

Sectional Analysis of SB 62

Submitted by Marc Grober, Esq. ¹

Bill Text	Commentary
<p>Section 1. AS 19.10.399 (9) is amended to read:</p> <p>(9) "motor vehicle" means a vehicle that is self-propelled, <u>except for a vehicle moved by human or animal power; "motor vehicle" does not include an electric-assisted bicycle as defined in AS 28.90.990 (a) ;</u></p>	<p>This is arguably inconsistent with current AAC usage which in some places has a hierarchy with "motor vehicles" being a subcategory of "vehicles" so sometimes bicycles are "vehicles" and sometimes they are not. The previous Commissioner of DPS claimed she has a memo from the AG indicating that as bicycles were NOT identified as vehicles in Chapter 4 of Title 13 (they are identified as vehicles in Chapter 2) Chapter 4 of Title 13 (concerning flashing rear lights, flashing police lights, etc; see 13 AAC 04.145), that bikes could have rear flashing red tail lights. But since it is Chapter 4 that would prevent bicycles from having police flashing lights, that would allow a tricycle on a roadway to mount and use police flashing lights, a position which is clearly unacceptable, but DPS has refused to address such issues at all.</p> <p>We need a consistent set of statutes and ACC provisions, and DPS has essentially refused to even consider taking that on.</p>
<p>Sec. 2. AS 19.10.399 (16) is amended to read:</p> <p>(16) "vehicular way or area" means a way, path, or area, other than a highway or private property, that is designated by official traffic control devices or customary usage and that is open to the public for purposes of pedestrian or vehicular travel, and which way or area may be restricted in use to pedestrians, bicycles, or other specific types of vehicles as determined by the Department of Public Safety or other agency having jurisdiction over the way, path, or area; <u>in this paragraph, "bicycle" has the meaning given in AS 28.90.990 (a).</u></p>	<p>We really need a concordance of both statutory and regulatory use of the terms motor vehicle, vehicle, bicycle, etc, as we currently have no real information as to how inconsistent our regulatory regime is such that all the various schemas and definitions can be reconciled. The use of the term bicycle in most cases is a misnomer (it clearly does not apply to all two wheel vehicles!). The only way we can really manage that is to start fresh.</p> <p>In Anchorage, which is apparently seen as a test tube for the roll out of these machines, we have trails from as narrow as 6', and I have seen many a bicyclist hit a tree or bush because they were going too fast for the conditions. Thankfully, most of the time a person going too fast for the conditions is physically fit (hence their ability to "go fast"), but if the intent is to</p>

	<p>put these vehicles in the hands of those not fit, what then?</p> <p>And, what impact on others on the trails when they confront operators not prepared to adequately control a 60 pound juggernaut doing 35 down a 7% hill face at a sudden 90 degree turn?</p>
<p>Sec. 3. AS 28.05.011(a) is amended to read:</p> <p>(a) The commissioner of public safety shall, unless otherwise provided by statute, adopt regulations in compliance with AS 44.62 (Administrative Procedure Act) necessary to carry out the provisions of this title and other statutes whose administration is vested in the Department of Public Safety. The regulations must include (1) rules of the road relating to the driving, stopping, standing, parking, and other conduct of vehicles, to pedestrians, and to official traffic control devices; regulations adopted under this paragraph may not prohibit the use of an electric personal motor vehicle <u>or an electric-assisted bicycle</u> on a sidewalk, bike path, or vehicular way or area restricted to the use of pedestrians; limitations on regulation of electric personal motor vehicles <u>or electric-assisted bicycles</u> imposed under this paragraph do not apply to a municipal ordinance regulating electric personal motor vehicles, <u>electric-assisted bicycles, or specific classes of electric-assisted bicycles</u>, enacted to meet local requirements; <u>unless otherwise specified by regulation, (A) an electric-assisted bicycle is considered a bicycle and may not be regulated as another type of vehicle; and (B) a user of an electric-assisted bicycle shall be afforded the same rights and be subject to the same duties as a user of a bicycle;</u> (2) minimum equipment for vehicles, including minimum standards of compliance to be met by manufacturers and vehicle sales and repairs businesses; (3) inspection of vehicles other than commercial motor vehicles, and the removal of vehicles from areas of public use when they are found to be in a defective or unsafe condition; (4) abandonment of vehicles; (5) management of records of the Department of Public Safety required for that department's administration of this title and its regulations adopted under this title, including provisions for ensuring the accuracy of information contained in automated and manual information retrieval systems; (6) definitions of words and phrases used in this title and in regulations adopted under this title unless otherwise provided by statute; (7) certification and regulation of junk yards.</p>	<p>First of all, as the Fairbanks MPO (FASTUS) will have to admit, the Department of Public Safety has for all practical purposes failed to do anything about our “rules of the road” for DECADES, even after MPOs and private citizens have repeatedly begged DPS to do something, anything.</p> <p>The idea that a person riding a vehicle at 28 mph on a 6 foot wide path filled with children without any limitations simply ignores the human condition and greenlights an entire new set of horrendous injuries.</p> <p>And that presumes that the current statute and regs to be adopted were enforceable (they are not- see specifics on sections below)</p> <p>Also, as noted before the House State Affairs Committee, the bill would allow a legally blind person to operate a vehicle weighing as much as a motorcycle on the public roads without a license, traveling at 28 mph (likely more as in fact the limitations are unenforceable (see below in specific sections). Do we really want legally blind persons driving vehicles on the roads while banning operating a motor scooter without a license?</p>

Sec. 4. [AS 28.10.011](#) is amended to read:

Sec. 28.10.011. Vehicles subject to registration. Every vehicle driven, moved, or parked on [UPON] a highway or other public parking place in the state shall be registered under this chapter except when the vehicle is (1) driven or moved on a highway only for the purpose of crossing the highway from one private property to another, including an implement of husbandry as defined by regulation; (2) driven or moved on a highway under a dealer's plate or temporary permit as provided for in [AS 28.10.031](#) and 28.10.181(j); (3) special mobile equipment as defined by regulation; (4) owned by the United States; (5) moved by human or animal power; (6) exempt under 50 U.S.C. App. 501-591 (Soldiers' and Sailors' Civil Relief Act); (7) driven or parked only on private property; (8) the vehicle of a nonresident as provided under [AS 28.10.121](#); (9) transported under a special permit under [AS 28.10.151](#); 18 (10) being driven or moved on a highway, vehicular way, or a public parking place in the state that is not connected by a land highway or vehicular way to (A) the land-connected state highway system; or (B) a highway or vehicular way with an average daily traffic volume greater than 499; (11) an implement of husbandry operated in accordance with the provisions of [AS 19.10.065](#); (12) an electric personal motor vehicle; **(13) an electric-assisted bicycle.**

Sec. 5. [AS 28.90.990](#)(a)(12) is amended to read:

(12) "electric personal motor vehicle" means an electric personal assistive mobility device that is a self-balancing vehicle with two nontandem wheels, designed to transport only one person, has an electric propulsion system, and has a maximum speed of not more than 15 miles an hour; **"electric personal motor vehicle" does not include an electric-assisted bicycle;**

Again, the regulation of these vehicles as envisioned here are unenforceable. See e.g. <https://cleantechnica.com/2022/07/28/the-problem-with-common-e-bike-laws-theyre-largely-unenforceable/>

Unless we do have regular inspections and certifications there is no way anyone is going to be able to enforce these provisions. Moreover, without easily identifiable plates, there is no lawful way to stop such a vehicle so as to even inspect the vehicle. Nor will any Law enforcement officer ever stop such a vehicle so as to enforce this law. Why adopt a law that will never be enforced?

Put yourself in the position of an officer on a trail (forget for a moment that we do not put officers on trails...). How is he to address the operator of such a vehicle? What is he to look for? How can he tell what he is looking at?

AND, and this is a critical AND, the governors on today's e-bikes are largely software based! Yes, software based, and there are already hacks available online. Moreover, the systems are dependent on the specifications of the partcu;ar battery and motor; change out the wheel and use a bigger battery and you have just fooled the software and you are going fast, fast, faster. Likely? You do know we have a guy with a gas-powered bicycle running about Anchorage...

Why make a "segue" exception? This arguably ignores the reality of use of vehicles in public spaces. We have 1, 2, 3, 4 and more wheeled vehicles employing direct AND indirect human power (human power used to generate electricity to power the vehicle), electric, gas, and even solar power vehicles. We have vehicles with wheels in dozens of different configurations, and all of these devices could potentially be used on a variety of different transportation modes. Why are we limiting a non-tandem device of two wheels but not limiting e-unicycles, etc?

<p>Sec. 6. <u>AS 28.90.990</u> (a) (18) is amended to read: {18) "motor vehicle" means a vehicle <u>that</u> [WHICH] is self-propelled, except <u>for</u> a vehicle moved by human or animal power; "motor vehicle" does not include an electric-assisted bicycle;</p>	<p>Again, why are we making an exception for certain vehicles when logically speaking the only basis for such effort is industry's haste to sell them?</p> <p>And, again, how can the LEO actually make any distinction? Why don't you get your hands dirty and take a look at a 2 hp e-bike and ask the DPS Commissioner to advise you what his officers would do, other than read a label?</p>
<p>Sec. 7. <u>AS 28.90.990</u> (a) (19) is amended to read: (19) "motorcycle" means a vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground; "motorcycle" [THE TERM] does not include a tractor or an electric-assisted bicycle;</p>	
<p>Sec. 8. <u>AS 28.90.990</u> (a) (20) is amended to read: (20) "motor-driven cycle" means a motorcycle, motor scooter motorized bicycle, or similar conveyance with a motor attached and having an engine with 50 or less cubic centimeters of displacement; "motor-driven cycle" does not</p>	<p>A 50 cc gasoline motorcycle can produce anywhere from 3 hp to 20 hp. Today, 'e-bikes' are being sold with front and rear motors offering as much as 3 hp. How and why are we differentiating vehicles on such a flimsy basis. Even the pre-emptive federal law (see below) recognizes how impossible such a regime is.</p>
<p>Sec. 9. <u>AS 28.90.990</u> (a) is amended by adding new paragraphs to read: (33) "bicycle" includes an electric-assisted bicycle; (34) "class 1 electric-assisted bicycle" means a bicycle equipped with an electric motor that provides assistance only when the rider is pedaling and that stops providing assistance when the bicycle reaches the speed of 20 miles per hour; (35) "class 2 electric-assisted bicycle" means a bicycle equipped with an electric motor that may be used exclusively to propel the bicycle and that stops providing assistance when the bicycle reaches the speed of 20 miles per hour; (36) "class 3 electric-assisted bicycle" means a bicycle equipped with an electric motor that provides assistance only when the rider is pedaling and that stops providing assistance when the bicycle reaches the speed of 28 miles per hour; (37) "electric-assisted bicycle" means a bicycle that (A) is designed to travel with not more than three wheels in contact with the ground; (B) has fully operative pedals for human propulsion; (C) has a seat or saddle for use of the rider; (D) is equipped with an electric motor that has a power output of not more than 750 watts; and (E) is a class 1, class 2, or class 3 electric-assisted bicycle.</p>	<p>This section is unenforceable, arguably meaningless when it comes to referencing wattage, meaningless when it comes to speed absent a discussion of load, and inconsistent with preemptive federal statute.</p> <p>Federal statutes, 15 USC §2085 (https://www.law.cornell.edu/uscode/text/15/2085) provides a definition of these vehicles which is not only pre-emptive, but limits usage based on the speed that the vehicle can manage on the flat with a specific load. But even that provision won't assist the enforcement of the current statute.</p> <p>And, even attempting to use wattage as a yardstick won't work because there are so many different ways to address wattage. See https://ebikes.ca/learn/power-ratings.html</p> <p>Currently there is at least one vendor providing Aventon Aventure e-bikes for unregulated use on Anchorage MUTs. APD has been advised that these bikes are rated with a peak wattage of over 1000 watts with one motor and APD has done nothing and will do nothing; that means that the effort to implement such regulation in Anchorage HAS NOT</p>

	<p>worked, contrary to the claims made the the sponsor of HB8.</p> <p>Additionally, many view speeding e-bikes on Anchorage trails as an unmitigated disaster and a huge hazard where users are traveling at speeds over up to 28 mph without being able to effectively control these 40 to 70 pound vehicles.</p>
<p>Sec. 10. AS 41.23 is amended by adding a new section to article 1 to read:</p> <p>Sec. 41.23.300. Definitions. In AS 41.23.010 - 41.23.300, (1) "bicycling" includes the operation of an electric-assisted bicycle;(2) "electric-assisted bicycle" has the meaning given in AS 28.90.990 (a) .</p>	
<p>1 My name is Marc Grober. I have been a member of the Alaska Bar since 1977 and have worked as an engineer, computer systems administrator and consultant, and teacher at elementary, secondary, and post-secondary levels. I spend some 15 hours per week in our parks and on our trails, run the Facebook Group Anchorage Bicyclists, and I am a member of the Board of the Northeast Community Council but I am presenting this analysis on a personal basis only. I ride road bike and fat bike and for years commuted to work via bicycle and did my wife. I will be 71 in April. I regularly walk, hike, bike, and ski in our parks and on our trails, and have been an advocate for our parks and trails, as well as for the recognition of the rights and duties of non-motorized users of our transportation network.</p> <p>Marc Grober, Esq. 5610 Radcliff Dr. Anchorage AK 99504 E-mail: marc@interak.com Cell: (907)227-2417</p>	