

EO

67

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX H-01
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030

DOCUMENT #87-15

February 17, 1987

John Willard

RECEIVED FEB 18 1987

The Honorable Fran Ulmer
Chair, State Affairs Committee
Alaska House of Representatives
PO Box V
Juneau, AK 99811

Dear Representative Ulmer:

I wanted to clarify, in writing, what will happen to the chemist position currently funded by the Division of Public Health's Alcohol and Blood Testing Program. As you are keenly aware, this position is presently based in Juneau.

If Executive Order 67 passes legislative muster, then \$68,800 will be transferred from the Department of Health and Social Services' FY 88 Budget to the Department of Public Safety. This transfer will occur shortly after the beginning of the new fiscal year.

As you are also aware, the Division of Public Health is planning to shut down its Southeast Regional Laboratory as a part of its restructuring of the division's statewide lab services, a restructuring motivated by a need to reorganize after a series of very deep budget cuts. The lab where the alcohol testing chemist works will therefore be shut down at the end of the current fiscal year. One of the employees of the Juneau lab will be transferred to Anchorage, and seven staff will be laid off.

Because the money for the chemist's position will no longer be in DHSS' budget, what happens to the person presently holding down the chemist's job is unclear. The position itself (i.e. the PCN for the job class) will be transferred. Assuming the individual in the job wants to move to Anchorage, that person's relocation costs will be borne by the Department of Public Safety [no doubt the justification for the \$2,400 in travel expenses Public Safety insisted on in the revised (\$68.8) fiscal note].

If the person opts to stay in Juneau, he will be out of a job.

None of this is good news, but I thought I should be clear for the (technical) record, about who is actually responsible for

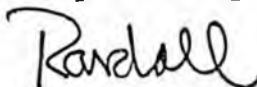
Representative Ulmer

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February 17, 1987

transferring (yet another position) out of Juneau. Public Safety, not DHSS, is relocating the alcohol and blood testing program to Anchorage where the program can take advantage of the Alcohol Crime Lab's modern facilities and equipment.

Respectfully Yours,

A handwritten signature in cursive script that reads "Randall".

Randall P. Burns
Special Assistant
to the Commissioner



Official Business

Alaska State Legislature

House

Pouch V
State Capitol
Juneau, Alaska 99811

STATE AFFAIRS COMMITTEE

EXECUTIVE ORDER 67

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STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

SENATE

Bill Version: EO 67

Publish Date: 1/19/87

REQUEST

Bill/Resolution No.: 773-87-0061 *EO 67*

Title: Alcohol Breath & Blood Testing

Sponsor: Governor

Requestor: _____

Date of Request: _____

FISCAL DETAIL

Agency Affected: Health & Social Services

BRU: State Health Services

Components: Lab Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		(42.0)				
TRAVEL		-0-				
CONTRACTUAL		(11.4)				
SUPPLIES		(4.0)				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		(57.4)	-0-	-0-	-0-	-0-

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		(57.4)				
FEDERAL FUNDS		-0-				
OTHER		-0-				
TOTAL		(57.4)	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME		(1)				
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

SEE ATTACHED PAGE

Prepared by: Elizabeth Ward, Director *E. Ward*

Division: Public Health

Phone: 465-3090

Date: November 20, 1986

Approved by Commissioner: John R. Poff

Agency: Health & Social Services

Date: 11/24/86

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

FISCAL NOTE ANALYSIS

EO 67 - Public Health

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. \$42,000 is allocated for personal services. Other funds include \$11,400 for associated contractual costs and \$4,000 for supplies. The total transfer (\$57,400) 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.

Revision Date: 12/8/86

REQUEST EXECUTIVE ORDER NO. 67

Bill/Resolution No.: 773-87-0061
 Title: An Act relating to chemical analysis of breath and blood; & providing for effective date
 Sponsor: _____
 Requestor: _____
 Date of Request: 11-15-86

FISCAL DETAIL

Agency Affected: Dept of Public Safety
 BRU: DPS Administration
 Components: Laboratory Services

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EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		63.9	63.9	63.9	63.9	63.9
TRAVEL		2.4	2.4	2.4	2.4	2.4
CONTRACTUAL		11.5	11.5	11.5	11.5	11.5
SUPPLIES		3.0	3.0	3.0	3.0	3.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		80.8	80.8	80.8	80.8	80.8

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		80.8	80.8	80.8	80.8	80.8
FEDERAL FUNDS						
OTHER						
TOTAL		80.8	80.8	80.8	80.8	80.8

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME		1	1	1	1	1
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

All costs are to be transferred from the Department of Health and Social Services to the Department of Public Safety. See attached details.

Prepared by: George M. Taft, Jr. Phone: 269-5687
 Division: Laboratory Services Date: 12/8/86

Approved by Commissioner: [Signature] Date: 12/11/86
 Agency: Department of Public Safety

JMR
12/11/86

Distribution (by Agency preparing fiscal note):

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

CONTINUATION of FISCAL NOTE ANALYSIS

Ex Order 67

For Bill/Resolution No. Law Log # 773-87-0061

LABORATORY SERVICES

COSTS RELATED TO THE TRANSFER OF THE ALCOHOL
BREATH TESTING PROGRAM FROM D.H.S.S. TO D.P.S.Personal Services

PCN-1558, Chemist III, Range 18B, 12 months

Salary	\$38,712	
Benefits	<u>12,280</u>	
Subtotal		\$50,992

PCN-1316, Clerk-Typist III, Range 8A, 6 months

Salary	9,786	
Benefits	<u>3,096</u>	
Subtotal		12,882

Total Personal Services

\$63,874Travel

72240 Field Travel	1,000	
72300 Conference & Meetings	400	
72500 Per Diem	<u>1,000</u>	

Total Travel

2,400Contractual

73100 Professional Services	5,000	
73300 Communications	2,500	
73500 Printing	1,000	
73700 Repair & Maintenance	<u>3,000</u>	

Total Contractual

11,500Supplies

74220 Office Supplies	500	
74520 Scientific Supplies	2,000	
74650 Repair & Maintenance Supplies	<u>500</u>	

Total Supplies

3,000

CONTINUATION of FISCAL NOTE ANALYSIS

Ex Order 67

For Bill/Resolution No. Law Log # 773-87-0061Equipment

The following equipment is transferred. No purchasing costs are involved.

1. Perkin Elmer gas chromatograph sigma 2000 with 3600 Data Station and automated head space.
2. IBM PC XT with Intoximeter modems.
3. Spare Intoximeters (2).
4. Nalco tank jig for mixing gases.
5. Expendible supplies, tanks, line conditioner, etc.

TOTAL COST\$80,774

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 28.35.033(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. 23, 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 29.35.023 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).

Drunk 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 Public Safety will improve our ability to effectively enforce our laws against drunk driving. I urge your support of this Order.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Cooper". The signature is written in dark ink and is positioned above the printed name and title.

Steve Cooper
Governor

M E M O R A N D U M

TO: HOUSE HESS MEMBERS

FROM: COMMITTEE STAFF

RE: EO 67

DATE: 1/26/87

The substance of EO 67 was included in a bill introduced in the 14th Alaska Legislature, SB 74. SB 74 included some other statutory changes and died in the House Judiciary Committee in May 1985.

The minutes from that House Judiciary meeting are enclosed in your packets.

Upon inquiring about the nature of the objections to the transfer of the responsibility for analyzing breathalyzer tests, staff was referred to Ms. Dana Fabe of the Anchorage Public Defender's office. In 1985 Ms. Fabe had reservations about this transfer because of concerns expressed by physicians about equipment working improperly in the field and the ability of Troopers to operate the equipment. When contacted last week, Ms. Fabe say she no longer has objections to this transfer.

You will note a difference of \$23.4 in the two fiscal notes attached to this executive order. DHSS is deducting \$57.4, while DPS says they will need to add \$80.8. A major factor of this difference is \$12,882 for 6 mos. of a Clerk Typist III which DPS says they will need to add. DHSS says when the responsibility was theirs, they were supposed to get funds for that position RSA'd to them from DPS. They also say that in 1977 the RSA'd funds stopped coming and the costs were simply absorbed by the department. DPS is also including \$2.4 in travel costs. DHSS says for them, those funds were eliminated to meet budget reductions.

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

SCIENTIFIC CRIME
DETECTION LABORATORY

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.

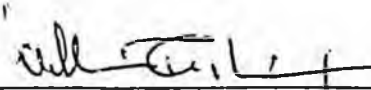
Several problems related to the administration of the program have existed since its inception in 1964. Their difficulties can largely be traced to the multi-agency management of the program. The Department of Public Safety presently provides the instruments and training to both Troopers and local Police 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

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: Executive Order No. 67

Bill Version: Executive Order No. 67
Publish Date: _____

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 J

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						
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)

SEE ATTACHED PAGE

Prepared by: Elizabeth Hard, Director E.W. Phone: 465-3090
Division: Public Health Date: 2/9/87

Approved by Commissioner: *Maria M. 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

FISCAL NOTE ANALYSIS

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.

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