

ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE

April 29, 2003

1:33 p.m.

MEMBERS PRESENT

Representative Jim Holm, Co-Chair
Representative Beverly Masek, Co-Chair
Representative Hugh Fate
Representative Vic Kohring
Representative Dan Ogg
Representative Mary Kapsner
Representative Albert Kookesh

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 230

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

- HEARD AND HELD

HOUSE BILL NO. 280

"An Act relating to the regulation of commercial motor vehicles to avoid loss or withholding of federal highway money, and to out-of-service orders concerning commercial motor vehicles; amending Rule 43.1, Alaska Rules of Administration; and providing for an effective date."

- MOVED HB 280 OUT OF COMMITTEE

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 |

BILL: HB 280

SHORT TITLE: COMMERCIAL MOTOR VEHICLES: REGULATIONS

SPONSOR(S): FINANCE

| Jrn-Date | Jrn-Page | | Action |
|----------|----------|-----|------------------------------------|
| 04/23/03 | 1071 | (H) | READ THE FIRST TIME - REFERRALS |
| 04/23/03 | 1071 | (H) | TRA, FIN |
| 04/29/03 | | (H) | TRA AT 1:30 PM CAPITOL 17 |

WITNESS REGISTER

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

POSITION STATEMENT: Presented HB 230 on behalf of
Representative Holm and answered questions from the members.

SETH LITTLE

Anchorage, Alaska

POSITION STATEMENT: Testified via teleconference in opposition
to HB 230 and answered questions from the members.

ED EARNHART

Anchorage, Alaska

POSITION STATEMENT: Testified via teleconference in support of
HB 230 and answered questions from the members.

BOBBIE JO SKIBO

Eagle River, Alaska

POSITION STATEMENT: Testified via teleconference in opposition
to HB 230 and answered questions from the members.

ANDRE CAMARA

Anchorage, Alaska

POSITION STATEMENT: Testified via teleconference in opposition
to HB 230.

CLARE STOCKERT

Anchorage, Alaska

POSITION STATEMENT: Testified via teleconference in opposition
to HB 230.

MARTHA LEVENSALER

Anchorage, Alaska

POSITION STATEMENT: Testified via teleconference in opposition to HB 230.

ALLEN COMBS

Anchorage, Alaska

POSITION STATEMENT: Testified via teleconference on HB 230 and answered questions from the members.

COLLEEN NORMAN

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 230 and answered questions from the members.

MICHAEL DOWNING, Chief Engineer

Department of Transportation & Public Facilities

Juneau, Alaska

POSITION STATEMENT: Testified on HB 230 and answered questions from the members.

AVES THOMPSON, Director

Division of Measurements, Standards, and Commercial Vehicles Enforcement

Department of Transportation & Public Facilities

Anchorage, Alaska

POSITION STATEMENT: Testified on HB 280 and answered questions from the members.

FRANK DILLON, Executive Vice President

Alaska Trucking Association

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 280.

BARBARA HUFF TUCKNESS, Director

Legislative and Governmental Affairs

Alaska Teamsters Local 959

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 280.

ACTION NARRATIVE

TAPE 03-19, SIDE A

Number 0001

CO-CHAIR JIM HOLM called the House Transportation Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Representatives Holm, Masek, Fate, Kohring, Ogg, and

Kookesh. Representative Kapsner arrived as the meeting was in progress.

HB 230-POLITICAL SIGNS ON PRIVATE PROPERTY

Number 0054

CO-CHAIR HOLM announced that the first order of business would be HOUSE BILL NO. 230, "An Act relating to political signs on private property."

Number 0095

TODD LARKIN, Staff to Representative Jim Holm, Alaska State Legislature, presented HB 230 on behalf of Representative Holm, sponsor, and answered questions from the members. He read Article I, Section 2, Source of Government, of the Alaska State Constitution, which says:

All political power is inherit in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.

MR. LARKIN told the committee that those are the sentiments that both the sponsor and he believe in and that are echoed in the sponsor's statement. This bill originated out of the frustration that free speech tended to be infringed upon in Alaska. He said the United States of America is based on the same premise that he just quoted. He said that means that "we the people" have the right to advocate or choose who governs us. What HB 230 seeks to do is allow persons on their private property to post a political sign on an issue or candidate, express their free speech, and advocate for or against those who govern them. He told the members that action is currently against state law if a sign is within 660 feet of certain state roads or any federally funded roads and that could be stretched out to mean within legible view, which actually means whichever is the greater distance. The state law was enacted in an effort to come into compliance with the Highway Beautification Act of 1965. He told the committee that in checking with the federal government he found that the State of Alaska has gone beyond compliance. Mr. Larkin pointed to the stacks of case law in favor of this bill. He asserted that if the legislature does not pass this bill, it is clear the state is in danger of litigation and will surely be defeated in a court of law.

Number 0315

REPRESENTATIVE KOOKESH commented that Mr. Larkin's statement that the state would "surely be defeated" is not really the case. He said he hopes that is not the position of the sponsor, because the courts in this land look at both sides of the issue. He warned Mr. Larkin about making that kind of statement.

MR. LARKIN corrected his statement to say he believes the state would surely be defeated. He pointed to the last part of the sponsor statement where it, first, advocates for a change in law to save individual citizens the time and expense of challenging the current restriction on free speech. He said the second reason to pass this bill would be to save the state the cost of defense and the likely legal fees that would be awarded to a victorious citizen. Mr. Larkin told the committee he believes it is unfair to infringe upon citizens' rights and then require that citizens go to court at their own expense to demand free speech when that infringement should not have occurred in the first place. He summarized his reply by saying that he could not with absolute certainty say the state would fail in a court of law, but the United States Supreme Court and other state supreme courts have said that this law would not be upheld. Only one state came down on the side of the state, due to a technicality.

CO-CHAIR MASEK asked if this bill has any correlation to the legislation on billboards. She asked if that law was challenged.

MR. LARKIN said that he is not clear about the billboard legislation. He found no reference to that bill. Legislative Legal and Research Services did countrywide research to see court decisions based on this kind of law. He suggested that Alaska billboard case must not have had enough similarities, because it was not mentioned by the agencies.

CO-CHAIR MASEK responded that there was an initiative on the ballot with respect to billboard signs and the result was that the people voted to prohibit billboard signs on Alaskan roadways. She asked if this bill might be along the same lines and expressed concern that the public may think it is not appropriate.

MR. LARKIN said he is vaguely familiar with the initiative, but he believes the billboards were commercial signs. This bill takes pains to stay away from commercial signs or billboards.

He said that there is a size restriction, which is constitutional. Speech cannot be regulated, but size can be stipulated. This bill only addresses free speech and is not intended to address the billboard issue. The largest sign that can be put up is 32 square feet.

REPRESENTATIVE OGG told the committee his concern is that during an election, people will want to exercise their free speech about a candidate or issue. A lot of people are concerned that some people put the signs up very early, prior to an election, and fail to take them down after the election. It just ends up being clutter or trash. He asked Mr. Larkin if the time element had been looked into with respect to free speech.

MR. LARKIN responded that this is beyond the basic scope of the bill. However, that was the second most investigated point of the bill and although there may be some very minimal ambiguity as to the type of speech looked at, there were no cases where a time limit was upheld. There have been multiple time limits required in an effort to urge people to clean up the signs, but every case was struck down where a time limit had been imposed.

REPRESENTATIVE OGG asked Mr. Larkin if U.S. Supreme Court cases were researched.

MR. LARKIN replied that the most of the cases reviewed were U.S. District Court cases and various state supreme court cases. The only U.S. Supreme Court case is the first one in the backup information, and has to do with residential signs expressing political, religious, or personal views. In the Oregon case, time limits were spoken to and found to be unconstitutional.

Number 0817

CO-CHAIR HOLM pointed to the Antioch case [City of Antioch v. Candidates' Outdoor Graphic Service] where the signs could not remain up past 7 days after an election or could not be put up earlier than 60 days before an election. In this instance, the court struck down this law as an affront to free speech. Co-Chair Holm said that one of the arguments was that there had to be an even playing field. For instance, a Representative already holding office has no infringement in getting his/her name out in front of the public; however, someone who has no money and wants to put signs out to be viewed by the public is prohibited from doing so. Therein lies the lack of parity between the two candidates running for office. He said case law is very interesting with respect to an individual's right to

promote his/her ideas. One issue that was determined was that it would be illegal for someone to put a sign in the front yard saying that he/she hates the war in Iraq under current Alaska law if that sign could be seen from a federally funded highway, because it falls under the federal Highway Beautification Act.

REPRESENTATIVE OGG asked if this would be illegal under state law.

CO-CHAIR HOLM responded that it would be illegal under Alaska law. He reiterated that it would be against federal law if the sign could be seen from a federally funded highway under the Highway Beautification Act. This is why the Alaska State Department of Transportation & Public Facilities told the legislature that if the law is changed, it will negatively impact the state's ability to get federal highway funds. He told the committee that he wrote to the U.S. Department of Transportation concerning this legislation, however, and obtained a letter from them saying that this bill would not negatively impact federal funds.

MR. LARKIN commented that the letter is in the members' packets for review. He said the letter confirms that the U.S. Department of Transportation does not intend to withhold any funding from the state if the bill, as it stands, becomes law. Mr. Larkin told the committee they even suggested some amendments, one of which will be presented today.

Number 0958

REPRESENTATIVE OGG commented that this seems hopeful to him. He said this bill would be a good thing because presently the state has a dichotomy. Signs could be on a borough road or city street, but if it is on a highway, it is not possible to display a sign within 600 feet of it.

REPRESENTATIVE FATE stated that the law is not administered evenly or fairly across the state of Alaska. In one area, political signs will be up that are obviously illegal, and in another area, signs have been removed to comply with state law. He agreed that this bill is a good approach to the problem.

REPRESENTATIVE OGG said Representative Fate is absolutely right. The enforcement of the law depends on who complains about signs.

CO-CHAIR HOLM pointed to the Collier case [Collier v. The City of Tacoma] that deals with this issue. He told the members that

Michael Collier was a person who ran for [Congress from] Tacoma, Washington, and fought this law and finally won.

MR. LARKIN told the members that Amendment 1 was suggested by the U.S. Department of Transportation as a safety issue.

Number 1109

REPRESENTATIVE FATE moved to adopt Amendment 1, 23-LS0780\H.1, Utermohle, 4/4/03, which read:

Page 2, line 8, following "base":

Insert "i"

(C) the signs do not interfere with, obstruct, confuse, or mislead traffic or pose a traffic hazard

Page 2, line 9:

Delete "(C)"

Insert "(D)"

Number 1126

CO-CHAIR HOLM asked if there was any objection. There being no objection, he announced that Amendment 1 was adopted.

REPRESENTATIVE KOOKESH said that while he does not object to Amendment 1, he wanted to enter into the record the fact that if there is a sign that presents interference, obstruction, or confusion, or misleads traffic, that the Alaska Department of Transportation & Public Facilities has the ability to go in and take a sign down or ask to have the sign taken down.

CO-CHAIR HOLM said he is in complete agreement with Representative Kookesh's clarifying comments.

Number 1153

SETH LITTLE testified in opposition to HB 230. He told the committee that the bill would allow the roadways to be cluttered. The public is exposed to and receives more than enough information about political candidates, and does not need political signs cluttering roadways. He said there is nothing in the bill that defines what a political sign is, what a permanent base is, or whether there is a timeline when the signs can be put up and taken down.

MR. LITTLE said another issue is that there is nothing in the bill that prohibits stacking of signs to create a billboard effect. Mr. Little pointed out that the bill says that individual signs cannot exceed 32 square feet, but many individual signs stacked next to each other could possibly create a billboard effect. He told the committee he believes HB 230 would open the door for the billboard industry, and would set the precedent to begin exempting other signs and billboards that were prohibited by a law that was passed by initiative in 1998. During that election, 72 percent of the voters voted to ban billboards. He said he believes political billboards have no place along the roadways. They are a distraction and interfere with traffic control signals and safe bicycle and pedestrian circulation. There is also an aesthetic value in prohibiting billboards and signs from cluttering the road systems, especially in Alaska where the tourism industry depends on beautiful Alaskan scenery.

Number 1277

MR. LITTLE said that many signs along the roadways can pose a potential hazard. Signs are particularly dangerous when placed in vision areas at intersections. Improperly placed signs can obstruct a motorist's view, distract a driver's attention, compound damages and injuries in the event of a crash, endanger the safety of individuals who are erecting signs along busy highways, and present obstacles to pedestrians and bicyclists. Mr. Little urged the committee members to oppose HB 230.

CO-CHAIR MASEK asked Mr. Little to speak to the issues he raised about there not being a definition of political signs and the lack of a time limit in posting the signs.

MR. LITTLE replied that during campaign season everyone is familiar with signs that have the candidates' names on them; however, he questioned whether a sign advertising a spaghetti dinner held by the chamber of commerce for a candidate is a political sign. He said he believes it is important to define what a political sign is.

MR. LITTLE said in response to the second part of Co-Chair Masek's question about the time limit that a sign can be displayed; he said the bill only refers to signs not being on a permanent base as a criterion. He told the committee his question would be whether the permanent base refers to the structure, or is within a timeline as far as when these signs need to be removed.

CO-CHAIR MASEK asked if he would still oppose the bill if it was amended to define time limits for the display of political signs.

MR. LITTLE replied that he would still object to the bill because he sees this legislation as the beginning of larger exemptions for other interests to tout free speech and access to their rights of free speech. Some commercial interest will then lobby for its rights to free speech, which will allow billboards onto Alaska's roadways.

CO-CHAIR MASEK asked Mr. Little if he believes this bill is too vague. She asked if he believes there should be more definitions and timelines in the bill.

MR. LITTLE said he would not support this bill even for one sector, political signs, because it would change the law for free speech. He said there is nothing that could be done to make HB 230 acceptable.

Number 1488

ED EARNHART testified in support of HB 230 and answered questions from the members. He told the committee he is representing the public interest, which means good elections that are competed for fairly by decent candidates. He said he has participated in elections for the last 25 years; some years he was involved with as many as four elections. For the last 17 years he has been involved with the placement of signs. Mr. Earnhart shared his view of the problems in Anchorage and the unfairness that exists because of the difference between the [laws and regulations that govern] municipal streets and the state highways that are classified under that 660-foot rule [federal Highway Beautification Act]. He asked if he correctly understood earlier testimony that the U.S. Department of Transportation recognizes that the situation in Alaska is different and has allowed some exemptions.

MR. EARNHART restated his question by asking if the [ban on political signs being within] 660-feet [of federally funded highways] still applies to Alaska.

CO-CHAIR HOLM responded that he is not sure what Mr. Earnhart is asking. He commented that the 660-foot requirement refers to signs that can be seen from a federally funded or supported highway.

MR. EARNHART commented that in Anchorage there are a lot of streets and bicycle paths that are federally supported. He said he believes the federal law was intended for interstate highway systems, and he understands the interpretation that was mentioned earlier in testimony is that Alaska would not be held to that standard if signs are on private property. He asked if he understands this correctly.

Number 1606

CO-CHAIR HOLM replied that is exactly correct.

MR. EARNHART said that this bill is intended to help eliminate the obstruction to use signs along the roadways for campaigns. He commended Co-Chair Holm for working to correct the problem.

MR. EARNHART told the committee he is concerned with enforcement for the sake of public safety. He said he believes that issue is covered by municipalities and boroughs. He asked if it was necessary to have that kind of detail in the bill.

CO-CHAIR HOLM responded that he is not sure.

MR. EARNHART said that in Anchorage the municipality takes care of the enforcement of safety with respect to the placement of signs. He said he believes that is true of the state's handling of state highways as well. He pointed out that enforcement is likely to be erratic because there are not enough funds or people to do the enforcement. He said he hopes this bill will simplify the law and reduce the need for enforcement. Mr. Earnhart shared that nothing was enforced for the last 30 days before the election in Anchorage in the last several years. He said the administrative time it took for giving notice to remove signs meant that nothing happened for the 30 days prior to the election. He said last year "Governor Murkowski" signs were everywhere and he does not fault them for it because it is warfare before an election. Mr. Earnhart said the only way to control warfare is if there are simple rules that are easily enforced.

CO-CHAIR HOLM thanked Mr. Earnhart for his testimony and assured him that the committee would ask the Alaska Department of Transportation and Public Facilities (DOT&PF) how it maintains control of political signs.

MR. EARNHART responded that he is less interested in DOT&PF than he is in the city of Anchorage. He said that while the city is supposed to be nonpartisan, it is, in fact, partisan.

MR. LARKIN commented that in their discussions with DOT&PF, the department has indicated that any definition that is added to this bill, no matter how small or broad, will reduce the enforcement load that it has right now.

Number 1760

BOBBIE JO SKIBO testified in opposition to HB 230 and answered questions from the members. She told the committee that she agrees with Seth Little's points concerning definitions of political signs and the timeline issue. Currently, there are still political signs up in Anchorage from the last election. She said a "George Wuerch" political sign is still up at Peters Creek. This is a problem that is seen along the roadsides. She shared her belief that it is important to pick up the signs because it is a major distraction. The Alaskan public spoke out against billboards, Ms. Skibo told the members. She agreed with Seth Little's comment that stacking 32 signs next to each other equals a billboard. She said that she believes the public receives enough political information through television, radio, newspapers, street corner handouts, and mailings. She said she thinks this covers all the bases and she does not want signs cluttering roadways and views of scenery. Tourism is a big factor and people come to Alaska for the view, not the politics of Alaska. Ms. Skibo said she would like to see the "George Wuerch" sign taken out of Peters Creek, and in fact, would never want to see a sign there again.

MS. SKIBO addressed the free-speech issue by saying that people with small children have political signs that advocate for the legalization of marijuana. She said there should be a definition of what a political sign is before moving forward on this issue. She spoke to Co-Chair Masek's question of whether she would support this bill with definitions of political signs and timelines included; she said she is not sure that she could support it.

CO-CHAIR MASEK asked Ms. Skibo what kind of timeline she thinks should be incorporated in the bill.

MS. SKIBO responded that a reasonable time to remove the signs would be a week at most. She reiterated her comment that she is still seeing signs from the last election.

CO-CHAIR MASEK asked Ms. Skibo what definition of a political sign she would be comfortable with.

MS. SKIBO said she believes just a sign displaying the name and the position the candidate is running for.

Number 2026

ANDRE CAMARA testified in opposition to HB 230. He told the committee that he believes that political billboard signs on roadways will cause visual distractions to motorists and create unsafe road conditions. Mr. Camara said that the tourism industry depends on Alaska's beautiful scenery because it is unique, and he said he feels it is important to keep it that way. There is nothing in HB 230 to prohibit the stacking of many signs to create a larger billboard effect. He expressed his opinion that the public is exposed to more than enough information on political candidates. He said he sees HB 230 as just a foot in the door for the billboard industry and it will only be a matter of time before this billion-dollar industry starts littering Alaska's landscape with billboards.

MR. CAMARA told the committee that in 1997 the state legislature ignored overwhelming public opposition in passing SB 56, sponsored by Senator Lyda Green. This bill made it legal for landowners to rent out advertising space along the highways. In 1998, 72 percent of the people decided through an initiative to permanently ban billboards in Alaska. This initiative repealed SB 56 and returned Alaska's sign laws to the way they have always been and the way he hopes they remain.

Number 2107

CLARE STOCKERT testified in opposition HB 230. She asked what the language is in Amendment 1, which the committee had adopted.

CO-CHAIR HOLM read Amendment 1 to Ms. Stockert.

MS. STOCKERT went on to say she is testifying in opposition to HB 230 because in 1998, 72 percent of the Alaskan people voted to ban billboards. She said she is concerned when she hears that the legislature is trying to overturn the vote of the people. She said there are already many signs on the roadways to ensure safety, and to add political signs to this is a whole new ball game. She told the committee that driving through the Lower 48 during election season is ugly because there are signs

everywhere. Alaskans do not want to be like the Lower 48; nor do Alaskans want the Lower 48 to tell them what to do, so she asked why there would be a desire to have billboards all over the place.

MS. STOCKERT asked what the definition of a political sign is. For example, what if during the next election there is an initiative to have a head tax? Can Princess Cruises put up a big sign saying "Vote No on a Head Tax"? Or could Governor Murkowski put up a sign saying "Buy your Frank Murkowski for Governor T-shirts here"? She said she would like to have more clarity on what "political signs" means.

MS. STOCKERT mentioned the issue of a timeline and the question a of permanent base. She pointed to a possible sign that would say "Tony Knowles for U.S. Senate" and asked if the public should have to look at that for the next year and half. How long can the signs stay up after the election? She questioned when the timeline would extend after the election, whether the municipalities have any discretion on what is allowable in their communities, whether stacking of signs is allowed, and who will enforce the law.

Number 2266

MARTHA LEVENSALER testified in opposition to HB 230. She said that a lot of the factual concerns she has about this bill have already been voiced by previous speakers. She expressed her opposition to this bill and told the committee she believes the language in the bill is so loose that stacking could occur and Alaska would have billboards that are ugly and distracting. Ms. Levensaler pointed out that 72 percent of Alaskans do not want billboards.

Number 2315

ALLEN COMBS testified on HB 230. He told the committee that he has been involved in at least two mayoral candidates' campaigns and he put up signs for them. He said he would like to see the playing field leveled for individuals who are running for political offices. The borough and the state have different rules. Often the borough does not know what it is doing and calls back a week later [with a different interpretation of regulation]. For instance, he said, in the last election a candidate he was working for was blackmailed by someone who said he had a bunch of signs that were illegal and if he did not take them down, this person was going to publicize it. So the signs

were taken down because the campaign did not want any negative publicity.

MR. COMBS told the committee he would like to see language included in the bill that says a political sign is for a person running for office. He believes that would clearly define what that is. He suggested that signs be up no sooner than 60 days before the election, and taken down no later than 10 days after the election. Put a \$100-per-day fine for each sign that is not picked up after 10 days, he suggested. This puts teeth into the law. He said the signs should meet the setback requirement, there should be only one sign in 32 square feet, and they should be no closer [together] than one-half mile. Mr. Combs said he believes that would alleviate some of the problems.

TAPE 03-19, SIDE B

MR. COMBS told the committee that he believes [laws pertaining to] federal campaign signs are not enforced. Officials turn their heads the other way; however, when it is a local election, then enforcement is carried out. He asked the members to level the field on this issue.

Number 2367

CO-CHAIR MASEK said she is in favor of less state government intervention and more local control. She asked Mr. Combs to clarify his position on local control of these issues by the municipalities.

MR. COMBS said that applying and paying for a permit is time consuming. Quite often, the person issuing the permit does not know what he/she is doing. Sometimes a call will come three days later saying the person made a mistake. It is a losing proposition, so he suggested putting the police on the other end. If a sign is put in the wrong place, there is a phone call, and a limited time to move or correct it. He said the way it is currently done is not effective. Mr. Combs told the committee his experience is limited to Anchorage, where he has lived since 1950.

CO-CHAIR MASEK asked if working with the borough assembly or the mayor would be a better solution, rather than getting the state involved by making it a statewide regulation.

MR. COMBS said that he believes the federal government makes the rules because of federal funding for roads. The state complies

with the rules and then the boroughs finally get the rules in the end. He said he does not really have an answer for Co-Chair Masek.

Number 2261

COLLEEN NORMAN testified in opposition to HB 230 and answered questions from the members. She told the committee she is here to speak against HB 230 because she believes allowing the posting of political signs along state roads will lead to major problems. First, it just adds to the campaign money battle. She pointed out that there is a bill going through the legislature that would increase the amount of campaign donations, which will mean there will be more political signs out. Second, she believes that the signs are a safety issue. People get distracted by the signs. She explained that where she lives on North Douglas Highway it is a very active road. There are a lot of people that run or bike on that road, and there are school children out there in the mornings. There is no sidewalk. If someone is driving down that road and is distracted by a political sign, it could cause a lot of problems and could be very dangerous.

MS. NORMAN told the members another concern she has is when political signs are displayed near intersections. In Anchorage a woman was hit by a car because the driver was distracted by a sign. Another issue that concerns her is the idea of clutter. She said when sitting outside she does not want to have 30 signs posted on the lawn next to her house. Ms. Norman agreed with Seth Little and others that a lot of signs put together have the same effect as a billboard. She said there really is not any clarity in the definition of political signs. Ms. Norman asked the members to take more time to look through this bill and make changes that would make it less vague. She summarized her comments by saying she opposes HB 230 as written.

CO-CHAIR HOLM asked Ms. Norman if she has ever seen in her life more than one four-by-eight political sign put together to make a billboard.

MS. NORMAN responded that she has not, but does not want it to happen.

CO-CHAIR HOLM said he has heard the same remark all afternoon and he is perplexed. He asked if all of the people who testified were together or had seen political signs displayed this way.

MS. NORMAN responded that she does not live where that is a problem, but she does not want to see huge billboard signs on each side of her or across the road. She said she appreciates freedom of speech, but does not support this bill.

CO-CHAIR HOLM said he appreciate Ms. Norman's sensibilities but offered that she lives in a country that allows her to express her views, because people have the freedom to express themselves through their political speech. Co-Chair Holm stated that from that freedom comes the bill.

Number 2092

MICHAEL DOWNING, Chief Engineer, Department of Transportation & Public Facilities, testified on HB 230 and answered questions from the members. Mr. Downing offered a few comments of clarification. He pointed out that these signs are not advertising on the highway right-of-way and that is important to keep in mind. This is advertising on private property and is an important distinction to the Department of Transportation & Public Facilities.

MR. DOWNING said that sign enforcement in general is particularly difficult; however, that is not the case when a sign is in the right-of-way. In that case, the department simply removes the sign from the right-of-way because there are no requirements for notice. Sign enforcement becomes more difficult when it is on private property or it is a political sign. The department distinguishes between political speech and commercial speech because it is believed that political speech is more important. Enforcement practice today, according to statute, is a 30-day notice by certified letter to the property owner where the sign is displayed. The letter is not sent to the candidate. The department might send a courtesy copy to the candidate; however, the violator is the property owner. Candidates have figured that out. He told the committee what he has observed is that the candidates will take advantage of the 30-day notice because if it is 30 days before the election, by the time the enforcement action occurs, the election is over. He said most candidates seem to be savvy about that.

MR. DOWNING told the committee that state regulation and law allows for on-premises advertising. State regulations say that for purposes of campaign headquarters, political advertising at the headquarters itself is on-premises advertising. Some campaigns and political parties have taken advantage of that.

There was a case in Juneau where a party leased a property next to a highway and designated that as the community campaign headquarters and then there was a huge proliferation of signs for every candidate in that party. That was legal and clever. He said he was surprised that it happened, but it is perfectly legitimate to do it. Another thing that he has seen is barges in Gastineau Channel [with political signs]. The department has no enforcement authority over that. It is visible from the highway system, but it is legal. That is an example of what goes on.

MR. DOWNING shared his and his staff's observations that the candidates who violate the ban on outdoor advertising tend to do better in the elections. He pointed out that this is not a particularly balanced situation with respect to sign enforcement on private property. As a general rule, the department does not go onto private property to remove a sign without a court order. He said [the need to get court orders] is not in regulation or statute; it is just the department's practice. If the department does not have a court order, it is more difficult to get support from the local law enforcement agencies to go onto someone's private property. There were certainly times when the department felt it was necessary to have that support, he noted.

Number 1902

MR. DOWNING told the committee that the citizens of the state are very passionate about the initiative that got passed. With the current ban on outdoor advertising, local governments are authorized to pass stricter laws [ordinances] than the department. They cannot make it less restrictive in their communities on state highways, but communities can make it more restrictive. Another observation is that when there is confusion about billboards, it may be "sourced" in the statute itself because the statute defines billboards pretty broadly. It is not the giant billboard seen on Lower 48 interstate highways. Almost any sign, device, or distraction is included in the Title 19 definition of what a billboard is.

MR. DOWNING offered four suggestions to the committee. He told the members the first suggestion was already addressed in Amendment 1 and the department supports that amendment. The second relates to the definition of what a political sign is. He suggested that political signs be limited to candidates and issues in front of the voters in the district where the sign is located. Mr. Downing said he believes that language would put some narrow parameters on the definition. Third, he said he

believes there should be time limits on the display of signs. Some individuals have suggested 60 days prior to election and 10 days following election. The department's right-of-way staff prefers 30 days prior to election and 5 days after the election. Fourth, Mr. Downing asked the committee to address the authority of the department for enforcement of illegal signs, particularly with the issue of safety. He asked that the authority of the department for removal remain in statute.

CO-CHAIR MASEK said that in the Matanuska-Susitna Borough the Department of Transportation & Public Facilities removes the signs and puts them in a holding area where a candidate must pay a fee to retrieve their signs. She asked what the fee is.

MR. DOWNING responded that the fee is \$50, which is set in regulation.

CO-CHAIR MASEK asked what happens when candidates do not pick up their signs.

MR. DOWNING responded that the Department of Transportation & Public Facilities will dispose of the signs after a period of time. There is no set period of time when that will happen; however, the disposal occurs when they believe the candidate will not be collecting them.

CO-CHAIR MASEK asked how many feet from the centerline of a highway a sign must be placed that is on private property.

Number 1739

MR. DOWNING replied that if the sign is on-premises advertising, it can be on the building. If the sign is not related to that business and therefore is not on-premises, it is subject to the requirements of the federal Highway Beautification Act where the requirement is 660 feet from the nearest edge of the highway right-of-way. He pointed out that the right-of-way varies, so the additional distance to the centerline would also vary. There is an additional provision in the federal law that says "or as intended to be read from the highway". Mr. Downing explained that the idea here is that those signs should not be placed with the intention of being read from the highway.

CO-CHAIR MASEK asked, if a private person who owns highway frontage property gives a candidate permission to put a sign up, whether this can be done legally.

MR. DOWNING responded that if he understands the question correctly, the answer would be no. He asked Co-Chair Masek to clarify her question.

CO-CHAIR MASEK gave an example of a candidate who is running for mayor and Jane Doe owns private property with highway frontage and gave the candidate permission to place his sign on her property. The sign would be placed the required 660 feet from the highway. She asked whether it would be legal to place the sign there.

MR. DOWNING responded that this example is one that would be subject to the additional language in the federal Highway Beautification Act where it says "or as intended to be read from the highway", which means that it is also banned under the federal law. He commented that the Department of Transportation & Public Facilities rarely sees that kind of violation.

Number 1632

REPRESENTATIVE FATE commented that it is very difficult to see a 4-foot by 8-foot sign from 660 feet away. He asked Mr. Downing about other signs including commercial advertising and memorials along highways, which was a big issue. The Department of Transportation & Public Facilities seems to enforce placement of signs unevenly, he suggested. For example, it appears that signs at intersections that describes a garage sale somewhere are not enforced, but yet a political sign will be. Relative to the political sign, some department staff have used intimidation as an enforcement tool by walking into a place and telling the owners, "This sign is illegal! Get it off of here!" They did not notify the owners of the property that they had 30 days to remove the sign by registered letter saying it is an illegal sign. The owners of the store were so intimidated that they took a \$150 [sign] plus the cost of the stand and labor and dumped it into the back of the pickup bed and took it to the dump.

REPRESENTATIVE FATE said that there needs to be a change in the enforcement of laws to make it more even across Alaska. He pointed out that he is not just talking about political signs, but all signs. Looking the other way in some areas of the state is not fair, and he urged the committee to make changes to mitigate this problem.

MR. DOWNING responded that the public likes to use the highway right-of-way for all kinds of things that are not allowed under

state law. The volume of that is very high. The right-of-way staff that enforces that law is pretty limited and has a limited budget. They will go through an area and try to clean it up, but there is a differential in the regulations, policies, and so forth. Mr. Downing said the guidance out of his office to the right-of-way chiefs is consistent. One of the things that he emphasizes continually is that wherever the bar is set anywhere in the state, that is the bar for everyone. The department cannot sustain saying it is okay to do something in Kenai, but not in Fairbanks. There has been an active dialog to ensure the ban is enforced uniformly. These are human beings, and they do get different ideas at times. In one case, there was an agent that was reluctant to enforce the ban, but the department finally persuaded him to do it, and his approach was to put posters over the signs, declaring them illegal. Of course, that was retracted as soon as it was discovered. Mr. Downing apologized for any of his staff who might have behaved the way Representative Fate described. He said he has no excuse for that kind of behavior.

REPRESENTATIVE FATE asked Mr. Downing if the Department of Transportation & Public Facilities is immune to litigation that might ensue as a result of uneven enforcement of the law. He clarified his question by saying he is not just talking about political signs. Representative Fate said he understands that realtor signs are exempt from this law.

Number 1377

MR. DOWNING replied that he does not know. He commented that there is a lot of litigation.

REPRESENTATIVE OGG replied that the First Amendment to the Constitution expresses what America, as a society, is about. He said with respect to this Act [federal Highway Beautification Act], it is difficult to define or limit what political speech is and it is a foolhardy road to go down because everyone in the country would have a different idea of what political speech is. The courts have said that obscenity, inciting people to riot, and things of that nature are violations of free speech. However, he said he sees a problem with limiting political speech by candidates and on issues before voters by denying people on their own property [free speech]. It is not the candidate who is advertising; this is the person who owns the property that is advertising and who is saying, "I own this property and I support that person or this idea." So this is not talking about a candidate, but a property owner and his or

her right to express a viewpoint, using his/her private property. To limit that to a candidate or issue in that district creates problems. Representative Ogg asked what happens when there is a statewide election: would it not be permissible because [the election] is not in that district? What happens when an individual wants to put a sign up about an issue that is before the state legislature, and not an issue before the voters?

REPRESENTATIVE OGG addressed the issue of time limits on displaying political signs. He said that many states have discussed this and it makes a lot of sense to do that, but the courts in this country have ruled that this creates a problem in that it infringes on free speech. He said he wonders why, in the face of court rulings, the Department of Transportation & Public Facilities would suggest a time limit.

CO-CHAIR HOLM announced that HB 230 would be held until a later date.

HB 280-COMMERCIAL MOTOR VEHICLES:REGULATIONS

Number 1254

CO-CHAIR HOLM announced that the final order of business would be HOUSE BILL NO. 280, "An Act relating to the regulation of commercial motor vehicles to avoid loss or withholding of federal highway money, and to out-of-service orders concerning commercial motor vehicles; amending Rule 43.1, Alaska Rules of Administration; and providing for an effective date."

Number 1250

AVES THOMPSON, Director, Division of Measurements, Standards, and Commercial Vehicles Enforcement, Department of Transportation & Public Facilities (DOT&PF), testified on HB 280 and answered questions from the members. He told the committee the division is responsible for commercial vehicle size, weight, and safety enforcement; commercial vehicle operating credentials; and enforcing and maintaining standards for weights and measures used in commerce in Alaska. The key elements of the commercial vehicle safety program include fixed weigh stations and mobile and commercial vehicle enforcement. The commercial vehicle enforcement officers conduct driver and vehicle safety inspections, enforce size and weight regulations, and inspect hazardous materials transport. He explained that at

the beginning of the fiscal year of 1998, Executive Order 98 consolidated commercial motor vehicle regulation and enforcement, from [what was then the Department of Commerce & Economic Development] and the Department of Public Safety into DOT&PF.

MR. THOMPSON told the committee the consolidation of these programs into one state agency was intended to result in greater convenience to industry and the public, as well as more efficient management of the programs. He said to a large extent this has been accomplished. When the consolidation was implemented, one minor omission occurred in the transfer of the necessary regulation promulgation authority. While most of the authority to operate the truck size, weight, safety, and permitting programs was given at the time to the Department of Transportation & Public Facilities, the authority to promulgate regulations for driver safety, vehicle requirements, and hazardous materials transport was not transferred and currently resides in the Department of Public Safety.

Number 1125

MR. THOMPSON told the committee that HB 280 transfers that authority to the Department of Transportation & Public Facilities and completes the consolidation of the commercial motor vehicle regulatory and enforcement programs started in Executive Order 98. He said that except for matters relating to the licensing of drivers for commercial motor vehicles, which is reserved for the Division of Motor Vehicles, HB 280 gives the authority to adopt regulations necessary to avoid the loss or withholding of federal highway money to the Department of Transportation & Public Facilities. These commercial motor vehicle safety regulations include equipment standards, working conditions for drivers, and vehicle inspection standards. The hazardous materials transport regulations deals with notification, movement, labeling, and documentation of hazardous materials loads. In addition, HB 280 sets a prohibition in Title 28 against operating a commercial motor vehicle after being placed out of service under a regulation adopted under Title 19. Other sections provide for the changes to the bale schedule and allow for the transition period for the Department of Public Safety regulations to continue to be enforced until the new regulations are adopted by the Department of Transportation & Public Facilities. The department is prepared to proceed with the adoption of regulation process once these legislative changes are effected.

MR. THOMPSON said the Federal Motor Carrier Administration regulations provide that a state becomes ineligible for basic program or incentive funds under the Motor Carrier Safety Assistance Program for failure to adopt new regulations or amendments to the federal motor carrier safety regulations or the federal hazardous materials regulations within three years of its effective date. Mr. Thompson told the committee adoption of these changes has not occurred since 1995 and the State of Alaska is out of compliance. In the federal fiscal year 2003, Alaska will receive \$685,500 in basic program and incentive funds. Passage of this bill is critically important, as DOT&PF needs the authority to adopt the regulation changes to avoid the loss or withholding of federal funding, he said. Loss of these funds through the failure to pass this legislation and the subsequent failure to adopt the regulations will virtually eliminate the state's commercial vehicle safety effort. Mr. Thompson told the committee the bill's provisions correcting the regulation adoption authorities problems and the supporting language in the existing statute are supported by the Alaska Trucking Association, the Alaska's Teamsters Local 959, and the Associated General Contractors of Alaska. The Department of Public Safety and the Department of Administration also support this legislation. Mr. Thompson urged the members to move HB 280 out of committee with a favorable recommendation.

Number 0959

CO-CHAIR MASEK asked if there is a fiscal note attached to this bill.

MR. THOMPSON responded that there is a zero fiscal note.

CO-CHAIR MASEK commented on the language on page 1, lines [9-11], "implement requirements imposed by federal statute", by saying she is sure that complying with federal statutes will cost the state money. She said, "Every federal mandate that is shoved down the throat of the state comes back and bites us in the butt."

CO-CHAIR MASEK asked Mr. Thompson to explain Executive Order 98.

MR. THOMPSON responded that Executive Order 98 was issued by the then-Governor Knowles. It consolidated the trucking regulations and enforcement activities from Department of [Commerce] & Economic Development and the Department of Public Safety into the Department of Transportation & Public Facilities.

CO-CHAIR MASEK asked Mr. Thompson if the state will fail to get the \$685,500 in basic program and incentives funds if the legislature fails to pass this bill.

MR. THOMPSON responded that the state has already received that funding for 2003; however, failure to pass this bill will put the FY 04 funds in jeopardy. The Motor Carrier Safety Assistance Program has been receiving the benefits for that program since 1991, and this existing language on page 1, lines 9-10, was necessary to implement requirements in both the federal and state statutes. He told the committee that language has been in Title 28 since 1991. Mr. Thompson clarified that this will not implement any new requirements, but simply transfer the authority from Department of Public Safety to the Department of Transportation & Public Facilities so the regulations can be updated. Mr. Thompson explained that the identical bill was introduced in the last legislative session and passed the House of Representatives 37-0. It went over to the Senate in the final days and was lost in the swirl of the end of session. So it died last session and has been reintroduced this year.

Number 0777

CO-CHAIR MASEK asked how much money the state lost because the bill did not pass.

MR. THOMPSON responded that there were no funds lost, but the state was put on notice that it needs to make this change to update the regulations. After Executive Order 98, the Department of Transportation & Public Facilities went to the Department of Law and was told that Department of Transportation & Public Facilities does not have the authority to change the regulations. This piece of legislation would correct that authority problem.

REPRESENTATIVE KOOKESH told the committee he has spent time reading the legislation and talking to the sponsor and believes this bill is a good idea. It is a housekeeping matter. He suggested the committee move the bill on to the next committee.

Number 0703

FRANK DILLON, Executive Vice President, Alaska Trucking Association, testified in support of HB 280. He told the committee the association fully supports this bill based on the

explanations Mr. Thompson provided the committee. This is, as Representative Kookesh noted, a housekeeping bill.

REPRESENTATIVE KOHRING asked for clarification that this bill does not create new regulations, but simply transfers authority from one state department to another.

MR. DILLON responded that is correct.

Number 0637

BARBARA HUFF TUCKNESS, Director of Legislative and Governmental Affairs, Alaska's Teamsters Local 959, testified in support of HB 280. She agreed that this bill is a housekeeping bill. Last session the efforts of Representative Kohring were most helpful in pushing this bill through the House of Representatives and she hopes that this year with everyone's assistance the bill will make it all the way through the legislature.

REPRESENTATIVE OGG told the committee in discussing the bill with the sponsor, he believes it is a good bill. He suggested that there be a change in the title to assure more clarity in the bill. The language could say something about "transferring authority from Department of Public Safety to Department of Transportation & Public Facilities." He pointed out that is what is being done, but the title does not say that clearly.

CO-CHAIR HOLM said the language was drafted by Legislative Legal and Research Services.

MR. THOMPSON commented that he believes the title adequately describes the bill. He said he discussed this with Representative Ogg this morning, but said in the interests of moving the bill along, he believes the title adequately addresses the issue.

Number 0484

REPRESENTATIVE FATE moved to report HB 280 out of committee with individual recommendations and the zero accompanying fiscal notes. There being no objection, HB 280 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 3:03 p.m.