

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

April 12, 2006

1:36 p.m.

**MEMBERS PRESENT**

Representative Lesil McGuire, Chair  
Representative Tom Anderson  
Representative John Coghill  
Representative Pete Kott  
Representative Peggy Wilson  
Representative Les Gara  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 482

"An Act relating to harassment, intimidation, and bullying in schools."

- MOVED CSHB 482(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 434

"An Act authorizing the commissioner of transportation and public facilities to participate in certain federal highway programs and relating to that authorization; relating to powers of the attorney general to waive immunity from suit in federal court related to those programs; and providing for an effective date."

- MOVED CSHB 434(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 261(FIN)

"An Act relating to the designation of traffic safety corridors; relating to the bail or fine for an offense committed in a traffic safety corridor and to separately accounting for such fines; and providing for an effective date."

- MOVED HCS CSSB 261(JUD) OUT OF COMMITTEE; ADOPTED A HOUSE  
CONCURRENT RESOLUTION ALLOWING THE TITLE CHANGE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 482

SHORT TITLE: SCHOOL:BULLYING/HARASSMENT/INTIMIDATION

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

02/13/06 (H) READ THE FIRST TIME - REFERRALS  
02/13/06 (H) EDU, HES, JUD  
03/16/06 (H) EDU AT 11:00 AM CAPITOL 106  
03/16/06 (H) Moved CSHB 482(EDU) Out of Committee  
03/16/06 (H) MINUTE(EDU)  
03/20/06 (H) EDU RPT CS(EDU) 1DNP 3NR 1AM  
03/20/06 (H) DNP: LYNN;  
03/20/06 (H) NR: GARA, THOMAS, NEUMAN;  
03/20/06 (H) AM: GATTO  
04/03/06 (H) FIN REFERRAL ADDED AFTER JUD  
04/04/06 (H) HES AT 3:00 PM CAPITOL 106  
04/04/06 (H) <Bill Hearing Postponed to 04/06/06>  
04/06/06 (H) HES AT 3:00 PM CAPITOL 106  
04/06/06 (H) -- Rescheduled from 04/04/06 --  
04/10/06 (H) JUD AT 1:00 PM CAPITOL 120  
04/10/06 (H) <Bill Hearing Postponed to 04/12/06>  
04/11/06 (H) HES AT 3:00 PM CAPITOL 106  
04/11/06 (H) Moved CSHB 482(HES) Out of Committee  
04/11/06 (H) MINUTE(HES)  
04/12/06 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 434

SHORT TITLE: AUTHORIZE HWY PROGRAM PARTICIPATION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/08/06 (H) READ THE FIRST TIME - REFERRALS  
02/08/06 (H) TRA, JUD, FIN  
03/14/06 (H) TRA AT 1:30 PM CAPITOL 17  
03/14/06 (H) Moved Out of Committee  
03/14/06 (H) MINUTE(TRA)  
03/15/06 (H) TRA RPT 4DP 2NR  
03/15/06 (H) DP: KOHRING, NEUMAN, GATTO, ELKINS;  
03/15/06 (H) NR: KAPSNER, THOMAS  
04/12/06 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 261

SHORT TITLE: REGULATION OF HWYS; TRAFFIC OFFENSES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/01/06 (S) READ THE FIRST TIME - REFERRALS  
02/01/06 (S) TRA, FIN  
02/09/06 (H) TRA AT 1:30 PM CAPITOL 17

02/09/06 (S) Heard & Held  
02/09/06 (S) MINUTE(TRA)  
03/09/06 (S) TRA AT 1:30 PM BUTROVICH 205  
03/09/06 (S) Moved CSSB 261(TRA) Out of Committee  
03/09/06 (S) MINUTE(TRA)  
03/15/06 (S) TRA RPT CS 3DP SAME TITLE  
03/15/06 (S) DP: HUGGINS, FRENCH, KOOKESH  
03/21/06 (S) FIN AT 9:00 AM SENATE FINANCE 532  
03/21/06 (S) Moved CSSB 261(FIN) Out of Committee  
03/21/06 (S) MINUTE(FIN)  
03/22/06 (S) FIN RPT CS 5DP 1NR SAME TITLE  
03/22/06 (S) DP: WILKEN, GREEN, BUNDE, DYSON,  
STEDMAN  
03/22/06 (S) NR: OLSON  
04/05/06 (S) TRANSMITTED TO (H)  
04/05/06 (S) VERSION: CSSB 261(FIN)  
04/06/06 (H) READ THE FIRST TIME - REFERRALS  
04/06/06 (H) JUD, FIN  
04/12/06 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

CRYSTAL NOVOTNEY, Staff  
to Representative Tom Anderson  
Juneau, Alaska

POSITION STATEMENT: Presented HB 482 on behalf of the sponsor,  
Representative Anderson.

BILL BJORK, President  
NEA-Alaska (National Education Association, Alaska branch)  
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of  
HB 482.

JOHN MACKINNON, Deputy Commissioner of Highways & Public  
Facilities  
Office of the Commissioner  
Department of Transportation & Public Facilities (DOT&PF)  
Juneau, Alaska

POSITION STATEMENT: Presented HB 434 on behalf of the  
administration and responded to questions; presented SB 261 on  
behalf of the administration and responded to questions.

PETER PUTZIER, Senior Assistant Attorney General  
Transportation Section  
Civil Division (Juneau)  
Department of Law (DOL)

Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 434; responded to questions during discussion of SB 261.

JAMES A. HELGOE, Lieutenant, Legislative Liaison

Division of Alaska State Troopers

Department of Public Safety (DPS)

Anchorage, Alaska

POSITION STATEMENT: Responded to a question during discussion of SB 261.

KURTIS J. SMITH, P.E., Statewide Traffic & Safety Engineer

Design & Construction Standards

Division of Design & Engineering Services

Department of Transportation & Public Facilities (DOT&PF)

Juneau, Alaska

POSITION STATEMENT: Responded to a question during discussion of SB 261.

#### **ACTION NARRATIVE**

**CHAIR LESIL McGUIRE** called the House Judiciary Standing Committee meeting to order at [1:36:03 PM](#). Representatives McGuire, Kott, Wilson, Anderson, and Coghill were present at the call to order. Representatives Gara and Gruenberg arrived as the meeting was in progress.

#### **HB 482 - SCHOOL:BULLYING/HARASSMENT/INTIMIDATION**

[1:36:21 PM](#)

CHAIR McGUIRE announced that the first order of business would be HOUSE BILL NO. 482, "An Act relating to harassment, intimidation, and bullying in schools." [Before the committee was CSHB 482(HES).]

REPRESENTATIVE ANDERSON, speaking as the sponsor, relayed that his staff would present HB 482.

[1:36:35 PM](#)

CRYSTAL NOVOTNEY, Staff to Representative Tom Anderson, Alaska State Legislature, sponsor, relayed on behalf of Representative Anderson that HB 482 address a growing problem in Alaska's schools that is often overlooked by teachers and administrators. Bullying has a truly negative effect on the social environment of schools, and on the emotional and mental well being of

Alaska's children. Recent studies suggest that bullying creates a climate of fear among students, inhibits their ability to learn, and leads to other anti-social behavior such as vandalism, shoplifting, skipping and dropping out of school, fighting, and using drugs and alcohol. Furthermore, 60 percent of the males studied who were bullies in grades six through nine were convicted of at least one crime as an adult, and 35-40 percent of these former bullies had three or more convictions by the age of 24. Only 15 of the 53 school districts in Alaska have made an attempt to address the bullying issue. With the increase in students in Alaska today, there is a growing need to ensure the safety of Alaska's children in their learning environment.

MS. NOVOTNEY said that HB 482 requires school districts, city and borough offices of education, law enforcement agencies, and youth-serving agencies to develop and implement interagency strategies on bullying and harassment. Currently, 21 states have some sort of anti-bullying law, and another 24 states are in the process of adopting similar legislation. Members' packets contain endorsement letters by the National Education Association (NEA), the Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), and [Allan A. Morotti, Ph.D., University of Fairbanks]. Bullying is a problem everywhere, even in Alaska, and its causes and effects cannot be overlooked. This bill not only gives teachers and administration officials the tools to deal with such a growing issue, but also allows for input from parents, guardians, students, and concerned members of the community during the development of a comprehensive bullying policy.

MS. NOVOTNEY relayed that successful programs focusing on recognizing, preventing, and effectively intervening in bullying behavior have improved safety and created a more inclusive learning environment. Some such programs include in-service training and other activities to improve school attendance and reduce school crime and violence. House Bill 482 is targeted at reducing vandalism, drug and alcohol abuse, gang membership and violence, hate crimes, bullying, teen-relationship violence, discrimination, and all harassment, including sexual harassment, in grades K-12. The House Special Committee on Education revised the bill, eliminating the mandate that school districts have an actual bullying policy. However, the House Health, Education and Social Services Standing Committee, amended the bill back to the original form so that school districts must implement such a policy, and added sexual orientation as an additional [target] of bullying.

MS. NOVOTNEY, in conclusion, said that ultimately, HB 482 will protect Alaska's children, discipline unruly students, and instill in Alaska's schools a message of civility and respect or suffer the consequences. She offered her understanding that CSHB 482(HES) now has a zero fiscal note, and relayed that Representative Anderson urges the committee's support of this important legislation and thanks Representatives McGuire, Kott, and Gruenberg for their co-sponsorship of the bill.

[1:41:16 PM](#)

BILL BJORK, President, NEA-Alaska (National Education Association, Alaska branch), after relaying that NEA-Alaska has submitted a letter of support and testimony to the House Special Committee on Education, stated that every school in Alaska ought be a sanctuary where all students can learn and teachers can teach and all school employees and the general public can work without the fear of intimidation or harassment. Many schools in Alaska are already engaged in good efforts to address these issues, and [CSHB 482(HES)] guarantees that every school will take the steps necessary to provide a good school climate for learning that is safe for everyone. He thanked the sponsor and co-sponsors of the bill, and the committee for its consideration.

CHAIR MCGUIRE, after ascertaining that no one else wished to testify, closed public testimony on HB 482.

[1:42:36 PM](#)

REPRESENTATIVE KOTT referred to language on page 2, line 18, and suggested that it ought to stipulate that the information referenced shall be reported to the appropriate committees of the "Alaska House of Representatives and the Alaska Senate".

REPRESENTATIVE ANDERSON said he would support such a change.

CHAIR MCGUIRE, calling the aforementioned suggested change Amendment 1, asked whether there were any objections. There being none, Amendment 1 was adopted.

[Following was a brief discussion regarding other legislation pertaining to similar issues.]

REPRESENTATIVE GARA indicated that he is supportive of HB 482.

[1:46:17 PM](#)

REPRESENTATIVE KOTT moved to report CSHB 482(HES), as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 482(JUD) was reported from the House Judiciary Standing Committee.

HB 434 - AUTHORIZE HWY PROGRAM PARTICIPATION

[1:46:47 PM](#)

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 434, "An Act authorizing the commissioner of transportation and public facilities to participate in certain federal highway programs and relating to that authorization; relating to powers of the attorney general to waive immunity from suit in federal court related to those programs; and providing for an effective date."

[1:47:07 PM](#)

JOHN MACKINNON, Deputy Commissioner of Highways & Public Facilities, Office of the Commissioner, Department of Transportation & Public Facilities (DOT&PF), explained that the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), included a pilot program - the [National Environmental Policy Act of 1969 (NEPA)] delegation pilot program - for five states: Alaska, California, Oklahoma, Ohio, and Texas. This pilot program gives these five states the ability to apply for delegation of the secretary of the U.S. Department of Transportation's NEPA responsibilities; under this pilot program, the state will assume the NEPA decision-making responsibility that is currently - for highway programs - under the purview of the Federal Highway Administration (FHWA).

MR. MACKINNON said that this [pilot program] puts the responsibility on the DOT&PF to determine what level of environmental documentation is required, whether it's an environmental impact statement (EIS), an environmental assessment, or a categorical exclusion. He explained that 95 percent of what the DOT&PF does are categorical exclusions - for example, repaving a road requires a "CATEX" - but very few EISs are done - perhaps only two or three a year - and only about a half dozen environmental assessments are done. Currently, though, the state doesn't determine what type of documentation

is required; instead, this determination is made by the FHWA. Participating in the pilot program will not result in less environmental protection, but it will put the decision-making process in the hands of the state.

CHAIR McGUIRE surmised that HB 434 was referred to the House Judiciary Standing Committee because Section 1 of the bill would affect the attorney general's power in that it would allow him/her to waive the state's immunity from federal court.

MR. MACKINNON concurred.

REPRESENTATIVE GARA asked how much it will cost the state to take over a job that the federal government is currently doing for the state for free. For example, how much would it typically cost the state to defend itself against a legal challenge regarding the way it performs its [EISs, environmental assessments, or CATEXs]? Also, what percentage of highway projects get litigated under the NEPA?

[1:52:59 PM](#)

PETER PUTZIER, Senior Assistant Attorney General, Transportation Section, Civil Division (Juneau), Department of Law (DOL), offered his belief that it's unlikely that a lot of litigation will occur, since most of the projects that the DOT&PF works on have six- to eight-year lead times, whereas the pilot program is slated to last only six years. Furthermore, very few projects will go through the entire environmental process that results in an EIS. He mentioned that he doesn't know what the statistics are with regard to what percentage of highway projects get litigated under the NEPA.

MR. MACKINNON added that since passage of the NEPA, [the state] has been challenged on only two projects: the "Whittier Tunnel" - in which the FHWA prevailed; and the "Iliamna-Nondalton bridge project" - in which [the DOT&PF] has so far prevailed.

REPRESENTATIVE GARA predicted that the "Knik Arm Bridge" will also get litigated, and that such litigation will occur before the aforementioned six- to eight-year period is concluded. If this proves true, would the state have to defend itself in that litigation?

MR. MACKINNON explained that because that project was started under the purview of the FHWA, the federal government would continue to defend that project. Under HB 434, the state would

only be responsible for defending itself against litigation engendered by projects that the state begins after it's been accepted into the pilot project.

MR. MACKINNON in response to a question, said that the federal law authorizing the pilot project went into effect August 10, 2005, and is slated to sunset on August 10, 2011. "We're halfway through [the] first year," he added.

REPRESENTATIVE KOTT and REPRESENTATIVE GRUENBERG pondered whether a sunset clause ought to be added to the bill.

MR. MACKINNON offered his belief that such won't be necessary because the federal legislation authorizing the pilot program already has a sunset clause, a sunset clause that will effectively terminate the states' participation on August 10, 2011.

MR. PUTZIER concurred.

[1:58:16 PM](#)

REPRESENTATIVE KOTT offered his understanding that inserting a sunset clause will ensure that the revisor automatically removes the proposed language from statute after the sunset date, whereas without a sunset clause, the proposed language will end up being left on the books.

REPRESENTATIVE GRUENBERG concurred, pointing out that the state could potentially be saddled with lawsuits as a result of participating in the pilot program.

MR. PUTZIER said he would research the issue.

CHAIR McGUIRE observed that HB 434 has also been referred to the House Finance Committee.

REPRESENTATIVE COGHILL predicted that the five new positions created by HB 434 won't simply go away after the pilot project terminates unless a sunset clause is added to the bill.

MR. MACKINNON pointed out that the state would be receiving federal funds to pay for those positions, which are capital improvement project (CIP) positions. With regard to HB 434, he said:

We look at this as an opportunity to speed up many of these environmental documents by getting the big decisions closer to home, and when a document is sitting on a desk in the [FHWA] ... or some other federal agency, we have a difficult time when we pick up the phone and try ... [to] speed it up and get it off that desk and either approved or disapproved - or getting some action on it - because they're a different agency. But when those decisions are sitting in the [DOT&PF], ... it's much easier to affect their movement through the [DOT&PF], and we see the opportunity here of moving them through faster as a way of actually more than paying for the \$650,000 cost of the program; [a] one year delay of a project can cost millions of dollars to that project just in inflation alone.

2:00:59 PM

MR. PUTZIER, in response to a question regarding the requirement that the state waive its immunity from suit in federal court, said that [under SAFETEA-LU,] it is simply one of the requirements of the pilot program. He surmised that this is because under the pilot program, the state would essentially be fulfilling a role of the FHWA. In response to another question, he said that if the state didn't prevail in such lawsuit and the position the state took in the action was found to not be substantially justified, then the state might get saddled with paying some attorney fees, for example, to the prevailing party.

REPRESENTATIVE GRUENBERG asked how much money the state will receive as a result of participating in the pilot program.

MR. MACKINNON said no additional funds will be forthcoming, though reauthorization over the five-year life of the program - "including the earmarks above the line" - comes to approximately \$2.5 billion, a portion of which will be used to pay for the NEPA pilot program; for example, when one of the environmental NEPA experts in the department is working on a project, he/she will bill out to that particular project.

REPRESENTATIVE GRUENBERG surmised, then, that the DOT&PF will have access to those funds.

MR. MACKINNON concurred.

REPRESENTATIVE GRUENBERG surmised that the waiver referenced in the bill is above and beyond that provided in existing state statutes.

[2:04:26 PM](#)

MR. PUTZIER concurred.

REPRESENTATIVE GRUENBERG asked whether Section 1 of HB 434 waives any additional sovereign immunity. Specifically, does it additionally affect AS 09.50.250 in any way?

MR. PUTZIER replied:

I believe it would subject us to the procedural rules in federal court. For example, we might be subject to ... the Equal Access [to] Justice Act, which might apply ... different [attorney fees] provisions. ... We would be standing, basically, in the shoes of the FHWA.

MR. PUTZIER, in response to a question, offered his understanding that the Equal Access to Justice Act is codified in 28 U.S.C. 2412, and reiterated the earlier comment that as a practical matter in environmental litigation, if the state doesn't prevail and the position the state took in the action is found to not be substantially justified, the state might have to pay some attorney fees to the prevailing party.

REPRESENTATIVE GRUENBERG asked whether the use of the term, "may" [in Section 1] is specifically mandated by the federal legislation. In other words, why is discretion in this matter being given to the attorney general?

MR. PUTZIER surmised that there was a concern about a potential separation of powers issue if the legislature were to mandate that the attorney general waive sovereign immunity. He noted, though, that the federal language says "shall", and that before the DOT&PF is allowed to adopt the aforementioned NEPA authorities, the attorney general would have to enter into a memorandum of understanding (MOU) with the FHWA; also, there would have to be "separate certification," either project-by-project or for all projects. The bill itself only lets Alaska get its "foot in the door" to be able to assume the NEPA responsibilities; it is not in and of itself an assumption of any responsibility nor is it a waiver of any of the State's normal sovereign immunity protections.

REPRESENTATIVE GRUENBERG offered his belief that under AS 09.50.250, it is the purview of the legislature - not the attorney general - to waive sovereign immunity.

MR. PUTZIER, in response to a question, said he can't recall any statutes written similarly to HB 434.

REPRESENTATIVE GRUENBERG asked whether the language of Section 1 meets the federal law's requirement, particularly given that this proposed state law only says "may".

MR. PUTZIER indicated that this [issue] was vetted extensively with the FHWA, and the language was approved on the condition that there be "sufficient follow-up." Again, HB 434 doesn't implement anything; it merely allows for the implementation of the pilot program by giving the DOT&PF the authority to proceed.

REPRESENTATIVE GRUENBERG said that once the DOT&PF exercises that authority, he doesn't want to see the attorney general refuse to waive the state's immunity from suit in federal court. "I think if somebody is injured by the actions of the State, they should have access to federal court," he remarked, adding that he may offer an amendment to that effect.

MR. PUTZIER indicated that he would like see the wording of such an amendment.

[2:10:00 PM](#)

REPRESENTATIVE KOTT asked how the five states were chosen, and whether the other four states have "fully fulfilled their commitment for entry."

MR. MACKINNON offered his understanding that every one of the five states is represented by a "ranking member" of the U.S. House of Representatives Committee on Transportation & Infrastructure, and that the other four states also have enabling legislation in the works.

REPRESENTATIVE WILSON asked whether changing the language in HB 434 would preclude Alaska from being part of the pilot program.

MR. MACKINNON explained that by entering into an MOU with the FHWA, the State shall be waiving its immunity from suit in federal court, and that the bill drafter in the attorney

general's office simply chose to use "may" instead of "shall" in HB 434; the MOU itself will still contain a "shall".

REPRESENTATIVE GARA offered his recollection that the State is reluctant to waive sovereign immunity in one type of case because it might then have to waive sovereign immunity in all other types of cases. He asked whether the attorney general has taken a position on this issue in the past and whether it is a concern.

MR. PUTZIER said he is not sure whether the attorney general has taken a position on this issue, but acknowledged that it is probably a valid concern. However, [the language regarding the waiver] is very narrowly tailored to a NEPA program, and so [the administration] would only accept being in federal court for the purpose of just that particular program. "I don't perceive that there would be any long-term negative consequences of what I will call a limited waiver of sovereign immunity," he remarked.

REPRESENTATIVE GARA said he would like something to that effect in writing from the attorney general's office.

[2:15:00 PM](#)

MR. PUTZIER agreed to get that for the committee.

REPRESENTATIVE COGHILL opined that the language of Section 1 already limits the waiver.

REPRESENTATIVE GRUENBERG referred to Conceptual Amendment 1, which read [original punctuation provided]:

p 1 l 7  
delete "The attorney general may,"  
Page 1 line 9  
delete "waive"  
Page 1 line 11 insert after States  
"is waived."

REPRESENTATIVE GRUENBERG asked whether the sovereign immunity clause of the Alaska State Constitution should also be referenced. [Note to the reader: no clause specifically using the words, "sovereign immunity" exists in the Alaska State Constitution.] In response to a comment, he said that he would want that clause to apply solely to "claims under this paragraph."

REPRESENTATIVE GARA asked whether the funding that is meant to pay for this pilot program could be used for something else if the state did not enter into the pilot program.

MR. MACKINNON said yes, adding, though, that 9 percent of the funds are state funds - a state match.

REPRESENTATIVE GARA surmised, then, that the other 91 percent of the funds could be used for some other highway projects if the state did not enter into the pilot program.

MR. MACKINNON concurred.

REPRESENTATIVE GARA said that since there seem to be more highway projects than can be funded, delaying the groundbreaking on some of them isn't such a big deal; therefore, he is questioning why they would spend the money to enter into this pilot project.

[2:19:12 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 1 [text provided previously].

REPRESENTATIVE KOTT and REPRESENTATIVE ANDERSON objected.

REPRESENTATIVE GRUENBERG made a motion to amend Conceptual Amendment 1 such that a reference to "the relevant provision in the [Alaska] State Constitution" is added after the reference in the bill to the U.S. Constitution.

CHAIR McGUIRE suggested that Representative Gruenberg instead simply make a motion to adopt Conceptual Amendment 1, as amended.

REPRESENTATIVE GRUENBERG agreed.

REPRESENTATIVE COGHILL objected, indicated that he would prefer to see the language of the provision that Representative Gruenberg wants referenced, and relayed that he is nervous about waiving sovereign immunity to begin with.

The committee took an at-ease from 2:21 p.m. to 2:24 p.m.

REPRESENTATIVE GRUENBERG made a motion to amend Conceptual Amendment 1 such that it would read:

p 1 l 7

delete "The attorney general may,"

Page 1 line 9

delete "waive"

Page 1 line 11 insert after "States" the following language

"and under Article II, Section 21, of the Alaska Constitution is waived."

CHAIR McGUIRE - noting that there was already a motion before the committee regarding a different Conceptual Amendment 1, as amended - suggested that the objections be removed so that the first motion could be withdrawn.

REPRESENTATIVES COGHILL, KOTT, and ANDERSON removed their objection.

REPRESENTATIVE GRUENBERG withdrew the first motion.

REPRESENTATIVE GRUENBERG then made a motion to adopt Amendment 2:

p 1 l 7

delete "The attorney general may,"

Page 1 line 9

delete "waive"

Page 1 line 11 insert after "States"

"and under Article II, Section 21, of the Alaska Constitution is waived."

REPRESENTATIVE COGHILL objected, and stated that he does not want to waive the Alaska State Constitution.

REPRESENTATIVE GRUENBERG said that that is not his intent; specifically, the waiver would only be for those provisions on page 1, lines 7-10, and nothing else.

REPRESENTATIVE COGHILL removed his objection.

[2:27:27 PM](#)

CHAIR McGUIRE asked whether there were any further objections to Amendment 2. There being none, Amendment 2 was adopted.

REPRESENTATIVE KOTT noted that with the adoption of Amendment 2, there will also need to be a conforming title amendment.

CHAIR McGUIRE concurred.

CHAIR McGUIRE stated that Representative Kott has made the motion to adopt Conceptual Amendment 3, a conforming title amendment. There being no objection, Conceptual Amendment 3 was adopted.

REPRESENTATIVE KOTT said he is not yet prepared to offer an amendment adding a sunset provision, but would be researching the issue further.

[2:28:58 PM](#)

REPRESENTATIVE WILSON moved to report HB 434, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 434(JUD) was reported from the House Judiciary Standing Committee.

SB 261 - REGULATION OF HWYS; TRAFFIC OFFENSES

[2:29:53 PM](#)

CHAIR McGUIRE announced that the final order of business would be CS FOR SENATE BILL NO. 261(FIN), "An Act relating to the designation of traffic safety corridors; relating to the bail or fine for an offense committed in a traffic safety corridor and to separately accounting for such fines; and providing for an effective date."

[2:30:01 PM](#)

JOHN MACKINNON, Deputy Commissioner of Highways & Public Facilities, Office of the Commissioner, Department of Transportation & Public Facilities (DOT&PF), relayed that SB 261 will give the department the ability to establish highway traffic safety corridors and assess double traffic fines [for violations occurring within] those highway traffic safety corridors, which will be defined as a stretch of road that has significantly higher than statewide average fatality rates. He referred to a chart, and noted that it illustrates the Seward Highway from "Potter Marsh" to Girdwood and the locations of the fatal accidents that occurred on it from 1997 to 2005. He mentioned that this past January there was a serious fatality caused by a young driver with a history of bad driving - he hit a couple traveling to Anchor Point and killed them. In response, the DOT&PF got together with the Department of Public Safety (DPS) in order to find some solutions.

MR. MACKINNON relayed that the department has what he called "highway safety sanction funds," adding that they are "soft sanctions of construction dollars that are pulled out of the construction side that go into education." He said that the department was able to use that money to fund additional enforcement by the DPS on that stretch of road, and though there may not be a correlation, there have been no fatalities on that stretch of road since then. Because of environmental conditions coupled with driver behavior, it is a stretch of road that a driver must pay particular attention to while traveling on it, and education efforts have increased people's awareness of that fact.

MR. MACKINNON shared that in 2005, State troopers wrote 722 citations for the entire Seward Highway, from Anchorage to Seward; this year, for the Girdwood "detachment" alone, from mid-January through mid-March, the State troopers wrote 730 citations, thus illustrating that increased enforcement works. He said that the aforementioned traffic safety corridors will have signage at both ends and intermittently throughout, and that the proposed double fines will help pay for the increased enforcement because 50 percent of those double fines will be returned to the DOT&PF, which in turn will provide those funds to the DPS or any other law enforcement agency that assists with enforcement. In other words, once initially funded, this [program] will continue to pay for itself.

MR. MACKINNON offered his recollection that speeding fines ranged between \$75 and \$100, and surmised that doubling those fines will result in a lot of money. He went on to relay that the DOT&PF has already identified a number of areas, mostly in the central region of the state, that would qualify for a highway traffic safety corridor, such as the Parks Highway from Wasilla to Big Lake, and Knik-Goose Bay Road.

MR. MACKINNON, in response to a question, acknowledged that the department has not yet done an analysis of roads in Representative Coghill's district, adding that his sense is that the traffic volumes are not high enough, though perhaps some small pieces of road in that area would qualify as highway traffic safety corridors. He explained that the department is not focusing on urban highways, where intersections can trigger accidents, but is instead focusing on rural roads because that's where driver behavior is the main cause of accidents. Referring to one of the charts, he noted that when the DOT&PF provided it to the Division of Alaska State Troopers, the troopers became

aware of where they needed to focus their enforcement efforts, and that a "blue box" indicates an accident where it was proven that drug or alcohol played a part in the accident, and that a "yellow box" indicates an accident where it was not proven that drug or alcohol played a part.

MR. MACKINNON, in response to questions, indicated that he is anticipating that one of the highway traffic safety corridors will be located along the Seward Highway between Anchorage and Girdwood, and that the proposed additional fines will pay for enforcement efforts rather than for educating the public that the fines will be double in those designated areas.

REPRESENTATIVE GARA asked Mr. MacKinnon to look favorably on an amendment he is considering that would substantially increase the fines - by more than just double - in highway traffic safety corridors for those drivers that pass vehicles when they shouldn't, such as passing when there is a solid [double] yellow line. "That is not just a simple traffic violation at that point," he remarked, "that is something that is killing people, and we know it."

MR. MACKINNON offered his understanding that the fine schedule for that behavior is established via regulation by the Division of Motor Vehicles (DMV), and so the DOT&PF would be willing to cooperate with the DMV to see if they would be able to raise that type of fine. In response to a question, he said he is not sure what the current fine is for crossing a double yellow line in order to pass another vehicle.

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JAMES A. HELGOE, Lieutenant, Legislative Liaison, Division of Alaska State Troopers, Department of Public Safety (DPS), relayed that under 13 AAC 02.075(b), the fine for driving left of center in a no passing zone is \$150 plus 2 points. He asked that members keep in mind that if one is driving left of center in a no passing zone and another person has to take evasive action, one could be charged with either reckless driving or negligent driving, both of which carry a substantially higher penalty.

MR. MACKINNON, in response to a question, surmised that doubling the current fine for driving left of center in a no passing zone would result in a fine of \$300, though he, too, commented that if the driver was doing so in an erratic manner, it would most likely result in a reckless driving or negligent driving charge.

REPRESENTATIVE GARA suggested that singling out the driving-left-of-center-in-a-no-passing-zone concept by tripling the fine for that conduct would allow the DOT&PF to make a public education point. His preference, he remarked is for people to know that that conduct is unacceptable, especially in highway traffic safety corridors.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 261.

REPRESENTATIVE GRUENBERG, noting that Title 11 contains crimes involving vehicles, asked whether they ought to have Section 3 apply to violations of Title 11 as well as to violations of Title 28.

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PETER PUTZIER, Senior Assistant Attorney General, Transportation Section, Civil Division (Juneau), Department of Law (DOL), said that the question of whether to double the fines for the vehicular crimes listed under Title 11 is simply a policy call. He pointed out, though, that for certain felony crimes, it could result, for example, in doubling [what is already] a \$50,000 fine.

REPRESENTATIVE GRUENBERG asked whether the DOT&PF would like to assess more points for violations occurring within highway traffic safety corridors.

MR. MACKINNON said that the department spoke with the DMV and discovered that doing so would raise a due process issue because a person can't be assessed so many points for a single offense that he/she loses his/her driver's license. Currently, when a person is close to losing his/her license because of points being assessed, the DMV is required to go through the process of notifying that person; therefore, the DMV strongly recommended against doubling the points that could be assessed for violations that occur within highway traffic safety corridors.

REPRESENTATIVE GARA opined that it would be in order to assess an additional 2 points and quadruple the fine for driving left of center in a no passing zone located within a highway traffic safety corridor. He said he would like to offer both of those changes as a single amendment. [Although no formal motion was made, this was treated as Amendment 1.]

REPRESENTATIVE COGHILL expressed some discomfort with the concept of even doubling the fines, and offered his belief that the lack of adequate signage and adequate "pull offs" is as much a factor as bad driving habits. He said he might agree to the concept of doubling the fines if the DOT&PF were to improve signage and increase the number of "pull offs."

REPRESENTATIVE WILSON pointed out that page 2, lines 4-5, says in part, "A claim for damages may not be made against the state or its officers, employees, or agents for an act or omission relating to the designation of and erection of signs regarding a traffic safety corridor."

REPRESENTATIVE GRUENBERG opined that the bill should include signage requirements; putting up more signs will result in only a minimal expense and could prevent infractions. He asked what the current signage requirement is.

MR. MACKINNON relayed that the department is amending the "Alaska Traffic Manual", which stipulates signage requirements, such that signage notifying the public of the double fines will be required at the beginning and end of each highway traffic safety corridor, at any intersecting road, and on every speed limit sign within a highway traffic safety corridor.

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REPRESENTATIVE GRUENBERG said he wants to insert a requirement that there be speed limit sign announcing the double fines every three miles in addition to any other signage already required.

KURTIS J. SMITH, P.E., Statewide Traffic & Safety Engineer, Design & Construction Standards, Division of Design & Engineering Services, Department of Transportation & Public Facilities (DOT&PF), relayed that the "Alaska Traffic Manual" is being modified to require a speed limit sign every five miles in a highway traffic safety corridor.

REPRESENTATIVE GRUENBERG opined that having a speed limit sign every three miles in a highway traffic safety corridor would be more appropriate. He said he would also like to double the fines for vehicles going too slowly, because he feels that that is a very dangerous practice.

MR. MACKINNON said that those concepts would be best addressed via the "Alaska Traffic Manual" - which can be adjusted very quickly - or via regulation, adding that the goal is to promote

highway safety and target high-risk drivers. He gave his word that he would see that the "Alaska Traffic Manual" is altered to require signage every three miles.

REPRESENTATIVE GRUENBERG indicated that he would write a letter of intent, which would follow the bill, that the committee can review at its next hearing.

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REPRESENTATIVE GARA made a motion to adopt Amendment 2, to alter the bill such that an additional 2 points shall be assessed for driving left of center in a no passing zone located within a highway traffic safety corridor. There being no objection, Amendment 2 was adopted.

REPRESENTATIVE KOTT referred to the aforementioned language on page 2, lines 4-5, and asked why that language was included.

MR. PUTZIER said that the department is required to erect signs designating highway traffic safety corridors, and the concern was that someone could argue that an accident or injury occurred simply because the department failed to erect such signage; the DOT&PF is trying to implement additional safety measures and is trying to alert people, but does not want to have to defend itself in litigation.

REPRESENTATIVE KOTT asked whether the DOT&PF should also be required to post signage designating highway work zones.

MR. MACKINNON relayed that that issue had been discussed but a corresponding clause was not included because the department did not want to complicate the bill.

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REPRESENTATIVE KOTT made a motion to adopt Conceptual Amendment 3, to include highway work zones in the language on page 2, lines 4-5. There being no objection, Conceptual Amendment 3 was adopted.

REPRESENTATIVE GRUENBERG observed that Conceptual Amendment 3 will require a title change, as well as a House concurrent resolution (HCR) to that effect.

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CHAIR McGUIRE made a motion to adopt Amendment 4, to [conform the title with regard to Conceptual Amendment 3] and to adopt an HCR addressing the title change.

REPRESENTATIVE GARA observed that Amendment 4 should also conform the title with regard to Amendment 2.

CHAIR McGUIRE, after ascertaining that there were no objections to Amendment 4, announced that Amendment 4, along with the accompanying forthcoming title change HCR, was adopted.

REPRESENTATIVE GARA referred to language on page 2, line 7 - which says in part, "The legislature may appropriate 50 percent of the fines ..." - pointed out that the legislature can't be told how to appropriate funds, and characterized this language as unenforceable because it violates the prohibition against dedicated funds and attempts to bind a future legislature.

CHAIR McGUIRE agreed, but surmised that that language was probably meant to be merely an expression of intent.

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REPRESENTATIVE KOTT moved to report CSSB 261(FIN), as amended, out of committee with individual recommendations, the accompanying fiscal notes, [and the forthcoming House concurrent resolution authorizing a title change]. There being no objection, HCS CSSB 261(JUD) [and what later became HCR 44] was reported from the House Judiciary Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:00 p.m.