

Joe Hayes

From: Marc-gmail [REDACTED]
Sent: Friday, April 28, 2023 5:22 PM
To: Senate State Affairs
Subject: HB 8: substantive misstatements made by Rep Carrick's Office re Federal laws on e-bikes so_3376
Attachments: -_increasing_recreational_opportunities_through_the_use_of_electric_bikes_-508_0.pdf

[Please provide this to each Senator, add as additional testimony regarding HB8, and confirm receipt - thank you]

Senators,

It has been a week since I wrote requesting a correction and apology from Rep. Carrick and have yet to have the courtesy of a response. In as much as this Committee is meeting again on the 2nd, I felt it incumbent upon me to advise the committee in writing sufficiently in advance that I documented the misstatements Rep Carrick's office have made, that I wrote to the Representative's office and provided detailed documentation of the errors (see below), and that their office apparently failed to address those misstatements in a timely fashion.

In as much As Mr Stuart Relay bullishly told me on the telephone that I was mistaken (one of the reasons I provided such a detail note to Rep Carrick's office) I am unfortunately concerned that their office still refuses to do the necessary research and analysis to engage in an accurate presentation of the bill. I suppose only time will tell.

In the interim let us be clear: HB8 does not say the same thing as 38 state statutes, federal statute, or MoA ordinance. Nor are the differences de minimus. Maybe its time the committee heard from their own lawyers and researchers?

Best,

Marc Grober, Esq
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Representative Carrick,

Once again I must ask you to correct the record on your office's presentations re HB8.

Your aide, responding to Senator Wielechowski, stated your bill defined e-bikes the same way federal law does.

I called your office and your aide returned my call during which conversation he insisted that the definition adopted by the Department of Interior was the same as in your bill. I pointed out that he was incorrect but he was rather insistent so I suggested he might want to review my sectional analysis and then prepare a correction and apology to the Senate State Affairs Committee.

To help this process along you can find below Secretary of the Interior Bernhardt 's signed Secretary's Order 3376, "Increasing Recreational Opportunities through the use of Electric Bikes."

This order specifically cites and relies on the pre-emptive federal statute repeatedly provided to the legislature. You will find the cite to that statute below as well. Federally, e-bikes are defined as [bold italics supplied],

(b)Definition

For the purpose of this section, the term “**low-speed electric bicycle**” means a two- or three-wheeled vehicle with fully operable pedals and an electric motor of **less than** 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph

E-bikes must have LESS THAN 750 watts and be unable to reach 20 mph on a paved level surface with a 170 pound operator. That was not what your bill stated (unless, of course, you asked for a CS that altered your definition as I have been requesting now for weeks in both chamber’s committees, that I missed, in which case please accept my thanks and apologies).

As I have repeatedly noted, e-bikes are defined in this fashion specifically to address consumer safety (<https://www.cpsc.gov/content/bicycle-requirements-business-guidance>), so your bill intentionally rejects a federal statute adopted specifically to protect the public from the motor vehicles you want to turn into bicycles, and then makes what IS NOT a bicycle legal to use on every trail in the state without regard to the impact of unlawfully permitting motor vehicles on trails that might well receive federal funding mandating that such funds not be used to provide access to motor vehicles (as neither you nor Senator Kawasaki sought a legal opinion on the matter).

Please provide an apology and correction to the Committee at your earliest opportunity. As I was not present at the hearing due to other obligations, I am going to take some time to further review your aide’s comments for additional errors or misstatements, and you may want to do the same as well.

Best wishes,

Marc

Marc Grober, Esq.
5610 Radcliff Dr
Anchorage, AK 98504

p.s. Of course, as DOI has surmised, even the federal statute would be difficult to enforce as against the rider, which is why we need to stop unscrupulous sales venues from selling these motor vehicles as e-bikes :-). Limiting e-bikes to 350 watts and prohibiting external batteries in your bill would be a very good idea.



15 U.S. Code § 2085 - Low-speed electric bicycles
law.cornell.edu



THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3376

Subject: Increasing Recreational Opportunities through the use of Electric Bikes

Sec. 1 Purpose. This Order is intended to increase recreational opportunities for all Americans, especially those with physical limitations, and to encourage the enjoyment of lands and waters managed by the Department of the Interior (Department). This Order simplifies and unifies regulation of electric bicycles (e-bikes) on Federal lands managed by the Department and also decreases regulatory burden.

Sec. 2 Authorities. This Order is issued under the authority of section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, as well as other relevant statutes.

Sec. 3 Background. Bicycling is an excellent way for visitors to Federal lands to experience America's rich natural heritage. Bicycling has been popular in America since the early nineteenth century. Since then, innovation in the design and production of bicycles has dramatically increased mechanical efficiency, opening bicycling to a greater number of people in a larger number of environmental and geographical conditions.

A relatively recent addition to the design of some bicycles is a small electric motor which can provide an electric power assist to the operation of the bicycle. Reducing the physical demand to operate a bicycle has expanded access to recreational opportunities, particularly to those with limitations stemming from age, illness, disability or fitness, especially in more challenging environments, such as high altitudes or hilly terrain.

While e-bikes are operable in the same manner as other types of bicycles and in many cases they appear virtually indistinguishable from other types of bicycles, the addition of a small motor has caused regulatory uncertainty regarding whether e-bikes should be treated in the same manner as other types of bicycles or, alternatively, considered to be motor vehicles. This uncertainty must be clarified. To resolve this uncertainty the Consumer Product Safety Act (Act) provides useful guidance. That Act defines a "low-speed electric bicycle" to include a "two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph", subjecting these low-speed e-bikes to the same consumer product regulations as other types of bicycles (15 U.S.C. § 2085). A majority of States have essentially followed this definition in some form.

Uncertainty about the regulatory status of e-bikes has led the Federal land management agencies to impose restrictive access policies treating e-bikes as motor vehicles, often inconsistent with State and local regulations for adjacent areas. The possibility that in some cases e-bikes can be propelled solely through power provided by the electric motor, a function often used in short duration by older

or disabled riders as an assist, has contributed to confusion about e-bike classification. Further, Federal regulation has not been consistent across the Department and has served to decrease access to Federally owned lands by e-bike riders.

Sec. 4 Policy. Consistent with governing laws and regulations:

- a) For the purpose of this Order, "e-bikes" shall mean "low-speed electric bicycle" as defined by 15 U.S.C. § 2085 and falling within one of the following classifications:
 - i) "Class 1 electric bicycle" shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour;
 - ii) "Class 2 electric bicycle" shall mean an electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour; and
 - iii) "Class 3 electric bicycle" shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour.
- b) E-bikes shall be allowed where other types of bicycles are allowed; and
- c) E-bikes shall not be allowed where other types of bicycles are prohibited.

Sec. 5 Implementation. I direct the Assistant Secretaries for Fish and Wildlife and Parks, Land and Minerals Management, and Water and Science, as appropriate, to do the following:

- a) Within 14 days of the date of this Order, unless otherwise prohibited by law or regulation:
 - i) To the extent existing regulations allow, adopt a Bureau/Service-wide policy that conforms to the policy set forth in Sec. 4 of this Order;
 - ii) Amend or rescind any prior written policies as appropriate;
 - iii) Instruct the Director, Fish and Wildlife Service (FWS) to develop a proposed rule to revise 50 CFR § 25.12 and any associated regulations to be consistent with this Order, add a definition for e-bikes consistent with 15 U.S.C. § 2085, and expressly exempt all e-bikes as defined in Sec. 4a from falling under the definition of off-road vehicle;
 - iv) Instruct the Director, National Park Service (NPS) to develop a proposed rule to revise 36 CFR § 1.4 and any associated regulations to be consistent with this Order, add a definition for e-bikes consistent with 15 U.S.C. § 2085, and expressly exempt all e-bikes as defined in Sec. 4a from the definition of motor vehicles;

v) Instruct the Director, Bureau of Land Management (BLM) to develop a proposed rule to revise 43 CFR § 8340.0-5 and any associated regulations to be consistent with this Order, add a definition for e-bikes consistent with 15 U.S.C. § 2085, and expressly exempt all e-bikes as defined in Sec. 4a from the definition of off-road vehicles or motorized vehicles; and

vi) Instruct the Commissioner, Bureau of Reclamation (BOR) to develop a proposed rule to revise 43 CFR § 420.5 and any associated regulations to be consistent with this Order, add a definition for e-bikes consistent with 15 U.S.C. § 2085, and expressly exempt all e-bikes as defined in Sec. 4a from the definition of off-road vehicles.

b) Within 30 days of the date of this Order, submit a report to the Secretary including:

i) A summary of the policy changes enacted in response to this Order;

ii) A summary of any laws or regulations that prohibit the full adoption of the policy described by this Order; and

iii) A timeline to seek public comment on changing any regulation described above.

c) Within 30 days of the date of this Order, provide appropriate public guidance regarding the use of e-bikes on public lands within units of the National Park System, National Wildlife Refuge System, lands managed by BLM, and lands managed by BOR.

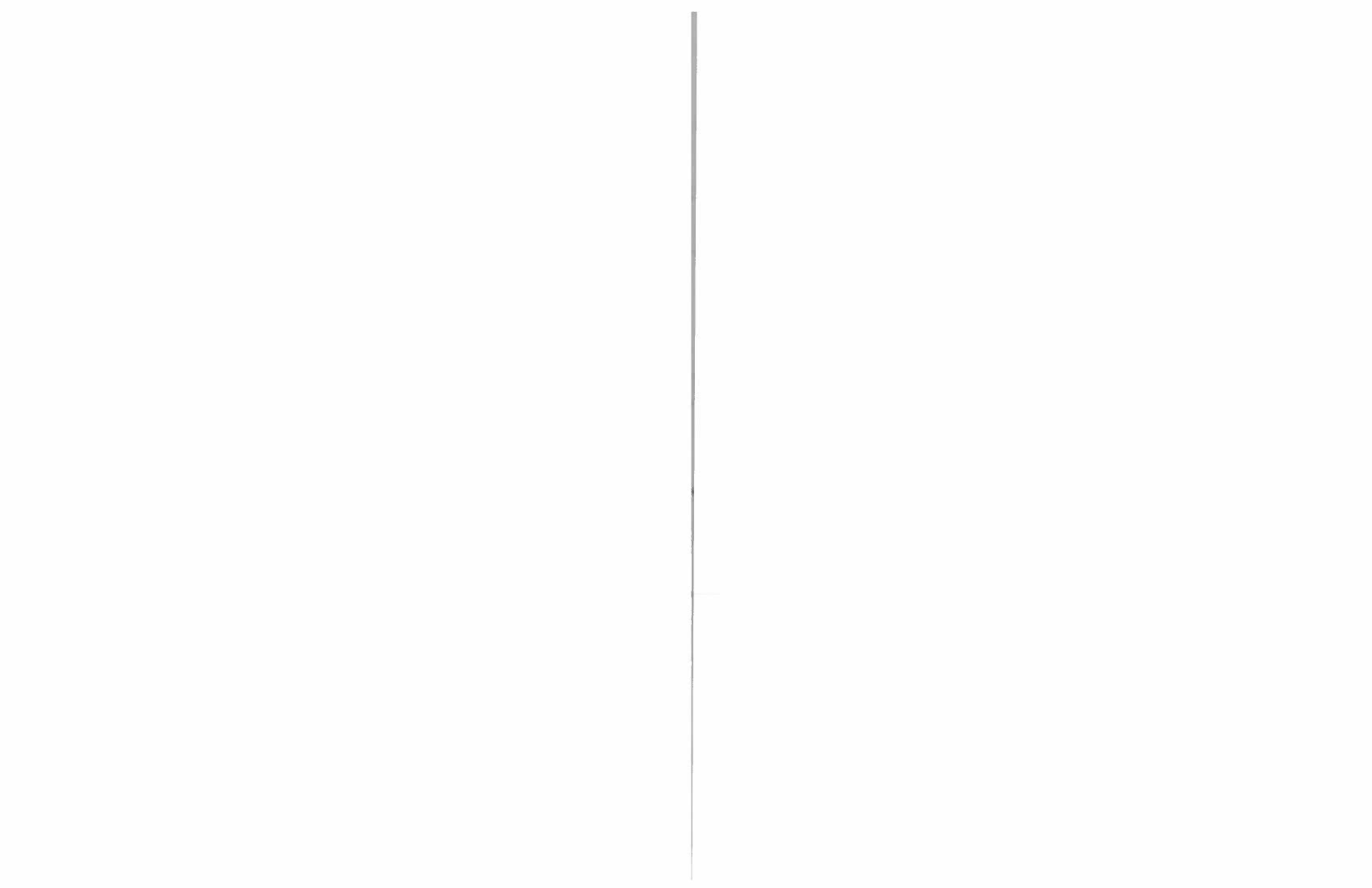
Sec. 6 Effect of the Order. This Order is intended to improve the internal management of the Department. This Order and any resulting reports or recommendations are not intended to, and do not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 7 Expiration Date. This Order is effective immediately. It will remain in effect until its provisions are implemented and completed, or until it is amended, superseded, or revoked.



Secretary of the Interior

Date: AUG 29 2019



Sen. Scott Kawasaki

From: Marc Grober <[REDACTED]>
Sent: Wednesday, April 19, 2023 1:18 PM
To: Senate State Affairs
Cc: Sen. Scott Kawasaki
Subject: Please add the following email to the SB62 Testimony

Follow Up Flag: Follow up
Flag Status: Flagged

Was the committee aware of the following?

—
My point, Scott, is that you are adopting a state statute, that conflicts with a pre-emptive federal statute intended to keep 750 watt motor vehicles off our trails, without even pausing to consider whether this would impact federal trails funds which may preclude motor vehicles on trails, and that sounds to me to be a bit reckless, don't you agree?

And I notice you didn't even bother with addressing the fact that under this bill YOUR constituents' bikes will still be illegal because they, though called "750 watt e-bikes", are all 1000 watt or more and will continue to be motor vehicles.

I understand that some legislators have voted for this bill because it is meaningless but suggests that the legislature is doing the people's business (as the literature reflects, 350 watts is more than adequate for all low-speed electric bicycle needs, so that argument is truly a red herring). I suppose I expect more from our legislators, especially Democrats, full of spit and vinegar about consumer protection, truth in legislation, health and safety, and non-motorized transportation.

Marc

Marc Grober
[REDACTED]
[REDACTED]

p. s. The value of testimony was clearly explained in a previous hearing where the Chair instructed witnesses to submit written comment to the committee 2 minutes before he asked unanimous consent to move the bill out of committee. The process reminds me of the three monkeys

On Apr 19, 2023, at 12:17 PM, Sen. Scott Kawasaki <Sen.Scott.Kawasaki@akleg.gov> wrote:

Hi Marc...our office has not requested anything from legislative legal services, but the Carrick office may have done so. The bill that is moving and the vehicle for consideration will be HB8 which passed the House yesterday. You may wish to reach out to them or it might be part of the information that is posted online already. We will hear and hold the bill in the Senate State Affairs Committee on Thursday at 3:30pm. Thanks for the interest...sjk



SENATOR SCOTT JIU WO KA
Alaska State Senate

State Capitol
Juneau, AK 99801
907-456-7423

*Working Hard for Alaska Families
Serving Fairbanks, Fort Wainwright, a*

From: Marc Grober <marc@interak.com>
Sent: Wednesday, April 19, 2023 11:35 AM
To: Sen. Scott Kawasaki <Sen.Scott.Kawasaki@akleg.gov>
Subject: SB62

Scott,

Could you share to me a copy of the legal opinion you obtained from Legislative Counsel on the impact of adopting a bill that puts vehicles outside the definition established pre-emptively by the federal government to protect the public from 750 and greater watt vehicles on federal funding for trails that precludes such usage?

And do you have battery and motor data for the constituents you are trying to protect so that we can clearly recognize that they would all still be unlawful under your bill (and then what would your solution be regarding ensuring that they then were not viewed as e-bikes.

Thanks,

Marc

"We but mirror the world. All the tendencies present in the outer world are to be found in the world of our body. If we could change ourselves, the tendencies in the world would also change. As a man changes his own nature, so does the attitude of the world change towards him. This is the divine mystery supreme. A wonderful thing it is and the source of our happiness. We need not wait to see what others do." – Mahatma Gandhi

A Hypothetical Discussion of About the Pros and Cons of HB8

Proponent: I support non-motorized safety and I think the bill improves that. Providing legal clarity on e-bikes in Alaska State Statute will support state agencies and local governments in regulating and enforcing e-bikes.

Critic: Perhaps, but the bill does not provide clarity and reduces safety [and the discussion below documents that none of the bikes you intend to allow on our trails are 750 watt bikes]. Further, no enforcement agency has used such efforts (for example, in Alaska the Municipality of Anchorage has adopted such an ordinance and APD has NOT enforced it) to do anything about effective policing. Moreover, your bill creates additional hazards as ebikes set fire to buildings, run pedestrians off sidewalks, and increase bicycle theft.

I appreciate the interests of Fairbanksans in making access to the outdoors accessible to all, but there is a better way than adopting poorly crafted legislation that is unenforceable, actually increases dangers for trail and road users, and introduces new poorly considered hazards to our communities. When a bill supporter argues that they can't imagine people traveling at 20 mph on bicycles, they demonstrate their ignorance of what bicycle use looks like in places like Anchorage, and state laws must be sensible for the entire state.

Proponent: The legislature has carved out exceptions in the past with SB 100 (2002), which created the definition for segways in Alaska State Statute because it was new technology, and there was legal ambiguity on regulating segways as motor vehicles. The minutes related to the bill that created this statutory definition state that the intent was so that segways could be treated similar to an electric wheelchair. E-bikes are different from segways and should be treated differently. Also, on page 4, lines 28-29, e-bikes are defined to include a bicycle designed to travel "with not more than three wheels," which includes e-bikes of 1, 2, and 3 wheels.

Critic: And this bill creates just another inconsistency which does little to resolve conflicts and as a result is more often than not ignored. In other words the legislature did nothing to address the consequences of such usage, signaling LEOs to do the same. Why not 4 wheels or 5 wheels and why treat a segue like a wheel chair if it can do 20 mph? Ebikes are not different than segues in any respect other than pedaling, and considering the use of the wattage scheme the bill offers, the pedal distinction is simply moot.

Proponent: I am focused on improving state statute and supporting both the administration and local government on regulating and enforcing statute.

Critic: Great! Let's do just that! Let's put the brakes on this bill until adequate research on how Europeans regulate and manage e-bikes, and the implications of federal legislation already adopted. Let's FIX the statutes and regulations, which most admit are badly broken but we refuse to bother with fixing because its just easier to keep patching.

The truth is that 350 watt e-bikes are available, and responsible states, in looking to make biking available to those needing accommodation, have limited that accommodation to devices less likely to cause harm, and have implemented licensing regimes to keep e-bikes from being used as motorcycles.

Proponent: Well, yes, I agree with you that there should be a clean-up of Title 13 regulations, I agree there should be some enforcement of Anchorage municipal code on low-speed e-bikes, and I agree that DPS should do a better job managing and enforcing the rules of the road, but an entire bicycle regulatory cleanup is currently outside the narrow scope of this bill.

Critic: Indeed! That is why the bill should be held until a rational regulatory matrix is adopted. In as much as your bill for practical purposes puts electric bikes operated by unlicensed persons doing 40 mph on the road (that includes those who have lost their license and persons who can't obtain a license), there is no reason someone who has lost their license can't immediately get back on the road with an "ebike" and it allows the legally blind to operate ebikes at 30 mph+ in the road!

Proponent: Shouldn't concerns related to current non-motorized regulations and enforcement be directed to the respective state agencies and local government

Critic: They have, and as a result the respective agencies or governments have responded in the same way as the sponsors of HB 8 and SB 62, marginalizing issues while inflating very minimal benefit. I understand that sounds harsh, but no amendment of HB8 or SB62 has been offered to address the many defects that have been identified, and in the same manner DPS has continued to refuse to undertake any revision or the Motor Vehicle Code, adopted decades ago.

Proponent: Also HB 8 allows municipalities to regulate e-bikes on non-motorized trails which could address these concerns.

Critic: Come come. The sponsor already argued to the House that this follows MoA regulation, which contrary to her testimony is not enforced, does not work (there are 1500 watt e-bikes on the MOA Multi Use Trails (MUTs), and is also inconsistent with federal law. Indeed, in Anchorage this rush to legalize has created a further problem because of inconsistent regulatory regimes on State, Municipal and Federal lands all practically within the same area.

Proponent: OK, what ARE your objections to the 750 watt limitation?

Critic: Under federal law low speed e-bikes must be LESS than 750 watts and are subject to additional load/speed tests - as a result ebikes in anchorage ARE NOT low speed ebikes. And your regimen legalizes motors and batteries producing wattage way beyond what you think the bill does; frankly, the only way your bill is really manageable is to reduce the wattage to 350 (see for example the Serfas init at <https://www.serfas.com/shop/products/e-bike/e-dart/serfas-edart-350w-e-bike/> or the 500 watt ENVO line at <https://envodrive.com/en-us/products/envo-st>) and prohibit a battery motor combination that could produce more than that and implement a licensing regimen on the vehicles requiring operators license on anything ~~not licensed~~ and inspected.

Why? Simply put, virtually all US ebikes, unlike the European regulations, have software governors that can be easily hacked, already produce 1000+ watts, and can be used with bigger batteries.

The widely used Bafang 750 is a 25 amp motor, meaning it will do 1.5 kw out of the box! Wattage equals volts times amps!!!! You do the math: 52 volt batter times 25 amp motor produces how many watts?

Moreover, why allow such bikes in the road without a license and not similar gas powered scooters. Motor scooters over 50 cc require a drivers license in Alaska; and a 50cc motor can produce 3 HP. We already have e-bikes in Alaska doing close to 4HP!

Proponent: Section 4 states that e-bikes are not required to be registered as a vehicle. E-bikes should be treated differently from motor vehicles and motorcycles, which require a license.

E-bikes should be registered as a vehicle, and should require an operators license, in no small part because your definition runs afoul of the federal definition (which you don't mention at all) and for Why should a 100 lb vehicle capable of doing 30 mph

NOT be treated like a motor vehicle (save for the fact that might slow sales of products already in violation federal law - a matter not addressed in the bill at all)

Proponent: Have you offered any specific provisions regarding amendment of the bill?

Critic: I don't think fiddling a poor patch makes that poor patch any better, BUT, at a minimum the bill should require drivers license of anything that can travel over 20 mph (as some jurisdictions do), require them to have license plates that indicate they have been inspected regularly and can not be noncompliant, and cap them at 350 watts.

If you want "low speed" ebikes on our trails in a safe manner maybe the bill should be addressing the huge defects referenced instead of dismissing them in a rush to put motorcycles on our trails and unlicensed motorists on our roads

Marc Grober

[REDACTED]

[REDACTED]

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