

SB

271

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
 APR 20 2006
 SENATE FINANCE COMMITTEE

DATE: 3/10/06

FURTHER:

DATE TURNED IN TO OFFICE: 21 April 2006

Finance Committee considered

SENATE BILL NO. 271

SB 271 AUTHORIZE HWY PROGRAM PARTICIPATION

"An Act authorizing the commissioner of transportation and public facilities to participate in certain federal highway programs and relating to that authorization; relating to powers of the attorney general to waive immunity from suit in federal court related to those programs; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- 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#
DOTPF	12/30/05	647.4			#1
DEC	2/21/05			✓	#2

APPROPRIATION - no fiscal note

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>	✓			

FISCAL NOTE

REPORTED OUT
APR 20 2006
SENATE FINANCE COMMITTEE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 271
(S) Publish Date: 2/8/06

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title: NEPA Pilot Project RDU: Design, Engineering, Construction
Component: Statewide Design & Eng Svcs
Sponsor: _____ Component No.: 2357
Requester: Governor

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	422.7	422.7	422.7	422.7	422.7	
Travel	50.0	50.0	50.0	50.0	50.0	
Contractual	154.7	154.7	154.7	154.7	154.7	
Supplies	20.0	10.0	10.0	10.0	10.0	
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	647.4	637.4	637.4	637.4	637.4	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1061 CIP Rcpts	647.4	637.4	637.4	637.4	637.4	
Other (Specify Type--Do not abbreviate)						
TOTAL	647.4	637.4	637.4	637.4	637.4	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time	4	4	4	4	4
Part-time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)
Under Section 6005 of SAFETEA-LU, the State of Alaska may assume the responsibilities of the Federal Highway Administration (FHWA) under the National Environmental Policy Act of 1969. Specifically, the FHWA may assign, with some exceptions, all or part of their responsibilities for environmental review, consultation, approvals or other actions required under any federal environmental law pertaining to the review and approval of federally funded projects. For the State to assume these obligations 1) DOT/PF requires two positions to fulfill the role of performing federal actions such as reviewing and approving federal environmental documents, 4(f) statements and environmental document re-evaluations (2 positions at range 24C and 2 positions at range 21C plus support costs), 2) the Attorney General's office requires one position to perform required legal sufficiency reviews of environmental documents (provided through a reimbursable services agreement (RSA)). Federal authorization for this pilot program expires in FY2011.

Prepared by: Nancy Slagle, Director
Division: Administrative Services
Approved by: Mike Barton
Agency: DOT&PF

Phone: 465-3911
Date/Time: 12/30/05 9:00am
Date: 12/30/05

SENATE FINANCE COMMITTEE
3 / 21 / 2006 COMMITTEE ACTION

Bill Number	SB 271		
Amendment			
Motion	to report from Committee		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	Bunde		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stedman			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
MOTION	WITHDRAWN		

the Secretary and the terms of the proposed agreement with the State; and

“(B) provide an opportunity for public comment.

“(3) SELECTION CRITERIA.—The Secretary may approve the application of a State to assume responsibilities under the program only if—

“(A) the requirements under paragraph (2) have been met; and

“(B) the Secretary determines that the State has the capability to assume the responsibilities.

“(4) OTHER FEDERAL AGENCY VIEWS.—Before assigning to a State a responsibility of the Secretary that requires the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency.

“(d) STATE DEFINED.—With respect to the recreational trails program, the term ‘State’ means the State agency designated by the Governor of the State in accordance with section 206(c)(1).

“(e) PRESERVATION OF PUBLIC INTEREST CONSIDERATION.—Nothing in this section shall be construed to limit the requirements under any applicable law providing for the consideration and preservation of the public interest, including public participation and community values in transportation decisionmaking.”

(b) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 23, United States Code, is amended by adding after the item relating to section 324 the following: 23 USC 301.

* 325. State assumption of responsibilities for certain programs and projects.”

SEC. 6004. STATE ASSUMPTION OF RESPONSIBILITY FOR CATEGORICAL EXCLUSIONS.

(a) IN GENERAL.—Chapter 3 of title 23, United States Code, is further amended by inserting after section 325 the following:

“§ 326. State assumption of responsibility for categorical exclusions

“(a) CATEGORICAL EXCLUSION DETERMINATIONS.—

“(1) IN GENERAL.—The Secretary may assign, and a State may assume, responsibility for determining whether certain designated activities are included within classes of action identified in regulation by the Secretary that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (as in effect on October 1, 2003).

“(2) SCOPE OF AUTHORITY.—A determination described in paragraph (1) shall be made by a State in accordance with criteria established by the Secretary and only for types of activities specifically designated by the Secretary.

“(3) CRITERIA.—The criteria under paragraph (2) shall include provisions for public availability of information consistent with section 552 of title 5 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(b) OTHER APPLICABLE FEDERAL LAWS.—

“(1) IN GENERAL.—If a State assumes responsibility under subsection (a), the Secretary may also assign and the State may assume all or part of the responsibilities of the Secretary for environmental review, consultation, or other related actions

required under any Federal law applicable to activities that are classified by the Secretary as categorical exclusions, with the exception of government-to-government consultation with Indian tribes, subject to the same procedural and substantive requirements as would be required if that responsibility were carried out by the Secretary.

“(2) **SOLE RESPONSIBILITY.**—A State that assumes responsibility under paragraph (1) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

“(c) **MEMORANDA OF UNDERSTANDING.**—

“(1) **IN GENERAL.**—The Secretary and the State, after providing public notice and opportunity for comment, shall enter into a memorandum of understanding setting forth the responsibilities to be assigned under this section and the terms and conditions under which the assignments are made, including establishment of the circumstances under which the Secretary would reassume responsibility for categorical exclusion determinations.

“(2) **TERM.**—A memorandum of understanding—

“(A) shall have a term of not more than 3 years;

and

“(B) shall be renewable.

“(3) **ACCEPTANCE OF JURISDICTION.**—In a memorandum of understanding, the State shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

“(4) **MONITORING.**—The Secretary shall—

“(A) monitor compliance by the State with the memorandum of understanding and the provision by the State of financial resources to carry out the memorandum of understanding; and

“(B) take into account the performance by the State when considering renewal of the memorandum of understanding.

“(d) **TERMINATION.**—The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State.

“(e) **STATE AGENCY DEEMED TO BE FEDERAL AGENCY.**—A State agency that is assigned a responsibility under a memorandum of understanding shall be deemed to be a Federal agency for the purposes of the Federal law under which the responsibility is exercised.”

(b) **CONFORMING AMENDMENT.**—The analysis for chapter 3 of title 23, United States Code, is further amended by adding after the item relating to section 325 the following:

“326. State assumption of responsibility for categorical exclusions.”

SEC. 6005. SURFACE TRANSPORTATION PROJECT DELIVERY PILOT PROGRAM.

(a) **IN GENERAL.**—Chapter 3 of title 23, United States Code, is further amended by inserting after section 326 the following:

Public
information.
Notice.

23 USC 301.

“§ 327. Surface transportation project delivery pilot program**“(a) ESTABLISHMENT.—**

“(1) IN GENERAL.—The Secretary shall carry out a surface transportation project delivery pilot program (referred to in this section as the ‘program’).

“(2) ASSUMPTION OF RESPONSIBILITY.—

“(A) IN GENERAL.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to one or more highway projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(B) ADDITIONAL RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

“(i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project; but

“(ii) the Secretary may not assign—

“(I) responsibility for any conformity determination required under section 176 of the Clean Air Act (42 U.S.C. 7506); or

“(II) any responsibility imposed on the Secretary by section 134 or 135.

“(C) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.

“(D) FEDERAL RESPONSIBILITY.—Any responsibility of the Secretary not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary.

“(E) NO EFFECT ON AUTHORITY.—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency, other than the Department of Transportation, under applicable law (including regulations) with respect to a project.

“(b) STATE PARTICIPATION.—

“(1) NUMBER OF PARTICIPATING STATES.—The Secretary may permit not more than 5 States (including the States of Alaska, California, Ohio, Oklahoma, and Texas) to participate in the program.

“(2) APPLICATION.—Not later than 270 days after the date of enactment of this section, the Secretary shall promulgate regulations that establish requirements relating to information required to be contained in any application of a State to participate in the program, including, at a minimum—

“(A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;

Deadline
Regulation*

"(B) verification of the financial resources necessary to carry out the authority that may be granted under the program; and

"(C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

"(3) PUBLIC NOTICE.—

Deadline.

"(A) IN GENERAL.—Each State that submits an application under this subsection shall give notice of the intent of the State to participate in the program not later than 30 days before the date of submission of the application.

"(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the State.

"(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under this section only if—

"(A) the regulatory requirements under paragraph (2) have been met;

"(B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and

"(C) the head of the State agency having primary jurisdiction over highway matters enters into a written agreement with the Secretary described in subsection (c).

"(5) OTHER FEDERAL AGENCY VIEWS.—If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency before approving the application.

"(c) WRITTEN AGREEMENT.—A written agreement under this section shall—

"(1) be executed by the Governor or the top-ranking transportation official in the State who is charged with responsibility for highway construction;

"(2) be in such form as the Secretary may prescribe;

"(3) provide that the State—

"(A) agrees to assume all or part of the responsibilities of the Secretary described in subsection (a);

"(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State;

"(C) certifies that State laws (including regulations) are in effect that—

"(i) authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

"(ii) are comparable to section 552 of title 5, including providing that any decision regarding the public availability of a document under those State laws is reviewable by a court of competent jurisdiction; and

"(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed.

"(d) JURISDICTION.—

"(1) IN GENERAL.—The United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.

"(2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary had the Secretary taken the actions in question.

"(3) INTERVENTION.—The Secretary shall have the right to intervene in any action described in paragraph (1).

"(e) EFFECT OF ASSUMPTION OF RESPONSIBILITY.—A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (i).

"(f) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any rulemaking authority of the Secretary under any Federal law.

"(g) AUDITS.—

"(1) IN GENERAL.—To ensure compliance by a State with any agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall conduct—

"(A) semiannual audits during each of the first 2 years of State participation; and

"(B) annual audits during each subsequent year of State participation.

"(2) PUBLIC AVAILABILITY AND COMMENT.—

"(A) IN GENERAL.—An audit conducted under paragraph (1) shall be provided to the public for comment.

"(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the Secretary shall respond to public comments received under subparagraph (A).

Deadline.

"(h) REPORT TO CONGRESS.—The Secretary shall submit to Congress an annual report that describes the administration of the program.

"(i) TERMINATION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the program shall terminate on the date that is 6 years after the date of enactment of this section.

"(2) TERMINATION BY SECRETARY.—The Secretary may terminate the participation of any State in the program if—

"(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

"(B) the Secretary provides to the State—

"(i) notification of the determination of noncompliance; and

"(ii) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and

23 USC 301.

“(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by Secretary.”.

(b) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 23, United States Code, is further amended by adding after the item relating to section 326 the following:

“327. Surface transportation project delivery pilot program.”.

SEC. 6006. ENVIRONMENTAL RESTORATION AND POLLUTION ABATEMENT; CONTROL OF NOXIOUS WEEDS AND AQUATIC NOXIOUS WEEDS AND ESTABLISHMENT OF NATIVE SPECIES.

(a) MODIFICATION TO NHS/STP FOR ENVIRONMENTAL RESTORATION, POLLUTION ABATEMENT, CONTROL OF NOXIOUS WEEDS AND AQUATIC NOXIOUS WEEDS.—

(1) MODIFICATIONS TO NATIONAL HIGHWAY SYSTEM.—Section 103(b)(6) of title 23, United States Code, is amended by adding at the end the following:

“(Q) Environmental restoration and pollution abatement in accordance with section 328.

“(R) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.”.

(2) MODIFICATIONS TO SURFACE TRANSPORTATION PROGRAM.—Section 133(b) of title 23, is amended by striking paragraph (14) and inserting the following:

“(14) Environmental restoration and pollution abatement in accordance with section 328.

“(15) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.”.

(b) ELIGIBLE ACTIVITIES.—Chapter 3 of title 23, United States Code, is further amended by adding after section 327 the following:

“§ 328. Eligibility for environmental restoration and pollution abatement

“(a) IN GENERAL.—Subject to subsection (b), environmental restoration and pollution abatement to minimize or mitigate the impacts of any transportation project funded under this title (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) may be carried out to address water pollution or environmental degradation caused wholly or partially by a transportation facility.

“(b) MAXIMUM EXPENDITURE.—In a case in which a transportation facility is undergoing reconstruction, rehabilitation, resurfacing, or restoration, the expenditure of funds under this section for environmental restoration or pollution abatement described in subsection (a) shall not exceed 20 percent of the total cost of the reconstruction, rehabilitation, resurfacing, or restoration of the facility.

“§ 329. Eligibility for control of noxious weeds and aquatic noxious weeds and establishment of native species

“(a) IN GENERAL.—In accordance with all applicable Federal law (including regulations), funds made available to carry out this

NEPA Delegation Pilot Fact Sheet

SAFETEA-LU includes a NEPA delegation pilot program for five states – Alaska, California, Oklahoma, Ohio, and Texas. Under the program, the five states are eligible to apply for delegation of the Secretary of Transportation's (Secretary) NEPA responsibilities for one or more highway projects within the state. The state may also apply for delegation of some or all of the Secretary's review and consultation responsibilities under other Federal environmental laws. The scope of delegation will be determined through application to the Secretary and execution of a Memorandum of Understanding (MOU).

Time Frame:

- Duration of the pilot program is six years from enactment of SAFETEA-LU. Unless extended by statute, the pilot terminates on August 10, 2011.
- The Secretary is required to promulgate regulations to establish delegation application requirements. Rulemaking is required to be complete within 270 days of the Act. Rulemaking is behind schedule.
- The State may not submit its application until
 - Rulemaking is complete and
 - The State must advertise the application and solicit public comment.
- After its application is accepted, the State and Secretary will enter into an MOU.
- Once the MOU is executed, delegation may proceed.

Delegation Options:

- NEPA delegation is limited to highway projects. The term includes roads, streets, and parkways, rights-of-way, bridges and protective structures.
 - NEPA delegation may be programmatic, or for specific, identified projects. The State has broad latitude to determine the FHWA environmental responsibilities it would like to assume [i.e. CEs, EAs, EISs, Section 4(f)].
- The State expects to request delegation for all of the Secretary's environmental review and consultation responsibilities under other Federal environmental laws (examples include Section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act)

- FHWA has indicated that it will not delegate:
 - Projects on the President's Streamlining Executive Order project list.
 - Cross border projects.
 - FTA sponsored projects.
 - Western Federal Lands sponsored projects.
- NEPA delegation is limited to environmental decision-making. It does not extend to engineering decisions.

Requirements and Responsibilities:

- Under delegation, the State would assume sole responsibility and liability for its NEPA actions and decisions and would be subject to Federal court jurisdiction. To receive delegation, the State is required to waive its 11th Amendment sovereign immunity from suits in Federal court for its decisions under NEPA.
- The State will be required to comply with all applicable Federal laws, Executive Orders, regulations, policies and guidance for the responsibilities it assumes.
- The State's delegation program will be audited, twice annually for the first two years, annually thereafter. The audits will be available for public comment.
- The Secretary is required to submit an annual report to Congress on the pilot program.
- The Secretary may terminate any state's participation in the pilot program at any time for cause.

Distributed by DOT & PF

3/17/2006

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/8/06

FURTHER: Finance

Date of 5-Day Notice: 2/9/06
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/9/06

Transportation Committee considered SENATE BILL NO. 271

SB 271 AUTHORIZE HWY PROGRAM PARTICIPATION

"An Act authorizing the commissioner of transportation and public facilities to participate in certain federal highway programs and relating to that authorization; relating to powers of the attorney general to waive immunity from suit in federal court related to those programs; and providing for an effective date."

and recommends:

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

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

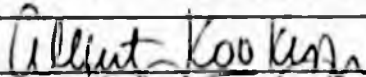


NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DOT	12/13/05	✓			1
DEC	14/2/05			✓	2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Kookesh</i> 			X	
<i>French</i> 			X	
CHAIR: 	X			

Kookesh
French

Huggins

SB 271



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 7, 2006

The Honorable Ben Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would authorize the Alaska Department of Transportation and Public Facilities to assume certain federal programmatic and environmental responsibilities as provided for by the United States Congress in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), P.L. 109-59. A prerequisite to assumption of the duties is that the State of Alaska agree to a waiver of immunity to suit in federal court for those duties specifically assumed from the United States Department of Transportation.

Under the recent SAFETEA-LU amendments, the State of Alaska is one of only five named states with the opportunity to participate in a so-called "pilot program" for assumption of duties and responsibilities under 23 U.S.C. 327 (National Environmental Policy Act of 1969). This bill provides a unique opportunity for the State of Alaska to have more direct involvement, and control, in the planning and decision-making process involved with many public projects.

I urge your prompt and favorable action on this measure.

Sincerely yours,

Frank H. Murkowski
Governor

Enclosure

COMMITTEE COPY