

HB

280

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Alaska State Legislature
House Finance Committee

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MEMORANDUM

To: Representative Jim Holm, Co-Chair
House Transportation Committee

From: Representative Bill Williams *Bill*

Date: April 23, 2003

Subject: Request for Hearing

I respectfully request that HB280, "An Act relating to the regulation of commercial motor vehicles to avoid loss or withholding of federal highway money, and to out-of-service orders concerning commercial motor vehicles; amending Rule 43.1, Alaska Rules of Administration; and providing for an effective date", be scheduled for a hearing in the House Transportation Committee.

Attached are a Sponsor Statement and a Bill Analysis.

Thank you for your attention to this matter. Feel free to contact me or my Aide, Tim Barry, if you have questions.

Alaska State Legislature
House Finance Committee

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Sponsor Statement for HB 280
Commercial Motor Vehicles: Regulations

“An Act relating to the regulation of commercial motor vehicles to avoid loss or withholding of federal highway money, and to out-of-service orders concerning commercial motor vehicles; amending Rule 43.1, Alaska Rules of Administration; and providing for an effective date.”

House Bill 280 would transfer certain authority to regulate commercial motor vehicles from the Department of Public Safety (DPS) to the Department of Transportation and Public Facilities (DOT&PF). This change is needed to avoid losing federal highway money. The bill also directly amends Rule 43.1 of the Alaska Rules of Administration.

Under current law, the authority to adopt regulations regarding commercial motor vehicles is divided among: the Department of Administration (DOA) for licensing of drivers of commercial motor vehicles; the DOT&PF for matters relating to commercial motor vehicle inspections; and the DPS for all matters relating to commercial motor vehicles. Under this bill, the authority to adopt regulations necessary to avoid the loss or withholding of federal highway money would be vested in DOT&PF, except for matters that relate to licensing of drivers of commercial motor vehicles.

The bill corrects an oversight that occurred when implementing Executive Orders 98 and 99 in 1997. EO 98 transferred the responsibility for commercial motor vehicle safety inspections from the DPS to the DOT&PF. EO 99 transferred most functions related to motor vehicles found in Title 28 from DPS to the Department of Administration (DOA). After the issuance of EO's 98 and 99, DPS retained the authority to adopt regulations related to commercial motor vehicles, except for safety inspections and driver licensing. HB280 would transfer the remaining regulation authority in DPS relating to commercial motor vehicles to DOT&PF. The Department needs the authority to adopt these regulations to avoid the loss or withholding of federal funding.

Federal Motor Carrier Safety Administration regulations provide that a state becomes ineligible for Basic Program or Incentive funds under the Motor Carrier Safety Assistance Program for failure to adopt any new regulation or amendment to the Federal Motor Carrier Safety Regulations (FMCSR) or the Hazardous Materials Regulations (HMR) within three years of its effective date. Since the state's

adoption of federal regulations pertaining to CMV operations, driver/vehicle safety standards and hazardous materials transport has not been updated since 1995, Alaska is out of compliance.

Alaska will receive \$685.5 in Basic Program and Incentive Funds in FFY2003. Loss of these funds through failure to pass this legislation and the subsequent failure to adopt the current regulations will virtually eliminate commercial vehicle safety enforcement effort in Alaska.

The Alaska Trucking Association, Teamsters Local 959 and the Associated General Contractors of Alaska support the bill provisions correcting the regulation adoption authority problems and supporting the language in existing statute. The Departments of Public Safety and Administration also support this legislation.

Contact: Tim Barry, Aide to Representative Bill Williams, at (907) 465-3424

Bill Analysis

“An Act relating to the regulation of commercial motor vehicles to avoid loss or withholding of federal highway money... “

Section 1. AS 19.10.060(c) repeal and reenact

Existing statute language:

AS 19.10.060(c) The department shall adopt regulations necessary to implement a commercial motor vehicle safety inspection program needed to avoid loss or withholding of federal highway money.

Proposed statute language in Sec. 1

AS 19.10.060(c) Except for requirements relating to a commercial motor vehicle driver's licensing program under AS 28, the department shall adopt regulations under AS 44.62 (Administrative Procedures Act) that are necessary to implement requirements imposed by federal statute or regulation that relate to commercial motor vehicles and that are necessary to avoid loss or withholding of federal highway money.

Effect of changes

Existing statutes allow the Department of Transportation and Public Facilities (DOT&PF) to adopt regulations relating to "...a commercial motor vehicle safety inspection program...". The proposed language allows the department to adopt regulations relating to all commercial vehicle activities excluding requirements relating to a commercial motor vehicle driver's licensing program. The intent of Executive Order 98, issued by then Governor Knowles, was to consolidate all truck regulation activities into DOT&PF with the single exception of the commercial motor vehicle driver's licensing program. The repeal and reenactment of AS 19.10.060(c) accomplishes that objective.

Section 2. AS 28.33.130(a) amend

Proposed change will add the prohibition against operating a commercial motor vehicle after being placed out of service under a regulation adopted under AS 19.10.060(c).

Section 3. AS 28.33.140(a) amend

Proposed change will provide for immediate disqualification from driving a commercial motor vehicle for the periods set out in this section for driving after being placed out of service in violation of regulations adopted under AS 19.10.060(c).

Bill Analysis

"An Act relating to the regulation of commercial motor vehicles to avoid loss or withholding of federal highway money..."

Section 4. AS 28.33.190(10) amend

Proposed change defines an "out of service order" to include an order issued under regulations adopted under AS 19.10.060(c),

Section 5. AS 28.05.011(a)(8) repealed.

AS28.05.011(a)(8) provides the Commissioner of Public Safety authority to adopt regulations necessary to implement requirements imposed by federal law or regulation that relate to commercial motor vehicles and that are needed to avoid loss or withholding of federal highway money, other than requirements relating to a commercial motor vehicle driver's licensing program or a commercial motor vehicle safety inspection program. Sec. 5 repeals this paragraph as the adoption authority will now reside in DOT&PF and DOA.

Section 6. The uncodified law of the State of Alaska is amended.

Adds a new section to allow for changes in the references to the Alaska Administrative Code in the traffic bail forfeiture schedule for certain commercial motor vehicle offenses.

Section 7. The uncodified law of the State of Alaska is amended.

Adds a new section that provides for a transition period to allow current DPS regulations to continue in force until the new regulations are adopted by DOT&PF.

Section 8. The uncodified law of the State of Alaska is amended.

Adds a new section that provides that Sections 1-5 and 7 take effect only if Section 6 receives the two-thirds majority vote of each House required by art. IV, sec.15, Constitution of the State of Alaska.

Section 9. Sets effective date for Section 7.

Section 10. Sets effective date for the act.

Bill Analysis

"An Act relating to the regulation of commercial motor vehicles to avoid loss or withholding of federal highway money .."

SUMMARY

Section 1 of the bill accomplishes a necessary change in regulation adoption authority. Prior to the consolidation of commercial motor vehicle regulation and enforcement into DOT&PF, the Department of Public Safety had authority to adopt CMV regulations for driver/vehicle safety and hazardous materials transport standards. Inadvertently, this authority was not transferred. This bill corrects that oversight.

Federal Motor Carrier Safety Administration regulations provide that a state becomes ineligible for Basic Program or Incentive funds under the Motor Carrier Safety Assistance Program for failure to adopt any new regulation or amendment to the Federal Motor Carrier Safety Regulations (FMCSR) or the Hazardous Materials Regulations (HMR) within three years of its effective date. In FFY2003, Alaska will receive \$685.5 in Basic Program and Incentive Funds.

Passage of this bill is critically important as the state's adoption of federal regulations pertaining to CMV operations, driver/vehicle safety standards and hazardous materials transport have not been updated since 1995. As you can see, we are out of compliance. The Department of Transportation and Public needs the authority to adopt these regulations to avoid the loss or withholding of federal funding. Loss of these funds through failure to pass this legislation and the subsequent failure to adopt the current regulations will virtually eliminate our commercial vehicle safety enforcement effort.

The bill provisions correcting the regulation adoption authority problems and supporting the language in existing statute have been supported in the past by both the Alaska Trucking Association and Teamsters Local 959. The Department of Public Safety also supports this legislation.



Aves D. Thompson, Director
Measurement Standards and
Commercial Vehicle Enforcement
Alaska Department of Transportation
and Public Facilities
907.341.3210

Bill Analysis

"An Act relating to the regulation of commercial motor vehicles to avoid loss or withholding of federal highway money..."

Applicable Code of Federal Regulation references:

49 CFR Sec. 350.335(b) A State that fails to adopt any new regulation or amendment to the Federal Motor Carrier Safety Regulations (FMCSR) or the Hazardous Materials Regulations (HMR) within three years of its effective date will be deemed to have incompatible regulations and will not be eligible for Basic Program nor Incentive Funds.

49 CFR Sec. 355 promotes adoption and enforcement of state laws and regulations pertaining to commercial motor vehicles that are compatible with appropriate parts of the Federal Motor Carrier Safety Regulations (FMCSRs).

49 CFR Sec. 355.5, defines Compatible or Compatibility as meaning that State laws and regulations applicable to interstate commerce and to intrastate movement of hazardous materials are identical to the FMCSRs and the HMRs or have the same effect as the FMCSRs; and that State laws applicable to intrastate commerce are either identical to, or have the same effect as, the FMCSRs or fall within the established limited variances under Secs. 350.341, 350.343, and 350.345 of this subchapter. Federal Hazardous Materials Regulations (FMHRs) means those safety regulations which are contained in parts 107, 171-173, 177, 178 and 180, except part 107 and Secs. 171.15 and 171.16. Federal Motor Carrier Safety Regulations (FMCSRs) means those safety regulations which are contained in parts 390, 391, 392, 393, 395, 396, and 397 of this subchapter.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB280
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act relating to the regulation of BRU Motor Vehicles
commercial motor vehicles... Component Motor Vehicles
 Sponsor (H) FIN
 Requester (H) TRA Component No. 2348

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on DMV.

Prepared by: Charles R. Hosack Phone 269-5559
 Division Motor Vehicles Date/Time 4/28/03
 Approved by: Mike Miller, Commissioner Date 4/28/2003
 Agency Department of Administration



STATE OF ALASKA
DEPT. OF TRANSPORTATION
AND PUBLIC FACILITIES

AVES D. THOMPSON
Director

Division of Measurement Standards
& Commercial Vehicle Enforcement
11900 Industry Way
Anchorage, Alaska 99515
Phone (907) 341-3210
Fax (907) 341-3220
Email aves_thompson@dot.state.ak.us
www.dot.state.ak.us/mscve/index.html

WORK ORDER REQUEST FORM

W.O. 23-LS0920

KEYWORDS: FEDERAL AID
MOTOR VEHICLES

ASSIGNED: Ford

REQUEST FOR: New Bill

TAKEN BY: DesRosiers

SUBJECT: Commercial Motor Vehicles

REQUESTED FOR: REP HOLM

BY: Barb

PHONE: 465-4858

DELIVER TO: Rep. Holm, Attn: Barb, Cap 110

INSTRUCTIONS:

Duplicate HB 510 - 22nd leg., relating to commercial motor vehicles.

OBTAIN	SPECIAL DRAFTING INSTRUCTIONS ATTACHED [] AUTHORIZED TO CONFER WITH _____ _____ RETURN _____ _____ TO REQUESTOR APPROVED <u> X </u> DIRECTOR, LEGAL SERVICES
REVIEWED _____ IN <u>03/31/03</u> DUE _____ TYPED: DRAFT _____ DATE _____ FINAL _____ DATE _____ PROOFED _____ DELIVERED _____	SPECIAL INSTRUCTIONS to TYPING/PROOFING Request for DRAFT

FAX 341-3220

Avos Thompson -

Need anything?

341 - 3210



Call - 240 - 0114

(Hazardous Material?)

Sec 2

ordered
draft
3/31/3

(a)

(1) within 4 hrs

(A)

(i)

(ii)

~~(iii)~~

(B) delete ?

(2) in possession

(A)

(B)



HOUSE TRANSPORTATION COMMITTEE
STATE CAPITOL, ROOM 17
465-4858

**COMMITTEE
MEMBERS**

Rep. Jim Holm
Co-Chair
Room 110
465-3466

Rep. Beverly Masek
Co-Chair
Room 403
465-2679

Rep. Hugh Fate
Room 128
465-4876

Rep. Cheryl Heinze
Room 416
465-4930

Rep. Mary Kapsner
Room 424
465-4942

Rep. Vic Kohring
Room 24
465-2186

Rep. Albert Kookesh
Room 114
465-3473

DATE: _____

TO: _____

FROM: Barbara Cotting, Committee Aide
House Transportation Committee

We have scheduled your bill _____ to be heard in the
House Transportation Committee at 1:30 p.m. on

_____.

I need the following no later than noon on

_____.

1. Latest version of the bill
2. Sponsor statement
3. Sectional analysis if applicable
4. Request for the hearing to be teleconferenced if applicable
5. Back-up material you want in committee members' packets

THANKS ☺ *Barbara*

Barbara Cotting, 465-4858, Room 110

4/8/3

12:08

Aves Thompson

Emailed analysis -

Call him

AUTHORITY TO ADOPT
REGS (FROM DPS TO DOT.)

HB 280

341-3210

AVES THOMPSON

CALL FOR CLARITY.

907-341-3210

IT IS COMING TO
TRANS. COMM.

-TODD-

Jim won't carry
the bill w/o it
removed - so I told
aves to find someone
else.



HOUSE TRANSPORTATION COMMITTEE
STATE CAPITOL, ROOM 17
465-4858

**COMMITTEE
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Co-Chair
Room 110
465-3466

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465-2679

Rep. Hugh Fate
Room 128
465-4967

Rep. Cheryl Heinze
Room 416
465-4930

Rep. Mary Kapsner
Room 424
465-4942

Rep. Vic Kohring
Room 24
465-2186

Rep. Albert Kookesh
Room 114
465-3473

DATE: February 19, 2003
TO: House Transportation Committee Members
FROM: Barbara Cotting, Committee Aide
RE: HB 67, "Force Accounts"

Please add the attached items to the packet for HB 67, "Force Accounts"

Revised fiscal note

Summary of St. Mary's force account project

Statement of opposition from AML

The bill will be heard at 1:30 p.m. Thursday February 20.

THANKS!

Barbara

Bill Analysis

“An Act relating to the regulation of commercial motor vehicles to avoid loss or withholding of federal highway money...”

Section 1. AS 19.10.060(c) repeal and reenact

Existing statute language:

AS 19.10.060(c) The department shall adopt regulations necessary to implement a commercial motor vehicle safety inspection program needed to avoid loss or withholding of federal highway money.

Proposed statute language in Sec. 1

AS 19.10.060(c) Except for requirements relating to a commercial motor vehicle driver's licensing program under AS 28, the department shall adopt regulations under AS 44.62 (Administrative Procedures Act) that are necessary to implement requirements imposed by federal statute or regulation that relate to commercial motor vehicles and that are necessary to avoid loss or withholding of federal highway money.

Effect of changes

Existing statutes allow the Department of Transportation and Public Facilities (DOT&PF) to adopt regulations relating to "...a commercial motor vehicle safety inspection program...". The proposed language allows the department to adopt regulations relating to all commercial vehicle activities excluding requirements relating to a commercial motor vehicle driver's licensing program. The intent of Executive Order 98, issued by then Governor Knowles, was to consolidate all truck regulation activities into DOT&PF with the single exception of the commercial motor vehicle driver's licensing program. The repeal and reenactment of AS 19.10.060(c) accomplishes that objective.

Section 2. AS 28.33.130(a) amend

Proposed change will add the prohibition against operating a commercial motor vehicle after being placed out of service under a regulation adopted under AS 19.10.060(c).

Representative Holm's amendment (page 2 starting at line 10) removes a provision in AS 28.33.130(a) whereby the presence of "...any measurable alcohol concentration within the blood or breath or any detectable presence of alcohol;" is no longer prohibited. This provision will be in conflict with current Federal Motor Carrier Safety Regulations as found in 49 CFR Sec. 392.5, which provides that "...any measurable..." is prohibited.

Alcohol tests performed by an employer pursuant to 49 CFR Sec. 382 with a result greater than 0.00 BAC but less than 0.02 BAC is considered 0.00 and not measurable

Bill Analysis

"An Act relating to the regulation of commercial motor vehicles to avoid loss or withholding of federal highway money..."

49 CFR Sec. 355 promotes adoption and enforcement of state laws and regulations pertaining to commercial motor vehicles that are compatible with appropriate parts of the Federal Motor Carrier Safety Regulations (FMCSRs).

49 CFR Sec. 355.5, defines Compatible or Compatibility as meaning that State laws and regulations applicable to interstate commerce and to intrastate movement of hazardous materials are identical to the FMCSRs and the HMRs or have the same effect as the FMCSRs; and that State laws applicable to intrastate commerce are either identical to, or have the same effect as, the FMCSRs or fall within the established limited variances under Secs. 350.341, 350.343, and 350.345 of this subchapter. Federal Hazardous Materials Regulations (FMRs) means those safety regulations which are contained in parts 107, 171-173, 177, 178 and 180, except part 107 and Secs. 171.15 and 171.16. Federal Motor Carrier Safety Regulations (FMCSRs) means those safety regulations which are contained in parts 390, 391, 392, 393, 395, 396, and 397 of this subchapter.

The gist of this paragraph is that the laws and regulations pertaining to driver/vehicle safety standards and hazardous materials driver/vehicle safety standards must be identical either in language or effect. If they are not, the Administrator of the Federal Motor Carrier Safety Administration can institute sanction procedures that can withhold portions of our annual highway fund appropriation.

The following is a quote from the Code of Federal Regulation and essentially means that we must be in compliance or in the first year we may lose 5% of our annual Federal-aid highway funds and in the second year and subsequent years, up to 10%.

PART 384--STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM--Table of Contents Subpart D--Consequences of State Noncompliance Sec. 384.401 Withholding of funds based on noncompliance. (a) **Following the first year of noncompliance. A State is subject to both of the following sanctions: (1) **An amount equal to five percent of the Federal-aid highway funds** required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's first year of noncompliance under this part. (2) The Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under section 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106-159, 113 Stat. 1754) shall be withheld from a State on the first day of the fiscal year following the fiscal year in which the FMCSA determined that the State was not in substantial compliance with subpart B of this part.**

(b) **Following second and subsequent year(s) of noncompliance.** A State is subject to both of the following sanctions: (1) **An amount equal to ten percent of the Federal-aid funds** required to be apportioned to any State under each of

Bill Analysis

"An Act relating to the regulation of commercial motor vehicles to avoid loss or withholding of federal highway money..."

sections 104(b)(1), (b)(3), and (b)(4) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's second or subsequent year of noncompliance under this part. (2) The Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under section 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106-159, 113 Stat. 1753) shall be withheld from a State on the first day of the fiscal year following the fiscal year in which the FMCSA determined that the State had not returned to substantial compliance with subpart B of this part.

Section 3. AS 28.33.140(a) amend

Proposed change will provide for immediate disqualification from driving a commercial motor vehicle for the periods set out in this section for driving after being placed out of service in violation of regulations adopted under AS 19.10.060(c).

Section 4. AS 28.33.190(10) amend

Proposed change defines an "out of service order" to include an order issued under regulations adopted under AS 19.10.060(c),

Section 5. AS 28.05.011(a)(8) repealed.

AS28.05.011(a)(8) provides the Commissioner of Public Safety authority to adopt regulations necessary to implement requirements imposed by federal law or regulation that relate to commercial motor vehicles and that are needed to avoid loss or withholding of federal highway money, other than requirements relating to a commercial motor vehicle driver's licensing program or a commercial motor vehicle safety inspection program. Sec. 5, page 3, line 12, repeals this paragraph as the adoption authority will now reside in DOT&PF and DOA.

Section 6. The uncodified law of the State of Alaska is amended.

Adds a new section to allow for changes in the references to the Alaska Administrative Code in the traffic bail forfeiture schedule for certain commercial motor vehicle offenses.

Section 7. The uncodified law of the State of Alaska is amended.

Adds a new section that provides for a transition period to allow current DPS regulations to continue in force until the new regulations are adopted by DOT&PF.

Bill Analysis

"An Act relating to the regulation of commercial motor vehicles to avoid loss or withholding of federal highway money..."

Section 8. The uncodified law of the State of Alaska is amended.

Adds a new section that provides that Sections 1-5 and 7 take effect only if Section 6 receives the two-thirds majority vote of each house required by art. IV, sec.15, Constitution of the State of Alaska.

Section 9. Sets effective date for Section 7.

Section 10. Sets effective date for the act.

SUMMARY

The bill, in Section 1, accomplishes a necessary change in regulation adoption authority. Prior to the consolidation of commercial motor vehicle regulation and enforcement into DOT&PF, DPS had authority to adopt CMV regulations for driver/vehicle safety and hazardous materials transport standards. At the time of consolidation, this authority was inadvertently not transferred along with the authority to adopt regulations for a safety inspection program. This bill corrects that oversight.

The amendment proposed in Section 2, which removes the provision on "...measurable alcohol..." creates a conflict with federal regulation. If this amendment is adopted, the State of Alaska is subject to a sanction by the Federal Motor Carrier Safety Administration in the amount of 5% of our Federal-aid highway funds in the first year and 10% in subsequent years. In Federal Fiscal Year 2004, the estimate of Federal-aid highway funds obligation authority is about \$345,000,000, the potential loss to the state is about \$17,250,000 in the first year and about \$34,500,000 in the second and subsequent years. .

The remaining provisions of the bill support the language in existing statute.

The bill provisions correcting the regulation adoption authority problems and supporting the language in existing statute have been supported in the past by both the Alaska Trucking Association and Teamsters Local 959.

Aves D. Thompson, Director
Measurement Standards and
Commercial Vehicle Enforcement
Alaska Department of Transportation
and Public Facilities
907.341.3210

HOUSE BILL NO. 510

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE

Introduced: 3/22/02

Referred: Transportation, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the regulation of commercial motor vehicles to avoid loss or
2 withholding of federal highway money, and to out-of-service orders concerning
3 commercial motor vehicles; amending Rule 43.1, Alaska Rules of Administration; and
4 providing for an effective date."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 19.10.060(c) is repealed and reenacted to read:

7 (c) Except for requirements relating to a commercial motor vehicle driver's
8 licensing program under AS 28, the department shall adopt regulations under
9 AS 44.62 (Administrative Procedure Act) that are necessary to implement
10 requirements imposed by federal statute or regulation that relate to commercial motor
11 vehicles and that are necessary to avoid loss or withholding of federal highway
12 money.

13 * **Sec. 2.** AS 28.33.130(a) is amended to read:

14 (a) A person may not operate a commercial motor vehicle or be on-duty

- 1 (1) if, within the preceding four hours, the person
 2 (A) consumed or was under the influence of
 3 (i) an alcoholic beverage;
 4 (ii) a controlled substance not prescribed by a
 5 physician; or
 6 (iii) a controlled substance prescribed by a physician
 7 that might impair a person's ability to operate a commercial motor
 8 vehicle; or
 9 *delete* (B) had any measurable alcohol concentration within the blood
 10 or breath or any detectable presence of alcohol;
 11 (2) while in possession of an alcoholic beverage or a controlled
 12 substance not prescribed by a physician unless
 13 (A) the alcoholic beverage or controlled substance is
 14 manifested and documented as part of an authorized shipment of cargo; or
 15 (B) under AS 04, the alcoholic beverage may be legally served
 16 to passengers being carried for hire;
 17 (3) after being placed out of service for violation of a regulation
 18 adopted under AS 19.10.060(c) ~~or~~ AS 28.05.011; or
 19 (4) with an invalid operator's or commercial operator's license.

20 * Sec. 3. AS 28.33.140(a) is amended to read:

- 21 (a) In addition to the court action provided in AS 28.15.181, conviction of any
 22 of the following offenses is grounds for immediate disqualification from driving a
 23 commercial motor vehicle for the periods set out in this section:
 24 (1) operating a commercial motor vehicle while intoxicated in
 25 violation of AS 28.33.030;
 26 (2) refusal to submit to a chemical test in violation of AS 28.35.032;
 27 (3) operating a motor vehicle while intoxicated in violation of
 28 AS 28.35.030;
 29 (4) leaving the scene of an accident in violation of AS 28.35.060, or
 30 failing to file, or providing false information in, an accident report in violation of
 31 AS 28.35.110;

1 (5) a felony under state or federal law that [, WHICH] was facilitated
 2 because the person used a commercial motor vehicle;
 3 (6) a serious traffic violation; or
 4 (7) driving after being placed out of service in violation of regulations
 5 adopted under AS 19.10.060(c) or AS 28.05.011.

6 * Sec. 4. AS 28.33.190(10) is amended to read:

7 (10) "out-of-service order" means an order issued under regulations
 8 adopted under AS 19.10.060(c) or AS 28.05.011 that prohibits an owner or operator of
 9 a commercial motor vehicle from operating a commercial motor vehicle; [.]

10 * Sec. 5. AS 28.05.011(a)(8) is repealed.

11 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
 12 read:

13 INDIRECT COURT RULE AMENDMENT. The provisions of secs. 1 - 5 of this Act
 14 have the effect of changing Rule 43.1, Alaska Rules of Administration, by changing the
 15 references to the Alaska Administrative Code in the traffic bail forfeiture schedule for certain
 16 commercial motor vehicle offenses.

17 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
 18 read:

19 TRANSITION: REGULATIONS. (a) The Department of Transportation and Public
 20 Facilities may proceed to adopt regulations necessary to carry out the changes made by this
 21 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
 22 before the effective date of the statutory change.

23 (b) Regulations related to commercial motor vehicles that were adopted under
 24 AS 28.05.011(a)(8) and are in effect on July 1, 2002, remain in effect and may be
 25 implemented and enforced by the Department of Transportation and Public Facilities until
 26 regulations are adopted by that department under AS 19.10.060(c), as repealed and reenacted
 27 by sec. 1 of this Act, and take effect.

28 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
 29 read:

30 CONDITIONAL EFFECT. Sections 1 - 5 of this Act take effect only if sec. 6 of this
 31 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,

- 1 Constitution of the State of Alaska.
- 2 * **Sec. 9.** Section 7(a) of this Act takes effect immediately under AS 01.10.070(c).
- 3 * **Sec. 10.** Except as provided in sec. 9 of this Act, this Act takes effect July 1, 2002.

Attached is a draft bill relating to the regulation of commercial motor vehicles by the Department of Transportation and Public Facilities to avoid loss or withholding of federal highway money and repealing the authority of the commissioner of public safety to regulate those vehicles for those activities. The bill also directly amends Rule 43.1 of the Alaska Rules of Administration.

Current law splits the authority to adopt regulations regarding commercial motor vehicles, which are necessary to avoid a loss or withholding of federal highway money, among the Department of Administration for licensing of drivers of commercial motor vehicles, the Department of Transportation and Public Facilities (DOT&PF) for matters relating to commercial motor vehicle inspections, and the Department of Public Safety for all matters relating to commercial motor vehicles. Except for matters that relate to licensing of drivers of commercial motor vehicles, under this bill the authority to adopt regulations necessary to avoid the loss or withholding of federal highway money would be vested in DOT&PF.

The current administrative structure was created under Executive Orders 98 and 99. Executive Order 98 transferred the responsibility for commercial motor vehicle safety inspections from the Department of Public Safety(DPS) to the Department of Transportation and Public Facilities (DOT&PF). Executive Order 99 transferred most functions related to motor vehicles found in Title 28 from

DPS to the Department of Administration (DOA). After the issuance of Executive Orders 98 and 99, DPS retained the authority to adopt regulations related to commercial motor vehicles, except for commercial motor vehicle safety inspections and commercial motor vehicle driver licensing. If enacted into law, this bill would transfer the remaining regulation authority in DPS relating to commercial motor vehicles to avoid a loss or withholding of federal highway money to DOT&PF.

Under AS 28.05.011(a)(8), the DPS has the authority to adopt "regulations necessary to implement requirements imposed by federal law or regulation that relate to commercial motor vehicles and that are needed to avoid loss or withholding of federal highway money, other than requirements relating to a commercial motor vehicle driver's licensing program or a commercial motor vehicle safety inspection program." The bill amends AS 28.05.011(a) by repealing this paragraph in sec. 5 of the bill.

Under existing AS 19.10.060 (c), the DOT&PF has the authority to "adopt regulations necessary to implement a commercial motor vehicle safety inspection program needed to avoid loss or withholding of federal highway money."

In sec. 1 of the bill, AS 19.10.060(c) is repealed and reenacted to read:

(e) except for requirements relating to a commercial motor vehicle driver's licensing program under AS 28, the department shall adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to implement requirements imposed by federal statute c. regulations that relate to commercial vehicles and that are needed to avoid loss or withholding of federal highway money.

After these changes to existing law are made through this bill, the DPS would have no responsibility to adopt regulations relating to commercial motor vehicles that are required under federal law that would result in a loss or withholding of the state's receipt of federal highway money. These changes have no impact upon the DPS's enforcement police powers over commercial motor vehicles.

When the changes occur, the responsibility for setting standards relating to operation of commercial motor vehicles, which would result in a loss or withholding of the state's receipt of federal highway money, would rest with the DOT&PF. This is a reasonable result. Many of the decisions relating to the regulation of commercial motor vehicles require engineering input, which the DOT&PF has readily available. Furthermore, the DOT&PF, as the recipient of Alaska's federal highway money, has a well-established relationship with the United States Department of Transportation. This closer relationship would be

beneficial to the operation of the commercial motor vehicle safety program.

Sections 2 - 4 of the bill make miscellaneous confirming amendments to reflect the change.

Sections 6 and 7 of the bill give notice that the bill requires an indirect amendment of Rule 43.1 of the Alaska Court System's Rules of Administration. The court system would need to revise this rule to reflect the new regulatory citations in its bail schedule. Because this bill will require an amendment of a court rule, a two-thirds majority is required for passage of these sections.

Section 8 of the bill provides for the smooth transition of the authority to adopt regulations relating to commercial motor vehicles to the DOT&PF by continuing the DPS's regulations on these matters until DOT&PF has adopted its own regulations. It also allows the DPS and the DOT&PF to begin advertising for the changes to their regulations before July 1, 2002 so long as the changes of regulations do not take effect before July 1, 2002, through neither can adopt any changes until then.

This bill will not increase the level of regulation of commercial motor vehicles. It will streamline this particular regulatory process.

Barbara,

Attached is a compilation of some of the documentation from last year. I have more if you like. I testified before the House Trans committee in support. DPS is in support and the Alaska Trucking Association and the Teamsters are in support.

In a conversation with the Representative today, he voiced concern about a couple of provisions about measurable alcohol. These provisions are in current law and are not affected by this proposed legislation. You will also note that the alcohol provisions are in Title 28 which is the Dept of Public Safety statute. If he has any questions, pls call me and I'll try to answer. Thanks for your help. Regards, Aves

Just hold this for
a while until we
are ready & have
the time.
It's not my highest
priority

22-LS1600\A

HOUSE BILL NO. 510

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE

Introduced: 3/22/02

Referred: Transportation, Judiciary

A companion Bill

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the regulation of commercial motor vehicles to avoid loss or
2 withholding of federal highway money, and to out-of-service orders concerning
3 commercial motor vehicles; amending Rule 43.1, Alaska Rules of Administration; and
4 providing for an effective date."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * Section 1. AS 19.10.060(c) is repealed and reenacted to read:

7 (c) Except for requirements relating to a commercial motor vehicle driver's
8 licensing program under AS 28, the department shall adopt regulations under
9 AS 44.62 (Administrative Procedure Act) that are necessary to implement
10 requirements imposed by federal statute or regulation that relate to commercial motor
11 vehicles and that are necessary to avoid loss or withholding of federal highway
12 money.

13 * Sec. 2. AS 28.33.130(a) is amended to read:

14 (a) A person may not operate a commercial motor vehicle or be on-duty

(1) if, within the preceding four hours, the person

(A) consumed or was under the influence of

(i) an alcoholic beverage;

(ii) a controlled substance not prescribed by a physician; or

(iii) a controlled substance prescribed by a physician that might impair a person's ability to operate a commercial motor vehicle; or

(B) had any measurable alcohol concentration within the blood or breath or any detectable presence of alcohol; *To Strict REMOVE in our Bill*

(2) while in possession of an alcoholic beverage or a controlled substance not prescribed by a physician unless

(A) the alcoholic beverage or controlled substance is manifested and documented as part of an authorized shipment of cargo; or

(B) under AS 04, the alcoholic beverage may be legally served to passengers being carried for hire;

(3) after being placed out of service for violation of a regulation adopted under AS 19.10.060(c) or AS 28.05.011; or

(4) with an invalid operator's or commercial operator's license.

* Sec. 3. AS 28.33.140(a) is amended to read:

(a) In addition to the court action provided in AS 28.15.181, conviction of any of the following offenses is grounds for immediate disqualification from driving a commercial motor vehicle for the periods set out in this section:

(1) operating a commercial motor vehicle while intoxicated in violation of AS 28.33.030;

(2) refusal to submit to a chemical test in violation of AS 28.35.032;

(3) operating a motor vehicle while intoxicated in violation of AS 28.35.030;

(4) leaving the scene of an accident in violation of AS 28.35.060, or failing to file, or providing false information in, an accident report in violation of AS 28.35.110;

1 (5) a felony under state or federal law that [, WHICH] was facilitated
2 because the person used a commercial motor vehicle;

3 (6) a serious traffic violation; or

4 (7) driving after being placed out of service in violation of regulations
5 adopted under AS 19.10.060(c) or AS 28.05.011.

6 * Sec. 4. AS 28.33.190(10) is amended to read:

7 (10) "out-of-service order" means an order issued under regulations
8 adopted under AS 19.10.060(c) or AS 28.05.011 that prohibits an owner or operator of
9 a commercial motor vehicle from operating a commercial motor vehicle; [.]

10 * Sec. 5. AS 28.05.011(a)(8) is repealed.

11 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 INDIRECT COURT RULE AMENDMENT. The provisions of secs. 1 - 5 of this Act
14 have the effect of changing Rule 43.1, Alaska Rules of Administration, by changing the
15 references to the Alaska Administrative Code in the traffic bail forfeiture schedule for certain
16 commercial motor vehicle offenses.

17 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 TRANSITION: REGULATIONS. (a) The Department of Transportation and Public
20 Facilities may proceed to adopt regulations necessary to carry out the changes made by this
21 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
22 before the effective date of the statutory change.

23 (b) Regulations related to commercial motor vehicles that were adopted under
24 AS 28.05.011(a)(8) and are in effect on July 1, 2002, remain in effect and may be
25 implemented and enforced by the Department of Transportation and Public Facilities until
26 regulations are adopted by that department under AS 19.10.060(c), as repealed and reenacted
27 by sec. 1 of this Act, and take effect.

28 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 CONDITIONAL EFFECT. Sections 1 - 5 of this Act take effect only if sec. 6 of this
31 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,

1 Constitution of the State of Alaska.

2 * **Sec. 9.** Section 7(a) of this Act takes effect immediately under AS 01.10.070(c).

3 * **Sec. 10.** Except as provided in sec. 9 of this Act, this Act takes effect July 1, 2002.