

EO

67-H

Date referred: 2/18/87

FURTHER REFERRALS:

DATE: 3/3/87

The Finance Committee has considered EO 67

Transferring responsibility for the alcohol breath and blood testing program from the Department of Health & Social Services to the Department of Public Safety.

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact
- zero fiscal note
- zero with analysis
- same as previous fiscal note(s) published 2/18/87 (HESS), (DOFPS)
- same as previous zero fiscal note published _____

SIGNING DO PASS:

ADAMS Lee Adams

POURCHOT Pat Pourchot

GOLL Kelly Goll

WALK-HARTMAN W. Walk-Hartman

BOYER Mark Boyer

LARSON Ronald J. Larson

RIEGER Alan A. Rieger

FRANK J. Frank

BROWN Tan Brown

DAVIS Mike Davis

SIGNING OTHER RECOMMENDATIONS:

Lee Adams
Chairman's signature

IN THE SENATE -- State Affairs, Judiciary
and Finance

IN THE HOUSE -- Health, Education and Social
Services, State Affairs and
Finance

EXECUTIVE ORDER NO. 67

1
2 Under the authority of art. III, sec. 23, of the Alaska Constitution,
3 and in accordance with AS 24.08.210, I order the following:

4 * Section 1. FINDINGS. As governor, I find that it would be in the
5 best interests of the state's efficient administration to transfer respon-
6 sibility for the alcohol breath and blood testing program from the Depart-
7 ment of Health and Social Services to the Department of Public Safety.
8 This will consolidate related functions, avoid confusion, save money, and
9 take advantage of the new crime laboratory administered by the Department
10 of Public Safety.

11 * Sec. 2. AS 28.35.033(d) is amended to read:

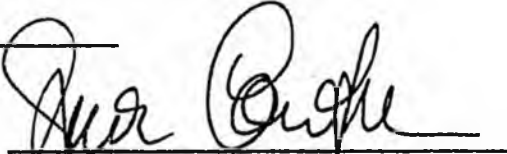
12 (d) To be considered valid under the provisions of this section,
13 the chemical analysis of the person's breath or blood shall have been
14 performed according to methods approved by the Department of Public
15 Safety [HEALTH AND SOCIAL SERVICES]. The Department of Public Safety
16 [HEALTH AND SOCIAL SERVICES] is authorized to approve satisfactory
17 techniques, methods, and standards of training necessary to ascertain
18 the qualifications of individuals to conduct the analysis. If it is
19 established at trial that a chemical analysis of breath or blood was
20 performed according to approved methods by a person trained according
21 to techniques, methods, and standards of training approved by the
22 Department of Public Safety [HEALTH AND SOCIAL SERVICES], there is a
23 presumption that the test results are valid and further foundation for
24 introduction of the evidence is unnecessary.

25 * Sec. 3. TRANSITION. Regulations adopted by the Department of Health
26 and Social Services under authority of AS 28.35.033(d) before the effective
27 date of this Order, remain in effect until regulations are adopted under
28 that subsection by the Department of Public Safety. The Department of
29 Public Safety shall administer those Department of Health and Social

1 Services regulations until it adopts its own.

2 * Sec. 4. This Order takes effect July 1, 1987.

3 DATED: ~~Jan. 14, 1987~~

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5 Steve Cowper, Governor

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STATE OF ALASKA 1987 LEGISLATIVE SESSION No. 3
FISCAL NOTE

REQUEST: Executive Order No. 67

-- Bill Version: EO 67
Publish Date: HOUSE 2/18/87

Revision Date: 2/9/87
Title: Alcohol Breath & Blood Testing

Agency Affected: Health & Social Services
BRU: State Health Services

Sponsor: GOVERNOR
Requestor: _____

Components: Lab Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		(51.0)				
TRAVEL		(2.4)				
CONTRACTUAL		(11.4)				
SUPPLIES		(4.0)				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		(68.8)	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		(68.8)				
FEDERAL FUNDS		-0-				
OTHER		-0-				
TOTAL		(68.8)				

POSITIONS:

FULL-TIME		(1)				
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

SEE ATTACHED PAGE

Prepared by: Elizabeth Ward, Director *E.W.* Phone: 465-3090
Division: Public Health Date: 2/5/87

Approved by Commissioner: *Michael R. Munson* Date: 2/9/87
Agency: Health and Social Services

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

With the transfer of the DWI regulatory authority to the Department of Public Safety it is assumed that there will be a transfer of the Chemist III and supporting funds from the Department of Health & Social Services. The original amount for the position was authorized in SB 611, CH 139 SLA 82 p. 12. This amount has been adjusted to reflect subsequent legislative appropriations, and is based on the FY 87 revised budget. \$51,000 is allocated for personal services. Other funds include \$11,400 for associated contractual costs and \$4,000 for supplies. The total transfer (\$66,400) will be from the General Fund.

The impact of this transfer on the Division of Public Health will be to eliminate the ability of the laboratory system to perform any public health toxicology activities. It will also entail the transfer of an employee from Juneau to Anchorage.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: Executive Order No. 67

Bill Version: EO 67
Publish Date: HOUSE 2/18/87

Revision Date: 2/9/87

Agency Affected: Public Safety

Title: Alcohol Breath & Blood Testing

BRU: DPS Administration

Sponsor: Governor

Components: Laboratory Services

Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		51.0				
TRAVEL		2.4				
CONTRACTUAL		11.4				
SUPPLIES		4.0				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		68.8				

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		68.8				
FEDERAL FUNDS		-0-				
OTHER		-0-				
TOTAL		68.8				

POSITIONS:

FULL-TIME		1				
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Funds to be transferred from the Department of Health and Social Services to the Department of Public Safety

Prepared by: Jos Manranath
Division: Administrative Services

Phone: 465-4336
Date: 2/9/87

Approved by Commissioner: [Signature]
Agency: Public Safety

Date: 2/9/87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: Executive Order No. 67

Bill Version: EO 67
Publish Date: HOUSE 2/18/87

Revision Date: 2/9/87

Title: Alcohol Breath & Blood Testin

Agency Affected: Public Safety
BRU: DPS Administration

Sponsor: Governor

Requestor: _____

Components: Laboratory Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		51.0				
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CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		68.8				
FEDERAL FUNDS		-0-				
OTHER		-0-				
TOTAL		68.8				

POSITIONS:

FULL-TIME		1				
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Funds to be transferred from the Department of Health and Social Services to the Department of Public Safety

Prepared by: Jos Manranath
Division: Administrative Services

Phone: 465-4336
Date: 2/9/87

Approved by Commissioner: [Signature]
Agency: Public Safety

Date: 2/9/87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 19, 1987

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 23, of the Alaska Constitution, I am transmitting an executive order that will transfer administrative and regulatory authority for the state's alcohol breath and blood testing program from the Department of Health and Social Services to the Department of Public Safety. This transfer is necessary to improve the administration of Alaska's alcohol breath and blood testing program and to ensure that the program is conducted in the most efficient and legally defensible manner.

Under AS 29.35.033(d), amended in sec. 2 of this order, the Department of Health and Social Services (DHSS) currently possesses regulatory authority for the state's breath test program. Much of the responsibility for the actual administration and day-to-day functioning of the program rests with the Department of Public Safety (DPS), however. DPS purchases and distributes the breath test instruments, repairs the instruments, purchases and distributes necessary supplies, and conducts the training of breath test operators and supervisor-instructors. The present division of functions between the two departments has led to difficulties in the administration of the present program. Since there is no one office or agency with clear administrative authority over the breath test program, some uncertainty about areas of responsibility and lines of authority has developed. Occasionally some necessary duties have "fallen between the cracks." As a direct result of this lack of a centralized oversight authority, state prosecutors have sometimes had to dismiss DWI prosecutions, and have had to defend scores of DWI cases on appeal.

Alaska has had criminal laws prohibiting drunken driving since territorial days. See ch. 49, SLA 1947. In ch. 83, SLA 1969,

Alaska adopted an "implied consent" statute, AS 28.35.031, requiring a person suspected of drunken driving to submit to a breath test to determine blood alcohol content. AS 28.35.033(d), also enacted in ch. 83, SLA 1969, made the Department of Health and Social Services (at that time called the Department of Health and Welfare) responsible for approving "satisfactory techniques, methods, and standards of training" for analysis of the alcohol content of a DWI arrestee's breath or blood sample. At the time that this responsibility was given to DHSS there was no other state agency that had either the facilities or the technical expertise to perform this function.

In 1978 a state forensic crime laboratory was established in the Department of Public Safety to provide essential scientific support services to local law enforcement officers and state troopers throughout the state. Since that time the state crime laboratory has performed a steadily increasing array of scientific functions and analyses. The laboratory now employs 14 persons full-time, including four forensic chemists who routinely analyze blood samples and suspected controlled substances and have testified in countless misdemeanor and felony trials. In recent years, laboratory personnel have begun conducting analyses of diverse crime scene evidence, including physical evidence in arson cases, urine testing, footprint comparisons, and some limited fiber, trace, and serological analyses.

In 1983 and 1984, the Legislature appropriated five and one-half million dollars to the Department of Public Safety to build and equip a sophisticated new crime laboratory facility in Anchorage. The new laboratory, which opened in January of 1986, contains some of the most modern and sophisticated scientific equipment available anywhere in the country. The new laboratory provides expanded testing capabilities in the areas of forensic chemistry, serology, toxicology, firearms identification, and trace evidence identification.

At this point in the state's history, it makes administrative and public policy sense to transfer the responsibility for administration of Alaska's alcohol breath and blood testing program to DPS's new "state-of-the-art" laboratory. Transfer of this function to the DPS laboratory would be consistent with the national trend in DWI law enforcement and alcohol breath testing. Currently, over half of the states in the country have placed full administrative responsibility for their alcohol breath test programs with their departments of public safety. Several of these states, such as Texas, Minnesota, New York, New Jersey, and Michigan, have sophisticated programs that serve as models for

other states. Only about one-fourth of the states continue to place administrative oversight authority for the state's breath test program in their departments of public health. Although alcohol blood tests are administered only in limited circumstances under AS 28.35.033(a) and 28.35.025, responsibility for those tests should also rest with DPS. Alaska's vast size and unique geographic characteristics present tremendous practical problems in the administration of the state's alcohol breath test program. The state owns approximately 70 Intoximeter 3000 breath test instruments located in 45 different communities in the state. These instruments require routine maintenance, and the calibration of the instrument must be verified every 60 days. There are approximately 1,000 certified breath test operators, 30 supervisor-instructors, and six instrument technicians in the state. All breath test operators and supervisor-instructors are police officers, either state troopers or members of local police departments.

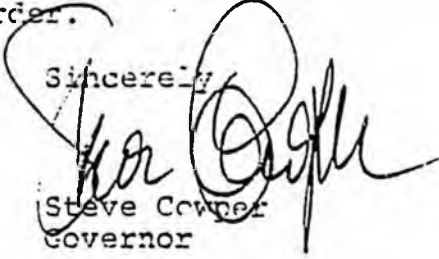
Since the effective enforcement of the DWI laws is such an integral part of the law enforcement duties of these agencies, the DPS laboratory should assume responsibility for a unified system, rather than one administered piecemeal without clear lines of authority or defined duties. This change would eliminate unnecessary confusion, expense, and duplication of effort, and reduce the potential for legal challenges to the system.

Section 3 of the Order provides that existing regulations regarding the administration of the program will remain in effect until new regulations are adopted by the Department of Public Safety. Section 4 establishes an effective date of July 1, 1987. This date has been chosen because it will be necessary to transfer some resources from the Department of Health and Social Services to the Department of Public Safety when the Order takes effect. July 1st is the beginning of the new fiscal year, and a convenient point at which to transfer positions.

Although not dealt with in this Order, the section heading of AS 29.35.033 should be modified so that it also refers to chemical analysis of breath. The existing title refers only to chemical analysis of blood, and therefore does not accurately reflect that both types of analyses are currently dealt with in that section. This change should be made by the revisor of statutes under AS 01.05.031(b)(2).

Drunken drivers maim and kill numerous innocent people every year, and cause significant property damage and economic loss. The just and efficient administration of our alcohol breath and blood testing program is a primary concern for all of us. Transfer of the administrative authority for the state's breath and blood testing program from the Department of Health and Social Services to the Department of ~~of~~ Safety will improve our ability to effectively enforce our laws against drunk driving. I urge your support of this Order.

Sincerely,



Steve Cowper
Governor

BILL NO: EO 67

DATE: 2/13/87

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TITLE: Alcohol Breath Test Program CONTACT: George Taft
Laboratory Services

DEPARTMENT OF
PUBLIC SAFETY

The Department of Public Safety supports passage of the bill transferring responsibility for the Alcohol Breath Testing Program from the Department of Health and Social Services to the Department of Public Safety.

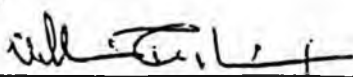
Several problems related to the administration of the program have existed since its inception in 1964. Their difficulties can largely be traced to the multi-agency management of the program. The Department of Public Safety presently provides the instruments and training to both Troopers and local Police Departments. The Department of Health and Social Services provides program administration, instrument certification and officer certification. However, as with the training, most instruments are certified by police officers trained as technicians.

When problems occur, the agencies charged with operation are not always advised. This is also true of the Department of Law. If everyone was current, possibly appeals and adverse decisions by the Court could be avoided through a change in procedures, training or expert forensic testimony.

The Attorney General and Commissioners of Health and Social Services and Public Safety have agreed in the past this program could best be administered by Public Safety. The Department of Public Safety proposes to administer the program from the Scientific Crime Detection Laboratory in Anchorage. The Laboratory Supervisor and his staff can augment the expertise that would be provided by the transfer of a Chemist III from the Juneau H. & S.S. lab.

Most importantly, through the transfer there will be a one window concept for maintenance, training, certification and procedures that comply with the court's requirements for introduction of intoximeter results into evidence. The Department of Public Safety and the Department of Law have an excellent line of communications which will keep both agencies and users current in regard to operational changes or training needs.

The relationship between local police and Troopers will insure that instruments which are not currently certified will not be used and that training will be delivered as needed. This program will be a priority of the Department of Public Safety.



WILLIAM R. NIX
Acting Commissioner

IN THE SENATE -- State Affairs, Judiciary
and Finance

IN THE HOUSE -- Health, Education and Social
Services, State Affairs and
Finance

EXECUTIVE ORDER NO. 67

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Services regulations until it adopts its own.

* Sec. 4. This Order takes effect July 1, 1987.

DATED: Jan. 14, 1987



Steve Cowper, Governor