

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

April 3, 2018

1:32 p.m.

MEMBERS PRESENT

Senator Bert Stedman, Chair
Senator David Wilson
Senator Dennis Egan

MEMBERS ABSENT

Senator Anna MacKinnon
Senator Click Bishop

COMMITTEE CALENDAR

SENATE BILL NO. 199

"An Act relating to the use of off-road vehicles within the James Dalton Highway corridor."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 259 (JUD) AM

"An Act relating to containing or confining loads being transported on highways."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 199

SHORT TITLE: DALTON HWY: ACCESS TO PRIVATE PROPERTY

SPONSOR(s): SENATOR(s) KELLY BY REQUEST

02/19/18	(S)	READ THE FIRST TIME - REFERRALS
02/19/18	(S)	TRA
03/29/18	(S)	TRA AT 1:30 PM BUTROVICH 205
03/29/18	(S)	-- MEETING CANCELED --
04/03/18	(S)	TRA AT 1:30 PM BUTROVICH 205

BILL: HB 259

SHORT TITLE: CONFINING VEHICLE LOADS

SPONSOR(s): REPRESENTATIVE(s) STUTES

01/08/18 (H) PREFILE RELEASED 1/8/18
 01/16/18 (H) READ THE FIRST TIME - REFERRALS
 01/16/18 (H) TRA, JUD
 01/25/18 (H) TRA AT 1:15 PM BARNES 124
 01/25/18 (H) -- MEETING CANCELED --
 01/30/18 (H) TRA AT 1:00 PM BARNES 124
 01/30/18 (H) -- MEETING CANCELED --
 02/01/18 (H) TRA AT 1:00 PM BARNES 124
 02/01/18 (H) Heard & Held
 02/01/18 (H) MINUTE(TRA)
 02/08/18 (H) TRA AT 1:00 PM BARNES 124
 02/08/18 (H) Moved CSHB 259(TRA) Out of Committee
 02/08/18 (H) MINUTE(TRA)
 02/09/18 (H) TRA RPT CS(TRA) 1DP 5AM
 02/09/18 (H) DP: STUTES
 02/09/18 (H) AM: KOPP, CLAMAN, DRUMMOND, EASTMAN,
 WOOL
 02/21/18 (H) JUD AT 1:00 PM GRUENBERG 120
 02/21/18 (H) <Bill Hearing Canceled>
 02/23/18 (H) JUD AT 1:30 PM GRUENBERG 120
 02/23/18 (H) Heard & Held
 02/23/18 (H) MINUTE(JUD)
 03/05/18 (H) JUD AT 1:00 PM GRUENBERG 120
 03/05/18 (H) Moved CSHB 259(JUD) Out of Committee
 03/05/18 (H) MINUTE(JUD)
 03/07/18 (H) JUD RPT CS(JUD) 5DP 1NR 1AM
 03/07/18 (H) DP: KOPP, KREISS-TOMKINS, STUTES,
 LEDOUX, CLAMAN
 03/07/18 (H) NR: REINBOLD
 03/07/18 (H) AM: EASTMAN
 03/15/18 (H) TRANSMITTED TO (S)
 03/15/18 (H) VERSION: CSHB 259(JUD) AM
 03/16/18 (S) READ THE FIRST TIME - REFERRALS
 03/16/18 (S) TRA, JUD
 03/29/18 (S) TRA AT 1:30 PM BUTROVICH 205
 03/29/18 (S) -- MEETING CANCELED --
 04/03/18 (S) TRA AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

JOSEPH BYRNES, Staff
 Senator Kelly
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Provided an overview of SB 199.

REBEKAH VANDERLUGT, representing self
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SB 199.

ROD ARNO, Executive Director
Alaska Outdoor Council
Palmer, Alaska

POSITION STATEMENT: Testified in support of SB 199.

REPRESENTATIVE LOUISE STUTES
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 259.

MATT GRUENING, Staff
Representative Stutes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided an overview of HB 259 and answered questions.

KELLY ROY, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 259.

ROBIN ABEL, representing self
Seattle, Washington

POSITION STATEMENT: Testified in support of HB 259.

AVES THOMPSON, Executive Director
Alaska Trucking Association
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition of HB 259.

DAN LOWDEN, Captain
Alaska State Troopers
Alaska Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding HB 259.

MIKE LESMANN, Legislative Liaison
Alaska Department of Transportation and Public Facilities
Juneau, Alaska

POSITION STATEMENT: Offered to provide follow-up information regarding HB 259.

ACTION NARRATIVE

[1:32:06 PM](#)

CHAIR BERT STEDMAN called the Senate Transportation Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Wilson, Egan, and Chair Stedman.

SB 199-DALTON HWY: ACCESS TO PRIVATE PROPERTY

[1:32:49 PM](#)

CHAIR STEDMAN announced the consideration of SB 199, an act related to the use of off-road vehicles within the James Dalton Highway corridor.

[1:33:08 PM](#)

JOSEPH BYRNES, Staff, Senator Kelly, Alaska State Legislature, Juneau, Alaska, provided an overview of SB 199 as follows:

Senate Bill 199 would allow for the use of off-road vehicles within the James Dalton Highway corridor to access private property within an established history of use as a homestead.

Under AS 19.40.210, off-road vehicles are not permitted on land within five miles of the highway right-of-way except under select circumstances. One, if necessary, for oil and gas exploration and development or transportation; two, to gain access to a mining claim in the vicinity of the highway; three, to travel across the corridor from a point outside the corridor to another point outside the corridor with a snow-machine. Unfortunately, this leaves no exception for individuals and their families who own private homesteaded land adjacent to the corridor who wish to use an off-road vehicle to access their property.

This issue came to our office's attention from a constituent who owns homesteaded property in the Brooks Range that is virtually inaccessible in winter months without an airplane, under current law. Article 8, Section 1 of the Alaska Constitution states, "It is the policy of the state to encourage the settlement of its land and the development of its resources by making them available for the maximum use consistent with the public interest;" this section was one of the reasons the Legislature found there was an immediate

need for a public highway from the Yukon River to the Arctic Ocean in the first place.

Homesteading has a rich history in Alaska, going back to the extension of the original Homestead Act to include Alaska by President William McKinley in 1898. By the time the last homestead claims were made in the 1980s, around 3,500 people had received land in Alaska according to BLM, [Bureau of Land Management]. Homesteaders represent the very embodiment of the state's desire to settle Alaska; however, for a myriad of reasons access has long plagued residents of our state. The prohibition on off-road vehicles is a holdover from a time when there was concern about the lack of sufficient public facilities and services available on the Dalton Highway. Today, the Dalton Highway includes amenities familiar to any traveler on Alaska's highways: restaurants, fuel stations, lodging, campgrounds, water fill-up and dump stations, and rest areas; it is long time that some of these restrictions on the use of the Dalton Highway be reevaluated.

At the very least this reevaluation should begin with this bill, SB 199. This proposes a very limited exception, only for persons wishing to access private property that was historically used as a homestead. The Department of Natural Resources has only located 16 federally patented homesteads within 10 miles of the Dalton Highway. Furthermore, SB 199 would not abandon Board of Game restrictions on the use of off-road vehicles for hunting purposes in the area or restrictions on the use of firearms within the corridor for hunting.

SB 199 is a bill of very narrow scope that is about giving homestead property holders the same access rights as those with mining claims and those seeking oil and gas development.

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CHAIR STEDMAN opened public testimony.

[1:37:33 PM](#)

REBEKAH VANDERLUGT, representing self, Fairbanks, Alaska, testified in support of SB 199. She disclosed that she is a private landowner who owns property through the Federal

Homestead Act. She said she supports the bill because her family has a right for equal access to their property. She noted that her property is virtually inaccessible in the winter and her family would like to access via snow-machines.

CHAIR STEDMAN asked Ms. Vanderlugt for the number of her property's homestead.

MS. VANDERLAUGT replied that she did not recall.

[1:39:26 PM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council, Palmer, Alaska, testified in support of SB 199. He said the bill will provide more public access to public resources as well as private lands.

MR. BYRNES noted that Ms. Vanderlaugt and her husband initially brought the issue to the attention of Senator Kelly's office. He detailed to committee members the history of the Vanderlaugt's homestead site.

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CHAIR STEDMAN held SB 199 in committee.

HB 259-CONFINING VEHICLE LOADS

[1:41:33 PM](#)

CHAIR STEDMAN announced the consideration of HB 259, an act relating to containing and confining loads being transported on highways.

[1:41:52 PM](#)

REPRESENTATIVE LOUISE STUTES, Alaska State Legislature, Juneau, Alaska, sponsor of HB 259, stated the following:

I brought this bill forward on behalf of an Alaskan who was grievously injured as a result of someone failing to properly secure their cargo in their vehicle. This bill addresses a serious gap in our confined-load statute which will protect the safety of Alaskan drivers and pedestrians.

In Alaska, even if you are seriously injured as a result of someone's negligence in securing their load, the current confined-load statute only allows for a \$300 traffic infraction. Additionally, the current confined-load statute only applies to sand, gravel,

rock or similar materials, leaving out a litany of objects that can injure or kill other drivers or pedestrians. This bill updates Alaska's combined load statute to include all materials that escape your vehicle with a few specific exemptions. It also requires maintaining six inches of freeboard or tarping loads consisting of: sand, gravel, rock or similar materials. It is a responsible public safety measure that will reduce injuries, fatalities, property damage, and roadway litter. It will be a move in moving Alaska one step ahead.

[1:43:59 PM](#)

MATT GRUENING, Staff, Representative Stutes, Alaska State Legislature, Juneau, Alaska, provided an overview of HB 259 as follows:

Whether someone overflows the bed of their truck with rocks and gravel, plywood, scrap metal, loose debris on the way to the dump, or simply fails to tie down large objects in a flatbed, unsecured loads are an undisputed hazard to other users of the roadway and pedestrians. Improperly secured loads can cause serious injuries, property damage, and fatalities.

The AAA Foundation for Traffic Safety concluded that from 2011 to 2014, road debris was a factor in more than 200,000 police-reported crashes, those crashes resulted in approximately 39,000 injuries and 500 deaths. Additionally, the report found that about two thirds of these accidents were the result of items falling from a vehicle due to unsecure loads and improper maintenance.

In another study by the U.S. Government Accountability Office it was found that there were approximately 440 fatalities caused by roadway debris in 2010, that data was gathered by the National Highway Traffic Safety Administration.

All 50 states have laws that require drivers to properly secure loads in any vehicle or trailer and impose fees that range from \$10 to \$5,000. In most states, failing to properly secure a load is a traffic violation. In Alaska, as the representative indicated, even if it results in a serious physical injury it is an infraction punishable by a fine not to exceed \$300;

however, in 15 states they have instituted possible criminal penalties for failing to properly secure loads. I would also like to note that there is a Legislative Research report that compares those laws and provides additional information about Maria's Law in Washington state which this legislation closely resembles.

Last year the State of Alaska, the mayor of Anchorage, the Anchorage assembly, the mayor of the Mat-Su Borough, and the Mat-Su Borough assembly officially declared June 6 as "Secure Your Load Day" by issuing proclamations and resolutions recognizing the hazards of failing to take the simple steps of affixing every load.

MR. GRUENING noted that in 2016, Solid Waste Services in Anchorage issued 1,392 citations for unsecured loads.

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He continued the overview of HB 259 as follows:

HB 259 establishes standards for load securement for all types of materials and requires covering or maintaining six inches of freeboard with loads consisting of sand, dirt, rock, gravel, and similar materials.

I would like to point out that there is a very high bar in this legislation for somebody to be charged with a misdemeanor, a violation only gets raised to the level of a class A misdemeanor if a person fails to secure a load with a mental state of criminal negligence and it results in a serious physical injury of another person. Likewise, a violation can only become a class B misdemeanor if a person fails to secure a load with criminal negligence and it results in \$5,000 or more in damage to another person's property. A violation under any other circumstance is a traffic infraction and has a penalty on the first offense of \$300 which is consistent with current law.

The legislation will decrease roadway litter, property damage, injuries and fatalities. It is a responsible public safety measure to protect Alaskan drivers and avoid costly repairs that result from the actions or inactions of others.

MR. GRUENING provided background information on invited testimony in support of HB 259. He noted that Robin Abel is a nationwide advocate of load securement and the mother of Maria Federici who is the namesake of "Maria's Law," a law adopted by Washington state which criminalizes a person's failure to secure a load. He added that Kelly Roy from Alaska would also address committee members regarding a tragedy she experienced due to an unsecured load. He noted that under the state's current confined-load statute, Ms. Roy had no recourse other than a littering fine. He said Ms. Roy brought the bill to Representative Stutes' office in hopes that others could avoid her experience.

He summarized that unsecured load incidences happen all too often and are completely avoidable by taking the short and simple steps of inspecting a load and securing it if necessary, before operating a vehicle.

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He referenced the sectional analysis for HB 259 as follows:

Section 1 on Page 1, line 3 through Page 3, line 9: AS 28.35.251 is repealed and reenacted:

Subsection (a) on Page 1, lines 4 through 7:

This subsection states that a person is guilty of the crime of failure to contain or confine a load in the first degree if, with a mental state of criminal negligence, they violate (c) and as result, cause serious physical injury to another person. Criminal negligence applies to the act of the securing the load. Failure to contain or confine a load in the first degree is a class A misdemeanor.

Subsection (b) on Page 1, lines 8 through 10:

This subsection states that a person is guilty of the crime of failure to contain or confine a load in the second degree if, with criminal negligence, they violate (c) and as result, cause property damage of \$5,000 or more to another person's property. Criminal negligence applies to the act of the securing the load. Failure to contain or confine a load in the second degree is a class B misdemeanor.

Subsection (c) (1) (A) (i) (ii) and (B) on Page 1, line 11 through Page 2, line 7:

This subsection specifies that a person commits the offense of failure to contain or confine a load in the third degree if the person drives or moves a motor vehicle loaded with any material on a highway unless it is secured or situated in a way that prevents it from escaping the vehicle or shifting to the extent that the vehicle's maneuverability or stability is adversely affected and the load is treated by methods approved through regulation by the Department of Public Safety that are designed to settle the load or remove loose material before it is driven on a highway. Failure to contain or confine a load in the third degree is an infraction.

Subsection (c) (2) on Page 2, lines 9 through 12:

This subsection specifies that a person may drive or move a motor vehicle loaded with sand, gravel, dirt, rock, or similar materials if at least 6 inches of freeboard is maintained around the perimeter of the load or a cover is used and securely fastened.

Subsection (d) (1) on Page 2, lines 13 through 16:

This subsection is an exemption that specifies that the provisions of this act do not apply to a vehicle that deposits sand, liquids, or other materials for the purpose of cleaning, maintaining, or improving traction on the highway.

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Subsection (d) (2) on Page 2, lines 17 through 18:

This subsection is an exemption that specifies that the provisions of this act do not apply to the natural accumulation of snow, ice, mud, dirt, or similar materials.

Subsection (d) (3) on Page 2, line 19:

This subsection is an exemption that specifies that the provisions of this act do not apply to a vehicle that is removing snow or hauling snow after removal.

Subsection (d) (4) on Page 2, lines 20 through 21:

This subsection is an exemption that specifies that the provisions of this act do not apply to random litter escaping a vehicle. Litter is defined in this section as plastic wrappers, empty plastic bags, leaves, paper, or similar soft materials. "Random" modifies "litter" to clarify that a load of litter is not exempted.

Subsection (e) on Page 2, lines 22 through 24:

This subsection specifies that in prosecution under (a) or (b), which is failure to contain or confine a load in the first degree or second degree respectively, a person being convicted in the preceding 10 years of a violation under (c), which is failure to contain or confine a load in the third degree, is prima facie evidence that the person acted with criminal negligence when securing the load.

Subsection (f) (1) on Page 2, lines 25 through 27:

This subsection specifies that failure to contain or confine a load in the first degree is a class A misdemeanor.

Subsection (f) (2) on Page 2, lines 28 through 29:

This subsection specifies that failure to contain or confine a load in the second degree is a class B misdemeanor.

Subsection (f) (3) (A), (B), (C), and (D) on Page 2, line 30 through Page 3, line 7:

This subsection specifies that failure to contain or confine a load in the third degree is an infraction punishable by a fine of not more than \$300 on the first offense, \$750 on the second offense, \$1,500 on the third offense, and \$2,500 on the fourth offense. The penalty for the first violation is consistent with current statute.

Subsection (g) on Page 3, lines 7 through 8:

This subsection specifies that criminal negligence in this section has the meaning given in AS 11.81.900.

Section 2 on Page 3, lines 5 through 6. AS 28.35.253 is amended by adding a new subsection:

This section is a conforming amendment to reflect the repeal and reenactment of AS 28.35.251 in Section 1 of the bill and the repeal of AS 28.35.255. AS 28.35.255 currently houses the penalties for violations of both AS 28.35.251 and AS 28.35.253. Violating AS 28.35.253 is currently an infraction and there is no substantive change.

Section 3 on Page 3, line 11:

This section repeals 28.35.255.

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SENATOR WILSON asked how many people may have a second or more infractions under the current law.

MR. GRUENING answered that he did not know. He suggested posing the question to the Alaska State Troopers. He added that he was not sure if the Alaska State Troopers tracked subsequent offenses.

SENATOR WILSON asked if more of the penalties for serious harm covered through insurance or covered through the process of going through civil court rather than criminalize someone who is moving down the road and a strap falls off.

MR. GRUENING replied that a person who strapped their load and the strap came loose would not be liable for a criminal penalty under HB 259 because the individual would not have acted with criminal negligence when they secured their load. He detailed "criminal negligence" as follows:

A person acts with criminal negligence with respect to a result or a circumstance described by a provision of law defining an offense when a person fails to perceive a substantial and unjustifiable risk that will occur or that the circumstances exist.

MR. GRUENING emphasized the following regarding "criminal negligence:"

The risk must be such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable would reserve in a situation.

MR. GRUENING summarized that criminal negligence would occur if a person failed to perceive a situation that a reasonable person under a gross deviation for a standard of care that results in a serious physical injury of another person. He said someone who tries to secure a load or that a reasonable person would not perceive as a risk would not be statutorily liable. He continued as follows:

I think when we were drafting this, we viewed that offense as a serious enough nature if those two circumstances existed, the serious physical injury and the criminal negligence, to rise to the level of a misdemeanor instead of leaving somebody to civil recourses.

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REPRESENTATIVE STUTES added that securing a load takes very little effort when the act could very possibly be saving a life.

SENATOR WILSON voiced concern that he feared a situation where a person helps a friend move but the individual does not know whether a load is secure or the laws that apply.

REPRESENTATIVE STUTES asserted that securing something that has the potential to come out of one's truck and injure someone is almost common sense.

SENATOR EGAN addressed a letter from Aves Thompson, Alaska Trucking Association, saying that the legislation is not needed.

MR. GRUENING agreed that the letter from the Alaska Trucking Association asserted that the legislation duplicates current laws.

SENATOR EGAN opined that the current laws do nothing for the general public.

MR. GRUENING agreed that while the Alaska Trucking Association is heavily regulated for securing loads, the public does not have requirements. He said the association's issue was the legislation's requirement for trucks to place a tarp over gravel or have six inches of freeboard, a non-issue exemption that has

been law for almost 10 years in the state of Washington. He summarized that the legislation covers the public and adds more stringent requirements than are needed for dealing with gravel.

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CHAIR STEDMAN opened public testimony.

[2:04:45 PM](#)

KELLY ROY, representing self, Anchorage, Alaska, testified in support of HB 259. She provided details related to a car accident she experienced due to an unsecured load. She said she has been fighting for three years to get back what she lost for something that could have been prevented by securing a load. She confirmed Mr. Gruening's statistical analysis for Anchorage where 1,392 citations were issued in 2016 for unsecured loads going to the landfill and 1,191 citations issued in 2017. She said her hope is the legislation will educate and remind every person how dangerous an unsecured load really is.

[2:09:57 PM](#)

ROBIN ABEL, representing self, Seattle, Washington, testified in support of HB 259. She provided details related to her daughter's 2004 car accident that happened in Washington state due to an unsecured load. She disclosed that the unsecured load incident was not a crime in Washington state, strictly a littering ticket. She said the law was changed the following year by legislation named after her daughter, Maria Federici, called "Maria's Law." She disclosed that truckers in Washington state supported the law because, "They understood this law enhanced their current six-inch rule and they didn't consider this change anything but good for safety." She added, "The tough work begins after the law is changed, it's one thing to change a law but a lifetime commitment to educate the public on the importance of load securement."

She addressed Senator Wilson's question regarding a civil court action as follows:

You have to have someone to go after to go to get civil justice and it takes you years and when you do get the check, it's no justice.

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AVES THOMPSON, Executive Director, Alaska Trucking Association, Anchorage, Alaska, testified in opposition of HB 259. He referenced a letter he sent to committee members on behalf of the Alaska Trucking Association as follows:

Our industry is highly regulated by both federal and state statute and regulation. The commercial vehicle load securement regulations are very detailed, very specific. I believe we do a pretty good job. Occasionally there's something that falls off, but I'm not aware of any injuries that have resulted from dropping or leaking or spilling of loads.

MR. THOMPSON said reference was made to the 1,300 violations at Anchorage's municipal landfill. He disclosed that the association has never objected to securing loads and emphasized that loads should be secured. He said the association's only point is commercial vehicles are already bound by strict statute and regulation for load securement. He specified that when the association states that HB 259 is duplicative, the duplicity is relative to the trucking industry. He summarized that the association was in opposition of HB 259 due to the legislation's duplicity and commercial vehicle coverage.

He noted that Representative Stutes mentioned securing loads was easy and inexpensive. He pointed out that a canvas tarp for a "belly dump" or "end dump" truck can run from \$6,000 to \$8,000. He said the association feels its operators are currently doing a safe job and loads are being contained.

[2:19:07 PM](#)

DAN LOWDEN, Captain, Alaska State Troopers, Alaska Department of Public Safety, Anchorage, Alaska, addressed Senator Wilson's question regarding multiple citations for unsecured loads. He said the Department of Public Safety could share citation departmental numbers, but there was no repository for tracking unsecured load citations from individual municipalities.

SENATOR WILSON asked that the Department of Transportation and Public Facilities address his question regarding funds available to states to raise awareness on unsecured loads. He asked if federal funding was available to Alaska.

[2:21:08 PM](#)

MIKE LESMANN, Legislative Liaison, Alaska Department of Transportation and Public Facilities, Juneau, Alaska, said he would get back to the committee with an answer to the question.

MR. GRUENING responded to Mr. Thompson's previous testimony as follows:

We do agree that they have stringent standards for load securement. From our perspective though, we don't see why the bill should not apply to them if one of their operators with criminal negligence failed to secure their load and it killed another person. If they don't abide by their own securement standards with criminal negligence and that result occurs, we have a difficult time seeing why the public would be liable to that standard, but the truckers wouldn't.

To his point about the cost of tarping, we did that analysis, we did come up with a different figure than \$8,000, it was closer to \$2,500 to \$3,000; but, the 6-inch freeboard exemption has existed in law for a long time in Washington state. DOT's fiscal note is a zero fiscal note because they already abide by the six-inch freeboard exemption for dirt, rock, sand, gravel, or similar materials.

So, there's two options in the bill, there is tarp or six inches of freeboard around the perimeter. DOT can abide by it, the Washington state truckers can abide by it, I don't see how it is going to require them to all purchase tarps.

[2:23:12 PM](#)

REPRESENTATIVE STUTES thanked the committee for hearing the bill and Ms. Roy for traveling from Anchorage to testify in person.

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CHAIR STEDMAN held HB 259 in committee.

[2:23:41 PM](#)

There being no further business to come before the committee, Chair Stedman adjourned the Senate Transportation Standing Committee meeting at 2:23 p.m.