

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 2961

SB

1

SFIN

FILE

SB 1

was referred to the
Senate Finance
Committee

Hearing(s) were held

The bill did not move
from Committee

FAILED

SENATE FINANCE
COMMITTEE
Amendment # 1
To Bill Number: SB1
Sponsor: Hoffman
Date: 4/20/06 Logged by: Robin

AMENDMENT

OFFERED IN: The Senate Finance Committee

TO: SSSB 1

OFFERED BY: Senator Hoffman

DEPARTMENT: Dept. of Education

Page 1 line 6

Delete	\$5,352
Insert	\$5,380

FUNDING SOURCE: General funds

EXPLANATION: This amendment will add 6 million to the BSA above the governors proposed number.

SENATE FINANCE COMMITTEE
4 / 26 / 2006 COMMITTEE ACTION

Bill Number	SB1		
Amendment	#1		
Motion	to adopt		
<u>Motion by</u>	Hoffman		
<u>Objection by</u>	Green		
Removed			
<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	2		
Nay	5		
Absent	1		
MOTION	FAILED		

GARY WILKEN
SENATOR
Fairbanks

Alaska State Legislature

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Senate

SPONSOR STATEMENT

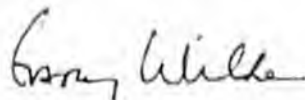
Sponsor Substitute for Senate Bill 1 Increase the Amount of the Base Student Allocation

Since 1998, the K-12 public school funding formula has distributed state education dollars based on a per student allocation. Sponsor Substitute for Senate Bill 1 increases this allocation by \$433, establishing the per student dollar at \$5,352.

Sponsor Substitute for Senate Bill 1 recognizes that day-to-day educational costs continue to increase, causing a financial strain on the school budgets in all 53 school districts. The 8.8 percent proposed increase in the student dollar will help mitigate these rising costs, thus allowing local school boards to direct more education dollars into the classroom.

Unfortunately school districts are also burdened with a five percent increase in their required employer contribution to two retirement systems, Public Employees' Retirement System and Teachers' Retirement System. Sponsor Substitute for Senate Bill 1 will generate the needed funds to cover these costs, estimated to increase \$40 million statewide in FY07.

Please join me in support of our public school system and give your approval to Sponsor Substitute for Senate Bill 1.



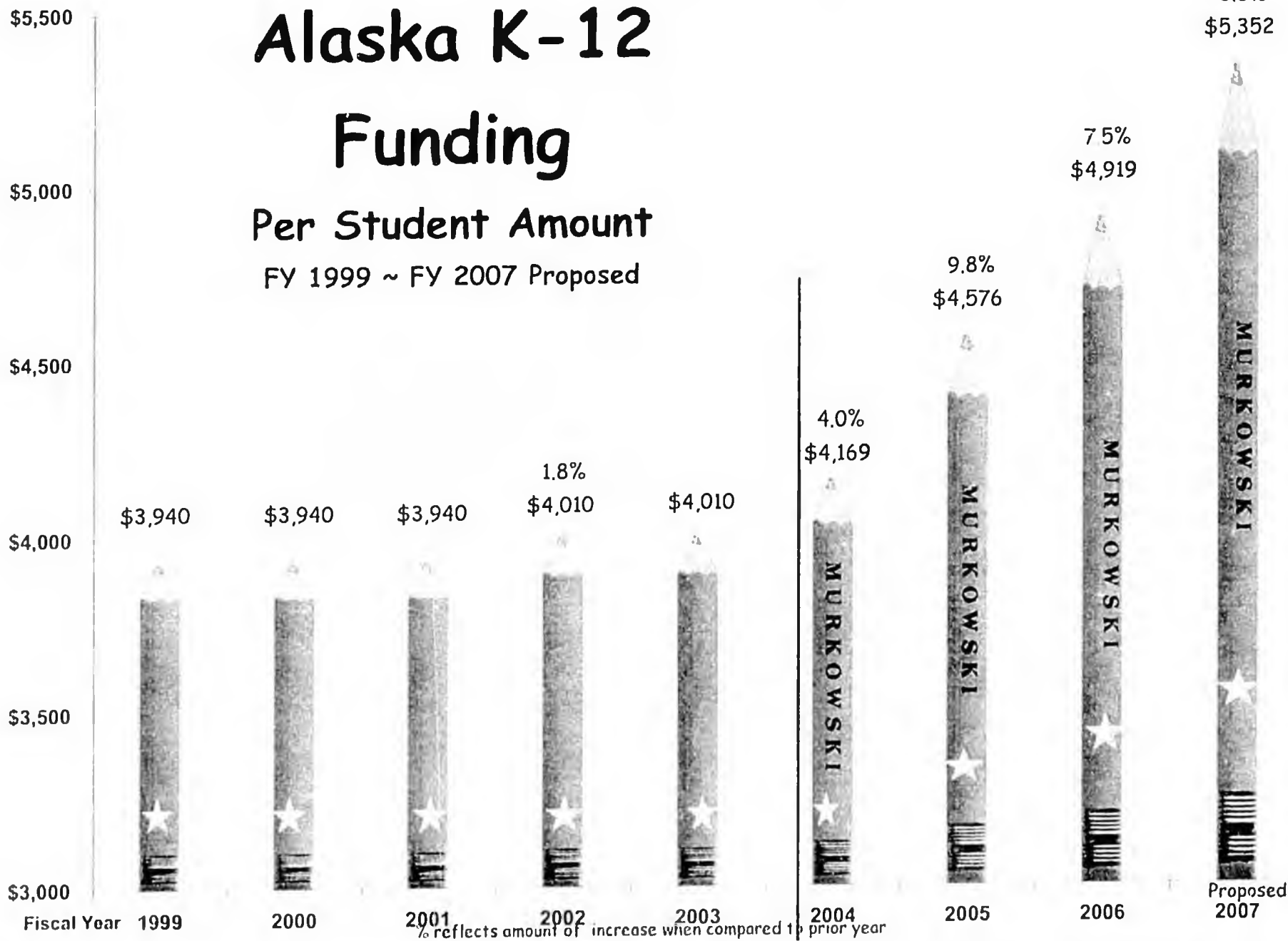
April 18, 2006



Education increase of 33%
during Murkowski
Administration

Alaska K-12 Funding

Per Student Amount FY 1999 ~ FY 2007 Proposed



% reflects amount of increase when compared to prior year

distributed 4/20/06 Sen. Wilkin

The Alaska Kids Count! Network goal : For schools across Alaska to have the resources needed to offer students a solid instructional program, and support services to help all students succeed.

The Governor's Foundation proposal translates into cuts to schools across Alaska. Rapidly escalating overhead costs - such as PERS/TRS, fuel, inflation, and health insurance premiums - exceed the \$90 million increase proposed by the Governor. Costs exceed revenues. This equates to a net loss to classrooms and students.

To meet overhead costs, and allow a small margin for improvement at the classroom level require an investment by the State of Alaska of approximately \$150 million, \$60 more than that proposed by the Governor.

Juneau offers one example of a community where students lose under the Governor's proposal. Although the District's revenues will increase by \$3.2 million, rising costs result in a net \$2 million deficit to Juneau schools.

What does \$2 million in cuts mean to Juneau students?

Instructional quality will diminish:

* Class sizes will increase, and teacher positions will be cut

<u>Grades</u>	<u>Current Ave. Class Size</u>	<u>Projected Ave class size (06-07 school year)</u>
K-2	22:1	25: 1
3-5	25:1	26: 1
6-8	30:1	31-32: 1
9-12	30:1	32: 1

Class sizes, for all grades, on average will increase. These are AVERAGES. Middle School classrooms, will AVERAGE 31-32 students per class. I walked into a class last week, and it smelled like a locker room with about 30 kids crammed into a confined space. Students couldn't traverse the room without bumping into each other or desks.

Note, too, that the emphasis on lowering class size in early elementary grades, to help young children get off to a good start, may be lost. K-2 class sizes will grow, with the AVERAGE, again, at 25.

Approximately 25 teacher positions will be eliminated, with each school losing at least one teacher.

Mary Hakala, Alaska Kids Count! Network, 4/17/06

distributed 4/20/06
9:49 AM

* Instructional materials for students and teachers will further diminish

Examples: There has been no budget for replacing aging textbooks for years. An \$80,000 increase in photocopying costs will further diminish access to instructional materials at the classroom level. As Brenda Taylor, parent at Auke Bay noted in testimony, teachers already spend from \$500 to \$2,000 out of their own pockets each year for classroom supplies. More of the burden is falling on parents, too, for field trips, lab fees, and donations for school supplies.

* Student-centered programs will be eliminated or substantially curtailed. Specifics include:

- Elementary art modeled after the successful Fairbanks program - curtailed or eliminated
- Elementary Counseling - 2 FTE counselors eliminated (previously funded with a federal grant which is ending) Most elementary schools will lose half their counseling positions/services.
- Drop out prevention counseling - 3 counselors eliminated, one each at DZ, Floyd Dryden, and JDHS. This leaves one counselor per middle school, each serving ~ 600 students.
- Truancy Tracker - 1 position . Dropout prevention strategy
- Secondary literacy specialist - 1 position.
- High School Qualifying Exit Exam Instructor - 1 position (tutoring to prepare students for the high school exit exam)

- Note: Reductions are spread across the budget, including administration, janitorial services, maintenance. Even High School activities was not spared, with a cut of \$174,000.

* Juneau is doing its part to support its schools

Juneau already contribute to the cap with local property tax dollars. Local dollars represents 43% of the Juneau school budget. There is also tremendous community support for athletics, arts and student initiatives above and beyond the local tax contribution. However, there is a limit to the capacity of any community to increase or sustain this level of fundraising and financial support for its youth.

Scrimping and cutting and squeezing is counterproductive and DIMINISHES the quality of learning opportunities for Alaska's students.

***Alaska's students deserve great schools.
Alaska can afford no less.***

Mary Hakala, Alaska Kids Count! Network, 4/17/06

What level of funding will keep Juneau Schools whole?

* An increase in state funding of approximately \$150 million. There are two known foundation options:

BSA increase only: To offset Juneau's \$2 million deficit the Foundation BSA must increase by approximately \$260 above the Governor's \$433. This equates to a statewide cost of ~ \$145 million (Governor's \$90 plus \$55).

or//

50% implementation of ISER District Cost Factors, in addition to adopting the Governor's proposed BSA increase of \$433 (BSA of \$5352). This approach costs the state approximately \$135 million (\$90 + \$45).



Official Business

Alaska State Legislature

Senate

Office of the Secretary

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Juneau, Alaska 99801-1182
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Fax: (907) 465-2832
Email: senate_secretary@legis.state.ak.us

FOR YOUR IMMEDIATE ATTENTION

DATE: 1/9/06
TO: Finance Committee
(Mindy, Room 520)
FROM: Office of the Senate Secretary
SUBJ: Sponsor Substitute

A Sponsor Substitute has been introduced on the following bill/resolution pending in your Committee:

RETRIEVE

SENATE BILL NO. 1

"An Act relating to the base student allocation used in the formula for state funding of public education; and providing for an effective date."

Please pull this bill/resolution (blue back) from your files and give to the page. The bill/resolution will be returned to you with the Sponsor Substitute.

Thank you.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES



Alaska State Legislature

Please enter into the record my testimony to the Senate Finance
committee name

Committee on SB 1 Increase Base Student Allocation, dated 4-20-06
bill # / subject public hearing date

I'm currently a student at Homer High School under the KPBSD and I am strongly for more school funding. Each year our school suffers more classes being cut and therefore more teachers losing jobs. To keep schools in the best condition possible and have them provide the best classes for their students cannot happen without proper support from the state legislature. There are many classes that I am in now that have a large amount of students in them, and there is not enough space to accommodate them all. Yet teachers are still being cut and the quantity of classes has gone down, while the number of students stays the same. To convince the state to give schools in the district more money for education would be a step in solving the problem of losing teachers and classes and also help to spread things out so that the class sizes are smaller and easier to teach. This problem has gone on long enough and we need to be putting forth all our effort to stop it. I am not alone in this, and the majority of the students and teachers at my school would appreciate anything that could be done to improve this situation. Thank you for your time and I hope that you really consider this issue.

Sincerely,
Katie Miller, HHS student

Signed: Katie Miller
Testifier

Representing (optional)

40899 Waterman Rd. Homer, AK 99603
Address

Phone number



Alaska State Legislature

Please enter into the record my testimony to the Senate Finance

committee name

Committee on SB 1 Increase Base Student Allocation, dated

bill # / subject

4-20-06

public hearing date

The Kenai Peninsula Borough School District (KPBSD) developed its preliminary budget using the Governor's proposed based student allocation (BSA). The revenue this generated fell short of the basically status quo (except for increased fuel, utility, retirement system rate and insurance rate increases) and a modest amount set aside to address the collective bargaining process.

This budget fell short of projected revenue by about \$3.6 million. A BSA of \$5570 is needed to balance the District's preliminary budget, absent an adjustment to the district cost factor portion of the funding formula or budgetary reductions.

The District has heard the direction from NCLB, parents and legislators for low pupil-teacher-ratios (PTR); so much so that the District budgeted fund balance in FY06 to ensure effective class sizes - not a sound financial practice. It's not prudent to use fund balance for ongoing operating expenses. Our fund balance is significantly below standards for such accounts - what we have is needed to address over expenditure of utility accounts and unforeseen situations.

The Board approved the FY07 budget April 3, 2006, with an increase to the PTR of 3 students to all staffing formulas. This equated to the loss of 41 teachers for next year. The total reduction in teachers for next year is 63 positions (22 due to declining enrollment + 41 due to the formula change) representing 13% of our teachers. This means some classes will be in excess of 30 students, the loss of voc-ed classes, arts, foreign languages, librarians, and counselors. We already have some administrators covering multiple schools; this practice will grow.

Thankfully, the Kenai Peninsula Borough Assembly approved funding at the cap for another year - so far. This level of support continues to be a struggle considering their financial constraints. An increase to the mill rate is needed to fund at the cap. As you are probably aware, a sales tax increase failed before the voters last fall; that matter will be presented to the voters again this fall. The Borough needs additional revenue in order to continue supporting the District at the cap.

If you have been following educational funding for anytime at all, you are aware of KPBSD's financial plight - it's getting worse each year. SOMETHING must be done to address a district faced with on-going declining enrollment. I understand the challenges of 'where to put the money' in the formula - statewide equity is important to consider. Frankly, for the Kenai it's getting to the point of 'we'll take it anyway we can get it'! District cost factors need to be adjusted in addition to an increase to the BSA.

Thank you for the opportunity to address educational funding issues with you.

Signed: Melody Douglas, CFO

Testifier

Kenai Peninsula Borough School District

Representing (optional)

148 N. Binkley St., Soldotna, AK 99669

Address

907-714-8841

mdouglas@kpbsd.k12.ak.us

Phone number



Alaska State Legislature

Please enter into the record my testimony to the

Senate Finance
committee name

Committee on SB 1 Increase Base Student Allocation,
bill # / subject

dated 4-20-06
public hearing date

My name is Jennie Hammond, I have two children attending Nikiski North Star Elementary in Nikiski. In my son's 1st grade class ~~there~~ are 26 students. He started the year with 24 students. I have noticed the difference in the classroom with just two more students. My son is distracted a little more. Next year we will have only 14 teachers instead of 16. The district has increased PTR by 3 students. In my daughter's all day kindergarten this year she had 20 students with no aide. Next year with the district's PTR it will be 23 students all day with no aide. We have at our school approx 415 students. Next year we could lose between 20-25 students. The class sizes could start at 26 students K-3 and 32 students in 4/6. In order for classes sizes to go back down again the children need more funding for teachers. I volunteer approx 14 hrs a week at their school. Nikiski North Star is a school that promotes parent and community involvement. This week we had our volunteer dinner it was stated that over 3,000 hrs of volunteering has taken place this year. Which could be about \$35,000 / year. Please for the children increase education funding to hire more teachers. Changing the cost differential would also help.

Thank you for your time.

Signed:

Jennie R Hammond

Testifier

Representing (optional)

Address

46210 Balto Nikiski AK 99635

Phone number

776-8561



Alaska State Legislature

Please enter into the record my testimony to the Senate Finance
committee name

Committee on SB 1 Increase Base Student Allocation, dated 4-20-06
bill # / subject public hearing date

Dear Senate Finance Committee:

Please consider increasing the Base Student Allocation for next year to \$5,511.00
I am a parent and teacher on the Kenai. The Kenai Peninsula Borough School district is facing serious financial difficulties for this coming school year. There is a possibility close to 100 teachers will be without jobs. Our high school counselors are looking at a 1 to 500 plus ratio. There are currently no full time librarians left in our district. These cuts will be devastating to our district and our community. Our children are our future and our public schools are the future of our communities.

Thank you,
LaDawn Druce

Signed: LaDawn Druce
Testifier

Representing (optional)

P.O. Box 2317 Soldotna, AK 99669
Address

262-3501
Phone number

SB

10

SFIN

FILE

SB 10

was referred to the
Senate Finance
Committee

Hearing(s) were held

The bill did not move
from Committee

Senate Bill 10 Related to Vandalism and Restitution (April 20, 2006)

- Introduction
- Thank you for the opportunity to appear before you to discuss Senate Bill 10. The Division appreciates any effort to assist it in its mission to hold juvenile offenders accountable for behaviors that cost Alaskans emotional and financial difficulty. We've appreciated the cosponsors willingness to consult and work with us to try and create a bill that enhances juvenile accountability.
- The mission of the Division of Juvenile Justice, as described in AS 47.12.010, is to promote a balanced juvenile justice system that imposes accountability of juvenile offenders, equips juvenile offenders with the skills needed to live responsibly and productively, and also affords protection and redress to victims.
- It is this third piece—promoting the safety and restoration of victims and communities—that we are concerned is jeopardized by this bill.
- The restitution payment structure set up by the bill (with the YOUTH ONLY is responsible for the first \$5,000 in damages, the parent for the next \$15,000, and the YOUTH ONLY responsible for any remainder) will likely slow down the speed with which victims are repaid for damages and will not encourage youth and their parents to work together to address the damages caused by delinquent acts.
- Whether a juvenile case is managed informally or formally, the provisions of the bill related to juvenile restitution removes the current joint and several liability system that encourages parents and youths to work together to see that restitutions to victims are repaid promptly and in full. While this conceivably may have the effect of holding juveniles more directly and individually accountable to their victims, in the end it will result in victims having to wait for the youth to gather, either through permanent fund dividend payments or through work, the money.
- Imagine a youth who has committed \$3,000 in damage. Under current statute, Juvenile Justice staff or the courts are able to order and collect that restitution directly from parents and the youth at once. Even if the youth and parent have no other source of cash income, they'd be able to repay most (if not all) of that restitution within a year by together using their permanent fund dividends. If you remove the requirement that parents participate, the victim would now have to wait three years for the youth to make annual payments of approximately \$1,000 each.
- So: while we support efforts to hold youth accountable, we are concerned about doing this at a cost to victims. AS 47.12.010, the statute describing the goals and purpose of the state's juvenile justice system, states that one of Alaska's goals is to "ensure that victims of crimes committed by juveniles are afforded the same

*Concerns
for
speed of
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- removed
H.S.
parent's
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to pay*

rights ^{and} victims of crimes committed by adults." This bill contradicts that statute by providing a restitution repayment scheme that will take longer for victims of juvenile crimes to be repaid than victims of crimes by adults, and as such, gives us serious concern.

- We also are concerned about elements of the bill related to state's liability for youth in our custody, and the possible impacts this may have on the state's ability to effectively recruit and retain foster parents. The bill repeals AS 34.50.020 (b), which currently and clearly states that a state agency or its agents, including those working in foster homes and other residential settings, are NOT responsible for the acts of unemancipated minors in its charge or custody; and ~~it~~ appears to conflict with regulation (7 AAC 53.110) that currently states that foster parents can be reimbursed by the state for damages and losses incurred by the juvenile in their care.
- An additional concern with the bill is that related to driver's license revocations. The bill states that a juvenile formally adjudicated for any delinquent offense shall have their driver's license revoked. (Currently, driver's licenses shall be revoked only for minor consuming violations, misconduct involving a controlled substance, and offenses involving the illegal use or possession of a firearm.)
- The Division is unaware of any evidence linking effectiveness of driver's license revocations with reducing offenses that have nothing to do with driving. The Division has spent the past few years focusing and investing heavily in research-based approaches to work with delinquent youth. Legislation that imposes far-reaching punitive measures without regard to whether the proposal has been linked to reduction in offenses is inconsistent with the mission of the Division and a data-driven approach.
- I want to re-emphasize that the Division takes its mission of holding juvenile offenders accountable seriously. We have worked to see that juvenile offenders managed through informal processes have repaid over 90% of the restitution payments owed to victims over the past several fiscal years; and we have worked closely with the Department of Law Collections Unit to ensure that restitutions ordered through the formal court system are repaid promptly and in full.
- The Division is eager to work with the Legislature to explore ways that further increase accountability for juvenile offenders in ways that are compatible with our obligation toward victims and the community. Thank you again, this concludes my testimony.



ALASKA STATE LEGISLATURE
SENATOR GRETCHEN GUESS
SENATOR FRED DYSON

Sponsor Statement

CS Senate Bill 10:

"An Act relating to civil liability for damage to or destruction of property by minors; relating to court revocation of a minor's privilege to drive; relating to restitution for certain acts of minors; and amending Rule 60, Alaska Rules of Civil Procedure."

Senate Bill (SB) 10 started out to lift the cap on civil liability for minor's vandalism, holding children and their parents accountable for the damage caused by minors.

In examining the current system, however, we found the juvenile system contains three processes for holding minors and their parents accountable for restitution: informal probation, criminal adjudication, and civil litigation. Each process approaches the crime of vandalism, non-vandalism crimes, the accountability of minors, and the accountability of parents differently.

The intent of Committee Substitute (CS) for SB 10 is to establish a consistent set of policies for all three processes to ensure full restitution, to hold minors and their parents appropriately accountable, and to improve the collection of restitution.

The key provisions of CS SB 10, applied to informal probation, criminal adjudication, and civil litigation processes, are as follows.

- All crimes against property are included except for shoplifting.
- All processes must result in full restitution being paid to the victim, unless the minor has no parents.
- Minors are accountable for the first \$5,000 of damages. Parents are accountable for the next \$15,000, and the minor pays the remaining amount. These allocations increase with the rate of inflation.
- The state is liable, to the same extent as parents, when the state has legal custody of the minor and has not placed the minor in his or her parents' physical care.
- The processes must develop payment plans based on ability to pay.
- Legal guardians, parents of runaway or missing minors, and adoptive parents of a hard-to-place child are exempt from liability.
- PFDs may be garnished and the court can order applying for a PFD.

Additionally, CS SB 10 revokes a minor's driver's license for any criminal adjudication.

Thank you for your consideration.



ALASKA STATE LEGISLATURE
SENATOR GRETCHEN GUESS
SENATOR FRED DYSON

Sectional Explanation

CS Senate Bill 10(JUD):

"An Act relating to civil liability for damage to or destruction of property by minors; relating to court revocation of a minor's privilege to drive, relating to restitution for certain acts of minors; and amending Rule 60, Alaska Rules of Civil Procedure."

Driver's License Provisions

Sections 1-3: Amends current statute on the revocation of a minor's driver's license to include all misdemeanor and felony offenses rather than just offenses involving misconduct with a controlled substance and illegal use or possession of a firearm.

Except for the existing statutes on repeat and habitual minor consumption or possession of alcohol, the court will revoke a minor's license for up to 90 days for a first misdemeanor, up to one year for subsequent misdemeanors, up to 180 days for a first felony, and up to two years or age 18 (whichever is longer) for subsequent felonies.

Section 4: Amends current statute allowing court issuance of a provisional driver's license to enable a person to earn a livelihood and satisfy conditions of probation.

Provisions on Civil Liability for a Minor's Destruction of Property

Section 5: Amends current statute on civil liability for the destruction of property by unemancipated minors with the following provisions.

- For any knowing or intentional act by a minor that damages or destroys property, the child is liable for the first \$5,000 of harm, parents are liable for the next \$15,000 of harm and the child is liable for any amount remaining. These specified monetary amounts will be adjusted to account for inflation.
- The amount of parental restitution will be apportioned between the parents without regard to legal custody but with due consideration for the actual care and custody of the minor provided by each parent.
- This section does not apply to shoplifting, which is covered in AS 09.68.110.

Section 6: Amends current statute on civil liability for the destruction of property by unemancipated minors to say the state is responsible for restitution, to the same extent as a parent (\$15,000), for acts of minors when the state has legal custody of the minor and has not placed the minor in his or her parents' physical care.

Section 7: Creates the following two new subsections on payment of civil liability for the destruction of property by unemancipated minors.

- The court will set a payment schedule for each individual liable for damages according to their ability to make payments. The payment schedule will separately address payments the minor may have to make after turning 18.
- The court may order an individual who is liable for damages to apply for a Permanent Fund Dividend.
- The court may modify these payment schedules if financial circumstances change.
- *Note exemptions from liability for legal guardians other than parents, persons other than parents with legal custody, parents of a runaway or missing minor, and adoptive parents of a hard-to-place children already exist in this statute.*

Permanent Fund Dividend Provisions

Section 8: Amends current statute to clarify that 100 percent of a parent's or minor's PFD can be taken to satisfy their required debt under this bill. *Note current law allows taking 100 percent of PFDs to satisfy restitution, but isn't clear whether it applies to minors as well as parents.*

Provisions on Informal Juvenile Justice Process for a Minor's Destruction of Property

Section 9: Amends current statute on the informal juvenile justice process to distinguish between crimes against a person and all other crimes (crimes against property), and to reference the driver's license provisions in sections three and four of this bill. For crimes against property, section nine creates the requirement for notice that an informal adjustment is not successfully completed until restitution is paid.

Section 10: Creates new subsections on informal adjustments for a minor's crimes against property, specifying the following

- Informal adjustment must include full restitution for damages resulting from the act of a minor, unless expressly waived by the victim.
- In determining the amount of restitution, the department may not consider the minor's or parent's ability to pay and must take into account the public policy that favors requiring compensation for damages and injury that results from criminal acts, the financial burden placed on the victim, and the amount and type of restitution that has already been made for the act.

- The child is liable for the first \$5,000 of harm, parents are liable for the next \$15,000 of harm, and the child is liable for any amount remaining. These specified monetary amounts will be adjusted to account for inflation.
- The amount of parental restitution will be apportioned between the parents without regard to legal custody but with due consideration for the actual care and custody of the minor provided by each parent.
- Parents are liable only if they have legal custody when the act was committed. This section exempts from liability legal guardians other than parents, persons other than parents with legal custody, parents of a runaway or missing minor, and adoptive parents of a hard-to-place children. *Note substantially similar exemptions currently exist in law regarding civil liability for a minor's destruction of property and in other areas of juvenile delinquency law.*
- The court will set a payment schedule for each individual liable for damages according to their ability to make payments and may modify these payment schedules if financial circumstances change. The payment schedule must provide for payments adequate to fulfill the total restitution amount by the time the minor turns 18. *Note enforcement of agreements made in the informal adjustment process relies on jurisdiction for criminal adjudication. In other words, failure to comply with the terms of an informal agreement results in criminal adjudication. Consequently, collection of restitution specified in an informal adjustment would be impossible after the offender's 18th birthday and payment schedules must provide for full payment by age 18. If this cannot be accomplished (e.g. offender is age 17.5 at the time of the vandalism), the informal adjustment process is not an option and the case will be handled through formal criminal adjudication, where the payment plan can continue long after the 18th birthday because the court retains jurisdiction to collect payments.*
- The court may order an individual who is liable for damages to apply for a Permanent Fund Dividend.
- The state is responsible for restitution, to the same extent as a parent (\$15,000), for acts of minors when the state has legal custody of the minor and has not placed the minor in his or her parents' physical care.

Provisions on Criminal Adjudication for a Minor's Destruction of Property

Section 11: Amends current statute on criminal adjudication of a minor to distinguish between crimes against a person and all other crimes (crimes against property). For crimes against property, section 11 creates subsections with the following provisions.

- The court will order the minor and the minor's parent to make suitable restitution (see section 13) and may not refuse to make an order of restitution.

- Exempts from liability legal guardians other than parents, persons other than parents with legal custody, parents of a runaway or missing minor, and adoptive parents of a hard-to-place children. *Note substantially similar exemptions currently exist in law regarding civil liability for a minor's destruction of property and in other areas of juvenile delinquency law.*
- The court may order the minor and the minor's parent to submit financial information for the purpose of establishing the amount of restitution payments and enforcing an order of restitution. *Note section 13 prohibits consideration of ability to pay in determining the total amount of restitution.*

Section 12: Amends current statute on criminal adjudication to include the driver's license provisions in sections three and four of this bill.

Section 13: Creates new subsection on criminal adjudication for a minor's crimes against property.

- Adjudication of a delinquent minor must include restitution for damages resulting from the act of a minor, unless expressly waived by the victim.
- In determining the amount of restitution, the court may not consider the minor's or parent's ability to pay and must take into account the public policy that favors requiring compensation for damages and injury that results from criminal acts, the financial burden placed on the victim, and the amount and type of restitution that has already been made for the act.
- The child is liable for the first \$5,000 of harm, parents are liable for the next \$15,000 of harm, and the child is liable for any amount remaining. These specified monetary amounts will be adjusted to account for inflation.
- Parents are liable only if they have legal custody when the act was committed. *Note the other exemptions for legal guardians other than parents, persons other than parents with legal custody, parents of a runaway or missing minor, and adoptive parents of hard-to-place children appear in section 11.*
- The amount of parental restitution will be apportioned between the parents without regard to legal custody but with due consideration for the actual care and custody of the minor provided by each parent.
- The court will set a payment schedule for each individual liable for damages according to their ability to make payments and may modify these payment schedules if financial circumstances change. The payment schedule will separately address payments the minor may have to make after turning 18.
- The court may order an individual who is liable for damages to apply for a Permanent Fund Dividend.

- The state is responsible for restitution, to the same extent as a parent (\$15,000), for acts of minors when the state has legal custody of the minor and has not placed the minor in his or her parents' physical care.

Miscellaneous Provisions

- Section 14:** Makes a conforming change to current statute on court dispositional orders.
- Section 15:** Amends current statute on court records to require the amount of unpaid restitution ordered during the criminal adjudication process and still owed by an individual age 18 or older to be public record.
- Section 16:** Makes a conforming change to current statute on court records.
- Section 17:** Makes a conforming change to current statute on court records.
- Section 18:** Makes a conforming change to current statute on community dispute resolution centers.
- Section 19:** Repeals existing statute on the civil liability of parents for the destruction of property by unemancipated minors. Language repealed reads as follows, "If a parent has an insurance policy that would compensate a claimant for civil damages described under (a) of this section, and the policy limits are in excess of \$15,000, civil damages may be recovered under (a) of this section in an amount not to exceed the policy limits or \$25,000, whichever amount is lower."
- Section 20:** The new subsection on civil actions created in section three of this bill amends Rule 60 of the Alaska Rules of Civil Procedure relating to modifications of payment schedules set in actions involving liability for the knowing or intentional acts of unemancipated minors.
- Section 21:** Severability. If any provision of this act is held invalid, the remainder of the act are not affected.

Summary of Damage Recovery by School District

	Anchorage School District	Fairbanks North Star Borough School District	Juneau School District	Kenai Peninsula Borough School District	Mat-Su Borough School District
Total Cost of Damages Annually	FY02/03 \$302,010 FY03/04 \$307,648 FY04/05 \$308,868 (FY04/05 figures are ytd)	FY03 \$70,000 FY04 \$60,000		FY00 \$77,000 FY01 \$29,000 FY02 \$126,000 FY03 \$82,000 FY04 \$76,000	FY03 \$42,334 FY04 \$14,999
Number of Vandalism Cases Annually	FY02/03 1278 FY03/04 791 FY04/05 374	No Data		200 (avg.)	FY03 31 FY04 29
Average Damage Per Case	\$376	No Data		\$390	\$956
Number/Percentage of Cases Where Vandals Are Identified	1.6% (40 vandals total identified in past 3 years)	Less than 50% (approximate)		5%	50% (approximate)
Number/Percentage of Cases Where Legal Action is Pursued	Cases with damages that exceed \$500 are pursued in civil court	Legal action is pursued in cases where damages is greater than \$500		Less than 1% of total cases go to court; 10% of cases where a vandal is identified go to court	90% + (when vandals identified)
Number/Percentage of Cases Where Damages Are Recovered	ASD has had \$918,528 in damage the past 3 years. Of that, \$21,080 has been recovered.	In 50% of cases, some portion of damages are recovered		Very low number of cases where full restitution is paid; Almost always, sole source of restitution is PFD	Some restitution is paid in most cases – usually in the form of the PFD.
Average Portion of Damages Recovered	2.3%; large portions of restitution outstanding	No Data		No Data	No Data
Attempt Direct Recovery Without Legal Action	Yes	Yes		Yes	Yes

January 27, 2005

Senator Gretchen Guess requested the following information:

1. *The total number of vandalism cases your district suffered, the total cost of damages, the total number of cases pursued in court.*

Fiscal Year	Number of Incidents (approx)	Amount of Damages	Pursued Court Cases
FY 02/03	1278	\$302,010.53	
FY 03/04	791	\$307,648.75	See question #3
FY 04/05 ytd	374	\$308,868.72	

2. *Number/percentages of cases where vandals are actually identified.*

In the past 3 years there have been approximately 40 perpetrators identified. In most vandalism cases there have been several perpetrators caught for one incident.

3. *Number/percentages of cases where legal action (e.g. in civil court) is pursued.*

The majority of vandalism cases with damages that exceed \$500 are pursued in civil court.

4. *Number/percentages of cases where damages are recovered.*

In vandalism cases with a low dollar figure the school/facility will generally ask the parent/guardian to reimburse the monies spent. The parent/guardian will seldom pay for the damage caused by their child. No payment has been received on several cases but there are current restitution orders in place.

We have had approximately \$918,528.00 worth of vandalism damages in 3 years. In those 3 years the District has received approximately \$21,080.10 worth of restitution. This calculates out to approximately 2.3% of recovered damages.

5. *In those cases where damages are recovered, what portion of the District's damages are recovered?*

There are a large number of dollar cases still pending court action, making it difficult to estimate the possible return.

6. *Average amount of damages recovered as a percentage of total damages resulting from vandalism.*

Question asked and answered in #4 and #5.

7. *How does the school District make decisions about how to recover damages from vandals? Do they attempt to seek restitution one on one with the suspect/perpetrator before contacting law enforcement? Do they contact law enforcement, proceed with criminal investigation, and attempt to seek restitution in criminal court? Do they pursue any claims in civil court?*

Major vandalism, over approximately \$500, is reported immediately to the police and/or fire department. Authorities charge offenders as they are caught and then the court orders restitution.

January 27, 2005

Senator Dyson requested the following information:

1. *How much does the District spend each year in vandalism and, how much does it collect in restitution?*

Fiscal Year	Number of Incidents (approx)	Amount of Damages	Pursued Court Cases
FY 02/03	1278	\$302,010.53	
FY 03/04	791	\$307,648.75	See question #3
FY 04/05 ytd	374	\$308,868.72	

2. *The following questions relate to the District's property insurance coverage:*

- A. *What kind of insurance coverage for vandalism does the District have?*

The District insures \$1.3 billion dollars worth of property. The property insurance premium is \$961,974. The self-insured portion, deductible, per loss is \$100,000. The per incident deductible applies to virtually any type of loss; such as, fire, wind or vandalism. Property insurance with a lower deductible would not be economical for the District to purchase.

- B. *How much money has your insurance provider had to reimburse the District each year for vandalism since December 2001?*

There has been no money to date received from our property insurer; however, we have two large arson claims pending. Each claim exceeds \$100,000.

- C. *What is the cost of your property insurance and how has vandalism impacted the rates?*

The District's property insurance premium for FY 04/05 was \$961,974. The vast majority of the District's vandalism falls below the \$100,000 per incident deductible; therefore, our insurance premiums have not increased due to vandalism.

2. *Senator Dyson, in reviewing our chart of major incidents, said that it did not appear that the change to the statute in 2003 in the amount we are allowed to*

collect from parents, etc. has had any impact on our ability to collect. Current statute allows us to collect \$15,000 - \$25,000 per incident depending on whether parents are covered by insurance; yet, we have only collected \$1700.

A large amount of the court ordered restitution has not been received or is still in the hearing process before the judge.

A. *Is the current cap the problem; or are there other factors that need to be addressed?*

There are still a large number of cases pending in which the cap may play a role. Also, judges seem hesitant to seek restitution beyond a minor's 19th birthday.

B. *What is the process the District goes through for collecting restitution?*

The District relies on the juvenile/adult court system for most vandalism incidences, which exception of minor on site infractions.

Kenai Peninsula Borough and School District

Gary Lamb, Risk Manager, 907-714-2351

FY00 \$77,000

FY01 \$29,000

FY02 \$126,000

FY03 \$82,000

FY04 \$76,000

200 documented cases of vandalism per year; the average cost of each case is \$390.

The responsible party is identified in about five percent of cases every year. Of these cases where the vandal is identified, about ten percent go to criminal court (none go to civil court). These constitute less than one percent of total vandalism cases.

The district attempts to collect from both the minor and the parent(s) in cases of minor vandalism. The threat of legal action always helps in recovering damages. Uncooperative individuals are reported to the police.

Once the district's claim makes it through the criminal court system, they almost always receive a favorable judgment demanding restitution be paid to the district. However, in general, the ability of the responsible party to pay is "extremely low." Permanent Fund Dividend checks are typically the only source of restitution collected.

It is hard to say what portion of damages are actually recovered, even on a case by case basis. Prosecuting the vandal in court can take several years, and the payment of restitution can take several more.

More funds are recovered directly from the vandal than through the courts. Most cases constitute damages of less than \$500 a piece. The district recovers about \$3,000 to \$5,000. Precise figures are not readily available due to the long period of time it often takes to recover damages through the courts. However, the legal costs of prosecution are typically not a barrier to procuring restitution. But it is far more expedient and cost effective to recover damages directly from the responsible party. The largest problem the district faces is identifying responsible parties.

To the best of my memory, there has only been one case within the KPB (involving 3 kids) since 1996 that the cap on the amount of legal responsibility by the parents has been an issue. We are still attempting to collect on this case.

How does Kenai Peninsula Borough School District make decisions about how to recover damages from vandals? Do they attempt to seek restitution one on one with the suspect/perpetrator before contacting law enforcement? Do they contact law enforcement, proceed with a criminal investigation, and attempt to seek restitution in criminal court? Do they pursue any claims in civil court? Any reasonable explanations you can offer on these things would be helpful.

Contacting the suspect (and/or parents of minors) directly is the most successful method of procuring restitution. The threat of law enforcement intervention is sufficient to receive a confession of guilt and payment of damages. However, in cases where the district cannot obtain restitution directly, they turn the matter over to law enforcement. The district is almost always successful in receiving restitution through the criminal court by simply providing documentation – the District Attorney's Office takes care of the rest. At the very least, garnishment of the perpetrator's PFD is part of the court's judgment. Because criminal prosecution is relatively successful, there is little need to take civil action. The amount of staff time and legal expenses associated with civil action are not worth it. And generally, perpetrators tend to have "empty pockets," rendering civil action superfluous.

Fairbanks North Star Borough School District
Dave Ferree, Risk Manager, 907-452-4461 x224
FY03 \$70,000
FY04 \$60,000

For the majority of incidents, no suspect is ever identified. If a suspect is identified, and the damage totals more than \$500, Risk Management will go after them. They would consider any damage greater than \$2,000 to be large. They must weigh the benefits and costs of pursuing restitution in court. In about 50% of these cases, some portion of damages is recovered.

The largest incident the district has had in the past ten years occurred when an arsonist did \$50,000 worth of damage to a school. He was caught and prosecuted. The district collected some portion of the damages from his PFD, but not nearly all of it.

In spite of the fact that the district has not recently experienced highly expensive vandalism cases, Mr. Ferree acknowledges there is always the potential for one, in which case this bill would help.

How does the **Fairbanks North Star Borough School District** make decisions about how to recover damages from vandals? Do they attempt to seek restitution one on one with the suspect/perpetrator before contacting law enforcement? Do they contact law enforcement, proceed with a criminal investigation, and attempt to seek restitution in criminal court? Do they pursue any claims in civil court? Any reasonable explanations you can offer on these things would be helpful.

Use all three methods (One on one, criminal, civil).
Most successful method is one on one. Parents typically step up and take responsibility and pay. Small percentage of acts actually find out who the perpetrator is.

Do go through courts. Typically when police are interested (especially for repeat offenders) they will prosecute in criminal court. Have procured some amount of restitution. Don't typically go through civil court because it is rarely, if ever worth the cost because each vandalism case is typically small (in terms of cost), and not worth the legal fees to prosecute civilly.

Summary:

The district utilizes all three methods for recovering restitution. Contacting the suspect and attempting to procure restitution through one on one negotiation is generally most successful. Parents of minor suspects are usually willing to step up and pay damage costs. The district does not generally pursue claims in criminal court unless law enforcement authorities have an interest in prosecuting the perpetrator. When the perpetrator is prosecuted, it is typically because they are a repeat offender. Generally, the district does not pursue restitution in civil court. It is usually not worth the associated cost of legal fees because most cases of vandalism tend to be relatively small in terms of cost.

SENATE COMMITTEE REPORT

DATE: 4/12/05

FURTHER

Rules

DATE TURNED
IN TO OFFICE:

2/14/06

Judiciary Committee considered

SENATE BILL NO. 10

SB 10 PARENTAL LIABILITY FOR CHILD'S DAMAGE

"An Act relating to liability for destruction of property by unemancipated minors; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 10 (JUD)
- 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	Indet.	Zero	FN#
HSS	1/18			✓	3
LAW	1/18	✓			4






PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:

French
Huggins
Gress

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
			X	
	X			
	X			
				
CHAIR: 	✓			

Section

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 1/11/05

FURTHER: Judiciary

Date of 5-Day Notice: 1/13/05
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4.11.05

Health, Education and Social Services Committee considered

SENATE BILL NO. 10

SB 10 PARENTAL LIABILITY FOR CHILD'S DAMAGE

"An Act relating to liability for destruction of property by unemancipated minors; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 10 (HES)
- 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#
LAW	1/11			X	1
ACS	1/12			X	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
Wilken <u>Garry Kelle</u>			X	
Ellon <u>[Signature]</u>			✓	
Olson <u>[Signature]</u>	✓			
Green <u>[Signature]</u>			✓	
Dyson CHAIR: <u>[Signature]</u>	✓			

SB

16

HFIN

FILE

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Senator Gary Stevens Alaska State Legislature

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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



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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.

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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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
Division: Legislative Liaison, DOT&PF
Approved by: Mike Barton
Agency: Commissioner, DOT&PF

Phone: 465-3904
Date/Time: 3/21/05 11 52 AM
Date: 3/21/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSSSB 15(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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 CF 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 3/22/05 9 52 AM
Approved by: Commissioner William Tandeske Date 3/22/2005
Agency Department of Public Safety

Information to Consider
On Questions Raised Concerning CS SSSB16
April 18, 2005

Section 2, page 3, lines 27-31 & page 4 lines 1-2 delete (13):

Public Facilities Inventory for Small Local Government

DOT&PF's role in overseeing the building programs for smaller local governments has been inactive and unbudgeted for nearly 20 years. Retaining this language perpetuates a statutory duty that the department is not staffed or budgeted to perform.

Section 2, page 4, lines 5-11 delete (14):

Adopt Energy Performance Standards

DOT&PF's role in adopting energy performance standards has changed over time. This duty was first established after the energy crisis of the 1970's when no such standards existed. Overtime, national standards bodies have established such standards and they continue to update them based on the latest research and technology. DOT&PF is not staffed or budgeted to duplicate these efforts. Retaining this language perpetuates a statutory duty that the department is not staffed or budgeted to perform.

Section 2, page 4, lines 12-15 delete (15):

Planning Assistance to REAAs

DOT&PF's role in overseeing the building programs for REAA's has been inactive and unbudgeted for nearly 20 years. Retaining this language perpetuates a statutory duty that the department is not staffed or budgeted to perform.

Section 2, page 4, lines 23-25 New (15):

Study Finance of Transportation Systems:

Going back to statehood, the department has been proactive in the area of studying transportation finance. Statewide transportation plans written in the early 1960's had significant analysis of the trends and adequacy in revenue. More recently, just a few years ago, it was DOT&PF which studied the new financing concept known as *Garvee Bonds* which was eventually approved for the bonding of several projects.

Additionally, the department already studies and takes action in several key areas of transportation revenues:

- ferry passenger and vehicle revenues
- airport landing, fuel, and concession fees
- oversize and weight fees on highways
- toll revenue on bridges and tunnels
- traffic impact fees from local agencies and developers

Looking to the near future, there is a revolution occurring in how transportation projects are financed elsewhere. Tried and true revenue approaches, such as gas taxes and bonds, are being supplanted by new and innovative techniques such as time of day tolls, and tolls

based on the weight of vehicles. These new revenue approaches require an integration of technology in the roadway and with user vehicles. For example, the Oregon DOT is now experimenting with chips in vehicles that report on total mileage driven and a mileage fee to the state is deducted automatically when the vehicle is fueled.

The new duty being added does not bestow any further implementation power. DOT&PF is simply being told to "*study alternatives available to finance the transportation system.*" Asking DOT&PF to identify new concepts and opportunities for transportation finance does not usurp or overlap the powers of the Department of Revenue, for DOT&PF is not empowered to act upon these recommendations. As the agency charged with a responsibility for the statewide transportation system, authorizing them to *at least every four years study* the adequacy of the revenue needed to *sustain and improve the system* is reasonable. Should these recommendations move to implementation, the need for outreach and cooperation with Revenue, the Governor's office and Legislature is still essential.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

CSSSSB 16(TRA)
Before House Finance Committee

Prepared by:
Alaska Department of Transportation
and Public Facilities
May 2, 2005

Thank you Co-Chairs Chenault and Meyer:

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.)

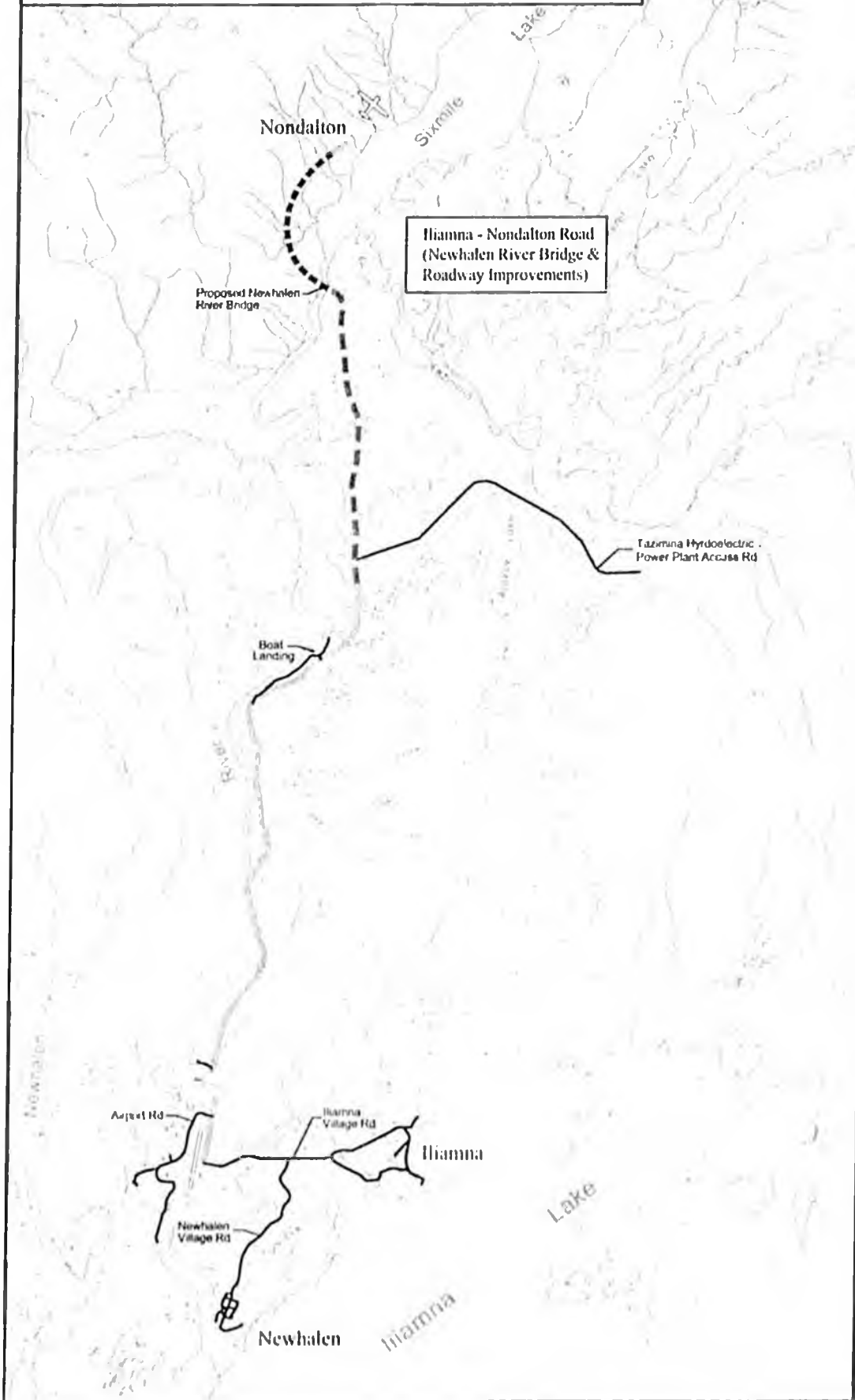
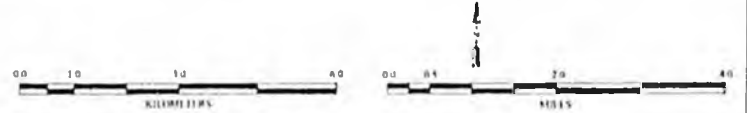
September 30, 2004 - "Southwest Alaska Transportation Plan" was revised. The revision consisted of extracting the Iliamna-Nondalton Road/Bridge project and the Aleknagik/Wood River Bridge project from the Plan baseline and subjecting them to the cost effectiveness methodology used to evaluate the other 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

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





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.

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 illustrate our support and the statewide urgency for this legislation.

Sincerely,



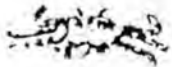
Mike Barton
Commissioner

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

NATIVE VILLAGE OF PORT LIONS
Port Lions Traditional Tribal Council

P.O. Box 69
Port Lions, Ak 99550
Ph: (907) 454-2234
Fx: (907) 454-2434

April 15, 2005



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

Dear Senator Stevens,

I am writing to express the support of CSSSB16 by the Port Lions Traditional Tribal Council. 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.

CSSSB16 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-effective study. While cost-effectiveness is a less demanding type of analysis, less than a formal cost-benefit analysis, it is much more suitable for decisions that are being made 5 to ten 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 CSSSB16 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,

Wayne Lukin
Tribal Transportation Coordinator



cc: Governor Murkowski
Commissioner Barton

ALEUTIANS EAST BOROUGH

SERVING THE COMMUNITIES OF

■ KING COVE ■ SAND POINT ■ AKUTAN ■ COLD BAY ■ FALSE PASS ■ NELSON LAGOON

April 5, 2005

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

Dear Senator Stevens:

I am writing to express Aleutians East Borough's support of 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.

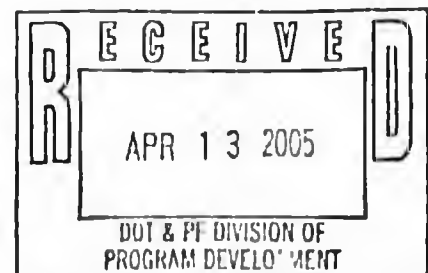
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Additionally, project opponents have used the current language in litigation to halt long planned, locally supported, safety enhancement projects scheduled for construction in rural areas. Enactment of CSSSSB16 would institute a more reasonable standard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

We urge you to pass this important legislation.

Sincerely,


Robert Juettner



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)

CLERK/PLANNER
P.O. BOX 349
SAND POINT, AK 99661
(907) 383-2699
(907) 383-3496 FAX
e-mail: AEBCLERK@aci.com

BOROUGH ADMINISTRATOR
3380 C STREET, SUITE 205
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(907) 274-7555
(907) 276-7569 FAX
e-mail: aebanc@aci.net

FINANCE DIRECTOR
P.O. BOX 49
KING COVE, AK 99612
(907) 497-2588
(907) 497-2386 FAX
e-mail: aebfinance@aci.com



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 State-wide 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.

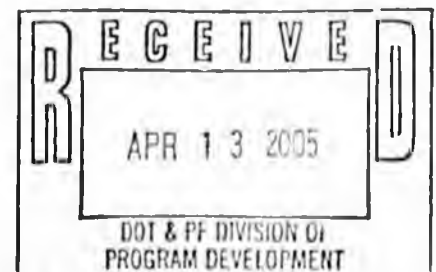
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Additionally, project opponents have used the current language in litigation to halt long planned, locally supported, safety enhancement projects scheduled for construction in rural areas. Enactment of CSSSSB16 would institute a more reasonable standard 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)



Old Harbor Tribal Council

P.O. Box 62, Old Harbor, Alaska 99643
Phone: (907) 286-2215 Fax: (907) 286-2277

April 11, 2005

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

Dear Senator Stevens:

I am writing to express the Old Harbor Tribal Council's support of 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 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.

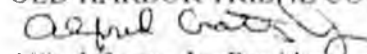
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Additionally, project opponents have used the current language in litigation to halt long planned, locally supported, safety enhancement projects scheduled for construction in rural areas.

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,
OLD HARBOR TRIBAL COUNCIL


Alfred Cratty, Jr., President

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)



Southwest Alaska Municipal Conference

3300 Arctic Boulevard, Suite 203 Anchorage, AK 99503 p: 907.562.7360 f: 907.562.0438 www.swamc.org

Alaska Peninsula
Aleutian Chain
Bristol Bay
Kodiak Island
Pribilof Islands

April 5, 2005

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

Dear Senator Stevens:

On behalf of Southwest Alaska Municipal Conference Board of Directors and Southwest Alaska communities, we are writing to express our support of 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.

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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 Gardner, President
Board of Directors

cc: Governor Frank Murkowski
Commissioner Mike Barton, DOT&PF
Senator Gary Stevens

pc: SWAMC Board of Directors
Jeff Ottesen, Director of Program Development, DOT&PF
Allen Kemplen, Southwest Planner, DOT&PF

April 6, 2005

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

Dear Senator Stevens:

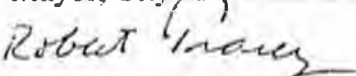
I am writing to express City of Nondalton support of CSSSSB16. This bill will remove a large burden that currently impedes our ability to submit projects to Alaska Department of Transportation and Public Facilities (DOT) for inclusion in the Statewide Transportation Improvement Program. (STIP).

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.

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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,
Robert Tracey
Mayor, City of Nondalton


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)

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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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

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Senator Gary Stevens

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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.

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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.

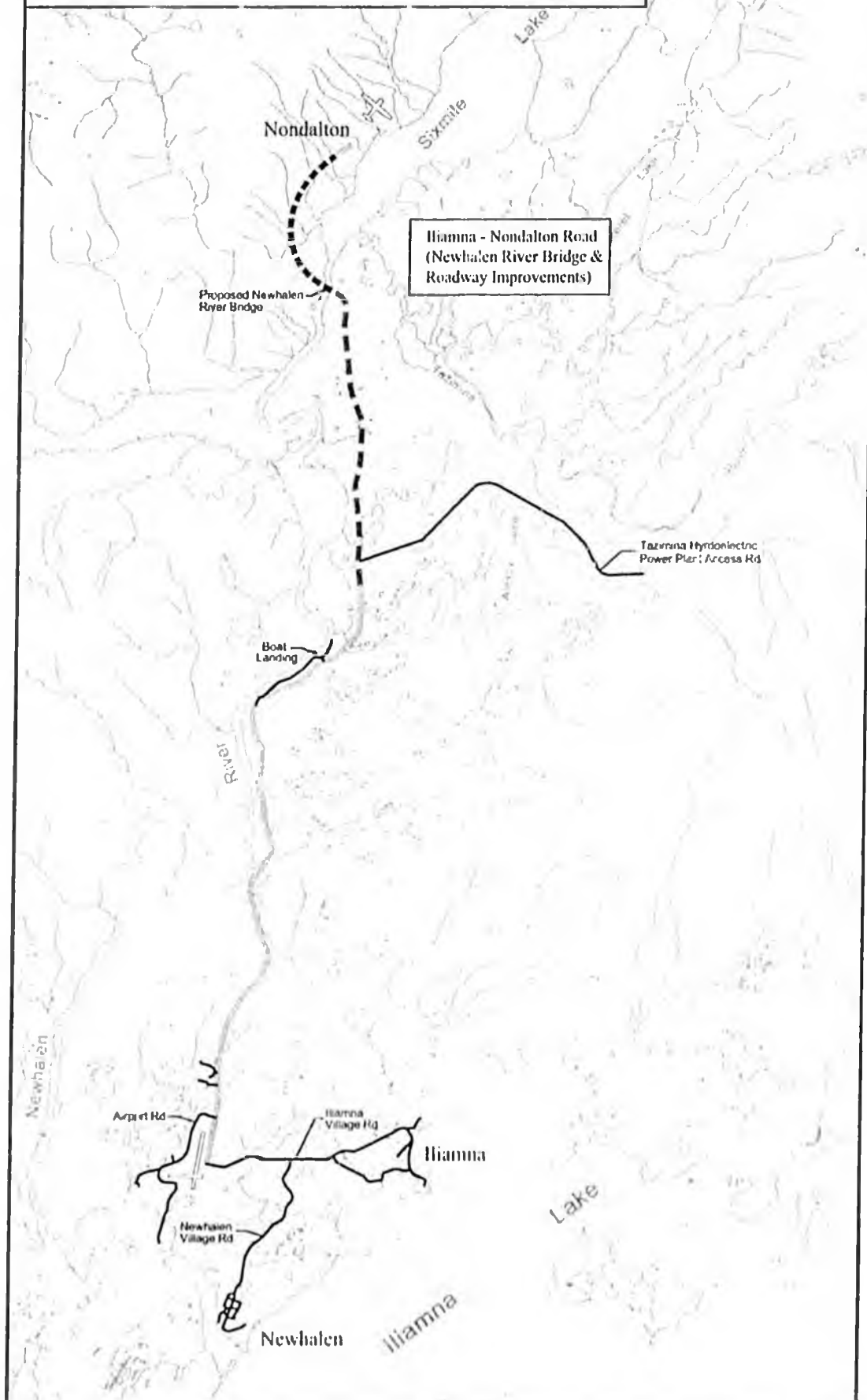
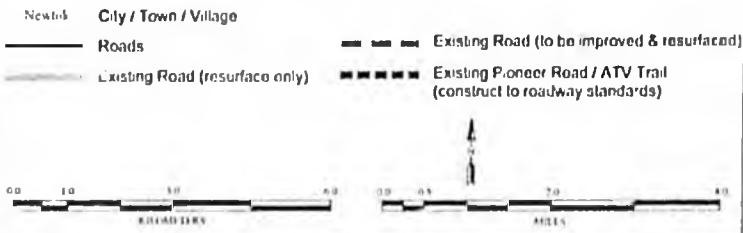
January 5, 2004 – Preliminary injunction granted to Plaintiffs. DOT&PF was ordered to cease any action to construct, contract to construct, or produce final design of the Iliamna–Nondalton road and bridge project until the economic costs of the project are considered in the next revision to the “Southwest 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.

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***Section 1**

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