

**ALASKA STATE LEGISLATURE  
HOUSE TRANSPORTATION STANDING COMMITTEE**

March 6, 2003

1:30 p.m.

**MEMBERS PRESENT**

Representative Jim Holm, Co-Chair  
Representative Beverly Masek, Co-Chair  
Representative Hugh Fate  
Representative Cheryll Heinze  
Representative Vic Kohring  
Representative Albert Kookesh

**MEMBERS ABSENT**

Representative Mary Kapsner

**COMMITTEE CALENDAR**

HOUSE BILL NO. 127

"An Act allowing certain roadside memorials to be placed within the right-of-way of a state highway."

- MOVED HB 127 OUT OF COMMITTEE

HOUSE BILL NO. 97

"An Act authorizing a long-term lease of certain Alaska Railroad Corporation land at Anchorage; and providing for an effective date."

- MOVED HB 97 OUT OF COMMITTEE

**PREVIOUS ACTION**

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

BILL: HB 97

SHORT TITLE:LONG-TERM LEASES OF ALASKA RR LAND

SPONSOR(S): REPRESENTATIVE(S) KOHRING

Jrn-Date	Jrn-Page		Action
02/14/03	0214	(H)	READ THE FIRST TIME - REFERRALS
02/14/03	0214	(H)	TRA, RES, FIN
03/06/03		(H)	TRA AT 1:30 PM CAPITOL 17

**WITNESS REGISTER**

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

POSITION STATEMENT: Presented HB 127 on behalf of the bill sponsor, Representative Jim Whitaker.

RACHELLE DOWDY  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 127.

SANDY GILLESPIE

POSITION STATEMENT: Her testimony supporting HB 127 was read by Rachelle Dowdy.

AL SUNDQUIST

Alaska Chapter of Americans United for Separation of Church and State

Anchorage, Alaska

POSITION STATEMENT: Testified that HB 127 should specify that no religious message be included.

JIM EDE

Wasilla, Alaska

POSITION STATEMENT: Testified that there are some problems with HB 127.

ASA DOWDY

Fairbanks, Alaska

POSITION STATEMENT: During discussion of HB 127, expressed the need to allow the roadside memorials to be an expression the family desires.

BARBARA DOWDY, Member

Fairbanks Chapter of Mothers Against Drunk Driving (MADD)

POSITION STATEMENT: Testified in support of HB 127.

SHERYL REILLY

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 127.

SALLY EKLUND

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 127.

DENNIS POSHARD, Legislative Liaison/Special Assistant

Office of the Commissioner

Department of Transportation & Public Facilities

Juneau, Alaska

POSITION STATEMENT: Answered questions and suggested an alternate program to HB 127.

MICHAEL L. DOWNING, Director and Chief Engineer

Division of Statewide Design & Engineering Services

Department of Transportation & Public Facilities

Juneau, Alaska

POSITION STATEMENT: Answered questions and testified in opposition to HB 127.

MARK MARLOW

Alaska Enfranchise Facilities, Inc. (AEF)

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 97.

#### **ACTION NARRATIVE**

#### **TAPE 03-7, SIDE A**

Number 0001

**CO-CHAIR JIM HOLM** called the House Transportation Standing Committee meeting to order at 1:30 p.m. Representatives Holm, Masek, Kohring, and Heinze were present at the call to order. Representatives Fate and Kookesh arrived as the meeting was in progress.

#### HB 127-ROADSIDE MEMORIALS

CO-CHAIR HOLM announced that the first order of business would be HOUSE BILL NO. 127, "An Act allowing certain roadside memorials to be placed within the right-of-way of a state highway."

Number 0115

LORI BACKES, Staff to Representative Jim Whitaker, provided the following sponsor statement on behalf of Representative Whitaker:

When a person dies on an Alaska road, family and friends often express their grief by placing items near where the tragedy occurred, in a kind of memorial to their loved one. Sometimes, even strangers are moved to add to the memorial when particularly touched by the loss.

These memorials serve two purposes. One, to allow the grieving to express their sorrow, and two, to remind those who travel of the inherent dangers in driving Alaska's roads, particularly when excessive speed or alcohol contributed to the cause of the accident. Many Alaskans instinctively check their speed and take extra care in driving when they pass one of these such memorials.

Recently, the State of Alaska Department of Transportation [ & Public Facilities ] informed the creators of such memorials that these encroachments to the right-of-way would no longer be tolerated. They warned that the department would remove them if they were not taken down by a date certain. This action is in response to a perceived threat to federal highway funding if the state allowed the memorials, as well as an interpretation of the state law that bans billboards.

The liberty to express our grief, the desire to memorialize a fallen officer, the wish to recognize a tragedy in our community, is a very personal freedom that must not be unnecessarily infringed by the government.

HB 127 sets out to clarify that while the state does not attempt to discourage the placing of such memorials, they will be reasonably regulated so as not to allow unsafe distractions and hazards in Alaska's right-of-ways.

Number 0210

MS. BACKES continued:

The genesis of this bill lies in a public notice of regulation change some two years ago when the Department of Transportation [& Public Facilities] created the "Memorial Sign Program." Representative Whitaker became concerned that while instituting this program, the department made it clear that personal roadside memorials would no longer be tolerated and must be removed.

We've had numerous conversations with the department over this issue and are aware of their concerns, namely, that the department believes that Alaska Statute AS 19.25.075 bans such memorials; and the department perceives a threat to federal highway funding should such memorials be allowed.

I'd like to briefly address those concerns. Firstly, the cited Alaska Statute is the section of law that bans billboards. I have a copy of the statute if the members would like to take a look at them. But it is our belief that the intent of the billboard ban did not contemplate its being applied to temporary personal roadside memorials such as are the topic of today's discussion. Secondly, the perceived threat to federal highway funding comes from a portion of the Highway Beautification Act that states that states face a 10 percent cut in federal highway funds if they did not make "provision for effective control of the erection and maintenance ... of outdoor advertising signs, displays, and devices which are within 660 feet of the nearest edge of the right-of-way and visible from the main traveled way ...."

Number 0417

We believe the provisions in HB 127 provide policy direction to the state department of transportation, that while roadside memorials will not be entirely against the law within the state, the legislature fully allows and expects the department to make certain they are not a hindrance to the free travel and maintenance of our roadways. This is accomplished in both Sections 1 and 2 of the bill. These memorials must be of temporary nature, must not interfere with the use of the highway, with other uses of the right-of-way, with the visibility of directional and other official signs and notices, or with highway safety

construction or maintenance. They must not contain political or commercial messages, and must contain contact information of the person who placed it there, so they may be contacted should there be a problem with such placement. If a particular memorial does not meet these standards, the legislature not only allows, but fully expects the department to contact the person who placed the memorial to have the situation corrected, or face having it removed by the department.

MS. BACKES concluded by offering to address any questions.

Number 0443

CO-CHAIR MASEK pointed out that the legislation doesn't [define] "temporary" and inquired as to its meaning.

MS. BACKES acknowledged that some of these memorials have been around for quite some time. She explained that Representative Whitaker sought to be as least restrictive as possible with its broad language. The concept of "temporary nature" means that the state doesn't intend to allow these memorials to have concrete footings or to be permanently attached to something along the roadway and that these memorials would be easily removed. Therefore, there was no specific timeframe.

Number 0552

REPRESENTATIVE HEINZE noted that she has long worked against drunk driving and asked if these memorials could include something, such as a yellow ribbon, signifying that alcohol was involved.

MS. BACKES informed the committee that the State of Alaska has instituted a Memorial Sign Program allowing the state, upon approval of application by a family, to place a sign near the location of the accident. She showed the committee photographs of signs that contained the plea "Please don't drink and drive." The personal roadside memorials addressed by HB 127 would be designed by the family with whatever message the family desires without commercial or political messages. In further response to Representative Heinze, Ms. Backes confirmed that folks can choose a particular sign.

REPRESENTATIVE FATE remarked, "We seem to have a great propensity for blaming alcohol [for] everything." He said he

was reminded of a study done by the State of Michigan in which 1,000 people were stopped under the influence of alcohol; it was found that 80 percent of those had other illicit drugs. He stated that alcohol isn't the only reason for accidents.

Number 0854

RACHELLE DOWDY provided the following testimony:

I support HB 127. 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 it is personal, it happened here, to this person, to this family, to this community, to someone we 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, moved beyond statistics. Would a standard, state sign have this effect? I don't think so. I encourage every committee member to review the images submitted by Sheryl Maree Reily and to take this issue to heart. I also suggest you [use the Internet search engine to find] Google "roadside memorial" and look at some of these sites. This form of human expression takes place not only in Alaska, but nationally and internationally. Does Alaska want to be known for its lack of human interest, such human interest replaced with mere statistics?

I have lived in Alaska my entire life. We thrive on 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? Do we want to be this impersonal? I don't.

MS. DOWDY clarified that she is related to Heather Dowdy, who was killed in 2000 in Fairbanks, Alaska, on the Old Steese Highway.

Number 0980

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 [Highway] 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 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, 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 - 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 on 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 of a system that does not equally 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 and who have died on the roads we drive every day.

Number 1152

AL SUNDQUIST, Alaska Chapter of Americans United for Separation of Church and State, said that while he sympathized greatly with the preceding testimony, he believes that the roadside memorial program provides [what is necessary]. Mr. Sundquist explained that [the Alaska Chapter of Americans United for Separation of Church and State] is opposed to the personal memorials that have religious content. The state is not in the position of supporting any religion. Therefore, he suggested that the language in HB 127 specify that no religious message can be included.

REPRESENTATIVE HEINZE related her understanding that [the roadside memorial] would come from the family [who lost a family member]. She asked if Mr. Sundquist was objecting to the family's expression and wishes [through the roadside memorial].

MR. SUNDQUIST pointed out that the current regulations provide for the family to [allow the memorial] to be placed and [allows] for the family to put a message [on the roadside memorial]. Mr. Sundquist clarified that he was objecting to the state's [allowing roadside memorials with religious content] to be placed on public property.

Number 1369

JIM EDE said he believes that the Alaska Department of Transportation & Public Facilities (DOT&PF) is correct in its statement that there are regulations governing memorials. The problem with these memorials is that they are very distractive to motorists, and although these roadside memorials look nice for a few days, after being out in the weather they become unsightly. Furthermore, there are many court cases specifying that there shouldn't be religious messages or symbols on public property. Mr. Ede highlighted that the state can lose federal highway funds if it doesn't abide by the federal regulations.

The solution proposed by the [U.S. Department of Transportation] is a good solution. He noted that many other states have a system in which one can apply and place a roadside sign with a short message. He also noted that [the roadside memorial system employed by some states] has an effective date. Without an effective date, there is the possibility of a multitude of these signs. Most of the problems with HB 127 have already been addressed by the [U.S. Department of Transportation] and the regulations that are already in existence.

Number 1565

ASA DOWDY informed the committee that he was the father of Heather Dowdy, who was killed by a drunk driver. Mr. Dowdy pointed out that the roadside memorials are for the family's expression. He noted that he and his family have benefited from the roadside memorial established for Heather. He emphasized the need for families who have lost a member to express their loss in the way they see fit, regardless of their religious affiliation. Mr. Dowdy said that when traveling he has noticed the roadside memorials that have been put in place, although he hasn't noticed the blue-and-white signs because they blend in with the other state signs. Furthermore, the roadside memorials make folks more conscious of their driving, which Mr. Dowdy said is the focus.

Number 1678

BARBARA DOWDY, Member, Fairbanks Chapter of Mothers Against Drunk Driving (MADD), said that her daughter, Heather, was killed by a drunk driver. She began by noting her support of HB 127. She then provided the following testimony:

My daughter, Heather, was killed September 30, 2000, at 3:00 in the afternoon by a drunk driver. My family and friends erected a roadside memorial on the Old Steese Highway. From the time that the accident took place to the placing of the memorial, I was not able to drive by the site of the accident. Now this has become a focal point, a place of solace as we try to recover from our grief. Memorials across the state of Alaska and all across the United States have been erected long before we became a nation. This is a traditional way of mourning. We cannot allow [DOT&PF] to mandate to our state, be it under the guise of benevolence, nor our federal government to mandate to our state that this tradition must be stamped out.

I have viewed, on the web, memorial after memorial that has been dedicated to the memory of a loved one. None of these memorials look rain-drenched or bedraggled; all of these are taken care of by loving family members and friends. The statements that are indicated on these memorials indicate that a loved one, a valued member of society, was ... violently and hastily taken from our midst. We honor their lives and we value their commitment to society. This is an affirmation that no official [DOT&PF] sign that says "Please drive safely" or "Don't drink and drive" can ever say. These state signs become an unnoticed nonentity. I have yet to see the two signs that I pass by every time I go into town, even though I've been told where they are located. How can this make an impact on society when people do not see them?

I contacted Lady Byrd Johnson's Office to let her know that the Lady Byrd Johnson [Highway Beautification Act of 1965] was being cited as the reason that the memorials were being removed. The letter that I received from Ms. Johnson's office stated that Ms. Johnson would be distressed to hear that her Act was a source of pain to a grieving family. ... I have been told by a friend who recently came back from the Lower 48 and drove through 24 different states ... that he saw memorials in every state that he drove through, and every time he saw one that he immediately took his foot off the gas and drove more cautiously. I do not see how ... taking one's foot off the gas and going down to the speed limit makes them a dangerous driver to follow. Since we are still a country that allows us to have freedom of religion, I do not see how my putting up a cross can take away from anyone else's freedom. Please help me to keep this memorial for my daughter and to uphold the right of myself and [other] grieving families by passing HB 127.

REPRESENTATIVE HEINZE remarked that roadside memorials have a tremendous impact on her.

Number 1875

SHERYL REILLY noted that she is in support of the Dowdy family. Ms. Reilly began by announcing her support for HB 127. She noted that she has forwarded her statement to the committee for

distribution. She indicated that [the Highway Beautification Act] is clear in addressing junkyards and billboards so that the highways are beautiful and maintained, although this seems to have been distorted. Ms. Reilly said she believes it's good that the state provides a choice with regard to the signs that are allowed. Furthermore, she related that she didn't believe this is a religious issue but rather an issue of humanity and grief and the expression of that grief, which she believes is protected by the constitution.

Number 1982

SALLY EKLUND began by informing the committee that her 21-year-old son was killed by a drunk driver in Fairbanks. She said that a memorial is a remembrance, usually put in place by the family. Her son was killed on the Johanson Expressway on November 20, 1996, and about one week after the accident she and her two other children built a cross. The cross had his picture on it, and also contained the clearly stated message that he was killed by a drunk driver. Within six months of the accident, the solid oak cross was busted in half. She wrote a letter to the editor and put up another cross on-site. Ms. Eklund went to the [DOT&PF] office and said she had the impression that [DOT&PF] was taking the cross down. She said that other families had received guidelines on how to take memorials down, although she did not receive such a letter or memo. She testified that she didn't feel that the memorial was a distraction or an eyesore. After the last time the cross was taken down, the local police were called, and now the cross is in her backyard. She stated that the memorials are personal and should be kept that way and that regulations are for impersonal government entities. She said her memorial for her son should say whatever she wants it to say; she has never meant to offend anyone.

Number 2237

MS. BACKES commented that the photographs that were referred to earlier were provided by the witness, Sheryl Reilly. There are other photographs on various web sites, and a listing of those web sites could be provided to anyone who is interested.

REPRESENTATIVE KOOKESH asked about the definition of "temporary" under [Sec. 19.25.260(a)].

MS. BACKES replied that there is not a definition because the sponsor's intent was to leave the language broadly worded to

allow freedom to those who put up the memorials. She reiterated that "temporary in nature" indicates that it is not meant to be permanent; the memorials would not have concrete footings or be permanently attached to the ground.

REPRESENTATIVE KOOKESH said he thought this ought to be time-certain to provide some guidelines. He said without further definition, "temporary" quickly becomes regarded as permanent.

CO-CHAIR HOLM questioned what a reasonable timeframe for grief might be, saying that this is not a time-certain situation.

**TAPE 03-7, SIDE B**

DENNIS POSHARD, Legislative Liaison/Special Assistant, Office of the Commissioner, Department of Transportation & Public Facilities, testified that the department is sensitive to those who have lost loved ones along the highways, which is why the Memorial Sign Program was developed. He said that although the process has been difficult and clumsy, it has resulted in a reasoned program for dealing with roadside memorials. He explained that [23 C.F.R. 710.403] requires the department to manage the roadsides and to control all encroachments within the right-of-way, and limits the use of the roadway to highway purposes. If there is something that is non-highway use, DOT&PF needs to work with the Federal Highway Administration (FHWA) because there is a federal highway oversight agreement which requires the department to submit all applications for encroachments in the right-of-way. The Federal Highway Administration either approves or denies those encroachments; one such example is the beautification permits that the department submits to the FHWA.

Number 2243

MR. POSHARD continued that if HB 127 passes, the grieving family will need to apply for a permit, to be reviewed by FHWA. The DOT&PF Memorial Sign Program is a voluntary, free program that allows a family to request a sign DOT&PF will put up and maintain for 10 years. Currently, if someone chooses to put up a memorial other than one of the departmental signs, technically and legally it is probably in violation of the law, but DOT&PF does not have the inclination or the resources to police the sites in a manner that would result in removing those signs. To Mr. Poshard's knowledge, the department has not taken down any memorials against the wishes of any families. He said that if

that has been done, it was done contrary to any direction that has been given from the commissioner's office. He said DOT&PF has had several good conversations with Representative Whitaker's office, and would like to continue working to achieve a reasonable resolution that allows DOT&PF flexibility and also allows grieving families to grieve in the manner they see fit.

Number 2155

CO-CHAIR HOLM asked if after the roads were built with federal funds, there were federal inspections ensuring that ongoing compliance was maintained on the sides of the roads. He asked if the agreement with the federal government pertained to design and construction or if it also applied once the road was built. He said he thought maintenance applied but wondered if monitoring of rights-of-way would impact funding.

Number 2114

MICHAEL L. DOWNING, Director and Chief Engineer, Division of Statewide Design & Engineering Services, Department of Transportation & Public Facilities, said the provision requires that the highway right-of-way continue to be managed according to the Code of Federal Regulations (C.F.R.) once federal aid dollars have been invested in that highway. The FHWA maintains that the requirements for management of the right-of-way are in perpetuity. Regarding the inspection of a federal-aid highway project, as part of the reimbursement provision, DOT&PF is required to certify that the highway right-of-way is free and clear of any illegal encroachments. The DOT&PF staff does the certification. It is not a federal inspector; however, the effect is the same.

Number 2018

CO-CHAIR HOLM wondered if once the highway was certified as meeting those criteria, it was no longer subject to penalty; he asked if federal oversight of the project continued from that point onward.

Number 2030

MR. DOWNING responded that the obligation remains, even if there is not much enforcement activity involved. He stated that certification is a one-time event at the completion of the project.

CO-CHAIR HOLM suggested that the State of Alaska owns its own highways after the projects are completed. He said that under the guise of being a member of the federal highway system, the state responds to laws pertaining to new design and construction. Co-Chair Holm asked about retroactivity.

Number 1989

MR. DOWNING said that he was an engineer, not an attorney, and he was reluctant to go into legal interpretations. He said if federal aid dollars have been spent on a highway in Alaska, there is a requirement to maintain, operate, and manage that highway right-of-way under those guidelines, for a very long period of time - a minimum of 20 years.

CO-CHAIR HOLM wondered if the passage of this legislation would result in Alaska's being suspect for losing future federal funds.

Number 1957

MR. DOWNING replied that he did not honestly believe there was a great risk of losing federal aid dollars, due to this issue of compliance with state and federal law. He stated his concern was focused elsewhere; he wanted to make sure that a safety hazard was not being introduced within the right-of-way. He said a "clear zone" is a section of the highway - a theoretical limit in which 80 percent of the run-off-the-road accidents occur. The department would not want to introduce a hazard into the clear zone.

Number 1912

MR. DOWNING said that other states have set precedents for removing memorials on the basis of safety. He said there is a correlation between the location of the memorial and the location of the accident, so the site is an inopportune place to introduce a hazard. He continued that the department could get past the safety concern and the concern of aesthetics. The bigger issue is that the majority of memorials that are placed in the highway right-of-way - that is, government property - are religious symbols; the question emerges of managing the separation of church and state. The court history is that government agencies lose that fight when those constitutional boundaries are crossed. As written, the bill does not define "memorials", but eventually a definition will occur, possibly through the permitting process. He said that if DOT&PF

submitted a permit for a memorial and asked for concurrence in accordance with the oversight agreement, FHWA would absolutely want to know what the memorial was honoring.

Number 1830

MR. DOWNING said there are ways to accommodate the need for personal expression and suggested that the department's Memorial Sign Program could be used. He said there are constitutional limitations, once religious symbols are involved.

Number 1798

CO-CHAIR MASEK referred to the Highway Beautification Act in the committee packet and noted that Congress has not repealed or changed the declaration in 37 years. She pointed out that advertising was not addressed within the right-of-way, and noted that the Federal Highway Act, in part, bases its interpretation of advertising within the right-of-way on the Highway Beautification Act. The Act regulates outside of the right-of-way, excluding on-premise signs, but does not address advertising within the right-of-way. The Federal Highway Act attributes this omission to the fact that in the 1960s, Congress did not foresee this becoming an issue in the future. Co-Chair Masek asked if this had any bearing on the bill.

Number 1739

MR. DOWNING replied that Alaska's ban on outdoor advertising originated in the Highway Beautification Act and in a ban which preceded that. He said that Alaska's ban goes further than the federal ban; the state law is more stringent [than federal law].

MR. POSHARD added that the Highway Beautification Act is not the governing law for instituting the [Memorial Sign Program] - the program was instituted out of the department's responsibility to manage the right-of-way.

CO-CHAIR MASEK said that there are agreements in place with each state regarding aspects of advertising in commercial and industrial zones along the highway, but this does not specifically apply to roadside memorials. She questioned whether an interpretation of this issue might falter the state's ability to get federal highway funding. Regarding the department's Memorial Sign Program, she asked how it worked; whether the public has to pay for the signs, fill out forms, get permits, et cetera.

Number 1645

MR. DOWNING replied that there is minimal processing, but DOT&PF needs confirmation that an accident did occur and needs the name of the individual who died. The department acknowledges that the family needs to be treated with the utmost respect and kindness, and makes the process as simple and as easy as possible. The department pays for the sign and puts the sign up. Funding for the program comes, in part, from sanctioned money generated by the state that have been diverted from construction to driver education.

CO-CHAIR MASEK asked if there have been many requests for the signs.

MR. POSHARD said that the department has already installed 60 memorial signs around the state. The closest sign is located near Egan Drive [in Juneau] just past the lookout viewing area in the wetlands, where a motorcycle fatality occurred last year. The department did a statewide inventory of the number of signs and believes there to be around 200 homemade roadside memorials around the state. Research is being done as to when an accident occurred and who the victim was, so that the family can be notified of the DOT&PF's Memorial Sign Program, in case they are interested.

Number 1531

CO-CHAIR MASEK asked if the signs could be adorned.

MR. DOWNING replied, "Absolutely, and it's just better if they don't ask us." He said that DOT&PF is not interested in preventing people from grieving. However, if they ask, the answer they will receive will be in the context of that memorial as being public property. He said that in a practical sense, he couldn't imagine the department objecting to such a request. He noted that there are a lot of memorials in existence and that the DOT&PF is not actively enforcing the statute which indicates that they're not legal.

Number 1450

MS. BACKES pointed out that about two years ago, Representative Whitaker's office began looking into this issue, and initially the department conveyed that safety was a major concern. However, the department has "re-thought" their concerns and now

safety may not be the biggest issue. Similarly, the department initially said that state law banned such roadside memorials, yet that cited state law clearly does not allow for billboards.

MS. BACKES referred to the agreement [Federal-aid Project Oversight Responsibility Agreement], cited by Mr. Downing in his testimony. She said it clearly states, "The agreement applies to the oversight of projects during design and construction." She said that having an ongoing inspection by the federal government, ensuring that there are no illegal encroachments in the right-of-way, would not result with the passage of HB 127, in the roadside memorials as being illegal. It would be easier for the department to respond to the federal government by saying, "we do not have any illegal encroachments." Currently, the department has intimated, perhaps between the lines, that it would rather "look the other way than face this head-on."

MS. BACKES continued that the department is not interested in causing pain to any of the families or in being heartless bureaucrats; it would rather just not have this issue be on the books. Unfortunately, it was made an issue a couple of years ago. She remarked that the public notice that is on the department's web site [e-mail publish date 9/5/02] regarding the creation of the Memorial Sign Program clearly states, "All existing, nonregulation memorials must be removed from state roadways. Beginning September 16, 2002, DOT&PF will begin removal of nonregulation memorials and hold them for 30 days." Ms. Backes stated that she thinks the website reveals the department's intent, and the passage of HB 127 would clearly state the intent of the legislature.

Number 1257

REPRESENTATIVE FATE moved to report HB 127 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HB 127 was reported from the House Transportation Standing Committee.

#### HB 97-LONG-TERM LEASES OF ALASKA RR LAND

CO-CHAIR HOLM announced that the next order of business would be HOUSE BILL NO. 97, "An Act authorizing a long-term lease of certain Alaska Railroad Corporation land at Anchorage; and providing for an effective date."

Number 1213

REPRESENTATIVE KOHRING, the bill's sponsor, stated that HB 97 allows the Alaska Railroad Corporation to grant a 55-year lease without a termination clause. This potentially gives organizations like the Alaska Enfranchise Facilities, Inc. (AEF) the opportunity to build a senior housing facility on Government Hill in Anchorage - property that is owned by the Alaska Railroad Corporation. He said the problem is that the [U.S. Department of Housing and Urban Development] HUD 202 grant requires a 75-year lease; however, since current law allows for a 55-year lease, that organization will not qualify to obtain the lease necessary to build the senior housing project.

REPRESENTATIVE KOHRING referred to legislation that had passed from the House Transportation Standing Committee during a previous year [HB 298, passed in 2002] that allowed for leases to be extended from 35 years, which was the time that was set in 1984, to 55 years. The intent of that legislation was to encourage economic development in communities along the Railbelt and to facilitate commercial and residential development. He pointed out that if 35 years does not meet the standards of a lending institution, it's difficult to obtain financing to build a facility. He added that there are certain exceptions in which 55 years is not sufficient. One such exception is a senior housing project effort in Anchorage in which there is an attempt to obtain a 75-year lease on a particular site.

Number 1188

REPRESENTATIVE KOHRING continued that if the Alaska Railroad Corporation is allowed to grant a 55-year lease without a termination clause, the time period for a lease on a particular site that is owned by the Alaska Railroad Corporation would essentially be extended indefinitely. The result of passing this law would be to pave the way to build much-needed senior housing - housing intended for low-income seniors.

Number 1046

CO-CHAIR MASEK referred to the previous legislation that had become law and asked if changes in HUD's requirements had resulted in disqualifying the aforementioned project.

Number 1030

REPRESENTATIVE KOHRING stated that the legislation allowed the railroad to extend its leases to 55 years rather than 35 years. He informed the committee that there are new HUD requirements

for the HUD 202 grant - a grant used to build low-income senior housing. He explained that after the previous legislation had been passed, HUD regulations then changed to require a 75-year lease on Section 202 grant loans.

Number 0973

MARK MARLOW, Alaska Enfranchise Facilities, Inc. (AEF), said the agency seeks to apply for a lease of at least 75 years for land on Government Hill so that the application of a Section 202 grant for that area can be facilitated. He testified in support of HB 97, saying that the legislation that was passed last year had nothing to do with this particular grant program. He stated that it was "just a good idea whose time had come" to extend the railroad's ability to lease ground from 35 years to 55 years. He said that it was a coincidence that HUD changed the terms of the "202 program" last year. The current requirement for Section 202 grant monies being used to build housing on leased land is to have a lease duration of 75 years. He said that previously the duration requirement had been 40 years.

MR. MARLOW testified that statute currently reads that the railroad is able to lease ground for longer than 55 years provided that the legislature approves of such a lease. He said the request for the legislature to approve of extending the lease would allow for the Alaska Railroad Corporation to approve of the lease, should AEF be successful in being awarded the grant.

Number 0840

REPRESENTATIVE FATE asked if Mr. Marlow had been in negotiations with the railroad.

MR. MARLOW confirmed that this was so.

REPRESENTATIVE FATE asked if anybody else had been in negotiations with the railroad.

Number 0821

MR. MARLOW said he leased the ground last year for 55 years, in anticipation of the application period for this year's Section 202 grant. When the regulation changed to requiring a 75-year lease there was the question of seeking the legislature's approval for a longer lease (indisc.) and the railroad's position, should the grant be awarded.

Number 0785

REPRESENTATIVE FATE asked if the intent was to build a senior home.

MR. MARLOW confirmed that this was correct.

REPRESENTATIVE FATE asked if the project would require a public process due to involving land belonging to the railroad but involving a dispersal clause in state statute indicating a "best interest finding."

Number 0758

MR. MARLOW replied that he didn't know the answer to that question. He reported that when he initially leased the land from the railroad his application was advertised and went through the railroad's process, resulting in the lease that currently exists.

Number 0737

REPRESENTATIVE FATE said he wondered if the lease would terminate if something to prevent completion of building the senior citizens' home occurred during the public process.

Number 0715

MR. MARLOW replied that it would not terminate unless something else was built that was similarly appropriate for the zoning, adding that something would have to be started on the property by September 2004. He said if AEF was not able to get the grant - and grant applications typically have to be in by the end of May - then between now and September of 2004, it would be incumbent upon him to either sell the lease or to build something himself. In any event, he said it would be a housing project, since the property is zoned residential.

Number 0666

REPRESENTATIVE FATE offered that a "best interest finding" is usually a required process, noting that he wasn't sure whether this was a HUD requirement.

Number 0618

CO-CHAIR MASEK moved to report HB 97 out of committee with individual recommendations and the accompanying fiscal note; she requested unanimous consent. There being no objection, HB 97 was reported from the House Transportation Standing Committee.

**ADJOURNMENT**

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:58 p.m.