

HB

305

HOUSE COMMITTEE REPORT

(11)

Date referred: 3/23/88

FURTHER REFERRALS:

DATE: 4-25-88

The Finance Committee has considered HB 305

"An Act relating to transportation of pupils; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 305 (Finance) 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 same as previous fiscal note published 3/4/88
- zero fiscal note same as previous zero fiscal note published 3/4/88 #3,4
- zero with analysis

SIGNING DO PASS:

 Birchot [Signature]
 Larson [Signature]
 Goll [Signature]
 Swack [Signature]
 Boyer [Signature]

SIGNING OTHER RECOMMENDATIONS:

 Riener [Signature]
 Fru. K [Signature]
 Wallis [Signature]
 Brown [Signature]
 Davis [Signature]

[Signature] - vice-chair
 Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 305 (FIN)

PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act relating to
transportation of pupils..."
Sponsor: House Labor & Commerce
Requestor: House HESS

Agency Affected: Labor
BRU: Labor Standards & Safety
Components: Wage & Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director *Tom Stuart* Phone: 264-2452
Division: Labor Standards & Safety Date: 3/18/88

Approved by Commissioner: Jim Sampson *Jim Sampson* Date: 3/18/88
Agency: Department of Labor

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

MAR 23 1988

LEGISLATIVE FINANCE

HB 305

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: An Act relating to transportation BRU: Motor Vehicles
of pupils.
 Sponsor: House L&C Components: _____
 Requestor: House L&C

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact on this department.

Prepared by: Bill Brown Phone: 465-4335
 Division: Motor Vehicles Date: 2-2-88
 Approved by Commissioner: [Signature] Date: 2-3-88
 Agency: Public Safety

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

FEB 4 1988

JMR
2/2/88

505

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: ...transportation of pupils...

Agency Affected: Education
BRU: K-12

Sponsor: House Labor and Commerce
Requestor: House Labor and Commerce

Components: Pupil transportation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

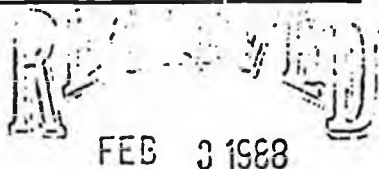
ANALYSIS : (Attach a separate page if necessary)

This is not a zero fiscal note. The potential cost of sections 2, 3, and 4 of the bill are indeterminate.

Prepared by: Steve Hole Phone: 465-2800
Division: Commissioner's Office Date: 2-2-88

Approved by Commissioner: William G. Demmert Date: 2-2-88
Agency: Education

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



Original sponsor: Labor and Commerce
Committee

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 305 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to wages and licensing of school bus
7 drivers; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section. 1. AS 23.10.055(5) is amended to read:

10 (5) an individual employed by the United States or by the
11 state or political subdivision of the state, except as provided in
12 AS 23.10.065(b), including prisoners not on furlough detained or
13 confined in prison facilities;

14 * Sec. 2. AS 23.10.065 is amended to read:

15 Sec. 23.10.065. MINIMUM WAGES. Except as provided under (b) of
16 this section, an [AN] employer shall pay to each employee wages at a
17 rate of not less than 50 cents an hour greater than the prevailing
18 Federal Minimum Wage Law or \$2.60 an hour, whichever is greater, for
19 hours worked in a pay period, whether the work is measured by time,
20 piece, commission or otherwise. An employer may not apply tips or
21 gratuities bestowed upon employees as a credit toward payment of the
22 minimum hourly wage required by this section. Tip credit as defined
23 by the Fair Labor Standards Act of 1938 as amended does not apply to
24 the minimum wage established by this section.

25 * Sec. 3. AS 23.10.065 is amended by adding new subsections to read:

26 (b) Subject to the limitation under (c) of this section, an
27 employer shall pay to each person employed as a school bus driver
28 wages at a rate of not less than two times the minimum wage estab-
29 lished under (a) of this section, for hours worked in a pay period,

1 whether work is measured by time, commission, or otherwise. An em-
2 ployer may not apply fringe benefits as a credit toward payment of the
3 minimum wage established under this subsection.

4 (c) Notwithstanding (b) of this section, an employer who con-
5 tracts with the Department of Education or a school district to pro-
6 vide school bus transportation services is not required to adjust
7 school bus driver wages under (b) of this section, except when enter-
8 ing into or renewing the contract.

9 * Sec. 4. AS 28.15.046(b) is amended to read:

10 (b) The department may not issue a license under this section
11 unless the applicant

12 (1) is at least 21 [19] years of age;

13 (2) has had a license to operate a motor vehicle at least
14 three years [ONE YEAR] before the date of application;

15 (3) has successfully completed all required driving, writ-
16 ten, and physical examinations;

17 (4) has submitted information sufficient to complete a
18 background check consisting of a fingerprint check of national crimi-
19 nal records and state criminal records of the state or states in which
20 the applicant has resided for the past two years;

21 (5) has completed a state approved school bus driver train-
22 ing course established under AS 14.07.020(a)(14) or has for the previ-
23 ous two years been licensed by the state to operate a school bus.

24 * Sec. 5. This Act takes effect September 1, 1988.

5-0777L
Ford
4/11/88

[] deleted
Language

Original sponsor: Labor and Commerce
Committee

Deleted [LEGISLATIVE FINDINGS]

1 IN THE HOUSE Pg. 1 Lines 9-16 BY THE FINANCE COMMITTEE

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 17 ten, and physical examinations;

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 19 background check consisting of a fingerprint check of national crimi-
 20 nal records and state criminal records of the state or states in which
 21 the applicant has resided for the past two years;

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 23 ing course established under AS 14.07.020(a)(14) or has for the previ-
 24 ous two years been licensed by the state to operate a school bus.

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5-0777L

Ford
4/11/88

[] Deletas
Language

Original sponsor: Labor and Commerce
Committee

Deletas [LEGISLATIVE FINDINGS]

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25 * Sec. 5. This Act takes effect September 1, 1988.

STEVE COWPER, GOVERNOR

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

GOLDBELT PLACE
801 WEST 10th STREET
POUCH F
JUNEAU, ALASKA 99811

April 21, 1988

The Honorable Mark Boyer
Alaska State Legislature
P. O. Box V
Mail Stop 3100
Juneau, Alaska 99811

Dear Representative Boyer:

The Department of Education is supportive of the proposed amendments to HB 305 recommended by the House Finance subcommittee.

Eliminating the one-year Alaska driver's license requirement will give greater flexibility to the bus contractors and school district bus supervisors in obtaining qualified drivers.

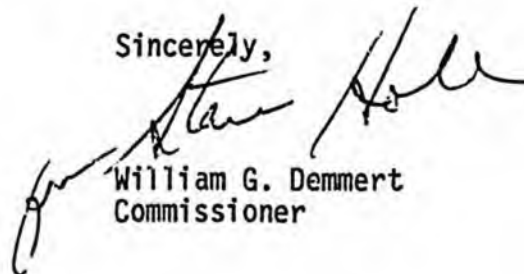
Requiring a driver to have been licensed for three (3) years improves the likelihood of a driver learning from a wide variety of driving experiences.

Increasing the minimum age to 21 years has several advantages:

1. Drivers are likely to have additional driving experience.
2. Statistics indicate that the more mature a driver is, the more safety conscious that driver is likely to be.
3. More mature drivers are likely to command more respect from the students and thereby provide better control.

Thank you for the opportunity to comment on these proposed changes. If I can provide additional information, do not hesitate to contact me at your convenience.

Sincerely,



William G. Demmert
Commissioner

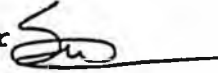
Alaska
MUNICIPAL
League

TELEPHONE
(907) 586-1325

217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

MEMORANDUM

TO: Al Adams, Chair
Members of the House Finance Committee

FROM: Scott A. Burgess, Executive Director 

DATE: April 11, 1988

SUBJECT: HB 305 - Transportation of pupils

The Alaska Municipal League opposes HB 305 mandating a minimum wage for school bus drivers.

While the AML supports the concern expressed in the legislation for the safety of children, the Alaska Constitution, Article 10, Section 1, provides for maximum local government. HB 305 infringes upon this power by impairing the obligation of contracting for local services. Provision of services for pupil transportation is a matter of a contractual relationship between a school district and the pupil transportation contractor. The matter of wages should be left to the contractor, who is solely responsible for the hiring of such employees at a certain wage level. The mandatory imposition of any wage level is objectionable.

Again, the AML is opposed to HB 305.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



February 3, 1988

To: Representative Bette Cato, Chair
Members, House Transportation Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: HB 305 - School Bus Drivers

HB 305, relating to wages and required experience for school bus drivers, was introduced by the House Labor and Commerce Committee and is before the House Transportation today.

I've included a brief sectional analysis of HB 305 to aid in your deliberations today. HB 305 makes three substantial amendments to existing statute: 1) raises the age to obtain a school bus drivers license from 19 to 21, 2) raises the one year requirement for having an Alaska drivers license to two years and, 3) establishes a minimum wage for drivers at no less than two and one half times the federal minimum wage law (\$3.35/hour - \$3.85/hour in Alaska).

The House Labor and Commerce Committee introduced HB 305 in response to concerns about the continuing reduction in wages for school bus drivers and the potential effect on the quality and availability of qualified drivers. Most school bus drivers are employees of contractors who bid for pupil transportation services. Less than twenty percent of school bus drivers in Alaska are paid directly by a school district. Since most pupil transportation costs are fixed (i.e. gas, oil, tires, insurance, heat, lights, license fees, routine maintenance, and the buses themselves), reducing wages paid to drivers may be the only way for a contractor to place the winning bid. The House Labor and Commerce Committee felt that the compensation levels of school bus drivers must not be allowed to deteriorate because wages currently paid are at an absolute minimum to expect qualified and proficient applicants.

Last year, the Committee received the results of a brief telephone survey of wages paid to school bus drivers:

CITY	CONTRACTOR	ENTRY WAGE	TOP WAGE
KENAI	LIDLAW	\$8.10/HR	\$11.45/HR
MATSU/BOROUGH	TUNDRA TOURS	\$8.22/HR	\$10.40/HR
KODIAK	F.M.S.	\$9.50/HR	\$10.00/HR
FAIRBANKS	F.M.S.	\$8.50/HR	\$10.00/HR
ANCHORAGE	F.M.S.	\$7.50/HR	\$ 9.00/HR
ANCHORAGE	LIDLAW	\$8.22/HR	\$ 9.75/HR

Before deciding to introduce HB 305, our Committee heard arguments that there is no correlation between wages paid to school bus drivers and a good safety record. However, the Anchorage School district has suffered three student fatalities in the last four years, in three separate school bus accidents. In each case, the contractor was T.M.S. (Transportation & Marketing Systems).

The operation of a school bus is viewed by many as nothing more difficult than driving the family car. From a mechanical standpoint this may be true. However, from a safety standpoint it is not. A much greater level of proficiency must be required of our school bus drivers than we require from drivers who do not carry passengers, let alone a bus full of children.

In recognition of the greater degree of experience and proficiency required, the legislature recently adopted measures to substantially increase the required experience and training levels for school bus drivers. While this legislation imposed considerable costs on potential drivers, it did nothing to protect their wages and therefore helped to make bus driving a substantially less attractive job. The resulting increase in the turnover rate among drivers means wasted training dollars, potentially unsafe pressure on current employees, and an overall lower level of proficiency.

In order to correct errors in the current version of HB 305, I prepared two amendments for your consideration. The first would correct the effective date so that it reads September 1, 1988 instead of September 1, 1987. The second amendment corrects a drafting oversight so that the minimum wage requirements established under HB 305 apply to all school bus drivers, whether they are paid by a school district or through an independent contractor.

The House Labor and Commerce Committee believes that HB 305 reasonably and fairly addresses an important public safety issue. We support measures to increase the proficiency and experience level for school bus drivers and feel strongly that the best way to accomplish that goal and still maintain a pool of qualified, experienced drivers, is to guarantee that they receive no less than a livable wage.

STEVE COWPER, GOVERNOR

DEPARTMENT OF LABOR

BOX 1149
JUNEAU, ALASKA 99802
PHONE:
(907) 465-4856

April 21, 1987

The Honorable Dave Donley
State Capital
P.O. Box V
Juneau, AK 99811

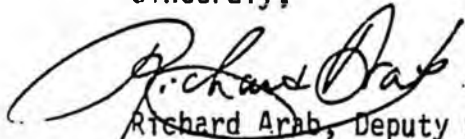
Dear Representative Donley:

I refer to your request of April 14, 1987 concerning statistics or a study which may indicate the relationship between wages paid to a school bus driver and his or her safety record.

The department does not have any information on this subject. I, therefore, called the Department of Education and the Alaska Highway Safety Council but neither of these agencies had any information on the subject. They referred me to the National School Transportation Association, in Springville, Virginia, and to the National Safety Council in Chicago, Illinois. I contacted both these organizations and they also were not aware of any studies in this area.

I am sorry I was not of more help but evidently there are no studies either on a state or national level on this subject.

Sincerely,



Richard Arab, Deputy Director
Division of Labor Standards
and Safety

GORDON Epperly : JUNEAU

1. School bus drivers are required to complete first aid and CPR classes, which takes about four hours of personal time and costs \$20 for their certification cards.
2. School bus drivers are required to have physicals, costing \$50 - \$100, on their own time.
3. New drivers are required to attend a two week training program, at their own expense, and complete a "ground check". Certification is \$10.
4. Returning drivers are required to attend eight hours of continued training per year. Own expense.

School bus drivers have been for years trying to become affiliated with a labor union, but because they are hired by a contractor, affiliation attempts have failed.

Other bus and truck drivers are paid Davis Bacon wages.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V. STATE CAPITOL
JUNEAU ALASKA 99811
707 465 3800

MEMORANDUM

March 2, 1988

SUBJECT: Durational Residency Requirement
 CSHB 305 (Transportation)

TO: Representative Bette Cato, Chair
 House Transportation Committee

FROM: Michael F. Ford MFF:ms
 Legislative Counsel

This is to bring to your attention a constitutional problem in sec. 5 of CSHB 305 (Transportation) concerning requiring school bus drivers to have an Alaska driver's license for one year. In our opinion such a requirement would be held unconstitutional as it would violate the state equal protection clause.

In Williams v. Zobel, 619 P.2d 422 (AK 1980), the Alaska Supreme Court discussed the test to be used to determine if a durational residency requirement is constitutional. Essentially the court balances the denial of the benefit or right against the government objective involved. The state must show that the residency requirement has a fair and substantial relationship to a legitimate government objective. See also State v. Erickson, 574 P.2d 1, 11-12 (AK 1978). Requiring an Alaska drivers' license for one year prior to being eligible for employment as a school bus driver does not seem to be a legitimate government objective. The argument that familiarity with Alaska driving conditions, or a general safety aspect, fails when you consider that driving conditions vary greatly across Alaska. For example, a person living in Ketchikan is probably no better prepared to drive a school bus in Fairbanks, than a person living in Montana or California.

In short, this type of residency requirement would probably not survive constitutional challenge.

MFF:gc
WKG1:064

Alaska Statutes

Title 14. Education.

Chapter

- 03. Public Schools Generally (§§ 14.03.010 — 14.03.140)
- 07. Administration of Public Schools (§§ 14.07.010 — 14.07.170)
- 08. Education in the Unorganized Borough (§§ 14.08.011 — 14.08.151)
- 09. Transportation of Pupils (§§ 14.09.010 — 14.09.020)
- 11. Construction, Rehabilitation, and Improvement of Schools and Education-Related Facilities (§§ 14.11.010 — 14.11.135)
- 12. Organization and Government of School System (§§ 14.12.010 — 14.12.180)
- 14. Local Administration of Schools (§§ 14.14.020 — 14.14.310)
- 17. Public School Foundation Program (§§ 14.17.010 — 14.17.250)
- 18. Prohibition Against Discrimination Based on Sex in Public Education (§§ 14.18.010 — 14.18.110)
- 20. Teachers and School Officials (§§ 14.20.010 — 14.20.650)
- 25. Teachers' Retirement (§§ 14.25.010 — 14.25.220)
- 30. Pupils and Educational Programs for Pupils (§§ 14.30.010 — 14.30.660)
- 33. School Safety Patrols (§§ 14.33.010 — 14.33.060)
- 35. Vocational Education (§§ 14.35.010 — 14.35.030)
- 36. Community Schools (§§ 14.36.010 — 14.36.070)
- 40. The University of Alaska and the Community Colleges (§§ 14.40.010 — 14.40.640)
- 42. Postsecondary Education (§§ 14.42.010 — 14.42.390)
- 43. Scholarship, Loan, and Grant Programs for Postsecondary Students (§§ 14.43.010 — 14.43.910)
- 44. Interstate Education Compacts (§§ 14.44.010 — 14.44.060)
- 45. Private and Denominational Schools (§§ 14.45.010 — 14.45.200)
- 48. Regulation of Postsecondary Educational Institutions (§§ 14.48.010 — 14.48.210)
- 50. Federal Aid for Education (§§ 14.50.010 — 14.50.080)
- 56. State Library and Historical Library and State Library Programs (§§ 14.56.010 — 14.56.350)
- 57. The State Museum (§§ 14.57.010 — 14.57.080)
- 60. General Provisions (§ 14.60.010)

Sec. 14.08.170. [Repealed, § 1 ch 124 SLA 1975.]

Chapter 09. Transportation of Pupils.

Section

10. Transportation of pupils

Section

20. Transportation for nonpublic school students

Collateral references. — 68 Am. Jur. 2d Schools, §§ 234-241.

79 C.J.S. Schools and School Districts, §§ 475-482.

One transporting children to or from school as independent contractor. 66 ALR 724.

Risks and causes of loss within liability policy covering transportation of school children. 154 ALR 1102.

Tort liability of public schools and institutions of higher learning for accidents associated with transportation of students. 34 ALR3d 1210.

Relief against school board's "bussing plan" to promote desegregation. 50 ALR3d 1089.

Tort liability for misclassification or wrongful placement of student in special education program. 33 ALR4th 1166.

Personal liability of executive or administrative officer unit for personal injury or death of student. 35 ALR4th 272.

Liability of school employee, other than teacher or administrator, for personal injury or death of student. 35 ALR4th 328.

Sec. 14.09.010. Transportation of pupils. (a) The department may provide for the transportation of pupils who reside a distance from established schools, and in order to accomplish that purpose may

(1) require school districts to enter into contracts with the department for the administration, supervision, operation or subcontracting of the operation of transportation systems for students to and from the schools within their service area;

(2) require all school districts, transportation contractors and other recipients of state transportation funds to submit to the department an annual report, which includes a financial statement and other operational data required by the department;

(3) permit school districts to

(A) establish supplementary systems of student transportation for students ineligible to utilize transportation facilities paid for by the state;

(B) charge fares or fees for the supplementary transportation systems; and

(C) use local tax funds to pay, in whole or in part, the cost of the supplementary system.

(b) Each school district mentioned in (a)(1) of this section is entitled to receive reimbursement from the state for the operation of the transportation system on a unit cost basis determined by the department.

(c) The school board of a district, or the department for areas not within school districts, shall designate as hazardous those routes

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which cannot be safely traveled by children not served by school bus. The designation may recognize hazards that exist only part of the time and in these instances the designation shall be applicable only during the time the hazards are found to exist. The board or the department shall provide for the transportation of pupils on routes designated as hazardous. The additional cost of the transportation in a district shall be shared equally by the district and the department. Eligibility to receive school bus service on routes designated as hazardous shall not be subject to restrictions based on the minimum distance between established schools and the residences of pupils. (§ 1 ch 39 SLA 1966; § 1 ch 98 SLA 1966)

Revisor's notes. — Subsection (c) was enacted as AS 14.10.070(c). Renumbered in 1966.

Opinions of attorney general. — Until the Alaska Supreme Court issues a decision overruling *Matthews v. Quinton*,

Sup. Ct. Op. No. 31 (File No. 48), 362 P.2d 932 (1961), or modifying it in a significant manner, the law in the state is that public funds may not be used to provide transportation to private school children. 1978 Op. Att'y Gen. No. 23.

NOTES TO DECISIONS

Prior law. — For cases construing former similar provisions, see *Tapscott v. Page*, 17 Alaska 507 (1958); *Matthews v. Quinton*, Sup. Ct. Op. No. 31 (File No. 48), 362 P.2d 932 (1961), cert. denied, 368 U.S. 517, 82 S. Ct. 530, 7 L. Ed. 2d 522 (1962).

Borough was not acting as an agent of the state in furnishing transportation of pupils. *Kenai Peninsula Borough v. State*, Sup. Ct. Op. No. 1124 (File No. 2092), 532 P.2d 1019 (1975).

While the state did supervise the school transportation service insofar as it related to the funding provided by it and also had certain regulations in effect pertaining to the over-all safety of the transportation system, the actual control of the transportation services was undertaken by the borough which, on its own behalf, entered into the contract with a school bus owner to furnish transportation service for specified routes. *Kenai Peninsula Borough v. State*, Sup. Ct. Op. No. 1124 (File No. 2092), 532 P.2d 1019 (1975).

Department of Education discretion in awarding school busing contracts. — Although neither the Department of Education nor regional school boards were explicitly given the discretion to decide when a busing contract was to be awarded by bid or by negotiation under former AS 37.05.230(4), the authority granted to the Department of Education under this section compelled the conclusion that the department additionally had been granted the discretion to choose between bid and negotiation in awarding busing contracts. *State v. Northern Bus Co.*, Sup. Ct. Op. No. 2899 (File No. 7079), 693 P.2d 319 (1984).

Applied in *Girves v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1168 (File No. 2016), 536 P.2d 1221 (1975).

Cited in *Jennings v. State*, Sup. Ct. Op. No. 1467 (File No. 2658), 566 P.2d 1304 (1977).

Collateral references. — Transportation of school pupils at expense of public. 63 ALR 413; 118 ALR 806; 146 ALR 625. Nature and extent of transportation

that must be furnished under statute requiring free transportation of school pupils. 52 ALR3d 1036.

Alaska Statutes

Title 23. Labor and Workers' Compensation.

Chapter

- 05. Department of Labor (§§ 23.05.010 — 23.05.340)
- 10. Employment Practices and Working Conditions (§§ 23.10.015 — 23.10.415)
- 15. Employment Services (§§ 23.15.010 — 23.15.650)
- 20. Alaska Employment Security Act (§§ 23.20.005 — 23.20.535)
- 25. Employer's Liability for Negligence (§§ 23.25.010 — 23.25.040)
- 30. Alaska Workers' Compensation Act (§§ 23.30.005 — 23.30.270)
- 35. Commercial Fishermen's Fund (§§ 23.35.010 — 23.35.150)
- 40. Labor Organizations (§§ 23.40.020 — 23.40.260)
- 45. General Provisions (§ 23.45.010)

Revisor's notes. — The provisions of this title were redrafted in 1984 to remove personal pronouns pursuant to § 4, ch. 58, SLA 1982, and to make other minor word changes.

Cross references. — For rights of correctional industries workers, see AS 33.32.

Chapter 05. Department of Labor.

Article

- 1. Administration (§§ 23.05.010 — 23.05.130)
- 2. Wage Claims (§§ 23.05.140 — 23.05.260)
- 3. General Provisions (§§ 23.05.270 — 23.05.280)
- 4. Reciprocal Agreements (§§ 23.05.320 — 23.05.340)

Article 1. Administration.

Section

- 10. Purpose
- 20. Records of department
- 30. Funds
- 40. Bond of commissioner
- 50. Power to issue subpoenas and take testimony
- 60. Powers of the department

Section

- 80. Employer's records
- 90. Employer shall furnish information
- 100. Inspections and examination of records
- 110. Biennial report
- 120. Cooperation with other agencies
- 130. Preference for resident workers

NOTES TO DECISIONS

Based on Fair Labor Standards Act. — See notes under same catchline under article analysis. Webster v. Bechtel, Inc., Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980), Notes to Decisions.

AS 23.10.050 — 23.10.150 are directed toward a situation distinct from that of

the Equal Pay for Women Act. Brown v. Wood, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978), modified on rehearing on other grounds, 592 P.2d 1250 (1979).

Applied in Dresser Indus., Inc v. Alaska Dep't of Labor, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Sec. 23.10.055. Exemptions. The provisions of AS 23.10.050 — 23.10.150 do not apply to

- (1) an individual employed in agriculture, which includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices, including forestry and lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market;
- (2) an individual employed in the catching, trapping, cultivating or farming, netting or taking of any kind of fish, shellfish, or other aquatic forms of animal and vegetable life;
- (3) an individual employed in the hand picking of shrimp;
- (4) an individual employed in domestic service, including a baby-sitter, in or about a private home;
- (5) an individual employed by the United States or by the state or political subdivision of the state including prisoners not on furlough detained or confined in prison facilities;
- (6) an individual engaged in the activities of a nonprofit religious, charitable, cemetery or educational organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis;
- (7) an employee engaged in the delivery of newspapers to the consumer;
- (8) an individual employed solely as a watchman or caretaker of a plant or property that is not in productive use for a period of four months or more;
- (9) an individual employed in a bona fide executive, administrative or professional capacity or in the capacity of an outside salesman or a salesman who is employed on a straight commission basis;
- (10) an individual employed in the search for placer or hard rock minerals;
- (11) an individual under 18 years of age employed on a part-time basis not more than 30 hours in a week; or

Sec. 23.10.065. Minimum wages. An employer shall pay to each employee wages at a rate of not less than 50 cents an hour greater than the prevailing Federal Minimum Wage Law or \$2.60 an hour, whichever is greater, for hours worked in a pay period, whether the work is measured by time, piece, commission or otherwise. An employer may not apply tips or gratuities bestowed upon employees as a credit toward payment of the minimum hourly wage required by this section. Tip credit as defined by the Fair Labor Standards Act of 1938 as amended does not apply to the minimum wage established by this section. (§ 4 ch 171 SLA 1959; am § 2 ch 2 SLA 1962; am § 1 ch 41 SLA 1974)

Cross references. — For the Fair Labor Standards Act of 1938, see 29 U.S.C. 201-219.

NOTES TO DECISIONS

This section is based on the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219, and the terms used in the Alaska Statute are defined in the same way as in the federal act. *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975), decided prior to the 1978 amendment to AS 23.10.055(5).

Prisoners as employees of the state. — See *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975), decided prior to the 1978 amendment to AS 23.10.055(5).

Article not void. — The Alaska Wage and Hour Act merely requires higher minimum and overtime pay than the Fair Labor Standards Act, 29 U.S.C. §§ 201-219. Although compliance with both is more expensive than compliance with the federal act, it is not, in any sense, impossible so as to make the Alaska law void. *Webster v. Bechtel, Inc.*, Sup. Ct. Op.

No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Concurrent coverage of minimum wage claims is not preempted by the Federal Fair Labor Standards Act. It appears that 29 U.S.C. § 218(a) was intended to allow the recovery of additional amounts under more protective state laws. It is logical that Congress contemplated that the state would allow for an action as to the whole claim, not just the increment, and, further, that Congress intended that the claims would be brought together, where possible, so that enforcement would not be costly. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Applied in *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

Cited in *Dresser Indus., Inc. v. Alaska Dept of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Collateral references. — Validity of minimum wage statutes relating to private employment, 39 ALR2d 740.

Sec. 23.10.070. Exemptions from minimum wage. To the extent necessary to prevent curtailment of opportunities of employment, the commissioner may by regulations or orders provide for the employment at wages lower than the minimum wage prescribed in AS 23.10.050 — 23.10.150 of

Alaska Statutes

Title 28. Motor Vehicles.

Chapter

- 05. Administration (§§ 28.05.021, 28.05.041, 28.05.091, 28.05.141, 28.05.151)
- 10. Vehicle Registration and Title (§§ 28.10.011, 28.10.021, 28.10.041, 28.10.051, 28.10.101 — 28.10.108, 28.10.111, 28.10.121, 28.10.131, 28.10.141, 28.10.151, 28.10.181, 28.10.201, 28.10.321, 28.10.411, 28.10.421, 28.10.423, 28.10.431, 28.10.495, 28.10.502)
- 15. Drivers' Licenses (§§ 28.15.041, 28.15.046, 28.15.051, 28.15.071, 28.15.166, 28.15.171, 28.15.191, 28.15.221, 28.15.231, 28.15.271)
- 17. Commercial Driver Training Schools (§ 28.17.051)
- 20. Motor Vehicle Safety Responsibility Act (§ 28.20.440)
- 22. Motor Vehicle Liability Insurance (§§ 28.22.010, 28.22.100, 28.22.200, 28.22.600)
- 32. Commercial Motor Vehicle Safety Inspections (§§ 28.32.010 — 28.32.900)
- 33. Commercial Motor Vehicle Financial Responsibility (§ 28.33.010)
- 35. Miscellaneous Provisions (§§ 28.35.031 — 28.35.033, 28.35.045, 28.35.145, 28.35.235, 28.35.251 — 28.35.255)
- 37. Driver License Compact (§§ 28.37.010 — 28.37.040, 28.37.110 — 28.37.190)
- 40. General Provisions (§§ 28.40.050, 28.40.100)

Chapter 05. Administration.

Article

- 1. Powers and Duties of Department of Public Safety (§§ 28.05.021, 28.05.041)
- 2. Vehicle Equipment Standards (§ 28.05.091)
- 3. Subpoenas, Notices and Hearings (§ 28.05.141)
- 4. Disposition of Certain Vehicle and Traffic Offenses (§ 28.05.151)

Article 1. Powers and Duties of Department of Public Safety.

Section

- 21. Commissioner to enter compacts and reciprocal agreements
- 41. Commissioner to prescribe forms, ex-

amine applications, and administer oaths

nor may the department issue the license until proper application has been made and all required driving, written, and physical examinations have been successfully completed. A license issued under this subsection expires on September 1 of the year following issuance. Application for renewal may be made by submitting to the department the results of a current physical examination and paying the required fee.

(c) A person may not drive a commercial motor vehicle until the person applies for and is issued a license for that purpose under (a) of this section. The department may not issue a license under this subsection unless the applicant is at least 19 years of age, has held a valid driver's license at least one year, and has successfully completed all required driving tests and written and physical examinations. In this subsection, "commercial motor vehicle" has the meaning given in AS 28.32.900. (§ 19 ch 178 SLA 1978; am § 2 ch 104 SLA 1985; am § 2 ch 19 SLA 1986)

Effect of amendments. — The 1985 amendment added subsection (c).
 The 1986 amendment deleted "school bus transporting school children, or a bus transporting school-age children or another" preceding "motor vehicle" in the first sentence of subsection (b).

Sec. 28.15.046. Licensing of school bus drivers. (a) In addition to the requirements of AS 28.15.041(a), a person may not drive a school bus transporting school children, or a bus transporting schoolage children until the person has applied for and has been issued a license for that purpose under this section.

(b) The department may not issue a license under this section unless the applicant

- (1) is at least 19 years of age;
- (2) has had a license to operate a motor vehicle at least one year before the date of application;
- (3) has successfully completed all required driving, written, and physical examinations;
- (4) has submitted information sufficient to complete a background check consisting of a fingerprint check of national criminal records and state criminal records of the state or states in which the applicant has resided for the past two years;
- (5) has completed a state approved school bus driver training course established under AS 14.07.020(a)(14) or has for the previous two years been licensed by the state to operate a school bus.

(c) The department may not issue a license under this section to an applicant who has been convicted of any of the following offenses within 20 years of the time of application:

- (1) sexual abuse of a minor in any degree (AS 11.41.434 — 11.41.440);
- (2) sexual assault in any degree (AS 11.41.410 or 11.41.420);

- (3) incest (AS 11.41.450);
- (4) unlawful exploitation of a minor (AS 11.41.455);
- (5) contributing to the delinquency of a minor (AS 11.51.130);
- (6) a felony involving possession of a controlled or imitation controlled substance (AS 11.71 or AS 11.73);
- (7) a felony or misdemeanor involving distribution of a controlled or imitation controlled substance (AS 11.71 or AS 11.73);
- (8) promoting prostitution in the first or second degree (AS 11.66.110 or 11.66.120).

(d) The department may not issue a license to an applicant who has been convicted of driving while intoxicated (AS 28.35.030) within two years of the time of application or to an applicant who has two or more convictions for driving while intoxicated within 10 years of the time of application.

(e) For purposes of determining whether an applicant has been convicted of an offense listed under (c) or (d) of this section, a conviction under prior state law or in another jurisdiction of an offense having elements substantially similar to those of the offenses listed in (c) or (d) of this section is considered a conviction.

(f) Costs of conducting the background check required under (b)(4) of this section shall be paid by the applicant. A license issued under this section expires on September 1 of the year following issuance. Application for renewal may be made by submitting to the department the results of a current physical examination and paying the required fee. (§ 3 ch 19 SLA 1986)

Sec. 28.15.051. Instruction permit, temporary driver's license and special driver's permit. (a) Except as provided in (b) of this section, a person who is at least 14 years of age may apply to the department for an instruction permit. The department may, after the applicant has successfully passed all parts of the examination under AS 28.15.081 other than the driving test, issue to the applicant an instruction permit. The permit allows a person, while having the permit in the person's immediate possession, to drive a specified type or class of motor vehicle on a highway or vehicular way or area for a period not to exceed two years. The permittee must be accompanied by a person at least 19 years of age who has been licensed at least one year to drive the type or class of vehicle being used, who is capable of exercising control over the vehicle and who occupies a seat beside the driver, or who accompanies and immediately supervises the driver when the permittee drives a motorcycle. An instruction permit may be renewed.

(b) The department, upon receiving proper application, may issue a restricted instruction permit effective for a school year or for a more restricted period to an applicant who is at least 14 years of age and who is enrolled in a driver education program which includes practice

Original sponsor: Labor and Commerce
Committee

1 IN THE HOUSE BY THE TRANSPORTATION COMMITTEE
2 CS FOR HOUSE BILL NO. 305 (Transportation)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to transportation of pupils; and
7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that the
10 driving conditions existing in this state are unique and require school bus
11 drivers to have experience in driving a vehicle on the roads and under the
12 conditions existing in the state in order to ensure that they are adequate-
13 ly trained. The legislature also finds that in order to properly train
14 school bus drivers, drivers should be licensed in this state for a minimum
15 period of one year, as required under AS 28.15.046(b)(2), as amended by
16 sec. 5 of this Act.

17 * Sec. 2. AS 23.10.055(5) is amended to read:

18 (5) an individual employed by the United States or by the
19 state or political subdivision of the state, except as provided in
20 AS 23.10.065(b), including prisoners not on furlough detained or
21 confined in prison facilities;

22 * Sec. 3. AS 23.10.065 is amended to read:

23 Sec. 23.10.065. MINIMUM WAGES. Except as provided under (b) of
24 this section, an [AN] employer shall pay to each employee wages at a
25 rate of not less than 50 cents an hour greater than the prevailing
26 Federal Minimum Wage Law or \$2.60 an hour, whichever is greater, for
27 hours worked in a pay period, whether the work is measured by time,
28 piece, commission or otherwise. An employer may not apply tips or
29 gratuities bestowed upon employees as a credit toward payment of the

1 minimum hourly wage required by this section. Tip credit as defined
2 by the Fair Labor Standards Act of 1938 as amended does not apply to
3 the minimum wage established by this section.

4 * Sec. 4. AS 23.10.065 is amended by adding new subsections to read:

5 (b) Subject to the limitation under (c) of this section, an
6 employer shall pay to each person employed as a school bus driver
7 wages at a rate of not less than two times the minimum wage
8 established under (a) of this section, for hours worked in a pay
9 period, whether work is measured by time, commission, or otherwise.
10 An employer may not apply fringe benefits as a credit toward payment
11 of the minimum wage established under this subsection.

12 (c) Notwithstanding (b) of this section, an employer who con-
13 tracts with the Department of Education or a school district to pro-
14 vide school bus transportation services is not required to adjust
15 school bus driver wages under (b) of this section, except when enter-
16 ing into or renewing the contract.

17 * Sec. 5. AS 28.15.046(b) is amended to read:

18 (b) The department may not issue a license under this section
19 unless the applicant

20 (1) is at least 21 [19] years of age;

21 (2) has had a license issued by the department to operate a
22 motor vehicle at least one year before the date of application and has
23 had a license to operate a motor vehicle at least three years before
24 the date of application;

25 (3) has successfully completed all required driving, writ-
26 ten, and physical examinations;

27 (4) has submitted information sufficient to complete a
28 background check consisting of a fingerprint check of national crimi-
29 nal records and state criminal records of the state or states in which

1 the applicant has resided for the past two years;

2 (5) has completed a state approved school bus driver train-
3 ing course established under AS 14.07.020(a)(14) or has for the previ-
4 ous two years been licensed by the state to operate a school bus.

5 * Sec. 6. This Act takes effect September 1, 1988.

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

HOUSE BILL NO. 305

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to transportation of pupils; and
7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that the
10 driving conditions existing in this state are unique and require school bus
11 drivers to have experience in driving a vehicle on the roads and under the
12 conditions existing in the state in order to ensure that they are adequate-
13 ly trained. The legislature also finds that in order to properly train
14 school bus drivers, drivers should be licensed in this state for a minimum
15 period of two years, as required in sec. 5 of this Act.

16 * Sec. 2. AS 14.09.010 is amended by adding a new subsection to read:

17 (d) A school district, transportation contractor, or other
18 recipient of state funds for pupil transportation shall establish two
19 wage schedules for its employees who provide pupil transportation
20 services. One wage schedule must include employees, other than driv-
21 ers, paid on an hourly basis, by classification. The other wage
22 schedule must include drivers, by classification. After an entity
23 establishes a wage schedule required by this subsection, an employee
24 hired by that entity to provide substantially the same pupil transpor-
25 tation services as an employee compensated according to the estab-
26 lished wage schedule shall be compensated at a rate not less than that
27 established by the wage schedule. If wages paid to the employee are
28 higher than the rate established by the wage schedule, the wage
29 schedule shall be amended to conform to the higher wage rate.

1 * Sec. 3. AS 23.10.065 is amended to read:

2 Sec. 23.10.065. MINIMUM WAGES. Except as provided under (b) of
3 this section, an [AN] employer shall pay to each employee wages at a
4 rate of not less than 50 cents an hour greater than the prevailing
5 Federal Minimum Wage Law or \$2.60 an hour, whichever is greater, for
6 hours worked in a pay period, whether the work is measured by time,
7 piece, commission or otherwise. An employer may not apply tips or
8 gratuities bestowed upon employees as a credit toward payment of the
9 minimum hourly wage required by this section. Tip credit as defined
10 by the Fair Labor Standards Act of 1938 as amended does not apply to
11 the minimum wage established by this section.

12 * Sec. 4. AS 23.10.065 is amended by adding a new subsection to read:

13 (b) An employer shall pay to each person employed as a school
14 bus driver wages at a rate of not less than two and one-half times the
15 prevailing Federal Minimum Wage Law, for hours worked in a pay period,
16 whether work is measured by time, commission, or otherwise. An em-
17 ployer may not apply fringe benefits as a credit toward payment of the
18 minimum wage established under this subsection.

19 * Sec. 5. AS 28.15.046(b) is amended to read:

20 (b) The department may not issue a license under this section
21 unless the applicant

22 (1) is at least 21 [19] years of age;

23 (2) has had a license issued by the department to operate a
24 motor vehicle at least two years [ONE YEAR] before the date of appli-
25 cation;

26 (3) has successfully completed all required driving, writ-
27 ten, and physical examinations;

28 (4) has submitted information sufficient to complete a
29 background check consisting of a fingerprint check of national

1 criminal records and state criminal records of the state or states in
2 which the applicant has resided for the past two years;

3 (5) has completed a state approved school bus driver train-
4 ing course established under AS 14.07.020(a)(14) or has for the previ-
5 ous two years been licensed by the state to operate a school bus.

6 * Sec. 6. This Act takes effect September 1, 1987.