

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

May 9, 2003

8:54 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Ethan Berkowitz

COMMITTEE CALENDAR

HOUSE BILL NO. 230

"An Act relating to political signs on private property."

- MOVED CSHB 230(STA) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 14

Relating to urging that the 2006 National Veterans Wheelchair Games be held in Anchorage, Alaska.

- MOVED CSHJR 14(STA) OUT OF COMMITTEE

HOUSE BILL NO. 288

"An Act changing the name of the Department of Community and Economic Development."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 295

"An Act relating to the publishing and furnishing of certain public notices regarding regulations or rules of certain state agencies; relating to distribution of the Alaska Administrative Code, Alaska Administrative Register, and supplements to the code or register; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 230

SHORT TITLE: POLITICAL SIGNS ON PRIVATE PROPERTY

SPONSOR(S): REPRESENTATIVE(S) HOLM

Jrn-Date	Jrn-Page		Action
03/31/03	0713	(H)	READ THE FIRST TIME - REFERRALS
03/31/03	0713	(H)	TRA, STA
04/29/03		(H)	TRA AT 1:30 PM CAPITOL 17
04/29/03		(H)	Heard & Held
04/29/03		(H)	MINUTE(TRA)
05/06/03		(H)	STA AT 8:00 AM CAPITOL 102
05/06/03		(H)	Scheduled But Not Heard -- Recessed to 5:30 PM --
05/06/03		(H)	TRA AT 1:30 PM CAPITOL 17
05/06/03		(H)	Moved CSHB 230(TRA) Out of Committee -- Recessed to a call of the Chair --
05/06/03		(H)	MINUTE(TRA)
05/07/03	1386	(H)	TRA RPT CS(TRA) 4DP 2NR
05/07/03	1386	(H)	DP: OGG, KOOKESH, FATE, HOLM;
05/07/03	1386	(H)	NR: KOHRING, MASEK
05/07/03	1387	(H)	FN1: ZERO(DOT)
05/07/03		(H)	STA AT 8:00 AM CAPITOL 102
05/07/03		(H)	Scheduled But Not Heard
05/08/03		(H)	STA AT 8:00 AM CAPITOL 102
05/08/03		(H)	Heard & Held Recessed to 3:00 pm to hear only HB 157
			MINUTE(STA)
05/09/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HJR 14

SHORT TITLE: NATIONAL WHEELCHAIR GAMES

SPONSOR(S): REPRESENTATIVE(S) CROFT

Jrn-Date	Jrn-Page		Action
03/10/03	0490	(H)	READ THE FIRST TIME - REFERRALS
03/10/03	0490	(H)	MLV, STA
04/15/03		(H)	MLV AT 3:00 PM CAPITOL 124
04/15/03		(H)	Scheduled But Not Heard
04/24/03		(H)	MLV AT 3:00 PM CAPITOL 120
04/24/03		(H)	-- Meeting Canceled --
05/01/03		(H)	MLV AT 3:00 PM CAPITOL 120
05/01/03		(H)	Moved Out of Committee --

			Recessed to a call of the Chair --
05/01/03		(H)	MINUTE(MLV)
05/02/03	1272	(H)	MLV RPT 5DP
05/02/03	1272	(H)	DP: MASEK, GRUENBERG, WEYHRAUCH,
05/02/03	1272	(H)	CISSNA, LYNN
05/02/03	1272	(H)	FN1: ZERO(H.MLV)
05/02/03	1289	(H)	COSPONSOR(S): LYNN
05/07/03		(H)	STA AT 8:00 AM CAPITOL 102
05/07/03		(H)	Scheduled But Not Heard
05/08/03		(H)	STA AT 8:00 AM CAPITOL 102
05/08/03		(H)	Scheduled But Not Heard
			Recessed to 3:00 pm to hear only HB 157
05/09/03	1522	(H)	COSPONSOR(S): DAHLSTROM
05/09/03		(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

TODD LARKIN, Staff
to Representative Jim Holm
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 230 on behalf of the sponsor,
Representative Holm.

JIM CANTOR, Chief Assistant Attorney
General Statewide Section Supervisor
Transportation Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Addressed his written suggestions to HB
230.

MICHAEL DOWNING, Director/Chief Engineer
Division of Statewide Design & Engineering Services
Department of Transportation & Public Facilities
Juneau, Alaska

POSITION STATEMENT: Testified on HB 230 saying that [the
department] is seeking enough definition so that it isn't left
to define things that the legislature feels it can't.

MARK GNADT, Staff
to Representative Eric Croft
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HJR 14 on behalf of the sponsor, Representative Croft.

ACTION NARRATIVE

TAPE 03-60, SIDE A

Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 8:54 a.m. Representatives Weyhrauch, Holm, Dahlstrom, and Lynn were present at the call to order. Representatives Seaton and Gruenberg arrived as the meeting was in progress.

HB 230-POLITICAL SIGNS ON PRIVATE PROPERTY

CHAIR WEYHRAUCH announced that the first order of business would be HOUSE BILL NO. 230, "An Act relating to political signs on private property." [Before the committee is CSHB 230(TRA).]

REPRESENTATIVE HOLM said that he would like to go through the written remarks of Mr. Cantor, Chief Assistant Attorney, Department of Law, line by line.

Number 0294

TODD LARKIN, Staff to Representative Jim Holm, Alaska State Legislature, turned to Mr. Cantor's written suggestions. With regard to [Section 2(a)(6)](B), Mr. Cantor suggests the language specify a timeframe during which the signs can be posted. Mr. Cantor also suggests inserting a subparagraph (H) in [Section 2(a)(6)] that specifies, "in this section, 'private property' does not include that portion of property subject to an easement for public transportation." Of the related case law, almost all of the cases refer to the concerns surrounding the time limit while a limited number of cases refer to the easement concern. He noted that he has requested that Mr. Cantor try to produce some case law that would say time limits or easement restrictions are legal or have been upheld by courts. Without the aforementioned, amendments of those type would have to be avoided because this legislation attempts to open up access to constitutional rights. Mr. Larkin informed the committee that the committee packet should include the related case law. He directed attention to the conclusion on page 7 of the Larry Whitton v. The City of Gladstone, Missouri case, a federal district case regarding time limits. He then directed attention

to page 6 of the VAN et al v. Information Council which specifies, "Regulations which prohibit all political and ideological signs in a given location, e.g., in a city or on the state's highways, have been repeatedly found to be unconstitutional."

REPRESENTATIVE HOLM interjected that the cases that Mr. Larkin is citing are those cases that he believes will make these requests unconstitutional. He specified that the requests are for a 60-day limit and clearly define that co-use of the right-of-way would not be allowed. He noted that the members can read the cases; the interesting thing is whether it could be upheld [in court]. The other issue that needs to be discussed is the fact that the regulatory process of the Department of Transportation & Public Facilities (DOT&PF) could be done knowing that the department may face a constitutional challenge on occasion.

Number 0748

REPRESENTATIVE LYNN highlighted that the next election is going to be a year from this summer. Therefore, he questioned why he shouldn't be able to put up a sign [in his yard].

MR. LARKIN pointed out that it appears that all of the courts that have heard the above argument would agree with Representative Lynn.

REPRESENTATIVE SEATON related his understanding that any time limit, including "temporary" would be unconstitutional.

MR. LARKIN recalled that one of the cases in the committee packet mentioned "temporary" in a city ordinance, which was struck down. Mr. Larkin said that the aforementioned city ordinance may have been struck down because the city didn't have a severability clause. The original version of HB 230, Version H, included language that specified that the "signs are not on a permanent base" and thus the sign could be in place in perpetuity. However, someone posed a situation in which there was a permanent base for a temporary sign, which the sponsor considered a friendly amendment. He suggested asking the DOT&PF representative whether, for enforcement purposes, the department preferred the language in the original legislation.

REPRESENTATIVE HOLM pointed out that [already existing] signs with a permanent base being used for another purpose often have political signs below [the permanent sign]. He said he didn't

want to infringe on that right. Representative Holm turned to Mr. Cantor's written suggestion [to include subparagraph (G)] as follows: "this section does not authorize indirect advertising of commercial products". Representative Holm said he wasn't sure how the aforementioned applied to political signs.

Number 1040

REPRESENTATIVE SEATON referred to a letter from the U.S. Department of Transportation dated April 21, 2003. The letter specifies: "The most recent Supreme Court case on residential signs, City Ladue v. Gilleo, 114 S.Ct. 2038 (1994), held that residential signs expressing political, religious, or personal messages, were an important and distinct medium of expression that deserved protection." Furthermore, the letter specifies that the signs should be temporary in nature. He asked if this letter is in reference to the original HB 230.

MR. LARKIN answered that the letter is in reference to the original HB 230 and the non-permanent base wording was inserted to satisfy the U.S. Department of Transportation. Therefore, some reference to permanency should remain in order to address the federal agency's concern. Mr. Larkin pointed out that this is a tangled web that tries to use language that stays within constitutional constraints as well as the wishes of the federal government. He noted that this legislation includes restrictions that wouldn't be present had the federal government not requested them.

MR. LARKIN emphasized that this legislation was structured with regard to what is and isn't constitutional. Since all time-limit restraints have been struck down when heard in court, the sponsor has attempted to address the concerns of those who don't want perpetual litter as well as the department's need for enforcement power. The aforementioned led to the language defining "current relevance" and "date of decision." Although the aforementioned may be unconstitutional, Mr. Larkin believes the language is crafted such that the court could view it as reasonable. The bill speaks to content, which is one of the things the courts review regarding whether [a state] is unconstitutionally restricting free speech. However, leaving political signs as a broad term doesn't actually create a restriction but rather creates access. Therefore, even if the content clause would come into play, Mr. Larkin didn't expect any challenges because the language is allowing rather than restricting. Mr. Larkin acknowledged that there are already constitutional questions for the legislation and remarked that

it's better to pass a law and maintain some state control rather than allow the courts to strike it down and permit everything.

Number 1378

JIM CANTOR, Chief Assistant Attorney, General Statewide Section Supervisor, Transportation Section, Civil Division (Anchorage), Department of Law, began with the easement issue. He explained that most highways are easements and most easements in Alaska were created as a matter of property law through public land orders, including Public Land Order 1613. Public Land Order 1613 includes language specifying that the underlying property owner can't do anything in the easement without a permit. Mr. Cantor said that he wasn't familiar with any of the easement cases that Mr. Larkin mentioned. The U.S. Supreme Court upheld an ordinance that prohibited political signs within the easement. He explained that modern highways were designed and courts enforce the "clear zone" concept, which is basically a zone in which a car can accidentally leave the road and not bump into anything dangerous. The clear zone varies in width depending upon the speed of the road and the shape of the road. Giving a carte blanche that allows people to place things in the easement creates a public safety issue. Subparagraph (H) he proposed in his written remarks would address the aforementioned. Mr. Cantor acknowledged that DOT&PF believes it would have the authority under existing law, but pointed out that it's being litigated.

MR. CANTOR turned to his suggestion to explicitly specify that a political sign is a noncommercial sign. The aforementioned is important in clarifying the committee's intent. Although the committee has been discussing political signs as campaign signs, political signs address a number of issues beyond campaigns. Mr. Cantor explained that he proposed a time limitation in order to have a definitive marker. He emphasized that the basic constitutional rule from the early part of the last century was that the government has the right to limit the time, place, and manner of speech. Mr. Cantor noted that at the same time the least restrictive means is attempted, one doesn't allow a government official to make content determinations. He expressed concern that the definitions of "current relevance" and "date of decision" require a government official to make a content determination regarding whether an issue is really over. The "temporary" rule is difficult to enforce and thus a time limitation [is in order]. He informed the committee that the cases he has seen deal with 30-, 60-, and 90-day timeframes. Furthermore, the cases are generally brought by candidates who

often say that it takes a candidate a long time to make himself/herself familiar to the community, and two months isn't enough time to do so. Mr. Cantor said that there are no challenges to long periods of time. If a long period of time is specified, the government official is provided a clean target.

Number 1754

REPRESENTATIVE LYNN related his understanding that both the property owner and the owner of the easement can use the easement. However, he said he understood that the owner of the easement has priority for the purpose of the easement.

MR. CANTOR remarked that easement is a broad term under the law meaning that there is some sort of right to cross and utilize some portion of land. Therefore, this would be dependent upon the wording of the easement; in fact, there are exclusive easements. He noted that highway easements under PLO 1613 take virtually all of the rights of the property owner. However, it allows the property owner to apply for a permit. Other easements aren't so exclusive, such as section line easements.

REPRESENTATIVE LYNN mentioned that he has an easement in front of his property and he can plant a tree on it if he wants. However, the "road people" can cut that tree if they choose to widen the road. He said he thought the same [logic] would apply to a political sign.

MR. CANTOR reiterated that easements vary from parcel to parcel. For the main state roads, which is what [DOT&PF] regulates, the property owners' use is constrained.

Number 1916

REPRESENTATIVE HOLM surmised that Mr. Cantor is delineating that roads are state roads because of state money put into them. However, he pointed out that in Fairbanks there have been many cases in which signs were taken down because federal money had been used to refurbish a road in downtown Fairbanks. Therefore, these aren't specifically state-owned roads. He assumed the same would be true in Anchorage and Juneau as well.

REPRESENTATIVE SEATON turned to Mr. Cantor's suggestion with subparagraph (C) regarding marking the date the sign was installed. He asked if the aforementioned is for enforcement.

MR. CANTOR replied yes.

CHAIR WEYHRAUCH remarked that Mr. Cantor's suggestions seem similar to the rules regarding posting signs in state office buildings.

MR. CANTOR said he wasn't familiar with those rules.

Number 2028

REPRESENTATIVE LYNN directed attention to Mr. Cantor's suggestion with subparagraph (F) and commented that he knew of a candidate who paid \$20 to place a sign in a noncommercial location. Representative Lynn asked if Mr. Cantor was suggesting that a candidate could pay to place a political sign in a location.

MR. CANTOR said he wasn't aware from where [subparagraph (F)] came, however, he suspected that it evolved from the fears that the commercial sign industry would view this as a new revenue source.

CHAIR WEYHRAUCH pointed out that subparagraph (E) of CSHB 230(TRA) includes the language specified in Mr. Cantor's written remarks regarding subparagraph (F).

REPRESENTATIVE HOLM noted that people who own bus benches are already allowed to charge people to place political signs on the benches. Furthermore, borough-owned buses are allowed to have political and commercial signs on the bus. Therefore, he said he didn't believe this is an issue that [the legislation] should enter into.

Number 2150

MICHAEL DOWNING, Director/Chief Engineer, Division of Statewide Design & Engineering Services, Department of Transportation & Public Facilities (DOT&PF), clarified that the department has expertise in the management and operations of the highway system but [DOT&PF] isn't an expert in free speech. Mr. Downing explained that he is seeking elegance and craft in this legislation such that the department isn't left to complete issues that have been left unfinished. At some point, this legislation has to be interpreted in real life, and therefore Mr. Downing said that he is seeking enough definition so that the department isn't left to define things that the legislature feels it can't.

REPRESENTATIVE HOLM commented that in the past DOT&PF has, by removing or not removing signs from certain places, exercised political will based upon the political beliefs of those who worked for DOT&PF. Representative Holm specified that [through this legislation] he is trying to eliminate the need for DOT&PF to make such decisions by defining that there is a constitutional right to freedom of political expression. This legislation attempts to provide direction to the department. However, Representative Holm said he wasn't sure that the legislature could define the department's actions. This legislation tries to err on the side of the individual to express his/her free speech while not placing a burden on DOT&PF. With regard to marking the sign with the date of installation, Representative Holm pointed out that it would be problematic for those who run year after year and reuse signs. He said this comes down to the following question: "Do you have a right to have a sign for 10 years on your property if you want to?" This legislation merely addresses whether a person has a right to express himself/herself without placing the department in the inappropriate position of making those decisions.

Number 2423

REPRESENTATIVE GRUENBERG posed an example of a person who wants to keep a political sign on his/her property for years and inquired as to why that individual wouldn't have that right. He said it seems to him that "current relevance" is in the eye of the beholder. He indicated that it is up to the property owner when the sign comes down due to the individual's right to express himself/herself.

CHAIR WEYHRAUCH pointed out that these statues were originally proposed by a group of individuals who were incensed by signs, billboards, and posters. There was the notion that the public didn't want the aforementioned visual pollution. Therefore, by referendum or initiative it was placed on the books. Chair Weyhrauch said that there seems to be a tension between accommodating First Amendment rights and private interest against the public's desire to have an environment as clean as possible.

REPRESENTATIVE GRUENBERG said that Chair Weyhrauch is referring to the ballot measure that said, "It's the intent of the people that Alaska shall remain forever free of billboards." A billboard is an outdoor commercial advertisement.

MR. DOWNING, in response to Chair Weyhrauch, specified that Title 19 defines "billboard," which seems to be very inclusive. Mr. Downing related his understanding that the definition of "billboard" would not be limited to commercial [signage] but rather refers to any device intended to distract. The aforementioned definition has led to some confusion, he said.

REPRESENTATIVE GRUENBERG remarked that what is being discussed is a classic example of why the separation of powers provision is coupled with the free speech provision in the Bill of Rights. Under the constitution, there is sometimes a higher good that may be more important than the popular will, which is the right of [an individual's] free expression on a matter of public importance. This issue is the right to speak.

Number 2665

REPRESENTATIVE SEATON said that he didn't believe it's fair to use the "temporary" language, which leaves DOT&PF in the position of deciding when to take down what signs. Allowing DOT&PF to use its judgment is exactly what the committee is saying that it doesn't want to do.

REPRESENTATIVE HOLM reiterated that the [department's] abuse of this was the reason behind this legislation. If the committee wants to remove line 18 on page 2, he said he didn't have a problem with that. Representative Holm explained that this legislation has been crafted so that it allowed DOT&PF to approach the unconstitutionality of being able to remove an individual's right to speech. Although this language is a potential constitutional challenge, it's done for the purpose of trying to be responsible to the request by the administration. He mentioned that ideally he wouldn't want any restriction whatsoever save the one regarding the signs that pose a traffic hazard. The language was crafted to help DOT&PF not hinder the department. "If you don't want it in there, we can get rid of it all," he concluded.

REPRESENTATIVE SEATON commented that he didn't believe laws are challengeable rather actions are challengeable. Therefore, it doesn't matter what is in the legislation because there has to be a case. Representative Seaton interpreted this legislation to mean that the department must create regulations based on its judgment in order to make a case and go to court because the legislature couldn't decide what to tell the department.

Number 2905

REPRESENTATIVE HOLM interjected that the above has already been done through the department's ability to have rights-of-way. The DOT&PF has been charged with making sure that the highways and rights-of-way are safe for the public. Because of the aforementioned, the legislature hasn't specified when and if action is taken but rather when and if there is an obstruction, which is defined. Representative Holm related that [through this legislation] he is trying to not be too specific so that the department is free to do its business.

REPRESENTATIVE SEATON said that he didn't have any problems with the obstruction part of the legislation.

TAPE 03-60, SIDE B

REPRESENTATIVE SEATON related his understanding that the intention is to craft legislation that allows political speech within the limitations such as the "temporary". Furthermore, the aforementioned is being done outside of the safety issue that should be taken up by the department. Representative Seaton expressed concern with regard to asking DOT&PF to promulgate regulations that have to be vague because whatever regulations are promulgated will probably be unconstitutional.

Number 2890

REPRESENTATIVE GRUENBERG asked if any legal opinion has been requested on HB 230.

CHAIR WEYHRAUCH said that no one has submitted a legal opinion to the committee.

MR. LARKIN mentioned that there was a verbal discussion with Legislative Legal and Research Services, which highlighted the possible problems with content and the date of decision concerns. He pointed out that the amorphous language isn't necessary; rather it's an attempt to give DOT&PF passive enforcement. This legislation attempts to allow DOT&PF to extricate itself from this enforcement quagmire and then make its regulatory requirements. He specified that DOT&PF is covered by the language on page 2, lines 19-20. However, he acknowledged that the language "or maintenance" could be added so that maintaining the road's shoulder would be addressed.

Number 2754

REPRESENTATIVE GRUENBERG moved that the committee adopt [Amendment 1], which read as follows:

Page 2, line 18
Delete subparagraph (B)

REPRESENTATIVE HOLM said [Amendment 1] is acceptable.

There being no objection, Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG pointed out that Mr. Cantor's written suggestions for paragraph (6) have inserted the ", non-commercial" language. Representative Gruenberg said he believes the aforementioned clarifies the intent of the legislation. Therefore, Representative Gruenberg moved that the committee adopt [Amendment 2] as follows:

Page 2, line 15, after "political"
Insert "non-commercial"

There being no objection, Amendment 2 was adopted.

REPRESENTATIVE GRUENBERG turned attention to Mr. Cantor's suggestion to insert a new subparagraph (G) and moved that the committee adopt Conceptual [Amendment 4], which would insert language saying, "this section does not authorize indirect advertising of commercial products".

REPRESENTATIVE HOLM inquired as to what that language would mean.

MR. CANTOR recalled that the concept stemmed from the letter from the Federal Highway Administration (FHWA) regarding whether this legislation would be acceptable with federal funding. The [FHWA] included this as a concern. Currently, there is a case before the U.S. Supreme Court involving letters sent out by Nike regarding how well it treats its employees in Asia. Although Nike says that letter was informational under the free speech clause while others say that it's commercial speech the end product of which is to sell Nike shoes.

REPRESENTATIVE LYNN posed a case in which a candidate who owns a business notes his business on his campaign signs and asked if that would be considered indirect advertising.

MR. CANTOR remarked that with free speech there is a very fine line between satire and commercial advertising.

REPRESENTATIVE GRUENBERG withdrew [Conceptual Amendment 3].

Number 2420

REPRESENTATIVE GRUENBERG directed attention to page 2, line 25, the last word of which is "or" while Mr. Cantor's suggestions use "and".

MR. CANTOR indicated that it was a typographical error.

REPRESENTATIVE GRUENBERG moved that the committee adopt [Amendment 4] as follows:

Page 2, line 25,
Delete "or"
Insert "and"

There being no objection, Amendment 4 was adopted.

MR. CANTOR, in response to Representative Gruenberg, said that his written testimony regarding paragraph (6) subparagraph (A) the word "and" instead of "or" was a typographical error on his part.

Number 2310

REPRESENTATIVE GRUENBERG turned to page 3, lines 5-6. However, he pointed out that if an individual is running for office or has a campaign for a ballot measure, the television or newspaper would be paid to carry the advertising, or the person delivering flyers may be paid. Therefore, he questioned why someone shouldn't be able to pay someone to put up a sign. Representative Gruenberg offered to delete the language on page 3, lines 5-6.

CHAIR WEYHRAUCH inquired as to how that provision was included.

MR. LARKIN recalled that perhaps it was a suggestion by [Legal and Research Services] or it may be referenced in the letter from the FHWA. After listening to the debate, he said that the provision probably isn't necessary.

REPRESENTATIVE GRUENBERG moved that the committee adopt Amendment 5 as follows:

Page 3, line 4,

Delete "; and"
Insert "."
Delete lines 5-6

There being no objection, Amendment 5 was adopted.

Number 2186

REPRESENTATIVE SEATON mentioned that his community is going to be upset when the rights-of-way are filled with signs. Therefore, he moved that that the committee adopt [Amendment 6], which would incorporate subparagraph (H), as suggested in Mr. Cantor's written comments. Subparagraph (H) would read:

in this section, "private property" does not include that portion of property subject to an easement for public transportation.

REPRESENTATIVE HOLM objected and remarked that he believes the above language is blatantly unconstitutional.

REPRESENTATIVE SEATON reminded the committee of Mr. Cantor's testimony that a property owner doesn't have the right to put anything within the state right-of-way, the "clear zone," without a permit. Therefore, if signs can be placed in the right-of-way, then so can bird feeders, trees, et cetera until it's determined to be a hazard.

REPRESENTATIVE HOLM disagreed and interjected that in some rights-of-way trees can be planted [without obtaining a permit].

Number 2051

MR. DOWNING referred to the FHWA's letter regarding whether this legislation complies with the Highway Beautification Act (HBA). He said that it's worth asking whether signs within the right-of-way violate HBA. He noted his suspicion that signs within the right-of-way violate HBA.

MR. CANTOR related that in response to other states that have asked the above question, [the federal government] backed off on strict enforcement with private property while still being protective of the right-of-way. As a tort lawyer, Mr. Cantor informed the committee that Alaska had a "clear zone" case in which there was a rock in the right-of-way. The state won that case on summary judgment, but only after spending \$290,000. He also noted that the state could've just as easily lost and spent

more that it did. "Having things in the 'clear zone' can be a very expensive proposition," he said.

MR. LARKIN pointed out that the FHWA's letter does address this matter as follows: "Despite these concerns, the FHWA does not believe that the proposed changes to Alaska law would violate the HBA." Mr. Larkin highlighted that the federal HBA doesn't regulate these rights-of-way under discussion because they simply withhold money and allow the state to regulate the right-of-way. In response to Representative Seaton, Mr. Larkin agreed that the federal government expresses its dislike of signs in the right-of-way by saying that the U.S. Department of Transportation has the authority to impose a 10 percent penalty on federal aid if it's determined that the state is noncompliant with HBA. In cases in which the right-of-way distinctions have been struck down, the states he researched didn't lose money.

CHAIR WEYHRAUCH reminded the committee of the objection to Amendment 6.

A roll call vote was taken. Representatives Seaton and Dahlstrom voted in favor of the adoption of Amendment 6. Representatives Holm, Lynn, Gruenberg, and Weyhrauch voted against it. Therefore, Amendment 6 failed by a vote of 2-4.

REPRESENTATIVE GRUENBERG [moved to report CSHB 230(TRA), as amended, out of committee with individual recommendations and the accompanying fiscal notes].

MR. DOWNING informed the committee that in 1997 SB 56 passed and it allowed "Todd" signs, which are a regulated sign to be placed on private property adjacent to the highway. That legislation, SB 56, was what caused the reaction that occurred with the referendum. He pointed out that HB 230 is considerably more advertising than [the "Todd" signs].

REPRESENTATIVE GRUENBERG remarked that HB 230 involves a basic constitutional right while SB 56 involved a [political] sign.

MR. DOWNING agreed that the "Todd" signs are commercial while those addressed in HB 230 are political signs.

CHAIR WEYHRAUCH, upon determining there was no objection, announced that CSHB 230(STA) was reported from committee.

HJR 14-NATIONAL WHEELCHAIR GAMES

CHAIR WEYHRAUCH announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 14, Relating to urging that the 2006 National Veterans Wheelchair Games be held in Anchorage, Alaska.

MARK GNADT, Staff to Representative Eric Croft, Alaska State Legislature, thanked the committee for hearing HJR 14, which he said is a good resolution to keep moving.

Number 1621

REPRESENTATIVE SEATON moved to adopt CSHJR 14, Version 23-LS0709\Q, Kurtz, 5/9/03, as the working document.

REPRESENTATIVE GRUENBERG objected for discussion purposes and then withdrew his objection.

[No objection was stated and thus Version Q was treated as adopted.]

CHAIR WEYHRAUCH explained that he made some grammatical changes to this legislation. Furthermore, he inserted language on page 2, lines 10-12, regarding Anchorage as an wheelchair accessible city. Also, he deleted the language from [Version H] that specified that the National Veterans Wheelchair Games are anticipated to bring in millions of dollars because this is desired because Anchorage is a good city and Alaska is a good state. He emphasized that the National Veterans Wheelchair Games is a very important event and is welcome in Alaska.

MR. GNADT said that the sponsor appreciates the changes.

REPRESENTATIVE LYNN noted his support of the resolution.

REPRESENTATIVE GRUENBERG moved to report CSHJR 14, Version 23-LS0709\Q, Kurtz, 5/9/03, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 14(STA) was reported from committee.

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:12 a.m.