

EO

67-5



Alaska State Legislature

Senate

Office of the Secretary

OFFICIAL BUSINESS

P.O. BOX V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

January 19, 1987

MEMORANDUM

TO: Senator Bennett, Co-Chairman
Senator Binkely, Co-Chairman
Finance Committee

FROM: Peggy Mulligan *PM*
Secretary of the Senate

RE: Executive Order No. 67

The President has referred Executive Order No. 67 (transferring the responsibility for the alcohol breath and blood testing program from the Department of Health and Social Services to the Department of Public Safety).

Attached is a copy of Section 23, Article III of the Constitution describing procedures for executive orders.

Thank you.

Enclosure

cc: State Affairs Committee
and Judiciary Committee

invasion. The governor, as provided by law, shall appoint all general and flag officers of the armed forces of the State, subject to confirmation by a majority of the members of the legislature in joint session. He shall appoint and commission all other officers.

Martial Law

SECTION 20. The governor may proclaim martial law when the public safety requires it in case of rebellion or actual or imminent invasion. Martial law shall not continue for longer than twenty days without the approval of a majority of the members of the legislature in joint session.

Executive Clemency

SECTION 21. Subject to procedure prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures. This power shall not extend to impeachment. A parole system shall be provided by law.

Executive Branch

SECTION 22. All executive and administrative offices, departments, and agencies of the state government and their respective functions, powers and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department.

Reorganization

SECTION 23. The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. ~~The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.~~

Handwritten signature

EXECUTIVE ORDER NO. 67

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

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

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

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

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

COMMITTEE COPY

1 Services regulations until it adopts its own.

2 * Sec. 4. This Order takes effect July 1, 1937.

3 DATED: _____

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6 Steve Cowper, Governor
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STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 19, 1987

The Honorable Jan Faiks
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

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. 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 alco-

hol 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 con-

tinue 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(c) and 28.35.035, 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.

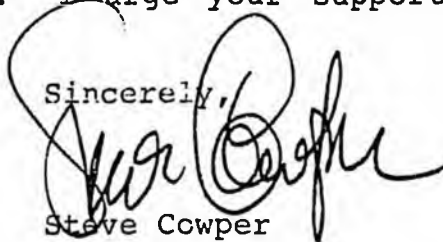
Since the effective enforcement of the DWI laws is such an integral part of the law enforcement duties of these agencies, the DPS laboratory should assume responsibility for a unified system, rather than one administered piecemeal without clear lines of authority or defined duties. This change would 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 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 black ink, appearing to read "Steve Cowper", written over the word "Sincerely,".

Steve Cowper
Governor

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

Revision Date : _____

REQUEST *EOW*
 Bill/Resolution No. : 773-87-0061
 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						
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REVENUE						
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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* Phone : 465-3090
 Division : Public Health Date : November 20, 1986

Approved by Commissioner : *J. R. P.* Date : 11/27/86
 Agency : Health & Social Services

Distribution (by Agency preparing fiscal note):

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

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. \$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.

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

Revision Date: 12/8/86

REQUEST

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

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						
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REVENUE						
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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.
 Division: Laboratory Services

Phone: 269-5687
 Date: 12/8/86

Approved by Commissioner: [Signature]
 Agency: Department of Public Safety

Date: 12/11/86

Distribution (by Agency preparing fiscal note):

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

*JNR
12/11/86*

CONTINUATION of FISCAL NOTE ANALYSIS

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			<u>\$63,874</u>

Travel

72240 Field Travel -		1,000	
72300 Conference & Meetings		400	
72500 Per Diem		<u>1,000</u>	
Total Travel			<u>2,400</u>

Contractual

73100 Professional Services		5,000	
73300 Communications		2,500	
73500 Printing		1,000	
73700 Repair & Maintenance		<u>3,000</u>	
Total Contractual			<u>11,500</u>

Supplies

74220 Office Supplies		500	
74520 Scientific Supplies		2,000	
74650 Repair & Maintenance Supplies		<u>500</u>	
Total Supplies			<u>3,000</u>

CONTINUATION of FISCAL NOTE ANALYSIS

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

Equipment

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

RES
AIR

O.C. + Bradley

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

REQUEST: Executive Order No. 67 **Bill Version:** Executive Order No. 57
Publish Date: _____

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

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				
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						
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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)

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

Prepared by: Jos Mapranath Phone: 465-4336
Division: Administrative Services Date: 2/9/87

Approved by Commissioner: [Signature] Date: 2/9/87
Agency: Public Safety

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:** Executive Order No. 67
Revision Date: 2/9/87 **Publish Date:** _____
Title: Alcohol Breath & Blood Testing **Agency Affected:** Health & Social Services
Sponsor: Governor **BRU:** State Health Services
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						
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 Ward, 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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