the Governor
Nona Wilson, Legislative Liaison, DOT&PF



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Gary Stevens

Current Version: CS SS SB 16 (TRA)

Contact: Doug Letch, 465-4925

Fact Sheet for: Senate Bill 16

Short Title: POWERS/DUTIES DOT&PF/TRANSPORTATION PLAN

Summary:

- Deletes the requirement that the Department of Transportation and Public Facilities participate in setting thermal and lighting energy standards.
- Includes other statutory clean-up language requested by DOT&PF.
- Deletes the requirement that the DOT&PF conduct a cost benefit study for projects where such studies are not warranted.

Benefits:

- Allows DOT&PF to proceed in a more timely manner with projects for which a cost benefit study is not required.
- Updates DOT&PF statutes to respond to circumstances as they actually exist today.

Background:

- Opponents of DOT&PF projects often manipulate obsolete statutes, such as a requirement that the department conduct a cost-benefits analysis, to halt construction of many projects vital to the health and wellbeing of Alaska residents. This has cost the state valuable time and money in litigation while significantly increasing project costs. SB 16 eliminates this requirement and cleans up other statutory language no longer appropriate to DOT&PF's functions.

Sec. 46.11.010. Thermal and lighting energy standards for public buildings.

(a) All public facilities of the state, the construction of which begins after July 1, 1980, shall be designed to comply with the thermal and lighting energy standards adopted by the Department of Transportation and Public Facilities under AS 44.42.020(a)(14).

(b) By June 30, 1988, all public facilities of the state existing on July 1, 1980 shall be modified, to the extent economically feasible, to comply with the thermal and lighting energy standards adopted by the Department of Transportation and Public Facilities under AS 44.42.020(a)(14). (§ 36 ch 83 SLA 1980)

Repealed

Sec. 46.11.020. Training of public building maintenance personnel. Persons responsible for the maintenance of public buildings designed with energy conservation or production features shall be trained by the department in the use and operation of those features. (§ 36 ch 83 SLA 1980)

Sec. 46.11.030. Energy audits. [Repealed, § 10 ch 79 SLA 1983.]

Sec. 46.11.040. Applicability of thermal and lighting energy standards to residential buildings. State financial assistance may not be approved or granted for the construction of or purchase of a loan for a residential building if construction of the building began after December 31, 1991, unless

(1) the building is in compliance with thermal and lighting energy standards;

(2) the building is in compliance with the building code of a municipality and the standards for thermal and lighting energy of the municipal building code meet or exceed the thermal and lighting energy standards;

(3) the building

(A) is constructed under an exception to the municipal building code granted because the exception will result in increased energy efficiency; or

(B) is located or is to be located in an area where thermal and lighting energy standards are not justified because of the high cost of implementation of the standards, with specific consideration given to the availability of inexpensive home heating energy sources, as determined under regulations adopted by the Alaska Housing Finance Corporation; or

(4) the applicant agrees, in writing, that the building will be brought into compliance with thermal and lighting energy standards within one year of conveyance. (§ 36 ch 83 SLA 1980; am § 7 ch 79 SLA 1983; am § 82 ch 74 SLA 1985; am § 6 ch 94 SLA 1990; am § 137 ch 4 FSSLA 1992)

Effect of amendments. — The 1992 amendment, effective July 1, 1992, substituted "Alaska Housing Finance Corporation" for "Commissioner of Community and Regional Affairs" in subparagraph (3)(B) and made a stylistic change.

Editor's notes. — Section 8, ch. 94, SLA 1990 provides that persons "responsible for administration

and management of programs in which state assistance is provided for the purchase or construction of residential buildings are encouraged to adopt and enforce the compliance standards and methods of AS 18.56.096(c)(2) within the housing programs for which they are responsible."

Sec. 46.11.050. Financing of energy efficient homes and buildings. (a) After December 31, 1980, a financial institution shall take into consideration the economic benefits of alternative energy systems, life-cycle energy costs, energy efficient building design, and energy conservation when financing homes and buildings with state financial assistance.

(b) After December 31, 1980, a financial institution that makes home mortgage loans with money provided to it by the commissioner of revenue from surplus state general fund investments authorized by AS 37.10.070, or a state agency that makes a direct home mortgage loan to an applicant, shall include estimated heating and lighting costs as determined by an energy audit in standard principal, interest, taxes, and insurance

Sec. 19.10.140. Long-range program for highway construction and maintenance. The governor shall require the department to establish a continuing, long-range program for highway construction and maintenance. The program must annually propose construction and maintenance of highways for not less than the next five years. A statement of the program shall be submitted by the governor to the legislature annually, and the long-range program shall include in detail the program prepared under AS 19.10.150. (§ 1 ch 124 SLA 1959)

Repealed

Cross references. — For responsibility of the Department of Transportation and Public Facilities for state transportation planning, see AS 44.42.050.

Sec. 19.10.150. Construction program. Before February 2 of each year, the department shall prepare a statement showing what construction work has been required and proposed and may be undertaken by the department. The statement must include a general itemization of the estimated cost for each project and the total estimated cost of all projects. The department shall adopt a construction program which must include all projects to be undertaken by it during the following construction season and shall establish project priorities. The department may increase, decrease, amend, or delete the construction program from time to time as circumstances warrant. (§ 3 art IV 152 SLA 1957)

Cross references. — For responsibility of the Department of Transportation and Public Facilities for state transportation planning, see AS 44.42.050.

Sec. 19.10.160. Standard plans and specifications; planning for future highways.

(a) The department shall prepare and adopt uniform standard plans and specifications for the establishment, construction, and maintenance of highways in the state. The department may amend the plans and specifications as it considers advisable. All standards must conform as closely as practicable to those adopted by the Association of State Highway and Transportation Officials.

(b) Design for proposed major upgrade and new construction projects for highways in federally recognized metropolitan planning areas must be conducive to safety, efficiency, and economy of maintenance and provide for capacity that will adequately serve future traffic as set out in this subsection. This subsection does not apply to design of highway maintenance projects. Proposed major upgrade and new construction projects that are estimated to cost

(1) less than \$5,000,000 must be designed to adequately serve planned future traffic for at least the next 10 years;

(2) \$5,000,000 or more must be designed to adequately serve planned future traffic for at least the next 20 years. (§ 1 art IV title II ch 152 SLA 1957; am § 12 ch 106 SLA 2002; am § 1 ch 67 SLA 2002; am § 1 ch 119 SLA 2004)

Cross references. — For responsibility of the Department of Transportation and Public Facilities for state transportation planning, see AS 44.42.050.

Effect of amendments. — The 2002 amendment, effective January 1, 2003, added subsection (b).

The 2004 amendment, effective June 30, 2004, in subsection (b), deleted "After December 31, 2002" at

the beginning, deleted "after construction project" at the end of paragraph (1), "or more" for "Between \$5,000,000 and \$10,000,000, inclusive" at the beginning of paragraph (2) and deleted "after construction of the project" at the end of paragraph (2), and deleted paragraph (3) relating to projects costing more than \$10,000,000.

Article 3. Construction.

Section

- 170. Construction by department
- 180. Request for public bids
- 200. Procedures for the award of contracts

Section

- 230. Method of construction of highway
- 240. Warning signs of road construction
- 250. Penalty for failure to erect warning



Lake and Peninsula Borough

P.O. Box 495
King Salmon, Alaska 99613

Telephone: (907) 246-3421

Fax: (907) 246-6602

April 5, 2005



The Honorable Gary Stevens
State Capitol, Room 103
Juneau, AK 99801-1182

Dear Senator Stevens:

I am writing to express the Lake and Peninsula Borough's support for CSSSSB16. This bill will remove a large burden that currently impedes our ability to submit projects to Alaska Department of Transportation and Public Facilities (DOT) for inclusion in the Statewide Transportation Improvement Program. (STIP).


Under current law (AS 44.42.050), DOT must consider cost and benefits for each project it wishes to build. The burden of this statute falls most heavily on local governments which often nominate projects for STIP funding and now must have a cost benefit study done in advance of the state scoring the project.

CSSSSB16 will change that by requiring a "cost-effectiveness" analysis for projects that are new (not rehab or maintenance) and that are not serving local needs. This exempts most of the projects that local governments might request, since many projects meet one of the two exceptions. Yet, new routes of transportation will still be required to have a cost-effectiveness study. While cost-effectiveness is a less demanding type of analysis, (than a formal cost-benefit analysis), it is much more suitable for decisions that are being made 5 to 10, or even 20 years prior to implementation.

Additionally, project opponents have used the current language in litigation to halt long planned, locally supported, safety enhancement projects scheduled for construction in rural areas. Enactment of CSSSSB16 would institute a more reasonable standard and prevent future litigation and life-threatening delays of this type.

We urge you to pass this important legislation.

Sincerely,


Glen Alsworth Sr.
Mayor

cc: Governor Murkowski (Office of the Governor, P.O. Box 110001, Juneau, AK
99801-0001)

Commissioner Barton (Department of Transportation and Public Facilities, 3132
Channel Drive, Juneau, AK 99801-7898)

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 1/14/05

FURTHER: Finance

Date of 5-Day Notice: 3/17/05
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4/1/05

Transportation Committee considered SPONSOR SUBSTITUTE FOR SENATE BILL NO. 16

SB 16 POWERS/DUTIES DOTPF/TRANSPORTATION PLAN

"An Act relating to the powers and duties of the Department of Transportation and Public Facilities; repealing the requirement for a long-range program for highway construction and maintenance; and repealing a requirement that public facilities comply with energy standards adopted by the Department of Transportation and Public Facilities."

and recommends:

- be replaced with _____ CS SSSB 16 (TRA)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/> Same Title	
<input checked="" type="checkbox"/> New Title	
House Bill:	
<input type="checkbox"/> Same Title	
<input type="checkbox"/> Technical Title Change	
<input type="checkbox"/> New Title w/ SCR # _____	

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DOT PF	3/21/05			✓	1
DPS	3-22-05			✓	2

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Therriault</i> Therriault			X	
<i>Cowdery</i> Cowdery			X	
<i>FRENCH</i> FRENCH			X	
<i>Kookesh</i> Kookesh			X	
CHAIR: <i>Huggins</i> Huggins	X			