ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2535 SJ SJR 32 - HB 8

2535

4. Interest rates will be established to reflect the average Treasury coupon equivalent rate published in the Wall Street Journal for the first three-month U. S. Treasury Bills auctioned in each calendar quarter, plus 50 basis points.

5. Interest will be paid annually.

6. Funds will not be made available in increments less than $1,000,000.

7. All certificates of deposit will be 100% collateralized.

8. All collateral will be delivered versus funds at a Trustee bank.

9. Trustee bank will mark all collateral to market and will institute additional collateral calls as necessary. Collateral will be released to the degree that mark to market warrants, and if requested by issuing bank.

10. Substitution of collateral will be permitted by the Trustee bank.

11. At maturity, all funds (principal and interest) will be delivered to Trustee versus collateral.

12. Trustee will liquidate collateral after three working days in the event of a failure to pay either principal or interest when due.

13. Collateral must be in the form of any or a combination of any of the following; at market value:

    a) obligations of, or obligations insured by or guaranteed by, the United States or agencies or instrumentalities of the United States;

    b) obligations secured by reserves paid in by the United States or agencies or instrumentalities of the United States or obligations of corporations in which the United States is a shareholder or member;

    c) corporate debt securities which are rated AA or better by a nationally recognized rating service;

d) the guaranteed portion of Federal Small Business Administration loans;

e) the portion of first lien real estate mortgages guaranteed by the Federal Veterans Administration;

f) the portions of business and industrial loans made under the Rural Development Act of 1972 which are guaranteed by the Farmer's Home Administration;

g) the guaranteed portion of Farmer's Home Administration loans;

h) notes secured by mortgages granting a first lien on commercial or residential real estate improved by completed buildings if the mortgages are insured by a private mortgage insurance corporation which is authorized to do business in Alaska and has combined capital and surplus aggregating at least $20,000,000, and if loan-to-value ratios do not exceed 75 percent for commercial mortgages and 90 percent for residential mortgages; however,

(1) no mortgage insurance is necessary for commercial loans having loan-to-value ratios of less than 50 percent and the minimum coverage of other commercial loans shall be 10 percent for those having a loan-to-value ratio of 50-60 percent and 15 percent for those having a loan-to-value ratio greater than 60 percent but no more than 75 percent, and

(2) no mortgage insurance is necessary for residential loans having a loan-to-value ratio of less than 70 percent and the minimum coverage of other residential loans shall be 10 percent for those having a loan-to-value ratio greater than 70 percent but less than 90 percent and 20 percent for those having a loan-to-value ratio of 90 percent;

(i) notes secured by mortgages granting a first lien on commercial real estate improved by completed buildings if the originating financial institution retains at least 25% of the mortgage until maturity;

NOTE: Uninsured loans or uninsured portions of loans [see (h) and (i) above] will be valued at 75% of the outstanding principal balance. Delinquent, default or extended loans will not be acceptable collateral.

14. The Permanent Fund is prepared to purchase three-year certificates of deposit issued by financial institutions as follows:

   a. The program will be funded in such a manner that each institution will be assured that certificates will be purchased in a total amount which is not less than 25% of capitalization as determined by each institution's published annual or quarterly report (to include paid-in-capital, unencumbered reserves, and retained or undistributed earnings).

   b. Additional funds made available for the program will be utilized to purchase certificates on a first-come, first-served basis regardless of capitalization.

1.

PRINT DRAFT
& DUMMY

Alaska Permanent
Fund Corporation

HOME

MORTGAGES

800 West 10th, Suite 302
Pouch 4-1000
Juneau, Alaska 99802

Telephone
(907) 465-2047

The Alaska Permanent Fund Corporation provides residential real estate financing to all areas of Alaska by providing a secondary mortgage market for loans originated and serviced by private lending institutions. The commitment of the Alaska Permanent Fund Corporation is to provide a stable source of funding for credit-worthy, eligible borrowers.

HOW TO FIND OUT ABOUT ALASKA PERMANENT FUND CORPORATION HOME MORTGAGES

Talk to any participating lender listed on the last page of this pamphlet for latest information.

HOW TO SECURE AN ALASKA PERMANENT FUND CORPORATION MORTGAGE

The lender will determine if you are eligible for home mortgage financing and if your income is sufficient to make the monthly mortgage payment. All mortgages are originated for the Alaska Permanent Fund Corporation by participating lenders; the Alaska Permanent Fund Corporation does not make direct mortgage loans.

HOUSING ELIGIBLE FOR MORTGAGE FINANCING

The Alaska Permanent Fund Corporation finances only permanent mortgages on new or existing homes consisting of single-family, duplex, tri-plex and four plex. All housing financed must be owner-occupied.

(3) (3)

MORTGAGE AMOUNTS. TERM. AND DOWN PAYMENT

Maximum Term - 30 years. Minimum Term - 15 years.

10% down payment required for single-family dwelling loans up to $150,000.00.

20% down payment required for single-family dwelling loansover $150,000.00.

20% down payment required for two-plex, tri-plex, and four-plex dwelling loans regardless of amount.

ADJUSTABLE INTEREST RATE

Initial interest rate is the rate of the Federal Home Loan Bank Board Series of Loans Recently Closed on Existing Homes (FHLBB) prevailing at the time the Alaska Permanent Fund Corporation makes a final commitment to purchase, plus ½ of 1%.

The interest rate on a conventional adjustable rate mortgage purchased by the Alaska Permanent Fund Corporation will be adjusted once each year as of March 1 or September 1, whichever is nearer the anniversary of the loan closing date, on the basis of annual change of the FHLBB Series for Loans Recently Closed on Existing Houses; however, no change may increase or decrease the interest rate by more than 2%. When the annual change in the FHLBB index would result in a change of more than 2% in the interest rate, the excess change in the index will be carried over and used as a basis for a subsequent adjustment during any year when the adjustment to that interest rate would otherwise be less than 2%.

Other Information

- Lenders are permitted to charge an origination fee to borrowers.
- The Alaska Permanent Fund Corporation will charge a 1% commitment fee for a six-month commitment.
- Mortgages may not be assumed by another borrower.
- The selection of any mortgage will be made on the basis of its individual merits and its suitability as part of the investment portfolio.
- No refinancing.

(4)

(4)

PARTICIPATING LENDERS

Alaska Bank of Commerce
Alaska Continental Bank
Alaska Federal Savings & Loan
Alaska Mutual Bank
Alaska National Bank of the North
Alaska Pacific Mortgage Co.
Alaska Statebank
B. M. Behrends Bank
City Mortgage Co.
Fedalaska Federal Credit Union
First Alaska Mortgage & Escrow
First Bank
First Federal Savings & Loan
First National Bank of Anchorage
First National Bank of Fairbanks
General Electric Mortgage Co.
Home Savings & Loan
Kissell Mortgage Co.
Lomas & Nettleton Mortgage Co.
Mt. McKinley Mutual Savings Bank
National Bank of Alaska
Peninsula Savings & Loan
Peoples Bank & Trust
Security National Bank
United Bank Alaska

Information contained in this pamphlet is subject to change. Consult your participating lender.

SJR

36

COMMITTEE REPORT

SENATE

FURTHER:

Date____________________

Mr. President

The Committee on ____________________ considered ______________

and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for ____________________
[ ] new title
[ ] same title and recommends ____________________

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to ____________________ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS

____
Chairman

____
Chairman recommendation

— CALENDAR —

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811

Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE

MEMBER
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

WESTERN CO[illegible] E COUNCIL
OF STA[illegible] ERNMENTS

February 29, 1984

Senator Bill Ray, Chairman
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99811

Re: SJR 36.

Dear Bill:

This is Joe's resolution and I don't have any high hopes that the U.S. Congress will ever amend the U.S. constitution to accommodate him in his request.

The resolution, in essence, would allow states to offer financial programs to state residents based on length of residency within a state, provided that the program to be offered has nothing to do with need, economic conditions, or the means of the intended recipients of the benefits of the program. Another proviso says that federal funding can't be involved in any way.

More simply put, if the amendment were to be adopted, the Longevity Bonus, the Pioneers' Homes, etc. would no longer be subject to constitutional attack on grounds of residency.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

SJR
43

COMMITTEE REPORT

SENATE

FURTHER:

Date______________________

Mr. President

The Committee on ______________________ considered ______________

and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for ______________________
[ ] new title
[ ] same title and recommends ______________________

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to ______________________ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS
______________________	______________________
______________________	______________________
______________________	______________________
______________________	______________________
______________________	______________________
______________________	______________________
______________________	
______________________	

____
Chairman

____
Chairman recommendation

SENATE AMENDMENT

BY SENATE JUDICIARY COMMITTEE

To: ______________________ SENATE BILL No. SJR 43

To: ______________________ HOUSE BILL No. ______________

PAGE: 2 LINE: 2

After the word "law" insert "who shall be subject to confirmation by a majority of the members of each house of the legislature in joint session"

S 70

TO: Senator Ray

FROM: Paula d. Scavera

DATE: March 6, 1984

RE: SJR 43

This resolution would put before the voters of Alaska a constitutional amendment which would allow the Legislature to confirm the members of the board of the Alaska Railroad Corporation. In addition to the confirmation of the board the resolution would provide that board members could only be removed "for cause".

Section 1

Adds language to Article 3 Section 22 of the Alaska Constitution which would create a new section in the constitution (Section 28) and that section would allow for a new kind of state entity.

Section 2

Creates Section 28 in the constitution and provides for confirmation and removal of the Alaska Railroad Board by the Legislature. The process for appointment and confirmation of the board is set out in this resolution, but not the process for removal.

Section 3

States that this constitutional amendment will be put before the voters at the next general election.

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

AVRUM M. GROSS
SUSAN A. BURKE

(907) 586-2777

February 22, 1984

MEMORANDUM

TO: Senate Transportation Committee

FROM: Gross & Burke

RE: Organization of Public Corporation to Operate the Alaska Railroad

At your request, we have reviewed the drafts of SB 10 and SB 352, with a view toward determining the extent to which those bills create a valid legal structure to operate the Alaska Railroad after its proposed purchase. Initially, we were asked whether the legislature had the power to require that gubernatorial appointments to the governing authority[1/] of the railroad be confirmed by the legislature. Both SB 352 and SB 10 presently require confirmation of executive appointments. At a second committee hearing we were requested to advise you of the minimum number of executive branch controls which must be placed on any entity created by law to operate the railroad to insure that the entity would be a part of the executive branch and, therefore, constitutionally sound. We shall answer the questions in the order posed.

SB 10 and SB 352 both provide that appointments made by the Governor be confirmed by the legislature in joint session.

1/ SB 10 speaks of an "Authority" while SB 352 creates a similar organization but describes it as the "Railroad Corporation." Purely for the purposes of simplicity, we will refer to the basic organizational structure at issue here as an "Authority."

We assume that if a similar section remains in a bill, which passes the legislature, the Governor will probably choose to submit the names of his appointees for confirmation just as he submits his appointees to a host of other boards and commissions in state government. It is our opinion, however, that should an occasion arise when the Governor decides not to submit a name or names for confirmation, the legislature would have no legal right to insist he do so.

Our conclusion is based both on the words of the Alaska Constitution and a decision of the Alaska Supreme Court. The constitution provides in Art. III, sec. 25 that:

> The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the Governor, subject to confirmation by a majority of the members of the legislature in joint session . . .

Sec. 26 of the same article states that

> When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the Governor subject to confirmation by a majority of the members of the legislature in joint session . . .

The wording of the constitution is clear on its face. The legislature may confirm the heads of all departments, whether they are single executive officers or a board. The legislature may also confirm boards or commissions which are "regulatory or quasi-judicial" agencies. A regulatory authority is, as it implies, one whose basic function is to regulate a particular public activity. The Fish and Game Board is a classic example of such a regulatory board. A quasi-judicial

agency is one in which individual rights are adjudicated. An example of such a board would be the Public Utilities Commission, where contested proceedings determine rates.

The Railroad Authority as established in SB 352 or SB 10 fits under none of these definitions. It is not at the head of a department[2/] nor is it a quasi-judicial or regulatory agency. Under the constitution, then, the legislature has no power to confirm executive appointments to the Authority, unless the legislature can add to the powers of confirmation which are granted in the constitution.

The legislature attempted to do just that in 1975 when it passed a statute authorizing confirmation of a whole list of lesser executive branch officials, including deputy commissioners and certain division directors. The Alaska Supreme Court held that the statute granting the legislature the additional confirmation power was unconstitutional. Bradner v. Hammond, 553 P.2d 1 (Ak. 1976) In the Supreme Court's view, the power to appoint to positions in the executive branch is a power reserved to the Governor under the doctrine of separation of power, except as the constitution permits the legislature to participate in the process through confirmation. If the constitution does not specifically

---

2/ We recognize that SB 352 provides, "The corporation shall be considered a principal department only for the purposes of Art. III, sec. 26, Constitution of the State of Alaska." (emphasis added) In our view, however, the courts would almost certainly view this purely nominal designation as one purely of form, since the bill does not actually establish a new department with the kinds of gubernatorial controls normally associated with a principal department of state government. This issue of gubernatorial controls is addressed in detail later in this memorandum.

authorize confirmation, there is no legal power to do so and the Governor's power of appointment can not be subjected to confirmation by the legislature. Put another way, the Bradner case holds that the constitution states the outer limits of legislative powers of confirmation; the legislature may not expand that power by statute. While neither SB 10 or SB 352, as presently structured, would withstand constitutional challenge on the issue of confirmation, there are options available to the legislature which would provide a valid legal basis for the confirmation of appointments. We will set these options out briefly for your consideration.

The first and most obvious manner for the legislature to obtain confirmation power is to pass a joint resolution placing before the voters a constitutional amendment that would specifically authorize the legislature to confirm appointments to the Railroad Authority. This amendment could be placed before the voters during this year's election. If the amendment passed, the first appointees of the Governor to the authority or commission would be constitutionally subject to confirmation; if it did not pass, the situation would remain as it is today -- confirmation if and when the Governor chooses to submit the names. We should note that following the Bradner case a constitutional amendment granting broad additional confirmation powers to the legislature was put before the voters and failed, but whether that would be the fate of a more narrowly drawn provision would be difficult to predict.

The second option to insure confirmation would be to create an entirely new department of state government, which would be headed by the Railroad Authority. The sole purpose that new department would be to the railroad. In such an instance, the Authority would be at the head of a department and under Art. III, sec. 26 of the Alaska Constitution, the members of the Authority, would be subject to confirmation. There are, however, certain serious problems which might result from this approach. One of the basic purposes of the present bills creating an independent public corporation or authority (located nominally within a department) is to permit the Railroad Authority to raise money for operations without involving the general credit of the state. If, however, the authority which manages the railroad is a full department of state government there is some real question about its ability to successfully perform this fundraising activity without the involvement of state credit. Art. IX, sec. 8 of the constitution provides that no state debt may be incurred unless (1) it is authorized by law; (2) is for capital improvements; and (3) is ratified by the voters. Sec. XI of the same article provides that the restrictions of sec. 8 do not apply to debts incurred through revenue bonds issued by public corporations or public enterprises of the state when the only security is the revenue of the enterprise or the corporation. Whether or not an entire department of state government can be made a "public corporation" or whether

or not the entire activity of a department of state government would qualify as a "public enterprise" are questions that have never been decided in this state by any court. While the committee can certainly receive advice from legal counsel as to the possible or probable outcome of litigation on these subjects, it would at best be an educated guess. The result might well be that in order to obtain confirmation powers the committee would create a department which, in the end, might be subject to the same bonding restrictions applicable to all other departments of state government. I gather there is no disagreement within the committee that such a result would be highly undesirable. We cannot recommend this method of insuring confirmation powers because the risks are simply to great -- the legislature would be in totally unchartered waters and the magnitude of the questions involved is simply to great to accept that degree of risk.

Having discussed the issue of confirmation, we now move to the second issue posed by the committee. Specifically, that question involves the extent to which a public corporation may be established independently of the authority of executive branch and yet be a part of that branch of government. Art. III, sec. 22 of our constitution requires that <u>all</u> agencies of state government and their respective functions shall be allocated within no more than 20 principal departments.

The only exceptions provided are for "regulatory, quasi-judicial, and temporary agencies." As we view the functions of the operation of the Railroad -- whatever form of entity is chosen -- those functions are not primarily "regulatory" or " quasi-judicial." Further, the railroad operation would not necessarily be "temporary." Although conceivably the railroad could be sold or leased at some point in the future to a private corporation, the existence of the operating entity could well be permanent.

We think it is clear that the Alaska Supreme Court would view the Railroad Authority as performing operational or executive functions and would, therefore, require that the Authority be either a separate principal department or located within one of the already established principal departments. We have already reviewed the problems that would be created if the Railroad Authority would be made the head of an ...tirely separate principal department. Therefore, we are left with the conclusion that the only other constitutionally sound option is to place the governing board or authority within an existing department of state government.

Simply stated, then, the legal issue you have asked reduces itself to this. On the one hand, the legislature seeks to create an "independent" authority -- one which has financial and political autonomy and is not subject to direct gubernatorial control. On the other hand, the constitution

requires that all executive or managerial functions be a part of the executive branch, which, in turn, is under the supervision and control of the Governor. What then are the limits -- how much gubernatorial control is required to make the "independent" authority a constitutionally valid part of state government?

The cases that the Alaska Supreme Court has reviewed concerning the requirements of Art. III, sec. 22 make it clear that more than mere nominal placement of an independent corporate entity within a department in the executive branch is required. For example, in De Armond v. Alaska State Development Corporation, 376 P.2d 717 (Alaska 1962), it was claimed that the legislation creating the Alaska State Development Corporation was unconstitutional because it sought to create an independent agency that was nominally within the Department of Commerce, but which the challengers claimed was not in actuality within that department. The Alaska Supreme Court rejected this contention and upheld the constitutionality of the Development Corporation. In doing so, the court enumerated a number of features contained in the enabling legislation for the corporation, which demonstrated sufficient ties with the Department of Commerce to justify the conclusion that the corporation was (at least for constitutional purposes) truly within the Department of Commerce.

The factors that the court cited were as follows:

(1) the Commissioner of Commerce had a permanent seat on the board of directors and thus had "considerable influence" on the board;

(2) the other six members of the board were appointed by the Governor, and served at his pleasure;

(3) the board was required to submit comprehensive annual reports to the Governor and legislature;

(4) the financial records were to be audited annually by the legislative auditor; and

(5) the state's bank examiner was required to examine the corporation's records each year.

Additionally, although the court did not make clear what significance this fact had, it noted that the corporation was "temporary" and could be dissolved by a majority vote of the board subject to legislative approval.

Four years later, the court reviewed a similar challenge to the constitutionality of the Alaska State Mortgage Association; i.e. that it was only a nominal rather than a legitimate part of the department of state government in which it had been placed. Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alaska 1966). The court, however, noted that the mortgage association legislation contained most of the same features which it had cited in De Armond to support its conclusion that the development corporation was properly established within a department of state government. Like

the development corporation in De Armond, the mortgage association members were appointed by the Governor and served at his pleasure. The commissioner of Commerce had a permanent seat on the board of the association. Additionally, the court noted that as further evidence of gubernatorial control, the mortgage association was required to submit detailed annual reports to the Governor and legislature, the financial records were subject to an annual legislative audit, and certified copies of the minutes of every meeting of the association were required to be sent to the Governor.

Neither of these decisions, unfortunately, provide any guidance on the question of the minimum number of factors that will be required in order to meet the constitutional requirements of executive supervision or control. In both cases, however, the court seemed to emphasize two factors over and above all the others. The first was that board members served at the pleasure of the Governor. The second was that the Commissioner of the department within which these independent entities were located served on the board and was a full voting member. These two features were emphasized by the court to demonstrate that the Governor exercised at least partial control over the activities of the board. The court, for instance, noted that while the commissioner was only a single member of a multi-member board his position as a cabinet member would give him

substantial influence. The court further emphasized that the Governor was in a position to exercise influence on an otherwise independent board through the fact if there were a real disagreement in policy, he could exert control over the board members through his ultimate power to reove them. The court, in Walker, cited with approval language from the Superior Court decision in the case to this effect:

> If the Governor is dissatisfied with the executive director in either his capacity as a member of the Alaska State Housing Authority or the Alaska State Mortgage Association, he can assert his authority over the board members to effect the director's removal, and should they disregard his wishes, his alternative is to appoint members to the board who will appoint an executive director satisfactory to the Governor.

Walker, at 250 n.19.

At the same time, the court recognized that there may be important and legitimate reasons for the legislature to insulate a board or authority from direct gubernatorial influence over particular decisions. In the courts words:

> It is true that the Commissioner of Commerce can not dictate the decisions of the Board. Nor can any other state official . . . . It is quite apparent that the legislature intended the board to be free from outside control in making decisions on particular loans.

De Armond, at 724 (emphasis added).

Nonetheless, it is clear from the decisions that there are limits to the degree of insulation that the court will

tolerate and still uphold the constitutionality of the placement of the independent corporation nominally within a department of state government.

Accordingly, it is our view that to insure constitutionality of this bill the legislature should, at an absolute minimum:

1. create an independent authority which is part of an enumerated department of state government;

2. provide that the board for the public corporation or authority be comprised of persons appointed by the Governor and who serve at his pleasure;[3/] and

3. that the commissioner of the department in which the authority is placed serve as a voting member of the board.

3/ There is a secondary, but perhaps no less important, reason why the appointees to the governing body of the railroad should serve at the Governor's pleasure. As a constitutional matter, there is a serious question as to whether any appointee of the executive branch with the exception of those who serve in regulatory or quasi-judicial positions can be subject to any other restrictions but that they serve at the Governor's pleasure. The U.S. Supreme Court has interpreted that under the federal constitution, if an office is "executive" in nature, legislative efforts to restrict the president's power to remove an official are invalid. Myers v. United States, 272 U.S. 178. That opinion has been modified slightly in Humphries Executor v. United States, 295 U.S. 602, as the court held that a member of the Federal Trade Commission could have his term set by Congress and be insulated from removal by the president, but the court was clear to limit its opinion to quasi-legislative or judicial agencies, i.e. those that were actually passing regulations or resolving legal disputes as their prime function. The Railroad Authority would fall in neither of these categories, but would be within a traditional executive agency structure.

We raise this issue because we can be reasonably sure that the content of this bill will be litigated in the courts, if there is any reasonable basis to do so. The appointment of commissioners to the Railroad Authority who serve at the Governor's pleasure would reduce the possibility of legal attack on yet another basis.

It would be advisable, as well, to include at least some of the kinds of provisions (such as the annual reports to the Governor and legislative audits) which the court in De Armond cited as significant, although these may not be essential. Beyond that, the legislature may, in our view, limit the application of acts such as the Executive Budget Act, Administrative Procedures Act and others which impact most executive branch agencies, but are not, in our view, critical to upholding the constitutionality of this public corporation structure.

AMG/SAB/yw

SJR

46

COMMITTEE REPORT

SENATE

FURTHER:

Date ______________

Mr. President

The Committee on ______________ considered ______________

and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for ______________
[ ] new title
[ ] same title and recommends ______________

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to ______________ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS
	[illegible]. I concur with Senator [illegible]

______________ Chairman

______________ Chairman recommendation

HB
6

COMMITTEE REPORT

SENATE

FURTHER:

Date: ____________________

Mr. President:

The Committee on ____________________ has had ____________________

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ____________________ [ ] same title [ ] new title

and recommends ____________________

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ____________________ Committee

MEMBERS SIGNING DO PASS

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MEMBERS HAVING OTHER RECOMMENDATIONS:

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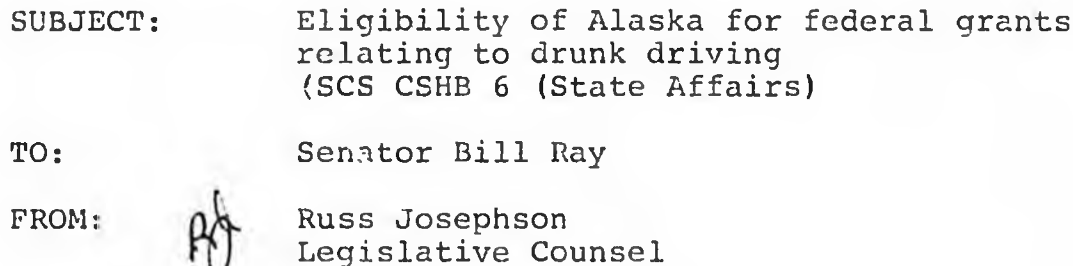
CHAIRMAN

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 998
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M   May 23, 1983



SUBJECT: Eligibility of Alaska for federal grants relating to drunk driving (SCS CSHB 6 (State Affairs)

TO: Senator Bill Ray

FROM: Russ Josephson
Legislative Counsel

You have asked whether SCS CSHB 6 (State Affairs) meets the requirements for eligibility for federal grants to states meeting the criteria of Congressman Barnes' bill (P.L. 97-364) passed in 1982. The grants are of two types, basic and supplemental. For your information and assistance, I am enclosing a photocopy of the pertinent parts of the federal law and the final rules adopted by the National Highway Traffic Safety Administration.

Basic Grants

As you will note in the federal law, there are four criteria for basic grants. They are

(1) provisions for prompt suspension of license;

(2) mandatory sentences;

(3) a 0.10 percent blood alcohol level standard; and

(4) increased enforcement and education.

(1) The license suspension criterion. Under the suspension criterion, the driver's license of a person determined to be intoxicated as a result of a chemical test or a person who refuses to take the test must be suspended promptly for at least 90 days on the first offense, and for at least a year for subsequent offenses. The officer must have probable cause under state law to believe the person has committed an alcohol-related traffic offense. For driving while

intoxicated or refusal of a chemical test of breath, SCS CSHB 6 (State Affairs) calls for a 90-day revocation (suspension) of the license on the first offense, not less than a year on the second offense, and for not less than ten years on subsequent offenses (sec. 6). Except as noted below, the bill meets the criterior on its face.

Concerns and differences. The discussion of the regulations in the Federal Register suggests the following:

(1) "Prompt suspension" means that the average time from arrest to final suspension action should not exceed 45 days. (Confiscation of the license at the scene by a peace officer is not suspension for the purpose of the criterion.) A state with a longer average time for final suspension actions may be awarded basic grants under this program if the state submits a plan showing how it will meet the 45-day standard in the future. Such a state will have to meet the 45-day standard to receive supplemental grants. Alaska will need to demonstrate its record of prompt suspensions. The bill as written appears to provide the means of meeting the requirements of the federal regulations.

(2) The adopted definition of "suspension" requires a full suspension for 30 days and allows the issuance of a restricted, provisional or conditional license ("limited license" in our terminology) for the remaining 60 days of the 90-day suspension period. We meet this requirement except that the adopted rule prohibits a limited license being issued to a person who has refused to take a chemical test. Sec. 7 of this bill contradicts the federal rule on this point.

(3) The scheme of determining who is a repeat offender for purposes of the federal rule is based on a person's record in a five-year period. "Repeat offender" is defined as "any person convicted of an alcohol-related traffic offense more than once in five years". (Refusal to submit to a chemical test is included.) Our statutory scheme is based on a ten-year period. Inasmuch as that is a stricter standard than the federal scheme, which wipes the slate clean after five years, apparently, I expect our scheme would receive federal approval.

(4) The federal rules allow the limited license to be used "for the purposes of going from [sic] a residence to or from a place of employment or to and from a mandated alcohol education or treatment program". While the wording of the definition is not clearly expressed, it is clear that it differs from our provision. Our provision (sec. 7 of the bill) allows the limited license "if the court determines that the person's ability to earn a livelihood would be severely impaired" and the limitation would "enable the person to earn a livelihood without excessive danger to the public". Thus, our version of this provision is stricter, allowing the limited license to be used only for work-related purposes. Again, I suspect the approach taken in this bill would receive federal approval, being stricter than the federal rule.

(2) The mandatory sentence criterion. For a person convicted more than once in a five-year period of driving while intoxicated, one of the options of this criterion is imprisonment for not less than 48 consecutive hours. Under SCS CSHB 6 (State Affairs), a first DWI conviction carries a penalty of 72 consecutive hours' imprisonment. A second conviction within ten years carries twenty days' imprisonment, minimum. Subsequent convictions carry a thirty days' sentence. Thus, the bill meets this criterion.

Difference: This criterion is based on a five-year period while the bill uses a ten-year period. Again, as our standard is stricter than the federal standard, I expect it would receive federal approval.

(3) The blood alcohol level criterion. This criterion sets the level at 0.10 percent. Under our statute, a person with 0.10 percent blood alcohol concentration is considered intoxicated and the bill leaves this provision unchanged, so we meet this criterion.

(4) The "increased efforts" criterion. The fourth criterion for the basic grants is "increased efforts or resources dedicated to the enforcement of alcohol-related laws and increased efforts to inform the public of such enforcement". The discussion of this criterion in the Federal Register indicates that states will "demonstrate increases in their effort by comparing fiscal year 1982 (or later years) with the prior preceding year or with the average of the State's enforcement and information efforts

over the three years preceding the year in which a State first applies for a grant". This bill does not address the issue of funding, and thus does not address the issue of the fourth criterion for a basic grant.

Supplemental Grants

Initially, the proposed rules for the grant program indicated four "significant" criteria and several additional criteria. As finally adopted, there are 21 criteria for supplemental grants. The scheme for qualifying states for supplemental grants by means of satisfying several criteria is quite complicated. The following factors are the key provisions:

-- a state must adopt at least eight criteria of their choosing to be eligible for a full supplemental grant of 20 percent

-- a state may choose to adopt a minimum of four criteria of its own preference; upon meeting those criteria, it qualifies for a supplemental grant of 10 percent

-- qualification for supplemental grants for a second and third year requires the adoption of two more criteria per year and the demonstration of increased performance in the criteria previously adopted

-- by the third year, a state will have to adopted and implemented 12 of the 21 criteria

-- credit for criteria adopted and implemented already will be given; a state with several criteria satisfied may not be required to adopt and implement more than a total of 15 criteria during the three years of the grant program.

The following are the 21 criteria for supplemental grants:

1. Raising the drinking age to 21 for all alcoholic beverages

2. Program coordination (a single individual or equivalent acceptable plan)

3. Rehabilitation and treatment

4. State and local task forces

5. Statewide driver record system

6. Locally coordinated programs

7. Prevention and education

8. Screening of drunk drivers (pre- or post-sentencing)

9. Evaluation systems (to evaluate programs)

10. Self-sufficiency of local programs

11. Use of roadside sobriety checks

12. Citizen reporting

13. Enactment of a BAC (blood alcohol concentration) of 0.08 percent as presumptive evidence of DWI

14. Uniform licensing procedures (participation in the National Driver Register and the Driver's License Compact, the one-license/one-record policy)

15. Preliminary breath tests

16. Plea-bargaining (reduction of charges; notation of why and that the original charge was alcohol-related)

17. Victim assistance, compensation and impact statements

18. Impoundment

19. Choice of test (peace officer's choice; second test may be required under certain circumstances)

20. Dram shop laws

21. Innovative programs

At this point it seems premature to discuss these criteria in any detail. Suffice it to say that some of these criteria may already be met and that some of them (the drinking age, rehabilitation and treatment, sobriety checks,

preliminary breath tests, and impoundment) are addressed either in this bill or in other pending legislation.

Summary

It appears that the bill will meet the criteria for basic grants provided that it is amended to prevent the issuance of a limited license to a person who has refused a chemical test. As noted above, there are some concerns and differences that ought to be noted. Ensuring that license suspensions become final within 45 days on the average is one concern. The difference between the bill and the criterion regarding the period of time upon which the scheme is based has been noted. The same difference applies to the mandatory sentence provision. The bill and the criterion also differ on the use of limited licenses. Finally, adoption and implementation of supplemental grant criteria need to be considered both now and in the near future if the state desires to qualify for supplemental grants. Some of the supplemental criteria may be met by this bill or by other pending legislation.

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per centum of the amount apportioned to such State for fiscal year 1983 under section 402 of this title. Such supplemental grant shall be in addition to any basic grant received by such State.

23 USC 402.

"(e)(1) For purposes of this section, a State is eligible for a basic grant if such State provides—

State eligibility.

"(A) for the prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer;

"(B) for a mandatory sentence, which shall not be subject to suspension or probation, of (i) imprisonment for not less than forty-eight consecutive hours, or (ii) not less than ten days of community service, of any person convicted of driving while intoxicated more than once in any five-year period;

"(C) that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated; and

"(D) for increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

"(2) For purposes of this section, a State is eligible for a supplemental grant if such State is eligible for a basic grant and in addition provides for some or all of the criteria established by the Secretary under subsection (f).

"(f) The Secretary shall, by rule, establish criteria for effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol, which criteria shall be in addition to those required for a basic grant under subsection (e)(1). The Secretary shall establish such criteria in cooperation with the States and political subdivisions thereof, appropriate Federal departments and agencies, and such other public and nonprofit organizations as the Secretary may deem appropriate. Such criteria may include, but need not be limited to, requirements—

Effective program critera.

"(1) for the establishment and maintenance of a statewide driver recordkeeping system from which repeat offenders may be identified and which is accessible in a prompt and timely manner to the courts and to the public;

"(2) for the creation and operation of rehabilitation and treatment programs for those arrested and convicted of driving while intoxicated;

"(3) for the impoundment of any vehicle operated on a State road by any individual whose driver's license is suspended or revoked for an alcohol-related driving offense;

"(4) for the establishment in each major political subdivision of a State of locally coordinated alcohol traffic safety programs which are administered by local officials and are financially self-sufficient;

"(5) for the grant of presentence screening authority to the courts;

"(6) for the setting of the minimum drinking age in such State at twenty-one years of age;

"(7) for the consideration of and, where consistent with other provisions of State law and constitution the adoption of, recommendations that the Presidential Commission on Drunk Driving may issue during the period in which rules are being made to carry out this section.

Appropriation authorization.

"(g) There is hereby authorized to be appropriated to carry out this section, out of the Highway Trust Fund, $25,000,000 for the fiscal year ending September 30, 1983, and $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1984, and September 30, 1985. All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditures of such funds to Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section. Sums authorized by this subsection shall not be subject to any obligation limitation for State and community highway safety programs.".

23 USC 101 *et seq.*

(b) The analysis for chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following:

"408. Alcohol traffic safety programs.".

Regulations, publication in Federal Register.
23 USC 408 note.

(c) The Secretary of Transportation shall issue and publish in the Federal Register proposed regulations to implement section 408 of title 23, United States Code, not later than November 1, 1982. The Secretary shall allow public comment and hold public hearings on the proposed regulations to encourage maximum citizen participation. The final regulations shall be issued, published in the Federal Register, and transmitted to Congress before February 1, 1983. To the extent such regulations relate to the making of basic grants under such section 408, such regulations shall become effective on the date on which they are published in the Federal Register. To the extent such regulations relate to the making of supplemental grants under such section 408, such regulations shall become effective April 1, 1983, unless before such date either House of Congress by resolution disapproves such regulations to such extent. If such regulations are so disapproved by either House of Congress, the Secretary shall not obligate for such supplemental grants any amount authorized to carry out such section 408 for the fiscal year ending September 30, 1983, or any subsequent fiscal year, unless specifically authorized to do so by a statute enacted after the date of enactment of this Act.

Ante, p. 1738.
Disapproval by Congress.

National Driver Register Act of 1982.

TITLE II—NATIONAL DRIVER REGISTER

SHORT TITLE

23 USC 401 note.

SEC. 201. This title may be cited as the "National Driver Register Act of 1982".

DEFINITIONS

23 USC 401 note.

SEC. 202. For purposes of this title, the term—

(1) "alcohol" has the meaning given such term by the Secretary of Transportation under regulations prescribed by the Secretary;

[illegible] resulted in the addition of two subparagraphs (f)(9) and (f)(10);[4] and (iii) effected the revision of subparagraph (f)(2).[5] Similarly, amendments to the delegation to the Regional Administrators have: (i) Caused paragraphs (a), (b) and (d) of Article 30–6 to be redesignated as paragraphs (b), (c) and (f);[6] and (ii) resulted in the addition of subparagraphs (b)(4) to Article 30–6.[7]

In light of these changes in Articles 30-1 and 30-6, the delegation of authority to the Division Director contains references to other delegations that are currently incorrect. The Commission, therefore, is amending Article 30–5 by conforming the references in this Division's delegation of authority with the appropriate paragraphs in the delegations of authority to the Director of the Division of Corporation Finance and the Regional Administrators. Specifically, the Commission is amending paragraph (b) of Article 30-5 to delegate to the Division Director the same functions as are delegated to the Director of the Division of Corporation Finance in paragraphs (a), (e), and (f) of Article 30-1, and is also amending paragraph (h) of Article 30-5 to delegate to the Director the same functions as are delegated to the Regional Administrators in subparagraphs (b)(1), (b)(2) and (b)(3), and paragraphs (e) and (f) of Article 30-6.

Procedural Matters

The Commission finds, in accordance with section 553(d) of the Administrative Procedure Act ("APA") [5 U.S.C. 553(d)], that the foregoing action relates solely to rules of agency organization, procedure, or practice; that section 553(b) [5 U.S.C. 553(b)] of the APA makes it unnecessary to publish general notice of rulemaking as required by that section; and that, in view of the foregoing, good cause exists for dispensing with the normal 30-day delay in effectiveness. Accordingly, the amendments to Article 30-5 described in this release will become effective immediately upon publication in the Federal Register.

Statutory Authority

The Commission hereby amends Article 30–5 paragraphs (b) and (h) of the rules of the Commission relating to general organization [17 CFR 200.30-5] pursuant to the authority contained in Pub. L. No. 87-592, 76 Stat. 394 [15 U.S.C. 78d-1, 78d-2].

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, and Securities.

Text of Amendment

Accordingly, 17 CFR Part 200 is amended as follows:

PART 200—ORGANIZATION, CONDUCT AND ETHICS, AND INFORMATION AND REQUESTS

By revising paragraphs (b) and (h)(1) of § 200.30-5 to read as follows:

§ 200.30-5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(b) With respect to matters pertaining to investment companies registered under the Investment Company Act of 1940, pooled investment funds or accounts, and the general assets or separate accounts of insurance companies, all arising under the Securities Act of 1933, the Securities Exchange Act of 1934 and the Trust Indenture Act of 1939, the same functions as are delegated to the Director of the Division of Corporation Finance in regard t[illegible]panies other than such register[illegible] [illegible]ment companies in parag[illegible] (e) and (f) of Article 30–1 (§ 2[illegible] this chapter) of these [illegible]

* * * * *

(h) * * *

(1) The Director of the Division of Investment Management shall have the same authority with respect to the Securities Act of 1933 [15 U.S.C. 77a, et seq.], Regulation A [17 CFR 230.251, et seq.] and Regulation F [17 CFR 230.651, et seq.] as that delegated to each Regional Administrator in paragraphs (b)(1), (b)(2) and (b)(3), and in paragraphs (e) and (f) of Article 30-6 of the Commission's Statement of Organization, Conduct and Ethics, and Information and Requests [17 CFR 200.30-6].

Dated: January 28, 1983.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-[illegible] Filed 2-4-83; 8:45 am]

BILLING CODE 8010-01-M

[illegible] Securities Act Release No. 6200 (February 13, 1980) [45 FR [illegible] (February 21, 1980)].

[illegible] Securities Exchange Act Release No. [illegible] (January [illegible], 1977) [42 FR [illegible] (January [illegible], 1977)]; Securities Exchange Act Release No. 14[illegible] (November [illegible], 1977) [42 FR [illegible] (December [illegible], 1977)].

[illegible] Securities Act Release No. 6[illegible] (November [illegible], 1980) [45 FR [illegible] (November 21, 1980)].

[illegible] Securities Act Release No. [illegible] (April [illegible], 1980) [45 FR 2[illegible] (April 10, 1980)].

[illegible] Securities Act Release No. 5[illegible] (September 2[illegible], 1977) [42 FR [illegible] (October 7, 1977)].

National Highway Traffic Safety Administration

23 CFR Part 1309

[Docket No. 82-16; Notice 5]

Incentive Grant Criteria for Alcohol Traffic Safety Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Final rule.

SUMMARY: This notice establishes criteria for effective programs to reduce crashes resulting from persons driving while under the influence of alcohol. This effort is undertaken pursuant to Pub. L. 97–364, which provides for two categories of federal incentive grants, basic grants and supplemental grants, to States that implement effective programs to reduce drunk driving. This final rule also sets forth the procedures a State must use to demonstrate it is eligible for a grant and the procedures NHTSA will use to award the grants.

DATES: These rules become effective by statute, February 7, 1983, except that [illegible] becomes effective by statute on April 1, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. George Reagle, Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–0837).

SUPPLEMENTARY INFORMATION: On November 4, 1982, (47 FR 51152) the National Highway Traffic Safety Administration (NHTSA) issued an advance notice of proposed rulemaking seeking comments on possible ways to implement the alcohol traffic safety incentive grant program established by Public Law 97–364 (23 U.S.C. 408, the Act). Based on the comments to that Notice, NHTSA issued a notice of proposed rulemaking on December 30, 1982 (48 FR 425). NHTSA primarily sought comments on what definitions and criteria the agency should establish for States to be eligible for both basic and supplemental grants, which can total up to 50 percent of the amount apportioned to a State in fiscal year 1983 under Section 402 of the Highway Safety Act of 1966.

To provide an increased opportunity for public comment, NHTSA held public hearings on December 13, 1982, in Washington, D.C. and January 11, 1983, in Atlanta, Georgia on its proposals. Persons representing numerous States, professional organizations, citizen groups, and others testified. In addition,

many interested parties submitted written comments to the docket for this rulemaking.

The final rule being issued today is based on the agency's review of the hearing testimony, comments received on the notice of proposed rulemaking and the Interim Report to the Nation prepared by the Presidential Commission on Drunk Driving. Significant comments to the notice are addressed below.

Basic Grant Criteria

The Act established four criteria that must be met by a State in order to be eligible for a basic grant in the amount of 30 percent of each State's fiscal year 1983 apportionment under section 402 of the Highway Safety Act. The agency notes again that because the four basic criteria are statutorily mandated by Congress, the agency does not have the authority to change, by deletion or addition, the substantive requirements for a basic grant, as was requested by some of the commenters. As was also noted in the agency's prior notices, however, several of the terms used in the statutory language setting forth the basic grant criteria were undefined, and NHTSA sought comments on several possible definitions that the agency believed would be consistent with the legislative purpose of the Act. In addition, NHTSA sought comments on ways by which States might most easily and effectively demonstrate that they have met the basic grant criteria.

Criterion No. 1: Prompt License Suspension

The first criterion established by Congress for basic grant eligibility requires:

> The prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (I) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests to be intoxicated, or (II) who refuses to submit to such a test as proposed by the officer.

Terms Used: "Prompt"

The agency proposed to define "prompt" as a mandatory suspension of the privileges of a driver's license that occurs no later than 30 days after a person is arrested for drunk driving, in at least 60 percent of the cases. In addition, the agency proposed that the average time to suspend a license could not exceed 45 days.

As in their responses to the agency's advance notice, numerous States voiced their concerns about the effect of the proposed definition of "prompt" on States that have judicially imposed, rather than administratively imposed, license suspension. While agreeing with the need to reduce the amount of time required to judicially impose a license suspension, numerous States, such as Florida, Georgia, Pennsylvania and Tennessee, urged the agency to establish a definition that would allow States to use an improved judicial suspension system.

They said that because of cost and other reasons, it may be difficult to convince their legislatures to adopt an administrative system. Florida, for example, noted that its legislature has twice turned down efforts to create an administrative systems of license suspension. Tennessee said that its prior administrative system had been overturned in court, because it failed to meet due process requirements, and that reinstatement of an administrative system would not be cost beneficial.

States proposed a number of alternative ways to accommodate the use of a judicial system, while still requiring improvements in those systems. New Jersey, which said that it can probably meet a 45 days average requirement, urged the agency to consider establishing an initial requirement of suspension within 120 days and then require improvement in subsequent years to a level of 90, 60 or 30 days. New Jersey said that without such an approach, the "States most in need of assistance to improve systems with serious problems will not qualify for the very funding needed to bring about improvements." Florida suggested that setting a requirement of 30 percent within 30 days, 60 percent within 60 days or less and 90 percent within 90 days or less would encourage States with judicial systems to improve those systems.

Numerous commenters, such as the National Association of Governors' Highway Safety Representatives (NAGHSR), Iowa, Maine, Missouri, New Mexico, and North and South Carolina, supported a requirement that the average time for suspension take no longer than 45 days.

States that currently have administrative systems of license suspension also urged the agency to modify its proposed definition to account for procedural and due process considerations built into their current systems. Delaware noted that each party in its administrative proceedings is allowed at least one continuance, which means that a certain percent[illegible] of cases stretch out beyond 40 days after arrest. Delaware suggested that the agency adopt an average of 45 days.

In formulating the final rule, the agency has attempted to fulfill the Congress's intention that States substantially reduce the current long delays between arrest and subsequent license sanction. Since one of the principal deterrents to drunk driving is the certainty and swiftness of punishment, it is crucial that States act promptly in imposing license suspensions. At the same time, the agency recognizes that if the time limit set for license suspension is too short, States that currently have long delays of five months or more may not have a realistic opportunity to meet the time limit and thus will be unable to receive the funds necessary to help them improve their program.

The agency has thus decided to define "prompt" as license suspension within an average of 45 days from time of arrest. However, States that have reached an average of 90 days from time of arrest may qualify for a basic grant, if they submit a plan showing how they will reduce that average to 45 days. In addition, the agency has decided to make as a condition to being eligible for each of the supplemental criteria that a State have a license suspension system in which the average time to suspend a license does not exceed 45 days.

These actions will have a two-fold effect. First, they will serve as an incentive to States with long delays to cut those delays in order to be eligible for a basic grant. Second, with the funds received under the basic grant, those States can then make further improvements in their systems in order to receive a supplemental grant. The system adopted by the agency will also provide a substantial reward to those States that have already, either through an administrative or judicial suspension system, reduced their average time to suspend a license to 45 days from arrest. Those States, if they meet the other criteria for a basic grant, will be eligible for consideration for supplemental grants. Whereas States that do not meet the 45 day average will not be eligible for a supplemental grant until the average of 45 days is achieved.

"Suspension"

The agency proposed two alternative definitions of the term "suspension." The first would have defined suspension as including only a full loss of driving privileges for the statutorily mandated period of 90 days. The second would

have allowed the use of a 30-day full suspension, followed by a 60-day period of restricted driving privileges. The restricted license could only be issued, under State-wide published guidelines, in exceptional circumstances specific to each offender and for the limited purpose of driving between a residence and a place of employment, and/or to and from an alcohol education or treatment program.

The agency also proposed that restricted licenses not be available for repeat offenders or for those who refuse to take a chemical test under implied consent statutes.

Permitting the use of a restricted license for a first offender was widely supported by such commenters, as the American Automobile Association (AAA), Iowa, Maryland, Michigan, Mississippi, National Council on Alcoholism (NCA), New York, and Wisconsin. In urging the use of restricted licenses, many of those commenters referred to the problem of possible loss of employment and difficulty in attending treatment/rehabilitation programs for rural drivers who do not have access to public transportation systems. Several of the commenters that urged the use of restricted licenses, such as AAA, NCA, Illinois and Michigan, indicated that they supported the agency's proposed 30-day full suspension followed by a 60-day restricted license.

New Jersey supported prohibiting the use of any restricted licenses. It argued that such license restrictions are difficult to enforce and are often abused. In addition, New Jersey said that license suspension will be a serious deterrent only if a driver knows that he or she can not obtain a restricted license. Delaware also commented that it does not permit the use of restricted licenses for the first 90 days of a suspension.

The agency has decided to adopt the definition of suspension that would require a full suspension for 30 days and permit the use of a restricted, provisional or conditional license for the remaining 60 days. (Several States commented that they do not have restricted licenses, but use an equivalent type of conditional or provisional license; the agency's definition will permit the use of those other types of licenses as well.) The agency believes that requiring a full suspension for the first 30 days creates a substantial deterrent to drunk driving. Allowing the use of some type of restricted license during the remaining 60 days will reduce the loss of transportation problems for rural drivers. The agency emphasizes that restricted, provisional or conditional licenses must only be used in exceptional circumstances unique to each offender. **To promote Statewide uniformity in the use of such licenses, the agency is also adopting the proposed requirement that each State must publish guidelines governing the use of those licenses.**

No commenter opposed the proposed requirement that restricted licenses not be available for persons that refuse to take a chemical test and the agency therefore has adopted that requirement in the final rule. The New York Department of Motor Vehicles requested the agency to permit the limited use of restricted licenses for repeat offenders. New Mexico also commented that it permits the use of restricted licenses for repeat offenders. The agency believes that the Act's provision on mandatory sentences or community service for repeat offenders shows that Congress intended stricter punishment for those offenders. **NHTSA is therefore adopting the proposed requirement that repeat offenders not be eligible for restricted or other types of limited licenses.**

Repeat Offender

The agency's proposal to define a repeat offender as anyone convicted of driving while intoxicated (DWI) or a similar alcohol-related traffic offense **more than once in five years was** supported by the commenters and is **therefore adopted in the final rule.** Michigan said that a person who has refused to submit to a chemical test more than once in five years should be considered a repeat offender. The agency considers a refusal to take a chemical test as an alcohol-related offense and thus such a person would be covered by the definition.

Refusal of Second Test

The agency proposed that mandatory license suspension apply to a refusal by a driver to take more than one chemical test, where a second test is authorized by State law. At least one commenter, Idaho, interpreted the agency's proposal to require States to adopt laws mandating a second test in order to be eligible under this criterion for a basic grant. Mandating the use of a second test in order to be eligible for a basic grant was not the agency's intent. The agency only wanted to specify that **where a State currently authorizes the use of a second test, a refusal to take that test would be grounds for mandatory suspension.** The agency believes that **such a requirement is in** line with Congress's intent for this criterion and is **therefore adopted.**

In the notice, the agency also proposed to adopt as a separate criterion for a supplemental, rather than a basic, grant that States adopt laws permitting an officer to require a second test. As explained elsewhere, the agency is adopting that proposal as one of the criteria that can be met to qualify for a supplemental grant.

Demonstrate Compliance

Several commenters, such as Iowa, Michigan, and South Carolina, expressed concern about possible problems in obtaining data on the average number of days between the offense and the sanctioning action and the average length of suspension. To reduce possible data gathering problems, States can provide those data based on statistically valid samples. No commenter opposed the requirement that States provide the agency with a copy of the license suspension law and the regulations or guidelines governing license suspension and thus those requirements are adopted in the final rule.

Criterion No. 2: Mandatory Sentence

The second criterion established by Congress for basic grant eligibility requires:

> A mandatory sentence, which shall not be subject to suspension or probation, of (i) imprisonment for not less than 48 consecutive hours, or (ii) not less than ten days for community service, of any person convicted of driving while intoxicated more than once in any five-year period.

Commenters uniformly supported the agency's proposed definition of "imprisonment" to include confinement not only in jails or prisons but also in such places as minimum security facilities or in-patient rehabilitation/treatment centers. The definition is therefore adopted in the final rule.

Demonstrate Compliance

No commenter opposed the proposed requirement that States demonstrate compliance by providing copies of existing legislation or regulations on mandatory sentences, and therefore it is adopted in the final rule. The agency also proposed that States provide information on the number of people convicted of an alcohol-related traffic offense more than once in a five year period. Wisconsin expressed concern about obtaining the necessary data on the average sentence imposed on repeat offenders. To lessen any possible data gathering problems, States can provide data on average sentences based on statistically valid samples.

Several commenters, such as Michigan and Pennsylvania, requested that States not be required to provide information of the place of confinement

used for each individual. It was not the agency's intention to require place of confinement information for each individual. States merely have to identify what general types of confinement (i.e., jails, treatment centers) they are using.

Criterion No. 3: Illegal Per Se Laws

The third criterion established by Congress for basic grant eligibility requires States to have a law that:

Provides that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

The agency's proposal to accept a State's *per se* law as evidence of compliance with this criterion was uniformly supported and is therefore adopted in the final rule.

Tennessee noted that its law establishes a blood alcohol concentration (BAC) of 0.10 percent as a presumptive level, rather than as illegal per se. Tennessee requested that the agency accept such a law as an acceptable equivalent if a State can demonstrate it is being effectively enforced. Kentucky also requested the agency to accept a presumptive statute as qualifying with this criterion. Given the narrow language of the statute that a BAC of 0.10 percent be *deemed* a violation, the agency does not have the authority to accept a presumptive statute as complying with this criterion.

Iowa raised the issue of how this criterion applies in a situation where a State has two separate per se laws with two different BAC levels. Under Iowa's administrative license suspension statute, a BAC of 0.10 percent is in itself grounds for license suspension. However, Iowa's criminal statute makes a BAC of 0.13 percent, rather than 0.10 percent, illegal *per se*. The agency believes that the language of the statute was meant to apply to any State law, whether administrative or criminal. Thus, each law must set a BAC of 0.10 percent as an offense in itself in order for a State to qualify under this criterion.

Demonstrate Compliance

No commenter opposed the proposed requirement that States demonstrate compliance by providing a copy of the applicable laws. The requirement is therefore adopted in the final rule.

Criterion No. 4: Increased Enforcement/Public Information Efforts

The fourth and final criterion established by Congress for basic grant eligibility requires:

Increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

The commenters uniformly supported the agency's proposal to allow States to determine for themselves which indicators they believe are most appropriate to demonstrate their increased efforts and it is therefore adopted in the final rule. As mentioned in the prior notice, States could use such indicators as: development of supportive administrative policy, increases in arrests and convictions and license suspensions/revocations, increased training for law enforcement officers, prosecutors and judges, increases in rehabilitation referral rates, changes in the public's perception of risk, increases in the number of public service announcements on drunk driving, increased citizen involvement in reporting drunk drivers, and decreases in alcohol-related crashes.

Likewise, the commenters supported the agency's proposal that States demonstrate increases in their levels of effort by comparing fiscal year 1982 (or later years) with the prior preceding year or with the average of the State's enforcement and information efforts over the three years preceding the year in which a State first applies for a grant. That proposal is thus adopted in the final rule.

Supplemental Grant Criteria

Need for Flexibility

The agency's goal in establishing the supplemental grant criteria has been to give full effect to the Congress's intent that States make substantial progress in improving their alcohol safety programs. At the same time, the agency has attempted to provide States with maximum flexibility to design programs that will be effective in their jurisdictions.

In the notice, NHTSA proposed two alternative methods of establishing the criteria that a State must have in place and implement or adopt and implement in order to receive a supplemental grant. States uniformly supported the agency's first alternative that would provide a State with a grant of up to 20 percent of its section 402 apportionment if it implements some, but not all, of the twenty-one proposed criteria. They said that this alternative would give a State the maximum flexibility to choose criteria that are appropriate for and consistent with the goal of improving their alcohol traffic safety program.

The States generally urged the agency not to adopt the second proposed alternative, which would have required them to implement all of those criteria that the Governor of the State has the current authority to implement without requiring the concurrence of another branch of the State government. Several States commented that such a requirement would have widely varying effects because of difference in the authority granted the Governor in different States. The Governor's Highway Safety Representative from Florida, for example, testified that because Florida has a fully elected cabinet, the administrative authority of the Governor is largely limited to issuing executive orders that are not binding on the agencies under cabinet control.

Weighting

Most of the commenters supporting the first alternative, such as Florida, Maryland, Michigan, and New Mexico, also urged that the agency not weigh the alternatives or make some of the criteria mandatory for all States. New Mexico, for example, said that "any weighted scale would not necessarily be reflective of a measure's relative effectiveness from state to state." Georgia and Iowa recommended making all of the criteria of equal weight by making adoption of each criterion qualify a State for one percent of the twenty percent supplemental grant. The NCA recommended a system which would assign a greater weight to the top ranked criteria in the agency's proposed list.

Minimum Number

There were also varying opinions among States favoring the first alternative as to how many of the criteria a State would have to adopt in order to be eligible for a full twenty percent grant. Several States, such as Maine, Maryland and Michigan, recommended requiring a minimum of 8 criteria, while Mississippi and Pennsylvania recommended a minimum of 10. Several States also requested that the agency also set a minimum number for receiving a grant of less than 20 percent. Florida, for example, recommended setting a minimum number of four.

Require Minimum of 8

The agency has decided to adopt the first proposed alternative and require that States adopt a minimum of eight criteria of their choosing in order to be eligible for a full supplemental grant of twenty percent. The agency has also decided that adoption of a minimum of four criteria, of a State's choosing, will qualify a State for a supplemental grant of ten percent. The agency believes that this approach will enable State's to choose those criteria that will most

effectively fit in with its current alcohol traffic safety program.

In order to be eligible for a supplemental grant for a second and third year, States will have to adopt two more criteria each year and demonstrate that they are increasing their performance in the criteria that they adopted in the prior year or years. This will mean that if a State is to be eligible for a full supplemental grant for all three years of the program, it will have had to adopt and implement a total of twelve of the twenty-one criteria by the third year. As a part of its Alcohol Safety Plan, discussed later in this notice, a State will have to explain how the criteria it adopts are related to its current alcohol safety program. This will ensure that States are adopting criteria that will enhance a comprehensive program.

The agency has also decided that States should not be required to adopt more than fifteen of the supplemental criteria. This will mean that a State that has already adopted a comprehensive program that, for example, meets thirteen of the supplemental criteria will not have to spend additional time and funds striving to adopt a total of seventeen criteria (thirteen in place the first year, plus two additional criteria each year for the second and third years) by the end of the three year funding period. States meeting fifteen criteria will have to show that they have increased their performance in the criteria that they have already adopted in order to be eligible for a supplemental grant in subsequent years.

Prior Adoption

In the notice, the agency proposed to recognize prior adoption and implementation of a criteria if it took place either in the legislative session current at the time of enactment of this Act (October 25, 1982) or during the previous legislative session. Since many States have two year legislative sessions, this meant that the agency would recognize actions taken within the past four years.

Many of the commenters such as Delaware, Pennsylvania, Michigan and New Jersey, urged the agency not to set a time limit on when a criteria had to be adopted and implemented. They argued that such a time limit could penalize progressive States that have had alcohol traffic safety programs in effect for a number of years. As the agency has previously noted, it appears to have been the primary intent of the Congress in establishing the incentive grant program to induce future action through new programs. On the other hand, the agency believes that States that have taken a leadership role in establishing new alcohol traffic safety programs should be rewarded for those efforts as long as they have been actively implementing those programs. Therefore, the agency will recognize prior adoption of a criterion as long as a State can demonstrate that it has been actively implementing that criterion during the past four years.

Twenty-One Criteria

The agency has decided to adopt in the final rule the twenty-one criteria proposed in the notice. Each of the criteria is discussed below.

1. Raising the Drinking Age to 21 for All Alcoholic Beverages. All of the commenters addressing this criterion, with one exception, supported increasing the drinking age to 21. That commenter, the Distilled Spirits Council of the United States said that their research has not sufficiently demonstrated the effectiveness of setting the drinking age at 21. The agency strongly disagrees. The research on the effect of increasing the drinking age has been independently reviewed, at different times, by the agency, the Presidential Commission on Drunk Driving and the National Transportation Safety Board. All of these reviews came to the same conclusion, there is statistically valid data to show that increasing the drinking age results in a decrease in alcohol-related crashes among young people. The agency has therefore decided to retain this criterion.

As proposed in the notice, the agency will only recognize adoptions of legislation as qualifying for this criterion if the legislation immediately or over a three year period raises the drinking age to 21. In addition, the 21 age limit must apply to all alcoholic beverages. Thus a law, such as in Oklahoma, that defines 3.2 percent beer as a non-alcoholic beverage would not qualify.

2. Program Coordination. Several commenters, while agreeing with the need for a coordinated effort among the various State agencies involved in alcohol traffic safety programs, urged that the agency not require the designation of a single person as the State coordinator. Michigan, for example, said that a State should have the flexibility to structure the organization of its program without having to establish a specific individual as overall coordinator.

Since a comprehensive program will require the cooperation of numerous State agencies, the agency believes that there should be some mechanism to ensure a coordinated effort. However, to provide States with increased flexibility in designing their own programs, the agency has decided not to require the designation of a single individual as coordinator. Instead, States can meet this criterion by providing an explanation of how they coordinate the work of the different State agencies involved in their alcohol traffic safety programs.

3. Rehabilitation and Treatment. Commenters addressing this criterion supported the agency's proposal on rehabilitation and treatment. Several of the commenters, such as National Association of Alcoholism and Drug Abuse Counselors and NCA, noted the importance of carrying out rehabilitation and treatment programs with qualified professionals in accordance with established guidelines.

The agency is therefore adopting the criterion as proposed, including the requirement that each State set minimum standards for rehabilitation and treatment programs.

Several of the commenters requested the agency to combine the rehabilitation and treatment criterion with the screening criterion. The agency recognizes that the two criteria are complementary and both are needed in a comprehensive program. The agency has decided to retain them as a separate criteria, however, in order to give States flexibility in implementing their programs. For example, a State may want to have its screening program conducted by treatment personnel, or by State or local health agencies or by private sector rehabilitation and treatment groups.

4. State and Local Task Forces. Delaware, while agreeing with the need for task forces, commented that in small States there is no need for local task forces. It said that the concerns of local communities can be adequately represented by involving them in the work of a Statewide task force. The agency agrees and thus, while encouraging States to establish county, city or regional task forces when appropriate, will only require the establishment of a State task force to meet this criterion. However, if local task forces are not used, States must show that the interests of local communities are represented on the State task force.

5. Statewide Driver Record System. Commenters, such as Illinois, Mississippi and New Mexico, supported the proposed requirement that the driver record system be operated so that conviction information is recorded in the system within 30 days of a conviction, license sanction or the completion of the appeals process. The 30 day requirement is therefore adopted.

Several commenters, such as NCA, Michigan and Wisconsin, again raised the issue of possible conflicts between disclosure of portions of a driver's records and State and Federal confidentiality and privacy law requirements. A frequently cited example was the U.S. Department of Health and Human Services confidentiality regulation concerning disclosure that a person has been a participating in an alcoholism treatment program. The commenters agreed, however, that information on drunk driving convictions should be public. The agency is therefore adopting a requirement that the public have access to the portions of a driver's record that are not protected by Federal or State confidentiality or privacy regulations.

Commenters did not object to the agency's proposed requirement that information in the record systems be retained for at least five years and therefore that requirement is adopted as proposed.

6. Locally Coordinated Programs. Several commenters, such as Delaware and Iowa, said that in their experience, effective management of alcohol safety programs can be done on the State or regional level, particularly in States that are geographically small or have their population concentrated in a limited area.

The agency recognizes that the degree of local control will necessarily vary from State of State. However, the need for some level of local coordination remains constant. As stated in the prior notice, the agency believes that the communities themselves should decide on the specific geographic area—city, county or regional—to be involved in a locally coordinated program. Because of the importance of involving the local communities in order to create a long-term successful alcohol traffic safety program, the agency has decided to adopt this criterion. In small States local coordination may be demonstrated by showing that the interests of local communities are recognized and how the overall State and local program is coordinated.

7. Prevention and Education. Commenters, such as AAA, Florida, NCA, and the National Safety Council supported the proposed requirement that States have a prevention and education program designed to change the societal norm relative to drunk driving. The requirement is therefore adopted.

States can demonstrate compliance with this criterion by providing a brief discussion of their prevention and education program and explaining how it relates to changing societal attitudes and norms against drunk driving. As mentioned in the notice, the State program should include a comprehensive kindergarten through twelfth grade education program as well as involvement of private sector groups and parents.

8. Screening. The [illegible] and NCA supported the requirement that courts have the authority to order screening of drunk drivers. They both recommended that the screening be done prior to sentencing. New Mexico and Delaware also supported screening, but urged the agency to allow either pre- or post-sentence screening. Delaware noted the practical problem that a certain percentage of arrested drivers plead guilty at arraignment and thus may not be screened before sentencing. These drivers would, however, receive postsentence screening.

The agency, while encouraging the use of pre-sentence screening, will permit the use of either pre- or post-sentence screening to comply with this criterion. States can demonstrate compliance by submitting a copy of the law authorizing screening and providing a brief description of the screening process.

Idaho requested the agency to define what level of screening is required to meet this criterion. As discussed in the agency's advance notice, the screening should, at a minimum, be based on BAC level at time of arrest, prior alcohol-related convictions and a self-administered questionnaire.

9. Evaluation Systems. The commenters supported the need for evaluation systems to determine the effectiveness of individual program countermeasures and the effectiveness of the program as a whole. Several States noted that they are currently carrying out such evaluations as a part of their highway safety programs.

The agency has decided, therefore, to adopt this criterion as proposed. States can demonstrate compliance by showing that they have an adequate State-wide data reporting and collection system and that the data is used in an evaluation process.

10. Self-Sufficiency. Several commenters, such as Georgia and Maine, expressed concern about possible abuses arising from the requirement that local programs become self-sufficient. They said that the need to generate revenue from fine monies could create a "bounty system."

The agency recognizes that there is the possibility of limited abuses. However, that problem can be resolved by having a system to identify and correct abuses, if they occur. The agency notes that several States, such as New York and Virginia, have already established programs moving toward self-sufficiency without creating abuses. In addition, fine revenue is only one mechanism of making a program self-sufficient. There are other ways for having the DWI offender pay for the system, such as treatment fees and court costs. The important consideration is that the people who create the DWI problem pay for its solution.

As mentioned in the agency's prior notices, the purpose of the section 408 incentive grant program was to provide States "seed money" to attack the problem of drunk driving. If a mechanism is not created to make such programs self-sufficient, there is a real danger that the programs may be reduced or eliminated when the Federal funds are gone. The agency has, therefore, decided to retain self-sufficiency as a criterion.

States can demonstrate compliance by providing a plan showing how they intend to make their programs self-sufficient. Specific progress toward implementation of the plan must be shown in order to meet this criterion in future years.

11. Use of Roadside Sobriety Checks. As in the responses to the agency's prior notice, there was a sharp difference of opinion among commenters on the use of roadside checks to detect drunk drivers. The California Highway Patrol again questioned its use on constitutional grounds. Other commenters, such as Delaware, Idaho and Maryland, said that roadside checks have been successfully used in their States and are particularly effective in increasing the public's perception of the risk of being caught for drunk driving.

Since States have the flexibility of choosing which of the supplemental criteria they wish to implement, the agency has decided to retain roadside sobriety checks as one of the criteria. Thus, those States which have legal questions about the use of the checks are not compelled to use them, while those States that have successfully used them in the past can continue to do so and receive credit. States can demonstrate compliance by providing information showing that they are systematically using roadside sobriety checks. States must also provide a copy of the regulation, law or policy authorizing the use of roadside sobriety checks.

12. Citizen Reporting. Several commenters, such as Delaware, Maryland, and New Jersey said that they have successfully used citizen reporting program in their States. Pennsylvania, however, raised the issue of whether these programs could be potentially abused by citizens making

false reports. Since the States actually implementing these programs have not reported problems with abuses and have reported strong citizen support, the agency is adopting the criterion as proposed.

Virginia expressed concern about a possible administrative problem in gathering citizen reporting information from each police dispatcher so that States can report the total number of reports and resulting arrests. To reduce possible data collection problems, States can demonstrate compliance with this criterion by providing information on the degree of participation, e.g., number of citizen reports and number of resulting arrests, based on statistically valid samples.

13. Enactment of a BAC of 0.08 Percent as Presumptive Evidence. Because of an inadvertent typographical error in the preamble to the agency's notice, several commenters thought that the agency was proposing to retain the criterion that States enact laws making a BAC of 0.05 percent as presumptive evidence of driving while under the influence. They urged the agency to set the level at 0.08 percent. Their recommendations coincide with the text of the proposed final rule which contained the correct version of the agency's proposal. The agency is therefore adopting the 0.08 percent BAC requirement in the final rule.

States can demonstrate compliance by providing a copy of the applicable law.

14. Uniform Licensing Procedures. Commenters addressing this criterion supported the agency's proposal that States fully participate in the National Driver Register and the Driver's License Compact and use a one-license/one-record policy. The agency is therefore, adopting this criterion in the final rule.

States can demonstrate compliance by providing a copy of the executive order, regulation or law setting up a one-license/one-record system. In addition, States must show that they have signed the Driver's License Compact and are using the National Driver Register.

15. Preliminary Breath Tests. Several commenters, such as Iowa and Michigan, supported adoption of this criterion. The California Highway Patrol again commented that preliminary breath tests (PBT's) are unnecessary and may lessen the importance of other investigative techniques.

As noted in the agency's prior notice, NHTSA believes that the use of PBT's should complement, not supplant, an officer's observations in identifying drunk drivers. Research has shown that PBT's can increase the effectiveness of alcohol safety programs by increasing arrests and the agency is therefore adopting this criterion in the final rule. States can demonstrate compliance by providing a copy of the law or regulation authorizing the use of PBT's.

The Illinois State Police requested the agency to substitute use of the Horizontal Gaze Nystagmus test in place of the PBT's. The agency is currently field testing the Horizontal Gaze Nystagmus test along with other psychomotor skill tests to determine their effectiveness. Until that testing is completed, the agency cannot make a determination of whether the Horizontal Gaze Nystagmus test is an acceptable substitute for a preliminary breath test.

16. Plea-bargaining. Commenters, such as Delaware, Idaho, the National Association of Chiefs of Police, and New Mexico, addressing this criterion supported its adoption. Oklahoma said that plea-bargaining was necessary to promote judicial efficiency, but agreed that there should be some mechanism to ensure that if there is plea-bargaining, the record system should indicate that an alcohol-related traffic offense was involved. New York State Senator Smith also agreed with need to prevent alcohol-related offenses from being bargained down to non-alcohol-related offenses. He said, however, that the agency's proposal would unnecessarily limit prosecutors in reducing alcohol-related offenses to lesser included alcohol-related offenses.

The agency recognizes that plea-bargaining may promote the efficiency of the judicial system, however, it is essential to ensure that the alcohol-related nature of the original offense is retained on the driver's record. The agency has, therefore, decided to adopt a requirement that no alcohol-related charge be reduced to a non-alcohol-related offense or probation without judgment be entered without a written declaration of why the action is in the interest of justice. The law must also provide that if a charge is reduced, that the defendant's driving record must reflect that the reduced charge is alcohol-related. States can demonstrate compliance by providing a copy of the applicable law.

17. Victim Assistance, Compensation and Impact Statements. Commenters addressing this criterion generally supported its adoption. They expressed agreement with the Presidential Commission statement that such programs are needed to help the "forgotten victims of the legal system," those injured by drunk drivers. The agency is therefore adopting this criterion as proposed.

States can demonstrate compliance by providing a description of their victim assistance programs, their use of victim impact statements and victim restitution.

18. Impoundment. There was a sharp difference of opinion on the proposed criterion on impoundment. Texas now supported the use of impoundment at the expense of the owner as a "significant sanction." Other commenters, such as Florida, Maine, New Mexico, and Pennsylvania, questioned its potential effectiveness and urged that it not be adopted as a mandatory criterion.

As with the criterion on roadside checks, the agency believes that States that have found impoundment to be an effective part of their alcohol traffic safety program should be encouraged to continue to use it. Since the States have the flexibility to determine which criteria to adopt, the agency has decided to retain impoundment of the vehicle or confiscation of the vehicle's tags as one of the final criteria.

General Motors Acceptance Corporation (GMAC) urged the agency to modify the impoundment criterion to recognize that rights of secured parties and lessors that had no knowledge of the suspension or revocation. GMAC said that otherwise there could be long delays when those parties attempt to recover possession of the vehicle. The agency has decided to adopt GMAC's suggestion.

States can demonstrate compliance with this criterion by providing the agency with a copy of the law or regulation authorizing impoundment of the vehicle or confiscation of the license plates or registration.

19. Choice of Test. Commenters, such as the Maryland State Police and the National Safety Council, supported the agency's proposal that States authorize the arresting officer to specify the type of chemical test to use. Maryland said that allowing the officer the choice of test is "an extremely valuable asset in reducing time required to process violators." The agency is, therefore, adopting this criterion.

The agency also proposed that States enact laws authorizing an officer to require a second chemical test under appropriate conditions. The California Highway Patrol said that a second test may be justified if and only if an officer has a reasonable belief that a suspect is impaired because of the use of drugs or drugs and alcohol. Before administering either the first or second test the officers must have sufficient grounds to show that the suspect was impaired.

The agency has decided to adopt this criterion as proposed. To ensure that a suspect will submit to a second test, the agency is adopting the requirement that

refusal to submit to more than one test results in a license suspension. States can demonstrate compliance by providing a copy of the applicable laws.

20. Dram Shop Laws. Several commenters, such as Florida, the Distilled Spirits Council of the United States and the National Licensed Beverage Association, recommended that the agency not adopt the proposed criterion on dram shop laws. They said that there is no evidence that dram shop laws have reduced alcohol traffic safety problems. The National Safety Council, on the other hand, recommended the adoption of a dram shop criterion. The Presidential Commission on Drunk Driving has also recommended adoption of such laws.

The agency recognizes that the vast majority of licensed beverage retailers carries out their business in a responsible manner. Dram shop laws are only aimed at persons who serve visibly impaired customers and thus increase the risk of alcohol-related crashes. The agency has, therefore, decided to adopt this criterion in the final rule.

Maine asked the agency to specify whether the dram shop law must be civil or criminal to comply with this criterion. The agency believes either a civil or criminal statute would be effective and thus will accept either one. New Mexico recommended that States be allowed to demonstrate compliance by showing that dram shop liability has been established by court decision rather than statutory law. The agency agrees, and will accept a showing that common law dram shop liability has been upheld by a State's highest court.

21. Innovative Programs. No commenter opposed the agency's proposal to encourage States to develop new, unique and innovative alcohol traffic safety programs. The agency recognizes that there are potential countermeasures that have not been developed that may be as effective as any of the other programs contained in the agency's other twenty criteria and thus wants to reward States for experimenting with new programs. The agency, therefore, adopts this criterion as proposed.

States can demonstrate compliance by providing a description of their innovative program and an evaluation showing why the program is as potentially effective as any of the other specified criteria.

General Requirements

The Act requires a State to maintain its aggregate level of funding from non-section 408 funds for existing alcohol traffic safety programs "at or above the average level of such expenditures in its two fiscal years preceding the date of enactment * * *" in order to be eligible for a basic grant. No commenter opposed the proposal to permit States to select either Federal or State fiscal year in determining the level of expenditures that must be maintained. The agency is therefore adopting that requirement in the final rule.

Several commenters, such as Illinois and Oklahoma, recommended that a State should only be required to maintain its aggregate level of section 402 alcohol program expenditures, rather than its expenditures from all possible sources, as proposed by the agency. They said that it would be difficult to determine the precise level of expenditures, particularly at the county and local levels of government. Since section 402 funds may not represent a substantial percentage of a State's alcohol traffic safety expenditures, the agency has decided to retain the requirement that a State consider all non-section 408 funds in determining its prior level of expenditures. The agency recognizes the State does not control, in many instances, the expenditures of funds by the counties, cities, and towns. The agency also recognizes that a full audit of the prior level of expenditures would be time-consuming and expensive. Thus States should require from those local agencies that receive section 408 grant funds certification that the existing level of local expenditure will be maintained. The agency will accept a States certification based on existing State budget documents, that the required level of State expenditures will be maintained.

Certification and Award Procedure

The commenters generally supported NHTSA's proposed alternative procedures for awarding grants. Oklahoma suggested another alternative awards procedures which, in essence, would be based on NHTSA regional officials conducting compliance hearings in each State. The agency plans to involve heavily its regional offices in the administration of the 408 program. At least in the first year of the program, the agency believes that the program should be coordinated by the agency's Office of Alcohol Countermeasures to provide consistency in implementing the program. The agency is, therefore, adopting its proposed alternative procedures in the final rule. These procedures establish the following three-step process:

1. The State provides information to document and verify its eligibility for the basic and supplemental grant criteria.

2. Upon review by NHTSA, the State would be notified that it is or is not eligible for the grant award based upon the documentation submitted. If eligible for grant award, the State would also be advised of the amount of the grant to be awarded subject to receipt and NHTSA formal approval of the State's Alcohol Highway Safety Plan. The agency has decided to adopt the recommendation of several commenters to allow the Alcohol Safety Plan to be submitted as a portion of a State's section 402 Highway Safety Plan. The Plan must be submitted within 120 days of notification to retain award eligibility.

3. Upon receipt and subsequent approval of the Plan, the grant will be awarded by execution of a Federal Aid Agreement.

The commenters also supported the agency's proposal to use a "soft" match in determining which State expenditures are reimbursable under section 408, and thus the agency will use a "soft" match in administering the program.

New Mexico recommended that a non-profit organization be eligible for section 408 grants. Unlike section 402, the statutory language of section 408 does not limit a State to only make grants to political subdivisions of a State. As long as a State can show that a non-profit organization is an integral part of a local alcohol safety program and is working under the control of a State or local agency, the agency believes that a State can make a grant to such an organization.

Paperwork Reduction

Pursuant to the Paperwork Reduction Act, the agency has requested Office of Management and Budget approval for the recordkeeping requirements adopted in the final rule.

Regulatory Evaluation

The agency has determined that this rulemaking should be classified as significant under the Department's regulatory policies and procedures. The agency has prepared a final regulatory evaluation and placed it in the public docket for this rulemaking. The agency has determined that since this rule will not have an annual impact of $100 million on the economy, it is not a major rule within the meaning of Executive Order 12291.

To develop the benefit estimates, the agency determined the degree to which proposals in the notice are presently being implemented. Estimates of safety benefits were then based on satisfying the criteria in those States that presently are not doing so. The impact of the criteria in one or more of four areas was

determined where applicable: (1) drunk drivers on the road, (2) alcohol-related crashes, (3) DWI arrests, and (4) DWI convictions. The agency quantified benefits in terms of reduced number of fatalities, injuries, or accidents where possible. Lack of data, or the nature of the criteria themselves at times, precluded quantifying benefits in every case; however, in such cases where quantification of benefits is not possible, the general magnitude of the impact is assessed to the degree possible. In some instances, benefits are estimated for specified levels of safety measure effectiveness in order to gauge the potential of the measure for improving highway safety.

Regulatory Flexibility Act

I hereby certify that the requirements that will be established by this rulemaking action will not have a significant economic impact on a substantial number of small entities because the States will be the recipients of any funds awarded under the regulation and, therefore, preparation of an Initial Flexibility Analysis is not necessary.

List of Subjects in 23 CFR Part 1209

Alcohol, Grant programs—transportation, Highway safety.

In consideration of the foregoing, a new Part 1209 is added to Title 23 of the Code of Federal Regulations to read as follows:

PART 1209—INCENTIVE GRANT CRITERIA FOR ALCOHOL TRAFFIC SAFETY PROGRAMS

Sec.
1209.1 Scope.
1209.2 Purpose.
1209.3 Definitions.
1209.4 General requirements.
1209.5 Requirements for a basic grant.
1209.6 Requirements for a supplemental grant.
1209.7 Award procedures.

Authority: 23 U.S.C. 408.

§ 1209.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 408, for awarding incentive grants to States that implement effective programs to reduce drunk driving.

§ 1209.2 Purpose.

The purpose of this part is to encourage States who have adopted or to adopt and implement alcohol traffic safety programs by legislation or regulations which will significantly reduce crashes resulting from persons driving while under the influence of alcohol. The criteria established are intended to ensure that the State alcohol traffic safety programs for which incentive grants are awarded meet or exceed minimum levels designed to reduce drunk driving.

§ 1209.3 Definitions.

(a) "Imprisonment" means confinement in a jail, minimum security facility or in-patient rehabilitation or treatment center.

(b) "Prompt" means that the overall average time from arrest to suspension of a driver's license either cannot exceed an average of 45 days or cannot exceed an average of 90 days and a State submits a plan showing how it intends to achieve a 45 day average.

(c) "Repeat offender" means any person convicted of an alcohol-related traffic offense more than once in five years.

(d) "Suspension" means:

(1) for first offenses, the temporary debarring of all driving privileges for a minimum of 30 days and then the use for a minimum 60 days of a restricted, provisional or conditional license **permitting a person to drive only for the purposes of going from a residence to or from a place of employment or to and from a mandated alcohol education or treatment program.** A restricted, provisional or conditional license can only be issued in accordance with Statewide published guidelines and in exceptional circumstances specific to the offender.

(2) For refusal to take **a chemical test**, first offense, the temporary debaring of all driving privileges for 90 days.

(3) For second and subsequent offenses, including the refusal to take a chemical test, the temporary debarring of all driving privileges for one year or longer.

§ 1209.4 General requirements.

(a) *Certification Requirements.* To qualify for a grant under 23 U.S.C. 408, a State must, for each year it seeks to qualify:

(1) Meet the requirements of § 1209.5 and, if applicable, the requirements of § 1209.6;

(2) Submit a certification to the Director, Office of Alcohol Countermeasures, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590 that: (i) It has an alcohol traffic safety program that meets these requirements. If the certification is based upon prior adoption of a criterion, a State must provide information showing that it has been actively implementing that criterion during the four years prior to application for a grant, (ii) it will use the funds awarded under 23 U.S.C. 408 only for the implementation and enforcement of alcohol traffic safety programs, and **(iii) it will maintain its aggregate expenditures from all other sources for its existing alcohol traffic safety programs at or above the average level of such expenditures in fiscal years 1981 and 1982** (either State or Federal fiscal year 1981 and 1982 can be used); and

(3) After being informed by NHTSA that it is eligible for a grant, submit to the agency an alcohol safety plan for one, two or three years, as applicable, that describes the programs the State is and will be implementing in order to be eligible for the grants and provides the necessary information, identified in §§ 1209.5 and 1209.6, to demonstrate that the programs comply with the applicable criteria. The plan must also describe how the specific supplemental criteria adopted by a State are related to the State's overall alcohol traffic safety program.

(b) *Limitations on Grants.* A State may receive a grant for up to three fiscal years subject to the following limitations:

(1) The amount received as a basic grant shall not exceed 30 percent of a State's 23 U.S.C. 402 apportionment for fiscal year 1983.

(2) The amount received as a supplemental grant shall not exceed 20 percent of a State's 23 U.S.C. 402 apportionment for fiscal year 1983.

(3) In the first fiscal year the State receives a grant, it shall be reimbursed for up to 75 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408;

(4) In the second fiscal year the State receives a grant, it shall be reimbursed for up to 50 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408; and

(5) In the third fiscal year the State receives a grant, it shall be reimbursed for up to 25 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408.

§ 1209.5 Requirements for a basic grant.

To qualify for a basic incentive grant of 30 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must have in place and implement or adopt and implement the following requirements:

(a)(1) The prompt suspension, for a period not less than 90 days in the case of a first offender and not less than one year in the case of a repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related offense, and: (i) To whom is administered one or more chemical tests

to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer.

(2) To demonstrate compliance, a State shall submit a copy of the law or regulation implementing the mandatory license suspension, information on the number of licenses suspended, the length of the suspension for first-time and repeat offenders and for refusals to take chemical tests and the average number of days it took to suspend the licenses from date of arrest. A State can provide the necessary data based on a statistically valid sample.

(b)(1) A mandatory sentence, which is not subject to suspension or probation, of imprisonment for not less than 48 consecutive hours or community service for not less than 10 days, for any person convicted of driving while intoxicated more than once in a five year period.

(2) To demonstrate compliance a State shall submit a copy of its law adopting this requirement and data on the number of people convicted of DWI more than once in any five years, what general types of confinement are being used, and the sentences for those persons. A State can provide the necessary data based on a statistically valid sample.

(c)(1) Establishment of 0.10 percent blood alcohol concentration (BAC) as sufficient evidence for finding that a person driving a motor vehicle is intoxicated.

(2) To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(d)(1) Increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

(2) To demonstrate compliance, a State shall submit data showing that it has increased its enforcement and public information efforts.

§ 1309.6 Requirements for a supplemental grant.

(a) to qualify for a supplemental grant of 20 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must have in place and implement or adopt and implement a license suspension system in which the average time from date of arrest to suspension of a license does not exceed an average of 45 days, and

(b) have in place and implement or adopt and implement eight of the following twenty-one requirements:

(1) Establishment of 21 years of age as the minimum age for drinking any alcoholic beverages. To demonstrate compliance, a State shall submit a copy of its law affecting this requirement.

(2) Coordination of State alcohol highway safety programs. To demonstrate compliance, a State shall submit information explaining how the work of the different State agencies involved in alcohol traffic safety programs is coordinated.

(3) Rehabilitation and treatment programs for persons arrested and convicted of alcohol-related traffic offenses. To demonstrate compliance, a State shall submit a copy of its law or regulation adopting this requirement, and a copy of the minimum standards set for rehabilitation and treatment programs by the State.

(4) Establishment of State Task Forces of governmental and non-governmental leaders to increase awareness of the problem, to apply more effectively drunk driving laws and to involve governmental and private sector leaders in programs attacking the drunk driving problem. To demonstrate compliance a State shall submit a copy of the executive order, regulation, or law setting up the task force and a description of how the interests of local communities are represented on the task force.

(5) A State-wide driver record system readily accessible to the courts and the public which can identify drivers repeatedly convicted of drunk driving. The public shall have access to those portions of a driver's record that are not protected by Federal or State confidentiality or privacy regulations. To demonstrate compliance, a State shall submit a description of its record system discussing its accessibility to prosecutors, the courts and the public and providing data showing the time required to enter alcohol-related convictions into the system is not greater than 30 days.

(6) Establishment in each major political subdivision of a locally coordinated alcohol traffic safety program, which involves enforcement, adjudication, licensing, public information, education, prevention, rehabilitation and treatment and management and program evaluation. In small States, local coordination may be demonstrated by showing that the interests of the local communities are recognized and coordinated by the State program. To demonstrate compliance, a State shall submit a description of the number of programs, type of programs and percentage of the State population covered by such local programs.

(7) Prevention and long-term education programs on drunk driving. To demonstrate compliance, a State shall submit a description of its prevention and education programs, of existing laws as it is related to changing general attitudes and norms against drunk driving with particular attention to the implementation of a comprehensive youth alcohol traffic safety program, and the involvement of private sector groups and parents.

(8) Authorization for courts to conduct pre- or post-sentence screenings of convicted drunk drivers. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement and a brief description of its screening process.

(9) Development and implementation of State-wide evaluation system to assure program quality and effectiveness. To demonstrate compliance, a State shall provide a copy of the executive order, regulation or law setting up the evaluation program and a copy of the evaluation plan.

(10) Establishment of a plan for achieving self-sufficiency for the State's total alcohol traffic safety program. To demonstrate compliance, a State shall provide a copy of the plan. Specific progress toward achieving financial self-sufficiency must be shown in subsequent years.

(11) Use of roadside sobriety checks as part of a comprehensive alcohol safety enforcement program. To demonstrate compliance, a State shall submit information that shows that it is systematically conducting roadside sobriety checks. In addition, a State shall provide a copy of its regulation or policy authorizing the use of roadside checks.

(12) Establishment of programs to encourage citizen reporting of alcohol-related traffic offenses to the police. To demonstrate compliance, a State shall submit a copy of its citizen reporting guidelines or policy and data on the degree of citizen participation, e.g., number of citizen reports and the number of related arrests. A State can provide the necessary data based on a statistically valid sample.

(13) Establishment of a 0.08 percent blood alcohol concentration as presumptive evidence of driving while under the influence of alcohol. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(14) Adoption of a one-license/one-record policy. In addition, the State shall fully participate in the National Driver Register and the Driver License Compact. To demonstrate compliance, a State shall submit a copy of the order, regulation or law showing the State is a member of the Driver License Compact and has adopted a one-license/one-

record policy, and is participating in the National Driver Register.

(15) Authorization for the use of a preliminary breath test where there is probable cause to suspect a driver is impaired. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(16) Limitations on plea-bargaining in alcohol-related offenses. To demonstrate compliance, a State shall submit a copy of its law or court guidelines requiring that no alcohol-related charge be reduced to a non-alcohol-related charge or probation without judgment be entered without a written declaration of why the action is in the interest of justice. If a charge is reduced, the defendant's driving record must reflect that the reduced charge is alcohol-related.

(17) Provide victim assistance and victim restitution programs and require the use of a victim impact statement prior to sentencing in all cases where death or serious injury results from an alcohol-related traffic offense. To demonstrate compliance, a State shall submit a description of its victim assistance and restitution programs, and its use of victim impact statements.

(18) Mandatory impoundment or confiscation of license plate/tags of any vehicle operated by an individual whose license has been suspended or revoked for an alcohol-related offense. Any such impoundment or confiscation shall be subject to the lien or ownership right of third parties without actual knowledge of the suspension or revocation. To demonstrate compliance a State shall submit a copy of its law adopting this requirement.

(19) Enactment of legislation or regulations authorizing the arresting officer to determine the type of chemical test to be used to measure intoxication and to authorize the arresting officer to require more than one chemical test. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(20) Establishment of liability against any person who serves alcoholic beverages to an individual who is visibly intoxicated. To demonstrate compliance, a State shall submit a copy of the law or court decision of a State's highest court establishing that liability.

(21) Use of innovative programs. To demonstrate compliance a State shall submit a description of its program and an explanation showing that the program will be as effective as any of the programs adopted to comply with the other supplemental criteria.

(c) To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must: (1) Have in place and implement or adopt and implement a license suspension system in which the average time from date of arrest to suspension of a license does not exceed 45 days; and (2) have in place and implement or adopt and implement four of the twenty-one requirements specified in section (b).

(d) To qualify for a supplemental grant for a second and a third year, a State must:

(1) Show that it has increased its performance for each of the requirements it adopted in the prior year, and

(2) Adopt two more requirements from section (b) for each subsequent year, except that a State does not have to implement more than a total of fifteen criteria.

§ 1209.7 Award procedures.

For each Federal fiscal year, grants under 23 U.S.C. 408 shall be made to eligible States upon submission of the alcohol safety plan and certification required by § 1209.4. Such grants shall be made until all eligible States have received a grant or until there are insufficient funds to award a grant to a State. Time of submission shall be determined by the postmark for certifications delivered through the mail and by stamped receipt for certifications delivered in person.

(Sec. 101, Pub. L. 97-364; 96 Stat. 1738 (23 U.S.C. 408); delegation of authority at 49 CFR 1.50)

Issued on January 31, 1983.

Raymond A. Peck, Jr.,

Administrator.

[FR Doc. 83-[illegible] Filed 2-2-83; 11:[illegible]]

BILLING CODE 4910-59-M

DEPARTMENT OF THE DEFENSE

Department of the Navy

32 CFR Part 770

Rules Limiting Public Access to Particular Installations; Base Entry Regulations for Naval Submarine Base, New London, Conn.

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is adding Subpart E to 32 CFR Part 770 in order to set forth regulations governing entry upon Naval Submarine Base New London, Groton, Connecticut. It is intended that these regulations will apprise members of the general public of the rules governing access to Naval Submarine Base New London, Groton, Connecticut.

EFFECTIVE DATE: October 4, 1982.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Dale E. [illegible], JAGC, U.S. Navy, Box 19, Naval Submarine Base New London, Groton, Connecticut 06349, Telephone: (203) 449-4739.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Commanding Officer, Naval Submarine Base New London, Groton, Connecticut, on October 4, 1982, adopted entry regulations entitled "Entry Regulations for Naval Submarine Base New London" (SUBASENLONINST 5510.15A). It is vital to the national defense that the operation of the submarine base continue without undue interruption. Accordingly, these regulations limit entry upon Naval Submarine Base New London to authorized personnel and those persons who have obtained advance consent pursuant to these regulations. It has been determined, in accordance with the public rulemaking provisions of 32 CFR Parts 296 and 701, that publication of these regulations for public comment prior to adoption would be impracticable, unnecessary, and contrary to the public interest since the nature and national importance of Naval Submarine Base New London mandate the immediate and uninterrupted effectiveness of these regulations.

List of Subjects in 32 CFR Part 770

Federal buildings and facilities, National defense, Restricted access areas, Security measures.

Accordingly, 32 CFR Part 770 is amended by adding a new Subpart E as follows:

PART 770—[AMENDED]

Subpart E—Base Entry Regulations for Naval Submarine Base New London, Groton, Connecticut

Sec.
770.41 Purpose.
770.42 Background.
770.43 Responsibility.
770.44 Entry restrictions.
770.45 Entry procedures.
770.46 Violations.

Authority: 50 U.S.C. 797; DoD Directive 5200.8 of July 29, 1980; SECNAVINST 5211.5C of December 20, 1980; OPNAVINST 5510.45 of April 19, 1979; 5 U.S.C. 301; 10 U.S.C. 5031; 32 CFR 700.702; 32 CFR 700.714.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE:
465-4322

May 24, 1983

The Honorable Bill Ray
Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Ray:

The Department of Public Safety submits this additional position paper on SC SC SHB 6 (SA).

The Department of Public Safety supports sobriety checkpoints but objects to the provisions of section 28.35.028. This section indicates that a preliminary breath test may be administered under AS 28.35.031 c (b). This section states that a driver involved in an accident or who has committed a moving violation shall be administered a preliminary breath test if the officer has reasonable grounds to believe that the person's ability to operate a motor vehicle is impaired by the ingestion of alcoholic beverages, etc.

At a checkpoint, most people, hopefully, would not become involved in an accident or commit a traffic violation. Without these important elements, a preliminary breath test could not be requested even though the individual appeared intoxicated. Routine testing for probable cause to arrest would creat a delay for other motorists waiting to pass the checkpoint.

This section also allows the individual to avoid the checkpoint if he can do so lawfully.

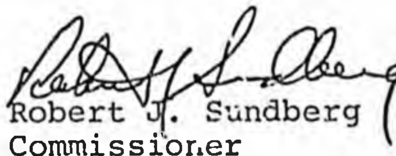
Other provisions of the Administrative Code require compliance to road blockage at equipment checkpoints. Roadside inspections under 13 AAC 06.040 require a motorist to stop and comply. Although 17 AAC 02.020 allows for road blockage, I do not feel it would be legal to use for sobriety checks.

12-L2LH

Section 28.35.029 is an open container law. This is further addressed in HB 421.

Although the Department of Public Safety supports the concept of both of these sections, we feel they should be addressed in separate bills. Both of these issues are complex in and by themselves.

Sincerely,



Robert J. Sundberg
Commissioner

FILE WITH H B6

TO: Senator Ray

FROM: Paula Scavera

DATE: May 19, 1983

RE: Sectional Analysis SCSCHB 6 (State Affairs)

Section 1:

Technical Amendment adding judges and employees of the court to the list of those persons who may physically take a license which has been revoked etc...

Section 2:

Adds a section on alcohol and automobiles, to the written portion of the driver's license examination.

Section 3:

Provides for administrative license revocation for refusal to submit to a chemical breath test and for an illegal breath alcohol level; outlines the procedures for the revocation, and provides for review of the revocation.

Section 4:

Adds refusal to submit to a chemical breath test to the list of offenses for which a person's driver's license may be revoked.

Section 5:

Outlines the drivers license revocation for those persons convicted of certain driving offenses listed in section 4. The period of revocation is not less than 30 days for the first conviction. Limited driver's licenses may be granted at the discretion of the court. Ten years would be the period of time used to calculate whether a person had a prior conviction.

Section 6:

Outlines the license revocation for persons convicted of DWI and refusal to submit a chemical sobriety test. The period of revocation would be 90 days for the first conviction. Upon second conviction, the period of revocation would be one year. For the third conviction, the revocation would be 10 years.

Section 7:

Adds a new subsection which states that a limited license may be granted for the final 60 days of a revocation when the revocation is for DWI or refusal to submit to a chemical sobriety test.

Section 8:

Is a technical amendment removing what would be an outdated reference.

Section 9:

Adds a new subsection to the to the section on license limitations which states that a person may not receive a new license until they show proof of responsibility (AS 28.20.240)

Section 10:

States that a person who is convicted for driving in violation of their license revocation, suspension, or cancellation shall be punished by a minimum of 10 days incarceration. The persons license shall not be restored for an additional year from the time they would have been eligible to have their license restored.

Section 11:

States that a person whose license was revoked for DWI or refusal to submit to a chemical sobriety test is convicted of driving while license is revoked, the court shall impose 90 days incarceration and a fine of not less than $1,000.

Section 12:

States that upon expiration of a period of limitation the driver's license remains revoked until the person furnishes proof of financial responsibility.

Section 13:

Sobriety Checkpoints--Similar to roadblocks--Enforcement officers can check for alcohol and administer preliminary breath tests (Department of Public Safety already has this power)(may want to take this out).Also Section 13 contains the Open Container Law - making it illegal to have unsealed containers of alcohol.

Section 14:

Outlines Fines and Incarceration periods for those convicted of DWI and refusal of chemical sobriety tests. Also states that the Court shall order treatment for the above offenses.

Section 15:

If you involved a traffic accident and suspected of alcohol or drug intake, the police officer may administer a preliminary breath test and refusal is an infraction --there by punishable by a $300 fine.

Section 16:

Refusal of a preliminary breath test may be used against someone in court.

Section 17:

Outlines the penalties of refusing to submit to preliminary sobriety tests-(same as DWI).

Section 18:

Technical section which makes the person give up their drivers license where they receive a notice of revocation.

Section 19:

States that a unconscious person need not be arrested before a chemical sobriety test may be administered.

Section 20:

States that upon the 2nd conviction the court may forfeit the motor vehicle involved in the drunk driving or refusal of sobriety test offense. Also provides for a hearing procedure on forfeitures of the motor vehicles to protect 3rd party interests in the motor vehicles. This section also provides local option for impoundment of motor vehicles.

Section 21:

Repeals technical sections

There is no effective date clause for this bill.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE:

May 23, 1983

455-4322

The Honorable Bill Ray
Chairman, Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Ray:

The Department of Public Safety submits the following Position Paper on SCSCSHB 6(SA). The Department of Public Safety objects to the provisions in this Bill that allows a person whose license is revoked under AS 28.15.165 to ask for an administrative hearing by the Department of Public Safety rather than a court review.

The Department has objection to such action for the following reasons. The Department currently has hearing officers only in Anchorage. If a person in Ketchikan, Nome, Barrow, Unalaska, Fairbanks, etc., asks for an administrative hearing, we are required to hold that hearing at the office of the department nearest to the residence of that person unless the person agrees that the hearing can be held elsewhere. Whenever possible, in areas more than 50 miles from Anchorage, or outside Fairbanks, we presently attempt to handle administrative hearings by phone. If the individual objects, a hearing officer must schedule a hearing at the office nearest the individual's residence, and travel to that location to hold the hearing.

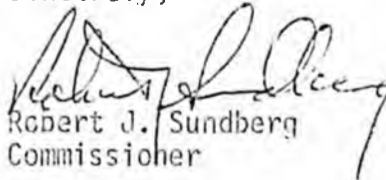
In instances such as outlined, there may be considerable delay between the time a hearing is requested and when it is held. During that time, the license action must be stayed until the hearing. In other words, the person arrested for drunk driving will be allowed to continue to drive until the hearing is held.

The Department holds hearings regularly in Anchorage, and approximately every two months in Fairbanks. However, not on a regular basis in other areas of the State. The court system has judges and/or magistrates scattered throughout the State who can handle the court review as outlined in present law. The Department only has hearing officers in Anchorage. If the proposed amendment is passed, and our fiscal note approved, a hearing officer would be added to Fairbanks. I feel, since the court system already has the staff throughout the State, no change should be made switching the responsibility to the Department of Public Safety, requiring an increase in staff, travel, and other expenses.

It should also be pointed out that if the law is changed as proposed, and the person is unsatisfied with the administrative hearing results, such as non-issuance of a limited license, that person can appeal the decision of the hearing officer to the district court per AS 28.05.141(d). Over 95% of the court reviews under the present law have been to request limited driving privileges.

Another possible problem area is that there will be two different agencies with the authority to grant limited driving privileges, the Department of Public Safety and the courts. If one denies and the other grants, there will be confusion on the defendant's part as to whether or not he can legally drive, as well as creating a difficult situation for law enforcement officers and prosecutors.

Sincerely,



Robert J. Sundberg
Commissioner

cc: Emil Notti, Legislative Assistant, Office of the Governor
Kevin K. Bruce, Special Assistant to the Governor

Alaska State Legislature

INTERIM OFFICE:
1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-2843
HOME (907) 274-3102

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4947

HOUSE MAJORITY WHIP

CHAIRMAN
STATE AFFAIRS

MEMBER
TRANSPORTATION
LEGISLATIVE COUNCIL

Representative Mitch Abood
HOUSE DISTRICT 11

MEMORANDUM

TO: Senator Bill Ray, Chairman
Senate Committee on Judiciary

FROM: Representative Mitch Abood, Chairman
House Committee on State Affairs

DATE: May 21, 1983

SUBJECT: HB 6

I have reviewed the Senate State Affairs Committee Substitute for HB 6 and would like to point out some problem sections appearing in the bill.

Page 10, Section 13. AS 28.35.028. Sobriety Checkpoints. The Department of Public Safety currently has the administrative authority to set up checkpoints (17 AAC 20.020) . The provision in HB 6 is unnecessary and should be deleted.

Page 10, following Sec. 13. (The section number has been deleted), should be section 14. Open Container. HB 421 is identical to this section and should be the vehicle for an open container law. It has no place in HB 6. Presently, 13 AAC 02.545 prohibits the driver of a car to drink while driving but there is no provision for the passenger.

Page 12, line 10 & page 14, line 29, page 15, line 1. The new language limits the court in assigning rehabilitation to the resources in the community where a person lives. What effect does this have on a chronic alcoholic in a rural area who may need treatment in a de-tox center or hospital, when none exists in his community. Would the court be prevented from assigning this type of treatment? They are trying to force the courts to do the job that they are supposed to do, but instead, have allowed a loophole and limited their authority.

A M E N D M E N T

Offered in the SENATE JUDICIARY COMMITTEE By Abood

TO: SCS CSHB 6(SA)

Page 7, line 10:

After "if" insert "the person is convicted of driving while intoxicated,"

Page 7, line 11:

After "impaired" insert ","

5/25/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSHB6 (Jud) # 1.
Title: "An Act...Driving a Motor Vehicle"
Sponsor: Abood, Furnace, Lindauer
Requestor:

II. FISCAL DETAIL

Agency Affected: Dept. of Administratio
Program Category Affected: Public Defende
BRU, Program of Subprogram(s) Affected: Third District, Fourth District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		177.2	187.8	199.1	211.0	223.7
200 TRAVEL						
300 CONTRACTUAL		15.0	15.9	16.9	17.9	19.0
400 COMMODITIES		4.5	4.8	5.1	5.4	5.7
500 EQUIPMENT		6.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		202.7	208.5	222.4	234.3	248.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		202.7	208.5	222.4	234.3	248.4
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME		3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

GENERAL FUND

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Bob Stokes, Admin. Officer Phone: 279-7541
Division: for Dana Fabe, Public Defender Date: April 13, 1983
Approved by Commissioner: Lisa Rudd Date: April 14, 1983
Department: Administration

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

There are several provisions within this bill which will require a substantial increase in the attorney time necessary to handle DWI and refusal of breathalyzer cases.

First, the increase in mandatory minimum penalties for second and subsequent offenders to 20 and 30 days respectively, as well as the increase in fines, will mean that a much higher number of defendants will exercise their right to a jury trial. Preparation for jury trial requires extensive interviews with the client and prospective witnesses, and the court time for the case is greatly increased, since a DWI change of plea in court may take 15 minutes while a jury trial in such a case usually lasts 1 - 2 days. We handle a high volume of not only State prosecuted DWI's but Municipally prosecuted DWI's as well. This increase in attorney time necessary for handling each drunk-driving case, given our already staggering misdemeanor caseloads, will require two additional attorneys for the Anchorage office, and one for the Fairbanks office.

Second, a drastic increase to a 90-day mandatory penalty for a first offender charged with driving with a suspended license will increase the number of jury trials which this office is required to handle.

Third, provisions in the statute which allow a police officer upon probable cause to seize the defendant's driver's license or impound his vehicle for a substantial period of time at the time of arrest will also require increased attorney time, due to the defendant's right to schedule a court hearing within 7 days to obtain return of his license or vehicle. Although the defendant may not have a right to an attorney to handle the hearing which he initiates to have his car or license returned, he will need an attorney's assistance at that hearing to the extent that it impacts his criminal case. Because anything that the defendant might say at that hearing regarding the facts of his case could be used against him at the subsequent criminal trial, he would need the assistance of counsel at that hearing. The attorney would have to obtain the immunity which would be due the client under the Alaska Supreme Court decision of McCracken v. Corey, as well as limit the scope of cross-examination at the hearing.

Because of the volume of DWI cases handled by this agency and the substantially increased attorney time necessary to comply with the provisions of the Statute, two additional attorneys for Anchorage and one for Fairbanks are requested.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST
Bill/Resolution No.: HB6/SB61 # 2
Title: Drunk Driving
Sponsor:
Requestor:

II. FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected: Admin. of Justice
BRU, Program of Subprogram(s) Affected:
Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		482.8	614.2	651.1	690.2	731.6
200 TRAVEL						
300 CONTRACTUAL		12.5	15.9	16.9	17.9	19.0
400 COMMODITIES		12.5	15.9	16.9	17.9	19.0
500 EQUIPMENT		31.2				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		539.0	646.0	684.9	726.0	769.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		539.0	646.0	684.9	726.0	769.6
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME		12	12	12	12	12
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard Barrier
Phone: 264-0545
Division: Alaska Court System/Administration
Date: 4/13/83

Approved by Commissioner:
Date:
Department:

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

The Court System currently disposes of approximately 6,000 DWI cases each year. Presently, 8.6% of these cases are disposed of at trial, or approximately 500 trials per year. This legislation will increase the number of cases proceeding to trial, since individuals faced with stiffer penalties and forfeiture of motor vehicles will be more likely to take their cases to trial than to plead guilty as they have in the past. Assuming that 5% of those individuals presently pleading guilty opted for a trial under the new statutes, the Court System would experience an increase of approximately 250 trials per year.

This legislation provides that individuals issued temporary licenses upon arrest on DWI have seven days in which to schedule a court hearing regarding extension of their temporary license. If 25% of the individuals charged with DWI ask the court for this seven day hearing, the court would experience an increase of approximately 1,500 hearings per year.

Once a motor vehicle has been forfeited to the state, the court must notice any interested party regarding this forfeiture and permit interested parties to submit a petition for remission of interest in the motor vehicle. Each petition filed will require a court hearing. It is estimated that this would lead to approximately 500 hearings per year.

Statewide, the major impact of this legislation would be an increase of approximately 250 DWI trials and 2,000 hearings per year. Along with the judicial manpower required to conduct the trials and hearings, the court needs supporting staff for the judges and clerical staff to process the case files, calendar and notice the participants in hearings, and perform other new clerical functions under this legislation related to impoundment of vehicles and forfeiture of vehicles.

The impact of this legislation will be felt in each court location in the state, though the major impact will be in the larger metropolitan areas. Both Anchorage and Fairbanks currently have a heavy caseload of DWI cases, with Anchorage reporting approximately 30% of the state's caseload and Fairbanks 25% of the caseload. In each of these locations the district courts are working at capacity, and would therefore need increased resouces to handle the projected number of new trials and hearings to be held under this legislation. In each location, the minimal staffing required to implement this legislation would be one district court judge, with a support staff of a secretary and in-court clerk, and two court clerk II positions in the criminal sections to deal with the new clerical demands created by this legislation.

In addition to Anchorage and Fairbanks, both Palmer and Kenai have significant DWI caseloads, with each having nearly 10% of

the state's caseload. While these courts may be able to get by without additional judicial resources, each would need at a minimum one additional court clerk II position.

A detailed breakdown of the cost associated with this legislation is provided below.

FY 84 COST OF IMPLEMENTING HB 6/SB 61

PERSONAL SERVICES:	
SALARIES:	
ANCHORAGE	
District Court Judge	$ 60,600
Secretary (Range 12B)	23,352
In-Court Clerk (Range 12B)	23,352
Court Clerk II (2 @ Range 10B)	41,424
FAIRBANKS	
District Court Judge	69,084
Secretary (Range 12B)	26,616
In-Court Clerk (Range 12B)	26,616
Court Clerk II (2 @ Range 10B)	46,706
PALMER	
Court Clerk II (Range 10B)	21,384
KENAI	
Court Clerk II (Range 10B)	21,984
	$361,118
BENEFITS:	
Judges	139,659
Classified	78,582
Total Personal Services	579,359
CONTRACTUAL	15,000
COMMODITIES	15,000
EQUIPMENT (one time costs)	31,200
TOTAL COST	$640,559
FIRST YEAR ADJUSTMENT:	
Less two months recruitment time	(101,560)
TOTAL COST FIRST YEAR	$538,999

(Subsequent years' costs include inflation at 6%.)

I. REQUEST

Bill/Resolution No.: CS HB 6 (Judiciary)
Title: "Act Relating to Motor Vehicles"
Sponsor: Abood
Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Life & Prop. Pr
BRU, Program or Subprogram(s) Affected: Driver/Vehicle Services & AST

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		26.6	28.2	29.9	31.7	33.6
200 TRAVEL						
300 CONTRACTUAL		10.5	6.6	7.0	7.4	7.8
400 COMMODITIES		.2	.2	.2	.2	.3
500 EQUIPMENT		41.7	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		80.7	35.0	37.1	39.3	41.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		80.7	35.0	37.1	39.3	41.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not identified by sponsor

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Michael Orelove — Phone: 465-4349
Division: Administrative Services — Date: 4-26-83

Approved by Commissioner: [signature] — Date: 4/26/83
Department: Public Safety

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

Division of Motor Vehicles

ANALYSIS

Personal Services and Equipment breakdown is contained on attached Form 13 - Request for New Position.

$4,300 of first year contractual is for new testing material and forms, and $6,200 is for postage (all license actions must be sent via certified mail). Remaining years contractual is for postage only.

ASSUMPTIONS

1) Alaska Court System will handle "Revenue" fiscal note covering fines and vehicle forfeitures; 2) 98% of defendants who take breath test will have .08% or higher; and 3) Effective date is July, 1983.

Division of Alaska State Troopers

ANALYSIS

In order to comply with the "at the scene" provision in Section 13 of this Bill, 40.0 will be required to purchase 100 new portable breathalyzer units ($400X100 = 40.0).

OSITION TITLE Document Processing Clerk II				RANGE/STEP 8B	BARG. UNIT CG	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
PE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT 4	LEG.		

NTINUATION LEVEL | ADDITION

TYPE OF EXPENDITURE			AMOUNT
1	2		3
PERSONAL SERVICES			
lary	19,176		
nefits	3,367		
pplemental Benefits	1,175		
xed Benefits	2,880		
TOTAL PERSONAL SERVICES		01	26,598
avel		02	
ntractual		03	
mmodities		04	100
uipment		05	1,724
her			
TOTAL COST			28,422

RECEIPT CODE	FUNDING SOURCE		
	Federal Receipts	1002	
	G.F. Match	1003	
	General Funds	1004	28,422
	I-A Receipts	1005	
	Program Receipts	1028	
	Other		

USE ONLY
Y NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

One Document Processing Clerk II will be required to handle administrative license actions and related work for individual defendants whose breath test results are .08% or higher. Will prepare and mail license actions (of which it is estimated there will be an increase of 3,500 to 4,000 annually based on 1982 statistics); enter data on computer; prepare certified copies for prosecutors, courts, etc.; process stays; maintain proof of insurance filings; and maintain records. Equipment breakdown for this position is as follows: Typewriter - $1,245; File Cabinet - $291; and Chair - $188.

QUEST FOR
W POSITION

AGENCY Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Driver Services

CSHB 6 (Jud) # 3

Revised Date

FY 84

-13

STATE OF ALASKA
FISCAL NOTE

Revision Date May 17 , 1983

I. REQUEST
Bill/Resolution No.: SCSCS HB6 (State Affairs)
Title: Act Relating to Driving a Motor Vehicle
Sponsor:
Requestor:

II. FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected: Admin. of Justice
BRU, Program of Subprogram(s) Affected: Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		241.5	256.0	271.4	287.7	305.0
200 TRAVEL						
300 CONTRACTUAL		7.5	8.0	8.5	9.0	9.5
400 COMMODITIES		7.5	8.0	8.5	9.0	9.5
500 EQUIPMENT		22.1				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		278.6	272.0	288.4	305.7	324.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		278.6	272.0	288.4	305.7	324.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME		6	6	6	6	6
PART-TIME		2	2	2	2	2
TEMPORARY		4	4	4	4	4

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any analysis

Prepared By: Richard P. Barrier FOR Phone: 264-0545
Division: Alaska Court System/Administration Date: May 17, 1983

Approved by Commissioner: Date:
Department:

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor

ANALYSIS OF FISCAL IMPACT OF SCSCSHB 6 (State Affairs)

The court system currently disposes of approximately 6,000 DWI cases each year. Presently, 8.6% of these cases are disposed of at trial, or approximately 500 trials per year. The bill will increase the number of cases proceeding to trial, since individuals faced with stiffer penalties and forfeiture of motor vehicles will be more likely to take their cases to trial than to plead guilty as they have in the past. Assuming that 5% of those individuals presently pleading guilty opted for a trial under the new statutes, the court system would experience an increase of approximately 250 trials per year. It is anticipated that this increase could be handled by use of retired judges on a part-time basis.

The house version of this legislation provides that individuals issued temporary licenses upon arrest on DWI have seven days in which to schedule a court hearing regarding extension of their temporary license. If 25% of the individuals charged with DWI asked the court for this seven day hearing, the court would experience an increase of approximately 1,500 hearings per year. However, the senate version incorporates an administrative rather than a judicial revocation, resulting in a substantially decreased cost to the court, since judicial involvement will be limited to appeals on the record.

Along with the judicial resources required to conduct the trials and appeals, the court needs supporting staff for the judges and clerical staff to process the case files, calendar and notice the participants.

The impact of this legislation will be felt in each court location in the state, although the major impact will be in the larger metropolitan areas. Both Anchorage and Fairbanks currently have a heavy caseload of DWI cases, with Anchorage reporting approximately 30% of the state's caseload and Fairbanks 25% of the caseload. In each of these locations the district courts are working at capacity, and would therefore need increased resources to handle the projected number of new trials and hearings to be held under this legislation. In each location, the minimal staffing required to implement the revised legislation would be one part-time retired district court judge, and an in-court clerk, and two court clerk II positions in the criminal sections to deal with the new clerical demands created by this legislation.

In addition to Anchorage and Fairbanks, both Palmer and Kenai have significant DWI caseloads, with each having nearly 10% of the state's caseload. Each would need at a minimum one additional court clerk II position.

Once the legislation comes into effect, the court system will monitor closely its impact on clerical and judicial resources.

If the impact is substantially greater than anticipated, the court system will consider the need for a supplemental appropriation.

A detailed breakdown of the cost associated with the senate committee substitute is provided below.

FY 84 COST OF IMPLEMENTING SCSCSHB 6 (State Affairs)

Personal Services:	Revised
Salaries:	
Anchorage	
Part-time retired district court judge (4 mos)	$ 15,150
In-court clerk (Range 12B) (4 mos)	7,784
Court clerk II (2 @ Range 10B) (12 mos)	41,424
Fairbanks	
Part-time retired district court judge (2 mos)	8,636
In-court clerk (Range 12B) (2mos)	4,436
Court clerk II (2 @ Range 10B) (12 mos)	46,706
Palmer	
Court clerk II (Range 10B) (12 mos)	21,384
Kenai	
Court clerk II (Range 10B) (12 mos)	21,984
	$167,504
Benefits:	
Judges	27,154
Classified	46,808
Total Personal Services	$241,466
Contractual	7,500
Commodities	7,500
Equipment (one time costs)	22,100
Total Cost	$278,566

(Subsequent years' costs include inflation at 6%)

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811
PHONE:

DOCUMENT NO. 83-154

April 15, 1983

The Honorable Vic Fischer
Senate State Affairs Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Fischer:

On Thursday April 7, 1983, your Committee requested that Corrections provide information regarding capital and operating costs for an institution which would house offenders convicted for drunk driving offenses (OMVI or DWI). In a short time we have reviewed available data and have formulated what we believe to be reasonable assumptions. This response is offered to your Committee with an understanding that the Sheffield Administration has not addressed the question as to whether this concept would be appropriate to pursue, and that funds are not available within current operating or capital requests to create an institution for this purpose. Further, this response is based on current statutes and law enforcement practices. Proposed changes under consideration could increase the numbers of offenders.

Sufficient numbers of offenders for a specialized facility to confine drunk drivers are only found in the southcentral region of the State. From data presently available we believe that a fifty five bed capacity would be necessary. It is likely that a site in the Matanuska Valley will be acquired for correctional purposes. Assuming the purchase of a 55 bed pipeline camp for transfer and setup it is estimated that capital costs for acquisition and site development would total $3,350,000.

Twelve month operating costs for a 55 bed facility are estimated to be $1,213,700. This figure includes a staff of nineteen, purchase and operation of two vans for transporting offenders to and from population centers, and routine operating costs.

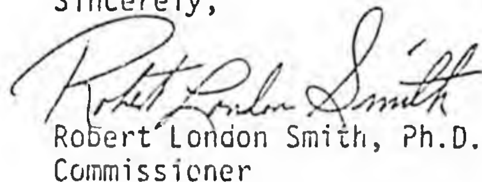
Programmatic issues for a specialized facility of this type have not been fully addressed. Many believe that those serving short sentences of three or ten days for drunk driving are not necessarily candidates for alcohol treatment programs. Some argue that the punative impact of incarceration is most appropriate, while others believe that needs assessment and referral are the proper goals for this setting and population. Still others support a full educational and treatment effort. Two Social Worker III positions have been included in the proposed staff to provide on site alcoholism counseling. With staggered shifts and days of work, the counseling can be provided seven days a week.

06-F38LH

While funding for a 110 bed minimum custody facility has not been identified in budget requests, future planning calls for a facility of this size and custody classification. Due to initial site development and core facility costs for the first 55 bed facility, the remaining 55 bed capacity could be added for a comparatively small sum. Estimates to erect housing and core facility pipeline structures for the second 55 inmates at the same site are $400,000, for a total capital investment of $3,750,000. Twelve month costs for a 110 bed facility with a staff of 36 and related operational/inmate costs would total $2,332,500. The additional 55 beds could be used for housing misdemeanant and minimum custody felony inmates.

It is my hope that this information is responsive to your inquiry. I wish to reiterate that the Administration has not developed a position regarding the appropriateness of a specialized facility for drunk drivers, nor would operating or capital funds be available for such a project with-within the Governor's FY'84 requests.

Sincerely,



Robert London Smith, Ph.D.
Commissioner

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

House Bill No. 6

"An Act relating to driving a motor vehicle."

House Bill No. 6 amends existing state law by increasing the length of sentence for first offense of driving with license suspended from 10 days to 14 days; second offense of operating a motor vehicle while intoxicated from 10 days to 20 days; third offense of operating a motor vehicle while intoxicated from 10 days to 30 days. It is estimated that the net effect of increasing the penalities for the specified offenses would increase the prison population by nine beds.

This bill would not significantly affect program objectives of the Division of Adult Corrections; however, it would have fiscal impact.

Recommended by: for Roger C. Lange

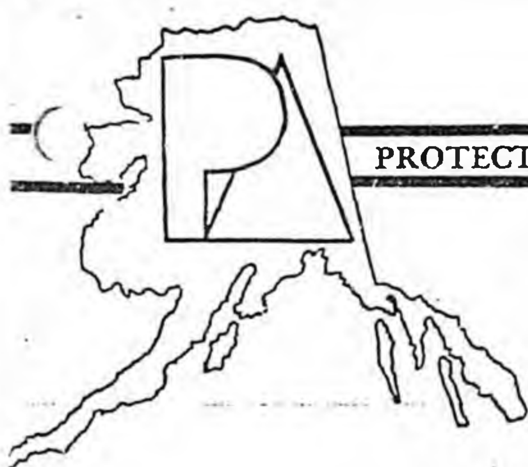
Roger V. Endell, Director
Division of Adult Corrections

Date: 2/8/83

Approved by: Robert London Smith

Robert London Smith, Ph.D.
Commissioner

Date: 2/9/83



PROTECTION AND ADVOCACY FOR THE DEVELOPMENTALLY DISABLED

David Maltman-Director
Jeff Jessee-Staff Attorney
Annely Girard-Coordinator
325 East 3rd, 2nd Floor
Anchorage, AK 99501
(907) 274-3658

Jan Maas-Advocate
419 6th St., Rm. 232
Juneau, AK 99801
(907)586-1627

Patricia Pennella-Advocate
763 7th Ave.
Fairbanks, AK 99701
(907)456-1070

April 13, 1983

Senator Vic Fischer
Pouch V
Mail Stop 3100
Juneau, Alaska 99811

Dear Senator Fischer:

This letter concerns the need for the State of Alaska to obtain a minimum security facility for the treatment of drunk drivers.

I noticed in the papers that it has been suggested that surplus pipeline camps be purchased and renovated for this purpose. It is my suggestion that the state first look to existing facilities that are not being appropriately utilized. The most notable example of this type of facility is Harborview Developmental Center for the developmentally disabled in Valdez.

Harborview currently provides residential care for up to 96 developmentally disabled Alaskans. Unfortunately, Harborview was constructed before it was realized that the developmentally disabled could be better served in community settings. This has resulted in the unnecessarily institutionalization of many Alaskans. There is a tremendous loss of human dignity and potential which occurs because of this state policy of institutionalization. In addition, the $85,000 per person per year spent on this primarily custodial care is staggering at a time when community services have been set back for three years in a row. There is a strong consensus growing that the people in Harborview must be returned to their families and communities as soon as possible. As a result, the state will need to find alternative uses for this building.

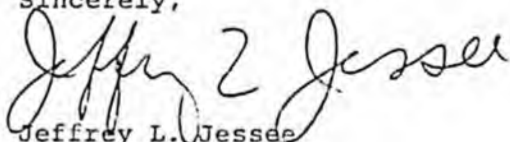
Harborview would be well-suited for use as a minimum security facility. Constructed after the earthquake of poured reinforced concrete, it contains a large cafeteria and laundry. In addition, each exterior door has an alarm system in place and the activities on each hall can be monitored from central nursing stations. The

local hospital is also located in the other end of the building. Renovations currently underway will result in a more efficient heating system and a new roof.

Alaskan's now believe that it is the drunken drivers that should be removed from the community, not the handicapped. I can think of no better expressions of this long overdue realization than by changing the use of Harborview.

Thank you for your consideration of this idea and please call me if you have any questions.

Sincerely,



Jeffrey L. Jessee
Staff Attorney

JLJ:bk

FILE WITH HB6

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

May 23, 1983

The Honorable Bill Ray
Chairman, Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Ray:

The Department of Public Safety submits the following Position Paper on SCSCSHB 6(SA). The Department of Public Safety objects to the provisions in this Bill that allows a person whose license is revoked under AS 28.15.165 to ask for an administrative hearing by the Department of Public Safety rather than a court review.

The Department has objection to such action for the following reasons. The Department currently has hearing officers only in Anchorage. If a person in Ketchikan, Nome, Barrow, Unalaska, Fairbanks, etc., asks for an administrative hearing, we are required to hold that hearing at the office of the department nearest to the residence of that person unless the person agrees that the hearing can be held elsewhere. Whenever possible, in areas more than 50 miles from Anchorage, or outside Fairbanks, we presently attempt to handle administrative hearings by phone. If the individual objects, a hearing officer must schedule a hearing at the office nearest the individual's residence, and travel to that location to hold the hearing.

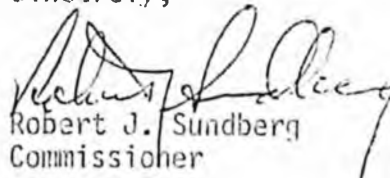
In instances such as outlined, there may be considerable delay between the time a hearing is requested and when it is held. During that time, the license action must be stayed until the hearing. In other words, the person arrested for drunk driving will be allowed to continue to drive until the hearing is held.

The Department holds hearings regularly in Anchorage, and approximately every two months in Fairbanks. However, not on a regular basis in other areas of the State. The court system has judges and/or magistrates scattered throughout the State who can handle the court review as outlined in present law. The Department only has hearing officers in Anchorage. If the proposed amendment is passed, and our fiscal note approved, a hearing officer would be added to Fairbanks. I feel, since the court system already has the staff throughout the State, no change should be made switching the responsibility to the Department of Public Safety, requiring an increase in staff, travel, and other expenses.

It should also be pointed out that if the law is changed as proposed, and the person is unsatisfied with the administrative hearing results, such as non-issuance of a limited license, that person can appeal the decision of the hearing officer to the district court per AS 28.05.141(d). Over 95% of the court reviews under the present law have been to request limited driving privileges.

Another possible problem area is that there will be two different agencies with the authority to grant limited driving privileges, the Department of Public Safety and the courts. If one denies and the other grants, there will be confusion on the defendant's part as to whether or not he can legally drive, as well as creating a difficult situation for law enforcement officers and prosecutors.

Sincerely,



Robert J. Sundberg
Commissioner

cc: Emil Notti, Legislative Assistant, Office of the Governor
Kevin K. Bruce, Special Assistant to the Governor

TREATMENT SERVICES
URBAN

Anchorage

- Inpatient (Alcoholism and Drug Abuse) 100 Beds
- Emergency Services/ Detoxification 22 Beds
- Outpatient (Alcoholism and Drug Abuse)
- Special Services (e.g. special women's treatment center; prison counselors)
- Methadone Maintenance/Detox and Drug Free Counseling
- Intermediate Care 20 Beds

Ketchikan

- Intermediate care 8 Beds
- Outpatient
- Emergency/Detoxification Services

Kodiak

- Intermediate care 12 Beds
- Outpatient
- Emergency/Detoxification Services

Sitka

- Inpatient (PHS Hospital) 16 Beds
- Emergency Services/ Detoxification
- Intermediate care 12 Beds
- Outpatient (Alcoholism and Drug Abuse)

Wasilla

Long term care 48 Beds

Fairbanks

- Inpatient 20 Beds
- Emergency Services/ Detoxification 10 Beds
- Intermediate Care 21 Beds
- Outpatient (Alcoholism and Drug Abuse
- Methadone Maintenance/Detox and Drug Free Counseling

Juneau

- Inpatient 15 Beds
- Emergency Services/ Detoxification
- Intermediate Care 21 Beds
- Outpatient (Alcoholism and Drug Abuse)

Bethel

- Emergency Services/ Detoxification 8 Beds
- Intermediate Care 8 Beds
- Outpatient
- Rural Village Counselors

Nome

- Emergency Services/ Detoxification
- Intermediate Care 12 Beds
- Outpatient
- Rural Village Counselors

Kotzebue

- Emergency Services/ Detoxification
- Intermediate Care 3 Beds
- Outpatient
- Rural Village Counselors

URBAN SERVICES

Combinations of outreach, public education, outpatient diagnosis and treatment, and aftercare are available in all large urban areas of the State. These same services are also found in all rural hub centers and through those programs to the surrounding villages.

TREATMENT SERVICES
RURAL

Subregional/Rural Hub Centers/Village Programs

- Norton Sound (Nome)
- Mauneluk (Kotzebue)
- Bristol Bay Area Health Corporation
- Mat-Su Council on Alcoholism
- Seward
- Cook Inlet Council on Alcoholism
- Cook Inlet Native Association
- Copper River Native Association
- McGrath
- Petersburg
- Wrangell
- Upper Tanana Council on Alcoholism
- Cordova
- Yakutat
- South Kachemak
- North Slope (Barrow)
- Rural Cap/I.H.S. (Village Counselors-Illiamna, Aleutian-Pribilof Islands, St. Paul)
- Ft. Yukon/TCC
- Valdez
- Kuskokwim N. A. (Aniak)
- Minto
- Galena
- SEARHC
- Haines
- Klukwan
- Hoonah
- Angoon
- Hydaburg
- Craig/Klawock
- Kake
- Yukon-Kuskokwim HC (Bethel)
- Mountain Village
- Hooper Bay
- Mekoryuk
- Toksook Bay
- Nunapitchuk
- Napaskiak
- Akiachak
- Akiak
- Quinhagak
- Togiak
- Manokotak
- Koliganek
- New Stuyahok
- Levelock
- King Salmon
- Nondalton
- Newhalen
- Port Heiden
- Chevak

Rural Services

Each community listed here has at least 1 full time alcohol/drug abuse worker. Many of the above grantees offer services in areas surrounding their specific locations and some of these programs have letters of agreement with Regional Center programs for services not provided by them.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE:
465-4322

May 24, 1983

The Honorable Bill Ray
Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Ray:

The Department of Public Safety submits this additional position paper on SC SC SHB 6 (SA).

The Department of Public Safety supports sobriety checkpoints but objects to the provisions of section 28.35.028. This section indicates that . preliminary breath test may be administered under AS 28.35.031 c (b). This section states that a driver involved in an accident or who has committed a moving violation shall be administered a preliminary breath test if the officer has reasonable grounds to believe that the person's ability to operate a motor vehicle is impaired by the ingestion of alcoholic beverages, etc.

At a checkpoint, most people, hopefully, would not become involved in an accident o. commit a traffic violation. Without these important elements, a preliminary breath test could not be requested even though the individual appeared intoxicated. Routine testing for probable cause to arrest would creat a delay for other motorists waiting to pass the checkpoint.

This section also allows the individual to avoid the checkpoint if he can do so lawfully.

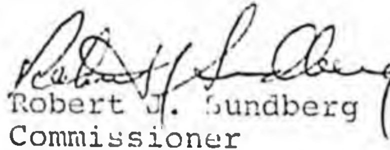
Other provisions of the Administrative Code require compliance to road blockage at equipment checkpoints. Roadside inspections under 13 AAC 06.040 require a motorist to stop and comply. Although 17 AAC 02.020 allows for road blockage, I do not feel it would be legal to use for sobriety checks.

12-L2LH

Section 28.35.029 is an open container law. This is further addressed in HB 421.

Although the Department of Public Safety supports the concept of both of these sections, we feel they should be addressed in separate bills. Both of these issues are complex in and by themselves.

Sincerely,



Robert J. Sundberg
Commissioner

FILE WITH HB6

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

June 6, 1983

The Honorable Bill Ray
Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Ray:

The Department of Public Safety wishes to submit this position paper on Senate Committee Substitute for Committee Substitute for HB 6.

Position: Support.

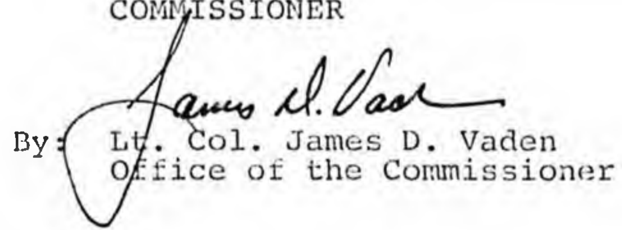
The Department of Public Safety supports this bill and feels that it will be beneficial in reducing the number of deaths and injuries on alaskan highways caused by drivers who are intoxicated.

We would propose that Section 17 and Section 18 of this version of the bill be eliminated. The statute numbers referred to in these two sections are repealed under Section number 24 of the bill, and the topics are addressed in Section 3.

Your consideration is appreciated.

Sincerely,

ROBERT J. SUNDBERG
COMMISSIONER



By: Lt. Col. James D. Vaden
Office of the Commissioner

12-L2LH

HB

8

COMMITTEE REPORT

SENATE

FURTHER:

Date: ____________

Mr. President:

The Committee on ____________ has had ____________

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ____________ [ ] same title [ ] new title

and recommends ____________

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ____________ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

____
CHAIRMAN

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

5/2/83

Date: 5/2/83

Mr. President:

The Committee on JUDICIARY has had HB 8

Relating to judicial retention elections; eff. date

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ______ [ ] same title [ ] new title

and recommends ______

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS

[signature]

[signature]

MEMBERS HAVING OTHER RECOMMENDATIONS:

[signature] DNP

[signature] Do Not Pass

[signature]

CHAIRMAN

Do Not Pass