

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

3082 SSA HB 6 8672

1 request because of lack of actual notice of the revocation or because
 2 of factors of physical incapacity such as hospitalization or incarcer-
 3 ation, the department shall waive the period of limitation, reopen the
 4 matter, and grant the review request.

5 (c) Upon receipt of a request for review, if it appears that the
 6 person holds a valid driver's license and that the driver's license
 7 has been surrendered, the department shall issue a temporary driver's
 8 permit that is valid until the scheduled date for the review. A
 9 person who has requested a review under this section may request, and
 10 the department may grant for good cause, a delay in the date of the
 11 hearing. If necessary, the department may issue additional temporary
 12 permits to stay the effective date of its action under AS 28.15.165(c)
 13 until the final order after the review is issued.

14 (d) A person who has requested a hearing under this section and
 15 who fails to appear at the hearing, for reasons other than lack of
 16 actual notice of the hearing or physical incapacity such as hospitali-
 17 zation or incarceration, waives the right to a hearing. The deter-
 18 mination of the department that is based upon the enforcement offi-
 19 cer's report becomes final.

20 ADMIN
 HEARING
 21 UNDER
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 22 COMPROMISE.

20 (e) Notwithstanding AS 28.05.141(b), the hearing under this
 21 section shall be held at the office of the department nearest to the
 22 residence of the person requesting the hearing unless a district court
 23 judge or a magistrate has been designated as a hearing officer in the
 24 matter by the commissioner or the department and the person agree that
 25 the hearing is to be held elsewhere.

26 (f) A review under this section shall be held before a hearing
 27 officer designated by the commissioner. Upon the consent of the
 28 administrative director of the state court system, the commissioner
 29 may designate a district court judge or a magistrate to serve as the

OUTLINE
FOR

1 ADMIN. hearing officer. The hearing officer shall have authority to

2 HEARING
3 PROCESSES

(1) administer oaths and affirmations;

(2) examine witnesses and take testimony;

(3) receive relevant evidence;

(4) issue subpoenas, take depositions, or cause depositions
or interrogatories to be taken;

(5) regulate the course and conduct of the hearing;

(6) make a final ruling on the issue.

(g) The hearing under this section shall be limited to the
issues of whether the arresting officer had reasonable grounds to
believe that the person was driving a motor vehicle while intoxicated
and whether

(1) the person refused to submit to a chemical test under
AS 28.35.031(a) after being advised that refusal would result in the
suspension, revocation, or denial of the person's license or nonresi-
dent privilege to drive and that the refusal is a misdemeanor; or

(2) the chemical test authorized under AS 28.35.031(a) and
administered to the person produced a result described in AS 28.35.-
030(a)(2).

(h) The determination of the hearing officer may be based upon
the sworn report of a law enforcement officer. The law enforcement
officer need not be present at the hearing unless the person request-
ing the hearing or the hearing officer requests in writing before the
hearing that the officer be present. If in the course of the hearing
it becomes apparent that the testimony of the law enforcement officer
is necessary to enable the hearing officer to resolve disputed issues
of fact, the hearing may be continued to allow the attendance of the
law enforcement officer.

LAW
ENFORCEMENT
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ADMIN.
HEARING

(i) Testimony given by the person at the hearing is not

1 admissible against the person in a criminal trial unless the person's
2 testimony at the trial is inconsistent with that given at the hearing.

3 (j) If the issues set out in (g) of this section are determined
4 in the affirmative by a preponderance of the evidence, the hearing
5 officer shall sustain the action of the department. If one or more of
6 the issues is determined in the negative, the department's action
7 shall be rescinded.

8 (k) If the action of the department in revoking a nonresident's
9 privilege to drive a motor vehicle is not administratively contested
10 by the nonresident driver or if the departmental action is sustained
11 by the hearing officer, the department shall give written notice of
12 action taken to the motor vehicle administrator of the state of the
13 person's residence and to any state in which that person has a driv-
14 er's license.

15 (l) A hearing officer revoking a driver's license because a
16 chemical test administered to the person produced a result described
17 in AS 28.35.030(a)(2) may grant limited license privileges if the
18 person has not been previously convicted within the preceding 10 years
19 of an offense (A) described in AS 28.15.181(a)(5) or (8); or (B) under
20 a law or ordinance in another jurisdiction with elements substantially
21 similar to an offense described in AS 28.15.181(a)(5) or (8). The
22 privileges may be granted for the final 60 days during which the
23 license is revoked if the hearing officer determines that the person's
24 ability to earn a livelihood would be severely impaired and a limita-
25 tion under AS 28.15.201 can be placed on the license that will enable
26 the person to earn a livelihood without excessive danger to the pub-
27 lic. A hearing officer may not grant limited license privileges when
28 revoking a driver's license because the person refused to submit to a
29 chemical test.

TO
COMPLY
W/
BARNES
BILL

APPEAL
OF ADMINISTRATIVE
HEARING.

1 (m) Notwithstanding AS 28.05.141(d), within 30 days of the issu-
2 ance of the final determination of the department, a person aggrieved
3 by the determination may file an appeal in superior court for judicial
4 review of the hearing officer's determination. The judicial review
5 shall be on the record, without taking additional testimony. The
6 court may reverse the department's determination if the court finds
7 that the department misinterpreted the law, acted in an arbitrary and
8 capricious manner, or made a determination unsupported by the evidence
9 in the record.

10 (n) The filing of an appeal under (m) of this section does not
11 automatically stay the department's revocation order. The court may
12 grant a stay of the order only upon a motion and hearing, and upon a
13 finding that there is a reasonable probability that the petitioner
14 will prevail on the merits and that the petitioner will suffer irrepa-
15 rable harm if the order is not stayed.

16 * Sec. 4. AS 28.15.181(a) is amended to read:

17 (a) Conviction of any of the [THE] following offenses is [ARE]
18 grounds for the immediate [SUSPENSION OR] revocation of a driver's
19 license:

20 (1) manslaughter or negligent homicide resulting from [THE]
21 driving [OF] a motor vehicle;

22 (2) a felony in the commission of which a motor vehicle is
23 used;

24 (3) failure to stop and give aid as required by law [UNDER
25 THE LAWS OF THIS STATE] when a motor vehicle accident results in the
26 death or personal injury of another;

27 (4) perjury or [THE] making [OF] a false affidavit or
28 statement under oath to the department under a law relating to motor
29 vehicles;

(5) [OPERATING OR] driving a motor vehicle while

1 intoxicated;

2 (6) reckless driving; [OR]

3 (7) using a motor vehicle in unlawful flight to avoid
4 arrest by a peace officer;

5 (8) refusal to submit to a chemical test under AS 28.35.-

6 032;

7 (9) driving while license canceled, suspended, revoked or

8 in violation of a limitation.

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LIST
FOR
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LICENSE
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OCATION.

9 * Sec. 5. AS 28.15.181(b) is amended to read:

10 (b) A court convicting a person of an offense described in
11 [UNDER] (a)(1) - (4), (6), or (7) of this section shall revoke that
12 person's driver's license for [A PERIOD OF] not less than 30 days for
13 the first conviction, unless the court determines that the person's
14 ability to earn a livelihood would be severely impaired and a limita-
15 tion under AS 28.15.201 can be placed on the license that [WHICH] will
16 enable the person to earn a livelihood without excessive [RISK OR]
17 danger to the public. If a court limits a person's license under this
18 subsection, it shall do so for [A PERIOD OF] not less than 60 [30]
19 days. Upon a subsequent conviction of a person for any offense de-
20 scribed in [UNDER] (a)(1) - (4), (6), or (7) of this section occurring
21 within 10 years after a prior conviction, the court shall revoke the
22 person's license and may not grant the person [ANY] limited license
23 privileges for the following periods:

24 (1) not less than one year for the second conviction; and

25 (2) not less than three years for a third or subsequent
26 conviction.

27 * Sec. 6. AS 28.15.181(c) is repealed and reenacted to read:

28 (c) A court convicting a person of an offense described in
29 (a)(5) or (8) of this section arising out of the operation of a motor

ADMINISTRATIVE LICENSE
REVOCATION MAY BE
CONCURRENT (ETC.) WITH
COURT LICENSE REVOCATION

1 vehicle for which a driver's license is required shall revoke that
2 person's driver's license. The revocation may be concurrent with or
3 consecutive to an administrative revocation under AS 28.15.165. The
4 court may not, except as provided in (e) of this section, grant limited
5 license privileges for the following periods:

6 (1) not less than 90 days if, within the preceding 10
7 years, the person has not previously been convicted of an offense

8 (A) described in (a)(5) or (8) of this section; or

9 (B) under a law or ordinance in another jurisdiction
10 with elements substantially similar to an offense described in
11 (a)(5) or (8) of this section;

12 (2) not less than one year if, within the preceding 10
13 years, the person has been previously convicted of one offense

14 (A) described in (a)(5) or (8) of this section; or

15 (B) under a law or ordinance in another jurisdiction
16 with elements substantially similar to an offense described in
17 (a)(5) or (8) of this section;

18 (3) not less than 10 years if, within the preceding 10
19 years, the person has been previously convicted of more than one of
20 the following offenses or has more than once been previously convicted
21 of one of the following offenses:

22 (A) an offense described in (a)(5) or (8) of this section;
23 or

24 (B) an offense under another law or ordinance in
25 another jurisdiction with elements substantially similar to an
26 offense described in (a)(5) or (8) of this section.

27 * Sec. 7. AS 28.15.181 is amended by adding new subsections to read:

28 (d) A court convicting a person of an offense described in
29 (a)(9) of this section shall revoke that person's driver's license for

TO COMPLY
W/
BARNES
BILL

1 not less than the minimum period under AS 28.15.291(c).

2 (e) A court revoking a driver's license under (c) of this sec-
3 tion, or sustaining the action of the department under AS 28.15.-
4 165(c), may grant limited license privileges for the final 60 days
5 during which the license is revoked if the

6 (1) revocation was for driving while intoxicated but not if
7 the revocation was for refusal to submit to a chemical test of breath
8 under AS 28.35.032;

9 (2) person has not been previously convicted within the
10 preceding 10 years of an offense

11 (A) described in (a)(5) or (8) of this section; or

12 (B) under a law or ordinance in another jurisdiction
13 with elements substantially similar to an offense described in
14 (a)(5) or (8) of this section;

15 (3) court determines that the person's ability to earn a
16 livelihood would be severely impaired; and

17 (4) court determines that a limitation under AS 28.15.201
18 can be placed on the license that will enable the person to earn a
19 livelihood without excessive danger to the public.

20 (f) For purposes of this section, convictions for both driving
21 while intoxicated and for refusal to submit to a chemical test of
22 breath under AS 28.35.031(a), if arising out of a single transaction
23 and a single arrest, are considered one previous conviction.

24 * Sec. 8. AS 28.15.201(b)(1) is amended to read:

25 (1) require the surrender of the driver's license [AND, IF
26 THE PERSON IS CONVICTED OF AN OFFENSE UNDER AS 28.15.181(a)(5), REVOKE
27 THAT PERSON'S LICENSE FOR A PERIOD OF NOT LESS THAN 60 DAYS]; and

28 * Sec. 9. AS 28.15.201(c) is amended to read:

29 (c) After the termination of a limitation as shown on the

1 certificate issued under (b) of this section, the license of a person
2 on whom a limitation was imposed is revoked until the person receives
3 a new [NO LONGER BOUND BY THE LIMITATION AND MAY APPLY FOR A DUPLI-
4 CATE] license in accordance with AS 28.20.240 [UNDER AS 28.15.141 OR,
5 IF OTHERWISE ELIGIBLE, FOR A NEW LICENSE IF THE LICENSE WAS REVOKED
6 FOR CONVICTION OF AN OFFENSE UNDER AS 28.15.181(a)(5) AND LIMITED
7 LICENSE PRIVILEGES WERE GRANTED UNDER AS 28.15.181(c)].

8 * Sec. 10. AS 28.15.291 is amended to read:

9 Sec. 28.15.291. DRIVING WHILE LICENSE CANCELED, SUSPENDED,
10 REVOKED OR IN VIOLATION OF LIMITATION. (a) A [NO] person may not
11 drive a motor vehicle on a highway or vehicular way or area [IN THIS
12 STATE] at a time when that person's [HIS] driver's license, or privi-
13 lege to drive [IN THIS STATE IF HE IS LICENSED IN ANOTHER JURISDIC-
14 TION,] has been canceled, suspended or revoked in this or another
15 jurisdiction, or when [HE IS] driving in violation of a limitation
16 placed upon that person's [HIS] license or privilege to drive in this
17 or [, EVEN WHEN HE IS DRIVING UNDER A LICENSE ISSUED IN] another
18 jurisdiction. Except as provided in (c) of this section, upon [UPON]
19 conviction of a violation of this section, the court shall impose a
20 [MINIMUM] sentence of imprisonment of not less than 10 days. The exe-
21 cution of sentence may not be suspended nor may probation or parole be
22 granted until the minimum imprisonment provided in this section has
23 been served; nor may imposition of sentence be suspended [, EXCEPT
24 UPON THE CONDITION THAT THE DEFENDANT BE IMPRISONED FOR NO LESS THAN
25 THE MINIMUM PERIOD PROVIDED FOR IN THIS SECTION]. In addition, the
26 person's [HIS] license or privilege to drive shall be revoked, and the
27 person [HE] may not be issued a new license nor may the [HIS] privi-
28 lege to drive be restored for an additional period of not less than
29 one year after the date that the person [HE] would have been entitled

1 to restoration of [HIS] driving privileges.

2 (b) When a person's license is canceled, limited, suspended or
3 revoked, that person [HE] shall be informed by the department or the
4 court that [WHICH] takes the action at the time of the action that,
5 upon a conviction of driving on a highway or vehicular way or area in
6 this state at a time when that person's [HIS] driver's license or
7 privilege to drive in this state has been canceled, suspended or
8 revoked, or upon a conviction of driving in violation of a limitation
9 of the [HIS] license, that person [HE] will be subject to the manda-
10 tory minimum sentence of [10-DAY] imprisonment under [(a) OF] this
11 section.

12 * Sec. 11. AS 28.15.291 is amended by adding new subsections to read:

13 (c) The court shall impose a sentence of imprisonment of not
14 less than 30 days and a fine of not less than \$500 upon conviction of
15 a violation of this section if the person's driver's license was
16 revoked under circumstances described in AS 28.15.181(c)(1). The
17 court shall impose a sentence of imprisonment of not less than 90 days
18 and a fine of not less than \$1,000 upon conviction of a violation of
19 this section if the person's driver's license was revoked under cir-
20 cumstances described in AS 28.15.181(c)(2) or (3). The execution of
21 sentence may not be suspended nor may probation or parole be granted
22 until the minimum imprisonment provided in this subsection has been
23 served. Imposition of sentence may not be suspended. In addition, the
24 person's privilege to drive shall be revoked for an additional period
25 of not less than one year after the date that the person would have
26 been entitled to restoration of driving privileges if the person had
27 not been convicted under this section.

28 (d) A person convicted of a violation of this section is guilty
29 of a class A misdemeanor.

1 * Sec. 12. AS 28.20.240 is amended to read:

2 Sec. 28.20.240. PROOF REQUIRED WHEN DRIVING PRIVILEGE [USE OF
3 LICENSE] IS RESTRICTED. Whenever under a law of this state the li-
4 cense of a person is suspended, revoked, limited under AS 28.15.201,
5 or canceled for any reason, the department may not issue to that
6 person a new or renewal of license [IN HIS NAME] until permitted to do
7 so under the motor vehicle laws of this state. A period of suspen-
8 sion, revocation, [LIMITATION,] or cancellation [UNDER THIS SECTION]
9 continues until proof of financial responsibility for the future is
10 provided. Upon expiration of a period of limitation, the license
11 remains revoked until proof of financial responsibility for the future
12 is provided.

13 * Sec. 13. AS 28.35.030(a)(2) is amended to read:

14 (2) when, as determined by a chemical test taken within
15 four hours after the alleged offense was committed, there is 0.10
16 percent or more by weight of alcohol in the person's blood or 100
17 milligrams or more of alcohol per 100 milliliters of blood, or when
18 there is 0.10 grams or more of alcohol per 210 liters of the person's
19 breath; or

20 * Sec. 14. AS 28.35.030(c) is amended to read:

21 (c) Upon conviction under this section the court shall impose a
22 minimum sentence of imprisonment of not less than 72 consecutive hours
23 and a fine of not less than \$250 if the person has not been previously
24 convicted in this or another jurisdiction of driving while intoxicated
25 under this or another law or ordinance with substantially similar
26 elements or refusal to submit to a chemical test under AS 28.35.032
27 or another law or ordinance with substantially similar elements. Upon
28 [A SUBSEQUENT] conviction under this section the court shall impose a
29 minimum sentence of imprisonment of not less than 20 consecutive days

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1 and a fine of not less than \$500 if, within the preceding 10 years,
2 the person has been previously convicted once in this or another
3 jurisdiction [WITHIN FIVE YEARS AFTER A CONVICTION] of driving while
4 intoxicated under this or another law or ordinance with substantially
5 similar elements or [IN THIS OR ANY OTHER STATE OR CONVICTION OF]
6 refusal to submit to a chemical test under AS 28.35.032 or another law
7 or ordinance with substantially similar elements. Upon conviction
8 under this section [OF BREATH UNDER AS 28.35.032,] the court shall
9 impose a minimum sentence of imprisonment of not less than 30 [10]
10 consecutive days and a fine of not less than \$1,000 if, within the
11 preceding 10 years, the person has been previously convicted in this
12 or another jurisdiction of more than one of the following offenses or
13 has more than once been previously convicted of one of the following
14 offenses: (1) driving while intoxicated under this or another law or
15 ordinance with substantially similar elements; (2) refusal to submit
16 to a chemical test under AS 28.35.032 or another law or ordinance with
17 substantially similar elements [UNLESS THE SUBSEQUENT CONVICTION IS
18 WITHIN ONE YEAR OF THE PREVIOUS CONVICTION, IN WHICH CASE THE COURT
19 SHALL IMPOSE A MINIMUM SENTENCE OF IMPRISONMENT OF NOT LESS THAN 20
20 CONSECUTIVE DAYS]. The execution of sentence may not be suspended nor
21 may probation be granted except on condition that [UNTIL] the minimum
22 imprisonment provided in this section is [HAS BEEN] served. Impo-
23 sition of sentence may not be suspended [, EXCEPT UPON THE CONDITION
24 THAT THE DEFENDANT BE IMPRISONED FOR NO LESS THAN THE MINIMUM PERIOD
25 PROVIDED IN THIS SECTION]. In addition, if the offense involved
26 driving a motor vehicle for which a driver's license is required, the
27 person's driver's [HIS OPERATOR'S] license shall be revoked in accor-
28 dance with AS 28.15.181 and the vehicle used in commission of the
29 offense may be forfeited under AS 28.35.036. In addition, the court

1 shall order, and a person convicted under this section [STATUTE] shall
2 undertake, for a term specified by the court, that program of alcohol
3 education or rehabilitation that [WHICH] the court, after considera-
4 tion of any information compiled under (d) of this section, finds
5 appropriate.

6 * Sec. 15. AS 28.35.030 is amended by adding a new subsection to read:

7 *clears up* (g) For purposes of this section, convictions for both driving
8 *ABT -* while intoxicated and for refusal to submit to a chemical test of
9 *BIENITY* breath under AS 28.35.031(a), if arising out of a single transaction
10 and a single arrest, are considered one previous conviction.

11 * Sec. 16. AS 28.35.031 is amended by adding new subsections to read:

12 (b) A person who operates or drives a motor vehicle in this
13 state shall be considered to have given consent to a preliminary
14 breath test for the purpose of determining the alcoholic content of
15 the person's blood or breath. A law enforcement officer may adminis-
16 ter a preliminary breath test at the scene of the incident if the
17 officer has reasonable grounds to believe that a person's ability to
18 operate a motor vehicle is impaired by the ingestion of alcoholic
19 beverages and that the person

20 (1) was driving a motor vehicle that is involved in an
21 accident; or

22 (2) committed a moving traffic violation.

23 (c) Before administering a preliminary breath test under (b) of
24 this section, the officer shall advise the person that refusal may be
25 used against the person in a civil or criminal action arising out of
26 the incident and that refusal is an infraction. If the person refuses
27 to submit to the test, the test shall not be administered.

28 (d) The result of the test under (b) of this section may be used
29 by the law enforcement officer to determine whether the driver should

1 be arrested.

2 (e) Refusal to submit to a preliminary breath test at the re-
3 quest of a law enforcement officer is an infraction.

4 (f) If a driver is arrested, the provisions of AS 28.35.031(a)
5 apply. The preliminary breath test authorized in this section is in
6 addition to any tests authorized under AS 28.35.031(a).

7 * Sec. 17. AS 28.35.032(a) is amended to read:

8 (a) If a person under arrest refuses the request of a law en-
9 forcement officer to submit to a chemical test under AS 28.35.031(a)
10 [OF BREATH AS PROVIDED IN AS 28.35.031], after being advised by the
11 officer that the refusal will, if that person was arrested while
12 *Some* operating or driving a motor vehicle for which a driver's license is
13 required, result in the [SUSPENSION,] denial or revocation of the
14 license or nonresident privilege to drive, that the refusal may be
15 used against the person in a civil or criminal action or proceeding
16 arising out of an act alleged to have been committed by the person
17 while operating or driving a motor vehicle or operating an aircraft or
18 a watercraft while intoxicated, and that the refusal is a misdemeanor,
19 a chemical test shall not be given, except as provided by AS 28.35.-
20 035.

21 * Sec. 18. AS 28.35.032(f) is amended to read:

22 (f) Refusal to submit to the chemical test of breath authorized
23 by AS 28.35.031(a) [AS 28.35.031] is a class A misdemeanor.

24 * Sec. 19. AS 28.35.032(g) is amended to read:

25 (g) Upon conviction of a person under this section, the court
26 shall impose a minimum sentence of imprisonment of not less than 72
27 consecutive hours and a fine of not less than \$250 if the person has
28 not been previously convicted in this or another jurisdiction of
29 driving while intoxicated under AS 28.35.030 or another law or

1 ordinance with substantially similar elements or refusal to submit to
2 a chemical test under this section or another law or ordinance with
3 substantially similar elements. Upon [A SUBSEQUENT] conviction under
4 this section the court shall impose a minimum sentence of imprisonment
5 of not less than 20 consecutive days and a fine of not less than \$500
6 if, within the preceding 10 years, the person has been previously con-
7 victed once in this or another jurisdiction [WITHIN FIVE YEARS AFTER A
8 CONVICTION UNDER THIS SECTION OR] of driving while intoxicated under
9 AS 28.35.030 or another law or ordinance with substantially similar
10 elements or refusal to submit to a chemical test under this section or
11 another law or ordinance with substantially similar elements. Upon
12 conviction under this section the court shall impose a minimum sen-
13 tence of imprisonment of not less than 30 consecutive days and a fine
14 of not less than \$1,000 if, within the previous 10 years, the person
15 has been previously convicted in this or another jurisdiction of more
16 than one of the following offenses or has more than once been pre-
17 viously convicted of one of the following offenses: (1) driving while
18 intoxicated under AS 28.35.030 or another law or ordinance with sub-
19 stantially similar elements; (2) refusal to submit to a chemical test
20 under this section or another law or ordinance with substantially
21 similar elements [IN THIS OR ANY OTHER STATE, THE COURT SHALL IMPOSE A
22 MINIMUM SENTENCE OF IMPRISONMENT OF NOT LESS THAN 10 CONSECUTIVE DAYS
23 UNLESS THE SUBSEQUENT CONVICTION IS WITHIN ONE YEAR OF THE PREVIOUS
24 CONVICTION, IN WHICH CASE THE COURT SHALL IMPOSE A MINIMUM SENTENCE OF
25 IMPRISONMENT OF NOT LESS THAN 20 CONSECUTIVE DAYS]. The execution of
26 sentence may not be suspended nor may probation be granted except on
27 condition that [UNTIL] the minimum imprisonment provided in this
28 section is [HAS BEEN] served. Imposition of sentence may not be
29 suspended. If the offense involved driving a motor vehicle for which

1 a driver's license is required, the person's driver's license shall be
 2 revoked under AS 28.15.181 [, EXCEPT UPON THE CONDITION THAT THE
 3 DEFENDANT BE IMPRISONED FOR NO LESS THAN THE MINIMUM PERIOD PROVIDED
 4 IN THIS SECTION]. In addition, the court shall order, and a person
 5 convicted under this section shall undertake, for a term specified by
 6 the court, that program of alcohol education or rehabilitation that
 7 the court, after consideration of any information compiled under (h)
 8 of this section, finds appropriate. The sentence imposed by the court
 9 under this subsection shall run consecutively with any other sentence
 10 of imprisonment imposed on the committed person.

11 * Sec. 20. AS 28.35.032 is amended by adding a new subsection to read:
 12 (j) For purposes of this section, convictions for both driving
 13 while intoxicated and for refusal to submit to a chemical test of
 14 breath under AS 28.35.031(a), if arising out of a single transaction
 15 and a single arrest, are considered one previous conviction.

16 * Sec. 21. AS 28.35.034 is amended to read:
 17 Sec. 28.35.034. SURRENDER OF LICENSE OR PERMIT [PERIOD OF REVO-
 18 CATION]. A person whose license or permit to operate or drive a motor
 19 vehicle has been [SUSPENDED OR] revoked under AS 28.15.165 or AS 28.-
 20 15.181 [THE PROVISIONS OF AS 28.35.032] shall surrender the [HIS]
 21 license or permit to the department on receipt of notice of the revo-
 22 cation. [SUCH A PERSON IS INELIGIBLE FOR AN OPERATOR'S LICENSE OR
 23 PERMIT FOR THREE MONTHS FOLLOWING THE DATE ON WHICH THE LICENSE OR
 24 PERMIT WAS RECEIVED BY THE DEPARTMENT, UNLESS THE DISTRICT COURT FINDS
 25 THAT EXTENUATING CIRCUMSTANCES EXIST WHICH WOULD CAUSE EXTREME HAN-
 26 DSHIP, IN WHICH CASE THE SUSPENSION OR REVOCATION MAY BE MODIFIED OR
 27 NULLIFIED.] After the [THREE MONTHS'] period of revocation has ex-
 28 pired, the person may make application for a new license as provided
 29 by law.

1 * Sec. 22. AS 28.35.035 is amended to read:

2 Sec. 28.35.035. ADMINISTRATION OF CHEMICAL TESTS WITHOUT CON-
3 SENT. (a) If a person is under arrest for an offense arising out of
4 acts alleged to have been committed while the person was driving a
5 motor vehicle [THE CRIME OF DRIVING] while intoxicated, and that
6 arrest results from an accident that causes death or physical injury
7 to another person, a chemical test may be administered without the
8 consent of the person arrested to determine the amount of alcohol in
9 that person's breath or blood.

10 (b) A person who is unconscious or otherwise in a condition
11 rendering that person incapable of refusal is considered not to have
12 withdrawn the consent provided under AS 28.35.031(a) [AS 28.35.031]
13 and a chemical test may be administered to determine the amount of
14 alcohol in that person's breath or blood. A person who is unconscious
15 or otherwise incapable of refusal need not be placed under arrest
16 before a chemical test may be administered.

17 (c) If a chemical test is administered to a person under (a) or
18 (b) of this section, that person is not subject to the penalties for
19 refusal to submit to a chemical test provided by AS 28.35.032 and
20 28.35.034.

21 * Sec. 23. AS 28.35 is amended by adding new sections to read:

22 Sec. 28.35.036. FORFEITURE OF MOTOR VEHICLE. (a) After convic-
23 tion of an offense under AS 28.35.030 or AS 28.35.032 involving a
24 motor vehicle of a type for which a driver's license is required, the
25 state may move the court to order the forfeiture of the motor vehicle
26 involved in the commission of the offense if the convicted person has
27 been previously convicted in this or another jurisdiction of more than
28 one of the following offenses or has more than once been previously
29 convicted of one of the following offenses:

(1) driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements; or

(2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements.

(b) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction.

(c) Upon receipt of a motion for forfeiture, the court shall schedule a hearing on the matter and shall notify the state and the convicted person of the time and place set for the hearing. At the hearing, the court may order the forfeiture of the motor vehicle if the court, sitting without a jury, determines by a preponderance of the evidence that the forfeiture of the motor vehicle will serve one or more of the following purposes:

(1) deterrence of the convicted person from the commission of future offenses under AS 28.35.030;

(2) protection of the safety and welfare of the public;

(3) deterrence of other persons who are potential offenders under AS 28.35.030; or

(4) expression of public condemnation of the serious or aggravated nature of the convicted person's conduct.

(d) Upon forfeiture of a motor vehicle the court shall require the surrender of the registration and certificate of title of that motor vehicle. The registration and certificate of title shall be delivered to the department.

(e) If not released under AS 28.35.037, a motor vehicle forfeited under this section may be disposed of at the discretion of the department.

THIS HAS BEEN ADDED AND I THINK IT IS DELIBERATE

WORK DRAFT WORK DRAFT WORK DRAFT

1 Sec. 28.35.037. REMISSION OF FORFEITURES. (a) Upon receiving
2 notice from the court of the time and place set for a hearing under
3 AS 28.35.036, the state shall provide to every person who has an
4 ascertainable ownership or security interest in the motor vehicle
5 written notice that includes

6 (1) a description of the motor vehicle;

7 (2) the time and place of the forfeiture hearing;

8 (3) the legal authority under which the motor vehicle may
9 be forfeited;

10 (4) notice of the right to intervene to protect the inter-
11 est in the motor vehicle.

12 (b) At the hearing, a person who claims an ownership or security
13 interest in the motor vehicle must establish by a preponderance of the
14 evidence that

15 (1) the petitioner has an interest in the motor vehicle
16 acquired in good faith;

17 (2) a person other than the petitioner was convicted of the
18 offense that resulted in the forfeiture; and

19 (3) before parting with the motor vehicle, the petitioner
20 did not know or have reasonable cause to believe that it would be used
21 in the commission of an offense.

22 possible (c) If a person satisfies the requirements of (b) of this sec-
23 AMBIGUITY tion, the court shall order that an amount equal to the value of the
24 petitioner's interest in the motor vehicle be paid to the petitioner
25 or the court shall order that the motor vehicle be released to the
26 petitioner together with title to the motor vehicle. (BY WHOM)

27 (d) Forfeiture of a motor vehicle under AS 28.35.036 is without
28 prejudice to the rights, and does not extinguish the claims, of a
29 creditor with an interest in the motor vehicle.

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Sec. 28.35.038. MUNICIPAL IMPOUNDMENT AND FORFEITURE. Notwithstanding other provisions in this title, a municipality may adopt an ordinance providing for the impoundment or forfeiture of a motor vehicle involved in the commission of an offense under AS 28.35.030, 28.35.032, or an ordinance with elements substantially similar to AS 28.35.030 or AS 28.35.032. An ordinance adopted under this section is not required to be consistent with this title or regulations adopted under this title.

* Sec. 24. AS 22.15.100 is amended by adding a new paragraph to read:

(10) to review an administrative revocation of a person's driver's license or nonresident privilege to drive, and an administrative refusal to issue an original license, when designated as a hearing officer by the commissioner of public safety and with the consent of the administrative director of the state court system.

* Sec. 25. AS 28.15.211(a)(4) and AS 28.35.032(b),(c), and (d) are repealed.

SCSCS HB 6
SUMMARY OF FISCAL NOTES

	<u>FY 84</u>	<u>FY 85</u>	<u>FY 86</u>	<u>FY 87</u>	<u>FY88</u>
Alaska Court System (6/8/83)	245.5	237.0	251.3	266.4	282.3
Dept. of Administration Public Defender Agency (6/6/83)	202.7	208.5	222.4	234.3	248.4
Dept. of H&SS (5/17/83)	117.1	124.1	591.5	622.4	659.7
Capital (22 beds x 130,000 ea.)	2860.0				
Dept. of Law General Government (5/5/83)	239.0	250.9	265.9	281.7	298.8
Dept. of Public Safety Life & Property Protect. (6/6/83)	<u>175.0</u> <u>73.1</u>	<u>35.5</u>	<u>37.6</u>	<u>39.8</u>	<u>42.2</u>
OPERATING TOTAL	<u>877.4</u>	<u>856.0</u>	<u>1368.7</u>	<u>1444.6</u>	<u>1531.4</u>
CAPITAL TOTAL	2860.0	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
FY TOTAL	3737.4	856.0	1368.7	1444.6	1531.4



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

SECTIONAL ANALYSIS - SCS SCHB 6 (JUD)

JUNE 9, 1983

Sec. 1.

Adds judges and employees of the court to the list of those persons who may physically take a license which has been revoked, canceled, limited, or suspended or is fictitious, stolen or altered.

Sec. 2.

Adds the subject of alcohol and drug abuse to the required topics of testing on the written portion of the driver's license examination.

Sec. 3.

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

- Notice includes - Dept notice of intent to revoke or refusal to issue original license.
- right to obtain court review of revocation.
 - notice itself is temporary license.
 - actual revocation effective after expiration of temporary license.

Court review limited to issues of probable cause to believe driver was intoxicated and whether driver refused to take chemical test or test was taken and proved driver to be under the influence. The standard of review is to be a preponderance of the evidence.

Sec. 4.

Conviction of refusal to submit to a chemical test and driving while license canceled, suspended, revoked or in violation of a limitation are added to the list of offenses of grounds for immediate revocation of a driver's license.

Sec. 5.

Outlines license revocation periods for 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 licenses may be granted at the discretion of the court. Consideration of prior conviction in adjudicating offenses is limited to 10 years.

Sec. 6.

Outlines license revocation for persons convicted of DWI and refusal to submit to a chemical sobriety test. The period of revocation would be not less than 90 days for the first conviction. Upon a second

conviction for a period of not less than one year. Upon a third conviction, for a period of not less than ten years.

Sec. 7.

Conviction of driving while license canceled, suspended, revoked or in violation of a limitation shall result in a penalty of:

i. not less than 30 days and a fine of not less than \$500.

ii. not less than 90 days and a fine of not less than \$1000.

the above applies to offense under AS 28.15.181(c) (2) or (3).

Sec. 8.

Amendment removing the penalty that is now increased in AS 28.15.181 (c)(1)(A).

Sec. 9.

States that a person may not receive a new license until proof of financial responsibility is shown. (AS 28.20.240)

Sec. 10.

A person convicted of driving in violation of a license revocation, suspension or cancellation shall be subject to a mandatory minimum sentence of not less than 10 days.

Sec. 11.

Sets out the penalties for violation of the statute.

Sec. 12.

Upon expiration of period of limitation, the license remains revoked until proof of financial responsibility for the future is provided.

Sec. 13.

A chemical test to determine blood alcohol level must be taken within four hours after the alleged offense is committed.

Sec. 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.

Sec. 15.

A person who drives or operates a motor vehicle in this state shall be considered to have given consent to a preliminary breath test. Refusal to take the test is an infraction.

Sec. 16.

A chemical test shall not be given, if a person is advised of the consequences, unless the arrest is predicated upon AS 28.35.035 (sec. 22 of this analysis)

Sec. 17.

Outlines the penalties of refusing to submit to preliminary sobriety tests. The driver has the right to appeal the department's license revocation to district court.

Sec. 18.

A person who refuses to submit to the chemical test, and has been convicted of DWI or refusal in this or another state, shall be denied driving privileges for one year.

Sec. 19.

Refusal to submit to a chemical test of breath is a class A misdemeanor.

Sec. 20.

Outlines the penalties for conviction of DWI or refusal to take chemical test.

Sec. 21.

After notice, a person must surrender license or permit to department. Application for new license may be made after period of revocation.

Sec. 22.

A chemical test may be administered without the consent of a person who is arrested for an offense of DWI that results in death or physical injury to another.

An unconscious person is considered not to have withdrawn consent. An unconscious person need not be placed under arrest before a chemical test may be administered.

Sec. 23.

Outlines the reasons and procedures for forfeiture of a motor vehicle.

Third parties with interest in vehicle to be forfeited shall be provided notice and opportunity to reclaim vehicle.

Home rule clause acknowledging municipality's right to establish impoundment or forfeiture of motor vehicle.

There is not effective date clause.

June 7, 1983

M E M O R A N D U M

TO: Sen. Don Bennett, Co-chairman
Senate Finance Committee
Sen. John Sackett, Co-chairman
Senate Finance Committee
Sen. Frank Ferguson
Sen. Joe Josephson
Sen. Jan Faiks
Sen. Vic Fischer
Sen. Bob Mulcahy

FROM: Karla L. Forsythe *KLF*
General Counsel, Alaska Court System

SUBJECT: Senate CS for CS for House Bill No. 6 (Judiciary)
"An Act relating to driving a motor vehicle"

Thank you for the opportunity to submit comments regarding the above-entitled act.

The proposed bill impacts the courts in two ways. First, penalties for DWI are increased. Based on past experience, the court system anticipates more contested hearings, because defendants will go to trial in an attempt to avoid harsher penalties. New resources (primarily part-time judges and clerical staff) will be required to process these cases, particularly in urban areas where DWI filings are heaviest and where courts are already working at capacity.

The second area of impact relates to a feature of this legislation not found in current law. Presently, an intoxicated driver's license is not revoked until the driver is sentenced by the court. The proposed bill requires immediate revocation on the scene by the law enforcement officer. If an officer has probable cause to believe a driver is intoxicated, and the driver refuses a chemical test or the test indicates the requisite blood alcohol content, the officer must take the person's license. The officer gives the driver a notice which serves as a 7-day driving permit. During that time, the driver can ask for review of the revocation, and the revocation must be stayed.

Senate Finance Committee
June 7, 1983
Page Two

Previous versions of this bill have incorporated one of two different approaches to the revocation review. One way is to have the review handled by the courts, which results in scheduling delays because of crowded court calendars. Alternatively, the hearing can be handled administratively by the department of public safety. The latter approach is recommended by the National Traffic Highway Safety Administration as a means of avoiding inevitable court delays, and was incorporated in the version of the bill from Senate State Affairs. Both the House bill and the Senate Judiciary Committee version require the court to handle these hearings, based in part on a DPS concern that the department would have to hire new hearing officers. However, the court would also have to hire new staff, including two judges, at a greater cost than that incurred by hiring hearing officers.

The department of public safety, the department of law, and the court system have analyzed the revocation procedure to determine if there is a way to resolve these concerns. The court system believes a mutually satisfactory approach has been developed, which places the hearing responsibility within the department of public safety, but permits the use of court system magistrates as hearing officers in outlying areas, which saves travel costs.

This new approach differs from the current version of the bill in several respects. First, the revocation procedure, including the administrative paperwork, would be handled under the auspices of the department of public safety. However, upon consent of the administrative director of the Alaska Court System, the commissioner of public safety would be authorized to designate magistrates to serve as hearing officers.

Practically speaking, this means that in the more urban locations where DPS can readily provide hearing officers, such as Anchorage and Fairbanks, DPS will handle the hearings. However, in outlying areas, such as Unalaska and Cordova, the local magistrate would be designated as the hearing officer. This approach saves state money, because it would be costly to transport a hearing officer to outlying communities in which revocation reviews rarely arise.

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Page Three

It is also proposed that the hearing officer should be able to grant limited licenses, using the same standard as would the court. Since most appeals to court under current law are for the purpose of obtaining a limited license rather than appealing legal issues, this procedure should avoid duplicative effort and reduce the number of appeals. Any appeal from a hearing officer's decision would not be conducted as a de novo hearing, as is the case under current law, but instead as an appeal on the record without new evidence.

The major advantage to an approach which uses both DPS and court system resources is that hearings in urban areas can be scheduled apart from the court calendar, resulting in speedier revocation of licenses. However, the costs of the procedure will be minimized by use of existing court system positions.

The court system has attached proposed revisions to the bill which incorporate these changes. In the sections which outline the revocation procedure, the word "court" has been stricken, or the word "department" substituted. New language authorized the commissioner to designate a magistrate to serve as a hearing officer upon consent of the administrative director of the court system. New proposed sections also authorize the hearing officer to grant a limited license, and set forth the procedure for judicial review of the revocation hearing. Finally, an amendment to Title 22 includes the duties of hearing officer as one of the functions of a district judge and magistrate.

The court system suggests re-drafting two other sections of the legislation. First, the bill should clearly define the relationship between the immediate revocation by an officer, the revocation review hearing, and any concurrent or consecutive revocation which the court imposes as part of the DWI sentence. Second, the present version of the bill contains separate sections for review of a revocation based on refusal to submit to a chemical test, and for review of a revocation based on the requisite blood alcohol content. These sections should be combined, and any inconsistencies resolved. Although it is not appropriate for the court system to propose substantive changes in these areas, clarification will aid the court in following the legislative intent.

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June 7, 1983
Page Four

The court system will be glad to provide additional information about these comments, or to answer any questions relating to the court's role in implementing the proposed bill.

cc:
Rep. Mitch Abood
Chief Justice Edmond W. Burke
Arthur H. Snowden, II
Gayle Horetski, Department of Law

Original sponsors: Abood, Furnace,
Lindauer, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 SENATE CS FOR CS FOR HOUSE BILL NO. 6 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL
6 For an Act entitled: "An Act relating to driving a motor vehicle."
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
8 * Section 1. AS 28.05.051(b) is amended to read:
9 (b) The commissioner, officers and employees of the department
10 designated by the commissioner, judges and employees of a court, and
11 all peace officers, may take possession of a certificate of title,
12 [OR] registration or license issued by this jurisdiction that [WHICH]
13 has been revoked, canceled, limited or suspended, or [WHICH] is ficti-
14 rious, stolen or altered.
15 * Sec. 2. AS 28.15.081(a) is amended to read:
16 (a) The department shall examine every applicant for a driver's
17 license. The examination shall include a test of the applicant's (1)
18 eyesight, (2) [HIS] ability to read and understand official traffic
19 control devices, (3) [HIS] knowledge of safe driving practices, (4)
20 knowledge of the effects of alcohol and drugs on drivers and the
21 dangers of driving under the influence of alcohol or drugs, and (5)
22 knowledge of the laws relating to driving while intoxicated and the
23 traffic laws and regulations of this state. The examination [, AND]
24 may include a demonstration of ability to exercise ordinary and rea-
25 sonable control in the driving of a motor vehicle of the type and
26 general class of vehicles for which the applicant seeks a license.
27 However, an applicant who has not been previously issued a driver's
28 license by this or another jurisdiction must demonstrate [HIS] abil-
29 ity, and must present medical information that [WHICH] the department

1 reasonably requires to determine [HIS] fitness to safely drive a motor
2 vehicle of the type and general class of vehicles for which the appli-
3 cant [HE] seeks a license.

4 * Sec. 3. AS 28.15 is amended by adding new sections to read:

5 Sec. 28.15.165. ADMINISTRATIVE REVOCATIONS RESULTING FROM CHEMI-
6 CAL SOBRIETY TESTS AND REFUSALS TO SUBMIT TO TESTS. (a) If a chemi-
7 cal test administered under AS 28.35.031(a) to a person driving a
8 motor vehicle for which a driver's license is required produces a
9 result described in AS 28.35.030(a)(2) or if a person under arrest for
10 driving a motor vehicle for which a driver's license is required
11 refuses to submit to a chemical test under AS 28.35.031(a), the law
12 enforcement officer shall read a notice and deliver a copy to the
13 person. The notice shall advise that

14 (1) the department intends to revoke the person's driver's
15 license or nonresident privilege to drive, or refuse to issue an
16 original license to the person;

17 (2) the person has the right to obtain [court] review of the
18 revocation or determination not to issue an original license;

19 (3) the notice itself is a temporary driver's license that
20 expires seven days after it is delivered to the person;

21 (4) revocation of the person's driver's license or nonresi-
22 dent privilege to drive, or a determination not to issue an original
23 license shall take effect upon expiration of the temporary driver's
24 license unless the person within seven days initiates [court] proceed-
25 ings to rescind the action.

26 (b) After reading the notice under (a) of this section, the law
27 enforcement officer shall seize the person's driver's license if it is
28 in the person's possession and shall deliver it to the department with
29 a sworn report describing the circumstances under which it was seized.

1 (c) Upon receipt of a sworn report of a law enforcement officer
2 that a chemical test under AS 28.35.031(a) produced a result described
3 in AS 28.35.030(a)(2) or that a person refused to submit to a chemical
4 test under AS 28.35.031(a), that notice under (a) of this section was
5 provided to the person, and that contains a statement of the circum-
6 stances surrounding the arrest and the grounds upon which the offi-
7 cer's belief that the person was driving while intoxicated a motor
8 vehicle for which a driver's license is required was based, the
9 department shall revoke the person's license or nonresident privilege
10 to drive a motor vehicle in the state, or refuse to issue an original
11 license effective upon expiration of the temporary driver's license
12 issued under (a) of this section.

13 (d) The period of revocation of a driver's license by the de-
14 partment under this section shall be determined in accordance with
15 guidelines for court revocations under AS 28.15.181(c).

16 Sec. 28.15.166. ~~[COURT]~~ REVIEW OF REVOCATION. (a) A person who
17 has received a notice under AS 28.15.165(a) may make a written request
18 for ~~[court]~~ review of the department's action under AS 28.15.165(c). If
19 the person's driver's license has not been previously surrendered to
20 the department, it shall be surrendered ~~[to the court]~~ at the time the
21 request for review is made.

22 (b) A request for review shall be made within seven days after
23 receipt of the notice under AS 28.15.165 or the right to review is
24 waived and the action of the department under AS 28.15.165(c) is
25 final. If a written request for a review is made after expiration of
26 the seven-day period, and if it is accompanied by the applicant's
27 verified statement explaining the failure to make a timely request for
28 a review, the ^{department} ~~[court]~~ shall receive and consider the request. If the
29 ^{department} ~~[court]~~ finds that the person was unable to make a timely request due to

1 lack of actual notice of the revocation or due to factors of physical
2 incapacity such as hospitalization or incarceration, the ~~[court]~~ department shall
3 waive the period of limitation, reopen the matter, and grant the
4 review request.

5 (c) Upon receipt of a request for review, if it appears that the
6 person holds a valid driver's license and that the driver's license
7 has been surrendered, the ~~[court]~~ department shall issue a temporary driver's
8 permit that is valid until the scheduled date for the review. If
9 necessary, the ~~[court]~~ department may issue additional temporary permits to stay
10 the effective date of the action of the department under AS 28.15.-
11 105(c) until the final order after the review is issued.

(d) The review shall be heard before a hearing officer designated by the commissioner. Upon the consent of the administrative director of the Alaska court system, the commissioner may designate a district judge or magistrate to serve as the hearing officer. The hearing officer shall have authority to administer oaths and affirmations; to examine witnesses and take testimony; to receive relevant evidence; to issue subpoenas, take depositions, or cause depositions or interrogatories to be taken; to regulate the course and conduct of the hearing; and to make a final ruling on the issue. If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the determination of the department which is based upon the enforcement officer's report becomes final.

12 ~~[(d)]~~ The ~~[court]~~ review under this section shall be limited to the
13 issues of whether there was probable cause to believe that the person
14 was driving a motor vehicle while intoxicated and whether

15 (1) the person refused to submit to a chemical test under
16 AS 28.35.031(a); or

17 (2) the chemical test authorized under AS 28.35.031(a) and
18 administered to the person produced a result described in
19 AS 28.35.030(a)(2).

20 ~~[(e)]~~^(f) If the issues set out in (d) of this section are determined
21 in the affirmative by a preponderance of the evidence, the ~~[court]~~ hearing officer shall
22 sustain the action of the department. If one or more of the issues is
23 determined in the negative, the department's action shall be
24 rescinded.

25 ~~[(f)]~~^(g) If the action of the department in revoking a nonresident's
26 privilege to drive a motor vehicle is sustained by the ~~[court]~~ hearing officer, the
27 department shall give written notice of action taken to the motor
28 vehicle administrator of the state of the person's residence and to
29 any state in which that person has a driver's license.

(h) A hearing officer revoking a driver's license on the basis that a chemical test administered to the person produced a result described in AS 28.35.030(a)(2) may grant limited license privileges. The privileges may be granted for the final 60 days during which the license is revoked if the hearing officer determines that the person's ability to earn a livelihood would be severely impaired and a limitation under AS 28.15.201 can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public. A hearing officer revoking a driver's license on the basis that the person refused to submit to a chemical test may not grant limited license privileges.

(i) Within 30 days of the issuance of the final determination of the department, a person aggrieved by the determination shall have the right to file an appeal for judicial review in superior court. The review shall

be on the record, without taking additional testimony. If the court finds that the department made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the department's determination. The filing of an appeal shall not result in an automatic stay of the revocation order. The court may grant a stay of the order only upon motion and hearing, and upon a finding that there is a reasonable probability that the petitioner will prevail upon the merits, and that the petitioner will suffer irreparable harm if the order is not stayed.

Sections 4 - 16. No changes.

1 (f) If a driver is arrested, the provisions of AS 28.35.031(a)
2 apply. The preliminary breath test authorized in this section is in
3 addition to any tests authorized under AS 28.35.031(a).

4 * Sec. 16. AS 28.35.032(a) is amended to read:

5 (a) If a person under arrest refuses the request of a law en-
6 forcement officer to submit to a chemical test under AS 28.35.031(a)
7 [OF BREATH AS PROVIDED IN AS 28.35.031], after being advised by the
8 officer that the refusal will, if that person was arrested while
9 operating or driving a motor vehicle for which a driver's license is
10 required, result in the [SUSPENSION,] denial or revocation of the
11 license or nonresident privilege to drive, that the refusal may be
12 used against the person in a civil or criminal action or proceeding
13 arising out of an act alleged to have been committed by the person
14 while operating or driving a motor vehicle or operating an aircraft or
15 a watercraft while intoxicated, and that the refusal is a misdemeanor,
16 a chemical test shall not be given, except as provided by AS 28.35.-
17 035.

18 * Sec. 17. AS 28.35.032(b) is amended to read:

19 (b) Upon receipt of a sworn report of a law enforcement officer
20 that a person has refused to submit to a chemical test authorized
21 under AS 28.35.031(a) [AS 28.35.031], containing a statement of the
22 circumstances surrounding the arrest and the grounds upon which the
23 law enforcement officer's belief was based that the person was
24 operating or driving a motor vehicle in violation of AS 28.35.030, the
25 Department of Public Safety shall notify the person that the person's
26 license or nonresident privilege to drive or operate a motor vehicle
27 in the the state is revoked or suspended, or that no original license
28 or permit will be issued for 90 days [THREE MONTHS]. In the same
29 notice the department shall inform the person that the person may

1 initiate a proceeding [~~in the district court~~] to ^{review} ~~rescind~~ the
2 department's action. The ~~court~~ proceeding shall be ~~without jury~~ and
3 shall be limited to the issues of whether

4 (1) the arresting officer had reasonable grounds to believe
5 the arrested person had been operating or driving a motor vehicle in
6 the state while intoxicated;

7 (2) the arrested person refused to submit to the breath
8 test upon request of the officer after being advised that refusal
9 would result in the suspension, revocation, or denial of the person's
10 license or nonresident privilege to drive and that the refusal is a
11 misdemeanor; and

12 (3) the accused defendant was informed fairly of the nature
13 of the tests, the accuracy of the methods, machines, equipment
14 involved, the expertise of the person administering the tests, or
15 operator of the machines, and the accused given such other reasonable
16 information as may be requested by the accused.

17 * Sec. 18. AS 28.35.032(d) is amended to read:

18 (d) If the person who refuses to submit to the chemical test
19 authorized by AS 28.35.031(a) [AS 28.35.031] has been convicted in
20 this or any other state of operating or driving a motor vehicle while
21 intoxicated or of refusal to submit to a chemical test of breath under
22 this section, the period of suspension or revocation for the person's
23 license, nonresident privilege to drive, or denial of original license
24 shall be one year.

25 * Sec. 19. AS 28.35.032(f) is amended to read:

26 (f) Refusal to submit to the chemical test of breath authorized
27 by AS 28.35.031(a) [AS 28.35.031] is a class A misdemeanor.

28 * Sec. 20. AS 28.35.032(g) is amended to read:

29 (g) Upon conviction of a person under this section, the court

* Sec. 20 - 24. No changes.

* Sec. 25. AS 22.15.100 is amended to read:

Sec. 22.15.100. Functions and powers of district judge and magistrate. Each district judge and magistrate has the power

(1) to issue writs of habeas corpus for the purpose of inquiring into the cause of restraint of liberty, returnable before a judge of the superior court, and the same proceedings shall be had on the writ as if it had been granted by the superior court judge under the laws of the state in such cases;

(2) of a notary public;

(3) to issue marriage licenses and to solemnize marriages;

(4) to issue warrants of arrest, summons and search warrants according to manner and procedure prescribed by law and the supreme court;

(5) to act as an examining judge or magistrate in preliminary examinations in criminal proceedings; to set, receive and forfeit bail and to order the release of defendants under bail;

(6) to act as a referee in matters and actions referred to the judge or magistrate by the superior court, with all powers conferred upon referees by laws;

(7) of the superior court in all respects including but not limited to contempts, attendance of witnesses and bench warrants;

(8) to order the temporary detention of a minor, or take other action authorized by law or rules of procedure, in cases arising under AS 47.10, when the minor is in a condition or surrounding dangerous or injurious to the welfare of the minor or others which requires immediate action; the action may be continued in effect until reviewed by the superior court in accordance with rules of procedure governing these cases.

(9) to issue a temporary order for emergency injunctive relief in cases involving domestic violence as provided in AS 09.55.610.

(10) to review administrative revocation of a person's driver's license or nonresident privilege to drive, and administrative refusal to issue an original license, when designated by the commissioner of public safety and upon the consent of the administrative director of the Alaska court system.

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: SCSCSHB 6 (S.A.)
Title: Act relating to driving a m.v.
Sponsor: Judiciary Committee
Requestor: Finance Committee

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES				419.7	444.9	471.6
200 TRAVEL		2.0	2.1	2.2	2.4	2.5
300 CONTRACTUAL		39.6	42.0	76.7	81.3	86.2
400 COMMODITIES		68.6	72.7	80.7	85.6	90.7
500 EQUIPMENT		-	-	4.5	-	-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC		6.9	7.3	7.7	8.2	8.7
TOTAL OPERATING	-0-	117.1	124.1	591.5	622.4	659.7
CAPITAL	-0-	2,880.0	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	2,977.1	124.1	591.5	622.4	659.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	9	9	9
PART-TIME						
TEMPORARY						

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

The source of funds to offset the fiscal impact of this bill has not been identified by the sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
Division: Adult Corrections Date: May 17, 1983
Approved by Commissioner: *Gerhardie J. Mat* Date: 18 May 83
Department: Health & Social Services

Distribution:

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3/8/83

IV. ANALYSIS:

A. Assumptions

1. Bed Impact

The passage of this bill will result in the need for 22 additional minimum security beds within the Alaska correctional system. The sections of the bill which affect increased inmate population projections are:

a. Section 11

Statistics furnished by the Department of Public Safety show 181 persons were convicted in 1982 for driving with a suspended or revoked license where the original offense resulting in the loss of license was driving while intoxicated (DWI) or implied consent (refusal to take a breathalyzer test). For purposes of this fiscal note, that number was used for calculating the increased person days of incarceration resulting from increased sentences to 30 or 90 days. It was assumed that 80% of the offenders would have been convicted only once in the previous 15 years and 20% convicted more than once in the previous 15 years.

The following calculations also consider that the offender would have been given a minimum sentence of 10 days previously, and it is assumed that every offender will earn all good time for which they are eligible. Therefore, 145 offenders would serve an additional 15 days and 36 offenders would serve an additional 60 days. This results in the need for an additional 11.88 beds.

b. Section 13

This section of the bill increases the minimum sentence for second time drunk drivers from 10 days to 20 days and third and subsequent time drunk drivers from 10 days to 30 days. It is estimated that would be 450 repeat offenders affected by this legislation, 425 second offenders and 25 third offenders. The additional sentence length to be served, assuming all good time will be earned is 12 days for second time offenders and 20 days for third offenders. This increased sentence length results in the need for 9 additional minimum security beds.

c. Section 16

This section provides new penalties for refusal to take a chemical test similar to the sentences to be imposed for driving while intoxicated. Statistical data for this offense was not available. Therefore, it was assumed that 20 individuals would be convicted with one

prior and 7 individuals would be convicted with 2 or more prior offenses. This would result in the need for 1.1 additional beds.

- d. The summary of a, b, and c above is 21.98 beds, which were rounded to 22 beds.
2. All persons convicted would receive the minimum sentence and all persons would earn all good time for which they would be eligible.
3. Inflation of 6% per year was used for the entire period of the fiscal note.
4. The new beds would not be available for occupancy until July 1, 1985. This will result in further overcrowding of the existing facilities for two years.
5. One additional position is needed for every 2.5 prison beds. Therefore, 9 correctional officers are needed to provide the security and supervision of the inmates. These positions would be requested for FY 86.

B. Program Summary:

1. Positions

- 1 - Correctional Officer III
- 8 - Correctional Officer II's

These positions are needed to provide for the security of the institution where the beds will be constructed and for the supervision of the additional 22 persons (full-time equivalents) within the Alaska corrections system.

2. Other Expenditures

The fiscal impact will be experienced as soon as the bill becomes law. Therefore, the incremental costs directly related to inmate care are identified in FY 84. Position costs and costs related to building operations are not included until FY 86.

- a. Travel - \$2000. Inmate transportation to point of arrest when released from custody.
- b. Contractual - \$39,600. Medical expenses for 22 full-time equivalent inmates at \$1800 per inmate per year.
- c. Commodities - \$68,600. Food, clothing, bedding, etc. for 8,085 inmate days at \$8.48 per day.
- d. Grants - \$6,900. Inmate gratuities paid for persons working in the kitchen, or janitorial/maintenance crews, etc.

e. Capital Expenditures

22 beds @ \$130,000 per bed = \$2,860,000

D. Economic Impact:

Passage of this bill should not significantly impact the State's economy.

E. Impact on Local Governments:

There would be no fiscal impact on local governments unless they changed local ordinances related to DWI to include the same penalties contained in this bill. The fiscal impact would occur for local government units who contract with the State for the care of prisoners for local offenses.

1.	POSITION TITLE Correctional Officer II (8)			RANGE/STEP 13/E	BARG. UNIT G	FORM 12. PAGE/LINE	GOV.	APPRD.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 96	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.	

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	223,608	OT 26,968
6.	Benefits	69,167	Shift Diff. 8,000
7.	Supplemental Benefits	15,857	
8.	Fixed Benefits	25,888	
9.	TOTAL PERSONAL SERVICES	01	369,576
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	1,600
13.	Equipment	05	4,000
14.	Other		
15.	TOTAL COST		375,176

JUSTIFICATION

These positions will provide security coverage for the minimum security beds resulting from enactment of CS for House Bill No. 6 (Judiciary).

Single position costs:

Salary	\$27,951
Overtime	3,371
Shift Diff.	1,011
Benefits	13,864
	\$46,197

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	375,176
19.		I-A Receipts 1005	
20.		Program Receipts 1020	
21.		Other	

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4A KEY NUMBER _____

13 REQUEST FOR NEW POSITION

AGENCY Corrections
PROGRAM Offender Confinement, Reformation, & Supervision
BRU Adult Confinement
COMPONENT _____

FY 84

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Revised Date _____

1.	POSITION TITLE Correctional Officer III			RANGE/STEP 15/A	DARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCAT:ON	ELECTION DISTRICT	LEG.	

3.	CONTINUATION LEVEL	<input checked="" type="checkbox"/>	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT	
	1	2	3	
	PERSONAL SERVICES			
5.	Salary	30,944	OT \$ 3371	
6.	Benefits	9,446	Shift Diff. \$ 1011	
7.	Supplemental Benefits	2,165		
8.	Fixed Benefits	3,236		
9.	TOTAL PERSONAL SERVICES	01	50,173	
10.	Travel	02		
11.	Contractual	03		
12.	Commodities	04	200	
13.	Equipment	05	500	
14.	Other			
15.	TOTAL COST		50,873	

JUSTIFICATION

These positions will provide supervision of security staff for the new minimum security beds resulting from the passage of CS for House Bill No. 6 (Judiciary).

Single position costs:

Salary	\$ 30,944
Overtime	3,371
Shift Diff.	1,011
Benefits	14,847
	\$ 50,173

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	50,873
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

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13 REQUEST FOR
NEW POSITION

AGENCY Corrections
Offender Confinement, Reformation,
& Supervision

PROGRAM _____

BRU Adult Confinement

COMPONENT _____

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Revised Date _____

FY 84

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: SCSCSHB 6 (FINANCE)
 Title: ..relating to driving a motor vehicle
 Sponsor: Abood
 Requestor: Senate Finance

II. FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Protection & BRU, Program of Subprogram(s) Affected: Driver Services and AST Det. Justice & CIB

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		116.4	148.1	157.0	166.4	176.4
200 TRAVEL		5.3	3.1	3.3	3.5	3.7
300 CONTRACTUAL		51.7	43.2	45.8	48.5	51.4
400 COMMODITIES		.7	.7	.7	.8	.9
500 EQUIPMENT		52.4				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		226.5	195.1	206.8	219.2	232.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		226.5	195.1	206.8	219.2	232.4
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME		4	4	4	4	4
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
 Division: Administrative Services

Phone: 465-4349
 Date: 6-16-83

Approved by Commissioner: [Signature]
 Department: Public Safety

Date: 6/16/83

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Division of Motor Vehicles

FISCAL NOTE DETAIL

SCSCSHB 6 (Finance)

Page 1

COMMENTS:

Under present law the department does not handle any reviews or hearings when administrative license action is taken for refusal to take a breath test. Therefore, the department currently does not have the staff to conduct the administrative reviews required in this bill. Three of the four positions requested are to handle the administrative review portion. Without the requested positions the reviews could not be conducted.

The present office space for the Driver Improvement Office in Anchorage, which will include two of the positions requested, will not accommodate any expansion. Therefore, the fiscal note provides for relocation and lease of new space for that section, which is currently within the Division of Motor Vehicles field office in Anchorage. Space can be made available within the Public Safety Building in Fairbanks for the hearing officer requested for that area. We currently have no hearing officers in Fairbanks.

ASSUMPTIONS:

This fiscal note is based on the following assumptions: 1) In 1982 there were approximately 4,755 arrests for DWI. Of those who refused to take the breathalyzer test approximately 19% filed appeals in the district court, mostly to request limited driving privileges. The fiscal note is based on the assumption there will be 5,000 arrests for DWI in FY84, of which 99% will receive administrative license action under the proposed law. It is assumed 20% of those will ask for a hearing, mostly to request limited driving privileges; 2) 99% of defendants who take breath test will have .10% or higher results; 3) Effective date is October 1, 1983, with staff coming on board September 1, 1983, for training.

DETAIL:

100 - Personal Services			
1 Driver Improvement Specialist II, Anchorage		34.2	
1 Driver Improvement Specialist II, Fairbanks		39.1	
1 Clerk Typist II, Anchorage		20.9	
1 Document Processing Clerk II, Juneau		22.2	
			116.4
200 - Travel			
210 - Field Travel		2.9	
230 - Training		2.4	5.3
300 - Contractual			
310 - Postage		7.9	
320 - Printing		.8	
330 - Lease Space (1,000 sq. ft.)		28.6	
360 - Equipment Rental (One AJIS terminal)		8.0	
380 - Professional Services (New slides for written tests)		3.8	

300 - Contractual (cont')		
382a- DP Chargeback (Program & Maintenance	2.0	
390 - Tuition	.6	51.7
400 - Commodities		
480 - Normal office supplies, including tapes to record hearings.	.7	.7
500 - Equipment		
520 - Video player and monitor to review arresting agency video tapes at time of breath test, or refusal.	1.5	
550 - Office equipment (itemized on Forms 13)	10.9	
		12.4
	SUBTOTAL	186.5

DIVISION OF ALASKA STATE TROOPERS

40.0

Analysis: In order to comply with the provisions of this bill that requires the breathalyzer test to be administered at the scene of the incident, \$40,000 will be required to purchase 100 new portable breathalyzer units.

TOTAL 226.5

1.	POSITION TITLE Driver Improvement Specialist II				RANGE/STEP 16A	BARG. UNIT GG	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 7-15	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE									
	1		2		3					
	PERSONAL SERVICES									
5.	Salary		30,876							
6.	Benefits		5,422							
7.	Supplemental Benefits		1,803							
8.	Fixed Benefits		2,880							
9.	TOTAL PERSONAL SERVICES		01		41,071					
10.	Travel		02		3,100					
11.	Contractual		03		300					
12.	Commodities		04		100					
13.	Equipment		05		2,969					
14.	Other									
15.	TOTAL COST				47,540					
	RECEIPT CODE				FUNDING SOURCE					
16.					Federal Receipts 1002					
17.					G.F. Match 1003					
18.					General Funds 1004					
19.					I-A Receipts 1005					
20.					Program Receipts 1028					
21.					Other					
						47,540				

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4A KEY NUMBER _____

This position would hold administrative hearings in the Anchorage area under driver license administrative suspension/revocation programs. This would include hearings on requests to grant a limited license on administrative license actions resulting from chemical sobriety tests, and refusals to submit to tests. Considerable time is necessary to properly prepare for each hearing.

Travel is based on two trips to Southeastern annually, two trips to Kodiak annually, and other outlying areas in the Second and Third Judicial Districts as required. \$1,200 in travel, and \$300 in contractual is to cover a one week course for administrative hearing officers at the National Judicial College at the University of Nevada.

Equipment breakdown for this position is as follows: Typewriter - \$1,245; Desk \$426; File Cabinet \$235; Chair \$163; and Recording equipment \$900.

Prepared showing full year costs. Only ten month cost reflected on fiscal note for FY84.

13 REQUEST FOR NEW POSITION

AGENCY Public Safety
PROGRAM Life and Property Protection
BRU Driver/Vehicle Services
COMPONENT Driver Services

FY 84

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Revised Date _____

1.	POSITION TITLE Clerk Typist II				RANGE/STEP 7B	DARG. UNIT GG	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PPT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 7-15	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1	2		3						
	PERSONAL SERVICES									
5.	Salary	18,120								
6.	Benefits	3,182								
7.	Supplemental Benefits	927								
8.	Fixed Benefits	2,880								
9.	TOTAL PERSONAL SERVICES	01	25,109							
10.	Travel	02								
11.	Contractual	03								
12.	Commodities	04	100							
13.	Equipment	05	2,947							
14.	Other									
15.	TOTAL COST	28,156								
16.	RECEIPT CODE	FUNDING SOURCE								
17.		Federal Receipts 1002								
18.		G.F. Match 1003								
19.		General Funds 1004		28,156						
20.		I-A Receipts 1005								
21.		Program Receipts 1028								
		Other								

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This person would handle necessary paperwork for scheduling hearings, notifying individuals of hearing date, time and location, and keep appropriate records.

Would transcribe hearing records as requested, and prepare certified copies for courts, prosecutors, private attorneys, etc, when necessary. Update computer files reflecting when license action is stayed and/or limited driving privileges granted.

Equipment breakdown for this position is as follows:
Typewriter - \$1,245; Desk - \$426; File Cabinet - \$235; Chair - \$141; Transcriber - \$900.

Prepared showing full year costs. Only ten month cost reflected on fiscal note for FY84.

13 REQUEST FOR NEW POSITION

AGENCY Public Safety
PROGRAM Life and Property Protection
BRU Driver/Vehicle Services
COMPONENT Driver Services

FY 84

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Revised Date _____

1.	POSITION TITLE Document Processing Clerk II				RANGE/STEP 8B	BARG. UNIT GG	FORM 12	PAGE/LINE	GOV.	APPROV.	DISAP
2.	TYPE OF POSITION PFT	STATE UNIT 12	RP NUMBER	PER NUMBER	DRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT 4		LEC.		
3.	CONTRIBUTION LEVEL				JUSTIFICATION						
4.	TYPE OF EXPENDITURE				<p>One Document Processing Clerk II will be required to handle administrative license actions and related work for individual defendants whose breath test results are .10% 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.</p> <p>Prepared showing full year costs. Only ten month cost reflected on fiscal note for FY84.</p>						
	PERSONAL SERVICES		AMOUNT								
5.	Salary	19,176									
6.	Benefits	3,367									
7.	Supplemental Benefits	1,125									
8.	Fixed Benefits	2,880									
9.	TOTAL PERSONAL SERVICES	01	26,598								
10.	Travel	02									
11.	Contractual	03									
12.	Commodities	04	100								
13.	Equipment	05	1,224								
14.	Other										
15.	TOTAL COST		28,422								
16.	RECEIPT CODE	FUNDING SOURCE									
17.		Federal Receipts 1002									
18.		G.F. Hatch 1003									
19.		General Funds 1004		28,422							
20.		I-A Receipts 1005									
21.		Program Receipts 1028									
		Other									
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4A KEY NUMBER											

13 REQUEST FOR
NEW POSITION

AGENCY Public Safety
 PROGRAM Life and Property Protection
 DRU Driver/Vehicle Services
 COMPONENT Driver Services

FY 84

Page of
 Revised Date

1.	POSITION TITLE Driver Improvement Specialist II			RANGE/STEP 16A	BARG. UNIT GG	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT 18-21	LEG.	

3.	CONTINUATION LEVEL		ADDITION
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	35,580	
6.	Benefits	6,248	
7.	Supplemental Benefits	2,181	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	46,889
10.	Travel	02	2,200
11.	Contractual	03	300
12.	Commodities	04	100
13.	Equipment	05	3,269
14.	Other		
15.	TOTAL COST		52,758

JUSTIFICATION

This position would hold all administrative hearings for the department in Fairbanks and outlying areas in the Fourth Judicial District. This includes hearings on requests to grant a limited license on administrative license actions resulting from chemical sobriety tests and refusals to submit to tests. Considerable time is necessary to prepare for each hearing.

Travel is based on 10 days per diem, and transportation costs within Fourth Judicial District. \$1,200 in travel, and \$300 in contractual is to cover a one week course for administrative hearing officers at the National Judicial College at the University of Nevada.

Equipment breakdown for this position is as follows: Typewriter - \$1,245; Desk - \$646; File Cabinet - \$291; Chair - \$187; and Recording equipment - \$900.

Prepared showing full year costs. Only ten month cost reflected on fiscal note for FY84.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	52,758
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

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13 REQUEST FOR
NEW POSITION

AGENCY Public Safety
PROGRAM Life and Property Protection
BRU Driver/Vehicle Services
COMPONENT Driver Services

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FY 84

STATE OF ALASKA
FISCAL NOTE

Revision Date June 16 1983

I. REQUEST

Bill/Resolution No.: SCSCSHB6 (FIN.)
 Title: "Driving a Motor Vehicle"
 Sponsor: Senator Fischer
 Requestor: Senate Judiciary

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
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)

GENERAL FUND		202.7	208.5	222.4	234.3	248.4
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Bob Stokes, Admin. Officer

Phone: 279.7541

Division: Dana Fabe, Public Defender *Dana Fabe*

Date: June 16, 1983

Approved by Commissioner: Lisa Rudd

Date:

Department: Administration

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ANALYSIS OF SCSCSHB 6 (FIN.)

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 last 1-2 days. We handle a high volume of not only State prosecuted DWI's but Municipally prosecuted DWI's as well. Past experience indicates that the Municipality of Anchorage will modify their ordinances to conform with the more severe penalty provisions of this bill. The 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, an increase in mandatory minimum penalties to 30 or 90 days for a conviction of driving with a suspended license where the offender has a prior history of DWI will greatly 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 at the time of arrest will also require increased attorney time, due to the defendant's right to immediately schedule a hearing to obtain return of his license.

Although the defendant does not have a right to an attorney to handle the hearing which he initiates to have his license returned, he does have the right at that hearing to the assistance of his court appointed attorney for the criminal case to the extent that that hearing could impact his criminal case. The hearing under this section addresses issues of whether the defendant refused to submit to a chemical test and what signs the arresting officer observed to justify his arrest for driving while intoxicated. These are the precise issues which will be litigated at trial.

For example, if the defendant admitted at the hearing that he had refused to submit to the chemical test but simply gave mitigating circumstances to justify the return of his license, he would have incriminated himself for purposes of his criminal trial. Similarly, if the defendant began to contest his state of sobriety, indicating the exact amount he had to drink at this administrative hearing on

the issue of whether the arresting officer had reasonable grounds to believe he was intoxicated, he would, by those statements, be incriminating himself for purposes of his upcoming criminal trial.

Even if this statement cannot be used in the State's case in chief, it could be used under this bill to cross-examine him for inconsistencies once he takes the stand. Furthermore, information gleaned at the hearing could be used derivatively to further investigate the case from the prosecution perspective. Because statements made at this hearing would directly bear on the issues to be tried in the criminal case, a client would have the right to the assistance of his court appointed counsel at that hearing. The attorney would have to attempt to obtain derivative use immunity due the client under the Alaska Supreme Court decision of McCracken v. Coxy, as well as assure that the scope of cross-examination at the hearing were limited to prevent unwarranted discovery which could impact the criminal proceedings.

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

STATE OF ALASKA
FISCAL NOTE

Revision Date June 16, 1983

①

I. REQUEST

Bill/Resolution No.: SCSCSHB 6 (Finance)
 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)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		208.5	221.0	234.3	248.4	263.3
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		245.6	237.0	251.3	266.4	282.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	245.6	237.0	251.3	266.4	282.3
FEDERAL FUNDS					
OTHER (Specify Source)					

POSITIONS:

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:

Recent revisions will have no additional fiscal impact on Court System.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard P. Barrier Phone: 264-0545
 Division: Alaska Court System/Administration Date: June 16, 1983
 Approved by Commissioner: _____ Date: _____
 Department: _____

Distribution:

- Original to Legislative Finance
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- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

ANALYSIS OF FISCAL IMPACT OF SCSCSHB 6 (Finance)

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 Senate Judiciary Committee substitute 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 proposed Senate Finance Committee substitute incorporates an administrative rather than a judicial license revocation review, resulting in a substantially decreased cost to the court, since judicial involvement will be limited to appeals on the record and use of magistrates as hearing officers in outlying areas.

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 Finance Committee substitute is provided below.

FY 84 COST OF IMPLEMENTING SCSCSHB 6 (Finance)

Personal Services:	<u>Revised</u>
Salaries:	
<u>Anchorage</u>	
Pretem retired district court judge (4 mos) . . .	\$ 5,050
In-court clerk (Range 12B) (4 mos)	7,784
Court clerk II (2 @ Range 10B) (12 mos)	41,424
<u>Fairbanks</u>	
Pretem retired district court judge (2 mos)	2,879
In-court clerk (Range 12B) (2 mos)	4,436
Court clerk II (2 @ Range 10 B) (12 mos)	46,706
<u>Palmer</u>	
Court clerk II (Range 10B) (12 mos)	21,384
<u>Kenai</u>	
Court clerk II (Range 10B) (12 mos)	<u>21,984</u>
	151,647
Benefits:	
Judges	10,011
Classified	<u>46,808</u>
Total Personal Services	\$208,466
Contractual	7,500
Commodities	7,500
Equipment (one time costs)	<u>22,100</u>
Total Cost	<u>\$245,566</u>

(Subsequent years' cost includes inflation at 6%)

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSHB 6 (Judiciary)
 Title: "...driving a motor vehicle."
 Sponsor: Judiciary Committee (Abood-Orig.)
 Requestor: House Finance Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: General Govt.
 BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY.87	FY 88
OPERATING						
100 PERSONAL SERVICES		164.2	208.9	221.4	234.7	248.8
200 TRAVEL		10.0	10.6	11.2	11.9	12.6
300 CONTRACTUAL		20.4	23.8	25.2	26.7	28.3
400 COMMODITIES		12.4	7.6	8.1	8.6	9.1
500 EQUIPMENT		32.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	239.0	250.9	265.9	281.7	298.8
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	239.0	250.9	265.9	281.7	298.8
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	4	4	4	4	4
PART-TIME						
TEMPORARY						

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

Not specified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director

Division: Administrative Services Division

Phone: 465-3672

Date: May 5, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General

Department: Department of Law

Date: May 5, 1983

Distribution:

Original to Legislative Finance

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CSHB 6 (Judiciary)

Fiscal Note

Analysis

#1

287

The committee substitute has eliminated impoundment of vehicles and retained modified and less restrictive provisions for forfeiture of vehicles. Likewise, the requirement to notify every person who has an ownership or security interest in vehicle within five days has been changed to simply notice prior to any hearing that would determine the disposition of any forfeited vehicle. Because of these changes, the fiscal impact on the department will be reduced. The requirement for court forfeiture hearings, however, still remains and the state must provide motions and answer intervenors' motions in order to invoke forfeiture. Consequently, the department's original estimate of four attorneys, and two clerical staff is being reduced to two attorneys and two clerical staff.

Fiscal Analysis - CSHB 6 #1

387

The impact of CSHB 6 is expected to result in the addition of one Attorney IV position (SR 24) and one Attorney III position (SR 22). In addition to these attorney positions, two secretarial positions will provide support for the Anchorage and Fairbanks attorneys.

The first year of this analysis will cover 10 months of FY 84, allowing 2 months for these four positions to be established. The costs beyond FY 84 have been projected on a 12 month basis and include a 6% annual inflation factor.

1st Year (10 months)

	ANCHORAGE		FAIRBANKS		TOTAL
	AIV	LSI	AIII	LSI	
Personal Services	56.2	24.5	56.2	27.3	164.2
Travel	5.0	-0-	5.0	-0-	10.0
Contractual	8.0	2.2	8.0	2.2	20.4
Commod. - ongoing	1.5	1.5	1.5	1.5	6.0
Commod. - single time	2.0	1.2	2.0	1.2	6.4
Equip. - single time	1.5	14.5	1.5	14.5	32.0
					<hr/> 239.0

2nd Year (12 months + 6% annual inflation)

Personal Services	71.5	31.2	71.5	34.7	208.9
Travel	5.3	-0-	5.3	-0-	10.6
Contractual	9.1	2.8	9.1	2.8	23.8
Commodities	1.9	1.9	1.9	1.9	7.6
					<hr/> 250.9

POSITION TITLE Attorney IV				RANGE/STEP 24A	D/G. UNIT X	FORM 12 PAGE/LINE	COV	APPROV	DISAPP
TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	NRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEC		

CONTINUATION LEVEL		ADDITION	
TYPE OF EXPENDITURE			AMOUNT
1	2	3	
PERSONAL SERVICES			
Salary	4,469/month	44,690	
Benefits		6,890	
Supplemental Benefits		2,240	
Fixed Benefits		2,400	
TOTAL PERSONAL SERVICES		01	56,220
Travel		02	5,000
Contractual		03	8,000
Commodities		04	3,500
Equipment		05	1,500
Other			
TOTAL COST			74,220

JUSTIFICATION

This is one of two attorney positions required by the Department of Law in order to absorb the significant increase in workload which will result from new legislation authorizing the forfeiture of motor vehicles driven by persons arrested for driving while intoxicated. The new legislation requires a court hearing when a forfeiture is contested by the vehicle owner, or by someone who has a financial interest in the vehicle. It is anticipated that many of these hearings will involve representatives from banks or financing companies who retain a financial interest in the vehicle.

RECEIPT CODE	FUNDING SOURCE	
16.	Federal Receipts 1002	
17.	G.F. Match 1003	
18.	General Funds 1004	74,220
19.	I-A Receipts 1005	
20.	Program Receipts 1028	
21.	Other	

FOR D&M USE ONLY
4A KEY NUMBER _____

AGENCY DEPARTMENT OF LAW

PROGRAM LEGAL SERVICES

NRU LEGAL SERVICES

COMPONENT LEGAL SERVICES OPERATIONS

13 REQUEST FOR
NEW POSITION

Page 4 of 7

Revised Date _____

FY 84

1.	POSITION TITLE Legal Secretary I				RANGE/STEP 10B	DEPT. UNIT CGU	FORM 12 PAGE/LINE	GOV	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	DRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEC.		

3.	CONTINUATION LEVEL	ADDITION		
4.	TYPE OF EXPENDITURE		AMOUNT	
	1	2	3	
	PERSONAL SERVICES			
5.	Salary	1,817/month	18,170	
6.	Benefits		2,800	
7.	Supplemental Benefits		1,110	
8.	Fixed Benefits		2,400	
9.	TOTAL PERSONAL SERVICES		01	24,480
10.	Travel		02	-0-
11.	Contractual		03	2,200
12.	Commodities		04	2,700
13.	Equipment		05	14,500
14.	Other			
15.	TOTAL COST			43,880

JUSTIFICATION

This is the second of two attorney positions required by the Department of Law in order to absorb the significant increase in workload which will result from new legislation authorizing the forfeiture of motor vehicles driven by persons arrested for driving while intoxicated. The new legislation requires a court hearing when a forfeiture is contested by the vehicle owner, or by someone who has a financial interest in the vehicle. It is anticipated that many of these hearings will involve representatives from banks or financing companies who retain a financial interest in the vehicle.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	43,880
19.		I-A Receipts 1005	
20.		Program Receipts 1020	
21.		Other	

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4A KEY NUMBER _____

13 REQUEST FOR
NEW POSITION

AGENCY DEPARTMENT OF LAW
PROGRAM GENERAL GOVERNMENT
DRU LEGAL SERVICES
COMPONENT LEGAL SERVICES OPERATIONS

1
Page 5 of 7
Revised Date _____

FY 84

1.	POSITION TITLE Attorney III				RANGE/STEP 22A	DARG. UNIT X	FORM 12 PAGE/LINE	GOV	APPROV.	DISAPP.	
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	DRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT	LEG.			
3.	CONTINUATION LEVEL				JUSTIFICATION						
4.	TYPE OF EXPENDITURE				AMOUNT						
	1		2		3						
	PERSONAL SERVICES										
5.	Salary	4,469/month	44,690								
6.	Benefits		6,890								
7.	Supplemental Benefits		2,240								
8.	Fixed Benefits		2,400								
9.	TOTAL PERSONAL SERVICES		01	56,220							
10.	Travel		02	5,000							
11.	Contractual		03	8,000							
12.	Commodities		04	3,500							
13.	Equipment		05	1,500							
14.	Other										
15.	TOTAL COST			74,220							
	RECEIPT CODE	FUNDING SOURCE									
16.		Federal Receipts 1002									
17.		G.F. Match 1003									
18.		General Funds 1004			74,220						
19.		I-A Receipts 1005									
20.		Program Receipts 1020									
21.		Other									
FOR B&M USE ONLY											
4A KEY NUMBER _____											

This is one of two secretary positions required to provide secretarial support for the two new attorney positions assigned to Anchorage and Fairbanks. This particular secretarial position will serve the needs of the new attorney assigned to Anchorage. Included in the duties of this position will be the responsibility of coordinating the activities of the Civil Division attorneys handling the forfeiture action with the attorneys and support staff of the criminal division who originally prosecuted the intoxicated operator of the motor vehicle.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW
PROGRAM LEGAL SERVICES
DRU LEGAL SERVICES
COMPONENT LEGAL SERVICES OPERATIONS

FY 84

Page 10 of 7
Revised Date _____

1.	POSITION TITLE Legal Secretary I				RANGE/STEP 10B	BARC. UNIT GGU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	DRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION		
4.	TYPE OF EXPENDITURE		AMOUNT	
	1	2	3	
	PERSONAL SERVICES			
5.	Salary	2,048/month	20,480	
6.	Benefits		3,160	
7.	Supplemental Benefits		1,260	
8.	Fixed Benefits		2,400	
9.	TOTAL PERSONAL SERVICES	01	27,300	
10.	Travel	02	-0-	
11.	Contractual	03	2,200	
12.	Commodities	04	2,700	
13.	Equipment	05	14,500	
14.	Other			
15.	TOTAL COST		46,700	

JUSTIFICATION

This is the second of two secretary positions required to provide secretarial support for the two new attorney positions assigned to Anchorage and Fairbanks. This particular secretarial position will serve the needs of the new attorney assigned to Fairbanks. Included in the duties of this position will be the responsibility of coordinating the activities of the Civil Division attorneys handling the forfeiture action with the attorneys and support staff of the criminal division who originally prosecuted the intoxicated operator of the motor vehicle.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	46,700
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR H&M USE ONLY
4A KEY NUMBER _____

13 REQUEST FOR
NEW POSITION

AGENCY DEPARTMENT OF LAW
PROGRAM LEGAL SERVICES
DRU LEGAL SERVICES
COMPONENT LEGAL SERVICES OPERATIONS

FY 84

Page 1 of 1
Revised Date _____

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3600


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 17, 1983

SUBJECT: Drinking age (SCS CSHB 17 (State Affairs)
version dated May 5, 1983)

TO: Senator Vic Fischer

FROM:  Russ Josephson
Legislative Counsel

You have asked for an opinion whether secs. 19 and 20 of this version of HB 17 come within the scope of the title of HB 17 as it passed the House. I do not believe they do.

Section 20 is the easier of the two sections to address. The title of CSHB 17 (Judiciary) am, the version of HB 17 that passed the House, did not include a reference to an effective date. Therefore, this section clearly does not fit under that title.

Section 19 presents a closer question. Sec. 19 provides a "grandfather clause" for those age 19 as of January 1, 1984. The title of CSHB 17 (Judiciary) am does not include such a clause. Had the title been broad, this section would not present a problem. However, the title is in a "string title" style; it mentions each of the main points of the bill. It is my feeling that the "grandfather clause" is a significant part of the bill and that the title ought to mention it. Accordingly, I do not feel that sec. 19 fits under the title of the bill as it passed the House.

The problem here, of course, is that under Rule 41(b) of the Uniform Rules of the Alaska State Legislature, one house may not amend the title of a bill introduced in the other house, except for a clerical or technical change. In drafting the committee substitute, I overlooked this restriction. You may want to use a committee bill to accomplish the scheme desired by the committee.

RJ:ljb
20/012

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 23, 1983

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

TO: Senator Bill Ray

FROM: *RJ* 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.

last
dod
14-
(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 criterion 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 CS HB 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.

RJ:ljb
21/009

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 criteria.

“(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.

23 USC 101 *et*
seq.

“(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.”

(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.

Ante, p. 1738.
Disapproval by
Congress.

(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.

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;

(i);² (ii) resulted in the addition of two subparagraphs (f)(9) and (f)(10);³ and (iii) effected the revision of subparagraph (f)(2).⁴ 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);⁵ 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 (b) 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 (c) 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.

¹ Securities Act Release No. 6200 (February 14, 1981) [46 FR 1144] (January 21, 1981).

² Securities Exchange Act Release No. 1190 (January 19, 1977) [42 FR 5640] (January 27, 1977).
³ Securities Exchange Act Release No. 12510 (November 20, 1977) [42 FR 57127] (December 9, 1977).

⁴ Securities Act Release No. 6263 (November 11, 1980) [45 FR 7974] (November 21, 1980).

⁵ Securities Act Release No. 1410 (April 1, 1979) [44 FR 25502] (April 10, 1979).

⁶ Securities Act Release No. 1611 (September 29, 1977) [42 FR 54630] (October 7, 1977).

Statutory Authority

The Commission hereby amends Article 30-5 paragraphs (b) and (f) 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 (f)(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 to companies other than such registered investment companies in paragraphs (a), (e) and (f) of Article 30-1 (§ 200.30-1 of this chapter) of these articles.

(f) * * *

(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 (c) 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 29, 1983.

By the Commission

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-3223 Filed 2-4-83; 8:45 am]

BILLING CODE 8010-01-M

National Highway Traffic Safety Administration

23 CFR Part 1200

(Docket No. 82-18; 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.

DATE: These rules become effective by statute, February 7, 1983, except that § 1200.3 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 (202-420-0837).

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 (42 U.S.C. 406, 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 1980.

To provide for 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 (b) 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 (c) 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 system 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 a 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 these current systems. Delaware noted that each party in its administrative proceedings

is allowed at least one continuance, which means that a certain percentage of cases stretch out beyond 40 days after arrest. Delaware suggested that the agency adopt an average of 45 days.

In formulating this 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 differences 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 criteria 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 States 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, it is 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 law 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 these 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 criteria, 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 those 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 trained court 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 small 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 suspension 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 participant 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 to 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 NAADAC 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. Those drivers would, however, receive post-sentence 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.

Illaho 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 semi-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 403 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 of 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 0.03 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 0.03 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 0.03 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, International 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 has 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 these local agencies that receive section 408 grant funds certification that the existing level of local expenditure will be maintained. The agency will accept a State 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 suggest another alternative awards procedure 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 criteria; 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. 400.

§ 1209.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 402, 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 do 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 debarring 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. 406, 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, 460 Seventh Street, S.W., Washington, D.C. 20590 that: (i) It has an alcohol traffic safety program that meets those 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. 406 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. 402;

(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. 402; 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. 402.

§ 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 (b) 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)(7) 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.

§ 1209.6 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 adopting 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 statewide 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 program, discussing how it is related to changing societal 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 showing that it is systematically using 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 0.02 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. 403 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. 97-261; 96 Stat. 1733 (23 U.S.C. 403); delegation of authority at 49 CFR 1.50)

Issued on January 31, 1983.

Raymond A. Pock, Jr.,
Administrator.

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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, (DD).

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. Bell, JACC, U.S. Navy, Box 11, Naval Submarine Base New London, Groton, Connecticut 06340. Telephone: (203) 439-4733.

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 235 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. 790, DOD Directive 3200.8 of July 29, 1980; SEC. NAVINST 5511.30 of December 20, 1980; OPNAVINST 5510.15 of April 19, 1971; 5 U.S.C. 501; 10 U.S.C. 6011; 32 CFR 230.702; 32 CFR 701.714.