

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672
11048 HOUSE STATE AFFAIRS

Offered as Amendment #1

adopted 2/3/04

23-LS0477AH.1
Bullock
1/30/04

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE FATE

TO: HB 319

1 Page 3, line 2:

2 Delete "12"

3 Insert "24"

4

5 Page 3, line 5, following "private sale":

6 Insert "under (g) of this section"

7

8 Page 3, lines 9 - 12:

Conceptual - needs clarification

9 Delete all material and insert:

10 "(1) prepare a schedule of land offerings under this section from lands
11 that were not selected by the state for mineral values, except for lands having a proven
12 high mineral potential based on a geophysical survey or geological evaluation
13 completed not more than 15 years before the offering, and identify the parcels for
14 disposal each year; and"

15

16 Page 3, lines 21 - 30:

17 Delete all material and insert:

18 "(g) A person may nominate a parcel for disposal under this section and
19 request a right of first refusal. If the commissioner accepts the nomination of a parcel
20 for disposal, the commissioner may also provide for disposal of additional parcels in
21 the surrounding area, subject to (d)(1) and (f) of this section."

Amendment #2

*Page 3, line
Change "2 1/2 acres" to "5 acres"*

adopted 2/3/04

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB319-DNR-LSME-1-28-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title Remote Rec Cabin Site Sales/ RDU Resource Development
Lottery Sale Component Land Sales/Municipal Entitlements
 Sponsor Rep. Fate
 Requester (H) STA Component No. 2456

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	368.0	368.0	368.0	368.0	368.0	368.0
Travel	20.0	20.0	20.0	20.0	20.0	20.0
Contractual	30.0	30.0	30.0	30.0	30.0	30.0
Supplies	15.0	15.0	15.0	15.0	15.0	15.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	433.0	433.0	433.0	433.0	433.0	433.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1153)					82.6	112.8
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	433.0	433.0	433.0	433.0	350.4	320.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (1153 Land Disp Income Fund)					82.6	112.8
TOTAL	433.0	433.0	433.0	433.0	433.0	433.0

Estimate of any current year (FY2004) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	6	6	6	6	6	6
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill establishes a new land disposal program within AS 38.05.600. It leaves the existing Remote Recreational Cabin Program under that statute in place. This fiscal note analyzes the impacts of the proposed program.

 The new program would have DNR negotiate private, non-competitive sales. (This is a significant change from the existing policy of only public, competitive land sales.) It also adds a maximum size restriction of 2.5 acres and establishes other guidelines regarding parcel locations.

Prepared by: Nancy Welch, Special Assistant to the Commissioner Phone 907-269-8431
 Division Commissioner's Office Date/Time 1/28/04
 Approved by: Thomas Irwin, Commissioner Date 1/28/04
 Agency Natural Resources

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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Full-time	6	6	6	6	6	6
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ANALYSIS: (Attach a separate page if necessary)

This bill establishes a new land disposal program within AS 38.05.600. It leaves the existing Remote Recreational Cabin Program under that statute in place. This fiscal note analyzes the impacts of the proposed program.

The new program would have DNR negotiate private, non-competitive sales. (This is a significant change from the existing policy of only public, competitive land sales.) It also adds a maximum size restriction of 2.5 acres and establishes other guidelines regarding parcel locations.

Prepared by: Nancy Welch, Special Assistant to the Commissioner
 Division: Commissioner's Office
 Approved by: Thomas Irwin, Commissioner
 Agency: Natural Resources

Phone 907-269-8431
 Date/Time 1/28/04
 Date 1/28/04

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB319-DNR-LSME-1-28-04

ANALYSIS CONTINUATION

Assumptions. The fiscal note assumes that DNR would process 150 applications under the new program which is established in Section 4(g) of the bill whereby DNR must approve parcels nominated by individuals. (If more than 150 individuals apply, a backlog would be established or more staff would be needed.)

The bill does not eliminate the existing program. Thus, the fiscal note also assumes that the existing program continues at its current level. If the program established in Section 4(g) is meant to replace the existing program, the cost and revenues provided in this fiscal note would change. The Department is currently preparing an estimate of the fiscal effect of eliminating the costs and revenues of the existing program.

The New Program. Section 4(g) of the bill would require individual processing for 2.5-acre parcels in locations throughout the state chosen by the applicant. This bill proposes that a member of the public can nominate a specific site and, if the person can demonstrate past recreational or mining use, DNR would be required to offer that site to that individual without competition. DNR would complete the processing: title search, appraisal review, best interest finding, easement decisions, etc. for that individual. This process would be repeated for each individual parcel.

Cost for Section 4(g). The new aspect of the program, Section 4(g), requires individual processing. For example, under the existing program, 150 parcels can be reviewed in six batches, combining survey reviews, appraisal reviews, best interest findings, and title searches. Section 4(g) would require 150 separate survey reviews, appraisal reviews, best interest findings, etc.

DNR estimates that this portion of the program will require the following staff: .

1 Appraiser II - @\$66.0 = \$66.0
1 NRS II - @\$58.0 = \$58.0
2 NRS I - @\$52.0/each = \$104.0
1 NRS I (part-time) - @\$26.0 = \$26.0
1 Land Survey Assistant II - @\$58.0 = \$58.0
1 Cartographer II - @\$56.0 = \$56.0

Revenues. Revenue generated under this bill would be a function of parcel size, per-acre price, number of parcels sold, and scheduling assumptions as outlined below.

Parcel Size. This bill proposes to decrease the maximum size to 2.5 acres. Under the current program, applicants choose the size of their parcel. The average size chosen under the current program is approximately 13.6 acres. (The minimum size is 5 to 10 acres depending on the area. Minimum size is established to comply with local platting board or waste disposal requirements. Maximum parcel size is 20 acres).

Parcel Price. Remote land in Alaska is inexpensive. The selling price for remote recreation cabin parcels staked in FY 01 and FY 02 is estimated to average \$620/acre. Small parcels sell for less than larger parcels, though the per-acre price is higher. Currently, the average size Alaskans chose to stake is 13.6 acres. Department appraisers estimate that all else being equal the per-acre price ratio between a 13-acre parcel and a 2.5 acre parcel is 1.9. Therefore, this fiscal note assumes that a 2.5-acre parcel will bring in \$1,180 per acre (= \$620/acre x 1.9). That is, each parcel brings in \$2,950 to the Department (= \$1,180/acre x 2.5 acres).

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB319-DNR-LSME-1-28-04

ANALYSIS CONTINUATION

Purchase Rate. In the current program, only 43% of people issued staking authorizations go on to purchase their parcels. The remainder decide not to continue somewhere during the process. The Department is working to bring up the purchase rate. However, this rate is actually greater than similar historical programs. The Department's homestead/homesite programs allowed people to gain ownership through either purchase or prove-up. Only 33% of the people who initially sought parcels followed through to ownership: two-thirds dropped out. It is possible that those who apply in the program proposed by this bill will have a higher purchase rate than past programs. However, individuals do not understand the major cost in time and money until they try to hire a surveyor and appraiser, and so the purchase rate may actually be lower. This fiscal note assumes a 66% purchase rate or 100 parcels per year.

Financing. The bill assumes current practice for financing: approximately 20% of applicants purchase outright and 80% finance their purchase over 10 years. The current interest rate is 7%.

Schedule. Section 3 of the bill does not change DNR's existing survey and appraisal practice but requires that both be completed within one year. Currently, the Department contracts with private surveyors on behalf of the individuals and is able to complete the survey and appraisal process within two years. Our experience is that individuals who are unfamiliar with surveyors and appraisers take far longer. Thus, the Department believes that the minimum time for the process is two years: one for summer for survey (survey instruction from DNR, survey by a private contractor, then review by DNR), and a second for appraisal (instructions from DNR, appraisal by a private contractor, then review by DNR). Therefore, the minimum schedule is as follows: FY 05 to prepare the regulations and information for the public. The first applications could occur in FY 06 with one year for DNR processing (title search, best interest finding, public notice, etc.). Survey could occur in FY 07; appraisal in FY 08, and revenue would begin when parcels are purchased in FY 09.

Summary. In summary, total value sold will be \$295,000 (100 parcels x \$2,950 per parcel). Of that amount \$82,600 will be paid the first year (\$59,000 through full purchase plus \$23,600 downpayment on the remainder). An additional \$30,240 will be paid each year through the following 10 years as individuals pay off the parcels. Therefore, the first year of revenue will occur in FY 09 and will be \$82,600. In FY 10, revenue will be \$112,840 (= \$82,600 + \$30,240).

Technical Issues. This bill *does not* repeal the current program: Section 4(f) appears to provide that it continues. Therefore, this fiscal analysis assumes the existing program continue at its present level. However, the bill would put the current program out of compliance with the law. To maintain the current program, Sections 4(e) and (h) should apply only to the new program: that outlined in Section 4(g).

If the new program *does* replace the existing program, the required additional cost would be somewhat less than outlined in this fiscal note as current staff could implement the new program (with some additions). However, total revenue to the state would be much less than indicated in the fiscal note, as the existing program is a much more cost-efficient and revenue-efficient method to offer lands to Alaska. The Department is currently preparing this financial information, and it should be available within the next week.

Also, the bill mandates that survey and appraisal is completed in one year. As outlined above, many years of experience with this issue shows a one-year schedule to be almost impossible. A more realistic expectation is 2 to 5 years. Based on DNR's current practice, the minimum time to accomplish these tasks is two years: one for survey and one for appraisal. Therefore, the requirement in Section 3 (line 2 of page 3) should be removed.

Representative
HUGH "BUD" FATE
Finance Committee

Energy Council- Executive Committee
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Alaska State Legislature



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House District 7

House of Representatives Sponsor Statement

HB 319

"An Act relating to the disposal of state land by lottery; and relating to the disposal, including sale or lease, of remote recreational cabin sites."

HB 319 is legislation to help move Alaska State land into the hands of private individuals. Presently, Alaska holds thousands of acres of remote area land that is generating no revenue for the state or local nearby governments.

By leasing or selling remote cabin sites, individuals will hold the surface rights to those lands. The initial cost will be minimal to residents through public or private sales. They will incur the costs of a survey and appraisal and must meet the requirements of statute regarding improvements.

Since the majority of the sites are remote, the means of access could result in the purchase of off road equipment, and in some cases boats and motors. Once improvements begin, the new landowner will be purchasing building materials, fuel and other necessities to make the cabin as comfortable as possible. The economic trickle down effect could be huge as it will also be felt in the real estate market.

HB 319 makes good economic sense for state government, local government, Alaska businesses and Alaskans. Just about every Alaskan wants that remote cabin, a place to escape, to hunt and fish or simply enjoy a mini-vacation. HB 319 will expand the opportunity to make that dream happen.

AS 38.05.600. Remote recreational cabin sites.

(a) The commissioner may provide for the sale or lease of state land for remote recreational cabin sites. Sales under this section shall be at fair market value determined as of the time of entry, and the purchaser shall reimburse the state for the appraisal, survey, and platting costs for the recreational cabin site.

(b) The annual fee for a remote recreational cabin site lease shall be set by the commissioner so as to ensure that the state receives a fair return for the use granted by the lease for the term of the lease. The commissioner shall establish regulations that specify the application procedures for and the terms and conditions of a remote recreational cabin site lease. A lease must be for a term of not more than five years, and may be renewed for one additional five-year period. At any time during the lease, the lessee may purchase the remote recreational cabin site by having the site appraised and surveyed in a manner acceptable to the department and by paying to the state the fair market value for the site determined as of the time of entry. The lease may not be assigned by the original lessee during the term of the lease.

(c) A remote recreational cabin site lease may be terminated by the commissioner before the expiration of the term of the lease if a lessee fails to use the land under lease in the manner required by the terms of the lease. After termination of a remote recreational cabin site lease, improvements or personal property on the land subject to the lease shall be managed in the same manner as required by AS 38.05.090 .

AS 38.05.090. Removal or reversion of improvements upon termination of leases.

(a) Unless otherwise agreed to in writing by the commissioner, a lessee shall remove from a former leasehold

(1) all personal property, including above-ground tanks, transportable buildings, equipment, machinery, tools, and other goods, not belonging to the state, within 30 days after termination of the lease; and

(2) all buildings and fixtures, including gravel pads, and below-ground tanks, foundations, and slabs, not belonging to the state, within 60 days after termination of the lease.

(b) Unless otherwise agreed to in writing by the commissioner, the lessee shall restore the leasehold to a good and marketable condition, acceptable to the commissioner, within 120 days after termination of the lease.

(c) If the lessee does not remove personal property, buildings, and fixtures as required within the time specified under (a) of this section, title to the personal property, buildings, and fixtures that remain automatically vests in the state unless the commissioner elects to remove and dispose of the remaining personal property, buildings, and fixtures of the lessee. The commissioner may assess upon the lessee the cost of removing and disposing of personal property, buildings, and fixtures remaining upon the land.

Reference Statute Language in HB 319

(d) If the lessee does not restore the land within the time period specified under (b) of this section, the commissioner may have the land restored and assess the costs upon the lessee.

(e) As part of a lease agreement, and in order to protect the public interest, the commissioner may require terms for removal or reversion of improvements additional to those specified in (a) - (d) of this section.

(f) Private residential improvements of a lessee that have become fixtures of the land and that are not removed by that lessee upon termination of the lease shall be purchased by the subsequent purchaser of the land if the improvements were authorized in the former lease or by permit from the director and if they have a net value of more than \$10,000. The net value is the value of the improvements as determined by an appraisal approved by the commissioner, less all rents due the department, all costs of restoration under (d) of this section, and all department expenses estimated to be incurred in making the sale. After termination of the former lessee's lease, and at additional times as determined necessary by the commissioner, the value of the authorized residential fixtures shall be determined by an independent appraisal made at the cost of the former lessee. A notice or offer by the state to sell formerly leased land under this subsection must state (1) the appraised value of authorized residential fixtures remaining on the land that must be purchased, and (2) that that cost is included in the purchase price. Out of the proceeds of the sale, the department shall pay to the former lessee the appraised value of the residential improvements, less all rents due the department, all costs of restoration due the department under (d) of this section, and all department expenses incurred in making the sale.

(g) Personal property described in (c) of this section is not subject to AS 34.45 (Uniform Unclaimed Property Act).

AS 38.05.127. Access to navigable or public water.

(a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the commissioner shall,

(1) determine if the body of water or waterway is navigable water, public water, or neither;

(2) upon finding that the body of water or waterway is navigable or public water, provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or limiting access is necessary for other beneficial uses or public purposes.

(b) The department shall adopt regulations implementing this section.

(c) Nothing in this section affects valid existing rights or limits in any way the constitutional right of the public to use and have free access to the navigable or public waters of the state.

(d) Upon application by a municipality or an affected owner of land, the department may vacate, release, modify, or relocate an easement and right-of-way for public access to or along navigable or public waters reserved by the department in a patent issued under AS 29.65 or former AS 29.18, if the commissioner determines the action is consistent with the public interest.

(e) The establishment of easements or rights-of-way for oil and gas and mineral leases under (a) of this section need not be made until the leases are ready to be developed.

(f) Rights-of-way or easements to waterways established under (a)(2) of this section shall be established approximately once each mile unless the commissioner makes a written finding that regulating or limiting access is necessary for other beneficial uses or public purposes.

(g) The commissioner may exchange land under AS 38.50 to create access to public water of the state.

Sec. 38.05.128. Obstructions to navigable water.

(a) A person may not obstruct or interfere with the free passage or use by a person of any navigable water unless the obstruction or interference is

(1) authorized by a federal agency and a state agency;

(2) authorized under a federal or state law or permit;

(3) exempt under 33 U.S.C. 1344(f) (Clean Water Act);

(4) caused by the normal operation of freight barging that is otherwise consistent with law;

or

(5) authorized by the commissioner after reasonable public notice.

(b) An unauthorized obstruction or interference is a public nuisance and is subject to abatement. The cost of abatement shall be borne by the violator and is in addition to any penalty imposed by the court.

(c) This section may not be construed to affect or abridge valid existing rights.

(d) Free passage or use of any navigable water includes the right to use land below the ordinary high water mark to the extent reasonably necessary to use the navigable water consistent with the public trust.

(e) Free passage or use of any navigable water includes the right to enter adjacent land above the ordinary high water mark as necessary to portage around obstacles or obstructions to travel on the water, provided

(1) entry is made without injury or damage to the land;

(2) entry is made in the least obtrusive manner possible;

(3) there is no reasonable alternative available to avoid the use of the adjacent land above the ordinary high water mark; and

(4) the navigable water is reentered immediately below the obstacle or obstruction at the nearest point where it is safe to do so.

(f) A violation of (e) of this section is a class B misdemeanor.

Emailed letter from Alaska Miners Association, Inc. – Steven C. Borrell, P.E. Executive Director – received 2/16/04

February 16, 2004

Honorable Bud Fate
Alaska State House of Representative
Capitol Building
Juneau, AK 99801

RE: House Bill 319, Disposal of State Land

Dear Representative Fate,

Thank you for the opportunity to comment on this bill. We have reviewed what we understand to be the latest version of House Bill 319 after some changes were made in the State Affairs Committee, as well as some proposed amendments that have not yet been addressed by the Committee.

Given that some parts of the bill have been changed and other changes are pending, we have concluded it would be best for our comments to address only Sec. 4 of the bill at this time. We will then review the bill again when we can review the entire bill with all changes in place.

In Sec. 4. we recommend that the new AS 38.05.600(d)(1) read as follows:

(1) prepare a schedule of land offerings under this section from lands that were not selected by the state for hard mineral potential and from lands having low mineral potential, as defined in regulation based on a geophysical survey and a geologic evaluation completed not more than 15 years before the offering for disposal; and

There are two important parts to this statement that warrant comment. First, it would not be appropriate to sell state land that was specifically selected for its hard mineral potential. These lands have the greatest opportunity to contain valuable mineral deposits of hardrock minerals. However, even though a buyer would only be purchasing the surface estate, such surface owners would become an encumbrance that could adversely affect the ability to develop the state's underlying minerals. This is precisely the situation today regarding coalbed methane where surface owners are opposing the very simple and unobtrusive production of shallow gas.

The second point is that both a geophysical survey and a geologic evaluation are needed to effectively determine the detailed mineral potential of a specific area. Given that geophysical technology continues to improve, it is important that relatively modern surveys are utilized without the requirement for a survey immediately before a land offering. It is necessary to specify a geologic evaluation because some types of mineral deposits are not identifiable with geophysics and the geologic evaluation pulls together all the available information.

We also wish to reiterate the need for an addition to this bill that would change an existing statute. This only involves cabins and facilities that were **on federal mining claims at the time of Statehood**. These facilities were allowed under federal law in effect at the time of Statehood but when the land was transferred to the State, the facilities often did not meet the requirements of State law. Even though the owner may have spent thousands dollars constructing the facilities and used them for decades, the only alternative under State law in many instances is for the owner to remove or destroy the facilities. We recommend a minor change to existing statute be added to HB-319 to address this issue with the following change to AS 38.05.035(b)(5):

AS 38.05.035. POWERS AND DUTIES OF THE DIRECTOR.

(b) The Director may

(5) when the director determines it is in the best interest of the state and will avoid injustice to a person or the heirs or devisees of a person, dispose of land, by direct negotiation to that person who presently uses and who used and made improvements to that land before January 3, 1959, or to the heirs or devisees of the person; the amount paid for the land shall be its fair market value on the date that the person first entered the land, as determined by the director; a parcel of land disposed of under this paragraph shall be of a size consistent with the person's prior use, but may not exceed ten [five] acres;

Thank you for the opportunity to comment on this bill.

Sincerely,

original signed

Steven C. Borell, P.E.
Executive Director

cc: Representative Bruce Weyhrauch

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ALASKA MINERS ASSOCIATION, INC.

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January 23, 2004

Honorable Bud Fate
Alaska State House of Representative
Capitol Building
Juneau, AK 99801

RE: House Bill 319, Disposal of State Land

Dear Representative Fate,

Thank you for the opportunity to comment on this bill. We appreciate the intent of this bill and support private ownership of lands when it is not likely to adversely impact potential mining or other resource development projects. We have now reviewed House Bill 319 in detail and have identified some recommended changes.

To address these items we recommend the changes below with new material underlined by id and material to be removed [~~bracketed bold~~].

The first change is in Sec.4, which adds a new section to AS 38.05.600.(d). The reference to geophysical surveys is appropriate but some deposit types cannot be identified by geophysical alone but rather require other geologic work. We recommend the following addition:

"(d)(1) prepare a schedule of land offerings under this section from lands that were not selected by the state for mineral values and lands having a low mineral potential based on a geophysical survey and geologic evaluation completed not more than 15 years before the offering..."

The next area is in subsection (g) where we recommend two changes. The first involves obtaining land adjacent to a mining claim. If the remainder of this bill becomes law, inclusion of this reference is not needed for a person to obtain land adjacent to a mining claim. So long as the parcel meets the tests defined elsewhere in the bill, this reference to a mining claim is not needed. In this situation, mining claims would become a form of "preference right" for land sales. We cannot support this. We therefore recommend the following changes:

"(g) A person may nominate a parcel for disposal under this section. ~~[If the person provides an affidavit to the commissioner showing at least three consecutive years of recreational use, other than merely transiting over the parcel by any means, of the parcel by the person, or that the person has held the area under a mining claim, as shown through not less than five consecutive years of production royalty reports or affidavits of annual labor to the state, on claims that are contiguous to the parcel, before offering the parcel for disposal to the public, the commissioner shall offer the parcel to the person nominating the parcel for disposal.]~~ If the commissioner supports ~~[accepts]~~ the nomination of a parcel for disposal, the commissioner may also provide for disposal of

additional parcels in the surrounding area, subject to (d)(1) and (f) of this section.'

There another situation where we believe an addition is needed. This involves facilities that were on federal mining claims at the time of Statehood and the land subsequently becomes State land. These facilities were allowed under the federal mining laws that were in effect at the time of Statehood but when the land was transferred to the State, the facilities often did not meet the requirements of State law. Even though the owner may have spent thousands dollars constructing the facilities and used them for decades, the only alternative under State law in many instances was for the owner to destroy or remove the facilities. We recommend a minor change to existing statute be added to HB-319 to address this issue with the following change to AS 38.05.035(b)(5)

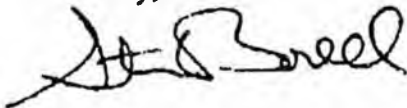
AS 38.05.035. POWERS AND DUTIES OF THE DIRECTOR.

(b) The Director may

(5) when the director determines it is in the best interest of the state and will avoid injustice to a person or the heirs or devisees of a person, dispose of land, by direct negotiation to that person who presently uses and who used and made improvements to that land before January 3, 1959, or to the heirs or devisees of the person; the amount paid for the land shall be its fair market value on the date that the person first entered the land, as determined by the director; a parcel of land disposed of under this paragraph shall be of a size consistent with the person's prior use, but may not exceed ten [five] acres, except where the land involves an airstrip in which case the area may not exceed twenty-five acres.

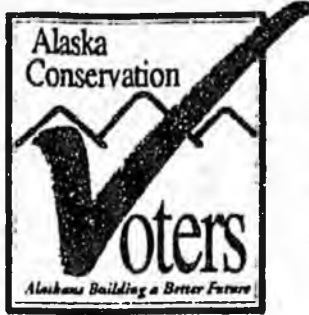
Thank you for the opportunity to comment on this bill.

Sincerely,



Steven C. Borell, P.E.
Executive Director

cc. Representative Kelly Wolf
Representative Nancy Dahlstrom



HB 319 House State Affairs

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To: Members of the House State Affairs Committee
From: Matt Davidson, Legislative Director for the Alaska Conservation Voters
Date: February 2, 2004
Subject: HB 319

HB 319 establishes a new land disposal program within the Department of Natural Resources (DNR) that allows state residents the exclusive right to purchase state lands which they have three consecutive years of prior recreational use. HB 319 is very similar to HB 233, considered in the 22nd Legislature. During testimony on HB 233 (22nd), the Department of Natural Resources enumerated many concerns with the legislation. Given these and other problems with HB 319, this bill should not move from the House State Affairs Committee.

HB 319 Gives Exclusive Purchase Rights

The proposed program strays from all existing land sale programs by giving individuals the exclusive right to purchase state resources. The vast majority of existing state land sales are currently made through either an auction and/or lottery systems. (Sect 3. (a))

HB 319 Encourages Trespass

The program would encourage people to build illegal cabins and other structures to help demonstrate their use of the land, thereby qualifying for the program. (Sect 4. (g))

HB 319 Allows Misuse of Mining Claims

The existing mining law has a well established criterion for the legitimate granting of title to holders of mining claims. The program described in HB 319 (Sect 4. (g)) undercuts the current program and could make mining claims a backdoor to gain land not available to all Alaskans.

HB 319 Invites Conflict between Potential Owners, Users

HB 319 doesn't contain a mechanism to deal with conflicts between potential owners and other users of individual recreational lands. Under the bill, DNR will give a preference to the first applicant who establishes recreational use. It is not difficult to imagine a scenario where one user with three annual trips to a prime recreational location would beat out another potential owner with 30 years of use of the same parcel or a business who has a state permit to use the parcel. HB 319 contains no direction of how to settle conflict between potential owners, users.

HB 319 Is Costly/Cumbersome to the State of Alaska

The self selection provision outlined in HB 319 will result in individuals applying for isolated and scattered parcels. Under the current state land sale program, DNR groups parcels and offers them as well planned clusters. The program requires one title check, one best-interest finding and so on, proving to be more efficient than the proposed exclusive-right program.

Alaskans building a better future.

HB 319 Adversely Effects Wildlife

Fish and game resources are easily over harvested following the settlement of formerly wild lands and waters. Wildlife which attracts private development will soon be depleted with more continuous pressure to the detriment of occasional campers and private landowners alike.

HB 319 Fails to Recognize Expense and Threat of Forest Fires

HB 319 furthers the issue of increased and continuing costs of protecting scattered private cabins from forest fires. The bill adds to the burden of firefighting costs where fires are now simply monitored, but not fought.

HB 319 Conflicts with Municipality Acreage Requirements

As stated by DNR, 10 acres is what is generally considered the minimum size for onsite sewage disposal. The proposed program violates municipal platting rules in the Fairbanks North Star Borough and Kodiak Borough.

HB 319 Consents to Selling Land for Less than Market Value

The proposal program does not guarantee the state a good return on the sale of prime state land. In fact, Line 7 of Sec.1 states the commissioner may sell land by lottery for less than fair market value of the land on a determination that scarcity of land available in the area makes the market value unrealistic.

Representative
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Finance Committee
Energy Council-Executive Committee
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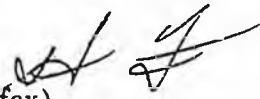
Alaska State Legislature



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House District 7

House of Representatives

Memorandum

To: House State Affairs Committee
Fm: Representative Hugh Fate 
Cc: Alaska Conservation Voters (via fax)
Date: February 3, 2004
Re: Alaska Conservation Voters Memo on HB 319 & Proven High Mineral

As requested by the Committee I would like to take this opportunity to response to Alaska Conservation Voters Memo on HB 319, submitted by Matt Davidson, Legislative Director on February 2, 2004.

The H version of HB 319 is language that existed in CS for HB 232 (RES) and served as a starting point based on discussions and amendments from the 22nd Alaska Legislature. I felt that this offered a better starting point for this legislature as some of the concerns had already been answered and resolved.

As the Memo was written prior to the amendments adopted as the CS for State Affairs I believe that the issues of, or at least a definition of, Exclusive Purchase Rights, Trespass, and Misuse of Mining Claims have been addressed.

Under the reference and scenario Invites Conflict: to a certain extent that concern has also been addressed in the amendment "...and request a right of first refusal." Since it is only a request, should the scenario conflict arise, the decision will be up to the Commissioner of DNR for resolution. Business issues are already addressed in statute:

AS 38.05.035 Powers and duties of the director states:

(f) **The director shall grant a preference right** to the purchase or lease **without competitive bid** of up to five acres of state land to an individual who has erected a building on the land and used the land for **bona fide business purposes** for five or more years under a federal permit or without the need for a permit and, after selection by the state, under a state use permit or lease, if the business

produced no less than 25 percent of the total income of the applicant for the five years preceding the application to purchase or lease the land. The director shall sell or lease the land at a price determined by the director to represent the current fair market value of the unimproved land but in no event less than the cost of administration including survey if required. If the director determines in a written finding that the purchase or lease of the land would interfere with public use by residents of the area, the director may condition the purchase or lease to mitigate the adverse effects on the public use or may reject the application for the preference right. A lease granted under this subsection may not be for a period in excess of 50 years. In this subsection, "business purposes" means a purpose permitted under the classification of the land at the time the land was entered. (emphasis added)

Costly and Cumbersome to the State of Alaska

As the Fiscal note indicates, an annual cost of \$433,000. I concur that those numbers are very close to reality. What the fiscal note does not address, in part because it was generated prior to the proposed amendments, are the advantages to, and therefore the increase in interest of these remote cabin sites. Presently, the Department offers land through the lottery, auction or over the counter sale. Much of the land currently being offered is either extremely remote with very limited access, or has inherent problems to topography to include wetlands. HB 319 will change that by allowing the public to identify sites that are preferred, and are of a more practical and economical size. This preference process will assist the Department by letting them know what people want. As indicated in the fiscal note, the price per acre will increase because of a simple supply and demand scenario meaning the land will have a higher value, conservatively between \$1,000 and \$1,500 per acre or \$5,000 to \$7,500 per site. I believe that once this program is in place the annual statewide demand could exceed 1,000 sites with a higher percentage of sites actually staked. Also because of a better quality of land, there will be a decrease in defaults. Essentially, the income for the state will far exceed the costs. I have attached some scenarios for your consideration.

Adversely Effects Wildlife

The wildlife impact is negligible as the five-acre site, combined with buffer zones both in existing statutes and this bill will eliminate an urban type private development situation. Under private ownership, people traditionally treat the wildlife on their property with more, not less respect. In many cases occasional campers are not necessarily the best stewards of the land they use, leaving signs of their visit behind or are there for the specific reason of hunting and fishing.

Expense and Threat of Forest Fires

The current policy of protecting remote cabins from forest fires is to say the least a nice gesture on behalf of firefighters, when in fact there is no requirement to do so.

AS 38.04.010 Public interest in making land available for private use.

(b) State land that is located beyond the range of existing schools and other necessary public services, or that is located where development of sources of employment is improbable, may be made **available for seasonal recreational purposes or for low density settlement**. The seasonal recreation use or low-density settlement shall have sufficient separation between residences so that **public services will not be necessary or expected**. The availability of timber, firewood, and water resources shall be considered in determining separation between residences. By considering the availability of timber, firewood, and water under this subsection or in making any disposal decision, the state does not by virtue of that consideration imply any right of the person receiving the disposal to an exclusive or other right to the timber, firewood, or water, that the state will not make any other disposals in the area, or that any disposals made will be limited in type or any other manner.
(emphasis added)

Again I would suggest that occasional campers with open fires pose a more serious threat of wildfire, as they have no vested interest in the land nor do they have a permanent type structure to protect.

Conflicts with Municipality acreage

Rules and regulations restricting the size of borough land sites within a borough are applicable on borough owned land. The state presently owns millions of acres that are not within an organized borough. Eventual determination of borough issues should be left in the hands of the land experts on both sides. Should a borough chose to lose the potential property tax base, then that decision is and should be up to the local assembly.

Consents to Selling Land for less than market value

This is language already in existing language and is only referenced in this bill to increase the amount of deposit from five to 10 percent. I believe the increased deposit will serve to impede the default rate. I also reference the definition of Fair Market Value

AS 38.04.910. Definitions.

(3) "fair market value" means the price at which a willing seller and a willing buyer will trade;

Finally on what we are referencing as Amendment # 3- Page 3 line 9-12

We propose a simple solution that addresses two issues presented by the committee.

Line 10 on the H version Line 11 on the Amendment H.1 [~~delete bracketed language~~]

...for mineral values[, except for lands having a proven high mineral potent'ial] based on geophysical survey....

Thank you for the opportunity to respond to this memo. I look forward to continuing discussion on HB 319 as I feel this is an important economic bill that will bring the Alaska dream to many of our residents who will become better stewards of the land they own than the state.

Attachments

HB 319 Revenue Assumptions

I. FINANCIAL ASSUMPTIONS

- 1) 2500 Ready Applicants
 - 2) 1000 Ready Willing Buyer
 - A) Three (3) Categories of Buyers:
 - o 20 % 100% Cash Purchase/ 0 Financed
 - o 20 % 25% Down/50% Financed
 - o 60 % 10% Down/90 % Financed
 - 3) Average Price: \$ 1,000/acre
 - 4) Investments
 - A) 5% Annual Yield
 - 5) Financing
 - A) 6% Annual Percentage Rate (Prime +2% on loans)
 - B) 10% Down Payment
 - C) 60 Month Term
-

II. PARCEL ASSUMPTIONS

- 1) Desirable Remote Parcels:
 - a. River Frontage
 - b. Ocean Frontage
 - c. Lakeshore Frontage
 - d. Highway Frontage
 - e. View Properties

- 2) Land Characteristics
 - a. Fee Simple Ownership
 - b. 5.0 acres Parcels/Subdividable into (4) 1.25 acre lots
 - c. Some Ground Trans Access (snowmobile, 4-wheeler, boat, vehicle)
 - d. Contracts for Sale/Lease option to purchase
 - e. No State of Alaska Fire Protection
 - f. No State of Alaska "Trail construction or maintenance.

- 3) Purchasers bears ALL cost of acquiring Fee Simple Title
 - o Appraisals
 - o Surveys
 - o Title Insurance
 - o Recording Costs
 - o Legal Expenses (documentation)

- 4) Purchaser will pay for all site improvements:
 - a. Roads and trail access construction/maintenance
 - b. Structures/Buildings
 - c. Materials/Supplies
 - d. Real Estate Improvements (wells, septic, power, etc.)

- 5) The land purchase has Value Added Benefits:
 - a. Labor/Construction
 - b. Materials purchases
 - c. Fuel/energy consumption
 - d. Future Real estate transactions(Resale/subdivision)

III. NARRATIVE DESCRIPTION

The applicant pays for ALL related expenses of the purchase transaction. They then survey, appraise and purchase the parcel. Because HB 319 opens such large areas, there will be considerable public interest regarding what land is available. There will be some conflicting claims to parcels, specifically where Native Allotments have priority. These parcels can be purchased on a 5 year "lease option" until 2009 when all selections are completed by Native corporations.

Access concerns will be borne by the purchaser. DNR will not be expected to develop or maintain access routes. This new program will place considerable demands on DNR to provide information, particularly through the DNR public information offices in Anchorage, Fairbanks, and Juneau.

DNR will need to provide the public with accurate land status information for millions of acres of state land so the public knows what land is available, including the location of existing third-party interests, mining locations, Mental Health Trust Land, Native allotment locations, and trail and access information.

Specific tasks include:

- 1) DNR develops regulations to implement this disposal of land, establish qualifications, methods for resolving conflicting claims, etc.
- 2) DNR identifies land available for entry under this program-from state and federal status plats based upon state ownership, land classifications, municipal entitlements, existing private lands, Native allotments, etc. They would need to make available existing maps of several million acres available for selection.
 - a. Produce additional maps from existing supply.
 - b. Print and distribute maps
- 3) Purchaser stakes parcel, orders and pays for: survey, appraisal, recordation and documentation.
- 4) DNR approves a list of qualified appraisors and surveyors acceptable to the State of Alaska. That list will be provided to the purchasers to choose these services. Since these individuals are already approved by DNR, a review of their work will not be necessary. Appraisals and surveys will not be accepted by the State of Alaska from any individual who has not be qualified and accepted by the State of Alaska.

FY04 and following years- staking period opens-assume staking and filing period starts summer 2004 and continues indefinitely. (1) Staff positions for Public Information Office and (1) staff position to keep land status maps current; Cartographer (Anchorage), (2) staff positions to review and process applications (Fairbanks), (1) staff position for Public Information Office in Juneau, (1) staff position to issue deeds and conduct related title searches.

- 1) DNR Public Information Office staff to field program inquiries
- 2) DNR accepts applications, certifies they qualify.
- 3) DNR reviews and approves applications and land available for selection.
- 4) DNR issues title documents

The purchaser performs the remaining functions and pays for the cost of implementation and acquisition of fee simple title.

2004
COMPARABLE SALES
(Average price/acre: Remote Parcels)

I. VERY REMOTE PARCELS (fly in only)			
a. Twin Lakes (Brooks Range)			
40 acres @ \$40,000	=		\$ 1,000/acre
b. Novy River "swampy" (Nuwitna)			
80 acres @ \$75,000	=		\$ 937/acre
c. Sand Lake "swampy" (Tok)			
50 acres @ 65,000	=		\$ 1,300/acre
II. REMOTE PARCELS (limited access)			
a. Clear, Ak			
70 acres @ \$45,000	=		\$ 642/acre
b. East Twin/West Twin Lakes (Woodriver)			
5 acres @ \$20,000	=		\$ 4,000/acre
c. Kendamina (Manley Flats)			
3 acres @ \$12,000	=		\$ 3,000/acre
III. DESIRABLE PARCELS (Waterfront lots, No road access)			
a. Delta Clearwater			
7 acres @ \$20,000	=		\$2,857/acre
5 acres @ \$25,000	=		\$5,000/acre
b. Good Pasteur River			
4.19 acres @ \$30,000	=		\$7,159/acre
c. Chena Angler Subdivision			
5 acres @ \$50,000	=		\$10,000/acre
IV. HIGHLY DESIRABLE PARCELS (Lakefront, Road access)			
a. Paxson Lake			
5 acres @ \$80,000	=		\$16,000/acre
5 acres @ \$50,000 (* 2 nd Tier lots)	=		\$10,000/acre
b. Fielding Lake			
5 acres @ \$35,000	=		\$ 7,000/acre

V. NATIVE ALLOTMENTS (VERY REMOTE)

a. Salmon Trout (Porcupine River) "Steep embankments" very remote 160 acres @ \$75,000	=	\$ 468/acre
b. (Nuwitna area) 80 acres @ \$75,000	=	\$ 937/acre
c. George Lake (Tok area) 40 acres @ \$60,000 (BIA appraised)	=	\$1,500/acre
10 acres @ \$30,000 (Waterfront lots)	=	\$3,000/acre

- The average price per acre on Native Allotments is \$500/acre. These parcels are large in size and very rural. They also have very limited access. These parcels take considerable time to sell and are equivalent to parcels offered in the past by DNR. These parcels are not as desirable to the average buyer, thus a per acre price of \$500 - 1000/ acre is reflected
- The average price per acre of \$1,000 for non-native allotment parcels is low and considered to be a conservative estimate of the value per acre for the types of parcels that would be selected. Most parcels selected will appraise and sell in excess of \$2,500/acre.

Data was provided by AK-Land (Robert A. Fox)

**REVENUE PROJECTION
FY 05**

I.	SALES REVENUE (1/1/05 – 1/31/05)	
	A. CASH SALES	
	[200 Parcels x 5.0 acres/ parcel x \$1,000/acre] =	\$1,000,000
	B. 50% CASH SALES	
	[200 Parcels x 5.0 acres/parcel x \$1,000/acre] =	\$ 250,000
	C) 10% DOWN SALES	
	[600 Parcels x 5.0 acres/parcel x \$1,000/acre] =	\$ 300,000

	TOTAL FY05 SALES REVENUE	\$1,550,000
II.	INTEREST INCOME (5% return)	
	A. CASH SALES	
	[\$1,550,000; 12mo. @ 5% compound daily)	
	Interest Income FY05 =	\$ 79,300
III.	FINANCE REVENUES (1/1/05 – 12/31/05)	
	A. CASH SALES	
		\$ 0
	B. 25% CASH SALES/75% FINANCED	
	[200 Parcels; \$3,750 @ 6%, 60 mo.]	
	Finance Income FY05 =	\$ 41,380
	C. 10% DOWN SALES/90% FINANCED	
	[600 Parcels; \$4,500 @ 6%, 60mo	
	Finance Income FY05 =	\$ 149,016

	TOTAL FY05 FINANCE INCOME	\$ 190,396
	TOTAL PROJECTED REVENUE FY05 =	\$1,819,696

HB 319 RECREATIONAL CABIN SITES

FY05 REVENUE PROJECTIONS BACKUP

A.	CASH SALES	(1/1/05)	DEPOSIT	=	\$1,000,000
B.	25% CASH SALES	(1/1/05)	DEPOSIT	=	\$ 250,000
C.	10% DOWN SALES	(1/1/05)	DEPOSIT	=	\$ 300,000
	TOTAL DEPOSITS to PRINCIPAL			=	\$1,550,000
D.	INTEREST INCOME OF INVESTMENT (5%) 12 mo.			=	\$ 79,300
E.	FINANCE INCOME ON LOANS (6%)				
	Accrued Interest	(206.90/yr x 200, \$(3,750 loans)		=	\$ 41,380
	Accrued Interest	(206.16/yr x 600, \$4,500 loans)		=	\$ 129,016
	TOTAL FINANCE INCOME			=	\$ 190,396

TOTAL REVENUE PROJECTED FOR FY05 = \$1,819,696

HB

321



HOUSE STATE AFFAIRS COMMITTEE

STATE CAPITOL, ROOM 102
465-2028

MEMORANDUM

COMMITTEE MEMBERS

Rep. Bruce Weyhrauch
Chairman
Room 102
465-2028

Rep. Jim Holm
Vice-Chair
Room 110
465-3466

Rep. Paul Seaton
Room 428
4652689

Rep. Nancy Dahlstrom
Room 108
465-4949

Rep. Bob Lynn
Room 415
465-4931

Rep. Harry Crawford
Room 426
465-3438

Rep. Max Gruenberg
Room 112
465-4940

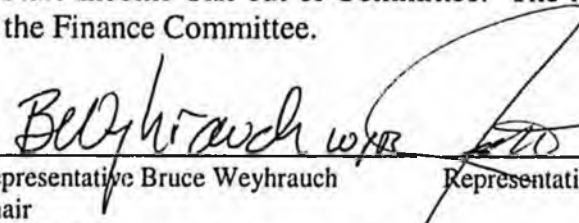
Date: May 14, 2003

To: Speaker Kott

From: House State Affairs Committee

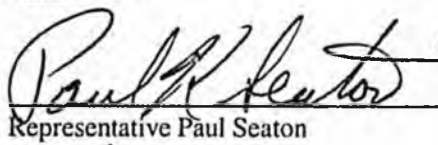
Re: HB 321

The House State Affairs Committee has agreed to waive HB 321 – State Income Tax out of Committee. The next committee of referral is the Finance Committee.

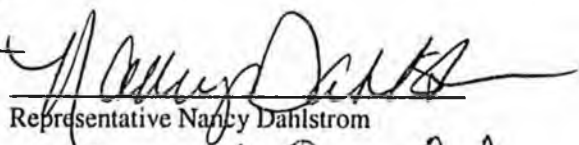


Representative Bruce Weyhrauch
Chair

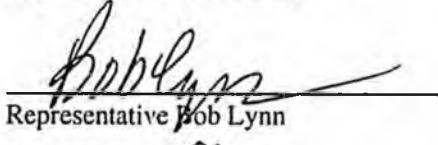
Representative Jim Holm, Vice-Chair



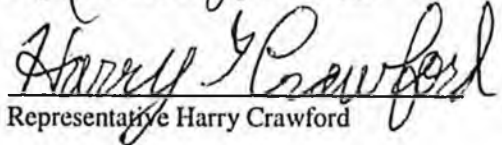
Representative Paul Seaton



Representative Nancy Dahlstrom



Representative Bob Lynn



Representative Harry Crawford



Representative Max Gruenberg

HB

322

ALASKA STATE LEGISLATURE

Chair
FISHERIES

Vice-Chair
EDUCATION

Member
HEALTH, EDUCATION AND SOCIAL SERVICES

Member
STATE AFFAIRS



REPRESENTATIVE PAUL SEATON
House District 35

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HB 322

Sponsor Statement

“An Act requiring a municipal initiative or municipal referendum to be submitted to the voters at the next regular election occurring not sooner than 60 days after certification of the initiative or referendum petition.”

House Bill 322 was introduced specifically to help cash-strapped local governments avoid costly special initiative elections and referendums. Upon being petitioned by local residents, current law forces municipalities to hold initiative elections and referendums within 75 days. Normally, local governments hold annual elections each October, which includes voting on local ordinances, special initiatives and local officials. Having a special election within 75 days of certification of a petition, places an onerous and costly burden upon local governments.

Under HB 322, local municipalities would be allowed to hold initiative elections and referendums on the following municipal election, thus saving time and money for local governments. For smaller communities, the average cost of a special initiative election totals more than \$35,000, which doesn't account for additional volunteers and additional workloads placed on municipal employees. For bonding or other special initiatives that are time sensitive, any local governing assembly can vote to hold a special election.

HB 322 streamlines the special initiative and referendum process by allowing local governments to cut costs and hold special elections during the annual election cycle.



ALASKA STATE LEGISLATURE

Chair
FISHERIES

Vice-Chair
EDUCATION

Member
HEALTH, EDUCATION AND SOCIAL SERVICES

Member
STATE AFFAIRS



REPRESENTATIVE PAUL SEATON
House District 35

HB 322

Sectional Analysis

“An Act requiring a municipal initiative or municipal referendum to be submitted to the voters at the next regular election occurring not sooner than 60 days after certification of the initiative or referendum petition.”

Section 1. AS 29.26.170(a) Amends the statutes by deleting the requirement that a certified municipal initiative be put to the voters within 75 days after certification. This section also changes the requirement from 45 to 60, the number of days before the election can be put to the voters.

Section 2. AS 29.26.170(b) Clarifies technical changes.

Section 3. AS 29.26.180(a) Amends the statutes by deleting the requirement that a certified municipal referendum be put to the voters within 75 days after certification. This section also changes the requirement from 45 to 60, the number of days before the referendum can be placed before the voters.

Session:

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FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 322
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: GOV
 Title An Act requiring a municipal initiative & RDU Elections
referendum elections. Component Elections
 Sponsor Representative Seaton
 Requester House State Affairs Component No. 21

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill has no fiscal impact on the Division of Elections.

Prepared by: Leonard G. Jones Phone 465-3051
 Division Division of Elections Date/Time 2/4/04 4:17 PM
 Approved by: Laura A. Glaiser, Director Date 2/4/2004
 Agency Office of the Lt. Governor, Division of Elections

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 322
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Muni Initiative & Referendum Election: RDU Comm Assist & Ec Dev (405)
 Component Community Advocacy
 Sponsor Representatives Seaton, Holm
 Requester House State Affairs Component No. 2703

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation has no impact on the operations of this division.

Prepared by: Gene Kane, Director Phone (907) 269-4580
 Division Community Advocacy Date/Time 2/5/04 8:10 AM
 Approved by: Eggen Blatchford, Commissioner Date 2/5/2004
 Agency Department of Community & Economic Development

February 4, 2004

The Honorable Representative Bruce Weyhrauch
Chair, House State Affairs Committee

The Honorable Representative Jim Holm
Vice Chair, House State Affairs Committee

Honorable Members:

Representative John Coghill
Representative Bob Lynn
Representative Paul Seaton
Representative Ethan Berkowitz
Representative Max Gruenberg

Dear Sirs;

I would like to thank Representative Paul Seaton for introducing HB 322 and a special thanks to Representative Jim Holm for co-sponsoring said legislation.

I strongly support the citizens' right to petition their government to add additional laws or to repeal a law they find is onerous. However, having to conduct a special election at a different time than the regularly scheduled municipal election is expensive, time consuming and very difficult to pull together. HB 322 is a simple bill that helps address one small area of AS 29 that deals with local municipal special elections. It places any initiative or referendum petition that is successful in being certified to the next regular municipal election. If you are a Home Rule or First Class municipality, you can establish this in your charter or adopt an ordinance to do just this. But Second Class general law Boroughs and Cities must follow Title 29 dealing with initiative and referendum petitions.

In the spring and summer of 2002, I processed 44 petition applications. Of these 44, six were initiative petition applications. Three of these petitions were certified and placed to election. Two of these petitions were placed on the October ballot of that year. One caused a special election in June. Because of the timing of the other petition applications and if any one of those were successful in their efforts, a possibility of an additional one or two special elections could have been called for the year 2002.

Special elections cost approximately the same amount of money that a regularly scheduled municipal election does and voter turnout is traditionally one half to one third a normal voter turnout. The special election in June of 2002 cost the Fairbanks North Star Borough \$66,243. This for a traditional low voter turnout of 9,159 voters out of 67,413 registered voters. The special election held this past week on January 27 cost the Fairbanks North Star Borough approximately \$65,000. This special election caused 11,297 voters out of 71,172 registered voters to go to the polls and vote.

In a time when communities are struggling with higher cost to do business, lower revenues and trying to keep costs reasonable for their taxpayers, this bill makes sense. Many municipalities are struggling to provide basic services to its citizens and cannot easily afford the cost of an unbudgeted special election. I believe most municipalities are like the Fairbanks North Star Borough; they do not budget for special elections because taxing the residents for something that may happen is an unreasonable cost. However, if a petition to initiate or repeal a law is approved, the municipality is obligated to call it under the current law and pay the costs for that election.

Special elections of any kind should be called when there is an urgent need to address an issue such as bonding for schools or facilities. HB 322 only does away with special elections for initiative and referendum petitions. It does not affect the ability of the local governing body to call a special election if needed nor does it affect recall petitions.

I urge your support and help in passing this law.

Very truly yours,

Mona Lisa Drexler, CMC
Municipal Borough Clerk
Fairbanks North Star Borough



KENAI PENINSULA BOROUGH

144 N. BINKLEY • SOLDOTNA, ALASKA • 99669-7599
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LINDA MURPHY, MMC
BOROUGH CLERK

April 29, 2003

The Honorable Paul Seaton
Alaska State House of Representatives
State Capitol, Room 428
Juneau, AK 99801-1182

RE: Requested Changes to Title 29 (Municipal Initiative and Referendum Elections)

Dear Representative Seaton:

It was a pleasure to meet with you in Juneau last week. As I discussed with you at that time, I am hopeful that you will sponsor legislation for the 2004 session that will eliminate the requirement that municipalities call a special election to consider an initiative or referendum brought forward by the voters. As you know, special elections are costly and generally result in a lower voter turnout than the regular election. In addition, most measures brought forward using the initiative or referendum process are not so pressing in nature that they could not wait for the regular municipal election. Of course, nothing in the change I am suggesting would prohibit the governing body from calling a special election if the Council or Assembly wished to have the matter considered in a more timely manner.

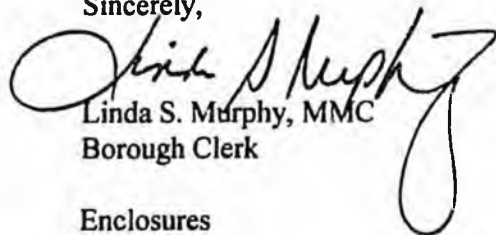
This amendment is supported by the Alaska Municipal League and is included in its 2003 policy statement. I have enclosed that portion of the policy statement for your information. I have also enclosed some language I drafted to make the requisite changes to AS 29.26.170 and AS 29.26.180.

You can expect support for this legislation from members of the Fairbanks North Star Borough delegation. Last year, the FNSB had a total of 46 petitions filed over a period of 4 months. Although these petitions resulted in only one special election (at a cost of \$35,000), there was the potential for many more at great cost to the municipality.

I will be asking Senator Gary Stevens to sponsor a companion bill in the Senate. It is my hope that this bill can be prefiled in both houses this winter and move expeditiously through the legislature.

Thank you once again for your assistance.

Sincerely,



Linda S. Murphy, MMC
Borough Clerk

Enclosures



217 Second Street, Suite 200 • Juneau, Alaska 99801
Tel (907) 586-1325 • Fax (907) 463-5480 • www.akml.org

January 12, 2004

Representative Paul Seaton
State Capitol
Room 428
Juneau, AK 99801

Re: H.B. 322

Dear Representative Seaton,

I am writing on behalf of the Alaska Municipal League (AML) to express support for H.B. 322.

As noted in the 2004 AML Policy Statement, "the League supports changes to Title 29.26 to require that an initiative vote be held at the next regularly scheduled election instead of requiring a costly special election."

Thank you for the opportunity to comment on this important legislation. Please let me know if you have any questions or need further information.

With best regards,


Kevin Ritchie
Executive Director

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Fairbanks North Star Borough

809 Pioneer Road * PO Box 71267 * Fairbanks, Alaska 99707-1267 *(907) 459-1401 FAX 459-1224

February 3, 2004

The Honorable Representative Bruce Weyhrauch
Chair, House State Affairs Committee
State Capital, Room 102
Juneau, Alaska 99801-1182

Dear Representative Weyhrauch;

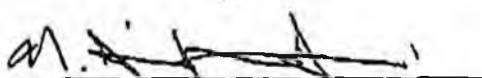
As Mayor of the Fairbanks North Star Borough and Presiding Officer of the Borough Assembly, we would like to go on record in support of HB 322, "An Act requiring a municipal initiative or municipal referendum to be submitted to the voters at the next regular election occurring not sooner than 60 days after certification of the initiative or referendum petition" as introduced by Representative Paul Seaton and co-sponsored by Representative Jim Holm.

First and foremost, we support the right of citizens to seek changes through the petition process. Passage of HB 322 would in no way affect the right of the public to pursue this important right. It would continue to allow the public to place important issues before the voters while decreasing the burden placed on municipalities to have special elections.

Current law forces municipalities to hold special elections within 75 days of the approval of an Initiative or referendum petition, placing an onerous burden on local governments. Under HB 322, local municipalities would be allowed to hold initiatives and referendums to the next regular municipal election rather than being required to hold a special election. A governing assembly could still, when necessary, call for a special election for such things as bonding or time sensitive issues.

We ask for your full support of HB 322 in order to allow municipalities such as ours to streamline our election process by placing initiative and referendum petition issues on the annual regular election ballot.

Sincerely,


Jim Whitaker, Mayor
Fairbanks North Star Borough


Hank Bartos, Presiding Officer
Fairbanks North Star Borough Assembly

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LINDA MURPHY, MMC
BOROUGH CLERK

January 30, 2004

The Honorable Paul Seaton
Alaska State House of Representatives
State Capitol, Room 428
Juneau, AK 99801-1182

RE: HB 322

Dear Representative Seaton:

Thank you for sponsoring HB 322 which seeks to eliminate the mandate that a municipality call a special election to consider an initiative or referendum brought forward by the voters.

As you know, special elections are costly and generally result in a lower voter turnout than the regular election. In addition, most measures brought forward using the initiative or referendum process are not so pressing in nature that they could not wait for the regular municipal election. Even so, I am happy to see that there is nothing in your bill that would prohibit the governing body from calling a special election if the Council or Assembly wished to have the matter considered in a more timely manner.

In 2002, the Fairbanks North Star Borough had a total of 46 petitions filed over a period of 4 months. Although these petitions resulted in only one special election (at a cost of \$35,000), there was the potential for many more at great cost to the municipality. As funding for municipalities dwindles, many local governments can no longer afford the luxury of conducting multiple elections.

Thank you once again for your assistance. I would be happy to testify on behalf of the bill at any upcoming committee hearing.

Sincerely,


Linda S. Murphy, MMC
Borough Clerk

Enclosures

PART III

LOCAL GOVERNMENT & PUBLIC SERVICES

The goal is to preserve the greatest degree and number of local government options and prerogatives so that municipal government can be highly responsive to unique local circumstances and the mandate of the Alaska Constitution "to provide for maximum local self government."

A. LOCAL AUTONOMY

- 1. Effective, Independent, and Economically Sustainable Local Government:** The League supports legislative and regulatory action that promotes more effective, independent and economically sustainable local government.
- 2. Lobbying:** The League supports the continued exemption of municipal officials and employees from the lobbying reporting requirements under the lobbying sections of Title 24, the Legislative Code (AS 24.45).
- 3. Anti Trust Laws:** The League supports legislation at both the state and federal levels placing municipalities in an equal position with state governments with respect to federal anti trust laws.
- 4. Local Construction:** The League supports amendments to Title 36, the Public Contracts Code, to permit local governments to establish their own notice, reporting, local hire, and prevailing wage requirements and methods for local construction. The League opposes any order that would have the state set local wage requirements.
- 5. Plumbing and Electrical Codes:** The League supports the expeditious updating of state safety codes to elimi-

nate the conflict between state and local plumbing and electrical codes. In concordance with planning and zoning, continue to require plan review and compliance with local permitting requirements.

B. ELECTIONS AND REAPPORTIONMENT

- 1. Amendment to National Voter Registration Act (Motor Voter):** The League supports efforts by the Division of Elections to seek amendments to the NVRA to allow for the removal of voters names from the list of registered voters when voters have not voted in four calendar years.
- 2. Local Elections:** The League opposes legislation that would diminish the authority of municipalities to conduct their own elections, including setting the date of such elections. The League opposes changes to AS 29.20.060 that restricts the ability of a municipality to establish local election districts. This includes changes that would force all municipalities to elect members from single member districts.
- 3. Initiatives and Referendums:** The League supports changes to Title 29.26 to require that an initiative vote be held at the next regularly scheduled election instead of requiring a costly special election.

C. Public Employees Labor Relations

1. Alaska Public Employees Labor Relations Act:

The League strongly opposes any legislation that would force municipalities to be subject to the provisions of the Alaska Public Employees Labor Relations Act. Just as strongly, the League opposes any legislative efforts to dictate the provisions of local public employee labor relations ordinances. The League supports legislation to allow each municipality to reject or withdraw from the terms of the Alaska Public Employees Labor Relations Act at any time by action of the governing body. The scope of decisions as to local government finance and labor policies is best left to the local governing body.

2. Binding Arbitration: Binding arbitration on local governments and school districts is not acceptable to the League. Binding arbitration hinders local elected officials' ability to determine their personnel costs and prevents local governments from having complete control of determining the local tax rate. The scope of decisions with regard to what local government can afford for labor is best left to the local bodies possessing that knowledge.

D. TRIBAL COUNCIL/LOCAL GOVERNMENT RELATIONS

1. Commission on Rural Governance:

The League supports and encourages efforts on the part of the legislature and other concerned parties to address tribal/state and municipal government relations.

2. Risk-Pooling: The League supports legislation enabling tribal organizations that provide municipal services to pool

for the purposes of risk sharing and insurance services. As state funds to municipalities decline, tribal entities are filling the void to provide municipal-type services to Alaska's citizens. Pooling is a cost-effective, efficient method for handling insurance needs of all entities providing these critical public services. Amending AS 21.76 to permit tribal organizations to pool with municipalities helps keep the cost of providing public services lower.

E. FORMATION AND ALTERATION OF MUNICIPALITIES

1. Local Government Structure in the Unorganized Borough:

The League supports state policies that provide incentives to encourage the formation of boroughs or annexation to boroughs in the unorganized areas of the state, but does not mandate such action. The League urges the legislature to take a more active role as the Assembly of the Unorganized Borough as mandated by the Constitution.

2. Call for a Review of the Role of Government:

The League calls for a review of municipal government involving the state, the municipalities, and the public to determine if state policies are consistent with the intent of the Alaska Constitution mandating "maximum local self-government with a minimum of local government units. . ." According to the Local Boundary Commission, the state has created significant disincentives to the formation of new municipal governments. Also, the report of the Commission on Rural Governance calls for "a formal review of Alaska's system of local government in order to strengthen self-government and home rule under the Alaska State Constitution."

Fairbanks Daily News-Miner

Fairbanks voters reject eliminating I/M program

By Associated Press

Wednesday, January 28, 2004 -

FAIRBANKS

Fairbanks area voters rejected efforts to eliminate a locally run anti-pollution program required under the federal Clean Air Act.

Voters said no to a Fairbanks North Star Borough referendum that would have done away with the vehicle inspection and maintenance program. The referendum failed 2-to-1 Tuesday.

Under state law, a vote to repeal the program likely would have resulted in a state takeover of the program, and higher fees.

The referendum was put forward by the I/M Repeal Committee. The group maintains that the clean air program is useless, and that better-made cars are why Fairbanks' air has improved over the years.

Members of the committee had hoped the referendum would pass and put pressure on state and local leaders to try to block a state takeover of the program, which is required under federal law.

Voters showed they preferred local control with 6,869 voting no on the referendum and 3,028 checking yes.

"It just seems like keeping it local is much smarter," said Lillian Anderson, a University of Alaska Fairbanks admissions counselor.

The 19-year-old I/M program is in place to reduce carbon monoxide levels in the air. Scientific studies show a link between high carbon monoxide levels and hospital admissions for heart and lung problems. The I/M program is chief among several clean-air programs in Fairbanks, including federally funded free winter bus rides and a campaign to encourage residents to plug in their vehicles to avoid cold starts.

The special election was spurred by a group of residents who said about 4,000 signatures were collected to get the issue on the ballot.

A majority of voters interviewed by the Fairbanks Daily News-Miner at four polling places harshly criticized the referendum.

"I think it was silly to bother," said Craig Dorman, a University of Alaska administrator. "It's been made quite clear the state's going to take it over."

About 100 area residents contributed money to the I/M repeal campaign, but its contributions were dwarfed by those to fight the repeal, gathered by a group that called itself Fairbanksans for Local I/M Control.

The repeal committee amassed at least \$4,867, according to financial disclosure reports made available by the Alaska Public Offices Commission last week. The group for local control raised \$17,750 during the same time. Its money came mostly from unions and businesses, including a \$10,000 donation from Jiffy Lube.

"We're happy that the voters recognized that we're better off with a locally run program," said Dave Veazey, a former borough assemblyman who was co-chairman for the local control group.

PAGE 2

turnout is typically 18,000 to 24,000 voters, Drexler said.

At the last special election, held in June 2002, 9,159 people voted.

The assembly appropriated \$51,350 to pay for this election, so it cost about \$5 per vote.

Veazey, who was reached at the Elks Lodge during an election night get-together of local control supporters, said the downside to the night was the low voter turnout.

"I wish we'd wake up as a community and participate more in this process," he said.

Reporter Amanda Bohman can be reached at abohman@newsminer.com or 459-7544.

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CS FOR HOUSE BILL NO. 327(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HOLM, Ogg

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the powers and duties of the Department of Transportation and**
2 **Public Facilities; relating to a long-range program for highway construction and**
3 **maintenance; repealing a requirement that public facilities comply with energy**
4 **standards adopted by the Department of Transportation and Public Facilities; relating**
5 **to the adoption of regulations regarding estimates of costs and benefits of transportation**
6 **projects; and providing for an effective date."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 *** Section 1. AS 19.10.140 is amended to read:**

9 **Sec. 19.10.140. Long-range program for highway construction and**
10 **maintenance. The [GOVERNOR SHALL REQUIRE THE] department may [TO]**
11 **establish a continuing, long-range program for highway construction and maintenance.**
12 **The program must periodically [ANNUALLY] project proposed construction and**
13 **maintenance of highways for not less than the next succeeding two [FIVE] years. The**

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1 program shall become part of the state transportation plan developed under
2 AS 44.42.050 [A STATEMENT OF THE PROGRAM SHALL BE SUBMITTED
3 BY THE GOVERNOR TO THE LEGISLATURE ANNUALLY, AND THE LONG-
4 RANGE PROGRAM SHALL INCLUDE IN DETAIL THE PROGRAM PREPARED
5 UNDER AS 19.10.150].

6 * Sec. 2. AS 44.42.020(a) is amended to read:

7 (a) The department shall

8 (1) plan, design, construct, and maintain all state modes of
9 transportation and transportation facilities and all docks, floats, breakwaters, buildings,
10 and similar facilities;

11 (2) study existing transportation modes and facilities in the state to
12 determine how they might be improved or whether they should continue to be
13 maintained;

14 (3) study alternative means of improving transportation in the state
15 with regard to the economic costs of each alternative and its environmental and social
16 effects;

17 (4) develop a comprehensive, long-range, intermodal transportation
18 plan for the state;

19 (5) study alternatives to existing modes of transportation in urban areas
20 and develop plans to improve urban transportation;

21 (6) cooperate and coordinate with and enter into agreements with
22 federal, state, and local government agencies and private organizations and persons in
23 exercising its powers and duties;

24 (7) manage, operate, and maintain state transportation facilities and all
25 docks, floats, breakwaters, and buildings, including all state highways, vessels,
26 railroads, pipelines, airports, and aviation facilities;

27 (8) study alternative means of transportation in the state, considering
28 the economic, social, and environmental effects of each alternative;

29 (9) coordinate and develop state and regional transportation systems,
30 considering deletions, additions, and the absence of alterations;

31 (10) develop facility program plans for transportation and state

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1 buildings, docks, and breakwaters required to implement the duties set out in this
2 section, including but not limited to functional performance criteria and schedules for
3 completion;

4 (11) supervise and maintain all state automotive and mechanical
5 equipment, aircraft, and vessels, except vessels and aircraft used by the Department of
6 Fish and Game or the Department of Public Safety; for state vehicles maintained by
7 the department, the department shall periodically [ANNUALLY] evaluate the cost,
8 efficiency, and commercial availability of alternative fuels [NATURAL GAS] for
9 automotive purposes, and the purpose for which the vehicles are intended to be used,
10 and convert or purchase vehicles to use alternative fuels [UTILIZE NATURAL
11 GAS] whenever practicable; the department may participate in joint ventures with
12 public or private partners that will foster the availability of alternative fuels
13 [NATURAL GAS] for all automotive fuel consumers;

14 (12) supervise aeronautics inside the state, under AS 02.10;

15 (13) complete and maintain a current inventory of public facilities,
16 including a projection of the serviceability of the facilities and projections of
17 replacements and additions to facilities needed to provide the level of services
18 programmed by the various user agencies, for municipalities with populations of less
19 than 12,000 and for unincorporated communities, and perform those duties on a
20 cooperative basis with larger municipalities;

21 (14) [ADOPT ENERGY PERFORMANCE STANDARDS FOR
22 PUBLIC FACILITIES OF THE STATE, THE CONSTRUCTION OF WHICH
23 BEGINS AFTER JULY 1, 1980; THE STANDARDS SHALL BE BASED ON
24 THERMAL AND LIGHTING ENERGY STANDARDS ESTABLISHED BY THE
25 AMERICAN SOCIETY OF HEATING, REFRIGERATION AND AIR
26 CONDITIONING ENGINEERS AS ADAPTED FOR APPLICATION IN HIGH
27 LATITUDE, COLD CLIMATE ENVIRONS;

28 (15) PROVIDE PLANNING ASSISTANCE, INCLUDING BUT NOT
29 LIMITED TO ENERGY AUDITS AND RELATED TECHNICAL SERVICES, TO
30 SCHOOL DISTRICTS AND REGIONAL EDUCATIONAL ATTENDANCE
31 AREAS TO DEVELOP AND IMPLEMENT

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(A) STANDARDS FOR THE DESIGN, CONSTRUCTION, AND OPERATION OF RURAL EDUCATIONAL FACILITIES; AND

(B) ENERGY CONSERVATION MEASURES FOR RURAL EDUCATIONAL FACILITIES;

(16)] implement the safety and financial responsibility requirements for air carriers under AS 02.40;

(15) [(17)] inspect weights and measures;

(16) provide an annual ^{summary report} report of the activities of the department under this section to the legislature by the fifteenth legislative day of each regular session of the legislature; the department shall make the ^{summary report} report available to the public and shall publish notice of the availability of the ^{summary report} report in a newspaper of general circulation in the state for at least once each week for three weeks following delivery of the ^{summary report} report to the legislature.

Amendment #1

* Sec. 3. AS 44.42.050(a) is amended to read:

(a) The commissioner shall develop [ANNUALLY] a comprehensive, intermodal, long-range transportation plan for the state. The plan may be developed in separate documents and divided into logical components, including geographic areas, modes of transportation, transportation corridors, systems, and other distinct subjects. The commissioner shall include the estimated costs of projects described in the plan and, if the commissioner determines appropriate, an estimate of the benefits of the project. In developing and revising the state plan, the commissioner may [SHALL] consider the requirements of 23 U.S.C. 135, as amended. Upon approval of the plan by the commissioner, the commissioner may transmit the plan to the governor and [MEANS AND COSTS OF IMPROVING EXISTING MODES AND FACILITIES, STATE AND FEDERAL SUBSIDIES, AND THE COSTS AND BENEFITS OF NEW TRANSPORTATION MODES AND FACILITIES. THE COMMISSIONER SHALL ALSO CONSIDER THE RECOMMENDATION OF THE ALASKA TRANSPORTATION PLANNING COUNCIL. THE PLAN SHALL BE SUBMITTED TO THE GOVERNOR FOR REVIEW AND APPROVAL AND SUBMITTED BY THE GOVERNOR TO] the legislature.

*4/26/04
copy of
23 USC 135
for
committee
from Todd*

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1 * Sec. 4. AS 44.42.050(d) is amended to read:

2 (d) The commissioner shall periodically develop a program [PLAN MUST
3 INCLUDE A DESCRIPTION] of projects planned for design and construction for a
4 period of not less than [THE FOLLOWING] two years that implement the plan
5 developed under (a) of this section. In developing the program of projects, the
6 commissioner may consider the requirements of 23 U.S.C. 135, as amended. The
7 program [DESCRIPTION] is in addition to the long-range plan required by (a) of this
8 section [AND BY AS 19.10.140]. The program [DESCRIPTION] must include an
9 estimate of federal, state, and other funds anticipated to be received and a
10 description, location, and itemization of the estimated cost for each project and the
11 total cost of all projects. The commissioner shall propose and forward to the governor
12 for review and approval and to the legislature for review [AND INCLUSION, AS
13 APPROVED, IN THE CAPITAL BUDGET] a construction program that includes the
14 projects to be undertaken during the following year [TWO YEARS], including
15 recommended project priorities. [FUNDS FOR TRANSPORTATION
16 CONSTRUCTION PROJECTS AND NECESSARY CONTINGENCIES SHALL BE
17 ITEMIZED AS ALLOCATIONS WITHIN THE BILL FOR THE GENERAL
18 APPROPRIATIONS ACT.]

19 * Sec. 5. AS 44.42.050 is amended by adding a new subsection to read:

20 (e) The commissioner shall adopt regulations establishing uniform procedures
21 for preparation of estimates of costs and benefits for projects included in a
22 comprehensive, intermodal, long-range transportation plan under (a) of this section.

23 The regulations must

24 (1) provide exceptions for those projects or category of projects for
25 which the determination of a detailed estimate of project costs and benefits is not
26 practical or is not useful due to factors such as federal and state requirements, the
27 nature of the project, or the impracticability of measuring benefits;

28 (2) identify the method and manner for estimating benefits of a project
29 so that the cost of estimating the benefits of a project is not excessive; and

30 (3) provide that the commissioner may waive the determination of the
31 calculation of benefits of a project if the commissioner determines that the calculation

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1 of the benefits is not in the best interest of the state.

2 * Sec. 6. AS 46.11.900(8) is amended to read:

3 (8) "thermal and lighting energy standards" means the thermal and
4 lighting energy standards

5 (A) established by the American Society of Heating,
6 Refrigeration, and Air Conditioning Engineers as revised

7 [(i) BY THE COMMISSIONER OF
8 TRANSPORTATION AND PUBLIC FACILITIES UNDER
9 AS 44.42.020(a) FOR PUBLIC FACILITIES; OR

10 (ii)] by the Alaska Housing Finance Corporation for
11 buildings and structures that are not public facilities; or

12 (B) developed in regulations adopted

13 [(i) BY THE COMMISSIONER OF
14 TRANSPORTATION AND PUBLIC FACILITIES UNDER
15 AS 44.42.020(a) FOR PUBLIC FACILITIES; OR

16 (ii)] by the Alaska Housing Finance Corporation for
17 buildings and structures that are not public facilities.

18 * Sec. 7. AS 46.11.010 is repealed.

19 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 ADOPTION OF REGULATIONS UNDER AS 44.42.050(e). (a) The Department of
22 Transportation and Public Facilities shall provide a copy of regulations that the department
23 proposes to adopt under authority of AS 44.42.050(e), added by sec. 5 of this Act, to each
24 incumbent state legislator, the secretary of the state senate, and the chief clerk of the house of
25 representatives at the time the department publishes the notice under AS 44.62.190 of the
26 proposed adoption of those regulations. In addition to the publication of the notice of the
27 proposed adoptions of regulations that is required under AS 44.62.190(a), the notice of the
28 proposed adoption of regulations under authority of AS 44.42.050(e), added by sec. 5 of this
29 Act, by the department shall be published once a week for three additional weeks in a
30 newspaper of general circulation in the state. The department shall accept public comment on
31 the regulations until at least 51 days have elapsed from the first publication in a newspaper of

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1 general circulation in the state of the notice of the proposed adoption of the regulations.
2 Regulations adopted under authority of AS 44.42.050(e), added by sec. 5 of this Act, may not
3 be filed with the lieutenant governor until at least 60 days have elapsed from the first
4 publication of the notice in a newspaper of general circulation in the state of the proposed
5 adoption of the regulations.

6 (b) On the day that the secretary of the state senate and the chief clerk of the state
7 house of representatives each receives a copy of regulations that the Department of
8 Transportation and Public Facilities proposes to adopt under authority of AS 44.42.050(e),
9 added by sec. 5 of this Act, the secretary and the chief clerk shall each provide notice in
10 writing to the regulations attorney, the revisor of statutes, and the lieutenant governor that
11 they have received a copy of the proposed regulations.

12 (c) This section applies only the initial adoption of the regulations under authority of
13 AS 44.42.050(e), added by sec. 5 of this Act.

14 * Sec. 9. Sections 5 and 8 of this Act take effect immediately under AS 01.10.070(c).

15 * Sec. 10. Sections 1 - 4 and 7 of this Act take effect on the day after the date on which the
16 lieutenant governor has received notice in writing from the secretary of the state senate and
17 the chief clerk of the state house of representatives under sec. 8 of this Act that they have each
18 received a copy of regulations that the Department of Transportation and Public Facilities
19 proposes to adopt under authority of AS 44.42.050(e), added by sec. 5 of this Act.

23-LS1135S
Utermohle
4/22/04

CS FOR HOUSE BILL NO. 327(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HOLM, Ogg

A BILL
FOR AN ACT ENTITLED

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

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** AS 19.10.140 is amended to read:

8 **Sec. 19.10.140. Long-range program for highway construction and**
9 **maintenance.** The [GOVERNOR SHALL REQUIRE THE] department may [TO]
10 establish a continuing, long-range program for highway construction and maintenance.
11 The program must periodically [ANNUALLY] project proposed construction and
12 maintenance of highways for not less than the next succeeding two [FIVE] years. The
13 program shall become part of the state transportation plan developed under

1 AS 44.42.050 [A STATEMENT OF THE PROGRAM SHALL BE SUBMITTED
2 BY THE GOVERNOR TO THE LEGISLATURE ANNUALLY, AND THE LONG-
3 RANGE PROGRAM SHALL INCLUDE IN DETAIL THE PROGRAM PREPARED
4 UNDER AS 19.10.150].

5 * Sec. 2. AS 44.42.020(a) is amended to read:

6 (a) The department shall

7 (1) plan, design, construct, and maintain all state modes of
8 transportation and transportation facilities and all docks, floats, breakwaters, buildings,
9 and similar facilities;

10 (2) study existing transportation modes and facilities in the state to
11 determine how they might be improved or whether they should continue to be
12 maintained;

13 (3) study alternative means of improving transportation in the state
14 with regard to the economic costs of each alternative and its environmental and social
15 effects;

16 (4) develop a comprehensive, long-range, intermodal transportation
17 plan for the state;

18 (5) study alternatives to existing modes of transportation in urban areas
19 and develop plans to improve urban transportation;

20 (6) cooperate and coordinate with and enter into agreements with
21 federal, state, and local government agencies and private organizations and persons in
22 exercising its powers and duties;

23 (7) manage, operate, and maintain state transportation facilities and all
24 docks, floats, breakwaters, and buildings, including all state highways, vessels,
25 railroads, pipelines, airports, and aviation facilities;

26 (8) study alternative means of transportation in the state, considering
27 the economic, social, and environmental effects of each alternative;

28 (9) coordinate and develop state and regional transportation systems,
29 considering deletions, additions, and the absence of alterations;

30 (10) develop facility program plans for transportation and state
31 buildings, docks, and breakwaters required to implement the duties set out in this

1 section, including but not limited to functional performance criteria and schedules for
2 completion;

3 (11) supervise and maintain all state automotive and mechanical
4 equipment, aircraft, and vessels, except vessels and aircraft used by the Department of
5 Fish and Game or the Department of Public Safety; for state vehicles maintained by
6 the department, the department shall periodically [ANNUALLY] evaluate the cost,
7 efficiency, and commercial availability of alternative fuels [NATURAL GAS] for
8 automotive purposes, and the purpose for which the vehicles are intended to be used,
9 and convert or purchase vehicles to use alternative fuels [UTILIZE NATURAL
10 GAS] whenever practicable; the department may participate in joint ventures with
11 public or private partners that will foster the availability of alternative fuels
12 [NATURAL GAS] for all automotive fuel consumers;

13 (12) supervise aeronautics inside the state, under AS 02.10;

14 (13) complete and maintain a current inventory of public facilities,
15 including a projection of the serviceability of the facilities and projections of
16 replacements and additions to facilities needed to provide the level of services
17 programmed by the various user agencies, for municipalities with populations of less
18 than 12,000 and for unincorporated communities, and perform those duties on a
19 cooperative basis with larger municipalities;

20 (14) [ADOPT ENERGY PERFORMANCE STANDARDS FOR
21 PUBLIC FACILITIES OF THE STATE, THE CONSTRUCTION OF WHICH
22 BEGINS AFTER JULY 1, 1980; THE STANDARDS SHALL BE BASED ON
23 THERMAL AND LIGHTING ENERGY STANDARDS ESTABLISHED BY THE
24 AMERICAN SOCIETY OF HEATING, REFRIGERATION AND AIR
25 CONDITIONING ENGINEERS AS ADAPTED FOR APPLICATION IN HIGH
26 LATITUDE, COLD CLIMATE ENVIRONS;

27 (15) PROVIDE PLANNING ASSISTANCE, INCLUDING BUT NOT
28 LIMITED TO ENERGY AUDITS AND RELATED TECHNICAL SERVICES, TO
29 SCHOOL DISTRICTS AND REGIONAL EDUCATIONAL ATTENDANCE
30 AREAS TO DEVELOP AND IMPLEMENT

31 (A) STANDARDS FOR THE DESIGN, CONSTRUCTION,

1 AND OPERATION OF RURAL EDUCATIONAL FACILITIES; AND
2 (B) ENERGY CONSERVATION MEASURES FOR RURAL
3 EDUCATIONAL FACILITIES;

4 (16)] implement the safety and financial responsibility requirements
5 for air carriers under AS 02.40;

6 (15) [(17)] inspect weights and measures.

7 * Sec. 3. AS 44.42.050(a) is amended to read:

8 (a) The commissioner shall develop [ANNUALLY] a comprehensive,
9 intermodal, long-range transportation plan for the state. The plan may be developed
10 in separate documents and divided into logical components, including geographic
11 areas, modes of transportation, transportation corridors, systems, and other
12 distinct subjects. The commissioner shall include the estimated costs of projects
13 described in the plan and, if the commissioner determines appropriate, an
14 estimate of the benefits of the project. In developing and revising the state plan, the
15 commissioner may [SHALL] consider the requirements of 23 U.S.C. 135, as
16 amended. Upon approval of the plan by the commissioner, the commissioner
17 may transmit the plan to the governor and [MEANS AND COSTS OF
18 IMPROVING EXISTING MODES AND FACILITIES, STATE AND FEDERAL
19 SUBSIDIES, AND THE COSTS AND BENEFITS OF NEW TRANSPORTATION
20 MODES AND FACILITIES. THE COMMISSIONER SHALL ALSO CONSIDER
21 THE RECOMMENDATION OF THE ALASKA TRANSPORTATION PLANNING
22 COUNCIL. THE PLAN SHALL BE SUBMITTED TO THE GOVERNOR FOR
23 REVIEW AND APPROVAL AND SUBMITTED BY THE GOVERNOR TO] the
24 legislature.

25 * Sec. 4. AS 44.42.050(d) is amended to read:

26 (d) The commissioner shall periodically develop a program [PLAN MUST
27 INCLUDE A DESCRIPTION] of projects planned for design and construction for a
28 period of not less than [THE FOLLOWING] two years that implement the plan
29 developed under (a) of this section. In developing the program of projects, the
30 commissioner may consider the requirements of 23 U.S.C. 135, as amended. The
31 program [DESCRIPTION] is in addition to the long-range plan required by (a) of this

1 section [AND BY AS 19.10.140]. The program [DESCRIPTION] must include an
2 estimate of federal, state, and other funds anticipated to be received and a
3 description, location, and itemization of the estimated cost for each project and the
4 total cost of all projects. The commissioner shall propose and forward to the governor
5 for review and approval and to the legislature for review [AND INCLUSION, AS
6 APPROVED, IN THE CAPITAL BUDGET] a construction program that includes the
7 projects to be undertaken during the following year [TWO YEARS], including
8 recommended project priorities. [FUNDS FOR TRANSPORTATION
9 CONSTRUCTION PROJECTS AND NECESSARY CONTINGENCIES SHALL BE
10 ITEMIZED AS ALLOCATIONS WITHIN THE BILL FOR THE GENERAL
11 APPROPRIATIONS ACT.]

12 * Sec. 5. AS 44.42.050 is amended by adding a new subsection to read:

13 (e) The commissioner shall adopt regulations establishing uniform procedures
14 for preparation of estimates of costs and benefits for projects included in a
15 comprehensive, intermodal, long-range transportation plan under (a) of this section.
16 The regulations must

17 (1) provide exceptions for those projects or category of projects for
18 which the determination of a detailed estimate of project costs and benefits is not
19 practical or is not useful due to factors such as federal and state requirements, the
20 nature of the project, or the impracticability of measuring benefits;

21 (2) identify the method and manner for estimating benefits of a project
22 so that the cost of estimating the benefits of a project is not excessive; and

23 (3) provide that the commissioner may waive the determination of the
24 calculation of benefits of a project if the commissioner determines that the calculation
25 of the benefits is not in the best interest of the state.

26 * Sec. 6. AS 46.11.900(8) is amended to read:

27 (8) "thermal and lighting energy standards" means the thermal and
28 lighting energy standards

29 (A) established by the American Society of Heating,
30 Refrigeration, and Air Conditioning Engineers as revised

31 [(i) BY THE COMMISSIONER OF

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TRANSPORTATION AND PUBLIC FACILITIES UNDER
AS 44.42.020(a) FOR PUBLIC FACILITIES; OR

(ii)] by the Alaska Housing Finance Corporation for
buildings and structures that are not public facilities; or

(B) developed in regulations adopted

[(i) BY THE COMMISSIONER OF
TRANSPORTATION AND PUBLIC FACILITIES UNDER
AS 44.42.020(a) FOR PUBLIC FACILITIES; OR

(ii)] by the Alaska Housing Finance Corporation for
buildings and structures that are not public facilities.

* **Sec. 7.** AS 46.11.010 is repealed.

* **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

Representative Jim Holm

District 9

Session

Capitol Building, Room 110

Juneau, AK 99801

Phone: (907) 465-3466

Fax: (907) 465-2937



Interim

119 N. Cushman St.

Fairbanks, AK 99701

Phone: (907) 456-7423

Fax: (907) 451-9293

SPONSOR STATEMENT FOR HB327

“An Act relating to the powers and duties of the Department of Transportation and public officials”

HB327 is being brought forward at the suggestion of the DOT and the Attorney General's office to clean up old statute which is now and always has been, obsolete.

A situation has developed in Rural Alaska where a bridge is being held up because of an oversight by state government. In the late 70's the Governor wrote executive order No. 39 § 2 (1977) creating the “Alaska Transportation Council” (among other things) directing the commissioner of DOT to consult with this council on all annual transportation projects. Projects were not supposed to move forward without the recommendation of the council being considered. Unfortunately, after the term of that sitting governor all of the subsequent governors failed to populate the council. This made it difficult to comply. A contributing factor to the issue was the manner in which the council became law. As an executive order, it entered statute from lack of action on the part of the legislature and was therefore, somewhat outside of the usual process.

As we in the Legislature know, good ideas come and go. What seemed very prudent at one point can seem impractical at a later date. I feel that as a matter of policy, if we have placed an unrealistic statute into law we should repair it at the first notice. This is exactly the situation that HB327

addresses, but with a more serious consequence. Because the State may have unwittingly overlooked the requirement to "consider the recommendation of the Council..." and do a cost "benefit" study for each project in the state, it has found itself in litigation. This oversight was brought to my attention last year.

Our problem is fairly straight forward. The state is not complying with this old statute, thereby setting a basis for litigation. One person has taken advantage of this situation to get an injunction against a rural project and there is every reason to think that more will follow. To preserve our current and future projects, we must quickly repair this statute and take the further step of making it retroactive.

The other changes to the statute amount to house cleaning. The changes reflect "Powers and Duties" that have been handed to other agencies along with practices that cost more than the resulting savings. Also some changes include allowing the Commissioner to study "alternative fuels" for use in state vehicles rather than just natural gas. And finally, changing "annual" requirements to "periodic" which will allow the commissioner discretion in choosing times that are sensible. This will save the money spent on studies and let it be spent on roads.

Please help me make this crucial change as soon as practical.

CS HB 327 (Version V)
Comments by Jeff Ottesen
Director, Program Development
Alaska Department of Transportation and Public Facilities
February 26, 2004

(Explanatory Sectional Analysis Submitted by D.O.T.)

This version of HB 327 (Version I) 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 3, 6, and 7** as house keeping measures.

Substantive:

The remaining sections of the bill are more substantive. They are directed at two specific goals:

- Ensuring that a specific project in the Lake Iliamna region (the Iliamna to Nondalton road and bridge) is not subject to endless planning and litigation; this a project that has been stopped and started since the mid-1970's.
- 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:

This section was recommended to us by the Department of Law. This section, coupled with the other sections, notably Section 8, ensures the law will directly apply to the subject project currently before the Superior Court.

Section 2:

This section applies to a statutory requirement that existed when we were the Department of Highways prior to the merger with the Department of Public Works and the creation of DOT&PF. It clarifies that the requirement for a program of projects is a piece of the overall program of projects now required at AS 44.42.050 (see Section 4 of this bill). It also changes the timing from annual to periodic. We fulfill this requirement when we prepare the STIP (Statewide Transportation Improvement Program).

As a matter of technical correction we would ask that the requirement of 20 years be changed to 2 years. It is not practical to predict project costs and funding streams for a 20-year horizon.

Section 4:

This section applies to the state's requirement for a multi-modal transportation plan. It clarifies that said transportation plan is in reality comprised of many different planning documents, organized by geography, modes, corridors and other distinctions. It further clarifies that the federal requirements are the primary standard of such planning efforts, which is practical, as nearly all of our funding must meet this standard.

Importantly, this section eliminates the requirement for consideration of costs and benefits of new transportation modes; this is the key element in the lawsuit against the state. It also eliminates the reference to the Alaska Transportation Planning Council, a body that has not been seated for nearly 20 years.

Section 5:

This section applies to the listing of projects slated for design and construction, typically known as the STIP (Statewide Transportation Improvement Program), TIP (Transportation Improvement Program for urban areas), and the AIP (Aviation Improvement Program). It aligns this section of state law to match up to various federal requirements we also must follow.

Section 8:

This section provides that this law is retrospective or retroactive to the time that AS 44.42 was adopted as a matter of law, and not as a matter of legislative act. As Mr. Todd Larkin pointed out last week, the entirety of the AS 44.42 was codified from an Administrative Order, not as a matter of Legislative Act.

Section 9:

Makes the effective date immediate.

Consequences of not passing this legislation:

- The Iliamna to Nondalton project may be delayed.
- The state's transportation planning processes will remain in conflict with various federal requirements. Process, not projects, will be the beneficiary leading to more paper and less pavement.
- Many, if not most other important projects, in all corners of the state, rural and urban, would be at risk for similar litigation.

Thank you for your time. I would be happy to answer any questions you may have.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB327-DOT-CO-2-13-04
 () Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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 (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Nona Wilson Phone 465-6973
 Director: Legislative Liaison Date/Time 2/16/04 12:43 PM
 Approved by: John MacKinnon Date 2/16/2004
 Agency: Deputy Commissioner

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB327-DPS-ASTD-2-24-04
 () Publish Date: _____

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 Representative Holm
 Requester House Transportation Committee Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill changes certain requirements of the Department of Transportation and Public Facilities relating to the evaluation of alternative fuel for vehicles under its supervision, and changes certain duties of the department relating to public facilities.

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

Prepared by: Joan M. Kasson, Program Budget Analyst Phone 907-465-2640
 Division Administrative Services Date/Time 2/24/04 9:03 AM
 Approved by: Commissioner William Tandeske Date 2/24/2004
 Agency Department of Public Safety

Discussion on Why a Mandatory 'Costs and Benefits'
Analysis is Not Appropriate
Alaska Department of Transportation and Public Facilities
February 18, 2004

AS 44.42.050 (a) requires the department to: "...consider means and costs of improving existing modes and facilities, state and federal subsidies, and the costs and benefits of new transportation modes and facilities."

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

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

Rural Alaska abounds in transportation needs that are provided as a basic public service. Virtually none of these would rise to a positive benefit-cost ratio because the small population base. Examples include:

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

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

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

Finally, the department often undertakes projects because a member of the Congressional delegation earmarked them. Such projects do not receive the normal prior planning or

detailed evaluation. The state has very little choice but to accept the project funds for the stated purpose, or to not use the funding.

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

B-C analysis is a good technique and is routinely used in some circumstances. However, under the current construction of the statute, and the court's recent interpretation, every project undertaken must receive this type of analyses. For the reasons stated it is not appropriate nor a prudent use of project funds to routinely require these B-C analyses.

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES OFFICE OF THE COMMISSIONER

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7098TEXT: (907) 465-3652
FAX: (907) 586-8365
PHONE: (907) 465-3900

February 13, 2004

The Honorable Jim Holm
Co-Chair, House Transportation
Alaska State Legislature
State Capitol, Room 110
Juneau AK 99801

Dear Representative Holm:

Through the cooperative efforts of our respective staffs, let me first thank you for taking lead on this important piece of legislation (HB 327). As you know, the department's transportation planning statutes are nearly three decades old, and have not been updated to reflect modern practice nor the influence of the federal-aid requirements that we must routinely adjust to. This legislation would bring these statutes into compliance with the external requirements, and simplify the planning process to ensure we deliver projects and not paper studies with our scarce funds.

The legislation also accomplishes some important housekeeping tasks, such as bringing our departmental powers and duties in line with changes that have occurred over time. To this end, I would offer these comments:

Section 1. Pertaining to AS 44.42.020 (a)

- Paragraph (11) is modified to minimize the frequency and hence the costs of alternative fuels evaluations for use in state vehicles. It also is modified to reflect the emergence of new alternatives fuels in addition to natural gas. We support this modification.
- Paragraph (13) is deleted to reflect that our agency has not been funded to perform this duty for more than a decade. Whether the public facilities responsibility remains at DOT&PF is still an open question, but regardless of that outcome, we support this modification.
- Paragraph (14) is deleted to reflect that our agency has not been funded to perform this duty for more than a decade. We believe there are many other standard setting bodies for energy performance standards and do not think this a valid responsibility for a state agency regardless of whether the public facilities responsibility remains at DOT&PF. We support this modification.
- Paragraph (15) is deleted to reflect the transfer of school construction responsibility to local school districts several years ago. We support this modification.

Representative Holm

Page 2

February 13, 2004

Section 2. Pertaining to AS 44.42.050 (a):

- This section would modify the transportation planning statute to better reflect modern practice and clarify the technical requirements and timing of updates to the state transportation plans. We support this section and have made some specific suggestions directly to your staff to further improve this section.

Sections 3 and 4. Pertaining to AS 46.11.900(8) and AS 46.11.010:

- Our comments above on paragraph (14) of AS 44.42.020 (a) in Section 1 of bill apply here too. We support this modification.

We understand that this bill will need our support and background information to ensure it is supported by the Legislature. To this end we are committed to meeting in any venue so scheduled and offering testimony as requested. I thank you for your dedication to this effort and important contribution to the state's transportation future.

Sincerely,



Mike Barton
Commissioner

cc: Rebecca L Hultberg, Special Staff Assistant, Office of the Governor
John MacKinnon, Deputy Commissioner of Highways & Public Facilities, DOT&PF
Jeff Ottosen, Director, Division of Program Development, DOT&PF
Nona Wilson, Legislative Liaison, DOT&PF

Transportation CS HB 327
Prepared by:
Alaska Department of Transportation and Public Facilities
March 16, 2004

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.

This version of Transportation Committee Substitute for HB 327 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 3, 6, and 7** as house keeping measures.

Substantive:

The remaining sections of the bill are more substantive. They are directed at two specific goals:

- Ensuring that a specific project in the Lake Iliamna region (the Iliamna to Nondalton road and bridge) is not subject to endless planning and litigation; this a project that has been stopped and started since the mid-1970's.
- 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:

This section was recommended to us by the Department of Law. This section, coupled with the other sections, notably Section 8, ensures the law will directly apply to the subject project currently before the Superior Court.

Section 2:

This section applies to a statutory requirement that existed when we were the Department of Highways prior to the merger with the Department of Public Works and the creation of DOT&PF. It clarifies that the requirement for a program of projects is a piece of the overall program of projects now required at AS 44.42.050 (see Section 4 of this bill). It also changes the timing from annual to periodic. We fulfill this requirement when we prepare the STIP (Statewide Transportation Improvement Program).

Section 4:

This section applies to the state's requirement for a multi-modal transportation plan. It clarifies that said transportation plan is in reality comprised of many different planning documents, organized by geography, modes, corridors and other distinctions. It further clarifies that the federal requirements are the primary standard of such planning efforts, which is practical, as nearly all of our funding must meet this standard.

Importantly, this section eliminates the requirement for consideration of costs and benefits of new transportation modes; this is the key element in the lawsuit against the state. It also eliminates the reference to the Alaska Transportation Planning Council, a body that has not been seated for nearly 20 years.

Section 5:

This section applies to the listing of projects slated for design and construction, typically known as the STIP (Statewide Transportation Improvement Program), TIP (Transportation Improvement Program for urban areas), and the AIP (Aviation Improvement Program). It aligns this section of state law to match up to various federal requirements we also must follow.

Section 8:

This section provides that this law is retrospective or retroactive to the time that AS 44.42 was adopted as a matter of law, and not as a matter of legislative act. The entirety of the AS 44.42 was codified from an Administrative Order, not as a matter of Legislative Act.

Section 9:

Makes the effective date immediate.

Consequences of not passing this legislation:

- The Iliamna to Nondalton project may be delayed.
- The state's transportation planning processes will remain in conflict with various federal requirements. Process, not projects, will be the beneficiary leading to more paper and less pavement.
- Many, if not most other important projects, in all corners of the state, rural and urban, would be at risk for similar litigation.

Thank you for your time. I would be happy to answer any questions you may have.

[Handwritten signature]

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA STATE COUNCIL OF TROUT)
UNLIMITED, ROBERT B. GILLAM,)

Plaintiffs,)

v.)

STATE OF ALASKA, ALASKA DEPARTMENT)
OF TRANSPORTATION AND PUBLIC)
FACILITIES,)

Defendant.)

RECEIVED

JAN 07 2004

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
3RD JUDICIAL DISTRICT
ANCHORAGE, ALASKA

Case No. 3AN-02-09363 CI

ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

AND GRANTING STATE'S CROSS-MOTIONS FOR PARTIAL SUMMARY

JUDGMENT

This is a case in which the Plaintiffs are seeking injunctive and declaratory relief with respect to a proposed road and bridge project between the communities of Iliamna/Newhalen and Nondalton in Southwest Alaska. The complaint was filed on July 25, 2002 by Plaintiffs Alaska State Council of Trout Unlimited, a branch of the nation's largest coldwater fisheries conservation organization, and Robert B. Gillam, who owns real property near the proposed project. The Defendant is the State of Alaska, Department of Transportation and Public Facilities (DOT&PF), which is the state agency responsible for transportation planning in Alaska.

project's cost, which Plaintiffs assert must be considered pursuant to AS 44.42.050.

On June 9, 2003, the State filed a cross-motion for partial summary judgment on the issue of the State's substantial compliance with AS 44.42.050 as related to the State's decision to baseline the Iliamna-Nondalton Road Project into the Southwest Alaska Transportation Plan. The State also cross-motoned for partial summary judgment on the issue of the Alaska Transportation Planning Council. In addition, the State filed its opposition to the motion for preliminary injunction.

Briefing was completed on all the motions in October 2003, and the court heard oral argument on October 29, 2003.

Factual Background

The following facts appear to be essentially undisputed between the parties:

Iliamna is a community of approximately 100 people that is located on the northwest shore of Iliamna Lake. It is connected by an approximate six-mile road to the community of Newhalen, which has about 160 residents. These two communities are served by a state-maintained airport. Nondalton is a community of approximately 220 people located on the western shore of Six Mile Lake. It is located approximately 20 miles north of Iliamna, on the other side of the Newhalen River. This litigation concerns a proposed road and bridge project to connect Nondalton to the other two communities

The benefit / cost analysis contained in this report concludes that continued construction of the road is not economically justifiable at this time. The present value of the project may be affected by future events. Consequently, it is recommended the project be re-evaluated at some future time.

Id. at 34.

In 1987, DOT&PF re-evaluated the project cost and estimated that the cost of completing the project upgraded to meet applicable federal standards at that time (including two bridges) to be approximately \$18.5 million. [Complaint and Answer at ¶ 15].

In December 1991, DOT&PF issued Tomorrow's Alaska: Transportation for the 21st Century, a statewide transportation policy plan. [Ex. D to Ottesen Affidavit dated 10/29/03]. The Iliamna and Nondalton roadway was on a map in this plan and identified as a highway route "recommended for future activity." [Id. at p. 5].

In October 1993, the Lake and Peninsula Borough issued Economic and Transportation Analysis of the Iliamna-Nondalton Inter-Village Road System. [Ex. C]. This analysis estimated the cost to complete the road and bridge at that time to be approximately \$9.5 million. [Id. at 1]. Although the analysis does not contain a cost/benefit analysis, it does identify the positive impact of the project on various levels: promotion of economic development and tourism, elimination of the need to further improve the Nondalton airport, promotion of private property development, consolidation of services, including fuel storage, and overall improved transportation for the area. [Id. at pp. 1-2]. It concludes by urging DOT&PF to prioritize the project's completion by ranking it as a priority "1"

ranked in order of their score using the criteria the DOT&PF had identified. The Iliamna-Nondalton project scored the 7th highest of all the community transportation program needs and priorities for the state, with a ranking of 110.5 points. The scoring criteria for the evaluation process did not specifically address the capital cost of the project or its cost effectiveness. [Ex. 4 to Otteson Depo. of 4/23/03 at 254-256]. As DOT&PF has stated:

cost-benefit analyses are not used by ADOT&PF to score Remote Roads and Trails transportation improvement projects. Project cost is not one of the standard thirteen criteria that are routinely scored by the ADOT&PF Project Evaluation Board (PEB) in the evaluation of proposed remote Alaskan road transportation improvement projects such as the Iliamna-Nondalton Road Improvement Project. Economic development is not the primary purpose for this project; the intent of the project is to provide year-round overland access between Iliamna and Nondalton allowing the communities mobility, increased safety, and use of regional service facilities.

Iliamna-Nondalton Road Improvements Revised Environmental Assessment at 52 (December 2001). The scoring criteria did include factors such as economic benefits following construction, the contribution the project would provide to health or quality of life, safety benefits from the project, the extent to which the project would improve intermodal transportation, and the contribution that other agencies or user groups would provide to fund the capital costs. [Ex. 4 to Otteson Depo. of 4/23/03 at 254-256].

Based on this scoring, the Iliamna/Nondalton project was listed in both the 1996-1998 Statewide Transportation Improvement Program (STIP) and the 1998-2000 STIP prepared for federal highway funding purposes. However, construction was not begun because the Plaintiffs in this case sued the Federal

recovery factor, the annual maintenance and operation cost, or estimate of the annual person miles traveled in 2020 for this particular project. [Id. at 59].

DISCUSSION

- A. The Commissioner has not violated the provision of AS 44.42.050 that requires consideration of the recommendation of the Alaska Transportation Planning Council.

AS 44.42.050(a) provides in relevant part as follows:

The commissioner shall develop annually a comprehensive, intermodal, long-range transportation plan for the state. In developing and revising the plan, the commissioner shall 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. The commissioner shall also consider the recommendation of the Alaska Transportation Planning Council.

It is undisputed that the Alaska Transportation Planning Council has not been in existence since the early 1980's, and that there is no legislative or constitutional directive to the Department that obligates it to establish such a council.

In these circumstances, the Department is not in violation of this portion of the statute. Had a Council been formed and made recommendations that the commissioner did not consider, a statutory violation could well have been established. But here, no recommendations were made, and thus no statutory violation of this particular provision has been established.

The Plaintiffs also assert that summary judgment cannot be granted to the state regarding this statutory provision because the state itself is a party to this litigation. Having failed to appoint the council, the Plaintiffs assert that the State

consistent with the statutory requirements at the outset, then the "baselining" or carrying-over of that project from year to year is not precluded by the statute.¹

- C. Plaintiffs have demonstrated that the State has not adequately considered the means and costs, as well as the costs and benefits of the proposed bridge, of the Iliamna-Nondalton project as required by AS 44.42.050.

AS 44.42.050(a) requires that in determining which projects should be included within the state transportation plan, the commissioner "shall 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." Further, section (d) of this statute requires that the state transportation plan "include an itemization of the estimated cost for each project and the total cost of all projects."

Here, DOT&PF asserts that it undertook the requisite statutory consideration of the Iliamna – Nondalton project in 1995, when it accorded the project a seventh-highest priority in the state based on the criteria that it applied to evaluate the project at that time.

But this court has reviewed the criteria that were employed by the Department at that time, and finds that they do not comport with the statutory requirements. Indeed, the Department itself has acknowledged that it did not undertake a cost-benefit analysis to evaluate transportation improvement projects in the remote parts of the state. See Ex. A, Revised Environmental

¹ Here, the 2002 Plan was silent on the total capital cost, capital recovery factor, annual maintenance cost, and estimate of the 2020 annual person miles traveled for the "baselined" projects. See Ex. 13 at 59. For the reasons discussed in part C, below, this appears due to the fact that this cost and effectiveness analysis was never undertaken at the outset, at least with respect to this project. It is one thing to carry-over the requisite analysis from year to year, which this court finds is not precluded by statute. It is another, as discussed below, to never undertake this statutorily required analysis at the outset.