

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

March 27, 2003

8:01 a.m.

MEMBERS PRESENT

Representative Bruce Weyhrauch, Chair
Representative Jim Holm, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Paul Seaton
Representative Ethan Berkowitz
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 177
"An Act relating to concealed handguns."

- MOVED CSSSHB 177(STA) OUT OF COMMITTEE

HOUSE BILL NO. 102
"An Act relating to concealed deadly weapons."

- HEARD AND HELD

HOUSE BILL NO. 127
"An Act allowing certain roadside memorials to be placed within the right-of-way of a state highway."

- MOVED CSHB 127(STA) OUT OF COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 5
Establishing a task force to make recommendations regarding a new design for the official seal of the State of Alaska.

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 177
SHORT TITLE: CONCEALED HANDGUNS

SPONSOR(S): REPRESENTATIVE(s) STOLTZE

Jrn-Date	Jrn-Page		Action
03/07/03	0467	(H)	READ THE FIRST TIME - REFERRALS
03/07/03	0467	(H)	STA, JUD
03/14/03	0540	(H)	SPONSOR SUBSTITUTE INTRODUCED
03/14/03	0540	(H)	READ THE FIRST TIME - REFERRALS
03/14/03	0540	(H)	STA, JUD
03/17/03	0567	(H)	COSPONSOR(S): DAHLSTROM, HOLM
03/24/03	0623	(H)	COSPONSOR(S): GATTO
03/27/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 102

SHORT TITLE: CONCEALED DEADLY WEAPONS

SPONSOR(S): REPRESENTATIVE(s) CROFT

Jrn-Date	Jrn-Page		Action
02/14/03	0215	(H)	READ THE FIRST TIME - REFERRALS
02/14/03	0215	(H)	STA, JUD
02/19/03	0257	(H)	COSPONSOR(S): GATTO
03/13/03		(H)	STA AT 8:00 AM CAPITOL 102
03/13/03		(H)	Scheduled But Not Heard
03/27/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 127

SHORT TITLE: ROADSIDE MEMORIALS

SPONSOR(S): REPRESENTATIVE(s) WHITAKER

Jrn-Date	Jrn-Page		Action
02/26/03	0304	(H)	READ THE FIRST TIME - REFERRALS
02/26/03	0304	(H)	TRA, STA
03/06/03		(H)	TRA AT 1:30 PM CAPITOL 17
03/06/03		(H)	Moved Out of Committee
03/06/03		(H)	MINUTE(TRA)
03/07/03	0463	(H)	TRA RPT 3DP 2AM
03/07/03	0463	(H)	DP: FATE, HEINZE, HOLM; AM: KOHRING,
03/07/03	0463	(H)	MASEK
03/07/03	0464	(H)	FN1: ZERO(DOT)
03/27/03		(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

REPRESENTATIVE BILL STOLTZ

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of SSHB 177; testified during the hearing on HB 102.

BRIAN JUDY, Alaska State Liaison
to the National Rifle Association (NRA)
and the Institute for Legislative Action
Sacramento, California

POSITION STATEMENT: Testified and answered questions on SSHB 177; on behalf of the NRA, testified in support of the concept of HB 102.

REPRESENTATIVE ERIC CROFT

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on SSHB 177; testified as sponsor of HB 102.

LORI BACKES, Staff
to Representative Jim Whitaker
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 127 to the committee on behalf of Representative Whitaker, sponsor.

RACHELLE DOWDY

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 127 and the amendments adopted today.

SANDY GILLESPIE

POSITION STATEMENT: Her testimony in support of HB 127 was read by Rachelle Dowdy.

JIM EDE

Wasilla, Alaska

POSITION STATEMENT: Expressed concerns with HB 127.

ASA DOWDY

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 127.

BARBARA DOWDY, Member

Fairbanks Chapter of Mothers Against Drunk Driving
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 127 as amended.

ACTION NARRATIVE

TAPE 03-30, SIDE A

Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 8:01 a.m. Representatives Weyhrauch, Holm, Seaton, and Gruenberg were present at the call to order. Representatives Dahlstrom, Lynn, and Berkowitz arrived as the meeting was in progress.

HB 177-CONCEALED HANDGUNS

Number 0040

CHAIR WEYHRAUCH announced that the first order of business was SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 177, "An Act relating to concealed handguns."

Number 0099

REPRESENTATIVE BILL STOLTZ, Alaska State Legislature, sponsor of SSHB 177, told the committee this straightforward legislation removes an amendment from statute that was enacted last year with respect to reciprocity agreements with other states for carrying concealed weapons; that amendment, although presumed to be innocuous, had caused other states to not accept [Alaska's concealed weapon laws] because they aren't compatible with their own. Furthermore, SSHB 177 adds language to direct the department to work towards reciprocity agreements with other states.

Number 0294

BRIAN JUDY, Alaska State Liaison to the National Rifle Association (NRA) and the Institute for Legislative Action, told the committee he was testifying on behalf of both. He said on the surface this appears to be a substantive change, but is really a technical change. The intent is to open up the recognition of Alaska concealed weapon permits by other states. Mr. Judy noted that the previous year's SB 242, carried by Senator Robin Taylor, would basically say that Alaska recognizes permits from all other states; it also would make other changes, with the idea of trying get more states to recognize Alaska's permits. He continued:

The more that Alaska recognizes, the more we're going to be able to have Alaska permits recognized in those other states because of a lot of the reciprocity agreements. So that's the intent of this bill, and it does it in two ways. First of all, it requires the Department of Public Safety [DPS] to enter into reciprocity agreement[s]. Now, this commissioner has already, pretty actively, started doing that. We just want to codify it, so it's in place for the future.

I've talked to them about this. They don't have a problem with that. They did ask that there be one amendment, which we don't have a problem with. And that amendment would be to clarify -- because it does say that the DPS shall enter into reciprocity agreements with other states. Now, there are some states, like Washington, for instance, that doesn't recognize other states' permits. So, they're not going to enter into a reciprocity agreement. So DPS, just as a technical issue, doesn't want to be forced to make agreements with states that aren't going to make agreements with them. So, they asked if we would be willing to do that, and we indicated yes.

The other thing this bill does is, it repeals the language that Representative Stoltz is talking about that was added on to SB 242 at the very end of session last year. ... There was a concern raised on the floor that people who had had a permit revoked or denied in Alaska could go outside the state, get a permit in another state, and then come back in and have that permit recognized in the State of Alaska.

Number 0513

MR. JUDY continued:

One of the points of that bill was to get Texas to recognize Alaska permits. There was another provision in the law that Alaska said was more restrictive than their recognition law, so they wouldn't recognize Alaska. Well, we didn't think that the amendment was going to cause us any problems. We didn't think it was an issue; we think it's highly unlikely that anybody who has a permit denied or revoked in this state is going to travel out somewhere else, get a

permit, and then carry in Alaska. But we didn't think it was an issue, didn't think it would cause a problem, so we accepted the amendment.

MR. JUDY referred to a handout in the committee packet that relates to the Texas Department of Public Safety's refusal to recognize Alaska permits because, technically, Alaskan law regarding recognition is more restrictive than the Texas law. He remarked, "If you repeal this language, it's going to automatically open the door for Texas to recognize Alaska, and probably some other states, too."

CHAIR WEYHRAUCH asked if [the bill] would reduce Alaska's requirements to those of Texas.

MR. JUDY answered no; Alaska currently recognizes permits from all other states. He said Texas is refusing to enter into agreement because Alaska "puts this ... proviso on the recognition of other states." He said it would be unlikely that an Alaskan would travel to Texas to get a Texas permit and then attempt to carry it in Alaska.

Number 0670

MR. JUDY said there are only 35 denials and revocations each year in Alaska. He said, "Most of those are going to be for issues that are going to prevent a person from being issued a permit in another state." He said the bottom line is that [SSHB 177] won't provide a substantive change to Alaska law and won't create problems, but will open the door for recognition of Alaska permits in other states. In response to a question by Representative Gruenberg, he said the reason for the change in Section 1 was because of the Texas letter refusing reciprocity.

Number 0717

REPRESENTATIVE GRUENBERG said he doesn't interpret the letter in the committee packet, written by Thomas A. Davis, Jr., dated June 28, 2002, as saying that. He referred to a portion of the letter that read: "After reviewing both statutes, we are trying to determine if Alaska will recognize all licenses issued by Texas. For instance, if Texas and Alaska were to enter into a reciprocity agreement, would Alaska recognize the following Texas concealed handgun licenses". Representative Gruenberg said this raises a number of questions, but doesn't say Texas won't recognize reciprocity with Alaska because of the current amendment to AS 18.65.748; it simply asks a question.

MR. JUDY drew attention to the response from DPS back to Texas, a fax written by Lieutenant Julia P. Grimes that says under certain circumstances Alaska will not recognize the Texas permit. As a result, Texas had responded - but not in writing - that it wouldn't enter into reciprocity with Alaska.

REPRESENTATIVE GRUENBERG emphasized that nothing in writing confirms Texas's response or says Alaska needs to amend its statute. He explained:

It seems to me that it was an entirely reasonable thing to amend it as Alaska did - that we don't want to license people, you know, have people come back to us, trying to get around - like you have some reason, as a felony, conviction, or something - and then they go to another state, get licensed there, and then say you've got to recognize it here. That would circumvent the Alaska law, and it would not be good public policy to allow that kind of a person to get a permit here. I can't imagine that would be something that Texas would not allow.

REPRESENTATIVE GRUENBERG said he'd like to know, on the record, who said this and what authority that person has. He indicated he thought the stated response didn't sound logical.

MR. JUDY said, "I agree with you."

REPRESENTATIVE STOLTZ asked if there is any state in which a person with a felony could possess a concealed-carry permit.

Number 1034

MR. JUDY told Representative Gruenberg that Texas is being "very bureaucratically nitpicky." He continued:

You're right; this sounds like a reasonable restriction, which is why we didn't have a problem with it when it was offered. Like I said, we felt that it was highly unlikely that one of these individuals - one of these 35 people a year that is either revoked or denied - is going to go to another state and to try to circumvent that law, particularly when they can carry openly in Alaska. And I think it's about as likely that a Texas permit is not going to be recognized by Alaska. But that's the reality.

MR. JUDY, in response to questions from Representative Gruenberg, said he hasn't spoken to [Mr. Davis], who has corresponded with Ms. Grimes.

REPRESENTATIVE GRUENBERG asked if Ms. Grimes was present. He emphasized that he would like more proof than "double hearsay" that there is a problem to be solved before [the legislature] repeals what he considers an important protection in Alaska law.

Number 1161

REPRESENTATIVE SEATON asked if there are reciprocity agreement problems with any state other than Texas.

REPRESENTATIVE SEATON answered, "We're trying to enhance the reciprocity agreements with all states." He noted that Texas has concealed-carry permits. He opined that many Alaskans travel to Texas and probably have a good reason to feel they need a concealed-carry permit in some of the venues there.

REPRESENTATIVE SEATON alluded to a list labeled "PERMIT ISSUANCE CRITERIA FOR STATES WHICH ISSUE CONCEALED WEAPON PERMITS TO NON-RESIDENTS (As compared to Alaska's qualifications)," included in the committee packet. He pointed out that Texas isn't on that list. He asked if [Texas] has requirements similar to Alaska's.

MR. JUDY clarified that the list he'd provided shows only the eleven states that issue permits to nonresidents, which Texas doesn't do. Thus an Alaskan wouldn't go to Texas to get a Texas permit. He continued as follows:

See, the argument was that without this language that we're suggesting be repealed, an Alaskan who's had a permit, denied or revoked, can travel to another state and be issued a permit by another state. Now, there's only eleven states that issue to nonresidents. And for your information and trying to raise the comfort level, I provided you with the issuance criteria for those eleven states. Four of them you can take off right now, because they're not going to issue: you either have to have a business in that state, you have to have a local background check. So, of those eleven, four really aren't a possibility.

So, in reality, there are seven states out there that an Alaskan could go to be issued a nonresident permit.

And if you look at the criteria in those seven states, they are generally as restricted, if [not] more restricted than Alaska. So, the chance of an Alaskan who's had a permit denied or revoked, you have two issues: What's the chance they're going to go out of state to try to get another permit? I would suggest that it's pretty remote. But if they do go to one of those seven states, what's the chance that they're going to issued a permit, if they don't qualify for a permit in Alaska? It's virtually impossible.

Number 1346

REPRESENTATIVE SEATON said he appreciates that, but the discussion is about reciprocity agreements. He asked Mr. Judy if he had the requirements for a concealed-handgun permit in Texas.

MR. JUDY said not immediately available, but it's not relevant to this debate. He clarified that Alaska recognizes Texas permits under existing Alaska law. He said, "What we're simply trying to do under this bill is, if we repeal that language, then it will take away the restriction that's imposed by Alaska on the recognition of Texas permits." Repealing that language will automatically open the door for Texas to enter into a reciprocity agreement with Alaska. He clarified that [SSHB 177] will allow the recognition of Alaska permits in Texas. He added that this is a bill to benefit Alaskan concealed weapon permit holders.

Number 1438

REPRESENTATIVE ERIC CROFT, Alaska State Legislature, referred to the two aforementioned letters [between Mr. Davis and Ms. Grimes]. He said it seems they establish what the problem is that Representative Stoltz's bill tries to correct. He said he'd attempted during the past summer in his office to get to the bottom of this. He said Mr. Davis, in his letter, asks Alaska what it would do in three hypothetical situations; that part read as follows [original punctuation provided, but format changed]:

- 1) if the Texas licensee is currently eligible for a Texas license, but not an Alaska permit and has never applied for an Alaska permit;

2) if the Texas licensee is currently eligible for a Texas license, but not an Alaska permit and has had an application in Alaska rejected or had a permit revoked or suspended by Alaska;

3) if the Texas licensee is currently eligible for a Texas license and an Alaska permit but applied for an Alaska permit when he was not eligible and was rejected, or had an Alaska permit revoked because he was not eligible at the time.

REPRESENTATIVE CROFT said the first of three is "an okay situation," but the other two are problematic for the very reason this bill corrects. He referred to the beginning of the third paragraph of the response [faxed] letter from [Ms. Grimes] of DPS, which read, "We would not recognize a Texas permit under the other two circumstances you listed. Based on the language of our new law, no reciprocity agreement is needed."

REPRESENTATIVE CROFT said he hadn't spoken with Mr. Davis, but had spoken with Ms. Grimes, with the Texas NRA representative, and with Brian Judy, among others. He mentioned the root of the problem regarding the hypothetical [situations] posed. Referring again to the letters, he said the third [correspondence, not available] is Texas saying that based on Alaska's response to the first letter, it will not do a reciprocity agreement with Alaska.

Number 1583

REPRESENTATIVE GRUENBERG questioned that conclusion and suggested the possibility that [Texas] would find, because of the unique wording of the Alaska law, that it would still have reciprocity. He explained:

A person wants to get a permit in Texas, but they were not eligible in Alaska; ... that's at least a possibility. That wouldn't necessarily cause Texas not to enter into a reciprocity ... agreement in Alaska. I would like to have a definite answer to that question, because this is just kind of preliminary discussion.

Number 1620

REPRESENTATIVE GRUENBERG asked Mr. Judy if Ms. Grimes actually held a conversation with Mr. Davis and whether Mr. Davis

definitely said Texas wouldn't enter into a reciprocity agreement with Alaska. He asked if [Mr. Davis] has the authority to make that decision and if he got a legal opinion to that effect, or whether his response was a preliminary, off-the-cuff response.

MR. JUDY replied, "That's my understanding." He said he has been addressing the issue for at least three or four years; as the state liaison for Alaska, one of the things he is trying to do is work for Alaskan firearms owners. The whole issue of weapons permits, reciprocity, and recognition is a big one because people with permits want to be able to "carry" in other states when they travel. In order to serve his membership, he said, he is trying to get Alaska's permits recognized in as many other states as possible.

MR. JUDY highlighted what he called another glitch in the law: until last year, Alaska only recognized out-of-state permits for 120 days. That is what SB 242 was trying to correct, he said, adding that it was the "hook that Texas was hanging their hat on." He continued as follows:

So, we repealed that. And at the eleventh hour, this language was suggested because of this concern that was raised, and we felt, "Okay, well that's not a problem." But in reality - and I don't have it in writing - ... if you go look at the Alaska DPS web site, there's no reciprocity agreement between Alaska and Texas. And the reality is, it's because of the fact that there's that restriction, then, as Representative Croft pointed out: a couple of these hypothetical scenarios would cause Alaska not to recognize a Texas permit. That's the reality. This bill fixes that.

Number 1785

CHAIR WEYHRAUCH pointed out that the bill's title is "An act relating to concealed handguns," whereas it really relates to reciprocity agreements with other states to carry concealed handguns. He asked Representative Stoltz if it might be a problem to have such a broad title.

REPRESENTATIVE STOLTZ responded that he doesn't think so. He added, "I would be happy if there was an outburst of pro-Second Amendment activity in both bodies that did more pro-gun stuff on this."

CHAIR WEYHRAUCH asked, "Is there any way to get any of that testimony ... nailed down [regarding] this issue between Texas and Alaska, at least to move it aside so it's not a concern?"

REPRESENTATIVE STOLTZ said yes. He noted [Representative Gruenberg] is also a member of the House Judiciary Standing Committee.

Number 1918

REPRESENTATIVE GRUENBERG said he would not oppose [moving SSHB 177 from committee]. He asked if Mr. Judy would coordinate a discussion between Mr. Davis and any legislators who want to participate before the bill is heard in the House Judiciary Standing Committee. He said an expert in Alaska law is needed. He continued as follows:

It doesn't say, on the face of our law that you want to repeal, why people would not be eligible in Alaska. But if they're not eligible because they're convicted felons, et cetera, et cetera, that would probably be consistent with Texas. And it may very well be that this thing can be cured without this particular legislative fix. I certainly have no problem with Section 2 in the bill, and I just want us to really know what we're doing here.

MR. JUDY responded that he'd be happy to work through Representative Gruenberg's office to address the issue.

REPRESENTATIVE GRUENBERG said he wants the issue clear on the record.

Number 1985

REPRESENTATIVE STOLTZ began discussion of a possible amendment. He asked Chair Weyhrauch if the current committee wished to address the technical change in Section 2 regarding reciprocity.

MR. JUDY clarified that it would be something along the lines of the following: "The department shall enter into [reciprocity] agreements with other states that are authorized [to enter] into agreements." He explained that DPS had raised the concern regarding the requirement that it enter into agreements with other states, when some states don't enter into agreements.

REPRESENTATIVE STOLTZ said, for example, that the department wouldn't be making [agreements] with California or New York, which don't have concealed-carry permits.

REPRESENTATIVE GRUENBERG asked if the current language [in SSHB 177] is sufficient from the department's point of view.

MR. JUDY replied that [the department] had asked for a slight modification so that it isn't mandated to enter into agreements with states that don't enter into agreements.

Number 2098

CHAIR WEYHRAUCH asked Representative Stoltz to confirm that this discussion follows a suggestion from DPS.

REPRESENTATIVE STOLTZ said yes. He said the bill illustrates the laws of unintended consequences. He said he wouldn't want the department to have to use its resources to try to help an Alaskan get a permit in another state where it isn't possible to do so.

Number 2128

REPRESENTATIVE GRUENBERG asked if the department would like language added that would read, for example, "if the other states have laws that permit this".

MR. JUDY responded, "Something along those lines."

CHAIR WEYHRAUCH offered the following conceptual amendment: On page 1, line 13, after the word "states", insert "that have the legal authority to enter such agreements".

REPRESENTATIVE STOLTZ commented, "I see nodding from the man on my left and all around the room."

CHAIR WEYHRAUCH announced that the foregoing conceptual amendment would be added to a committee substitute. He clarified that [lines 13-14, with the inclusion of the conceptual amendment] would read as follows:

(b) The department shall enter into reciprocity agreements with other states that have the legal authority to enter such agreements so that permittees may carry concealed handguns in those other states.

Number 2240

REPRESENTATIVE DAHLSTROM moved to report SSHB 177, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSSHB 177(STA) was reported from the House State Affairs Standing Committee.

HB 102-CONCEALED DEADLY WEAPONS LEGAL

[Contains discussion of SSHB 177]

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 102, "An Act relating to concealed deadly weapons."

Number 2295

REPRESENTATIVE ERIC CROFT, Alaska State Legislature, sponsor, told Chair Weyhrauch he appreciates that both SSHB 177 [sponsored by Representative Stoltz] and HB 102 are being heard on the same schedule because they "were born out of the same frustration." He said he has seen two or three concealed-carry bills during his short time in the legislature. He said his involvement on the bill includes working on the reciprocity issue over the summer, trying to talk to the Texas Department of Public Safety, participating in "the debate that led to the amendment that we're being forced to correct in the prior bill," and meeting with Representative Stoltz on [SSHB 177]. He said he'd left the meeting with Representative Stoltz thinking that "this was entirely too complicated and too restrictive of Alaskans' right to keep and ... bear arms."

REPRESENTATIVE CROFT said he'd told Representative Stoltz at that time that he would draft something modeled on Vermont's law, which is unrestrictive and allows [its residents] to bear arms. He indicated no significant problems had resulted in Vermont, which has a very low crime rate. Representative Croft reported that Representative Stoltz had said [Vermont's concealed-carry law] fits with "our Alaskan character and our specific and very definite constitutional right to keep and bear arms." Unlike the U.S. Constitution, Alaska's constitution says it's an individual right. Representative Croft said he knows that the purposes behind [Alaska's] restrictions regarding "concealed carry" are all done with the best motives, but he just doesn't believe "we need to second guess our citizens in that way."

Number 2440

REPRESENTATIVE CROFT said although a person may think that Vermont's law might create a problem of transients from nearby high-crime states coming into Vermont, that hasn't been Vermont's experience. He opined that Alaska, situated next to restrictive Canadian gun laws along one side and having water around the rest of the state, should have been the state to start "this experiment" first.

REPRESENTATIVE CROFT mentioned getting out of "a constant, somewhat condescending" discussion of the particulars of allowing people to carry a weapon inside, rather than outside, their purses or coats. He stated, "The more these details stood as impediments to the individual right of Alaskans to keep and bear arms, the more I questioned the entire premise of these laws." He said he is presenting for the committee's consideration that "we can trust our citizens more than that."

Number 2526

REPRESENTATIVE CROFT said the intent of the bill is to get rid of the requirement that a person has a permit. Currently, he noted, permit holders must tell someone at a private residence that they are entering with a concealed [weapon], at which point the resident might refuse entry or just be aware of the information. Permit holders, when stopped by a police officer, have the obligation to tell the officer if they are "carrying concealed." He said, "Both of those are reasonable provisions in deleting the permit requirement. We accidentally, in the first draft of this bill, deleted those two requirements."

REPRESENTATIVE CROFT noted that the amendments are available [included in the committee packet]. He said he would like for somebody carrying concealed, after the passage of this bill, to have all the requirements that a permit holder had before. He clarified, "If it was illegal for you to carry a gun before, it would be under this bill. We simply eliminate the requirement that you get this government permit."

Number 2626

REPRESENTATIVE CROFT brought attention to Amendment A.1, labeled 23-LS0515\A.1, Luckhaupt, 2/20/03, which read:

Page 1, lines 3 - 8:

Delete all material.

Insert a new bill section to read:

**** Section 1.** AS 11.61.220(a) is amended to read:

(a) A person commits the crime of misconduct involving weapons in the fifth degree if the person

(1) knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person and when contacted by a peace officer fails to immediately inform the peace officer of that possession;

(2) knowingly possesses a loaded firearm on the person in any place where intoxicating liquor is sold for consumption on the premises;

(3) being an unemancipated minor under 16 years of age, possesses a firearm without the consent of a parent or guardian of the minor;

(4) knowingly possesses a firearm

(A) within the grounds of or on a parking lot immediately adjacent to a center, other than a private residence, licensed under AS 14.37, AS 47.33, or AS 47.35 or recognized by the federal government for the care of children;

(B) within a

(i) courtroom or office of the Alaska Court System; or

(ii) courthouse that is occupied only by the Alaska Court System and other justice-related agencies; or

(C) within a domestic violence or sexual assault shelter that receives funding from the state; or

(5) possesses or transports a switchblade or a gravity knife.

Page 2, line 2:

Delete "11.61.220(a)(1), 11.61.220(b), 11.61.220(e), 11.61.220(h)"

Insert "11.61.220(b)"

REPRESENTATIVE CROFT explained that Amendment A.1 adds back in the "permit" requirement which was previously deleted. In response to a question by Chair Weyhrauch, he clarified that A.1 addresses [the issue of informing a police officer of possession of concealed weapon].

REPRESENTATIVE CROFT brought attention to Amendment A.2 [labeled 23-LS0515\A.2, Luckhaupt, 3/14/03], which read:

Page 1, lines 3 - 8:

Delete all material.

Insert a new bill section to read:

"* Section 1. AS 11.61.220(a) is amended to read:

(a) A person commits the crime of misconduct involving weapons in the fifth degree if the person

(1) knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person within the residence of another person unless the person has first obtained the express permission of an adult residing there to bring a concealed deadly weapon within the residence;

(2) knowingly possesses a loaded firearm on the person in any place where intoxicating liquor is sold for consumption on the premises;

(3) being an unemancipated minor under 16 years of age, possesses a firearm without the consent of a parent or guardian of the minor;

(4) knowingly possesses a firearm

(A) within the grounds of or on a parking lot immediately adjacent to a center, other than a private residence, licensed under AS 14.37, AS 47.33, or AS 47.35 or recognized by the federal government for the care of children;

(B) within a

(i) courtroom or office of the Alaska Court System; or

(ii) courthouse that is occupied only by the Alaska Court System and other justice-related agencies; or

(C) within a domestic violence or sexual assault shelter that receives funding from the state; or

(5) possesses or transports a switchblade or a gravity knife.

Page 2, line 2:

Delete "11.61.220(a)(1), 11.61.220(b), 11.61.220(e), 11.61.220(h)"

Insert "11.61.220(b)"

REPRESENTATIVE CROFT explained that Amendment A.2 addresses [the issue of informing the resident of possession of a concealed weapon]. He said, "If the committee decided to do both, the drafters would have to put a '(1)' and a '(2)' there and join

them." He indicated he didn't know if the committee would choose both; thus he'd had them drafted as separate amendments.

Number 2700

REPRESENTATIVE GRUENBERG stated his assumption that Amendment A.1 would have to be amended to only apply if the defendant is aware that he/she is speaking to a police officer, because the officer could be under cover. Referring to [existing language in paragraph (1)] of both Amendments A.1 and A.2, he asked whether the term "deadly weapon" includes more than a concealed handgun. For example, could it include a pipe bomb or machine gun?

REPRESENTATIVE CROFT answered that he believes the definition of "deadly weapon" is broader. He admitted that it may be an issue, although unintended. He said it was his intent that people be able to carry firearms without the restriction.

Number 2797

CHAIR WEYHRAUCH asked for confirmation that a pipe bomb, for example, is already illegal to possess.

REPRESENTATIVE GRUENBERG said the crime is called "misconduct involving weapons in the fifth degree," and is a broad crime crafted to include any kind of a concealed deadly weapon.

Number 2835

REPRESENTATIVE CROFT commented that there are persuasive attorneys on the committee, because he initially concurred with Representative Gruenberg's comments but now agrees with Chair Weyhrauch. He continued as follows:

If it's independently illegal, as I think a pipe bomb and, I'm fairly sure, a sawed-off shotgun ... would be, then it doesn't matter, I guess, so much whether ... [it's] concealed or not; it's just illegal to possess. And we aren't affecting the federal or state prohibitions on what you can and can't carry. We're simply eliminating ... the distinction of it being under your jacket or outside of it.

Number 2869

REPRESENTATIVE DAHLSTROM asked Representative Croft if [Vermont's concealed-carry law] has affected its crime statistics.

REPRESENTATIVE CROFT answered that [Vermont's crime rate] is one of the lowest in the nation; however, that may be attributed to a lot of different factors. He opined that the important thing is that [Vermont's] decision to allow its citizens to "carry concealed" freely didn't [cause the crime rate to go up]. He said, "It may be one of those things that is a measure of respect that you treat your citizens. And that may have benefits that [are] hard to quantify."

Number 2934

REPRESENTATIVE GRUENBERG said these are crimes under other statutes, as well. He asked, "This is a misdemeanor, is it not, Representative Croft?"

REPRESENTATIVE CROFT answered, "I believe so."

REPRESENTATIVE GRUENBERG explained, "It provides the prosecution with the charging option. And it's important to keep it on the books properly." He mentioned a discussion yesterday with Representative Stoltz and said, "We wanted to keep the prosecution to have as many charging options as they can."

TAPE 03-30, SIDE B

Number 2999

REPRESENTATIVE SEATON asked if this bill would [make it illegal] for a person out hunting to fail to immediately reveal to an Alaska Fish & Game Department (ADF&G) protection officer that he is carrying a concealed hunting knife. He pointed out that a sheath knife wouldn't be defined as an ordinary pocket knife.

Number 2980

REPRESENTATIVE BILL STOLTZ, Alaska State Legislature, responded that it isn't even a "concealed carry" status. He related his belief that it would be "concealed carry in the field."

REPRESENTATIVE CROFT offered his belief that there is an exception in the current concealed-carry [law], and said, "We'd certainly want it here for outdoor recreational activity." He said he thinks when a person is in the field, it is a different situation. However, he gave an example of the person getting

into a car and driving through a metropolitan area; at that point, he noted, the person would probably be violating the law if the [weapon] was still concealed. He said, "They have tried, at least, to address this recreational activity idea. We'll check to make sure that before, and in the changes we make in the bill, ... it stays there."

Number 2887

REPRESENTATIVE SEATON referred to [existing statute in paragraph (1) of Section 1 of both Amendments A.1 and A.2], which read: "knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person". He said many people who aren't hunting wear sheath knives. He said he doesn't think the intention is to say that only ordinary pocket knives are now permissible to possess without being charged with a crime [for not revealing the carrying of a concealed weapon]. He said, unfortunately, there are circumstances when officers are unreasonable. He asked [Representative Croft] to "tighten up that language."

Number 2815

REPRESENTATIVE CROFT cited AS 11.61.220(b)(2), current law that will not be changed, which reads:

(2) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection;

REPRESENTATIVE CROFT remarked, "So they've at least tried to address the specific [issue] that you talked about." Agreeing with Representative Seaton's general point regarding who is going to determine when [the language in statute] "necessarily" is involved, he said it sounds as though both he and Representative Seaton "would like to err on the side of the right."

Number 2670

CHAIR WEYHRAUCH noted that Section 3 of the bill repeals statutes including AS 18.65.755(a)(1). That paragraph, with the surrounding statutory language, read as follows:

(a) A permittee may not possess a concealed handgun

(1) within a residence, other than the permittee's residence, unless the permittee has first obtained the express permission of an adult residing there to bring a concealed handgun within the residence; and

(2) anywhere a person is prohibited from possessing a handgun under state or federal law.

CHAIR WEYHRAUCH said repealing paragraph (1) would allow a person to possess a concealed handgun in a residence and not obtain the permission of an adult residing there.

Number 2603

REPRESENTATIVE CROFT stated, "You have to eliminate the distinction between permittees and ordinary citizens if you're going to take this step. And it's the reason, then, that we have Amendments [A.1 and A.2], to add it back as a crime for a person to carry a deadly weapon." He referred to [the proposed added language in A.2], which read as follows:

within the residence of another person unless the person has first obtained the express permission of an adult residing there to bring a concealed deadly weapon within the residence;

REPRESENTATIVE CROFT said the more he listens to the committee's questions, the more he thinks there is [language in the bill] to clean up. He explained that the reason the word "permittee" should not be used is because people are now allowed to "carry concealed" without a permit. He said "person" [should be used] in its place, which is what Amendment A.2 does.

CHAIR WEYHRAUCH asked about adopting the amendment as a proposed committee substitute (CS) and then working on it.

REPRESENTATIVE CROFT reminded members that Amendments A.1 and A.2, although similar, address two different things. They could be adopted together or just one could be adopted. He recommended the former action.

REPRESENTATIVE SEATON requested that the previously stated issue regarding the use of "concealed handgun" rather than "deadly weapon" be addressed.

REPRESENTATIVE CROFT agreed to do that before the next meeting.

Number 2530

REPRESENTATIVE LYNN moved to adopt a conceptual amendment incorporating both Amendment A.1 and Amendment A.2. There being no objection, it was so ordered.

Number 2453

BRIAN JUDY, Alaska State Liaison to the National Rifle Association (NRA) and the Institute for Legislative Action, said HB 102 is "really shifting gears" from the concealed weapon permits bill [SSHB 177] by "doing away with that whole process." He said he doesn't think it's inconsistent to discuss the two at the same time. He told members:

While the NRA has supported the concealed weapon permit law - as evidenced by [HB] 177, we're continuing to improve upon it. At the same point in time, philosophically, we don't believe that ... law-abiding citizens should have to get permission from the government to be able to provide a means of self-protection. And, essentially, the concealed weapon permit process puts a price tag on people's ability to provide a means of self-protection.

As was pointed out, in Alaska you don't need to get that permission if you're going to carry openly. You can carry openly in Alaska, loaded, unloaded, anywhere. You can also carry concealed in Alaska, without a permit, if you're engaged in a lawful outdoor activity necessarily involving the use of firearms for self-protection.

This, basically, would expand that just a little bit to say anytime, even if you're ... not engaged in a lawful activity but you're carrying a firearm for self-protection, you should be able to do so without having to go through the bureaucracy, get a permit, pay the fee, ... et cetera.

Essentially, what it comes down to is: you can carry a firearm anywhere in plain view in Alaska, but if you put on a coat when it's cold and you cover that weapon, then you have to go through all this bureaucracy. And it really doesn't make sense.

The Vermont experience has been talked about. Crime is at the bottom of the barrel in that state; it just doesn't cause a problem. Montana is similar. In 99.8 percent of Montana, you don't need a permit to carry concealed; you only need a permit to carry concealed in Montana if you're ... within city limits. And in Montana, crime is very low. There's just not a ... problem.

Law-abiding citizens are the only ones getting permits right now. This would allow them to carry without that permit. Criminals right now are carrying concealed weapons, regardless of the permit law, and they're going to continue to do so.

We heard a lot of horror stories in 1994, when the concealed weapon permit law was first proposed. We heard that there was going to be blood running in the streets, there were going to be shootouts in Anchorage. It was quite amazing to hear. It didn't surprise us because we had heard that in all the other states that proposed concealed weapon permit laws. As in all those other states, it didn't take place.

Number 2315

MR. JUDY referred to a graph included in the committee packet. He explained that it shows violent crime [in Alaska], and indicated the position of the line at the point when the concealed weapon permit law took effect. He noted [on individual graphs] that crime dropped in the following areas: violent crime, robbery, and aggravated assault. He continued:

Now, as Representative Croft indicated, I'm not going to try to claim that that was because, all of a sudden we had a concealed weapon permit law. But whatever the reason, the passage of the concealed weapon permit law not only didn't cause all the horrors that were predicted, but crime went down. And I would suggest that ... the horror stories that you will likely hear about are not going to take place. I can't predict that crime's going to continue to drop precipitously as it has, but one can only hope that it will continue to approach those levels in Vermont.

Number 2268

MR. JUDY discussed training as follows:

The last point I want to make is on training. I'm sure we're going to hear that this is a terrible proposal because people aren't going to be subjected to mandatory training. Well, again, it doesn't make sense that ... law-abiding citizen ... who can lawfully own or possess a firearm can carry openly anywhere in Alaska and they're not subjected to mandatory training. But if you want to wear a coat and cover your firearm, all of a sudden you have to take this expensive course and go through this bureaucracy. I would suggest that it's not really necessary.

There are 43 states that issue concealed weapon permits. Those states have a wide range of training, from no training in the State of Washington to very restrictive. And Alaska's among the more restrictive. The State of Washington's a good example, aside from the Vermont experience. In Washington, there are approximately 250,000 concealed weapon permits issued. They don't require training. There ... is not a problem, training-related or otherwise, with concealed weapon permit holders in Washington.

The empirical evidence from every state, regardless of the level of training, is that these people who are carrying firearms for self-protection are exercising their constitutional right and their natural right to provide a means of self-defense in a responsible ... manner.

Number 2189

MR. JUDY continued:

The NRA supports training on a voluntary basis. We're the group that instructs the instructors. The instructors right here in Alaska who are providing the screening courses are, in most cases, I would suspect, NRA-certified ... instructors. So, we support training. We don't believe it should be mandated. We support the concept of HB 102, and we urge your support. Thank you.

Number 2158

REPRESENTATIVE GRUENBERG indicated a technical inconsistency. He referred to AS 18.65.750(d) and said, "We are repealing Section 750 entirely." He said [that section] dealt with possession and display of the permit. Subsection (d) defines the term "contacted by a peace officer", he noted. He said because Amendment A.1 was adopted, the phrase "contacted by a peace officer" is reinserted. He offered a technical amendment to reinsert the statutory definition, since the concept is now back in the bill.

Number 2100

REPRESENTATIVE CROFT said he thinks that is a good point which bears further consideration. Mentioning points made earlier by Representatives Seaton and Gruenberg and that two amendments had, in effect, been adopted, Representative Croft said he wants to take a second look at some of the more technical aspects. He said he is still comfortable "with the policy direction."

Number 2060

REPRESENTATIVE GRUENBERG [in reference to his previously stated amendment] asked that "that phrase" be defined.

CHAIR WEYHRAUCH indicated that he'd heard no objection and that the foregoing technical amendment was adopted.

REPRESENTATIVE GRUENBERG noted that also repealed would be AS.18.65.770, which read as follows:

Sec. 18.65.770. Access to list of permittees by peace officers.

The department shall compile a list of permittees in a manner that allows immediate access to the information by peace officers. The list of permittees and all applications, permits, and renewals are not public records under AS 40.25.110 - 40.25.125 and may only be used for law enforcement purposes.

REPRESENTATIVE GRUENBERG asked if Representative Croft and Mr. Judy, for example, would speak with the Department of Public Safety to find out if the department, for any legitimate reason, needs to retain that section in law.

REPRESENTATIVE CROFT said he would.

CHAIR WEYHRAUCH announced that HB 102 would be held over.

HB 127-ROADSIDE MEMORIALS

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 127, "An Act allowing certain roadside memorials to be placed within the right-of-way of a state highway." [In packets was a proposed committee substitute (CS), Version 23-LS0299\I, Utermohle, 3/21/03.]

Number 1906

LORI BACKES, Staff to Representative Jim Whitaker, Alaska State Legislature, presented HB 127 on behalf of Representative Whitaker, sponsor. She explained that HB 127 merely seeks to allow Alaskans the right to express their grief for the loss of a loved one with as little governmental interference as possible. When a person dies on an Alaskan highway, sometimes family and friends place items at the location of the accident to memorialize the individual. These memorials serve the following two purposes: to pay tribute to the deceased and to help warn other travelers of the potential tragedy associated with dangerous driving. These memorials are seen throughout the country and the globe.

MS. BACKES pointed out the committee packet includes an informal study conducted by the Texas Department of Transportation. The study reviews how some other states handle this issue. Among those states surveyed, most allow roadside memorials officially or unofficially in various forms. Historically, Alaska's Department of Transportation & Public Facilities (DOT&PF) has ignored these personal memorials. However, about two years ago the state-sponsored memorial sign program was created; with it, DOT&PF gave notice to Alaskans that personal memorials would no longer be tolerated, and thus the roadside memorials would be removed if not taken down by a date certain. In response to this, the mother of a young lady who was killed by a drunk driver in the Fairbanks area circulated a petition requesting that the state continue to allow the personal roadside memorials. The petition contains 244 signatures.

MS. BACKES pointed out that such memorials aren't restricted to automobile accidents. She said this is a phenomenon that won't be stopped, and thus Representative Whitaker believes it's wise to establish a program through which roadside memorials are allowed yet controlled. Ms. Backes noted that she has had several in-depth conversations with representatives from the

DOT&PF and that she believes the majority of the concerns have been addressed in the proposed CS [Version I].

Number 1701

REPRESENTATIVE HOLM moved to adopt CSHB 127, Version 23-LS0299\I, Utermohle, 3/21/03, as the working document.

REPRESENTATIVE GRUENBERG objected for discussion purposes and then immediately removed his objection.

[Version I was treated as adopted.]

REPRESENTATIVE GRUENBERG said he supports the legislation generally. However, he expressed concern with subsection (f) [page 2]. He posed a situation in which a fairly large roadside memorial falls into the roadway and causes an accident; voicing concern about the broad immunity, he said the state should have some responsibility for that. Furthermore, a memorial could be placed on the road if snow on the ground made it difficult to see where the roadside ended, for example, and he said he'd like for the state to have some responsibility if the sign is actually placed in the road and causes an accident.

REPRESENTATIVE HOLM referred to page 1, line 10, which specifies that roadside memorials "must not interfere with the use of the highway, with other uses of the right-of-way"; he questioned why Representative Gruenberg's concern would be a problem. He pointed out that DOT&PF must be informed before [a roadside memorial is erected].

REPRESENTATIVE GRUENBERG asked if there is a requirement that the individual erecting the roadside memorial inform DOT&PF in advance.

REPRESENTATIVE SEATON referred to page 2, line 1 [paragraph (2), "inform the department of the location of the memorial"].

REPRESENTATIVE GRUENBERG pointed out that the language doesn't require it in advance.

REPRESENTATIVE HOLM said he suspects that the requirement to not interfere and to inform DOT&PF places the onus on the state to recognize the location of the roadside memorial.

REPRESENTATIVE GRUENBERG expressed his desire to have some time limit regarding notification to the department. He suggested

language specifying that the department must be notified within 48 hours of placement of the roadside memorial.

Number 1365

MS. BACKES said she didn't believe Representative Whitaker would have any problem with the aforementioned language. However, reporting to the department within 48 hours may be a little on the short side, especially since most of these memorials are spontaneously put in place within hours of the accident. Furthermore, these memorials are often in response to extreme grief and distress. Ms. Backes suggested that perhaps notification within a week or two would be more appropriate.

REPRESENTATIVE GRUENBERG announced that he would offer an amendment in which [notification to DOT&PF] would need to occur within five days. Representative Gruenberg said he didn't want to absolve the department from taking reasonable action to remove [a memorial] that is in the roadway. He stressed the need to hold the department to a normal tort standard. He specified that he is concerned with regard to the ultimate responsibility.

MS. BACKES said DOT&PF already has the responsibility to take care of hazards in the roadway and maintain the roadways free of hazards. She said she wasn't sure that the sponsor would agree to reasonably require DOT&PF to respond to a hazard such [as one created from a roadside memorial].

REPRESENTATIVE GRUENBERG clarified that he didn't want to lower the responsibility. He referred to page 2, lines 10-12, the sentence, "The state is not liable for damage to, or for damage or injury resulting from the presence of, a memorial in the right-of-way of a state highway." He said it provides complete immunization and changes the law on that subject.

MS. BACKES highlighted the following from AS 44.80.070:

When the state, or a department or agency of the state that has control over a highway or vehicular way or area, permits a portion of the highway or vehicular way or area, as defined under AS 28.40.100, to be used for a special purpose, the state is not subject to legal action or recovery of damages for injury arising out of, or in any manner connected with the special purpose use.

MS. BACKES said [the drafting attorneys] in Legislative Legal and Research Services are of the opinion that the aforementioned statute already addresses this. The language in the proposed CS is almost redundant, she added, but was included in order to further allay the concerns of DOT&PF.

Number 0915

REPRESENTATIVE SEATON returned to subsection (f) on page 2. He posed a situation in which there is an accident close to the site of a roadside memorial. If the individual claims to have been distracted by the memorial, would the liability be transferred from that individual to the person who placed the memorial on the roadside?

MS. BACKES replied no. She said the statute requires that drivers have the responsibility to not drive negligently and not be unduly distracted by things on the road; if there was an accident in which an individual claimed to have been distracted by a roadside memorial, she was certain it would have to be argued in court. She went on to say there is no intention for the individual placing the memorial on the roadside to assume the responsibility for someone having an accident, unless the memorial directly interfered with the safety of the road.

REPRESENTATIVE SEATON asked if subsection (f) accomplishes that or means that the individual placing the memorial on the right-of-way bears the sole risk and liability for damage and injury resulting from the presence of the memorial.

MS. BACKES responded that if it can be proven that the cause of the accident was the roadside memorial, the liability would then be on the individual who placed the memorial on the roadside.

REPRESENTATIVE GRUENBERG returned to AS 44.80.070 and related his understanding that it applies to someone who has some type of permit and who has negotiated with the department to obtain permit. The aforementioned is a different situation from that of an individual placing a memorial on the roadside who might not have even notified the department for a significant period of time.

Number 0623

REPRESENTATIVE BERKOWITZ inquired as to the default provision regarding liability, if subsection (f) is deleted.

MS. BACKES reiterated that Legislative Legal and Research Services has said AS 44.80.070, "Liability of state under special use permits", would solve that. In regard to Representative Gruenberg's concern, Ms. Backes said a special-use permit doesn't necessarily have to be a written permit. She emphasized that placement of a roadside memorial in the middle of the road would be nonconforming and thus would fall outside the bounds of the allowed special use under HB 127.

REPRESENTATIVE BERKOWITZ opined that if any discussion of liability was deleted, the same rules of liability that apply elsewhere would apply in this instance. Therefore, he suggested that subsection (f) could be deleted.

MS. BACKES said Representative Whitaker wouldn't have a problem with the deletion of subsection (f), which was inserted to address DOT&PF's concerns with regard to its liability to an individual in an accident with regard to a roadside memorial. Furthermore, the department was concerned with its liability, should its maintenance equipment accidentally [destroy] a roadside memorial. If the committee chooses to delete subsection (f), she suggested considering inclusion of some language specifying that the state isn't responsible for damage to a memorial.

REPRESENTATIVE HOLM asked if Ms. Backes would suggest that the committee retain the last sentence of subsection (f).

REPRESENTATIVE BERKOWITZ agreed that [the first sentence of subsection (f) could be deleted as well as] the disjunctive clause, "or for damage or injury resulting from the presence of,". Therefore, subsection (f) would read as follows: "The state is not liable for damage to a memorial in the right-of-way of a state highway."

MS. BACKES related that Representative Whitaker fully expects that DOT&PF will take care not to damage these memorials. Therefore, she suggested including the word "inadvertent".

REPRESENTATIVE BERKOWITZ remarked that at some point, one has to count on the discretion of people. Furthermore, if one reviews the budget, one discovers that there isn't going to be any highway maintenance anyway, and thus it shouldn't be a problem.

Number 0138

CHAIR WEYHRAUCH related his understanding that subsection (f) was included so that any damage arising from a memorial wouldn't make the state liable.

MS. BACKES agreed, but reiterated the opinion of the Legislative Legal and Research Services Division that AS 44.80.070 addresses the matter also.

Number 0075

REPRESENTATIVE BERKOWITZ moved that the committee adopt Amendment 1, on page 2, to delete the first sentence of subsection (f) and amend the second sentence of subsection (f) such that it would read, "The state is not liable for damage to a memorial in the right-of-way of a state highway." There being no objection, it was so ordered.

REPRESENTATIVE SEATON turned attention to the term "temporary memorial" on page 1, line 7.

TAPE 03-31, SIDE A

Number 0001

MS. BACKES explained that the language "temporary" wasn't intended to refer to any specific timeframe but rather to mean a structure that was not permanent. She related that Representative Whitaker is reluctant to try to insert any timeframe for which these roadside memorials can remain in place.

Number 0080

REPRESENTATIVE GRUENBERG offered [Amendment 2]:

Page 2, line 1, after "memorial"
Insert "within seven days of placement of the
memorial"

REPRESENTATIVE GRUENBERG specified that the purposed is so that [DOT&PF] will know the roadside memorial exists and can make arrangements to protect it and ensure that it's not in the right-of-way.

CHAIR WEYHRAUCH announced that there being no objection, [Amendment 2] was adopted.

REPRESENTATIVE GRUENBERG directed attention to page 2, lines 21-23, and asked if the [department's removal of a roadside memorial] would be a cumbersome procedure.

MS. BACKES answered that DOT&PF hasn't indicated that the [removal of roadside memorials identified as an unauthorized encroachment] would be problematic. In further response, Ms. Backes said she didn't know the procedure; however, from discussions with DOT&PF she has gathered that when DOT&PF crafts the regulations specifying the restrictions on the placement of these memorials, the intent is that DOT&PF will have a procedure for removal. The procedure would involve contacting the sponsor of the memorial in order to provide an opportunity for the sponsor to correct any problem associated with safety or maintenance. If the problem isn't corrected in a reasonable amount of time, DOT&PF will remove it.

CHAIR WEYHRAUCH pointed out that the language on page 2, lines 21-23, refers to AS 19.25.230-19.25.250, which speaks to political signage. Notice of removal is provided via a certified letter. If the [sign] isn't removed, the department may remove it at any time. Furthermore, the cost of removal can be billed to the person that was supposed to move it.

Number 0433

REPRESENTATIVE LYNN inquired as to how the grieving family would know about these provisions. Has there been any thought that the funeral home would issue paperwork specifying the procedures and contacts for placing a roadside memorial?

MS. BACKES answered that although there isn't such a provision in the legislation, in conversations with DOT&PF it has come out that West Virginia has a similar program to that proposed here. West Virginia posts guidelines for these types of memorials on its web site. Ms. Backes related that the Fairbanks Chapter of Mothers Against Drunk Driving (MADD) has said it would be willing to distribute pamphlets to families in this circumstance or to funeral homes. Furthermore, the department felt that being able to post something on its web site would be appropriate.

Number 0583

RACHELLE DOWDY noted her support of HB 127 and the amendments. Ms. Dowdy provided the following testimony:

Standard roadside signs equal statistics. This is fine, but Alaska has the worst drunk driving record in the nation. We have to remind drivers that this is personal: it happened here, to this person, to this family, to this community, to someone who is loved - not just a statistic.

Heather's friends stopped to add flowers to her marker one day, and a motorist stopped. She said she had a history of drinking and driving. She thought, "It would never happen to me," but this marker enlightened her and caused her to change her habits. It got personal; it moved beyond statistics. Would a standard, state sign have this effect? I don't think so. Does Alaska want to be known for a lack of human interest, such human interest replaced with mere statistics?

I have lived in Alaska my entire life. We thrive on our individuality up here, our freedom to express ourselves, both individually and as a community. Do we really want to summarize our personal loss and our shameful national record in identical blue and white statistics? I don't.

MS. DOWDY noted that this weekend she was driving the Parks Highway, where she saw one of the proposed state signs. In order to see and read the sign, Ms. Dowdy said she had to pull to the side of the highway. However, if she has seen a memorial, Ms. Dowdy said, she has known what it means and hasn't had to stop and read it.

Number 0843

SANDY GILLESPIE had her testimony read by Rachelle Dowdy as follows:

I support HB 127. Roadside memorials are visible on many of Alaska's highways and roads. These markers play a significant role in recognizing and acknowledging the humanity all of us share. When still a Fairbanks resident, I heard about a family of five killed by a drunk driver on the Glenn Highway just outside of Anchorage. Each time I drive into Anchorage, I see their memorial and think of that family. I never met them; I don't remember their names. But I wish them well. I acknowledge their

lives and deaths. I think of the people left behind who love them.

I think of other specific sites: two along the Richardson near Eielson Air Force Base; two on Chena Hot Springs Road near Fairbanks; two on Minnesota Drive in Anchorage; one on Northern Lights [Drive] near the Anchorage airport. The last one names "Brother" and "Daddy" as the person or persons [killed there]. In passing these sites, to name just a few, I have not been distracted from driving. I see the markers as I see the landscape, but the images travel with me. [It] makes me more human.

My 17-year-old sister-in-law was killed by a drunk driver in Fairbanks. The family put up a memorial on the Old Steese Highway for Heather Dowdy. People driving by regularly have stopped at a nearby turnout and told us how the site has impacted them. A grandmother told us how her very young grandson asked about Heather. Grandma explained what happened, and the child refers to Heather by name. Another person told us that she ... used to drive after drinking; she no longer does because this memorial made real to her what the consequences can be.

In Oregon last year, I saw the official road signs that marked traffic deaths, including drunk-driving deaths. I like those signs also. I think we have a right to know and should know every spot where a drunk driver has killed or injured someone. I think we should have signs that say how many people have been killed at various sections of highway by drunk drivers, just like we have signs on the Glenn [Highway] saying how many moose have been killed there; [it's] good, but not as important as people. The official signs are about statistics and documentation and a condemnation of a system that does not adequately deal with drunk drivers in our state. I want those signs also. But they do not replace the memorials, the signs that make us aware of and able to care about the people we have never met who have died on the roads we drive every day.

Number 1082

JIM EDE noted his support of the [DOT&PF] regulations governing roadside memorials as well as the program to clean up these memorials. Mr. Ede said people's sentiment with regard to these roadside memorials only last for a few days, after which these memorials in the right-of-way become unsightly. Furthermore, these memorials are very distracting to motorists. Moreover, Mr. Ede charged that these many of these memorials are illegal due to the attached religious symbols that reside on public property. There are many court cases relating to the illegality of religious symbols on public property. Mr. Ede highlighted that the state could lose federal highway funds if it doesn't abide by the federal regulations. He suggested that the committee obtain an opinion from the attorney general before moving forward with this legislation.

REPRESENTATIVE LYNN pointed out that religious symbols can be found on public property in this country's national cemeteries.

Number 1388

ASA DOWDY informed the committee that he has had the privilege of having a memorial up for his daughter [who was killed by a drunk driver]. Mr. Dowdy announced his support of HB 127. He noted that he and his family have benefited from the roadside memorial established for his daughter. These roadside memorials provides [the family] a focal point while promoting safe driving. These roadside memorials are a cheap way in which to honor loved ones and inform the public of safety. Mr. Dowdy said he appreciated the [DOT&PF's] signs for those who don't have the ability or will to establish a roadside memorial, but he felt [HB 127] provided a choice of expression. In response to a comment by Representative Gruenberg, he said HB 127 was introduced before the Dowdy family became involved.

REPRESENTATIVE GRUENBERG suggested the legislation could be known as the "Heather Dowdy bill" in her honor.

Number 1540

BARBARA DOWDY, Member, Fairbanks Chapter of Mothers Against Drunk Driving (MADD), began by noting her support of HB 127 as amended. She informed the committee that her daughter, Heather, was killed September 30, 2000, at 3:00 in the afternoon by a drunk driver. Although it has been two-and-a-half years since Heather was killed, Ms. Dowdy emphasized that [the family] hasn't forgotten the issues or the memorial they placed [on the roadside] for her.

BARBARA DOWDY took exception to an earlier statement indicating that someone would stop grieving within two days. She noted that there are two roadside signs on the New Steese Expressway that she passes every day and those signs make no impact. In fact, after nine months of passing these signs, she had to have someone point them out for her to notice them, whereas people see roadside memorials. Furthermore, roadside memorials become a focal point for grieving. Although a small minority of people believe the crosses are problematic with regard to the separation of church and state, she said, there are no legal grounds because these crosses are being put in place by the families, not the state.

BARBARA DOWDY opined that a cross has become more than a religious symbol, since it is now a national icon and symbol of respect for someone who has died. She said she didn't see how a memorial to her daughter could infringe on anyone else's rights, and she asserted her right to place the cross and flowers to commemorate her daughter.

BARBARA DOWDY turned to the issue of federal highway funds' being tied to design and construction. She said federal highway funds have nothing to do with maintenance. These memorials seem to be a maintenance issue, although the families and friends of the deceased are maintaining these memorials and thus no state funds are used for the memorials' maintenance or construction. Therefore, the state is saved \$500 for every memorial. She opined that passage of HB 127 will make the roadside memorials legal and thus the threat of losing federal funds a nonissue.

MS. DOWDY closed by reading the last paragraph of the an article entitled "Roadside Memorials: Marking Journeys Never Completed" found in the Tombstone Traveler's Guide by Chris Tina Leimer, which reads as follows:

But, for many people, that can't replace the healing balm of roadside memorials. Roadside memorials are folk art created out of love and grief. Unfettered by regulations or cost, they are creative acts, restorative acts in the face of destruction. They allow the remembrance to be matched with the death: the death happened in public; the memorial may need to be public, in the very venue that is so intimately connected with the deceased, the place where he died.

And since the death was sudden, unexpected, and maybe senseless but not unique, roadside memorials let people know that a particular person, an individual, was alive. They say, "We will not let you die unnoticed; you are valuable; you deserve to be remembered." And they invite the world to join in.

MS. DOWDY urged the committee to pass HB 127 [as amended].

REPRESENTATIVE LYNN announced his strong support of this legislation. He related his belief that it's a disgrace for DOT&PF to disallow the appropriate memorials.

Number 1830

REPRESENTATIVE LYNN moved to report CSHB 127, Version 23-LS0299\I, Utermohle, 3/21/03, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 127(STA) was reported from the House State Affairs Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:02 a.m.