

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
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.
Massachussetts							
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

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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
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

STATE	Allowed DWI	Allowed Other	State Law	Time limit	Cost Burden	Sign or memorial	Unofficially allowed to stay in p!ace?:
Wyoming	NO	NO	NO	N/A	N/A	N/A	YES

PACKET CONTENTS:

- Resolutions in support
- Legislative research report
- Bill summary, with description of changes
- Nationwide survey
- Fiscal note
- Sponsor statement
- HB127 version LS0299\Q

Alaska State Legislature

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District 10



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Sponsor Statement

CS HB 127 (STA) – 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.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB127
(H) Publish Date: 3/7/03

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: Norther 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

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LEGISLATIVE RESEARCH REPORT

NOVEMBER 18, 2002



REPORT NUMBER 03.028

REGULATION OF PRIVATE ROADSIDE MEMORIALS

PREPARED FOR REPRESENTATIVE JIM WHITAKER

BY PATRICIA YOUNG, MANAGER

You asked for information about the regulation of roadside memorials. You were particularly interested in knowing if any state laws or regulations explicitly allow personal, private memorials along roadsides and the extent to which such memorials are regulated. You asked that we provide copies of pertinent regulations or statutes.

A roadside memorial is an object constructed, erected or placed along a roadside to commemorate or mark an event—usually the death of a loved one. While these markers often include crosses, they take a variety of forms and may or may not include plaques or inscriptions.

State laws and official highway policies generally prohibit unauthorized encroachment on a dedicated right-of-way and the placement of anything other than necessary signage and traffic indicators that conform to the recommendations of the Manual on Uniform Traffic Control Devices as adopted by the American Association of State Highway Officials. Despite such laws and policies, however, the spontaneous appearance of private roadside memorials is a phenomenon that occurs across the country. A number of states—including Alaska—have adopted formal programs for placing standardized markers on roadways where alcohol and drug related fatalities occur. A few of these programs—including Alaska's—also provide for markers for roadway fatalities not involving alcohol or drugs.

Even in states with such programs, however, many persons choose to place personal remembrances and adornments on the standard markers, or to create their own memorials, regardless of what the state offers. As one authority on the subject of private memorials points out,

... people erect roadside memorials regardless of official regulations. In such cases, most highway departments, recognizing the emotionally and spiritually

charged nature of the assemblages, choose to look the other way if at all possible.¹

We searched state statutes and administrative codes on Lexis; we also searched the Internet to identify states in which the regulation of private roadside memorials is at issue. Based on the results of our initial queries, we spoke with transportation officials in 13 states. Among those states, six (including Alaska) do not permit private memorials, but officials confirmed that unless the memorials pose immediate safety hazards or maintenance concerns, highway crews focus on more pressing duties. The other seven states we contacted allow private roadside memorials, either officially or unofficially, unless they pose a safety hazard or a significant maintenance problem, under the following conditions:

→ **Idaho** regulations adopted in 1992 provided that with a permit, individuals could erect memorials of a certain size and material, decorated with a gold star. According to highway officials, few people applied for the permits and most memorials continued to be of an individual character. The department policy was to move or remove them only if they presented some operational or safety issue. In 2001, lawmakers effectively rescinded the uniform design by passing a law providing that individuals may erect memorials along non-interstate roadways and directing the transportation department to promulgate rules regarding "size limitations and placement of memorials."²

→ **New Jersey** has an unofficial statewide policy allowing private memorials. According to transportation officials, persons do not need a permit, and their memorials are allowed to remain indefinitely. Administrative rules provide for persons to install private roadside memorials along the Atlantic City Expressway. The rules specify that the Expressway Authority must approve each project prior to its installation, that memorials will be removed after ten days, and that persons installing memorials without approval shall be subject to penalties (fines of \$150 for a first offense, \$300 for a second offense, and \$500 for any subsequent offense).³

→ **New Mexico** allows private memorials without statute, regulation, or written policy. According to the community relations director with the state's Department of Transportation, such memorials are part of the state's rich tri-cultural tradition and are "revered by everyone." When memorials must be removed for safety reasons, every effort is made to advise the person or persons who placed or erected them. In some notable instances, highway

¹ Holly Everett, Department of Folklore, Memorial University of Newfoundland, and author of *Roadside Crosses in Contemporary Memorial Culture* (Denton: University of North Texas Press, 2002), e-mail communication, November 12, 2002.

² Jeff Stratten, public affairs officer, Idaho Department of Transportation, (208) 334-8817. We include copies of IC 549-1316 and IDAPA 39.03.63 as Attachment A.

³ John Dourgarian, communications officer, New Jersey Department of Transportation, (609) 530-2124. We include NJAC 19:2-5.10 as Attachment B.

contractors have collected, catalogued, and stored memorials until they could be replaced following completion of projects.⁴

- ◆ **Texas** has no statutes, regulations, or official policy regarding private memorials, but they are allowed, and the state Department of Transportation has issued guidelines for their placement on the state highway system. According to highway officials, at one time the state attempted to restrict memorials to the signs sponsored by Mothers Against Drunk Driving to commemorate victims of drunk driving. When asked to expand the program to all highway fatalities, officials proposed a program whereby, for a \$100 fee, the department would install and maintain for 18 months a crash-worthy sign with the victim's name and date of death; after that period, the department would give the sign to the victim's family. The proposal engendered considerable debate, with strong factions on both sides of the controversy. Eventually, the state abandoned the proposed program. The guidelines are an attempt to coordinate the placement of private memorials and to ensure that they do not create a safety hazard. Even so, officials note that the department is consulted on fewer than half of the markers along the roads. As in other states, unless the markers clearly create a safety hazard—being constructed of metal embedded in concrete, for example—maintenance crews have the option of taking no action.⁵
- ◆ **Virginia** lawmakers recently passed a bill allowing in general terms for roadside memorials on state highways. The law calls for the state's transportation board to promulgate regulations regarding the size, distance from roadway, and other safety concerns. According to a spokesperson for the state's Department of Transportation, regulations are still in the planning stage, and the degree of personal expression in the design of the markers and whether individuals will be allowed to place them is unclear at this time.⁶
- ◆ **West Virginia** lawmakers in 2000 enacted legislation reflecting the state's informal policy of allowing private roadside memorials unless safety or maintenance considerations dictate otherwise. Among other provisions, the new law allows family members to place "decorations, flowers or other memorial ornaments or tributes" on the right-of-way near where the fatality occurred. Regulations implementing the law, which are published on the department's website, also allow family members to erect permanent memorial markers with a permit from the Department of Transportation.⁷

⁴ Kathie Lyendecker, community relations director, New Mexico State Highway and Transportation Department, (505) 827-5134. We include as Attachment C a departmental press release dated February 7, 2000.

⁵ Richard Kirby, maintenance operations director, Texas Department of Transportation, (512) 416-3034. We include as Attachment D a copy of the Texas guidelines for memorial markers within the right-of-way, as well as an informal survey the department conducted in 2000 on state's policies concerning such memorial markers.

⁶ Tamara Neale, media relations manager, Virginia Department of Transportation, (804) 786-6458. We include as Attachment E a copy of Virginia Code § 33.1-206.1.

⁷ Charles R. Lewis, engineer, West Virginia Department of Transportation, (304) 558-3063. We include as Attachment F copies of W. Va. Code § 17-20-1 and § 17-20-2, as well as the rules and regulations published on the departmental website at http://www.wvdot.com/3_roadways/3d1fa1_memorials.htm.

- ◆ **Wyoming** has an unofficial policy allowing individuals to place or erect roadside memorials. However, highway officials are in the process of developing guidelines and procedures to provide for the Department of Transportation to install non-religious signs or symbols to commemorate human fatalities along the state highway system. There will be no fees, and the markers will stand for five years. The policy—in its draft form—specifies that once the program is established, existing memorials will be allowed to stand for five years, but no new memorials will be allowed. Officials acknowledge that while some families may use the program, the more personal memorials will continue to appear, and “when the state removes them, more will return in their place.”⁸

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

⁸ Lieutenant Carl McDonald, safety and training officer, Wyoming Highway Patrol, (307) 777-4344. We include as Attachment G a copy of the Wyoming Department of Transportation's Draft Operating Policy on Roadside Memorials for Fatal Crashes, as well as a departmental press release dated July 3, 2002.

CS HB 127(STA) Bill Summary – With Committee Change Description

Section 1 Amends AS 19.25 to add new sections that

Sec. 19.25.260

- (a) permit a person to place a temporary memorial in the right of way but outside of the traveled way of a state highway.
- (b) States that a memorial must not interfere with highway use, safety, construction or maintenance.
- (c) States that the person who places the memorial
 - (1) must post their contact information on the memorial.
 - (2) must contact the department of the location of the memorial within 7 days of placement. (*added in State Affairs*)
 - (3) must provide contact information to the department.
- (d) States that a person may not place a political or commercial message on the memorial.
- (e) States that a person may not place reflective or distractive materials on a memorial.
- (f) States that the state is not liable for damage to a memorial. (*added in State Affairs*)
- (g) defines memorial

Sec. 19.25.270

- (a) Requires the person who placed the memorial to change, relocate, or remove the memorial if so directed by the department.
- (b) authorizes the department to require removal of nonconforming memorials.

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

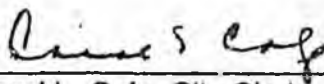
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fairbanks that the City Council supports passage of House Bill 127.

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

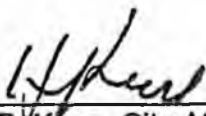

Steve M. Thompson, City Mayor

ATTEST:

APPROVED AS TO FORM



Carol L. Colp, City Clerk



Herbert P. Kuss, City Attorney

Date:	# Of Pages	QUICK FAX™ OfficialFax	
TO: <u>Herb Kuss</u>		From: <u>Steve M. Thompson</u>	
Co./Dept.		Co./Dept. <u>City Clerk's Office</u>	
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

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Michael Thurnes
Sandi Trumbower
Perry Williamson
Sue Williamson
Jennifer White