

**HB**

**127**



# ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA  
STATE CAPITOL  
JUNEAU, ALASKA  
99801-1182

(907) 465-3744  
FAX (907) 465-2273

STATE AFFAIRS COMMITTEE

## Fax

To: George Utermohle

From: Ginny Austerman

Fax: 465-2029

Date: March 27, 2003

Phone: 465-2450

Pages:

Re: CSHB 127

CC:

Urgent  For Review  Please Comment  Please Reply

•Comments:

**Today House State Affairs adopted CSHB 127 (23LS0299II).**

**The following amendments were offered and passed by the Committee:**

**Amendment #1 – page 2 delete lines 7, 8 and 9. Line 10 - delete the words “from construction, maintenance, or use of the right-of-way.**

**Line 11 – delete the words “, or for damage or injury resulting from the presence of,”**

**Amendment #2 – page 2 line 1 after the word “location” insert the words “within seven days of placement”.**

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**Line 11 - delete the words " , or for damage or injury resulting from the presence of,"**

**Amendment #2 - page 2 line 1 after the word "location" insert the words "within seven days of placement".**

*Adopted*

23-LS0299I  
Utermohle  
3/21/03

**CS FOR HOUSE BILL NO. 127( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE WHITAKER**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to roadside memorials within the right-of-way of a state highway."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **\* Section 1.** AS 19.25 is amended by adding new sections to read:

4 **Article 4. Roadside Memorials.**

5 **Sec. 19.25.260. Roadside memorials permitted.** (a) Notwithstanding  
6 AS 19.25.090, 19.25.105, and 19.25.200, a person may place in the right-of-way but  
7 outside of the traveled way of a state highway a temporary memorial for a decedent  
8 who died in a traffic accident at or reasonably near the site where the memorial is  
9 located.

10 (b) A memorial must not interfere with the use of the highway, with other uses  
11 of the right-of-way, with the visibility of directional and other official signs and  
12 notices, or with highway safety, construction, or maintenance.

13 (c) The person who places a memorial in the right-of-way of a state highway  
14 shall

15 (1) post the person's contact information on the memorial;

L

*Amendment #2*  
*within 7 days of placement of the memorial*

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(2) inform the department of the location of the memorial; and

(3) provide the person's contact information to the department.

(d) A person may not place a political or commercial message on a memorial.

(e) A person may not place reflective material or another item on a memorial if that material or item would be distracting to drivers and other users of the right-of-way.

*Amendment #1*  
(f) The person who places a memorial in the right-of-way of a state highway bears the sole risk of liability for damage or injury resulting from the presence of the memorial in the right-of-way and the sole risk for damage to the memorial arising from construction, maintenance, or use of the right-of-way. The state is not liable for damage to, <sup>a</sup> or for damage or injury resulting from the presence of, a memorial in the right-of-way of a state highway.

(g) In this section, "memorial" means decorations, flags, flowers, and other lightweight objects or ornamentation commonly used at funerals or at gravesides as a tribute to a decedent.

**Sec. 19.25.270. Relocation or removal of memorial.** (a) If, incidental to the construction or maintenance of a state highway, the department determines that a memorial authorized by AS 19.25.260 must be changed, relocated, or removed, the person who placed the memorial within the right-of-way shall change, relocate, or remove the memorial at no expense to the state within a reasonable time set by the department. If the owner does not change, relocate, or remove a memorial within the time set by the department, the memorial is an unauthorized encroachment and subject to the provisions of AS 19.25.230 - 19.25.250.

(b) If a memorial in the right-of-way of a state highway does not comply with the requirements of AS 19.25.260, the memorial is an unauthorized encroachment. The department may require removal of the encroachment in the manner provided in AS 19.25.230 - 19.25.250.

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB127  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
 Title An Act allowing certain roadside memorials to BRU Design and Engineering Services  
be placed in the right-of-way of a state highway Component Nnrther Region D&ES  
 Sponsor Whitaker  
 Requester HTRA Component No. 2299

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Dennis R. Poshard Phone 465-3900  
 Division Special Assistant to Commissioner Date/Time 3/6/03 8:59 AM  
 Approved by: Commissioner Mike Barton Date 3/6/2003  
 Agency Alaska Department of Transportation and Public Facilities

# Alaska State Legislature

Representative Jim Whitaker  
House of Representatives  
District 10



Session  
Capitol Building, Room 501  
Juneau, Alaska 99801  
Phone: (907) 465-3004  
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119 N. Cushman St. Suite 213  
Fairbanks, AK 99701  
Phone: (907) 452-1088  
Fax: (907) 452-1146

## Sponsor Statement

### HB 127 – Roadside Memorials

When a person dies on an Alaska road, family and friends often express their grief by placing items near where the tragedy occurred, in a kind of memorial to their loved one. Sometimes, even strangers are moved to add to the memorial when particularly touched by the loss.

These memorials serve two purposes. One, to allow the grieving to express their sorrow, and two, to remind those who travel, of the inherent dangers in driving Alaska's roads, particularly when excessive speed or alcohol contributed to the cause of the accident. Many Alaskans instinctively check their speed and take extra care in driving when passing one of these personal memorials.

Recently, the State of Alaska Department of Transportation informed the creators of such memorials that these encroachments to the right of way would no longer be tolerated. They warned that the department would remove them if they were not taken down by a date certain. This action is in response to a perceived threat to federal highway funding if the state allowed the memorials, as well as an interpretation of the state law that bans billboards.

The liberty to express our grief, the desire to memorialize a fallen officer, the wish to recognize a tragedy among our community, is a very personal freedom that must not be unnecessarily infringed by government.

HB 127 sets out to clarify that, while the State does not attempt to discourage the placing of such memorials, they will be reasonably regulated so as not to allow unsafe distractions and hazards in Alaska's right of ways.

Introduced by: Mayor Thompson  
& Council Member Kawasaki  
Date: March 10, 2003

**RESOLUTION NO. 4054**

**A RESOLUTION IN SUPPORT OF HOUSE BILL 127, WHICH WOULD ALLOW THE PLACEMENT OF ROADSIDE MEMORIALS FOR THE VICTIMS OF A TRAFFIC ACCIDENT TO BE PLACED WITHIN THE RIGHT-OF-WAY OF A STATE HIGHWAY.**

**WHEREAS**, certain staff of the Alaska Department of Transportation and Public Facilities have taken a position that will not allow the placement of personalized roadside memorials in memory of victims of traffic accidents.

**WHEREAS**, House Bill 127, as attached, will accommodate the interest of both the state and those wishing to place personalized roadside memorials; and

**WHEREAS**, the City Council believes that personalized memorials, safely placed in accord with House Bill 127, will not only honor the dead, but will also serve as a better way to alert motorists of the importance of driving responsibly; and

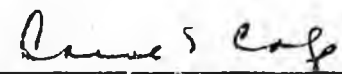
**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Fairbanks that the City Council supports passage of House Bill 127.

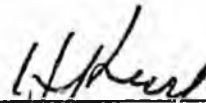
**Passed, Approved and Effective this 10th day of March, 2003**

  
Steve M. Thompson, City Mayor

ATTEST:

APPROVED AS TO FORM

  
Carol L. Colp, City Clerk

  
Herbert P. Kuss, City Attorney

Date:	# Of Pages	QUICK FAX™ OfficeMax	
To:	Carol Colp	From:	Herbert P. Kuss
Co./Dept.		Co./Dept.	City Clerk's Office
Fax:		Fax:	
Phone:		Phone:	
Note:		E-Mail:	

**MADD GOLDEN HEART CHAPTER  
FAIRBANKS, AKASKA**

**Resolution**

March 4, 2003

**RE: H. B. No. 127  
Roadside Memorials**

The Pending MADD Golden Heart Chapter of Fairbanks, Alaska, has voted in support of Rep. Jim Whitaker's House Bill Number 127, which allows for personal roadside memorials to be placed on or near the site of a traffic accident.

The following members have voted in support of the legislation:

Asa Dowdy, Jr.  
Barbara Dowdy  
Mary Ehrlander  
Sally Ekland  
Joe Joseph  
Heather Koponen  
Gabriele Larry  
Bill Larry  
Sandra McVeigh  
Linda Pearson  
Brenda Sadler  
Pat Thurman  
Michael Thurnes  
Sandi Trumbower  
Perry Williamson  
Sue Williamson  
Jennifer White

AB 127



West Virginia Department of Transportation Connecting West Virginia and the World

A World-Class Mountain  
Transportation System

ROADWAYS

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ROADWAYS RA

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ROAD CONDITIONS

SEARCH

Home: Roadways; DOH: Rules and Regulations

## WVDOT ROADWAYS

- [State Highway System](#)

Location and DOH operation of Interstates, US routes, WV routes and bridges

- [DOH Programs](#)

Programs and events sponsored by the DOH

- [The Division of Highways](#)

Contact information, archaeology, transportation planning and DOH regulations



- [Multimodal Connections](#)

Download PDF map showing the connections between buses, rail, roads, rivers and air.

You will need the free [Adobe Acrobat Reader](#) to open the PDF map.

## Rules and Regulations

### Roadside Memorials:

- ["We Respect Your Feelings,"](#) a primer for Roadside Memorials.
- [Legislative Rules 157CSR6-9 Roadside Memorials](#)
- [Application Form for Permanent Memorials](#)  
Help Us... Read the Guidelines

## "We Respect Your Feelings"

### A Primer for Roadside Memorials

#### In General . . .

Every year, over 300 persons lose their lives on West Virginia streets and highways. Frequently, loved ones and friends have chosen to commemorate these individuals and to honor their memories by placing some type of memorial object or display near the spot where they died.

The Division of Highways has tried to respect these memorial displays and has had an informal policy that the persons placing or renewing them may do so with as little interference as possible. The memorials have been left in place, unless safety or maintenance considerations dictated otherwise.

The West Virginia Legislature has taken notice of this custom, and passed House Bill 4063 on March 9, 2000. This Bill specifically authorizes the placement of memorial markers or other tributes within state highway rights of way to memorialize people who have died as a result of motor vehicle related accidents.

This information has been prepared by the Division of Highways to explain how you may go about placing these memorials, and to help promote the state use of the highway and the right of way while the markers are being placed or maintained.

### **Identifying your Tribute**

The Division of Highways will not ordinarily contact you regarding your highway memorial. However, in case this becomes necessary, we suggest that you place a small, durable tag or label with your name, address and daytime telephone number on the memorial.

### **If You Need to Contact Us . . .**

If it becomes necessary to remove some or your entire memorial, our employees will attempt to preserve the items removed and will attempt to preserve the items removed and will hold them at the local maintenance garage for you to claim them.

Other contacts should be directed to the District Office, which oversees the county in which the memorial is located.

### **Types of Memorials and Registering Your Memorial**

The Division of Highways has separated highway memorials into two classes. A **"temporary"** memorial is one that consists of flowers (cut and artificial), flags, or other lightweight ornaments and objects that do not exceed a surface dimension of four feet by four feet. Before placing temporary memorials, you must contact the nearest Division of Highways office for placement identification and for safety considerations.

In some instances, families or friends may wish to place and maintain more substantial or permanent tributes. Before placing a **"permanent"** memorial, you must obtain a formal permit from the appropriate Highways District Office.

### **Please Help Us!**

Highways employees perform a variety of activities on the roadway and within the right-of-way to properly maintain our highway system. Our highways also serve as corridors for utilities and are bordered by private property. Please be aware of our needs and of the rights, requirements and feelings of our neighbors when placing any decorations or other items.

**For instance:**

Don't place any items on, in front of or alongside private property or residences without express permission.

Don't attach anything to trees or to signal or utility poles.

Stay well away from ditches, culvert pipes, bridges and other highway features where the DOH needs access.

If a guardrail is present, please place your tribute behind it or you may attach "temporary" markers to a guardrail post with removable, lightweight, string, wire or tape.

If you have questions or concerns, please contact us before proceeding.

**PLEASE KEEP YOURSELF AND OTHERS SAFE!**

Our foremost concern is that you, our employees and the traveling public be safe while your memorial is being placed, is present or is being maintained.

You should park safely; completely clear of the travel lanes, even if it means walking some distance. It may be necessary to relocate your memorial to a nearby site to avoid endangering yourself or creating a hazard.

**Memorials may not be placed:**

In the median of any divided highway

On any bridge

Where they would block sight distance from any intersecting road or driveway

Where they interfere with or obscure any traffic control device

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Legislative Rules 157CSR6-9 Roadside Memorials, Effective May 4, 2001

2.22. "Roadside Memorial Marker" means any of the various kinds of tributes, typically ornamental, placed alongside the roadway to memorialize people who have died as a result of vehicular accidents. For the purpose of this rule, Temporary Memorial Markers include, but are not limited to the various types of decorations, flags, flowers (cut and artificial) and other lightweight objects or ornamentation commonly used at funerals or at gravesides as a tribute to the dead. Permanent Memorial Markers are items such as plaques, stone monuments and etc., which are typically self-supported, intended to last many years and require a more significant installation/mounting process.

### **§157-6-9. Roadside Memorials.**

9.1. Purpose. This section provides requirements for the placement of Roadside Memorial Markers within the rights-of-way of the State's highways by family members or friends for the sole purpose of memorializing persons who have died as a result of vehicle related accidents.

9.2. Temporary Memorial Markers. Temporary Memorial Markers may be placed near the location of a fatal vehicular accident within the following rules.

9.2.a. Before placing a Temporary Memorial Marker, the person(s) must contact the nearest Division of Highways office. The family member or friend will be asked questions concerning the intended placement and construction of the Temporary Memorial Marker so that appropriate guidance may be provided. Also, the Division employee will record the family member or friend's name, address and phone number for future contact, if required.

9.2.b. Temporary Memorial Markers must not exceed surface dimensions of four feet in length by four feet in width, and should be self-supporting. Any structural or support members of the memorial are limited to a diameter no greater than three inches if wooden or one-quarter inch if metal.

9.3. Permanent Memorial Markers. Permanent Memorial Markers are only allowed if a permit is obtained from the Division. Application for this permit may be made through the Division's District office with jurisdiction.

9.4. Physical placement of Roadside Memorial Markers. All Roadside Memorial Markers must:

9.4.a. be within the highway right-of-way, as far from the travel lanes as reasonably possible and not on private property nor in front of or alongside of private property or residences unless express permission is obtained from the property owner;

9.4.b. be clear of ditches, culvert pipes, bridges and other highway features that require access for maintenance;

9.4.c. be behind the guardrail, if one is present, except that Temporary Memorial Markers may be tied to a guardrail post with lightweight string, wire or tape and must be easily removable for maintenance purposes;

9.4.d. not be placed in the highway median, on any bridge, nor attached to trees, fences, signs, signals, utility poles, etc.

9.4.e. not be a hazard to the motoring public in any way including, but not limited to: restricting driver's sight; having any light reflecting materials or be illuminated by any means; or by interfering with or obscuring any traffic control device.

9.5. Safety. Persons placing roadside memorial markers are responsible for doing so by acting in a safe manner including parking completely clear of the travel lanes, even if it means walking some distance. The memorial may need to be placed nearby the accident location, rather than exactly at the accident location, in order to avoid endangering the persons placing or maintaining the memorial and to avoid endangering the motoring public.

9.6. Removal of Roadside Memorial Markers. Division of Highways personnel will normally not remove Roadside Memorial Markers that meet the requirements of these rules. However, the Commissioner has the authority to direct or cause the removal of any Roadside Memorial Marker, without notice, within a state highway right-of-way upon determining that removal is necessary for construction, maintenance, safety or other purpose.

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[State Highway System](#) | [DOH Programs](#) | [Division of Highways](#) | [Multimodal Connections](#)

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West Virginia Department of Transportation  
Division of Highways  
Building 5, Room A-110 • 1900 Kanawha Boulevard, East • Charleston, WV 25305-0430  
Phone: (304) 558-3505 • Fax: (304) 558-1004  
General information and/or questions, please email [info@dot.state.wv.us](mailto:info@dot.state.wv.us)



HB 127

## MEMORIALS ON THE RIGHT OF WAY NATIONWIDE SURVEY

STATE	Allow DWI	Allow Other	State Law	Time limit	Cost Burden	Sign or memorial	Unofficially allowed to stay in place?:
Alabama							
Alaska							
Arizona							
Arkansas							
California	NO	NO	NO	N/A	N/A	N/A	YES, for a few months
Colorado	YES	NO	NO	2 years	\$100 family	Sign	NO
Connecticut	NO	NO	NO	N/A	N/A	N/A	NO
Delaware							
Florida	YES	YES	NO	1 yr min	State	Sign	NO
Georgia							
Hawaii	YES	YES	NO	1 week	Family	Flowers	NO
Idaho	YES	YES	NO	NONE	Family	Sign	YES
Illinois							
Iowa							
Indiana							
Kansas	YES	YES	NO	NONE	Family	Memorial	YES <i>Warren Lick - Trans. Engineers</i>
Kentucky							
Louisiana	NO	NO	NO	N/A	N/A	N/A	NO
Maine							
Maryland	NO	NO	NO	N/A	N/A	N/A	YES, for a short period of time.
Massachusetts							
Michigan	NO	NO	NO	N/A	N/A	N/A	YES
Minnesota							
Mississippi	NO	NO	NO	N/A	N/A	N/A	YES
Missouri							
Montana	YES	YES	NO	NO	American legion	Cross only	YES

## MEMORIALS ON THE RIGHT OF WAY NATIONWIDE SURVEY

STATE	Allowed DWI	Allowed Other	State Law	Time limit	Cost Burden	Sign or memorial	Unofficially allowed to stay in place?:
Nebraska	NO	NO	NO	N/A	N/A	N/A	YES
Nevada	NO	NO	NO	N/A	N/A	N/A	YES
New Hampshire	YES	YES	NO	6-months	Family	Memorial	YES <i>603-271-3734 Commis</i>
New Jersey	YES	YES	NO	NONE	Family	Memorial	YES
New Mexico	YES	YES	NO	1 yr min	Family	Sign	YES
New York							
North Carolina							
North Dakota	NO	NO	NO	N/A	N/A	N/A	YES
Ohio							
Oklahoma							
Oregon	NO	NO	NO	N/A	N/A	N/A	YES. The last legislative session attempted to deal with the issue and quickly backed off the subject entirely due to the heated emotions.
Pennsylvania	NO	NO	NO	N/A	N/A	N/A	YES. They also allow the planting of flowers.
Rhode Island							
South Carolina							
South Dakota							
Tennessee							
Texas							
Utah							
Vermont	YES	NO	NO	NONE	Family	Sign	YES, for 1 month
Virginia	YES	YES	NO	NONE	Family	Memorial	YES
Washington	YES	YES	NO	6 months	Family	Sign	YES
West Virginia	YES	YES	YES	NONE	Family	Memorial	YES
Wisconsin							

## MEMORIALS ON THE RIGHT OF WAY NATIONWIDE SURVEY

<b>STATE</b>	<b>Allowed DWI</b>	<b>Allowed Other</b>	<b>State Law</b>	<b>Time limit</b>	<b>Cost Burden</b>	<b>Sign or memorial</b>	<b>Unofficially allowed to stay in place?:</b>
<b>Wyoming</b>	NO	NO	NO	N/A	N/A	N/A	YES



# Alaska State Legislature

MAR 31 2003

2 PAGES

Please enter into the record my testimony to the HSTA  
committee name

committee on HB 127, dated 3-27-03  
bill/subject

Roadside memorials are unsightly - After a day or two they are so much trash, rotting flowers, tattered decorations, and rotting teddy bears.

Roadside memorials are distracting for drivers and make highways more dangerous.

Roadways are public property consequently they are secular. Legally religious symbols are not permitted on public property.

HB 127 is in conflict with Federal regulations, right of ways

Bill is unnecessary as DOT already has provision for roadside memorials. They have provisions like many other states for a sign program in place of roadside memorials.

Signed:

Testifier

Jim Ede

(Over)!

Representing (Optional)

Alaskans United for Separation of

Address: Church & State

Box 870365 Wasilla

Phone No.

376-4631

Before HR 127 goes anywhere there should be an attorney General's opinion on the legality of bill, the implications of Bill in conflict with federal law & regulations, and the consequences of passing such a bill in light of federal regulations and law

# Alaska State Legislature

## Representative Jim Whitaker

**Session**  
Capitol Building, Room 501  
Juneau, Alaska 99801  
Phone: (907) 465-3004  
Fax: (907) 465-2070



**Interim**  
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Fairbanks, AK 99701  
Phone: (907) 452-1088  
Fax: (907) 452-1146

### Memorandum

**To:** Representative Bruce Weyhrauch,  
Chair, House State Affairs Committee

**From:** Representative Jim Whitaker

**Re:** Hearing Request for HB127

**Date:** March 6, 2003

---

HB 127, Roadside Memorials, has been referred to the House Committee on State Affairs. I respectfully request a hearing of this bill before the committee at your earliest possible convenience.