

ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE

March 8, 2011

1:04 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Lance Pruitt, Vice Chair
Representative Eric Feige
Representative Craig Johnson
Representative Cathy Engstrom Munoz
Representative Max Gruenberg
Representative Pete Petersen

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Steve Thompson

COMMITTEE CALENDAR

HOUSE BILL NO. 22

"An Act prohibiting the use of a cellular telephone when driving a motor vehicle; and providing for an effective date."

- MOVED CSHB 22(TRA) OUT OF COMMITTEE

HOUSE BILL NO. 30

"An Act relating to the transportation infrastructure fund, to local public transportation, to the municipal harbor facility grant fund, to motor fuel taxes, to the motor vehicle registration fee, to driver's license fees, to identification card fees, to the studded tire tax, and to the vehicle rental tax; and providing for an effective date."

- MOVED CSHB 30(TRA) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 4

Proposing amendments to the Constitution of the State of Alaska creating a transportation infrastructure fund.

- MOVED HJR 4(TRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

01/18/11 (H) TRA, FIN
02/15/11 (H) TRA AT 1:00 PM CAPITOL 17
02/15/11 (H) Heard & Held
02/15/11 (H) MINUTE(TRA)
02/17/11 (H) TRA AT 1:00 PM CAPITOL 17
02/17/11 (H) Heard & Held
02/17/11 (H) MINUTE(TRA)
02/24/11 (H) TRA AT 1:00 PM CAPITOL 17
02/24/11 (H) <Bill Hearing Canceled>
03/08/11 (H) TRA AT 1:00 PM CAPITOL 17

BILL: HJR 4

SHORT TITLE: CONST. AM: TRANSPORTATION FUND
SPONSOR(S): REPRESENTATIVE(S) P.WILSON, THOMPSON

01/18/11 (H) PREFILE RELEASED 1/7/11
01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) TRA, JUD, FIN
02/15/11 (H) TRA AT 1:00 PM CAPITOL 17
02/15/11 (H) Heard & Held
02/15/11 (H) MINUTE(TRA)
02/17/11 (H) TRA AT 1:00 PM CAPITOL 17
02/17/11 (H) Heard & Held
02/17/11 (H) MINUTE(TRA)
02/24/11 (H) TRA AT 1:00 PM CAPITOL 17
02/24/11 (H) <Bill Hearing Canceled>
03/08/11 (H) TRA AT 1:00 PM CAPITOL 17

WITNESS REGISTER

KENDRA KLOSTER, Staff
Representative Cathy Munoz
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the changes included in the proposed committee substitute (CS) for HB 22.

ALFRED MCKINLEY, SR.
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 22.

RODNEY DIAL, Lieutenant
Deputy Commander, A Detachment
Division of Alaska State Troopers

Department of Public Safety (DPS)
Ketchikan, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 22.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Testified and answered HB 22.

REBECCA ROONEY, Staff
Representative P. Wilson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Explained the changes in the proposed committee substitute (CS) on behalf of one of the prime sponsor of HB 30.

AVES THOMPSON, Executive Director
Alaska Trucking Association, Inc. (ATA)
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 30.

RACHAEL PETRO, President; CEO
Alaska State Chamber of Commerce (ASCC)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 30.

JOHN MACKINNON, Executive Director
Associated General Contractors of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 30.

BRIAN KANE, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 30.

JEFF OTTESEN, Director
Division of Program Development
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 30.

ACTION NARRATIVE

[1:04:34 PM](#)

CHAIR PEGGY WILSON called the House Transportation Standing Committee meeting to order at 1:04 p.m. Representatives P. Wilson, Feige, Johnson, Munoz, Gruenberg, and Petersen were present at the call to order. Representative Pruitt arrived as the meeting was in progress. Representative Thompson was also in attendance.

[1:05:19 PM](#)

CHAIR P. WILSON announced that the first order of business would be HOUSE BILL NO. 22, "An Act prohibiting the use of a cellular telephone when driving a motor vehicle; and providing for an effective date." [Before the committee was Version B.]

[1:05:31 PM](#)

KENDRA KLOSTER, Staff, Representative Cathy Munoz, Alaska State Legislature, explained the changes contained in the proposed committee substitute (CS), Version B. She recapped the CS for HB 22 contains a provision to allow use of a cell phone in the "hands free mode". Definitions were added for the terms "emergency" and "hands free mode" for clarity. She addressed several items that arose at the last hearing. Committee members brought up other examples of driving distracted, such as radio use. The Alaska Highway Safety Office (AHSO) reported that some engagement with radio use resulted aware of the effective date of changes to cell phone use. Currently the AHSO has been working on a campaign for distracted driving. The AHSO can incorporate any changes included in HB 22, if it passes, into the AHSO's media campaign. The AHSO advised that it would not need additional funding to do so. The sponsor discussed this with the Department of Law and the Department of Public Safety, who thought that it might be a good idea to have an effective date, but this is a matter that left to the committee to decide. She related the sponsor has received many interesting stories about people who have encountered cell phone use. She related a scenario in which a person was riding a motorcycle needed to use his foot to avoid being trapped under someone's car since the person was distracted while using a cell phone.

[1:08:31 PM](#)

REPRESENTATIVE GRUENBERG asked whether any of the e-mails raise any issues the committee should be aware of in terms of possible amendments.

MS. KLOSTER answered that some people wanted to ban all cell phone use including "hands free mode" cell phones.

REPRESENTATIVE GRUENBERG offered to provide copies of information on blogs on this topic.

[1:10:27 PM](#)

ALFRED MCKINLEY, SR. stated that he agreed with the bill. He explained a person driving a vehicle using a cell phone resulted in his brother-in-law's death, and injured his sister. The driver's sentence was only 30 days, he said. He reiterated his testimony of last week. He offered his support for HB 22. He considered previous testimony and related that the bill would apply to cell phone use on "public land" so it is reasonable since it could protect citizens. He related that bicycles are relevant, noting he has almost hit bicyclists. He offered his belief that crashes resulting in death is one reason this bill is essential to Alaskans. He said, "I hope you pass this bill and get it on the road."

[1:14:10 PM](#)

CHAIR P. WILSON, after first determining no one else wished to testify, closed public testimony on closed public testimony on HB 22.

[1:14:29 PM](#)

CHAIR P. WILSON made a motion to adopt Amendment 1, labeled 27-LS0155\B.2, Luckhapt, 3/7/11, which read:

Page 1, lines 7 - 10:

Delete all material and insert:

"(b) This section does not apply to a person

(1) using a cellular telephone for emergency purposes, including an emergency call to a law enforcement agency, fire department, or other emergency services agency or entity; or

(2) 18 years of age or older using a cellular telephone by hands-free mode."

CHAIR P. WILSON explained that Amendment 1 would exempt a person using a cell phone during an emergency or to a person age 18 or older.

[1:16:25 PM](#)

REPRESENTATIVE PETERSEN objected for purpose of discussion. He understood the purpose of Amendment 1. He preferred not to single out any age group, whether it is teenagers or seniors.

REPRESENTATIVE GRUENBERG disagreed with the prior speaker. He offered his belief that this bill represents changing morals and ideas. He related that a few years ago it would not have been possible to pass a bill like this. He recalled he attempted to tack on language in another bill having to do with texting to no avail. However, society has changed and this bill reflects the change. Amendment 1 attempts to expand HB 22 to those under the age of 18, who are not as skillful drivers. He did not want to jeopardize the bill, but he thought Amendment 1 could help the bill. He stressed the importance of saving lives and his belief that this bill will save lives. He said he hoped that Amendment 1 would pass.

REPRESENTATIVE PETERSEN maintained his objection.

[1:20:36 PM](#)

A roll call vote was taken. Representatives Munoz, Feige, Pruitt, Gruenberg and Chair Wilson voted in favor of. Representatives Representative Johnson and Representative Petersen voted against it. Therefore, Amendment 1 passed by a vote of 5-2.

[1:21:35 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, labeled 27-LS0155\B.3, Luckhaupt, 3/7/11, which read:

Page 1, line 1, following "**vehicle**":
Insert "**; and providing for an effective date**"

Page 2, following line 2:
Insert a new bill section to read:
"*** Sec. 2.** This Act takes effect July 1, 2011."

REPRESENTATIVE PRUITT objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG recalled earlier testimony that the department would like to have an effective date since this bill will affect everyone. He added an effective date can help provide advance notice of when the provisions will go into effect. He explained Amendment 2 would add an effective date of July 1, 2011.

REPRESENTATIVE PRUITT removed his objection. There being no further objection, Amendment 2 passed.

[1:23:27 PM](#)

REPRESENTATIVE JOHNSON asked how anyone could operate a cell phone without touching it.

CHAIR P. WILSON related "hands free mode" as one instance.

REPRESENTATIVE JOHNSON described "iphone" use. He related that in order to put the phone in a "hands free mode" he would first have to push a button.

CHAIR P. WILSON related some advance planning could place a phone in the correct mode plus some vehicles have voice activated phones.

REPRESENTATIVE JOHNSON wondered whether people would need to buy new phones in order to comply with this law.

[1:25:19 PM](#)

RODNEY DIAL, Lieutenant; Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), related that "OnStar" is a completely voice-activated navigation system. This bill would not allow manipulation of a cell phone if a person did so while driving on a roadway.

REPRESENTATIVE JOHNSON related his understanding that even with "OnStar" pushing a button is necessary to activate the system.

LIEUTENANT DIAL indicated he has a relatively new car and uses only his voice to operate the telephone system his car uses. He recalled that some vehicles may require pushing a button and he was uncertain whether solely pushing a button would constitute a violation. In further response to Representative Johnson explained he would expect someone to do more than pushing one button before the average law enforcement officer would initiate

a traffic stop. He suggested he would need to consult with the attorney general's office for clarification.

REPRESENTATIVE JOHNSON related that the language in HB 22 does not say that, it reads "hands-free mode". He even thought activating a "Bluetooth" would require pushing a button.

REPRESENTATIVE MUNOZ recalled that the amendment to allow operating "hands free mode" was added due to the testimony by truckers and couriers who use their cell phones to communicate with their business or dispatcher. She wondered if adding operation to "hands free mode" could help.

REPRESENTATIVE P. WILSON suggested the technical aspect could be addressed in the House Judiciary Standing Committee. She directed Lieutenant Dial to check with the attorney general's office prior to the next hearing for further clarification.

REPRESENTATIVE GRUENBERG stated that it is his intent that "hands-free" mode does not prohibit touching the phone. He referred to page 1, lines 14-15, of HB 22, and related that so long as the person is not holding the phone using the cell phone is allowable. He offered his belief that using a cell phone mounted on dash and pressing a button would also be permissible under the bill as long as the driver was using the speaker function or earpiece without actually holding the phone.

[1:30:39 PM](#)

REPRESENTATIVE JOHNSON asked whether it would be better for him use a phone if he is sitting next to it looking down rather than having it up and just pushing a button to activate the phone.

REPRESENTATIVE GRUENBERG stated he does not recommend doing so. He said the point is whether it violates the law and the answer is no. One of the reasons, the chair's amendment was adopted.

REPRESENTATIVE JOHNSON said he thought that the Alaska State Troopers would have to obtain an interpretation from the Department of Law prior to citing.

[1:32:01 PM](#)

REPRESENTATIVE GRUENBERG asked Lieutenant Dial whether he would need to consult the attorney general's office or if his explanation cleared this up.

LIEUTENANT DIAL agreed he understood. He related that Alaska State Troopers exercise discretion in the field. If an AST felt it was necessary to stop vehicle for someone pushing a button that the AST would consult with the Department of Law (DOL) as to whether the action was appropriate. He envisioned law enforcement officers would use their discretion. If an officer observed someone talking on the phone while driving, it would represent a violation of the law much more so than pushing a button to activate some type of "hands-free" telephone call.

REPRESENTATIVE JOHNSON asked whether he would be in violation of the law if the phone was on seat he dialed the phone. He further asked if that action would be any less distracting than actually talking on the phone.

LIEUTENANT DIAL offered his belief that holding the phone and talking on a phone longer than the time it would take to push a button would be more distracting.

REPRESENTATIVE JOHNSON asked whether a person could dial a full set of numbers so long as he/she is not holding the phone plus the person could also text. He asked whether it would be more distracting to dial a phone on the seat than holding the phone.

LIEUTENANT DIAL said he did not believe he was qualified to answer his question. He suggested that AHSO may have statistical information that could clarify the level of distraction.

[1:34:13 PM](#)

REPRESENTATIVE JOHNSON related his position is fairly clear and he did not wish to pursue this further.

REPRESENTATIVE MUNOZ asked why he would dial the phone on the seat next to him if it was not a "hands free mode" device.

REPRESENTATIVE JOHNSON answered that he would do so since it would be legal but if he picked it up and dialed it would not be legal. He would not want to break the law, he said.

[1:34:54 PM](#)

REPRESENTATIVE GRUENBERG pointed out that punching a series of buttons to text messages would be in violation of existing statute.

REPRESENTATIVE JOHNSON understood. He merely mentioned it for emphasis. However, he might dial if it were legal to do so.

[1:35:40 PM](#)

REPRESENTATIVE PETERSEN related his constituents asked for the amount of any proposed fine for using a cell phone while driving.

LIEUTENANT DIAL related that fines are set by the Alaska Supreme Court. The DPS has no input on fines, he said.

REPRESENTATIVE PETERSEN asked whether he was aware of the number of points that would be assessed on the driver's licenses.

LIEUTENANT DIAL responded that until the bail was set the department would not know the penalty amount. He offered his belief that the maximum allowable in statute is \$500.

[1:37:48 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), stated the maximum fine in Title 28 for a violation is \$300. She offered her belief that Lieutenant Dial was referring to a bail schedule set that may be lower. In response to Chair Wilson, she related that the court sets bail amounts based on request of the affected department. She stated it would likely be the DPS who would request the bail amount

[1:38:51 PM](#)

REPRESENTATIVE PETERSEN clarified that the maximum fine would be \$300. He asked whether that would be the amount set for the first offense.

MS. CARPENETI answered that would be the maximum amount. She assumed that as with other schedules in which a bail amount is set, the bail amount would likely be substantially less.

REPRESENTATIVE PETERSEN asked whether she knew the number of points that would be assessed against a driver's license and whether it would depend on the number of offenses a person had assessed on his/her license.

MS. CARPENETI answered that the commissioner of the Department of Administration (DOA) would set the schedule for assigning the

number of points. She assumed it would be based upon a graduated point system.

1:39:59 PM

REPRESENTATIVE FEIGE asked what citation would be issued to a driver if a crash was caused by driver distraction such as changing channels on a radio.

LIEUTENANT DIAL answered that currently the AST would either use negligent or reckless driving. He agreed with Ms. Carpeneti that the maximum bail amount would be \$300. He previously had been relating the bail amount for insurance violations.

REPRESENTATIVE FEIGE asked whether negligent or reckless driving could be used to cite a driver if a crash was caused by driver distraction from dialing or talking on a cell phone.

LIEUTENANT DIAL answered yes. He said it would depend on severity of the offense. It would depend on the collision as to whether the offense would be negligent or reckless driving.

The committee took an at-ease from 1:41 to 1:42 p.m.

1:42:30 PM

REPRESENTATIVE JOHNSON related when a person is charged with a crime and the matter is resolved through the court process it generates a cost. He asked for clarification on the fiscal note.

MS. CARPENETI agreed. However, the Department District Attorney's office does not represent the state in traffic matters. The DOL would not appear and these matters of violations generally are handled in traffic court.

REPRESENTATIVE JOHNSON asked if there is not any cost associated with cell phone violations that it follows that no one is expected to be cited. He asked for the purpose of passing this bill.

CHAIR P. WILSON responded that the bill would save lives.

REPRESENTATIVE JOHNSON offered his belief that the fiscal note should be positive.

CHAIR P. WILSON offered her belief that fines would be collected.

REPRESENTATIVE JOHNSON maintained the bill should have a positive fiscal note.

[1:44:16 PM](#)

REPRESENTATIVE GRUENBERG recalled the Alaska State Troopers (AST) would decide whether to cite for this offense or something else. The same number of AST hours would be spent on the road working traffic offenses so the enforcement focus would be up to the AST's discretion. The statute dealing with fiscal notes only requires a fiscal note in the event the department will request an additional appropriation. In this case, the bill would not require an additional appropriation.

REPRESENTATIVE JOHNSON related in his experience serving on budget subcommittees that very few departments indicate the department will do more work for less money. He surmised that the budget request may not happen initially but it would likely occur in year two or three. He said it seems that when the administration likes a bill that it often has a zero fiscal note, but if the department does not like a bill, the bill would likely have a fiscal impact. He related his goal is to seek budget integrity.

[1:45:57 PM](#)

REPRESENTATIVE PRUITT asked whether the court would incur additional fiscal impact. Additionally, he inquired if law enforcement officers are attending traffic court whether this bill would add to the Department of Public Safety's (DPS) fiscal impact.

REPRESENTATIVE GRUENBERG related his understanding that the same answer would apply. He explained that most of the driving offenses would be in the cities and it would likely affect municipal police rather than AST and the legislature does not require municipalities to submit fiscal notes. Additionally, AST could only write so many citations in an eight-hour shift, so the officer would cite for cell phone offenses or something else, which would not result in more court time, just in the type of citation issued.

[1:47:40 PM](#)

REPRESENTATIVE PETERSEN asked whether the AST would cite for speeding or cell phone use in an instance in which an AST stopped a vehicle for speeding and discovered the person was also using his/her cell phone.

LIEUTENANT DIAL responded that with the dedicated traffic unit, officers have a set amount of time to work traffic stops. It is not uncommon for officers to stop a driver for one offense and also discover another offense during the traffic stop. Typically, officers would not issue multiple citations. The officer would pick one violation to cite and issue a warning on any other violation.

1:49:17 PM

REPRESENTATIVE PRUITT asked whether it would be necessary to for people purchase a "Bluetooth" in order to comply with this bill. He was curious about the technology necessary to comply with the "hands-free mode."

REPRESENTATIVE GRUENBERG explained some vehicles have built in phones and the driver would dial a number and talk.

REPRESENTATIVE PRUITT restated his question. He related that he personally does not have voice activated or built in technology in his vehicles, which is nearly ten years old. Thus, if he plans on speaking to anyone using a cell phone he would need to dial on the phone, which would not be "hands-free" or he would need to ensure that the phone could recognize his voice using a "Bluetooth." He acknowledged he could receive a call since it would only require pushing a button. However, he was unsure how it would work to dial out.

REPRESENTATIVE GRUENBERG related his understanding that the "Bluetooth" is a device that is placed somewhere and the driver pushes a button to activate it. He further related his understanding that cell phone holders are rubberized mats, which are placed on the dash. The driver would dial, which he said would be okay under the bill.

REPRESENTATIVE PRUITT reiterated that so long as the phone is attached to the car he could use the device.

CHAIR P. WILSON referred to page 1, lines 4-6, of HB 22 which read, "(a) A person may not use a cellular telephone when driving a motor vehicle on a highway or vehicular way or area."

She suggested a person could pull over and dial their cell phone.

REPRESENTATIVE PRUITT responded that differs from the prior interpretation. He suggested someone could answer the cell phone but could not make a telephone call. He noted Representative Gruenberg is disagreeing.

CHAIR P. WILSON referred to Amendment 1, which was adopted. She said two exceptions apply. She read:

- (b) This section does not apply to a person
 - (1) using a cellular telephone for emergency purposes, including an emergency call to a law enforcement agency, fire department, or other emergency services agency or entity; or
 - (2) 18 years or older using a cellular telephone by hands-free mode.

CHAIR P. WILSON clarified that these are the exceptions.

REPRESENTATIVE PRUITT pointed out that calling to tell his wife he is going to be late would not be considered an emergency, but he is sure she would like to know. He wondered if it would be necessary to pull the car over to do so.

REPRESENTATIVE GRUENBERG related to the age provision which would apply and indicated that a driver could use the "hands free mode", which is defined.

[1:54:30 PM](#)

REPRESENTATIVE GRUENBERG referred to definition on bottom of page 1, lines 13-15, of HB 22 which read: "hands-free mode" means use of a cellular telephone for listening or talking by means of a speaker function, headset, or earpiece without holding the telephone."

REPRESENTATIVE GRUENBERG explained that the language allows for a person to use the phone so long as they are not holding the phone.

[1:55:00 PM](#)

REPRESENTATIVE PRUITT explained it would be cumbersome to do so. He was concerned that the line of sight to the roadway would be

affected. He offered his belief that if the phone was in front of him it would provide a better view of the roadway.

REPRESENTATIVE JOHNSON asked whether "vehicular way or area" is defined.

[1:55:51 PM](#)

MS. CARPENETI referred to AS 28.90.990(30), which read as follows:

"vehicular way or area" means a way, path, or area, other than a highway or private property, that is designated by official traffic control devices or customary usage and that is open to the public for purposes of pedestrian or vehicular travel, and which way or area may be restricted in use to pedestrians, bicycles, or other specific types of vehicles as determined by the Department of Public Safety or other agency having jurisdiction over the way, path, or area.

[1:57:01 PM](#)

REPRESENTATIVE JOHNSON offered his belief that by that definition a driver could not pull over by the side of the road.

CHAIR P. WILSON responded that once the driver pulls off the roadway and stops he/she is not driving.

REPRESENTATIVE JOHNSON related his understanding that a person who was under the influence of alcohol could be arrested even if his/her car was stopped if the person was sitting in the car.

MS. CARPENETI pointed out that if the key is in the ignition it is considered operating, which is a different term than driving.

[1:58:00 PM](#)

REPRESENTATIVE GRUENBERG moved to report the committee substitute (CS) for HB 22, labeled 27-LS0155\B out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, the CSHB 22(TRA) was reported from the House Transportation Standing Committee.

[1:58:30 PM](#)

REPRESENTATIVE FEIGE objected for purpose of discussion. He said that he represents House District 12, which has a lot of highway, with reasonable cell phone coverage. He said he is loath to enact any laws that restrict personal freedom. If this bill passes, what would be banned next: putting on makeup, talking to person next to the driver, or talking on a citizen band radio (CB). He offered his belief that there is a perception that people using cell phones cause accidents, noting that statistics can be manipulated.

[2:00:44 PM](#)

REPRESENTATIVE FEIGE An existing statute exists to cite a person who causes an accident. He suggested leaving it up to municipalities to enact cell phone ban. He was unsure cell phone usage should be banned in Barrow or on the Richardson Highway. He did not think it should be a statewide ban. He expressed further concern over the cost of a new device. He then removed his objection.

[2:03:06 PM](#)

There being no further objection, the CSHB 22(TRA), as amended, was reported from the House Transportation Standing Committee.

[2:03:17 PM](#)

The committee took an at-ease from 2:03 p.m. to 2:05 p.m.

[2:05:54 PM](#)

CHAIR P. WILSON announced that the next order of business would be HB 30, HOUSE BILL NO. 30, "An Act relating to the transportation infrastructure fund, to local public transportation, to the municipal harbor facility grant fund, to motor fuel taxes, to the motor vehicle registration fee, to driver's license fees, to identification card fees, to the studded tire tax, and to the vehicle rental tax; and providing for an effective date."

[2:06:07 PM](#)

REPRESENTATIVE PRUITT moved to adopt the proposed committee substitute (CS) for HB 30, labeled 27-LS0198\X, Kane, 3/8/11, as the working document. There being no objection, Version X was before the committee.

[2:06:24 PM](#)

REBECCA ROONEY, Staff, Representative P. Wilson ,Alaska State Legislature, on behalf of one of the prime sponsors, Representative P. Wilson, explained the changes incorporated into the proposed CS. She explained the changes incorporated into the proposed CS. She stated that the title was changed to add "other fees and taxes related to motor vehicles." She explained that several exceptions were made for specialty funds. Additionally, when capturing the fees in 28.90 that would be deposited into the transportation fund, the bill drafter inadvertently included snow machine fees. Proposed Section 3 identifies that unless otherwise provided by law, state fees or taxes collected less refunds would be deposited to the transportation fund.

[2:09:02 PM](#)

MS. ROONEY referred to page 5, line 12, of HB 30 to the proposed Transportation Infrastructure Fund Advisory Council (ATIFAC). She read the goal of the ATIFIC, which is the lead in language:

(a) The Transportation Infrastructure Fund Advisory Council is established as an individual, nonpolitical body to prioritize a list of eligible transportation projects solely on the factors of nonbiased information and need.

MS. ROONEY explained that the goal was to compile the stakeholders to represent as many modes of transportation as possible. This version reduces the size of the ATIFIC to 19 members, of which 17 are voting members. She explained that the legislative seats were changed to nonvoting members to address a concern about separation of powers. Additionally the Department of Transportation & Public Facilities (DOT/PF) was reduced to one member, the commissioner or his/her designee. The Anchorage Metropolitan Area Transportation Solutions (AMATS) and the Fairbanks Metropolitan Area Transportation System (FMATS) Policy Committee members were also removed since this fund primarily would work with state funded projects but not federally funded projects used by those organizations. Version X also removes the representative from the Alaska Federation of Natives but leaves in the Alaska Inter-Tribal Council member.

[2:11:52 PM](#)

MS. ROONEY referred to page 9, line 27, of HB 30. She explained that "modes of local public transportation" was changed to

"modes of coordinated transportation" to better reflect the changes over time and not limit it to local areas alone.

MS. ROONEY referred to page 12, lines 5-9, of HB 30 adds a contingency clause so if the voter initiative to change the state's constitution does not pass, none of this bill would go into effect.

MS. ROONEY concluded by relating that proposed Section 20 of HB 30 would add an effective date that coincides with the date of the constitutional amendment to establish a transportation infrastructure fund. The original bill set a specific date tied to the 2012 general election.

[2:13:57 PM](#)

REPRESENTATIVE GRUENBERG referred to page 5, line 30, of HB 30 and asked whether the name of the organization is Alaska Truckers Association instead of Alaska Trucking Association.

[2:14:31 PM](#)

AVES THOMPSON, Executive Director, Alaska Trucking Association, Inc. (ATA) agreed the title is the Alaska Trucking Association.

[2:14:47 PM](#)

REPRESENTATIVE PETERSEN referred to page 9, line 27, of HB 30. He asked whether coordinated transportation is defined.

REPRESENTATIVE MUNOZ indicated the governor recently appointed a coordinated transportation task force to coordinate municipal opportunities statewide.

CHAIR P. WILSON clarified that the goal is to include different modes of transportation to use different sources of money and stretch transportation dollars.

[2:16:06 PM](#)

REPRESENTATIVE MUNOZ referred to the Motor Vehicle Registration Tax (MVRT). She said she did not think the bill identified a percentage.

MS. ROONEY responded that the percentage is identified in the resolution. In further response to Representative Munoz, she explained it is set at 50 percent.

REPRESENTATIVE MUNOZ asked for the total number of proposed council members.

MS. ROONEY answered the proposed ATIFIC is comprised of 17 voting members and two non-voting members for a total of 19 members.

CHAIR P. WILSON pointed out that the numbers were reduced.

2:17:50 PM

RACHAEL PETRO, President; CEO, Alaska State Chamber of Commerce (ASCC), explained that each year the Alaska State Chamber of Commerce (ASCC) sets its legislative priorities. Transportation infrastructure has long been an issue for its members. This year is not any different, she said. Creation of an Alaska Transportation Infrastructure Fund is one of the top three priorities of its members. The Alaska business community believes investing in transportation infrastructure is critical for the long term growth of Alaska's economy. Currently, as many of you know, Alaska's multi-modal transportation infrastructure is not only dilapidated but lacks a consistent funding mechanism to address the billions of dollars of multi-modal needs in Alaska. Alaska needs new transportation infrastructure development to provide access to resources, reduce barriers for many communities and allow for safe and more efficient transportation for all Alaskans. The state's highway and airport infrastructure is largely funded by federal dollars, which are under severe threat of significant reduction. The federal government lacks consistent programs for harbors and ports. The Alaska State Chamber of Commerce supports HB 30 and believes it represents a good step in the state being proactive to address today's needs while planning for the future.

2:20:26 PM

JOHN MACKINNON, Executive Director, Associated General Contractors of Alaska, thanked the committee for looking ahead with respect to the transportation needs of Alaskans. He provided a brief work history, relating that he has served as the executive director for the past three years and prior to that was a deputy commissioner for the Department of Transportation & Public Facilities (DOT&PF). He related that a state funded transportation program is an essential element. He stated that anecdotally, federal dollars is worth about \$.75 compared to a state dollar. One important element of a state

funded program includes a substantial stream of consistent funding. This bill includes that element, since the endowment fund would spin off five percent a year into the program. Additionally, using motor fuel taxes and vehicle registration fees are an appropriate use of taxes since the connection between the fee and the use is helpful to the public. Another element that is important is that this bill embodies programmatic development of the projects. The one efficiency in the federal program is that it is funded and developed programmatically. Thus, a project is not funded with one block of money. Instead if "x" dollars are required for planning and design the funds are allocated. Subsequently, funding for permitting is allocated and the funding is programmed out over the course of the development and construction of the project, which is efficient.

[2:23:12 PM](#)

MR. MACKINNON explained that it is not as easy to do in the conventional lump-sum state appropriation. The third element is prioritizing projects on need and facts instead of politics. He related that it is not difficult to look back in the past decade and find projects that were funded that do not represent the highest and best use of public funds. He offered his belief that at least a couple hundred million dollars were spent on projects that could have been spent on projects that represent a better use of money. He suggested the process of prioritizing projects by an advisory group, much like the rural school projects are prioritized in that way and tends to take the politics out so needed projects get funded. He thanked members for some of the changes made. He said going to the coordinated transportation aspect gives the advisory board much more flexibility. It is not just transit but grouping transit needs together in an area. He commented that making the advisory board smaller is also an improvement. He offered strong support for HB 30.

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MR. THOMPSON explained that the Alaska Trucking Association is a statewide organization representing the interests of nearly 200 member companies from Barrow to Ketchikan. Freight movement represents a large chunk of the state's economy and affects everyone each and every day. One priority of the Alaska Trucking Association has been a state funded capital projects program as federal funding is likely to decrease to a point where it will no longer meet Alaska transportation

infrastructure needs. Alaska needs to invest dollars in its system. He said he ATA believes HB 30 goes a long way in setting the stage for a robust state funded capital projects program that will benefit all modes of transportation. As the largest payer of the motor fuel tax, the trucking industry is glad to see an effort to devote these user fees to the improvement and expansion of our state highway system infrastructure. As an association, the ATA has supported fuel tax increase proposals in the past provided that they are dedicated to the highway system. He note changes made in the composition of the ATIFIC and commended the committee. The ATA previously requested a seat on the proposed ATIFIC and is glad to see they are on council members list. He hoped this system would help depoliticize the decision-making process. There may be a tendency to look to the ATIF to support more and more expenditures to the highway system in Alaska. He hoped the ATIF appropriations would provide additional funds to support a robust state capital project's program. Simply put, if the ATIF is not an add-on to the existing transportation funding that it will not accomplish its purpose. He said the ATA believes the ATIF has the potential to supplement existing transportation programs.

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CHAIR P. WILSON, after first determining no one else wished to testify, closed public testimony on HB 30.

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REPRESENTATIVE GRUENBERG referred to page 11, Section 18, to the severability clause. He wondered what the legal issues were.

BRIAN KANE, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, related that the severability clause relates back to AS 37.14.890 (a)(1) and (2). He explained the severability clause relates to the two legislative members of the proposed ATIFIC. He related that there may be a concern in having legislature members on the proposed ATIFIC. He pointed out that it represents a judgment on the part of the committee as to whether the severability clause should remain in the bill.

CHAIR P. WILSON asked for his opinion since the two legislative members are nonvoting as to whether the provision should remain.

MR. KANE responded that the legislature has definitely lessened any possible problems, but there still may be some issue lurking just generally. He said if it is not in there and it becomes a constitutional issue as to whether the members could be part of the proposed ATIFIC, he thought the members would just be removed and he did not think the proposed ATIFIC would be disbanded solely on that basis.

REPRESENTATIVE GRUENBERG asked whether the issue might be one of a separation of powers.

MR. KANE agreed that was the main issue since the members are usually appointed from the executive branch.

CHAIR P. WILSON related that the governor would appoint one member from each of the judicial districts. She asked if that would be a consideration.

MR. KANE responded that typically legislative members are not part of a council.

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REPRESENTATIVE GRUENBERG referred to page 5, lines 17-20, and asked whether any precedent or other statutes that would cover these provisions or any case law that would apply.

MR. KANE related that the attorney general's office has issued a couple of opinions, but he was unsure if any statutes list legislators along with governor appointees.

[2:33:21 PM](#)

REPRESENTATIVE JOHNSON recalled a mayor of Anchorage previously filed a lawsuit against the legislature since some legislators were appointed to AMATS. He related that he was one member and the municipality prevailed. He stated he was one of the legislature appointees, and most members agreed it was good to have nonvoting members.

REPRESENTATIVE GRUENBERG recalled a lawsuit was filed. He assumed the statute was upheld.

REPRESENTATIVE JOHNSON said it was not and he was not allowed to serve on AMATS.

[2:34:34 PM](#)

JEFF OTTESEN, Director, Division of Program Development, Department of Transportation & Public Facilities (DOT&PF), responded that he represented the DOT&PF during the previously mentioned lawsuit. He stated that the issue revolved around the effective date. The effective date was ruled by judge to be improper but the rest of the statute change was valid. He characterized the issue as being like a rock ready to fall. He explained if the AMATS Board bylaws are ever redone, the timing of which is governed by federal rules, that the state statutes would be triggered and two ex-officio members from the legislature would be added to the AMATS Policy Board. He reaffirmed that the implementation was ruled invalid but not the entire statute.

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REPRESENTATIVE JOHNSON did not recall the specific details just the outcome.

[2:35:46 PM](#)

REPRESENTATIVE GRUENBERG asked whether it would be problematic to have the severability provisions included in HB 30. He said was unsure of how the effective date related to the issue.

MR. OTTESEN said he does not believe so. He recalled that the AMATS situation had to do with what was triggering the implementation of law. The governor could not approve a spending plan if the board composition did not include these two members. Thus, the governor was disallowed from approving the spending plan. That what the judge found to be improper, he said.

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REPRESENTATIVE GRUENBERG commented that this bill has a contingent effective date, depending on the constitutional amendment. It would only allow the law to come into effect if the voter approved it in 2012. He asked whether the Chair would like to have an alternate plan in place in case that did not occur.

CHAIR P. WILSON offered to entertain this in a finance subcommittee.

REPRESENTATIVE GRUENBERG offered his belief that would cure some concern. He related that he is not a great fan of dedicated funds. However, he liked the idea of this fund and incorporating an alternate plan would help him become a great fan.

[2:38:23 PM](#)

CHAIR P. WILSON recalled testimony from the Department of Revenue (DOR) that the committee should think about making a change to the percent of market value (POMV) for its Alaska Transportation Infrastructure Fund (ATIF) ATIF rates. She provided a handout to members titled ATIF payout rates, which showed the payout rates from 4.5 percent to 6 percent. She wanted to be certain the fund would continue to grow and asked members to review the documents.

[2:39:58 PM](#)

REPRESENTATIVE JOHNSON suggested the finance subcommittee should consider this. He recommended sending the form to the House Finance Committee.

[2:40:40 PM](#)

REPRESENTATIVE MUNOZ recalled Pat Kemp had concern over 20 percent maximum participation on federally funded projects. She asked if he was comfortable with the language.

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MR. OTTESEN said he did not have an opportunity to review Deputy Commissioner Kemp's comments. However, he thought that 20 percent of overall fund, not per project. He related his understanding that some categories of funding have a match rate of 40 to 50 percent, although some match rate is usually about 9 percent. He offered his belief that in reviewing the overall program, it was likely that the program would stay within the cap. There are times when non federal funds are extremely powerful to advance projects, and when the department has the choice to make distinction between the two classes of money the DOT&PF can advance projects quicker and at lower cost. He related a scenario in which the Tanana Bridge was demolished. The DOT&PF advanced the project but was stalled waiting for environmental permits. Under the federal rules, the DOT&PF could not move to right-of-way step. The DOT&PF could see it might take several months so it used state funds to purchase

several right-of-way parcels. In doing so the department saved an entire year on the project. Using state fund the public benefits, the state can lower project costs and also can save time. He pointed out the DOT&PF needs to have that kind of funding flexibility.

[2:43:35 PM](#)

REPRESENTATIVE MUNOZ moved to report the proposed committee substitute, (CS) for HB 30, labeled 27-LS-0198\X, Kane, 3/8/11, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, the CSHB 30(TRA) was reported from the House Transportation Standing Committee.

[2:44:08 PM](#)

CHAIR P. WILSON announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 4, Proposing amendments to the Constitution of the State of Alaska creating a transportation infrastructure fund.

[2:44:53 PM](#)

REPRESENTATIVE MUNOZ moved to report the proposed committee substitute, (CS) for HJR 4, labeled 27-LS0197\I, Kane, 2/11/11, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 4(TRA) was reported from the House Transportation Standing Committee.

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ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:45 p.m.