

ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE

April 23, 2005

2:05 p.m.

MEMBERS PRESENT

Representative Jim Elkins, Co-Chair
Representative Carl Gatto, Co-Chair
Representative Vic Kohring
Representative Mark Neuman
Representative Bill Thomas
Representative Mary Kapsner

MEMBERS ABSENT

Representative Woodie Salmon

COMMITTEE CALENDAR

HOUSE BILL NO. 259

"An Act relating to covered or enclosed loads."

- HEARD AND HELD

HOUSE BILL NO. 279

"An Act relating to encroachments in the right-of-way of a highway."

- MOVED CSHB 279(TRA) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 18

Relating to the federal Maritime Transportation Security Act of 2002 and the state's right to tax commercial passenger vessels.

- TABLED

PREVIOUS COMMITTEE ACTION

BILL: HB 259

SHORT TITLE: TRUCK LOAD REQUIREMENTS

SPONSOR(S): TRANSPORTATION

04/07/05	(H)	READ THE FIRST TIME - REFERRALS
04/07/05	(H)	TRA, FIN
04/12/05	(H)	TRA AT 1:30 PM CAPITOL 17
04/12/05	(H)	Scheduled But Not Heard
04/19/05	(H)	TRA AT 1:30 PM CAPITOL 17

04/19/05 (H) Moved CSHB 259(TRA) Out of Committee
04/19/05 (H) MINUTE(TRA)
04/23/05 (H) TRA AT 2:00 PM CAPITOL 17

BILL: HB 279

SHORT TITLE: OUTDOOR ADVERTISING; ENCROACHMENTS

SPONSOR(S): TRANSPORTATION

04/19/05 (H) READ THE FIRST TIME - REFERRALS
04/19/05 (H) TRA, FIN
04/23/05 (H) TRA AT 2:00 PM CAPITOL 17

BILL: HJR 18

SHORT TITLE: FEDERAL MARINE TRANSPORTATION SAFETY ACT

SPONSOR(S): REPRESENTATIVE(S) GATTO

04/15/05 (H) READ THE FIRST TIME - REFERRALS
04/15/05 (H) TRA, FIN
04/23/05 (H) TRA AT 2:00 PM CAPITOL 17

WITNESS REGISTER

NONA WILSON, Legislative Liaison

Office of the Commissioner

Department of Transportation & Public Facilities (DOT&PF)

Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 259.

REPRESENTATIVE BILL STOLTZE

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 279.

JOHN MACKINNON, Deputy Commissioner

Highways & Public Facilities

Office of the Commissioner

Department of Transportation & Public Facilities (DOT&PF)

Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 279.

LINDA KOVAC, Secretary/Treasure

Board of Directors

Chugiak Community Council

Municipality of Anchorage (MOA)

Chugiak, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 279 and expressed her hope that the bill will pass.

BRUCE BARTLEY, Chief

Chugiak Volunteer Fire and Rescue Company, Inc.

Anchorage Fire Department

Municipality of Anchorage (MOA)

Chugiak, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 279, urged the committee to adopt the bill, and responded to a question.

DEBBIE OSSIANDER, Member

Anchorage Assembly

Municipality of Anchorage (MOA)

Chugiak, Alaska

POSITION STATEMENT: Testified in support of HB 279.

CODY RICE, Staff

to Representative Carl Gatto

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HJR 18 on behalf of the sponsor, Representative Gatto, and responded to questions.

ACTION NARRATIVE

CO-CHAIR CARL GATTO called the House Transportation Standing Committee meeting to order at [2:05:33 PM](#). Representatives Gatto, Elkins, Neuman, and Kohring were present at the call to order. Representatives Thomas and Kapsner arrived as the meeting was in progress.

HB 259 - TRUCK LOAD REQUIREMENTS

CO-CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 259 "An Act relating to covered or enclosed loads." [A proposed committee substitute (CS) for HB 259, Version 24-LS0833\Y - although never formally adopted as a work draft - had been treated as amended and reported from committee on 4/19/05.]

CO-CHAIR GATTO, because of the lack of a formal motion during the meeting on 4/19/05 regarding the adoption of Version Y as a work draft, relayed his intention of having the committee rescind its action in reporting [Version Y, as amended] from

committee, and then rescind it's actions in amending [Version Y], thus allowing the committee to adopt, as a work draft, a new proposed CS for HB 259, Version 24-LS0833\S, which incorporates the amendments made to Version Y.

CO-CHAIR GATTO moved that the committee rescind its action in reporting [Version Y, as amended] from committee. There being no objection, the committee's action was rescinded.

CO-CHAIR GATTO moved that the committee rescind its actions in adopting amendments to [Version Y].

REPRESENTATIVE NEUMAN asked what those amendments entailed.

CO-CHAIR GATTO said:

Those amendments had to do with "a gross to remove" pickup trucks from this requirement, and we did that by saying that vehicles with a gvw [gross vehicle weight] ... of less than 9,200 pounds wouldn't qualify. And we did this because we called various organizations to see what pickup trucks entailed, and if you talk about the gross vehicle weight, then you pretty much know that you've got all the pickups included, and we did not want to include pickups in this, so they're excluded.

We dealt ... also with giving exclusions to certain communities, and Representative Thomas wanted us to exclude communities that are not connected to Anchorage by a continuous state road such [as] passing through the country of Canada; [such] would not be under the ... requirements of this bill. And also if the communities were less than 5,000 in population. Basically the bill was intended to do something about the heavy truck traffic in Anchorage and [Matanuska-Susitna ("MAT-SU")], and we wanted to, essentially, define what these words meant in legislation that already exists, so that it's clear to [the DOT&PF] what our intent was in this original language.

CO-CHAIR GATTO announced that the committee's actions in adopting the amendments [to Version Y] were rescinded.

CO-CHAIR ELKINS made a motion to adopt the proposed CS for HB 259, Version 24-LS0833\S, as the work draft.

CO-CHAIR GATTO announced that Version S was before the committee.

CO-CHAIR GATTO reiterated that Version S incorporates the amendments adopted during the 4/19/05 meeting, and characterized Version S as perfect because it deals with the pickup truck exemption and the issue of snow, it exempts communities under 5,000 and any community not connected to Anchorage by road, and it changes "contained or confined" to "covered or enclosed."

2:10:54 PM

REPRESENTATIVE NEUMAN said he has problems with the bill. He said a lot of road construction involves one- or two-mile trips, and so covering each and every one of the loads of material used is going to add a tremendous amount of "time and cost" to all Alaska's road projects. He said the gravel on the roads does not all come from dump trucks, and there are already laws to help people replace windshields from rock damage due to [dump] trucks. He indicated that he didn't think that HB 259 will fix the current enforcement problem, and detailed the steps he took when he [hailed loads of material]. He said he cannot support the bill, and mentioned the possible increase in cost to businesses.

2:13:17 PM

CO-CHAIR GATTO asked how much time it takes to cover a load with an "automatic" cover.

NONA WILSON, Legislative Liaison, Office of the Commissioner, Department of Transportation & Public Facilities (DOT&PF), mentioning both swing arm style automatic covers and track style automatic covers, said she didn't know how much time covering a load would take, adding that private truck drivers might not be able to afford fully automatic covers. In response to a further question, she indicated that she was unfamiliar with exactly how the "automatic" systems work.

CO-CHAIR GATTO indicated that if using the automatic covers added an hour in the course of a day, he would be concerned, but if using them adds "40 seconds," such would be acceptable.

REPRESENTATIVE NEUMAN said dump trucks get dirty, and the cover tracks would always be full of gravel, thus one would have to "be up there cleaning them constantly." He postulated that the

cost of installation and maintenance would be astronomical and should be included in the cost estimates.

MS. WILSON reiterated that she didn't know whether [automatic] covers would be on swing arms or on an actual tracks.

[2:17:15 PM](#)

CO-CHAIR GATTO restated the intent of the bill, and posited that the [Alaska State] Troopers would be understanding for short hauls. He expressed concern about trucks on long-distance highway trips "blowing" gravel all over the highway.

MS. WILSON said the DOT&PF can assist vehicle owners with claims of rock damage from department trucks.

CO-CHAIR GATTO said it is difficult to chase a truck that is responsible for spewing rocks.

[2:19:09 PM](#)

MS. WILSON posited that usually when there is debris flying off of a truck, it is because it is overloaded. She pondered whether drivers might tend to overload a truck with a cover.

CO-CHAIR GATTO suggested that that is a separate issue.

CO-CHAIR ELKINS said he would like to defer the issue in order to see the minutes from the previous meeting, adding, "I would like to know what the testimony was that convinced us last meeting to pass this bill."

MS. WILSON referred to the fiscal note, which had been characterized as high, and indicated that the estimate has been lowered as a result of the amendments offered during the bill's last hearing.

[2:21:33 PM](#)

REPRESENTATIVE NEUMAN said he would like input from the trucking industry.

CO-CHAIR ELKINS moved to [set aside] HB 259 for the purpose of reviewing the minutes from the bill's prior meeting.

CO-CHAIR GATTO relayed that HB 259 [Version S] would be held over.

The committee took an at-ease from 2:22 p.m. to 2:23 p.m.

HB 279 - OUTDOOR ADVERTISING; ENCROACHMENTS

2:25:16 PM

CO-CHAIR GATTO announced that the next order of business would be HOUSE BILL NO. 279 "An Act relating to encroachments in the right-of-way of a highway."

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, said he lives in a community with a highway going through it. It was once more scenic, he added, opining that easements have been given out by the Department of Transportation & Public Facilities (DOT&PF) in an antiquated way. Some easement are 50 feet and some are 300 feet, and the community is looking at a potential expansion. Some landowners have encroachments such as lawns. He said HB 279 "grandfathers" in those encroachments that don't interfere with possible construction or impede the state's interests. He said it is a huge issue in Chugiak.

2:28:48 PM

CO-CHAIR GATTO asked if the bill runs afoul of federal requirements, thus limiting Alaska's potential funding.

REPRESENTATIVE STOLTZE said he has worked with agencies in an effort to craft the legislation so as not to run into problems.

2:29:50 PM

JOHN MACKINNON, Deputy Commissioner, Highways & Public Facilities, Office of the Commissioner, Department of Transportation & Public Facilities (DOT&PF), said that HB 279 provides clarification and gives the department the ability to permit outdoor advertising within the right-of-way, which, to date, has been prohibited by state statute. "There are probably somewhere in the order of under 100 of these, within the right-of-way, throughout the state, and ... they've become a problem for us and they've been a problem for years," he added. He said many of the signs that encroach have been removed, but there are many still remaining, and they should be permitted as the encroachments occurred in good faith. "When you've got a 300 foot right-of-way, and the road and its improvements encompass 100 feet of it [with] the 200 feet on the outboard side - or 100 on each outboard side - what's the harm in allowing

public/private use of that area," he said. "We do support this," he added, but the DOT&PF is waiting for a determination from the [Federal Highway Administration (FHWA)] regarding outdoor advertising.

CO-CHAIR GATTO asked what would happen if both the bill passes and the state wants to use the right-of-way.

MR. MACKINNON said that people would be required to remove the encroachments, adding that it's probably a cleaner situation to have the encroachments identified and permitted. Any such permitting agreement could stipulate what would happen should the state decide to use the right-of-way.

CO-CHAIR GATTO referred to a handout in members' packets containing proposed changes to HB 279; that handout read [original punctuation provided]:

Page 2, line 2, following "right-of-way"
Delete "who erected"
Insert "for"

Page 2, line 12, following "fee"
Insert "not to exceed \$100"

CO-CHAIR GATTO referred to the proposed change to page 2, line 2, of the bill as Amendment 1. [Although no formal motion had been made,] he asked whether there were any objections to adopting Amendment 1. There being none, Amendment 1 was adopted.

CO-CHAIR GATTO referred to the proposed change to page 2, line 12, of the bill as Amendment 2.

[An unidentified speaker in the audience made comments, but those comments were not picked up clearly by the microphones.]

MR. MACKINNON noted that the DOT&PF's regulations provide for a \$250 nonrefundable application fee for any encroachment permit.

CO-CHAIR GATTO [although no formal motion had been made] asked whether there were any objections to the adoption of Amendment 2. There being none, Amendment 2 was adopted.

REPRESENTATIVE KAPSNER asked whether there was a fiscal note.

MR. MACKINNON said the DOT&PF is not sure at this time what the fiscal note would be, but predicted that it would not be much, since the department would most likely deal with encroachments on a project-by-project basis. He offered his belief that Section 2 of the bill stipulates that the burden of proof of "that three-part test" lies with the department.

CO-CHAIR GATTO offered a hypothetical example wherein one applies for and receives an encroachment permit and then chooses to erect a 12 by 24 foot advertising sign. He asked whether such would be "grandfathered" in.

MR. MACKINNON explained that the bill specifically says that only the encroachments that existed on the Act's effective date would be grandfathered in. He added, "We are in the process this year of doing a video cataloging of the rights-of-way, which would show the existing encroachments or any structure/improvement located on the right-of-way; that would allow us to have a date at which the encroachment [existed]."

CO-CHAIR GATTO ascertained that the bill doesn't have a specific effective date.

[2:37:29 PM](#)

LINDA KOVAC, Secretary/Treasure, Board of Directors, Chugiak Community Council, Municipality of Anchorage (MOA), relayed that the Old Glenn Highway Rehabilitation Project - Alaska Department of Transportation & Public Facilities (DOT&PF) State Project No. 52515 - is an upgrade to the Old Glenn Highway, which runs through Chugiak. The primary scope of this project, she continued, is to add shoulders, a pathway, and turn lanes at the major intersections. Chugiak has been pushing for this upgrade to increase safety for over 10 years, and is pleased the work is being addressed; however, the history of this road's right-of-way is complex, and many costly encroachments have been built in this right-of-way over the last 50 years. The right-of-way itself varies between 60 and 300 feet, with several sections that are 200 feet.

MS. KOVAC relayed that the DOT&PF has informed the Chugiak Community Council that all encroachments will have to be removed due to federal funding requirements, and its position on encroachments is that if a person wants to obtain a permit to have an encroachment, the application will only be considered after all existing encroachments have been removed from the entire right-of-way and the project is complete. Additionally,

the list of allowable encroachments is minimal. For example, some permitted uses could be grass, or flowers, or parking in excess of what's required for a particular property. Furthermore, encroachments for commercial purposes will not be allowed. She mentioned that the DOT&PF has relayed that since the Old Glenn Highway's right-of-way has been thoroughly researched and surveyed, the right-of-way must be enforced due to possible liability issues. She offered her understanding that this means that all encroachments must be removed regardless of whether the project continues.

MS. KOVAC predicted that if the encroachments are removed, this will impact residences and business adjacent to "this five-mile stretch of road." Such an impact will cause hardships and some entities will go out of business due to a loss of parking, and some entities will have to find new land on which to install new septic systems or water wells. "We wonder why certain encroachments would have to be removed if they are not obtrusive; House Bill 279 would allow some unobtrusive encroachments to remain, perhaps like wells, lift stations, signs, parking, and others," she remarked, adding, "this bill may also reduce impacts to the Chugiak Volunteer Fire Department's Latimer Fire Station." Currently the DOT&PF information indicates that the right-of-way line goes right through the station house; additionally, the station's parking area will need to be removed.

MS. KOVAC mentioned that HB 279 may also reduce the impact [of the project's encroachment requirements] on the Chugiak Benefits Association [Building] - which is a nonprofit community center managed by and belonging to the communities of Chugiak and Eagle River - particularly its parking lots, basketball courts, and fenced-in play areas. She said she hopes that HB 279 passes, and characterized [the bill] as "just common sense."

[2:40:48 PM](#)

BRUCE BARTLEY, Chief, Chugiak Volunteer Fire and Rescue Company, Inc., Anchorage Fire Department, Municipality of Anchorage (MOA), urged the committee to support HB 279. He said that Latimer Fire Station 35 is located on the Old Glenn Highway, and that depending upon which map one looks at, the DOT&PF's proposed right-of-way is either right outside the station's front door, or runs right through the middle of the building. He relayed that the Chugiak Volunteer Fire and Rescue Company has occupied the aforementioned building for more than 50 years; the land the structure sits on is leased by the Bureau of Land

Management (BLM) to the Chugiak Volunteer Fire and Rescue Company in perpetuity for as long as the structure remains a fire station, and the structure sits 118 feet from the edge of the existing pavement. In conclusion, he described the structure's attributes and some of the activities that occur in it, and urged the committee to adopt the legislation.

CO-CHAIR GATTO asked Mr. Bartley whether the loss of 100 feet between the station and the road would compromise the Chugiak Volunteer Fire and Rescue Company's ability to perform its duties.

MR. BARTLEY replied that the loss of 100 feet might create a safety problem when pulling out onto the road.

CO-CHAIR GATTO asked whether there is a flashing light located at that station.

MR. BARTLEY said there is not, but mentioned that there is a DOT&PF sign, approximately 100 yards down the road, warning approaching traffic of the station's presence.

[2:43:28 PM](#)

DEBBIE OSSIANDER, Member, Anchorage Assembly, Municipality of Anchorage (MOA), relayed that she has been hearing concerns regarding the Old Glenn Highway project, specifically that the right-of-way encroachment issue would engender problems for many groups and residences in her community should the project go through as currently outlined. After listing various entities that would be affected by the project, she said that there is a need for flexibility so as to make the project workable for the community. She characterized HB 279 as a wonderful approach to the potential problems surrounding encroachments on both the Old Glenn Highway and the Seward Highway, adding that she wholeheartedly supports the bill.

CO-CHAIR GATTO mentioned that members' packets contain letters of support for the legislation from both the Chugiak-Eagle River Chamber of Commerce and the Chugiak Community Council.

[2:46:20 PM](#)

REPRESENTATIVE KAPSNER moved to report HB 279, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 279(TRA) was reported out of committee.

HJR 18 - FEDERAL MARINE TRANSPORTATION SAFETY ACT

CO-CHAIR ELKINS announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 18 Relating to the federal Maritime Transportation Security Act of 2002 and the state's right to tax commercial passenger vessels.

2:47:31 PM

CODY RICE, Staff to Representative Carl Gatto, Alaska State Legislature, sponsor, relayed on behalf of Representative Gatto that HJR 18 asks Congress to clarify or repeal Section 445 - proposed 33 U.S.C. 5(b) - of the Maritime Transportation Security Act of 2002. This provision was put in place to prevent Yakutat from taxing cruise ships that sailed by Yakutat and did not stop at its port. He added that the aforementioned provision essentially says that all taxes must be no more than a small burden on interstate commerce and must be used either to compensate [a community] for services rendered to the vessel or to increase the efficiency and safety of interstate commerce.

MR. RICE offered his belief that this provision has been interpreted rather broadly by some groups, thus resulting in disagreements regarding the meaning of the provision. He mentioned that a Fairbanks Daily News-Miner article contains comments [by spokespersons for U.S. Senator Ted Stevens and U.S. Congressman Don Young], and that a copy of that article has been included in members' packets.

2:49:14 PM

CO-CHAIR ELKINS said he would not characterize the comments in the article as either U.S. Senator Ted Stevens or U.S. Congressman Don Young "weighing in" on the issue. He said his concern with HJR 18 is that the legislature didn't really open up a dialog with either U.S. Senator Ted Stevens or U.S. Congressman Don Young before having "gone public with it." He concluded by saying, "I don't care for it."

MR. RICE replied:

I don't know that that's necessarily entirely correct. This [section] actually applies specifically to several taxes that may already be existing throughout the United States, and I, myself, have been in contact with both [U.S. Senator Ted Stevens's] chief of staff,

[and U.S. Congressman Don Young's] transportation drafting attorney on several instances and have discussed this particular provision with them. And in fact, last summer, there was some talk of including some kind of a clarification in the "Coast Guard bill" that passed. It didn't happen, but it is something that we've ... [had] existing conversations ... [about, though] it has been several months. ...

[2:50:24 PM](#)

REPRESENTATIVE THOMAS said he didn't like the resolution, and didn't want to embarrass the Senator and Congressmen with it by using it to tell those gentlemen that they made a mistake. He also noted that no one raised the issue when those gentlemen recently addressed the legislature.

MR. RICE said that nothing in the resolution claims there was a mistake made in the drafting of the Maritime Transportation Security Act of 2002, and noted that neither the Senator nor Congressman have corrected the comments made by their spokespersons.

[2:52:03 PM](#)

REPRESENTATIVE THOMAS pointed out, however, that the first portion of the resolution claims that the Act's sponsor has stated that the Act was never meant to prevent Alaska from imposing a head tax, but doesn't actually state who the sponsor is.

MR. RICE said the sponsor of that specific provision is U.S. Congressman Don Young, and opined that spokespersons commonly speak on behalf of their employers. He noted that according to the newspaper article, comments that [Section 445 of the Maritime Transportation Security Act of 2002] was never intended to prevent state or local governments from imposing a head tax were made by Congressman Young's spokesperson.

REPRESENTATIVE THOMAS asked why Congressman Young sponsored the language in that provision.

CO-CHAIR GATTO offered his understanding that Congressman Young offered that language in response to local laws passed in Yakutat. He suggested that the language of the provision has resulted in unintended consequences, and offered that the resolution merely asks Congress to clarify the issue.

CO-CHAIR ELKINS opined that there is an easier way to communicate with U.S. Senator Ted Stevens and U.S. Congressman Don Young than by passing a resolution, which, he suggested, could embarrass those gentlemen. He reiterated his belief that the legislature has not yet made an effort to discuss the issue with the provision's sponsor.

[2:55:30 PM](#)

REPRESENTATIVE KAPSNER said that she doesn't know enough about the issue to agree with the statements being made in the resolution. She pointed out that generally when she wants to communicate with or deliver a message to someone, she sends him/her a letter directly. She asked Co-Chair Gatto whether his intent in sponsoring the resolution was to get the public on board.

CO-CHAIR GATTO said that he doesn't know whether the public knows about this issue, and suggested that a resolution of this sort is a logical follow-up to the aforementioned conversations his staff has had with U.S. Senator Ted Stevens's and U.S. Congressman Don Young's spokespersons.

[2:56:37 PM](#)

REPRESENTATIVE NEUMAN asked Mr. Rice and Co-Chair Gatto whether either of them had written to U.S. Senator Ted Stevens, U.S. Senator Lisa Murkowski, or U.S. Congressman Don Young to request that this issue be clarified at the federal level.

MR. RICE reiterated that he has had at least a dozen conversations with [U.S. Senator Ted Stevens's] chief of staff [and U.S. Congressman Don Young's] transportation drafting attorney on this subject.

REPRESENTATIVE KAPSNER asked if anything has been put in writing.

MR. RICE said such has not been done, that phone conversations were considered a more expedient form of conversation. He again said that the resolution merely asks for clarification on a contentious issue.

[2:57:53 PM](#)

REPRESENTATIVE NEUMAN asked whether the committee wanted to request that Co-Chair Gatto write to the members of Alaska's congressional delegation and ask them to provide the committee with a written response on this issue. Such a letter might appease members' concerns, he suggested.

CO-CHAIR ELKINS acknowledged that such could be done, but noted that the cruise ship industry was present and might wish to testify on the bill.

[2:58:47 PM](#)

REPRESENTATIVE THOMAS instead expressed a preference for tabling the resolution and then contacting the members of Alaska's congressional delegation in writing on this issue.

REPRESENTATIVE THOMAS made a motion to table HJR 18. There being no objection, HJR 18 was tabled.

ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at [2:59:25 PM](#).