

**ALASKA STATE LEGISLATURE  
HOUSE TRANSPORTATION STANDING COMMITTEE**

April 6, 2017

1:07 p.m.

**MEMBERS PRESENT**

Representative Louise Stutes, Co-Chair  
Representative Adam Wool, Co-Chair  
Representative Matt Claman  
Representative Harriet Drummond  
Representative Chuck Kopp  
Representative Mark Neuman  
Representative Colleen Sullivan-Leonard

**MEMBERS ABSENT**

Representative David Eastman (alternate)  
Representative Gabrielle LeDoux (alternate)

**COMMITTEE CALENDAR**

HOUSE BILL NO. 204

"An Act relating to overtaking and passing certain stationary vehicles."

- MOVED HB 204 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 204

SHORT TITLE: OVERTAKING/PASSING DOT VEHICLES

SPONSOR(S): REPRESENTATIVE(S) KAWASAKI

03/29/17	(H)	READ THE FIRST TIME - REFERRALS
03/29/17	(H)	TRA, JUD
04/06/17	(H)	TRA AT 1:00 PM BARNES 124

**WITNESS REGISTER**

REPRESENTATIVE SCOTT KAWASAKI  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 204 as prime sponsor.

DAN CARSON, Equipment Operator  
Fairbanks, Alaska

**POSITION STATEMENT:** During the hearing of HB 204, offered support for the legislation.

MIKE COFFEY, Director  
South Coast Region  
Statewide Maintenance and Statewide Operation Director  
Department of Transportation & Public Facilities (DOTPF)  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of HB 204, offered testimony and answered questions.

TOM BRICE, Business Representative  
Public Employees Local 71  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 204, offered support for the legislation.

DON ETHERIDGE, Representative  
American Federation of Labor and Congress of Industrial  
Organizations (AFL-CIO)  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 204, offered support for the legislation.

DAN LOWDEN, Captain  
Division of Alaska State Troopers  
Department of Public Safety (DPS)  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 204, answered questions.

MERCEDES COLBERT, Staff  
Representative Scott Kawasaki  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of HB 204, answered a question.

#### **ACTION NARRATIVE**

[1:07:04 PM](#)

**CO-CHAIR LOUISE STUTES** called the House Transportation Standing Committee meeting to order at 1:07 p.m. Representatives Stutes, Kopp, Claman, Sullivan-Leonard, Wool, and Neuman were present at the call to order. Representative Drummond arrived as the meeting was in progress.

**HB 204-OVERTAKING/PASSING DOT VEHICLES**

1:07:50 PM

CO-CHAIR STUTES announced that the only order of business would be HOUSE BILL NO. 204, "An Act relating to overtaking and passing certain stationary vehicles."

1:08:37 PM

REPRESENTATIVE SCOTT KAWASAKI, Alaska State Legislature, pointed out that this is National Work Zone Awareness week within the United States. He advised that currently under AS 28.35.185, drivers are required to "vacate the nearest lane or slow down" when approaching certain emergency and service vehicles, which includes emergency, fire, law enforcement, animal control vehicles, and tow trucks. This bill would specifically add the Department of Transportation & Public Facilities (DOTPF) vehicles with flashing yellow lights that perform maintenance or roadwork during its course of duty. In the event a driver approached one of these flashing lights vehicles on a roadway with two or more lanes, traveling in the same direction, the driver should "vacate those lanes closest to the vehicle or slow down to a reasonable speed."

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REPRESENTATIVE KAWASAKI explained that under the current 2005 statute, if personal injury results due to the person's failure to vacate the lane or slowdown, it is punishable as a class A misdemeanor; if the failure to move over does not result in personal injury, it is punishable by \$150 traffic infraction and two points assessed against the driver's license. He read the list of violators caught by the Alaska State Troopers and charged under of AS 28.35.185 as follows: 2014 - 53; 2015 - 14; and 2016 - 23 and noted that it will take time to receive information from other major municipalities that also enforce this particular statute. This bill is next referred to the House Judiciary Standing Committee and the specifics of the infractions and citations will be addressed. Representative Kawasaki then listed various Department of Transportation employees who were injured or killed while performing their job duties in other states and noted that this bill will bring about a safer work place. He stated that omitting DOTPF workers was an oversight when the 2005 legislation was passed and adding

DOTPF would further clarify the law and add public safety for the DOTPF workers.

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REPRESENTATIVE KOPP offered surprise that Representative Kawasaki's sponsor statement and testimony did not prominently feature Robert Hamel, a long time Alaska DOTPF worker who was killed instantly on November 24, 2012, at mile 88 of the Seward Highway. He said he would like to see Robert Hamel included in the sponsor statement after the bill leaves this committee. Safety is an issue, he said, and he has seen near-misses many times with DOTPF workers who frequently work traffic control at bad scenes. He related that he likes that the law is not being changed and is merely adding this class of DOTPF vehicle.

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REPRESENTATIVE CLAMAN said he supports this bill, noting that the statute describes emergency, police, and fire vehicles, and it does not indicate a governmental agency, and asked why the legislation was not written to cover municipal vehicles performing the same function. He opined that this legislation should not be limited to state DOTPF vehicles, but rather to include any vehicle performing that same function in the same manner as this language covers emergency vehicles without specifying the agency. He offered that an emergency vehicle could include ambulances operated by private contractors, and in this instance, DOTPF narrows the language too much for the appropriate scope, he offered.

REPRESENTATIVE KAWASAKI responded that his office looked into that issue and sought to clarify whether the pool could be enlarged to include all privately or publically owned vehicles that have some sort of capacity and a reason to be on a right-of-way at a yield.

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REPRESENTATIVE NEUMAN referred to HB 201, page 1, lines 8-9, which read as follows:

(a) ... when the stationary vehicle is displaying flashing emergency lights on a highway or roadway

REPRESENTATIVE NEUMAN asked the legislative intent of lines 8-9 when discussing the lights on the highway or roadway because

there is the roadway itself where vehicles travel, and the shoulder where a driver could pull over for a flat tire. Many times, he commented, there are DOTPF vehicles further off into the ditch, such as engineers. He asked whether it was Representative Kawasaki's intent that the language is the shoulder next to the right-of-way and not down into the ditch.

REPRESENTATIVE KAWASAKI answered that it takes a bit of common sense, generally. He explained that the intent of the legislation is specifically to the folks "right on the side of the road," and not necessarily in the ditch, but most folks will yield and slow down the moment they see a flashing light.

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REPRESENTATIVE NEUMAN agreed that it was common sense, and he related that in purposes such as this bill, it is nice to have the legislator's exact legislative intent. He further related that if someone challenged this new law and it became a court case, the legislative intent should be on record.

REPRESENTATIVE KAWASAKI offered that when a vehicle is on the road performing work, such as laying down cones or supervising a site, they become a specific hazard and this law would apply. This law probably would not apply if the person was further off outside of the roadway or right-of-way or within the ditch, he explained.

REPRESENTATIVE NEUMAN commented that it would be where people normally do not drive.

REPRESENTATIVE KAWASAKI answered exactly.

[1:20:52 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD remarked that she does not like to legislate something that should be common sense, such as yellow cones set up and flashing lights. She asked for the numbers showing that this legislation is necessary.

REPRESENTATIVE KAWASAKI answered that the Department of Transportation & Public Facilities (DOTPF) will present statistics as to how its work safety zones have performed over the last 12 years. Work safety zones and specifically, the ones that say you have to drive a certain speed limit or receive a triple fine, have worked to curb speeders and have worked to enforce the idea that people are working, and drivers should be

extra vigilant, he remarked. He noted that before a DOTPF worker is able to work in a work safety zone with a large orange sign, they are required to set cones establishing the lane markers, and with their yellow lights they would be outside performing those duties. This legislation will ensure that folks take extra precautions as those safety corridors are being established, he stated.

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REPRESENTATIVE SULLIVAN-LEONARD asked what entity would enforce this law.

REPRESENTATIVE KAWASAKI advised that the Department of Public Safety (DPS) currently enforces this particular law, and with municipalities it would be the local municipal law enforcement. There were 23 citations in the last year of workplace safety zone violations, he said.

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REPRESENTATIVE NEUMAN noted a private contractor in Big Lake who works on many road construction jobs, its workers put up the barriers and many times those workers are out in the middle of the highway trying to set the cones. He asked that Representative Kawasaki consider adding those folks into the legislation.

REPRESENTATIVE KAWASAKI replied that similar to Representative Claman, tow trucks are covered under current law and are probably 90 percent private companies, and when on the side of the road trying to maintain traffic within that particular corridor they are in jeopardy. Animal control officers are typically municipal officers. He reiterated that he is considering including contracted employees that also perform the same duties, and he would be happy to work with Representative Newman.

CO-CHAIR STUTES opened invited testimony on HB 204.

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DAN CARSON, Equipment Operator, advised he works for the Department of Transportation & Public Facilities (DOTPF) as an equipment office. [Co-Chair Stutes previously advised that Mr. Carson was testifying today solely on his own behalf.] He said it is his job to be on the roadway every day and that DOTPF

workers are in "the public's line of fire" when motorists drive down the road. There are "a few courteous driver's out there" who do slow down and give the workers space to do their jobs; however, he advised, a majority of the traveling public does not slow down and does not give the workers much room to do their job. The DOTPF equipment travels at a slower pace than traffic and they must slow down to perform whatever the job requires. During the winter, they put out flares when performing snow removal, such as cleaning an intersection, to alert traffic of the activity. Many times those flares are routinely ignored, and people drive over the flares and put them out eliminating the warning for the other drivers following behind. There are times where the ice has frozen down a little harder in some spots more so than in others, and when his grader hits a frozen spot it moves the machine and slides it over 5-6 feet in a heartbeat, he explained. Generally, he said, DOTPF's equipment is bigger than everyone else on the road, and in an accident DOTPF will win. He related that he does not want someone's injury to be on his conscience if there is a way to eliminate that fear by having traffic slow down and move over so everyone remains safe. The most dangerous places are the higher speed, higher volume roads with two or more lanes traveling in one direction wherein traffic usually has room to move over, but many times drivers do not and drive right next to the workers in the same lane, he remarked. The goal is to make the roads better and safer for everyone and adding DOTPF, and possibly contractors, to that "Move Over" law is a simple cost-effective way to make work zone safer for everyone, he stated.

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MIKE COFFEY, Director, South Coast Region, Statewide Maintenance and Statewide Operation Director, Department of Transportation & Public Facilities (DOTPF), advised he has been employed with the Department of Transportation & Public Facilities for 35 years, approximately 20 years of that time involved maintenance and operations in all three regions across the state, he then listed various positions he has held within the Department of Transportation & Public Facilities (DOTPF), and commented he is a "maintenance guy." He highlighted that every day Alaska DOTPF maintenance and operations personnel serve in harm's way while working on state highways. Throughout the state, people often ignore traffic work zones and snow plows and graders are hit by vehicles, yet the DOTPF vehicles are well-lit with flashing yellow and blue strobes and with all of the typical construction signing, barricades, flaggers, cones. Drivers are distracted and run through DOTPF's work zones, people do not obey the

orders of flaggers causing flaggers to take evasive actions to get out of the way of errant vehicles, he said. The snow plows put up quite the cloud of snow wherein it is basically a white-out, he described, and yet vehicles pass snow plows on both the right and left side while performing DOTPF duties. Mr. Coffey thanked Representative Kopp for mentioning "Rob" because [his death] was the ultimate sacrifice while performing public service." He described Rob Hamel as a "great guy, great asset to the department, and that should never happen again." Mr. Hamel's death "devastated many of us in the department, and it was a terrible terrible time." He pointed out that nationally, maintenance workers have one of the most dangerous jobs, and in many states more highway maintenance workers are killed in the line of duty than the police and firemen. He reported that 35,000 people are injured in work zones every year, and approximately 700 people, including 130 maintenance and operations and construction workers, are killed in work zones every year. Unfortunately, nationally and in Alaska, fatalities have been up over the last couple of years and he opined that distracted driving is a cause of the rise in fatalities. The Alaska Department of Transportation & Public Facilities supports CSHB 204, he stated.

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CO-CHAIR WOOL referred to Mr. Coffey's testimony of the slow-moving snow plows and pointed out that that is not reflected in this legislation, this legislation has to do with vehicles that are pulled off to the side of the road.

MR. COFFEY agreed, and he explained that he brought up snow plows in general to illustrate that anytime DOTPF workers are on the highway, they are in harm's way.

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CO-CHAIR WOOL clarified that this legislation is not "passing a grader or something like that." He commented that in reading these other states' laws, they all seem to almost have identical language, and he read a New Jersey statute as follows: "Vehicles approaching a stationary or authorized emergency vehicle, tow truck, highway maintenance emergency service vehicle traveling in the same direction." Most states mentioned emergency lights and New Jersey does not, "Must move over to another lane if possible or slow down," he read. It appears to be "common sense type stuff" and Alaska does not include the language "highway maintenance," it just has emergency or tow truck. He said he

assumes most of these vehicles have lights so that makes it easy.

MR. COFFEY interjected that the lights are required.

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REPRESENTATIVE NEUMAN noted that the legislation adds the words: "the vehicle operated by the Department of Transportation & Public Facilities," but Mr. Coffey had discussed flaggers and such. He asked Mr. Coffey whether he had any particular language or verbiage to recommend.

MR. COFFEY responded, to have the broadest language that includes engineers, survey crews, and such, not limited to state employees because many municipal employees are alongside the roadway. He stressed that for anyone working in the highway environment there is risk, therefore, the department would be supportive of being as broad as possible.

REPRESENTATIVE NEUMAN suggested Mr. Coffey work with Representative Kawasaki.

[1:37:04 PM](#)

TOM BRICE, Business Representative, Alaska District Council of Laborers, Public Employees Local 71, advised that Public Employees Local 71 represents the blue-collar state employees, and he is also involved with private construction labor unions. He related that Mr. Hamel's death shook the union to its foundation as many people had great respect for Mr. Hamel. Public Employee's Local 71 supports HB 204, and would appreciate expanding it to include municipal employees performing road maintenance work because language providing a level of safety for all of the folks working in the roadway is appreciated. He mentioned that there are statutes providing double traffic fines for people caught speeding in those traffic zones, and HB 204 would address issues where there may be a cherry picker working on a stop lights, or engineer technicians performing road inspection. He commented that not only are vehicles running into large DOTPF equipment damaging, but it is challenging for the operator emotionally and physically. Having the conversation about what is going on Alaska's roadways is important, and Local 71 encourages the bill to move forward, he said.

CO-CHAIR STUTES noted that Mr. Brice is a former member of this body.

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DON ETHERIDGE, Representative, American Federation of Labor, and Congress of Industrial Organizations (AFL-CIO), advised that the AFL-CIO is fully supportive of this legislation and advised that the double traffic fines in construction areas is a piece he helped get through the legislature years ago, and it made a difference in slowing people down as they drive through those areas. He said he has seen "these crazy guys go out there" and see how many cones they could "accidentally" knock over, which is the type of activity that "they should be able to give tickets." Previously, he offered, there was an accident where a flagger was driving a vehicle with flashing lights following the workers performing work on the side of the road and "some lady" hit the back of that pickup driving 55 mph. The flagger was stopped with a great big flashing arrow light on the vehicle, and the accident put the flagger in the hospital for a long period of time. He suggested that the members stop at one of the work safety zones to experience what it's like when "one of them cars goes whizzing by you doing 50 - 60 mph. It's spooky."

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REPRESENTATIVE SULLIVAN-LEONARD related that the hard part of these situations is the fact that there cannot be a local police officer or state trooper at every site. She asked what DPS will do to assist in this endeavor.

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DAN LOWDEN, Captain, Division of Alaska State Troopers, Department of Public Safety (DPS), advised that the state troopers will do what it does with every other traffic violation, it will take the appropriate enforcement action when witnessing these violations, and/or if people report the violations and offer enough information the state troopers will follow-up. Representative Sullivan-Leonard was correct, he advised, there is not the personnel to follow along behind a crew to keep an eye on the situation.

REPRESENTATIVE SULLIVAN-LEONARD asked how this new language would help the DPS.

CAPTAIN LAWDEN responded that the statute adds this class of vehicles in this situation, so an enforcement action could be taken. Currently, people are not required to move over in the lane, or if that is not possible to slow down, he said. In the event a DOTPF vehicle is along the roadway working with its lights on and someone barrels past them, or even drives by at the speed limit and does not move over, there is not much the state troopers can do, he said.

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REPRESENTATIVE KOPP noted that this would be new law and asked whether Captain Lawden would work with DOTPF on a public informational brochure such as, "Move Over - It's The Law" type of brochure. He suggested there may be a way the public media unit could work with DOTPF to offer the information to new folks receiving their driver's licenses or permit, such as a public media campaign.

CAPTAIN LAWDEN advised that "We already have a PSA that it has been aired quite a bit," at least in South Central Alaska, about the "Move Over" law. He said he could see the PSA being updated if this bill becomes law and adding this class of vehicles, or any other class discussed today. The DPS would at least play the PSA already recorded, he said.

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CO-CHAIR WOOL said that quite honestly, he did not know that by law, he was required to change lanes if it is safe to do so, and suggested that possibly a PSA campaign is not a bad idea for those who obtained their driver's licenses in the past. In reading these statutes from other states, such as Massachusetts, he noted, it seems to put it in common sense language as follows: "Drivers traveling in the same direction or approaching a stationary emergency vehicle, highway maintenance vehicle, or tow or recovered vehicle with flashing lights." He pointed out that it covers highway maintenance at the state or local level, and a city vehicle with flashing lights would be equally respected. In the State of Massachusetts, when he lived there, he said, it was by law required that a police car be at construction sites, "all of them. And boy, that really makes you slow down."

[1:51:31 PM](#)

CO-CHAIR STUTES opened public testimony. After ascertaining no one wished to testify, closed public testimony on HB 204.

[1:51:50 PM](#)

REPRESENTATIVE KOPP offered that David Morris was his next-door neighbor in Kenai, and that he worked with DOTPF in Alaska and then moved to Colorado DOT and was killed his first year on the job in a construction zone when a logging truck plowed into him. Mr. Morris was stopped at an accident scene in a dump truck, but it killed him instantly. Maintenance workers do work in harm's way and this is a common-sense bill, he described, and sometimes common sense is legislated because "common sense is a flower that does not grow in every garden."

CO-CHAIR STUTES related that there have been good comments and ideas given to the sponsor of this bill, and given this bill is next referred to the House Judiciary Standing Committee, she would like to move it out of committee.

[1:53:18 PM](#)

CO-CHAIR WOOL asked whether vehicles, not necessarily state DOTPF vehicles, but possibly a local municipality vehicle with flashing lights would be covered under this bill, or whether there was possible language to include other maintenance vehicles that were not necessarily state vehicles.

CO-CHAIR STUTES advised that that was what Representative Newman referred in his "amendment to this bill," covering all road maintenance vehicles.

REPRESENTATIVE NEUMAN agreed, and he said there was an agreement with Representative Kawasaki that he would follow up on that issue.

[1:54:17 PM](#)

REPRESENTATIVE CLAMAN asked whether there was a problem with expanding the legislation during the time Representative Kawasaki's office spoke with Legislative Legal and Research Services.

MERCEDES COLBERT, Staff, Representative Scott Kawasaki, Alaska State Legislature, responded that the staffer working with Legislative Legal and Research Services drafting the bill is ill today and she would prefer to speak with the staffer before

answering. She advised that she researched the Anchorage Police Department online and it directly references this statute and follows the statute for its own practices, but she was unclear whether other municipalities follow the "Move Over" law as written, or whether they have their own ordinances individually by municipality.

[1:55:40 PM](#)

CO-CHAIR WOOL expressed concern about other jurisdiction vehicles and assumed a state law would apply to a road within a city that is in the same state. In the event there was an Alaska state law about "Move Over" it would apply even in municipalities, he said. Again, he reiterated, local maintenance vehicles and flaggers and people standing in the road "which my understanding with that would be something different, this is emergency vehicles with lights under state or possibly local municipality."

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REPRESENTATIVE KOPP affirmed to Co-Chair Wool that Title 28 is controlling for all motor vehicle law enforcement in any municipality in Alaska. Therefore, local police departments enforce state law.

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REPRESENTATIVE DRUMMOND offered her assumption that it also applies to boroughs as well as municipalities.

REPRESENTATIVE KOPP answered that boroughs are municipalities.

REPRESENTATIVE DRUMMOND said she agrees with her colleagues that it is hard to legislate common sense. Although, she pointed out, in this case it behooves the committee to add this set of vehicles to the law and find a way to be as inclusive as possible for all of those with pieces of equipment operating in harm's way.

[1:57:38 PM](#)

CO-CHAIR WOOL moved to report HB 204 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 204 moved from the House Transportation Standing Committee.

1:58:18 PM

**ADJOURNMENT**

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 1:58 p.m.