

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672  
5363 SLAB SB 141 - SB 146 935

Chapter 93

Sec. 18.60.060. POSTING OF INFORMATION IN WORKPLACE. (a) The department shall print and make available to employers posters that contain notice of the provisions of this chapter relating to toxic and hazardous substances.

(b) An employer whose employees are or may be exposed in the workplace to a toxic or hazardous substance shall display the following information in a manner designed to notify the employees:

(1) a poster printed by the department under (a) of this section; and

(2) an OSHA form 20 or equivalent information for each toxic or hazardous substance to which an employee may be exposed in the workplace

(A) under normal conditions of work; or

(B) during a reasonably foreseeable emergency, including equipment failure and rupture of containers.

(c) Instead of posting the information required under (b)(2) of this section, an employer may post a list of the chemical name and product name of each toxic or hazardous substance to which an employee may be exposed in the workplace, together with an identification of a location, in or near the workplace and accessible to employees, where an employee may inspect the information listed under (b)(2) of this section.

\* Sec. 3. AS 18.60.105 is amended by adding new paragraphs to read:

(6) "be exposed" means to ingest, inhale, or absorb through the skin or eyes a substance, or fumes or other potentially harmful aspect of a substance;

(7) "OSHA" means the federal Occupational Safety and Health Administration;

(8) "toxic or hazardous substance" includes

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1 (A) a chemical listed in 29 CFR Part 19.0, Subpart Z,  
2 Toxic and Hazardous Substances, "General Industry Standards",  
3 Occupational Safety and Health Administration;

4 (B) a chemical listed in "Threshold Limit Values for  
5 Chemical Substances and Physical Agents in the Work Environment",  
6 American Conference of Governmental Industrial Hygienists (Latest  
7 Edition);

8 (C) a substance for which an OSHA form 20 or  
9 equivalent information is required under OSHA regulations; and

10 (D) a substance determined by the department, in  
11 accordance with the Administrative Procedure Act (AS 44.62), to  
12 be a health hazard to an employee who is exposed to the  
13 substance, including a carcinogen, reproductive toxin, irritant,  
14 corrosive, sensitizer, hepatotoxin, nephrotoxin, neurotoxin,  
15 agent that acts on the hematopoietic system, agent that damages  
16 the lungs, a cutaneous hazard and an eye hazard;

17 (9) "toxic or hazardous substance" does not include

18 (A) substances that because of their physical state,  
19 volume, or concentration do not pose a health hazard upon expo-  
20 sure;

21 (B) substances that are goods, food, drugs, cosmetics  
22 or tobacco products intended for personal consumption; or

23 (C) substances in transit;

24 (10) "transit" means conveyed in a sealed or unopened con-  
25 tainer by a mode of transportation.

26 \* Sec. 4. AS 18.60.105 is amended by adding a new subsection to read:

27 (b) In AS 18.60.03(14), 18.60.065 - 18.60.068, and 18.60.105-

28 (a)(9)

29 (1) "employee" means a person who works for an employer,

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1 but not in a place used primarily as a personal residence;

2 (2) "employer" means a person, including the state and a  
3 political subdivision of the state, who has one or more employees  
4 working in a place not used primarily as a personal residence.

5 (3) "health hazard" means a substance capable of causing  
6 acute or chronic adverse effects to health;

7 (4) "workplace" means a place of employment other than a  
8 place used primarily as a personal residence.

9 \* Sec. 5. Sections 1, 3, and 4 of this Act take effect immediately in  
0 accordance with AS 01.10.070(c).

1 \* Sec. 6. Section 2 of this Act takes effect July 1, 1984.

Bill No. Senate Bill 141  
Title "An Act relating to hazardous painting certification."

Date March 4, 1987

Contact: Richard Arab  
465-4856

Eileen Plate  
465-2700

Senate Bill 141 is designed to assure the competency of persons employed to perform hazardous painting in the state and thereby prevent harmful exposures to workers who apply toxic and hazardous paints, to their co-workers and to the public.

Under the provisions of this bill, persons who are employed to perform hazardous painting must complete an approved training program and be certified. The training program would consist of instruction in and a demonstration of each person's knowledge and skill in using safe work practices and appropriate protective equipment.

Today, many solvents, metals, pesticides, isocyanates, and carcinogens are applied to surfaces in Alaska because highly resistant surfaces are needed for the harsh environment which exists in many parts of the state. Exposure to those toxic and hazardous substances can cause a variety of adverse health effects. For example:

- Nerve and brain damage, including memory and coordination impairment, result from chronic solvent exposures. Hepatitis and increased incidence of accidents also result from acute solvent exposures;
- Heavy metal poisoning occurs from exposure to lead, cadmium and other metals;
- Asthma and anaphylactic shock occurs from isocyanate exposures;
- Pesticide poisoning occurs from exposure to wood preservative additives such as penta chlorophenol.
- Heart attacks can occur from overexposure to methylene chloride; and
- Cancer can result from exposure to chromate paint pigments and benzene solvents;

These occupational diseases and injuries can be prevented by using appropriate work practices and proper protective equipment. The public and building occupants near painting projects can be better warned and protected by certified painters who use appropriate isolation and curing times. Workers' families, as well as other members of the community, need to be protected from the exposure to toxic material, such as lead chromate, brought home on the individual worker's person or clothing.

**POSITION PAPER/Department of Labor**

Under the provisions of Senate Bill 141, the Department of Labor would establish minimum requirements for certification training programs; review and approve such programs; issue certificates to persons who present evidence of having completed an approved training program; and enforce the certification requirements.

The Department of Labor supports the certification concept presented in this bill. However, the Department would recommend several amendments to the bill, as follows:

1. Amend line 13 on page 2 to read:

and regulations, including relevant portions of Alaska occupational safety and health standards that are adopted by reference in 8 AAC 61.010, and

Alaska's safety and health standards are adopted in 8 AAC 61.010, and use of this state reference instead of the federal reference would, therefore, be more appropriate.

2. Amend lines 27-29 on page 2 to read:

(2) issue citations to employers who employ persons to perform hazardous painting without being certified or without having a certificate on their person.

Alaska's occupational safety and health program operates under federal guidelines which do not provide for citing employees.

3. Amend lines 11-14 on page 3 to read:

(2) "hazardous painting" means the application of a substance containing a pigment or a substance containing or combined with a toxic or hazardous substance as defined in AS 18.60.105 in vaporized, particulate or liquid form to create a coating that will adhere to a surface to protect or preserve the surface. Exempted are water-based paints which do not contain emulsion epoxys, biocides, organometallic preserving agents, and secondary amines.

This amendment is recommended to limit the certification requirements to only the more hazardous painting applications and thereby exclude from the certification requirements low toxicity water-based paints widely used in residential painting. This amended definition would also extend the certification requirements to the extremely hazardous spraying of liquified metal surfacing. In its present form, the definition would exclude such applications from the certification requirements.

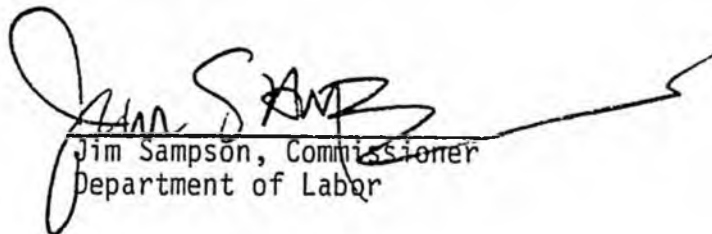
4. In addition a delayed effective date, until January 1, 1988, is recommended for the certification requirements. The Department will need this lead time to develop the training program curriculum and to educate employers on the certification requirements.

The industry will likewise need this lead time to have training programs in place and workers trained by the effective date.

The Department will, however, need to have the authority to adopt regulations, approve training programs and issue certifications prior to the effective date of the certification requirements. Therefore the January 1, 1988 effective date requested should apply only to proposed Sections AS 18.63.010, AS 18.63.050, and AS 18.63.070; all other provisions of the bill would then take effect several months earlier, and thereby provide the required lead time.

The Department is continuing to explore the specific implications of this certification proposal.

APPROVED:



Jim Sampson, Commissioner  
Department of Labor

## ASBESTOS FACT SHEET

**NEW FEDERAL STANDARDS** - On July 21, 1986 the Federal OSHA reduced the allowable eight hour exposure limit for asbestos ten fold from 2.0 to 0.2 fibers /cc. In taking this action, the Federal OSHA rejected recommendations of NIOSH for lower limits. OSHA stated "that the 0.2 fibers/cc is the lowest limit that can be achieved by the use of engineering controls and work practices". The new Federal standard requires protective clothing and respiratory protection for asbestos levels over 0.2 fibers/cc.

**PROPOSED ALASKA OSHA STANDARD** - On February 9, 1987 the Alaska OSHA proposed to adopt the NIOSH asbestos limits rejected by the Federal authorities. This action could result by April 17, 1987 in requiring employees to wear protective clothing and work with respiratory protection if asbestos levels of 0.01 fibers/cc are measured. This 0.01 limit is twenty times lower than the new Federal limit of 0.2. Federal rules gave the state OSHA six months to meet the new Federal regulations. The State did not act during this six month period and requested an additional six months to undertake rulemaking. The public has not been involved in any advisory capacity in the development of these proposed new State regulations. The State of Washington is now proposing to adopt the 0.2 Federal limit after involving the general public through a fifteen member advisory committee. No other state has adopted an asbestos limit more stringent than 0.2 fibers/cc along with a corresponding action limit of 0.1.

**GENERAL IMPACT** - Industrial, commercial, office and educational asbestos levels commonly can be found in the 0.01 to 0.1 range using current acceptable methods. The difference between the accepted Federal standards and the proposed state standards will result in many public and private workplaces becoming posted hazard areas requiring protective controls.

**IMPACT ON APC'S OPERATIONS** - APC does not anticipate any significant problem in meeting the new Federal OSHA limits. It does expect the proposed new state regulations to have a significant impact on the effective and economic operation of its Sitka Pulp Mill. Specific problems that have been identified are:

- operating and maintenance crews wearing respirators for entire work shifts.
- mill operating areas being restricted areas limited to specific employees.
- protective clothing requiring change rooms at each building entry.
- heat buildup and dehydration in employees wearing protective clothing in hot areas.
- restrictions on knowing previous employee

- asbestos history.
- unrealistic training requirements for asbestos recognition.

SPECIFIC COMMENTS ON PROPOSED REGULATIONS - APC has contacted a number of authorities for advice on implementing Alaska OSHA's proposed asbestos regulations. People experienced in the field stated have offered the following observations:

NHS, Inc. - the proposed 0.01 regulation is "unenforceable and unrealistic"! Maureen K. Hamilton, Director of Environmental Health Sciences, NHS, Richland, WA (509-943-0802). (Note that the State of Alaska uses NHS to analyze all its asbestos samples.)

FEDERAL OSHA - sample analysis at 0.01 is questionable. Samples require several weeks for analysis and each sample will cost \$200-300 compared to \$30 for a federal OSHA level sample. Jay Carter, Division of Physical Sciences and Engineering, Monitoring and Control Research, OSHA, Cincinnati, OH (513-841-4494).

PRIVATE LABORATORY - Analyzing samples to determine that the 0.01 level has not been exceeded could no longer be accomplished by certified Alaska facilities. Larry Taylor, Taylor Labs, Sitka, AK (907-747-6364).

IMPACT ON STATE BUDGET - A cursory check of public buildings in Sitka has shown some to be above the 0.01 action level specified by the proposed regulations. Since the Department of Labor is responsible for monitoring and enforcement in public workplaces, we have made an estimate of the additional staff and associated costs that this proposed regulation would have on State expenditures. We estimate that DOL's staff would have to be increased by 12 Industrial Hygienists and program cost will run between \$750,000 and \$1,000,000 depending on travel and sample analysis numbers.

ALASKA PULP CORPORATION POSITION - The State of Alaska should adopt the new Federal asbestos regulations in their entirety. The justification for this action is that sufficient time does not exist to allow considered evaluation and input by the effected public within the present six months extension granted by OSHA for rule making. Further, the Governor should appoint a public advisory body to review the special needs of Alaska and to recommend any changes needed in the Federal regulations.

MEMORANDUM State of Alaska

to: Jim Sampson  
Commissioner  
Department of Labor

DATE: January 23, 1987

FILE NO:

TELEPHONE NO: 465-2700

FROM: *Annette S. Thorn*  
Annette Thorn, M.D., M.P.H.  
Medical Director Occupational Health  
Office of the Commissioner

SUBJECT: Asbestos Standard

The present asbestos standard in effect in Alaska protects workers from asbestosis but it does not protect workers from the risk of lung cancer. Federal OSHA promulgated a new asbestos standard which went into effect January 1, 1987. The Federal standard was found to be seriously deficient in many areas though it does offer an improvement in the standard of protection. The current standard of practice actually being used by many employers in Alaska is already far ahead of the current federal standard.

WHO?

ARBITRARY  
UNREASONABLE

WHAT  
EVIDENCE

Given the fact that NIOSH recommended a permissible exposure limit of 0.1 fibers/cc and since evidence in the federal register shows that this level is feasible, it was my recommendation, and the former Commissioner's decision, that the State should propose 0.1 fiber/cc as the PEL instead of 0.2 fiber/cc adopted by Federal OSHA. This is expected to reduce the expected cancer ratio from six cancer deaths per 1,000 to three cancer deaths per 1,000.

WHAT PROOF  
WHO CONCLUDED

NIOSH has stated that there is no level of asbestos exposure which can be considered without risk of cancer. Anderson in 1979 reported that five family members of 678 asbestos workers developed cancer of the lung lining when their only contact with asbestos was from the very low level of asbestos brought home on the father's clothing. Mesothelioma, or cancer of the lung lining is so rare among non-asbestos exposed individuals, that mesothelioma is considered to be due only to asbestos exposure. Residents living over a half-mile from an asbestos factory have been found to have mesothelioma. Therefore, very low levels of asbestos have been shown to cause cancer.

CONTRADICTORY  
STATEMENT

NIOSH  
CONCLUSION

It is NIOSH's policy that the level of asbestos in the work environment should be reduced to the lowest level feasible, which is 0.1 fibers/cc. It is also their policy that only supplied-air respirators should be used for asbestos work because the protection provided by filter respirators is inadequate for a carcinogen with no warning properties. There is leakage around the face seal of all filter respirators and asbestos has no warning properties which alert the worker to the fact that there is inadequate protection when leakage occurs.

WHO DETERMINED  
FEASIBILITY

Since it is common practice and feasible using respiratory protection to protect workers down to less than 0.01 fibers/cc, and since there is no known safe level of asbestos, Alaska is proposing to reduce employee exposure using respiratory protection to 0.01 fiber/cc (or to 10,000 fibers/m<sup>3</sup> of air).

USING PROTECTION  
VS  
NO PROTECTION  
WHAT CAN BE  
MEASURED ACCURATELY

Asbestos Standard

Workers assume that allowable exposure limits are protective. This standard would provide workers with the protection expected from a standard.

Other major corrections of deficiencies include:

Action Level Is 0.01 fiber/cc and is used to trigger not only respiratory protection but regulated areas, and protective clothing. This is the level which is recommended by the EPA and is generally accepted for reoccupancy of a building after abatement work (.01 fiber/cc = 10,000 fiber/m<sup>3</sup>). The State's target acceptable level of actual employee exposure is 0.01 fiber per cc whereas the Federal standard allows actual exposure at 0.1 fibers per cc.

ASBESTOS  
FEEL?  
ARBITRARY

PEL Is 0.1 fiber/cc. Engineering controls and work practices must be used to get the environmental level down to the PEL, if feasible. The PEL also triggers medical surveillance and mandatory showers (.1 fiber/cc = 100,000 fiber/m<sup>3</sup>).

MPEL The Federal standard did not provide for a maximum short-term exposure limit. The Alaska standard has a maximum permissible exposure limit of 0.5 as measured over 30 minutes. The MPEL allows compliance officers to conveniently monitor short-term exposures and provides a limit which is protective for short-term activities.

WHY?

Regulated Areas The Federal standard regulated areas does not protect unprotected employees just outside the regulated area. The State standard requires the employer to not only mark off contaminated areas, but to also isolate them so that unprotected workers get exposed to no more than the action level (0.01 fibers/cc which is the clearance level for reoccupancy following abatement).

- Respiratory Protection
1. Half-mask respirator must be used above 0.01 fibers/cc and below .1 fiber/cc
  2. Full-face mask respirator must be used above .1 fiber/cc but below .5 fibers/cc
  3. Battery-operated or supplied-air respirator must be used above .5 fiber/cc but below 1 fiber/cc
  4. Supplied-air respirator must be used above 1 fiber/cc

NO

On-Site Compressed-Air Testing For Class D Air The Federal standard does not adequately protect against the risks of compressed air. The State requires on-site monitoring for Class D air to prevent deaths or accidents from carbon monoxide poisoning from the oil-lubricated compressors and to prevent lung inflammation from oil droplet inhalation. Both temperature and carbon monoxide alarms are required to ensure warning when there is a disfunction in the filtration

OK

## Asbestos Standard

system or compressor operation. Good protection against asbestos should not create a new risk of carbon monoxide poisoning. This section will require a \$50 on-site test kit so the employer can test and troubleshoot the system.

Respiratory Respiratory fit-testing results, chest x-ray results, medical exam results, and air monitoring results will be given to employees in writing for their own records, and to decrease the cost and inconvenience to the employees and employers of repetitive exams for each one-month job. Also, employees have a right to know about their own status. The Federal standard does not provide this information to the employee in written form as does the State standard. NO

Dehydration On abatement projects, use of protective clothing leads to over heating and dehydration. Supplied-air respirators supply air with no humidity and dehydration often occurs. The State standard will allow employees to leave the regulated area, and decontaminate as often as needed to drink water, alleviate thirst and prevent dehydration. Excessive dehydration can cause serious medical problems. The Federal standard does not address this issue.

Small Scale Short Duration Operations Are more strictly defined to not cause asbestos exposure above the PEL and to last no more than one hour. The Federal standard allows excessive exposure, inadequate control of fiber dispersal, and inadequate decontamination for certain operations. Since the goal is to limit employee risk, the Alaska definition provides better protection for workers.

Pre-Work Survey For Asbestos The State construction asbestos standard requires that all materials that could reasonably be suspected of containing asbestos be bulk-sampled and analyzed for asbestos content prior to remodeling, construction, tear out, or repair. This is needed to avoid situations where everyone is exposed before protections are even contemplated. The Federal standard does not address this problem.

Work Stoppage Work stoppage will be mandated under the Alaska standard if employees are not in an adequate level of respiratory protection as determined by monitoring by the employer. Work will also be stopped if a material suspected of containing asbestos is being disrupted, bulk samples have not been taken, and workers are not in an appropriate level of respiratory protection. This is needed to avoid continued exposure while air samples are being analyzed by OSH. This will also provide an impetus to the employer to provide adequate respiratory protection before an inspection. This is not a requirement of the Federal standard.

## Asbestos Standard

- Medical Surveillance      The Alaska Construction Standard will require medical monitoring for all asbestos-exposed workers before exposure. The Federal standard requires surveillance if the employee is exposed to asbestos for more than 20 days. It is very hard to keep track of whether an employee has worked for more than 20 days since an employee may work for one week for one employer and two weeks for another and neither will have an obligation to provide monitoring. Also, there is evidence that even only 20 days of exposure or less can pose a health risk.
- Chest X-Ray Frequency      In the Federal construction standard, chest x-rays will be given at the discretion of the physician. Alaska physicians do not have the training to recognize how often chest x-rays will be useful for detecting asbestos-induced disease. A schedule like the one in the general industry (OHEC) standard is needed. The Alaska schedule prevents physicians from performing too many x-rays for monetary gain or out of ignorance, and makes sure x-rays are taken at a frequency which would be useful in detecting disease.
- Prohibition of Excess Chest X-Rays Done For Convenience Of Employer      The Alaska standard requires the employer or physician to make a reasonable effort to obtain previous chest x-rays rather than expose the worker to excess radiation and the consequent risk of cancer. In Alaska, asbestos workers were getting up to 10 chest x-rays per year which increases the risk of cancer unnecessarily and provides no useful information. The Federal standard does not deal with this problem.
- Confidentiality of Medical Information And Findings      The Federal standard requires that medical information be given to the employer which the employer can use to discriminate against the employee. Under the Alaska standard, unless the employee waives the right to medical confidentiality, only clearance for (and limitations on) asbestos work, and clearance for (and limitations on) use of protective clothing and respirators need be given to the employer. All other medical records may be maintained by the doctor. Protection of medical confidentiality helps protect employees with benign signs of previous exposure to asbestos from discrimination based on the employer's desire to avoid workers' compensation claims in the future.
- Discrimination On The Basis of Medical Findings      Discrimination based on medical findings unrelated to the employee's ability to perform work is not prohibited under B.S. the Federal standard. It is prohibited under the State standard.
- Brake Repair      Under the Alaska OHEC Standard, the employer is given the choice of setting up a regulated area in the brake repair

## Asbestos Standard

shop or using a drum which encloses the brake repair process and keeps the fibers from spreading to other workers in the shop or contaminating the entire shop. If an enclosed drum is used, air monitoring will not be required of the employer (as long as grinding, beveling, and machining of asbestos are not performed). The Federal standard does not prevent the contamination of repair areas and does not protect nearby employees.

## Objective Data

The Federal standard allows the use of previously collected objective data to demonstrate compliance instead of actual air monitoring. The State standard narrows the definition of objective data. The objective data must be statistically valid, and must be representative of the actual exposure. Also, the air monitoring must have been done under the same workplace conditions and when the same process was used.

## Air Monitoring Frequency

The Federal standard allows total discontinuation of monitoring if air monitoring results are below the PEL. This is not allowed under the State standard. Air monitoring must continue at least annually under the State standard unless drum enclosure is used for brake shoe repair.

## Emergency Spill

Decontamination procedures are required by the state in the case of unanticipated exposures whereas there are no requirements in the Federal standard.

## Decontamination

Decontamination procedures are more protective in the State standard than the Federal Standard.

## Training

The state adds requirements to train workers on how to recognize asbestos. This is important if workers run into potential sources of asbestos that may cause exposures.

CAN'T DO

AT:kmc  
Lex:12



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Hein  
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Original sponsors: Josephson, Sturgulewski  
and Uehling

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 141 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to hazardous painting certification;  
7 and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 18 is amended by adding a new chapter to read:

10 CHAPTER 63. HAZARDOUS PAINTING CERTIFICATION.

11 Sec. 18.63.010. HAZARDOUS PAINTING CERTIFICATE REQUIRED. A  
12 person may not employ or contract with a professional painter to  
13 perform hazardous painting for compensation unless the painter holds a  
14 current valid hazardous painting certificate issued by the department.

15 Sec. 18.63.020. ISSUANCE OF CERTIFICATE. (a) An application  
16 for issuance of a hazardous painting certificate shall be on a form  
17 prescribed by the department. An application for initial issuance of  
18 a certificate shall include proof that the applicant completed an  
19 approved basic hazardous painting certificate program not more than 30  
20 days before the application was received by the department. An appli-  
21 cation for certificate renewal shall include proof that the applicant  
22 completed an approved supplemental hazardous painting certificate  
23 program not more than 30 days before the date the application was  
24 received by the department.

25 (b) The department shall issue a hazardous painting certificate  
26 to an applicant who has completed an application and submitted a  
27 certificate fee. A certificate is valid for three years.

28 Sec. 18.63.030. FEE. The commissioner shall establish the  
29 triennial fee for a hazardous painting certificate by regulation. The

1 fee must reflect the department's approximate costs or projected costs  
2 for the hazardous painting certification program.

3 Sec. 18.63.040. CERTIFICATE PROGRAMS. (a) The department shall

4 (1) establish requirements for basic and supplemental  
5 hazardous painting certificate programs;

6 (2) review, and approve or disapprove, programs proposed by  
7 contractors, labor organizations, public and private schools, voca-  
8 tional education institutions, and others;

9 (3) assist persons who propose programs to meet require-  
10 ments for approval.

11 (b) A basic hazardous painting certificate program must include  
12 instruction and written and practical testing in methods of ventila-  
13 tion, respirator selection, chemical reaction to body tissue, proper  
14 use of painting tools, knowledge of relevant health and safety laws  
15 and regulations, including relevant portions of state occupational  
16 safety and health standards adopted by reference under 8 AAC 61.010,  
17 and other appropriate subjects. A supplemental hazardous painting  
18 certificate program shall include instruction and written and practi-  
19 cal training necessary to ensure that a person who completes the  
20 program will be knowledgeable about new developments and changes  
21 related to hazardous painting that have occurred since the person  
22 completed a basic hazardous painting certificate program.

23 (c) A hazardous painting certificate program conducted by an  
24 employer of a person enrolled in the program must also meet the re-  
25 quirements of AS 18.60.066.

26 Sec. 18.63.050. INSPECTIONS AND CITATIONS. The department shall

27 (1) inspect job sites to assure that persons performing  
28 hazardous painting are certified as required under AS 18.63.010 and  
29 are performing the work safely; and

1 (2) issue citations to persons who employ or contract with  
2 a professional painter in violation of AS 18.63.010.

3 Sec. 18.63.060. REGULATIONS. The department may adopt regula-  
4 tions necessary for the implementation of this chapter.

5 Sec. 18.63.070. PENALTY. The department may impose a civil fine  
6 of not more than \$1,000 on a person who violates this chapter or a  
7 regulation adopted under this chapter.

8 Sec. 18.63.100. DEFINITIONS. In this chapter

9 (1) "department" means the Department of Labor;

10 (2) "hazardous painting" means the application of a sub-  
11 stance containing a pigment or containing or combined with a toxic or  
12 hazardous substance, as defined in AS 18.60.105, in vaporized, liquid,  
13 or particulate form to create a coating that will adhere to a surface  
14 to protect or preserve the surface; "hazardous painting" does not  
15 include the application of water-based paint that does not contain  
16 emulsion epoxies or isocyanates;

17 (3) "professional painter" means a painting contractor, an  
18 employee of a painting contractor, or a person engaged in the business  
19 of painting, but does not include a casual laborer, a commercial  
20 artist, or a person who creates artworks.

21 \* Sec. 2. AS 18.63.020, 18.63.030, 18.63.040, 18.63.060, 18.63.070, and  
22 18.63.100, added by sec. 1 of this Act, take effect July 1, 1987.

23 \* Sec. 3. AS 18.63.010 and 18.63.050, added by sec. 1 of this Act, take  
24 effect January 1, 1988.

MARCH 4, 1987

TESTIMONY

SB 141: Hazardous Painting Certification Program.

THANK YOU MR. CHAIRMAN. FOR THE RECORD MY NAME IS RESA JERREL, AND I REPRESENT THE ALSAK CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA (A.G.C.) REPRESENTING MORE THAN 700 MEMBER FIRMS.

WE ARE OPPOSED TO THIS LEGISLATION. WHAT THIS BILL ESSENTIALLY REQUIRES: IS A STATE LICENSE TO DO PAINTING WORK IN THE STATE OF ALASKA. BUT IS THERE A NEED FOR SUCH A LICENSE? WE THINK NOT.

THERE ARE LITERALLY THOUSANDS OF POTENTIALLY HAZARDOUS SUBSTANCES THAT ARE HANDLED SAFELY IN TODAY'S WORKPLACE. PAINT SHOULD NOT BE TREATED ANY DIFFERENTLY THAN THE OTHER HAZARDOUS AND TOXIC SUBSTANCES IN THE WORK PLACE.

FURTHER, PRESENTLY PROTECTION FOR THE WORKER IS COVERED UNDER THE 1983 LEGISLATION CALLED "WORKER RIGHT TO KNOW" ABOUT TOXIC AND HAZARDOUS SUBSTANCES IN THE WORKPLACE.

FOR A BRIEF HISTORY:

IN 1983 THERE WAS GREAT CONCERN, NATIONWIDE, TO ESTABLISH "WORKERS RIGHT TO KNOW" LAWS - WHICH WAS CONTROVERSIAL - ALASKA WAS NO EXCEPTION. IT SEEMED AT THE TIME THAT EVERY ONE WAS INTERESTED IN THE LEGISLATION BUT, WITH VERY DEFINITE DIFFERENT POINTS OF VIEW. THERE WAS US, THE OIL INDUSTRY, THE TRUCKERS, THE HOSPITAL ASSOCIATION, THE VARIOUS LABOR UNIONS, THE ALSAKA HEALTH PROJECT AND SOME ENVIRONMENTALISTS.

THE THEN CHAIRMAN OF THE SENATE RESOURCES COMMITTEE SENATOR FAHRENKAMP AND HER STAFF PERSON PAT POURCHOT COULD

Page: 2

SEE THIS WAS PITTING EVERYONE AGAINST EACH OTHER. SO, THEY GATHERED US ALL TOGETHER, OVER AT THE DEPARTMENT OF LABOR'S CONFERENCE ROOM, FOR SEVERAL MEETINGS TO HAMMER OUT THE DIFFERENCES - THIS WAS NOT AN EASY TASK. WHAT EMERGED WAS A PIECE OF LEGISLATION ON "WORKERS RIGHT TO KNOW" WHICH WAS WORKABLE AND WRITTEN IN SUCH A MANNER THAT WE WOULD NOT HAVE TO BE WORKING ON LEGISLATION DEALING WITH INDIVIDUAL SUBSTANCES YEAR AFTER YEAR.

THAT LEGISLATION PASSED INTO LAW AND REQUIRES:

HAZARDOUS AND TOXIC SUBSTANCES SHIPPED INTO THE STATE HAVE TO BE ACCOMPANIED BY AN OSHA FORM 20 OR EQUIVALENT, LIKE A MATERIAL SAFETY DATA SHEET (MSDA).

AN EMPLOYER IS REQUIRED TO CONDUCT A SAFETY EDUCATION PROGRAM FOR EMPLOYEES BEFORE A NEW WORK ASSIGNMENT, INWHICH AN EMPLOYEE IS EXPOSED TO A SUBSTANCE.

THIS SAFETY EDUCATION PROGRAM "SHALL" INFORM THE EMPLOYEE OF:

- LOCATION, PROPERTIES, AND KNOWN OR SUSPECTED ACUTE AND CHRONIC HEALTH EFFECTS OF THE HAZARDOUS OR TOXIC SUBSTANCES IN THE WORK PLACE.
- NECESSARY HANDLING OR HYGIENIC PRACTICES OR PRECAUTIONS,
- HOW EMPLOYEES COULD BE EXPOSED TO THE SUBSTANCE
- THE LOCATION, PURPOSE AND PROPER USE AND LIMITATIONS OF PERSONAL PROTECTIVE EQUIPMENT.

IN YOUR FILE IS A BLANK MATERIAL SAFETY DATA SHEET (MSDA) WHICH HAS TO ACCOMPANY THE SUBSTANCE INTO THE STATE, AND THE EMPLOYER HAS TO POST IN THE WORKPLACE. YOU WILL NOTE THAT UNDER SECTION II ON THE FORM, IT IS ENTITLED "PAINTS, PRESERVATIVES, AND SOLVENTS" WHICH KICKS IN THE SAFETY EDUCATION REQUIREMENTS.

Page: 3

WITH ALL THIS IN PLACE, UNDER EXISTING LAW AND REGULATIONS - WE BELIEVE THE REAL QUESTION IS: WHAT DOES A CERTIFICATION PROGRAM PROVIDE THAT IS NOT ALREADY IN CURRENT LAW AND REGULATIONS? THE ANSWER IS - NOTHING.

SUFFICIENT HEALTH STANDARDS ALREADY EXIST, WHICH I OUTLINED BEFORE, WHICH COVER THE PROTECTION OF WORKERS USING PAINT.

I BELIEVE THAT, THAT GROUP THAT STRUGGLED IN 1983, TO COME UP WITH SOUND LEGISLATION TO PROTECT THE WORKER AND ALSO NOT HAVE TO DEAL WITH LEGISLATION ON INDIVIDUAL SUBSTANCES YEARLY, DID A GOOD JOB AND COVERED AS MANY FORSEEABLE PROBLEMS AND HAZARDS POSSIBLE.

I WOULD SUGGEST THAT IF WE MISSED SOMETHING ON PAINT -- OR THERE IS A LOOP HOLE THAT IS NOT COVERED BY THE "WORKERS RIGHT TO KNOW" LAW - YOU HAVE RIGHT HERE IN THE LEGISLATURE, TWO PEOPLE THAT ARE VERY, VERY FAMILIAR WITH THE ISSUES AND CONCERNS OF THE VARIOUS PARTIES - SENATOR FAHRENKAMP AND REP. POURCHOT - I WOULD APPRECIATE YOU CONSIDERING PUTTING TOGETHER ANOTHER GROUP, LIKE IN 1983, WITH THOSE TWO LEGISLATORS, TO WORK OUT THE PROBLEM, IF THERE IS ONE - AND TO COME BACK BEFORE YOUR FULL COMMITTEE WITH A WORKABLE SOLUTION.

THANK YOU VERY MUCH FOR YOUR TIME AND ATTENTION.



# Alaska State Legislature

## Senate

### Office of the Secretary

PO. BOX V  
CAPITOL BUILDING  
JUNEAU, ALASKA 99811

OFFICIAL BUSINESS

February 11, 1987

SB-128 →

#### MEMORANDUM

TO: Senator Kelly, Chairman  
Labor and Commerce

FROM: Peggy Mulligan  
Secretary of the Senate

RE: Confirmation of Governor's Appointees

Pursuant to AS 39.05.080 (statute attached), President Faiks has referred the positions noted to your committee for a hearing, recommendation and report:

Department of Commerce and Economic Development  
Commissioner John Anthony Smith

Department of Labor  
Commissioner Jim Sampson

Resumes are attached.

Enclosures

JIM SAMPSON  
COMMISSIONER OF LABOR

Jim Sampson, 35-year old former Business Manager/Secretary-Treasurer of the Alaska State District Council of Laborers, AFL-CIO, Anchorage, Alaska. Previously, Business Representative for Laborers Local 942, Fairbanks, Alaska 1975-1985. Experience includes contract administration, negotiations of collective bargaining agreements, labor legislation, jurisdictional dispute resolution, and grievance and arbitration resolution. Executive Board Member of Laborers' Local 942, Fairbanks, Alaska 1981-1987.

Board of Trustees, Alaska Laborers-Employers Retirement Fund, a defined benefit retirement plan with assets and investments of \$250,000,000. Helped organize the Alaska Laborers Retirees Association, 1981-1987.

Board Member, Alaska Laborers-Employers Health and Security Fund, 1981-1987  
Board Member and Chairman, Alaska Laborers-Employers Legal Service Fund,  
1981-1987

Board Member, Alaska Laborers-Employer Training Fund, 1981-1987

Member, International Foundation of Employee Benefit Plans. He has participated in numerous employee benefit seminars, including assisting in organizing a 1985 Health Care Cost Containment Institute in Anchorage, Alaska between purchasers and providers of health care in Alaska, the first of its kind in Alaska.

Attended Lathrop High School, graduated Nenana High School, Nenana, Alaska  
1969.

Attended University of Alaska, Fairbanks 1970-1973.

B.A. in Labor Studies, Antioch University, George Meany Institute for  
Labor Studies.

JIN SAMPSON  
2501 Commercial Drive, Suite 140  
Anchorage, Alaska 99501  
Business: (907) 276-1640  
Residence: (907) 278-1901

JOB OBJECTIVE: Commissioner of Labor

### EXPERIENCE

Business Manager/Secretary-Treasurer, Alaska State District Council of Laborers, AFL-CIO, 1985-Present.

Board of Trustees, Alaska Laborers-Employers Pension, Health and Security, Legal, and Training Funds, 1981-Present.

Representative, Laborers' Local 942, Fairbanks, Alaska, 1975-1985.

Worked on various projects as a Construction Laborer, 1968-1975.

### EDUCATION

Antioch University, George Meany Institute, Silver Spring, Maryland, B.A., Labor Studies, January 1987.

University of Alaska, Fairbanks, 1970-1973, Political Science.

Nenana High School, 1969.

### MEMBERSHIPS AND OFFICES

Fairbanks Private Industry Council, 1984-1985.

Tanana Valley Community College, Citizens' Advisory Council, Petroleum Technology Program, 1984.

International Foundation of Employee Benefit Plans, 1981-Present.

Executive Board, Laborers' Local 942, Fairbanks, Alaska, 1981-Present.

Delegate, Alaska State District Council of Laborers, 1977-Present.

Member, Laborers' Local 942, Fairbanks, Alaska, 1968-Present.

Clear Sky Sportsman's Club, 1968-Present.

### REFERENCES

Available upon request.

JOHN ANTHONY SMITH  
801 "B" Street, Suite 300  
Anchorage, Alaska 99501  
(907) 278-4691

DATE OF BIRTH: September 10, 1942

PERSONAL INFORMATION: Married to Carol Ann Bechtel Smith  
Two Children: Jessica Renee Smith  
Michael Anthony Smith

EDUCATION:

Legal: Cornell University Law School  
September, 1968 to June, 1971  
J.D. with specialization in  
International Law

College: Cornell University  
September, 1960 to June, 1964  
Major: Industrial and Labor  
Relations and Political  
Science

EMPLOYMENT:

Smith, Gruening, Brecht, Evans &  
Spitzfaden  
801 "B" Street, Suite 300  
Anchorage, Alaska 99501

Representation of clients in banking,  
commercial, maritime and natural  
resources; litigation in federal and  
state courts and representation before  
federal, state and local administrative  
bodies; legislative and administrative  
work with state and federal entities;  
municipal law.

ADMITTED TO PRACTICE:

United States Supreme Court  
Ninth Circuit Court of Appeals  
Federal District Court for the  
District of Alaska

**PUBLIC SERVICE, COMMUNITY INVOLVEMENT AND CORPORATE:**

(current)

- Executive Committee - Democratic House & Senate Council, Democratic Congressional Campaign Committee
- Executive Committee and Member of Board of Directors of the Anchorage Organizing Committee for the 1992 Winter Olympics (Vice-President for Legal Affairs) 1985-86
- International Relations Committee and Friendship Fund Subcommittee for the United States Olympic Committee 1986
- Director - Alaska Business Monthly 1985-86
- Director - Glacier Creek Academy 1985-86

(past)

- National Policy Committee - John Glenn for President Campaign Committee
- Chairman - Governor's Bodily Injury Committee during Governor Hammond's Administration
- Adjunct/Professor - University of Alaska School of Justice
- Coordinator - University of Alaska Rural Justice Program

**PROFESSIONAL ORGANIZATIONS:**

- Alaska Bar Association
- Former Chairman - Specialization Committee
- Former Chairman - Bush Justice Committee
- Continuing Legal Education Committee
- American Bar Association
- Forum Committee on the Construction Industry
- Fidelity and Surety Committee of the Tort and Insurance Section
- American Judicature Society
- American Trial Lawyers Association

**MEMBERSHIPS:**

- Commonwealth North
- Alaska Resource Development Council
- Anchorage Chamber of Commerce

**MILITARY:**

United States Navy - discharged as a  
Lt.jg in December, 1967 after a tour  
of duty in Viet Nam

**PUBLICATIONS & LECTURES:**

Columnist "Courtroom to Boardroom" in  
the Anchorage Times; formerly  
columnist with Alaska Journal of  
Commerce

**BIOGRAPHIES:**

Who's Who in American Law  
Who's Who in the World

SB

146

Original sponsor: Transportation Committee

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 146 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to weights and measures; and provid-  
7 ing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 45.75.050(b) is amended to read:

10 (b) The regulations may include

11 (1) standards of net weight, measure, or count, and reason-  
12 able standards of fill, for a [ANY] commodity in package form;

13 (2) rules governing the technical and reporting procedures  
14 to be followed, and the report and record forms and marks of approval  
15 and rejection to be used by inspectors of weights and measures in the  
16 discharge of their official duties;

17 (3) exemptions from the sealing or marking requirements of  
18 AS 45.75.120 for [WITH RESPECT TO] weights and measures of a character  
19 or size that sealing or marking would be inappropriate, impracticable,  
20 or damaging to the apparatus in question; [AND]

21 (4) for [WITH RESPECT TO] classes of weights and measures  
22 of a character that retesting is unnecessary to continued accuracy,  
23 exemptions from the requirements of AS 45.75.070 and 45.75.080 for  
24 testing, and schedules fixing the frequency of required retests for  
25 classes of devices exempted;

26 (5) in the implementation of AS 44.33.020(25), provisions  
27 governing the size, weight, and load limitations established under  
28 AS 19.10.060; the issuance of permits for overweight and oversize  
29 vehicles; and the operation of weigh stations.

1 \* Sec. 2. AS 45.75 is amended by adding new sections to read:

2       Sec. 45.75.131. ISSUANCE OF CITATIONS. (a) A peace officer or  
3 an employee of the Department of Commerce and Economic Development who  
4 is authorized by the commissioner of public safety to enforce the  
5 size, weight, and load limitations adopted by the Department of Trans-  
6 portation and Public Facilities under AS 19.10.060 may issue a cita-  
7 tion to a person who violates

8               (1) a weight, size, or load limitation;

9               (2) the terms of an overweight or oversize vehicle permit  
10 issued under AS 44.33.020(25); or

11              (3) a regulation adopted under AS 44.33.020(25) and AS 45.-  
12 75.050(b)(5).

13       (b) A citation issued under this section must be in writing. A  
14 person receiving the citation is not required to sign a promise to  
15 appear in court.

16       (c) The time specified in the notice to appear on a citation  
17 issued under this section must be at least 15 days after the issuance  
18 of the citation, unless the person cited requests an earlier hearing.

19       (d) The commissioner of public safety is responsible for the  
20 issuance of books containing appropriate citations and shall maintain  
21 a record of each book and each citation contained in it. The commis-  
22 sioner of public safety shall require and retain a receipt for every  
23 book issued to an employee of the Department of Commerce and Economic  
24 Development designated by the commissioner of public safety to provide  
25 investigative service to enforce provisions of this chapter.

26       (e) A peace officer or an employee who issues a citation under  
27 this section shall deposit the original or a copy of the citation with  
28 a court having jurisdiction over the alleged offense. Upon its de-  
29 posit with the court, the citation may be disposed of only by trial in

1 the court or other official action taken by the magistrate, judge, or  
2 prosecutor. The peace officer or employee who issued the citation may  
3 not dispose of it or copies of it or of the record of its issuance  
4 except as required under this subsection and (f) of this section.

5 (f) The commissioner of public safety shall require the return  
6 of a copy of every citation issued under this section and o all  
7 copies of every citation that has been spoiled or on which an entry  
8 has been made and not issued to an alleged violator. The commissioner  
9 of public safety shall also maintain in connection with every citation  
10 issued a record of the disposition of the charge by the court in which  
11 the original or copy of the citation was deposited.

12 (g) If the form of citation issued under this section includes  
13 the essential facts constituting the offense charged and is sworn to  
14 as required under the laws of this state for a complaint charging  
15 commission of the offense alleged in the citation, the citation when  
16 filed with a court having jurisdiction, is considered to be a lawful  
17 complaint for the purpose of prosecution.

18 (h) Unless the citation has been voided or otherwise dismissed  
19 by the magistrate, judge, or prosecutor, or bail has been forfeited  
20 under AS 45.75.133, a person who fails to appear in court to answer a  
21 citation issued under this section, regardless of the disposition of  
22 the charge for which the citation was issued, is guilty of a class B  
23 misdemeanor.

24 Sec. 45.75.133. BAIL FORFEITURE. (a) The supreme court shall  
25 specify by rule or order those violations that are appropriate for  
26 disposition without court appearance, and shall establish a schedule  
27 of bail amounts. The maximum bail forfeiture amount for an offense  
28 may not exceed the maximum fine specified by law for that offense. If  
29 the person who has been cited can dispose of the violation without

1 court appearance, the issuing peace officer or employee shall write on  
2 the citation the amount of bail forfeiture applicable to the viola-  
3 tion.

4 (b) A person cited for a violation for which a bail forfeiture  
5 amount has been established under (a) of this section may, within 15  
6 days after the date of the citation, mail or personally deliver to the  
7 clerk of the court in which the citation is filed by the employee

8 (1) the amount of bail indicated on the citation for that  
9 offense; and

10 (2) a copy of the citation indicating that the right to an  
11 appearance is waived, a plea of no contest is entered and the bail is  
12 forfeited.

13 (c) When the cited person has forfeited bail under (b) of this  
14 section, the court shall enter a judgment of conviction. Forfeiture  
15 of bail is a complete satisfaction for the violation. The clerk of  
16 the court accepting the bail forfeiture shall provide the offender  
17 with a receipt stating that fact.

18 (d) A cited person who fails to pay the bail forfeiture amount  
19 established under (a) of this section or to appear in court as re-  
20 quired, is guilty of a class B misdemeanor.

21 (e) Notwithstanding other provisions of law, if a person cited  
22 for a violation for which a bail forfeiture amount has been estab-  
23 lished under (a) of this section appears in court and is found guilty,  
24 the court may not impose a penalty that exceeds the bail forfeiture  
25 amount for that offense established under (a) of this section.

26 \* Sec. 3. AS 45.75.380 is amended to read:

27 Sec. 45.75.380. OFFENSES AND PENALTIES. A person commits a  
28 violation subject to the penalty specified in AS 12.55.035(b)(5) if  
29 the person does one or more of the following acts [WHO, PERSONALLY OR

1 BY A SERVANT, OR AGENT, OR AS THE SERVANT OR AGENT OF ANOTHER, PER-  
2 FORMS ANY ONE OF THE FOLLOWING ACTS IS GUILTY OF A MISDEMEANOR AND  
3 UPON A FIRST CONVICTION OF THE VIOLATION IS PUNISHABLE BY A FINE OF  
4 NOT LESS THAN \$20 NOR MORE THAN \$200, OR BY IMPRISONMENT FOR NOT MORE  
5 THAN THREE MONTHS, OR BY BOTH. UPON A SECOND OR SUBSEQUENT CONVIC-  
6 TION, THE PERSON IS PUNISHABLE BY A FINE OF NOT LESS THAN \$50 NOR MORE  
7 THAN \$500, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH]:

8 (1) uses or has in possession for the purpose of using for  
9 a [ANY] commercial purpose specified in AS 45.75.080, sells, offers,  
10 or exposes for sale, or hire, or has in possession for the purpose of  
11 selling or hiring, an incorrect weight or measure or a device or  
12 instrument used to or calculated to falsify a weight or measure;

13 (2) uses or has in possession for current use, in buying or  
14 selling a commodity or thing, or for hire or award, or in the computa-  
15 tion of a basic charge or payment for services rendered on the basis  
16 of weight or measurement, or in the determination of weight or mea-  
17 surement when a charge is made for determination, a weight or measure  
18 that has not been tested and sealed by the appropriate authority  
19 within one year, [(A)] unless

20 (A) the person gives written notice [IS GIVEN] to the  
21 appropriate authority to the effect that the weight or measure is  
22 available for examination, or is due for reexamination [RE-EXAMI-  
23 NATION], as the case may be; [,]

24 (B) the person receives [UNLESS] specific written  
25 permission to use the weight or measure [IS RECEIVED] from the  
26 appropriate authority; [,] or

27 (C) [UNLESS] the weight or measure is exempt from  
28 sealing or annual testing requirements by AS 45.75.080 or by a  
29 regulation adopted [OF THE DIRECTOR ISSUED] under AS 45.75.050;

1 (3) disposes of a rejected or condemned weight or measure  
2 in a manner contrary to law or regulation;

3 (4) removes from a weight or measure, contrary to law or  
4 regulation, a tag, seal, or mark placed on it by the appropriate  
5 authority;

6 (5) sells or [,] offers [OR EXPOSES] for sale less than the  
7 quantity the person represents of a commodity, thing, or service;

8 (6) takes more than the quantity the person represents of a  
9 commodity, thing, or service when, as buyer, the person furnished the  
10 weight or measure that the seller used to determine [BY MEANS OF  
11 WHICH] the amount of the commodity, thing, or service [IS DETERMINED];

12 (7) keeps for the purpose of sale, advertises, or offers  
13 [OR EXPOSES] for sale, or sells a commodity, thing, or service in a  
14 condition or manner contrary to law or regulation;

15 (8) uses in retail trade, except in the preparation of  
16 packages put up in advance of sale and of medical prescriptions, a  
17 weight or measure that is not so positioned that a customer may accu-  
18 rately read, from a position that may reasonably be assumed by a  
19 customer, its indications [MAY BE ACCURATELY READ] and observe the  
20 weighing or measuring operation [OBSERVED FROM SOME POSITION WHICH MAY  
21 REASONABLY BE ASSUMED BY A CUSTOMER];

22 (9) hinders or obstructs the director, an inspector, a  
23 sealer, or a deputy sealer in the performance of official duties under  
24 this chapter;

25 (10) violates a provision of an overweight or oversize  
26 vehicle permit issued under AS 44.33.020(25);

27 (11) violates a weight, load, or size limitation established  
28 under AS 19.10.060 or a regulation adopted under AS 19.05.020, AS 44.-  
29 33.020(25), or AS 45.75.050(b)(5);

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(12) violates a provision of this chapter or [OF] a regulation adopted under this chapter for which a specific penalty is not prescribed.

\* Sec. 4. AS 45.75.380 is amended by adding a new subsection to read:

(b) Notwithstanding the maximum fine for a violation provided under (a) of this section, a person who violates a regulation or special permit governing the weight limit of a motor vehicle shall pay a penalty of \$.05 for each pound of weight over the authorized weight limit for the vehicle.

\* Sec. 5. AS 28.40.050(e) and AS 45.75.360 are repealed.

\* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

Begin here

1 \* Sec. 2. AS 45.75 is amended by adding new sections to read:

2       Sec. 45.75.131. ISSUANCE OF CITATIONS. (a) ~~A peace officer~~ or  
3 an employee of the Department of Commerce and Economic Development who  
4 is authorized by the commissioner of public safety to enforce the  
5 size, weight, and load limitations adopted by the Department of Trans-  
6 portation and Public Facilities under AS 19.10.060 may issue a cita-  
7 tion to a person who violates

8               (1) a weight, size, or load limitation;

9               (2) the terms of an overweight or oversize vehicle permit  
10 issued under AS 44.33.020(25); or

11               (3) a regulation adopted under AS 44.33.020(25) and AS 45.-  
12 75.050(b)(5).

13       (b) A citation issued under this section must be in writing. A  
14 person receiving the citation is not required to sign a promise to  
15 appear in court.

16       (c) The time specified in the notice to appear on a citation  
17 issued under this section must be at least 15 days after the issuance  
18 of the citation, unless the person cited requests an earlier hearing.

19       (d) The commissioner of public safety is responsible for the  
20 issuance of books containing appropriate citations and shall maintain  
21 a record of each book and each citation contained in it. The commis-  
22 sioner of public safety shall require and retain a receipt for every  
23 book issued to an employee of the Department of Commerce and Economic  
24 Development designated by the commissioner of public safety to provide  
25 investigative service to enforce provisions of this chapter.

26       (e) A peace officer or an employee who issues a citation under  
27 this section shall deposit the original or a copy of the citation with  
28 a court having jurisdiction over the alleged offense. Upon its de-  
29 posit with the court, the citation may be disposed of only by trial in

1 the court or other official action taken by the magistrate, judge, or  
 2 prosecutor. The peace officer or employee who issued the citation may  
 3 not dispose of it or copies of it or of the record of its issuance  
 4 except as required under this subsection and (f) of this section.

5 (f) The commissioner of public safety shall require the return  
 6 of a copy of every citation issued under this section and of all  
 7 copies of every citation that has been spoiled or on which an entry  
 8 has been made and not issued to an alleged violator. The commissioner  
 9 of public safety shall also maintain in connection with every citation  
 10 issued a record of the disposition of the charge by the court in which  
 11 the original or copy of the citation was deposited.

12 (g) If the form of citation issued under this section includes  
 13 the essential facts constituting the offense charged and is sworn to  
 14 as required under the laws of this state for a complaint charging  
 15 commission of the offense alleged in the citation, the citation when  
 16 filed with a court having jurisdiction, is considered to be a lawful  
 17 complaint for the purpose of prosecution.

18 (h) Unless the citation has been voided or otherwise dismissed  
 19 by the magistrate, judge, or prosecutor, or bail has been forfeited  
 20 under AS 45.75.133, a person who fails to appear in court to answer a  
 21 citation issued under this section, regardless of the disposition of  
 22 the charge for which the citation was issued, is guilty of a class B  
 23 misdemeanor.

24 Sec. 45.75.133. BAIL FORFEITURE. (a) The supreme court shall  
 25 specify by rule or order those violations that are appropriate for  
 26 disposition without court appearance, and shall establish a schedule  
 27 of bail amounts. The maximum bail forfeiture amount for an offense  
 28 may not exceed the maximum fine specified by law for that offense. If  
 29 the person who has been cited can dispose of the violation without

1 court appearance, the issuing peace officer or employee shall write on  
2 the citation the amount of bail forfeiture applicable to the viola-  
3 tion.

4 (b) A person cited for a violation for which a bail forfeiture  
5 amount has been established under (a) of this section may, within 15  
6 days after the date of the citation, mail or personally deliver to the  
7 clerk of the court in which the citation is filed by the employee

8 (1) the amount of bail indicated on the citation for that  
9 offense; and

10 (2) a copy of the citation indicating that the right to an  
11 appearance is waived, a plea of no contest is entered and the bail is  
12 forfeited.

13 (c) When the cited person has forfeited bail under (b) of this  
14 section, the court shall enter a judgment of conviction. Forfeiture  
15 of bail is a complete satisfaction for the violation. The clerk of  
16 the court accepting the bail forfeiture shall provide the offender  
17 with a receipt stating that fact.

18 (d) A cited person who fails to pay the bail forfeiture amount  
19 established under (a) of this section or to appear in court as re-  
20 quired, is guilty of a class B misdemeanor.

21 (e) Notwithstanding other provisions of law, if a person cited  
22 for a violation for which a bail forfeiture amount has been estab-  
23 lished under (a) of this section appears in court and is found guilty,  
24 the court may not impose a penalty that exceeds the bail forfeiture  
25 amount for that offense established under (a) of this section.

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27 Sec. 45.75.380. OFFENSES AND PENALTIES. A person commits a  
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1 BY A SERVANT, OR AGENT, OR AS THE SERVANT OR AGENT OF ANOTHER, PER-  
2 FORMS ANY ONE OF THE FOLLOWING ACTS IS GUILTY OF A MISDEMEANOR AND  
3 UPON A FIRST CONVICTION OF THE VIOLATION IS PUNISHABLE BY A FINE OF  
4 NOT LESS THAN \$20 NOR MORE THAN \$200, OR BY IMPRISONMENT FOR NOT MORE  
5 THAN THREE MONTHS, OR BY BOTH. UPON A SECOND OR SUBSEQUENT CONVIC-  
6 TION, THE PERSON IS PUNISHABLE BY A FINE OF NOT LESS THAN \$50 NOR MORE  
7 THAN \$500, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH]:

8 (1) uses or has in possession for the purpose of using for  
9 a [ANY] commercial purpose specified in AS 45.75.080, sells, offers,  
10 or exposes for sale, or hire, or has in possession for the purpose of  
11 selling or hiring, an incorrect weight or measure or a device or  
12 instrument used to or calculated to falsify a weight or measure;

13 (2) uses or has in possession for current use, in buying or  
14 selling a commodity or thing, or for hire or award, or in the computa-  
15 tion of a basic charge or payment for services rendered on the basis  
16 of weight or measurement, or in the determination of weight or mea-  
17 surement when a charge is made for determination, a weight or measure  
18 that has not been tested and sealed by the appropriate authority  
19 within one year, [(A)] unless

20 (A) the person gives written notice [IS GIVEN] to the  
21 appropriate authority to the effect that the weight or measure is  
22 available for examination, or is due for reexamination [RE-EXAMI-  
23 NATION], as the case may be; [,]

24 (B) the person receives [UNLESS] specific written  
25 permission to use the weight or measure [IS RECEIVED] from the  
26 appropriate authority; [,] or

27 (C) [UNLESS] the weight or measure is exempt from  
28 sealing or annual testing requirements by AS 45.75.080 or by a  
29 regulation adopted [OF THE DIRECTOR ISSUED] under AS 45.75.050;

1 (3) disposes of a rejected or condemned weight or measure  
2 in a manner contrary to law or regulation;

3 (4) removes from a weight or measure, contrary to law or  
4 regulation, a tag, seal, or mark placed on it by the appropriate  
5 authority;

6 (5) sells or [,] offers [OR EXPOSES] for sale less than the  
7 quantity the person represents of a commodity, thing, or service;

8 (6) takes more than the quantity the person represents of a  
9 commodity, thing, or service when, as buyer, the person furnished the  
10 weight or measure that the seller used to determine [BY MEANS OF  
11 WHICH] the amount of the commodity, thing, or service [IS DETERMINED];

12 (7) keeps for the purpose of sale, advertises, or offers  
13 [OR EXPOSES] for sale, or sells a commodity, thing, or service in a  
14 condition or manner contrary to law or regulation;

15 (8) uses in retail trade, except in the preparation of  
16 packages put up in advance of sale and of medical prescriptions, a  
17 weight or measure that is not so positioned that a customer may accu-  
18 rately read, from a position that may reasonably be assumed by a  
19 customer, its indications [MAY BE ACCURATELY READ] and observe the  
20 weighing or measuring operation [OBSERVED FROM SOME POSITION WHICH MAY  
21 REASONABLY BE ASSUMED BY A CUSTOMER];

22 (9) hinders or obstructs the director, an inspector, a  
23 sealer, or a deputy sealer in the performance of official duties under  
24 this chapter;

25 (10) violates a provision of an overweight or oversize  
26 vehicle permit issued under AS 44.33.020(25);

27 (11) violates a weight, load, or size limitation established  
28 under AS 19.10.060 or a regulation adopted under AS 19.05.020, AS 44.-  
29 33.020(25), or AS 45.75.050(b)(5);

1                    (12) violates a provision of this chapter or [OF] a regula-  
2                    tion adopted under this chapter for which a specific penalty is not  
3                    prescribed.

4 \* Sec. 4. AS 45.75.380 is amended by adding a new subsection to read:

5                    (b) Notwithstanding the maximum fine for a violation provided  
6                    under (a) of this section, a person who violates a regulation or  
7                    special permit governing the weight limit of a motor vehicle shall pay  
8                    a penalty of \$.05 for each pound of weight over the authorized weight  
9                    limit for the vehicle.

10 \* Sec. 5. AS 28.40.050(e) and AS 45.75.360 are repealed.

11 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).  
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Dept. of Transportation & Public Facilities

# ***Position Paper***

**BILL NO:** SB 146

**APPROVED:** Mark Hickey *MSK*  
Commissioner

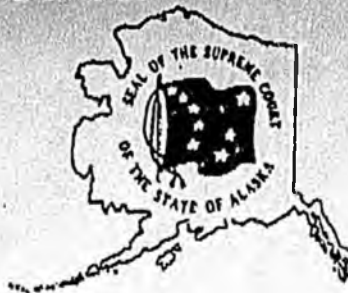
**TITLE:** An Act Relating to Weight and Measures and  
Providing for an Effective Date

**DATE:** 3/9/87

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The proposed legislation provides statutory authority for the Department of Commerce and Economic Development for enforcement of vehicle size, weight and load limitations. It also provides for penalties for those who violate either the provisions of an oversize or overweight vehicle permit or the legal size weight and load limitations adopted under Alaska Statutes.

The legislation is needed since without it there is no legal mechanism for enforcement of penalties for violations of existing vehicle size and weight regulations.



DIVISION OF  
MEASUREMENT STANDARDS

MAR 2 1987

Alaska Court System  
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORBYTHE  
STAFF COUNSEL

303 K Street  
Anchorage, Alaska 99501

(907) 254-8225

February 25, 1987

Senator Jay Kerttula  
Chair, Senate Judiciary Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Representative John Sund  
Chair, House Judiciary Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Dear Senator Kerttula and Representative Sund:

The supreme court recently updated the Alaska Traffic Bail Forfeiture Schedule for the first time since it was adopted by the court in 1975. In the process of preparing the schedule for review by the court, administrative staff discovered that there are no penalty provisions in the Alaska Statutes which would permit enforcement of a variety of regulations relating to size, height and weight of commercial vehicles. Although these offenses previously were listed on the bail schedule with a bail forfeiture amount, it appears the offenses should not have appeared on the schedule because of the lack of a penalty section. The court system brought this concern to the attention of the Department of Public Safety, which concurred with the court/staff analysis.

Based on this information, the supreme court decided to omit these offenses from the bail schedule. Normally, omission would result in a mandatory court appearance (rather than a mail-in payment). However, without a penalty there is no basis for judicial officers hearing these matters to sentence defendants.

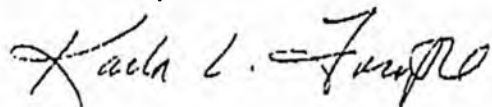
The new schedule was made available to State Troopers several weeks ago, and troopers on the street became aware that this provision was no longer listed on the schedule. As a result, troopers have inquired of administrative staff and also of court system traffic clerks whether or not the court system will accept citations for these offenses and what the disposition will be.

Senator Jay Kerttula, et al  
February 25, 1987  
Page Two

Although the court system usually does not suggest substantive measures to the Legislature for its consideration, there is a clear need for legislation in this area. To the best of my knowledge there is no controversy surrounding this measure. Since the court system is in the best position to provide the Legislature with background material on these offenses, I have attached several memoranda outlining the development of this problem and the relationship between the relevant statutes and regulations. Although the court system is not in a position to propose specific language, it appears that the Legislature could solve this problem by adopting a specific penalty for violation of these regulations.

Thank you for your consideration of this problem. I will be glad to provide additional information or answer any questions from you or other committee members.

Sincerely,



Karla L. Forsythe  
Staff Counsel

KLF:bs

Att.

cc: Arthur H. Snowden, II, Administrative Director  
Susan Miller, Manager, Special Projects  
Acting Public Safety Commissioner William Nix  
Judge Glen C. Anderson  
Magistrate Skip Slater  
Magistrate Roy Williams  
Sandy Ganong, Anchorage Traffic Supervisor  
Joe Swanson, Division of Weights and Means,  
Department of Commerce and Economic Development

2/25/87-7

DEPARTMENT OF LAW

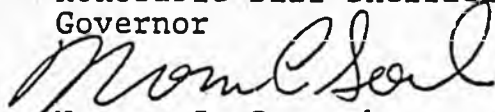
POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

November 26, 1984

M E M O R A N D U M

TO: Honorable Bill Sheffield  
Governor

FROM:   
Norman C. Gorsuch  
Attorney General

RE: Attached bills:  
1. Providing penalties for overweight  
and oversize vehicle violations;  
2. Amending the Weights and Measures Act  
Our file nos: 377-115-85 and 377-008-85,  
respectively

Attached are two bills dealing with weights and measures. The short one, prepared in final form for introduction by the governor, was requested by the Department of Public Safety, and deals only with the penalties for overweight and oversize vehicle violations. The longer one, prepared in draft for introduction by a friendly legislator, was requested by the Department of Commerce and Economic Development.

With regard to the penalties for violations of overweight or oversize vehicle regulations or permits, the two bills accomplish essentially the same thing, but in different form. Both bills pick up those kinds of violations to provide a penalty, and both bills treat them as "infractions" -- the offenses below misdemeanors. In addition, the longer bill adds the five-cents-a-pound fine for overweight vehicles to the basic \$300 fine, whereas the shorter bill retains the present alternative arrangement (\$300 for oversize or five cents a pound for overweight).

The two requests are explained in more detail below.

DEPARTMENT OF PUBLIC SAFETY BILL  
(377-115-85)

This bill provides penalties for violation of the weight and size regulations found in 17 AAC 25.010 -- 17 AAC 25.110 and for violation of a permit issued for an oversize or overweight vehicle under AS 44.33.020(25). Currently there is no provision in AS 19.45 or AS 44.33 that imposes a penalty for

violation of the Department of Transportation and Public Facilities' regulations governing vehicle weight and size or of the Department of Commerce and Economic Development's permits (and its related regulations). A draft containing the identical provisions has been approved by the three departments involved.

A draft transmittal letter to the legislature, explaining the bill in more detail, is also attached.

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT BILL  
(377-008-85)

This bill amends many sections of AS 45.75, the Weights and Measures Act. This bill was requested by the Department of Commerce and Economic Development, and approved by the Governor's Office on July 30, 1984. We understand that Joe Swanson, director of the division of measurement standards, plans to take the bill to a legislator for introduction.

The bill is nearly identical to CSSB 491(L&C), a version of a governor's bill that was introduced last year (Department of Law file no. 377-075-84). That bill was held up in the House Labor and Commerce Committee. One major difference between CSSB 491(L&C) and the attached bill, is the addition of some detailed procedures in AS 45.75.130 about the issuance of citations (sec. 13 of the bill). The other major difference is the change from a class B misdemeanor to an "infraction" (or "violation" under AS 12.55.035(b)(5)) for all weights and measures offenses (sec. 26 of the bill).

After conferring with Assistant Attorney General Joe Balfe, who is assigned to work with the Department of Public Safety full-time, Joe Swanson decided that the infraction approach of the DPS bill (a draft of which we distributed November 8, 1984) would be preferable for the oversize and overweight vehicle offenses. On Friday, November 23, he told Assistant Attorney General Art Peterson that that approach should be extended to all of the weights and measures offenses. It is felt that the deterrent effect of the greater likelihood of conviction using the infraction approach outweighs the deterrent effect of the stiffer penalties of the misdemeanor approach. It should be noted that the infraction approach does not carry with it the possibility of imprisonment or the increase in penalties for subsequent convictions. In fact, in the current penalty section for AS 28, the motor vehicle title, AS 28.40.050(d) says that an infraction is not considered a criminal offense.

Although this bill is not now going to be introduced

as a governor's bill, a draft transmittal letter is also attached. The letter had already been drafted, and may be useful to the introducing legislator, perhaps as material for a committee report that would provide some useful legislative history and intent.

NCG:AHP:PBF:JDB:md

cc w/enc.: Hon. Robert Sundberg, Commissioner  
Dept. of Public Safety

Hon. Richard Lyon, Commissioner  
Dept. of Commerce & Economic Development

Hon. Richard Knapp, Commissioner  
Dept. of Transportation & Public Facilities

Joseph Swanson, Director  
Division of Measurement Standards  
Department of Commerce and Economic Development  
Anchorage

Joseph Balfe, Esq.  
Assistant Attorney General  
Anchorage

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that corrects an oversight in the current law -- perhaps caused by the splitting of responsibility for overweight and oversize vehicles among the Department of Transportation and Public Facilities (DOTPF), the Department of Commerce and Economic Development (DCED), and the Department of Public Safety (DPS). The bill provides penalties for violation of the weight and size regulations in 17 AAC 25.010 -- 17 AAC 25.110, adopted by DOTPF under authority of AS 19.10.060, governing vehicles on public highways. It also provides penalties for violation of permits issued by DCED for overweight and oversize vehicles and for violation of DCED's regulations adopted to enforce DOTPF's weight and size limitations.

Under current law, AS 19.05.010 makes DOTPF responsible for, among other things, "protection and control of the state highway system." AS 19.05.020 and AS 44.42.030 give the department broad authority to adopt regulations to carry out its duties, and AS 19.10.060(1) gives the department specific authority to "establish limitations on weight, size, and load of vehicles." AS 19.45.002 makes violation of AS 19.05 -- 19.25 a misdemeanor, but does not specify the penalty for violation of a regulation adopted under those statutes.

Also under current law, AS 44.33.020(25) requires DCED to operate vehicle weighing stations; issue permits for over-size and overweight vehicles; enforce DOTPF's size, weight, and load limitations; and adopt regulations relating to that enforcement. However, AS 44.33 does not contain an applicable penalty provision.

AS 18.65.080 and AS 44.41.020 give DPS broad authority to enforce the criminal laws of the state and to protect life and property. AS 28.40.050 (designated AS 28.35.230 until publication of the 1984 supplement to the Alaska Statutes) provides penalties for AS 28 violations. However, the duty to operate vehicle weighing stations, enforce DOTPF's weight and size limits, adopt relevant regulations, etc., was transferred from DPS to DCED by ch. 77, SLA 1982's repeal of AS 28.05.011(8) and enactment of AS 44.33.-020(25). Thus, AS 28.40.050(c)'s reference to a regulation adopted "under this title" (i.e., Title 28 of the Alaska Statutes) is no longer sufficient to cover violations of these regulations. Nor is it sufficient to cover violation of DCED's special permits or DOTPF's weight, size, and load limit regulations.

This bill remedies these deficiencies with regard to weight, size, and load regulations. It does not deal with other DCED or DOTPF regulations or functions, nor does it change any of the current penalty provisions.

This bill would classify a violation of the regulations or a permit as an infraction and allow a court to impose the penalty provided for in AS 28.40.050(c) (a fine not to exceed \$300, if the violation consists of an oversize infraction), or AS 28.40.050(e) (\$0.05 for each pound of weight over the authorized weight limit, if the violation involves an overweight infraction).

Because of the extensive damage that can be caused to our public highways by overweight vehicles, and the potential danger that an unregulated, oversize vehicle poses to the motoring public, I have provided in this bill that, if passed, the Act will take effect immediately in accordance with AS 01.10.070(c).

Sincerely,

Bill Sheffield  
Governor



Alaska Court System  
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street  
Anchorage, Alaska 99501

January 9, 1987

Trooper Dial  
Alaska State Troopers  
5848 Tudor Road  
Anchorage, AK 99507

RE: The enforceability of 17 AAC 25.020-.060 (page 27 of the  
VEHICLE AND TRAFFIC OFFENSES BOOKLET)

Dear Trooper Dial:

Enclosed is a July 23, 1985 letter from Court System Deputy Director Stephanie Cole to Public Safety Commissioner Sunberg. Paragraph 3 of the letter concerns the enforceability of 17 AAC regulations. Attached to Stephanie's letter is a copy of an April 11, 1985 letter on this subject from Joe Balfe to Karla Forsythe.

Also enclosed is the department's response to Stephanie's letter. The response is dated August 7, 1985 and signed by Colonel Kolivosky. Paragraph 3 of the letter appears to confirm that the 17 AAC regulations should be removed from the Traffic Bail Forfeiture Schedule.

I believe this problem with Title 19 of the statutes could be corrected very easily if the Department of Public Safety brings it to the attention of the Legislature.

Even though there appears to be no penalty in Alaska Statutes Title 19 (Highways and Ferries) for violating the 17 AAC 25 regulations (which are adopted under the authority of AS 19.05 and 19.10), it can be argued that AS 28.40.050(e) provides a penalty for the 17 AAC 25 regulation which governs allowable gross weights (17 AAC 25.060).

Trooper Dial  
January 9, 1987  
Page Two

AS 28.40.050(e) states:

(e) not withstanding the maximum fine provided for infractions under (c) of this section, for the violation of regulations or special permits issued governing vehicle weight limits, overweight penalties shall be imposed at the rate of five cents for each pound of weight over the authorized weight limit for that vehicle.

The argument against using this statute as the penalty for 17 AAC 25.060 is that the AS 28.40.050 penalty section applies only to regulations adopted under Title 28 (i.e., the 13 AAC regulations) not to regulations adopted under other Titles in the statutes. This limitation is quite clear in paragraph (c) of AS 28.40.050. However, it is much less clear in paragraph (e) of the statute.

I discussed this problem with General Counsel Karla Forsythe after I talked to you. I believe we will try to present this issue to the Supreme Court to see if they think it is appropriate to add 17 AAC 25.060 to the Traffic Bail Forfeiture Schedule based on the penalty section in AS 28.40.050(e). In the meantime, if you wish to continue to charge violations of 17 AAC 25.060, the alleged offense will have to be charged as a mandatory court appearance and the judge in each case will have to decide if there is a penalty for the alleged offense. I will let you know if we are able to get this issue decided by the Supreme Court.

Sincerely,

*Susan Miller*

Susan Miller  
Office of Special Projects  
264-8229

Enclosures (2)

cc: Karla Forsythe

bcc: Joe Swanson



Alaska Court System  
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

STEPHANIE J. COLE  
Deputy Administrative Director

303 K STREET  
ANCHORAGE, ALASKA 99501

July 23, 1985

Commissioner Sundberg  
Department of Public Safety  
Pouch N  
Juneau, Alaska 99811

Dear Commissioner Sundberg:

The administrative office of the Alaska Court System is in the process of updating the statewide traffic bail forfeiture schedule. We hope to present a proposed order to the supreme court for adoption this fall. The order will double existing bail forfeiture amounts, delete repealed statutes and regulations, and add newly adopted statutes and regulations. A draft of the proposed supreme court order containing the actual schedule will be forwarded to the department for comment within the next few weeks.

In the course of developing the revised schedule, several issues have arisen which can best be resolved with the assistance of the Department of Public Safety. These issues are outlined below. I would greatly appreciate it if the department could review these issues, and provide a response by August 16, 1985 so that the order can be presented to the supreme court in a timely manner. Also, it would be extremely helpful if you could designate one person to speak for the department and to work with the court system in revising the schedule. Bill Brown, Jay Dulany and Joe Balfe have worked with the court system in the past on matters relating to the schedule.

Issues for the Department of Public Safety to consider

1. The demerit point schedule contained in 13 AAC 08.210 does not include many of the offenses which the court system processes as criminal cases. These offenses are listed in Attachment A. The department may wish to consider assessing points for these offenses.
2. It is my understanding that the Motor Carrier Safety Regulations formerly contained in 3 AAC 62 have been repealed. These offenses will not appear on the revised traffic bail forfeiture schedule.

3. In a letter dated April 11, 1985, Assistant Attorney General Joe Balfe questions whether any 17 AAC regulation is enforceable (Attachment B), primarily because there is no penalty stated for a violation of a regulation adopted under the authority of certain chapters of Title 19. The court system therefore proposed to eliminate all regulations under 17 AAC from the traffic bail forfeiture schedule. If this creates a problem, or if the department wishes to take a different approach to these offenses, please let me know.

4. The department may wish to review the following offenses which appear on the existing schedule to determine if the offense category should be changed.

- a. An offense under 13 AAC 40.030(c)(2) -- Vehicle to be in Safe Operating Condition -- currently requires a mandatory court appearance. Does the department believe this is still the preferable approach, or should a mail-in bail forfeiture amount be established?
- b. Five offenses for which bail forfeiture is authorized under the current schedule appear to be sufficiently serious to warrant a mandatory court appearance. Does the department wish to retain the bail forfeiture amount, or change the schedule to require mandatory appearances on these offenses?

13 AAC 02.545(a) Drinking While Driving

13 AAC 04.240(a)(d) Requirement for Transportation of Hazardous Material

\*17 AAC 40.420(a) Permit required

\*17 AAC 40.420(b) Operating Vehicle for Disposing of Garbage, w/o Permit

\*17 AAC 40.440(a) Vehicles to Have Proper ID

\*NOTE: These last 3 offenses may be removed from the schedule entirely (see paragraph 3).

5. As a result of statutory and regulatory changes, the offenses listed below should be added to the schedule. It would be helpful if the department could make recommendations about whether each offense is amenable for disposition by mail-in bail forfeiture, the appropriate bail forfeiture amount, points which should be assessed, and the appropriate processing code.

AS 28.35.182(c)

Fail to Stop at Direction of Peace Officer

AS 28.22.250

Falsification of Info. Required Under AS

28.22.210-240

AS 28.05.095(a)

Fail to Properly Secure Child in Child Safety Device

AS 28.05.095(a)

Fail to Provide Child Safety Device (1st Offense)

AS 28.05.095(a)

Fail to Provide Child Safety Device (2nd or Subsequent Offense)

AS 28.05.095(c)	Illegal Removal of Vehicle Seatbelt
13 AAC 06.110	Unlawful Driving of Unsafe Vehicle
13 AAC 06.020(a)	Refusing to Submit Vehicle to Inspection or Test
13 AAC 06.020(b)	Operating Vehicle After Being Directed to Have It Repaired
13 AAC 06.040(a)	Fail to Stop and Submit to Road Side Inspection
13 AAC 08.085(a)	Fail/Mail Report w/in 10 Days Following Accident
13 AAC 08.085(d)	Fail/Mail Supplemental Report Required by Dept.
13 AAC 08.150	Driving Vehicle w/o Properly Classified Driver's License
AS 28.15.041(b)	School Bus Driver Permit Required
*17 AAC 25.030(b-g)	Vehicle or Load Exceeding Length Allowed
*17 AAC 25.030(h)	Combination of 3 or More Cargo-Carrying United Prohibited
*17 AAC 25.035	Exceeding Reasonable Access Limits

\*NOTE: the last three offenses may be removed from the schedule entirely (see paragraph 3).

6. The list of offenses in the above paragraph reflect statutory and regulatory changes through 1984. It would be helpful if the department could identify new offenses created by statute or regulation during 1985, and provide a recommendation as to whether disposition by mail-in bail forfeiture is appropriate, and a recommendation as to bail amount, points and processing code.

#### 7. Legislative Changes

Several changes to motor vehicle statutes would assist the court system in expeditious processing of cases, and should also directly benefit the department in enforcing motor vehicle laws. Would the department be willing to consider seeking the legislative changes listed below?

- a. Under AS 28.35.040, reckless driving is a misdemeanor. Under AS 28.15.181 (6), a conviction for reckless driving is grounds for immediate revocation of a driver's licence. However, the possibility of revocation is not addressed in the reckless driving statute. The statute should be revised to provide that:

(b) A person convicted of reckless driving is guilty of a misdemeanor and is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year or by both. In addition, the person's driver's license may be revoked in accordance with AS 28.15.181. (See similar reference in AS 28.35.030(c).

- b. AS 28.40.050(b) provides that the privilege to drive or the registration of vehicles may be suspended or revoked for a violation of a provision of Title 28 for which another penalty is not specifically provided. Does this statute provide for

suspension or revocation of licenses and registration for offense; in addition to those offenses listed in AS 28.15.181 for which suspension or revocation of license is authorized? Either AS 28.40.050(b) should refer to AS 28.15.181, or the statute should enumerate the lengths of suspension/revocation authorized.

- c. Under AS 05.25.060(b), a person charged with operating a watercraft while under the influence is punishable by a maximum penalty of \$500 and/or 6 months. The statute should incorporate the same penalty as AS 28.35.030.
- d. Under AS 28.35.045(c) a person convicted of negligent driving is guilty of an infraction, and in addition the court may limit or suspend the person's driver's license. However, AS 28.15.220 does not include negligent driving as grounds for immediate suspension or revocation of a driver's license. If license suspension or revocation of the license is a possibility, then defendants charged with that crime are faced with loss of a valuable license, and are entitled to jury trials.

Either AS 28.35.045(c) should be revised to eliminate the reference to license suspension, or the possibility of license suspension for negligent driving should be included in AS 28.15.181.

- e. Under AS 28.05.151, the traffic bail schedule can include misdemeanors. As a result, defendants charged with misdemeanors for which bail amounts have been established can plead guilty and mail in the forfeiture amount. These offenses apparently do not appear on an individual's criminal history. Because the maximum penalty is a relatively small fine, courts have not required jury trials and court-appointed counsel for indigent defendants. However, characterizing these offenses as misdemeanors rather than infractions may denote some degree of criminality, which could subject the current system to challenge by persons convicted of misdemeanors who have not been afforded a jury trial or court-appointed counsel. In the view of the administrative office, the legislature's intention to treat these offenses as minor would be clarified by reclassifying bailable misdemeanors as infractions. What is the view of the department about the desirability of reclassifying the offenses listed below which fall into this category?

<u>Violation Section</u>		<u>Penalty Section</u>
AS 05.30.010	Operating Unreg. Snow Vehicle	AS 05.30.110
AS 05.30.040(a)	Fail/Display Numbered Reg. Decal	AS 05.30.110
AS 05.30.080(1-4)	Snow Vehicle Equip. Required	AS 05.30.110
AS 05.30.100	Snow Vehicle Operator to Report Accident	AS 05.30.110
AS 19.25.030	Damages to Obstr/Signs/Const.	AS 11.81.250(a)(4) and (c)

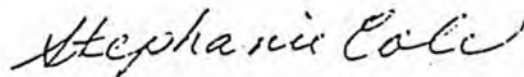
AS 28.10.081(b)	Cert/Registration Carried in Vehicle	AS 28.40.050(a)(b)
AS 28.10.451	Violation of Reg./Title Requirements	AS 28.40.050(a)(b)
AS 28.10.461	Plates/Decals/permits Properly Displayed	AS 28.40.050(a)(b)
AS 28.10.461	Cert/Registration Carried in Vehicle	AS 28.40.050(a)(b)
AS 28.10.461	Operating Unregistered Vehicle	AS 28.40.050(a)(b)
AS 28.10.471	Operating veh. w/Exp. Reg. Up to 90 Days	AS 28.40.050(a)(b)
AS 28.10.471	Operating Veh. w/Exp. Reg. Over 90 Days	AS 28.40.050(a)(b)
AS 28.10.481	Improper Use of Evidence of Reg./Title	AS 28.40.050(a)(b)
AS 28.15.011	Driving w/Expired License	AS 28.40.050(a)(b)
AS 28.15.011	Driving w/o Valid License (No SR-22 Req.)	AS 28.40.050(a)(b)
AS 28.15.131	License To Be Carried & Displayed	AS 28.40.050(a)(b)
AS 28.15.135(b)	Bail/Notice Dept. of Chg. of Name/Address	AS 28.40.050(a)(b)
AS 28.35.155	Oper. Veh. w/Studded/Chained Tires When Prohibited	AS 28.40.050(a)(b)
AS 28.35.180	Disobey Signal of Officer Regulating Traffic	AS 28.40.050(a)(b)
AS 28.35.245	Motorcycle Helmet Required for Minor Drivers	AS 28.40.050(a)(b)
AS 42.10.050	Oper. w/o Common/Contract Carrier Permit	AS 42.10.393
AS 42.10.113	Vehicle Identification Requirements	AS 42.10.393
AS 42.10.130	Oper. w/o Common/Contract Temp. Carrier Permit	AS 42.10.393
AS 42.10.240		AS 42.10.393

8. Presently courts issue bench warrants for defendants who fail to respond to a citation. Since bench warrants are not actively served on defendants in all court locations, including Anchorage, the result is a substantial number of defendants who do not respond. There would be an additional incentive for these defendants to respond if license or registration renewal was contingent on payment of all outstanding fines. What are the views of the department about seeking legislation or adopting internal procedures which would permit such action?
  
9. The administrative office plans to present to the supreme court a schedule which lists offenses numerically. The administrative office will also prepare the schedule with traffic offense listings by category (correctable/dismissable, mail-in bail forfeiture, mandatory court appearance and criminal). Is an alphabetical format desirable as well?

10. The supreme court has adopted a traffic bail forfeiture schedule for the Municipality of Anchorage and State of Alaska only. However, other municipalities (such as Ketchikan) use the state traffic bail schedule as a basis for listing bail forfeiture amounts on municipal citations, and simply annotate the state traffic schedule to reflect the analogous municipal provision. Is this practice acceptable to the department, or does the department take the position that separate schedules should be adopted by supreme court order? If the latter procedure is adopted, it is likely that the supreme court will ask the department to review proposed schedules for conformity to the state schedule.

Thank you for your assistance in resolving these issues.

Sincerely,



Stephanie Cole  
Deputy Administrative Director

KF/k1

cc: Joe Balfe, Assistant AG  
Bill Brown, DMV  
Jay Dulany, Driver Improvement Specialist  
Gayle Horetski, Assistant District Attorney - Juneau  
Karla Forsythe  
Jeneane Moore  
Charlene Dolphin  
Susan Miller

ATTACH. . A  
TRAFFIC OFFENSES PROCESSED AS CRIMINAL CASES

<u>Statute/Regulation</u>	<u>Offense</u>	<u>Penalty Code</u>
AS 05.25.030(a)(b)	Fail/Report Watercraft Accident	AS 05.25.090
AS 05.25.060(a)	Reckless or Neg. Driving of Watercraft	AS 05.25.090
AS 05.30.100	Fail/Report Snow Vehicle Accident	AS 05.30.110
AS 28.10.471	Operating vehicle with suspended/revoked registration	AS 28.40.050(a)(b)
AS 28.10.493(a)	Illegal Transfer of Vehicle By Owner	AS 11.81.250(a)(5)
AS 28.10.493(b)	Illegal Transfer of Vehicle By Dealer	AS 11.81.250(a)(5)
AS 28.15.011	Driving without a valid license (SR-22 requirement)	AS 28.40.050(a)(b)
AS 28.15.041(b)	School Bus Driver Permit Required	AS 28.40.050(b)
AS 28.15.121(d)	Driving in violation of restricted license	AS 28.40.050(a)(b)
AS 28.15.281(a)	Unlawful use of driver's license	AS 28.40.050(a)(b)
AS 28.15.281(b)	Permitting unauthorized person to drive	AS 28.40.050(a)(b)
AS 28.15.291	Driving while license suspended/revoked	AS 28.15.291/ 28.35.230
AS 28.15.291	Driving in violation of limited operator's license	AS 28.15.291/ 28.35.230
AS 28.22.250	Falsification of Information Required Under AS 28.27.210-240	AS 28.22.250 Class A Misdemeanor
AS 28.35.026	Fail/Return Rental Vehicle	AS 28.35.026
AS 28.35.030	Driving under influence of intoxicating liquor/drugs	AS 28.35.030/ 28.15.181
AS 28.35.032	Refusal to submit to chemical test	AS 28.35.032/Misd. A schedule
AS 28.35.040	Reckless Driving	
AS 28.35.050(a)	Action of operator immediately after injury accident	AS 28.40.050(a)(b)/ 28.15.181
AS 28.35.050(b-c)	Action of operator immediately after property damage only accident	AS 28.40.050(a)(b)
AS 28.35.060(a)	Operator to give information and render assistance	AS 28.35.060(b)(c)/ 28.15.181
AS 28.35.060(c)	Failure to assist injured person	AS 28.35.060(b)(c)/ 28.15.181
AS 28.35.080	Failure to give immediate notice of accident	AS 28.40.050(a)(b)
AS 28.35.182(c)	Fail/Stop at Direction of Peace Officer	AS 28.25.182(c) Class B Misd.
AS 28.35.110(a)	Giving false information on accident report	AS 28.35.110(a)
AS 28.35.110(b)	Failure to report accident	AS 28.35.110(b)
AS 28.35.130	False report or destruction of evidence	AS 28.35.130
AS 28.35.135(a)	Making false statement on application	AS 28.40.050(a)(b)/ 28.15.181



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

Alaska Division

P.O. Box 1648  
Juneau, Alaska 99802

July 18, 1986

HPR-AK  
722.31

Joe Swanson, Director  
DCED, Division of Measurement  
Standards  
P.O. Box 10-1686  
Anchorage, Alaska 99511

DIVISION OF  
MEASUREMENT STANDARDS

JUL 21 1986

Dear Mr. Swanson:

Oversize Enforcement Authority

The FHWA 1984 review of the Alaska Size and Weight Enforcement Program revealed that no legal authority exists in this state to issue citations for oversize loads. At that time we encouraged your Department to seek that authority from the Legislature. We are aware of your unsuccessful efforts to do that during the 1986 Legislative Session.

In the meantime, there has been a continuing record of damage to bridges and overpasses as a result of overhead collisions with oversize loads. The majority of these collisions occurred in the Central Region. The ADOT&PF estimates \$514,010 - \$664,010 damage to bridges from 1982 to date.

The cost to repair damaged structures is not eligible for federal reimbursement. These costs must be borne by the Alaska DOT&PF maintenance budget. In light of the financial distress Alaska faces, it is more important than ever to reduce the drain on limited state resources. The ability to write citations for oversize loads would be a method of enforcing the existing regulations.

Although FHWA still cannot participate in these repair costs, we strongly encourage you to once again seek that authority in the 1987 Legislative Session. We view this hole in the enforcement authority to be an obstacle to the effectiveness of the program.

Sincerely yours,

Barry F. Morehead  
Division Administrator

Sec. 42.30.350. ISSUANCE OF CITATIONS. (a) An employee of the Department of Commerce and Economic Development who is authorized by the commissioner to enforce the size, weight, and load limitations adopted by the Department of Transportation and Public Facilities under AS 19.10.060 may issue a citation to a person who violates,

(1) the terms of an overweight and/or oversize vehicle permit issued under AS 44.33.020 (25).

(2) the provisions of a regulation adopted under AS 44.33.020(25)'

(3) a weight load, or size limitation established under AS 19.10.060;

(4) the provisions for a regulation adopted under AS 19.10.060;

Sec. 42.30.351. FORM AND ISSUANCE OF CITATION. (a) A citation issued under this section must be in writing. A person receiving the citation is not required to sign a promise to appear in court.

(b) The time specified in the notice to appear on a citation issued under this section must be at least 15 days after the issuance of the citation, unless the person cited requests an earlier hearing.

(c) The commissioner is responsible for the issuance of books containing appropriate citations and shall maintain a record of each book and each citation contained in it. The commissioner shall require and retain a receipt for every book issued to an employee of the department designated by the commissioner to provide investigative service to enforce provisions of this chapter.

(d) An employee who issues a citation under this section shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense. Upon its deposit with the court, the citation may be disposed of only by trial in the court or other official action taken by the magistrate, judge, or prosecutor. The employee who issued the citation may not dispose of it or copies of it or of the record of its issuance except as required under this subsection and (e) of this section.

(e) The commissioner shall require the return of a copy of every citation issued under this section and of all copies of every citation that has been spoiled or on which an entry has been made and not issued to an alleged violator. The commissioner shall also maintain in connection with every citation issued a record of the disposition of the charge by the court in which the original or copy of the citation was deposited.

(f) If the form of citation issued under this section includes the essential facts constituting the offense charged and is sworn to as required under the laws of this state for a complaint charging commission of the offense alleged in the citation, the citation when filed with a court having jurisdiction, is considered to be a lawful complaint for the purpose of prosecution.

(g) Unless the citation has been voided or otherwise dismissed by the magistrate, judge, or prosecutor, or bail has been forfeited under AS 42.30.351, a person who fails to appear in court to answer a citation issued under this section, regardless of the disposition of the charge for which the citation was issued, is guilty of a class B misdemeanor.

Sec. 42.30.352. BAIL FORFEITURE. (a) The supreme court shall specify by rule or order those violations that are appropriate for disposition without court appearance, and shall establish a schedule of bail amounts. The maximum bail forfeiture amount for an offense may not exceed the maximum fine specified by law for that offense. If the person who has been cited can dispose of the violation without court appearance, the issuing employee shall write on the citation the amount of bail forfeiture applicable to the violation.

(b) A person cited for a violation for which a bail forfeiture amount has been established under (a) of this section may, within 15 days after the date of the citation, mail or personally deliver to the clerk of the court in which the citation is filed by the employee

(1) the amount of bail indicated on the citation for that offense;  
and

(2) a copy of the citation indicating that the right to an appearance is waived, a plea of no contest is entered and the bail is forfeited..

(c) When the cited person has forfeited bail under (b) of this section, the court shall enter a judgment of conviction. Forfeiture of bail is a complete satisfaction for the violation. The clerk of the court accepting the bail forfeiture shall provide the offender with a receipt stating that fact.

(d) A cited person who fails to pay the bail forfeiture amount established under (a) of this section or to appear in court as required, is guilty of a class B misdemeanor.

(e) Notwithstanding other provisions of law, if a person cited for a violation for which a bail forfeiture amount has been established under (a) of this section appears in court and is found guilty, the court may not impose a penalty that exceeds the bail forfeiture amount for that offense established under (a) of this section.

Section 42.30.360. OFFENSES AND PENALTIES. (a) A person commits a class B misdemeanor and is punishable by a fine of not less than \$100.00 or more than \$1,000.00 if the person does one or more of the following acts:

(1) hinders or obstructs the commissioner or his designee in the performance of official duties under AS 44.30.020(25) or a regulation adopted under AS 44.30.020(25);

(2) violates a provision of an overweight or oversize vehicle permit issued under AS 44.33.020(25);

(3) violates a weight, load, or size limitation established under AS 19.10.060 or a regulation adopted under AS 19.05.020, AS 44.33.020(25).

(b) Notwithstanding the maximum fine for a violation provided under (a) of this section, the director shall impose on a person who violates a regulation or special permit governing the weight limit of a motor vehicle a maximum penalty of \$.05 for each pound of weight over the authorized weight limit for the vehicle.

BILL SHEFFIELD, GOVERNOR

Robert J. Sundberg  
Commissioner

P.O. BOX 6188 ANNEX  
ANCHORAGE, ALASKA 99502

**DEPARTMENT OF PUBLIC SAFETY**

DIVISION OF STATE TROOPERS

April 11, 1985

RECEIVED  
APR 12 1985

Office of Administrative Director  
Alaska Court System

Karla Forsythe  
General Counsel  
Alaska Court System  
303 K Street  
Anchorage, Alaska 99501

Dear Karla:

I am answering on behalf of Colonel Kolivosky, your letter dated March 7, 1985, concerning confinement of truck loads.

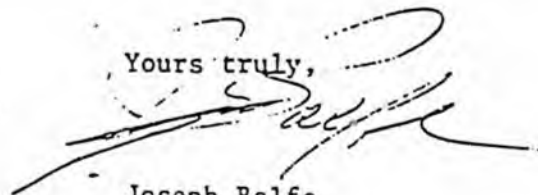
In checking AS:19.45.002, I note that there is no provision for a penalty for violation of any regulation promulgated under Title 19. In otherwords, there is a penalty if one violates the statute but 19.45.002 does not mention regulations. It appears to me that there is no penalty provision for any of 17 AAC regulations.

3 AAC 62.146 is not applicable for, as you pointed out, those regulations are no longer in effect since the abolition of the Alaska Transportation Commission.

In checking with the Alaska State Troopers, it was indicated that violations of the sort mentioned in Rep. Sam Cotten's letter are handled under 13 AAC 02.530 which is a regulation authorized under Title 28.

In conclusion, I don't think there is any question but that regulations in 17 AAC do not fall under any public safety regulation under Title 28, and as pointed out above, I question whether any 17 AAC regulation is enforceable.

Yours truly,



Joseph Balfe  
Assistant Attorney General  
for Law Enforcement

cc: Bruce Freitag  
D.O.T. Juneau

JB/lm

BILL SHEFFIELD, GOVERNOR

Robert J. Sundberg,  
Commissioner

**DEPARTMENT OF PUBLIC SAFETY**

DIVISION OF STATE TROOPERS

6188 Annex  
Anchorage, Alaska 99502

August 7, 1985

RECEIVED  
AUG 19 1985

Stephanie J. Cole  
Deputy Administrative Director  
Alaska Court System  
303 "K" Street  
Anchorage, Alaska 99501

Office of Administrative Director  
Alaska Court System

Dear Ms. Cole:

The following reply is written paragraph by paragraph in response to an inquiry from the court dated July 23, 1985 dealing primarily with a new bail forfeiture schedule.

1. Attachment "A" has been awarded the attached points based as nearly as possible on similar violations in the previously published schedule; (attached).
  2. The Department of Public Safety concurs that offenses formerly contained in 3 AAC 62 should not appear in the Revised Bail Forfeiture Schedule.
  3. Mr. Balfe, in the April 11, 1985 letter to Karla Forsythe was presenting the overall opinion of the State Troopers. At this time it is still appropriate to eliminate the Traffic Bail Forfeiture Schedule under 17 AAC from the update.
  4. (a) 13 AAC 40.030 (c)(2) does not exist. Unsafe vehicles are found in 13 AAC 04.001 through 04.009 and should still require a mandatory court appearance to insure that the cited unsafe condition has been corrected.  
  
(b) 13 AAC 02.545 (a) Drinking While Driving - should be mandatory court appearance. 13 AAC 04.240 (a)(d), Hazardous Material Transport - should be mandatory court appearance.
- \* Remove the (3) three 17 AAC violations from the update.

Stephanie J. Cole  
8/7/85 - RE: Bail Forfeiture Schedule  
Page 2

5. The following recommendations cover the new statutory and regulating changes and coincide with the point recommendations in schedule "A".

AS 28.35.182(c) - Fail to stop at direction of peace officer-  
6 points - \$60.00 fine

AS 28.22.250 - Falsified information-  
4 points - \$40.00 fine

AS 28.05.095(a) - Fail to secure child-  
Mandatory court appearance

AS 28.05.095 - 1st and 2nd or subsequent offense-  
Mandatory court appearance

AS 28.05.095(c) - Seat belt removal-  
Mandatory court appearance

13 AAC 06.110 is error, section is 13 AAC 06.010-  
6 points - \$60.00 fine

13 AAC 06.020(a) - Refuse to submit to inspection/test-  
Mandatory court appearance

13 AAC 06.020(b) - Operating after directions to repair-  
Mandatory court appearance

13 AAC 06.040(a) - Fail to stop and submit to roadside inspection-  
Mandatory court appearance

13 AAC 08.085(a) - Fail to submit report within 10 days-  
2 points - \$20.00 fine

13 AAC 08.085(d) - Fail to submit supplemental report-  
2 points - \$20.00 fine

13 AAC - 08.150 - Driving vehicle without proper class license-  
4 points - \$40.00 fine

AS 28.15.041(b) - School bus permit required-  
4 points - \$40.00 fine

\* Remove (3) three 17 AAC violations from updated schedule.

Please note that Mr. Bill Brown and Jay Dulany have previously provided the appropriate processing code and will continue to do so.

6. In the motor vehicle laws of Alaska, Alaska Statute Title 28, no 1985 changes have been published. A full review of the current edition published by the Michie Company in 1985 indicate the most recent addition to Title 28 came through the session laws of 1983. Future traffic law will have to be identified and incorporated into the Revised Bail and Point Schedule at that time.
7.
  - a. The Department whole-heartedly supports the proposed legislative change to AS 28.35.040 (b) - Reckless Driving.
  - b. The answer is yes, AS 28.40.050(b) does provide for suspension or revocation, in addition to offenses listed in AS 28.15.181. Reference should be made to AS 28.15.161.
  - c. AS 28.35.030 - Operating a Vehicle, Aircraft or Watercraft While Intoxicated covers the watercraft now and 05.25.060 (b) should be repealed.
  - d. Please note that AS 28.15.220 was repealed in 1978, but that Negligent Driving, AS 28.35.045 (4)(b) is a lesser included offense of Reckless Driving, and as such is already incorporated in AS 28.15.181, court suspensions, revocations, and limitations and therefore, no statutory charge is required.
  - e. If by classifying bailable misdemeanors as infractions, we reduce those incidents where defendants may demand costly jury trials, and subsequently also be afforded an attorney at public cost, we still promote a prosecution for the listed traffic offenses, the Department still supports the move, in all, (24) twenty four violations.
8. The Department supports tying license and registration renewals to the payment of all outstanding fines. By attaching this requisite to both driver's license and registration, many outstanding warrant fines will be paid, as well as getting the individual to appear in court to answer to the Failure to Appear Warrant.

9. Alphabetizing the schedule will assist all police agencies in more easily locating the appropriate violation and assessing points and fines to citations. This allows the motoring public to get on with their business more expeditiously and allows the officer to return to patrol or investigative duties that much sooner. It will save us valuable time.
10. Rather than issuing separate Bail Schedules for other municipalities, fines should be the same statewide. The schedule adopted for both the Municipality of Anchorage and State of Alaska should be used as the role model for all other cities in Alaska.

Sincerely,

*Michael C. Kolivosky*  
Colonel Michael C. Kolivosky  
Director  
Alaska State Troopers

ATTACHMENT A  
TRAFFIC OFFENSES PROCESSED AS CRIMINAL CASES

<u>Statute/Regulation</u>	<u>Offense</u>	<u>Penalty Code</u>
AS 05.25.030(a)(b)	Fail/Report Watercraft Accident	AS 05.25.090
AS 05.25.060(a)	Reckless or Neg. Driving of Watercraft	AS 05.25.090
AS 05.30.100	Fail/Report Snow Vehicle Accident	AS 05.30.110
AS 28.10.471	Operating vehicle with suspended/revoked registration	AS 28.40.050(a)(b)
AS 28.10.493(a)	Illegal Transfer of Vehicle By Owner	AS 11.81.250(a)(5)
AS 28.10.493(b)	Illegal Transfer of Vehicle By Dealer	AS 11.81.250(a)(5)
AS 28.15.011	Driving without a valid license (SR-22 requirement)	AS 28.40.050(a)(b)
AS 28.15.041(b)	School Bus Driver Permit Required	AS 28.40.050(b)
AS 28.15.121(d)	Driving in violation of restricted license	AS 28.40.050(a)(b)
AS 28.15.281(a)	Unlawful use of driver's license	AS 28.40.050(a)(b)
AS 28.15.281(b)	Permitting unauthorized person to drive	AS 28.40.050(a)(b)
AS 28.15.291	Driving while license suspended/revoked	AS 28.15.291/4 28.35.230 4
AS 28.15.291	Driving in violation of limited operator's license	AS 28.15.291/2 28.35.230
AS 28.22.250	Falsification of Information Required Under AS 28.27.210-240	AS 28.22.250 Class A Misdemeanor
AS 28.35.026	Fail/Return Rental Vehicle	AS 28.35.026
AS 28.35.030	Driving under influence of intoxicating liquor/drugs	AS 28.35.030/10, 75 28.15.181
AS 28.35.032	Refusal to submit to chemical test	AS 28.35.032/Misd. 10, 75 A schedule
AS 28.35.040	Reckless Driving	
AS 28.35.050(a)	Action of operator immediately after injury accident	AS 28.40.050(a)(b)/ 28.15.181
AS 28.35.050(b-c)	Action of operator immediately after property damage only accident	AS 28.40.050(a)(b)
AS 28.35.060(a)	Operator to give information and render assistance	AS 28.35.060(b)(c)/11, 75 28.15.181
AS 28.35.060(c)	Failure to assist injured person	AS 28.35.060(b)(c)/11, 75 28.15.181
AS 28.35.080	Failure to give immediate notice of accident	AS 28.40.050(a)(b)
AS 28.35.182(c)	Fail/Stop at Direction of Peace Officer	AS 28.25.182(c) 11, 75 Class B Misd.
AS 28.35.110(a)	Giving false information on accident report	AS 28.35.110(a) 11, 75
AS 28.35.110(b)	Failure to report accident	AS 28.35.110(b) 11, 75
AS 28.35.130	False report or destruction of evidence	AS 28.35.130 11, 75
AS 28.35.135(a)	Making false statement on application	AS 28.40.050(a)(b)/ 28.15.181

ATTACHMENT A  
TRAFFIC OFFENSES PROCESSED AS CRIMINAL CASES

<u>Statute/Regulation</u>	<u>Offense</u>	<u>Penalty Code</u>
AS 05.25.030(a)(b)	Fail/Report Watercraft Accident	AS 05.25.090 2
AS 05.25.060(a)	Reckless or Neg. Driving of Watercraft	AS 05.25.090 <i>(see class 10 neg 6)</i>
AS 05.30.100	Fail/Report Snow Vehicle Accident	AS 05.30.110 2
AS 28.10.471	Operating vehicle with suspended/revoked registration	AS 28.40.050(a)(b) 4
AS 28.10.493(a)	Illegal Transfer of Vehicle By Owner	AS 11.81.250(a)(5) 4
AS 28.10.493(b)	Illegal Transfer of Vehicle By Dealer	AS 11.81.250(a)(5) 4
AS 28.15.011	Driving without a valid license (SR-22 requirement)	AS 28.40.050(a)(b) 2
AS 28.15.041(b)	School Bus Driver Permit Required	AS 28.40.050(b) 2
AS 28.15.121(d)	Driving in violation of restricted license	AS 28.40.050(a)(b) 2
AS 28.15.281(a)	Unlawful use of driver's license	AS 28.40.050(a)(b) 4
AS 28.15.281(b)	Permitting unauthorized person to drive	AS 28.40.050(a)(b) 4
AS 28.15.291	Driving while license suspended/revoked	AS 28.15.291/4 PTS 28.35.230 4 PTS
AS 28.15.291	Driving in violation of limited operator's license	AS 28.15.291/2 PTS 28.35.230
AS 28.22.250	Falsification of Information Required Under AS 28.27.210-240	AS 28.22.250 Class A Misdemeanor 4 PTS
AS 28.35.026	Fail/Return Rental Vehicle	AS 28.35.026
AS 28.35.030	Driving under influence of intoxicating liquor/drugs	AS 28.35.030/ 10 PTS 28.15.181
AS 28.35.032	Refusal to submit to chemical test	AS 28.35.032/Misd. 10 PTS A schedule
AS 28.35.040	Reckless Driving	
AS 28.35.050(a)	Action of operator immediately after injury accident	AS 28.40.050(a)(b)/ 28.15.181 4 PTS
AS 28.35.050(b-c)	Action of operator immediately after property damage only accident	AS 28.40.050(a)(b) 4 PTS
AS 28.35.060(a)	Operator to give information and render assistance	AS 28.35.060(b)(c)/11 PTS 28.15.181
AS 28.35.060(c)	Failure to assist injured person	AS 28.35.060(b)(c)/10 PTS 28.15.181
AS 28.35.080	Failure to give immediate notice of accident	AS 28.40.050(a)(b) 4 PTS
AS 28.35.182(c)	Fail/Stop at Direction of Peace Officer	AS 28.25.182(c) 6 PTS Class B Misd.
AS 28.35.110(a)	Giving false information on accident report	AS 28.35.110(a) 4 PTS
AS 28.35.110(b)	Failure to report accident	AS 28.35.110(b) 4 PTS
AS 28.35.130	False report or destruction of evidence	AS 28.35.130 4 PTS
AS 28.35.135(a)	Making false statement on application	AS 28.40.050(a)(b)/ 28.15.181 4 PTS

# ALASKA STATE LEGISLATURE

Sen. Lloyd Jones, Chairman  
Sen. John B. "Jack" Coghill, Vice Chairman  
Sen. Mitch Abood  
Sen. Bettye Fahrenkamp  
Sen. Tim Kelly



P.O. Box V  
Juneau, AK 99811  
907-465-4921

## Senate Transportation Committee

### MEMORANDUM

TO: Senate Labor and Commerce Committee Member

FPOM: Senator Lloyd Jones, Chairman *LJ*  
Senate Transportation Committee

DATE: March 9, 1987

SUBJECT: Senate Bill 146, relating to weights and measures.

The Senate Transportation Committee has introduced this legislation to implement penalty provisions providing for a traffic bail forfeiture schedule. The authorizing regulations were eliminated when the Alaska Transportation Commission was abolished. Recently, because of no statutory authority the Alaska Supreme Court removed the provisions from the traffic bail forfeiture schedule.

Normally, omission from the bail schedule would result in a mandatory court appearance. However, without a penalty there is no basis for judicial officers hearing these matters to sentence defendants.

The Alaska Court System in a February 25, 1987 letter written to the respective chairmen of the Senate and House Judiciary Committees stated there is a clear need for legislation in this area. The letter further stated, the Legislature could solve this problem by adopting a specific penalty for violation of these regulations. Senate Bill 146 would provide those penalties.

Given the imminence of breakup and the inability, under current regulations, of the Department of Commerce to enforce weight restrictions, it is important that this bill be given expeditious treatment. I encourage your support of this legislation.

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

**REQUEST:** \_\_\_\_\_

Bill Version : SB 146

Publish Date : \_\_\_\_\_

Revision Date: \_\_\_\_\_

Title: Act relating to Weights and Measures

Agency Affected: Commerce & Econ. Dev.

BRU: Consumer Protection

Sponsor: Senate Transportation

Requestor: \_\_\_\_\_

Components: Measurement Standards

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
----------------	-----	-----	-----	-----	-----	-----

<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-
----------------	-----	-----	-----	-----	-----	-----

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

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

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: Joe Swanson, Director

Division: Measurement Standards

Phone: 345-7750

Date: March 9, 1987

Approved by Commissioner: J. Anthony Smith, Commissioner

Date: March 9, 1987

Agency: Department of Commerce and Economic Development

Distribution (by preparer):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

Senate Secretary

0190k3987b



DIVISION OF  
MEASUREMENT STANDARDS

MAR 2 1987

Alaska Court System  
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORBYTHE  
STAFF COUNSEL

303 K Street  
Anchorage, Alaska 99501

(907) 264-8228

February 25, 1987

Senator Jay Kerttula  
Chair, Senate Judiciary Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Representative John Sund  
Chair, House Judiciary Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Dear Senator Kerttula and Representative Sund:

The supreme court recently updated the Alaska Traffic Bail Forfeiture Schedule for the first time since it was adopted by the court in 1975. In the process of preparing the schedule for review by the court, administrative staff discovered that there are no penalty provisions in the Alaska Statutes which would permit enforcement of a variety of regulations relating to size, height and weight of commercial vehicles. Although these offenses previously were listed on the bail schedule with a bail forfeiture amount, it appears the offenses should not have appeared on the schedule because of the lack of a penalty section. The court system brought this concern to the attention of the Department of Public Safety, which concurred with the court/staff analysis.

Based on this information, the supreme court decided to omit these offenses from the bail schedule. Normally, omission would result in a mandatory court appearance (rather than a mail-in payment). However, without a penalty there is no basis for judicial officers hearing these matters to sentence defendants.

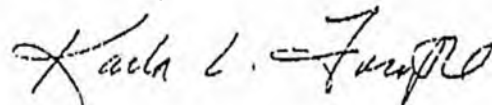
The new schedule was made available to State Troopers several weeks ago, and troopers on the street became aware that this provision was no longer listed on the schedule. As a result, troopers have inquired of administrative staff and also of court system traffic clerks whether or not the court system will accept citations for these offenses and what the disposition will be.

Senator Jay Kerttula, et al  
February 25, 1987  
Page Two

Although the court system usually does not suggest substantive measures to the Legislature for its consideration, there is a clear need for legislation in this area. To the best of my knowledge there is no controversy surrounding this measure. Since the court system is in the best position to provide the Legislature with background material on these offenses, I have attached several memoranda outlining the development of this problem and the relationship between the relevant statutes and regulations. Although the court system is not in a position to propose specific language, it appears that the Legislature could solve this problem by adopting a specific penalty for violation of these regulations.

Thank you for your consideration of this problem. I will be glad to provide additional information or answer any questions from you or other committee members.

Sincerely,



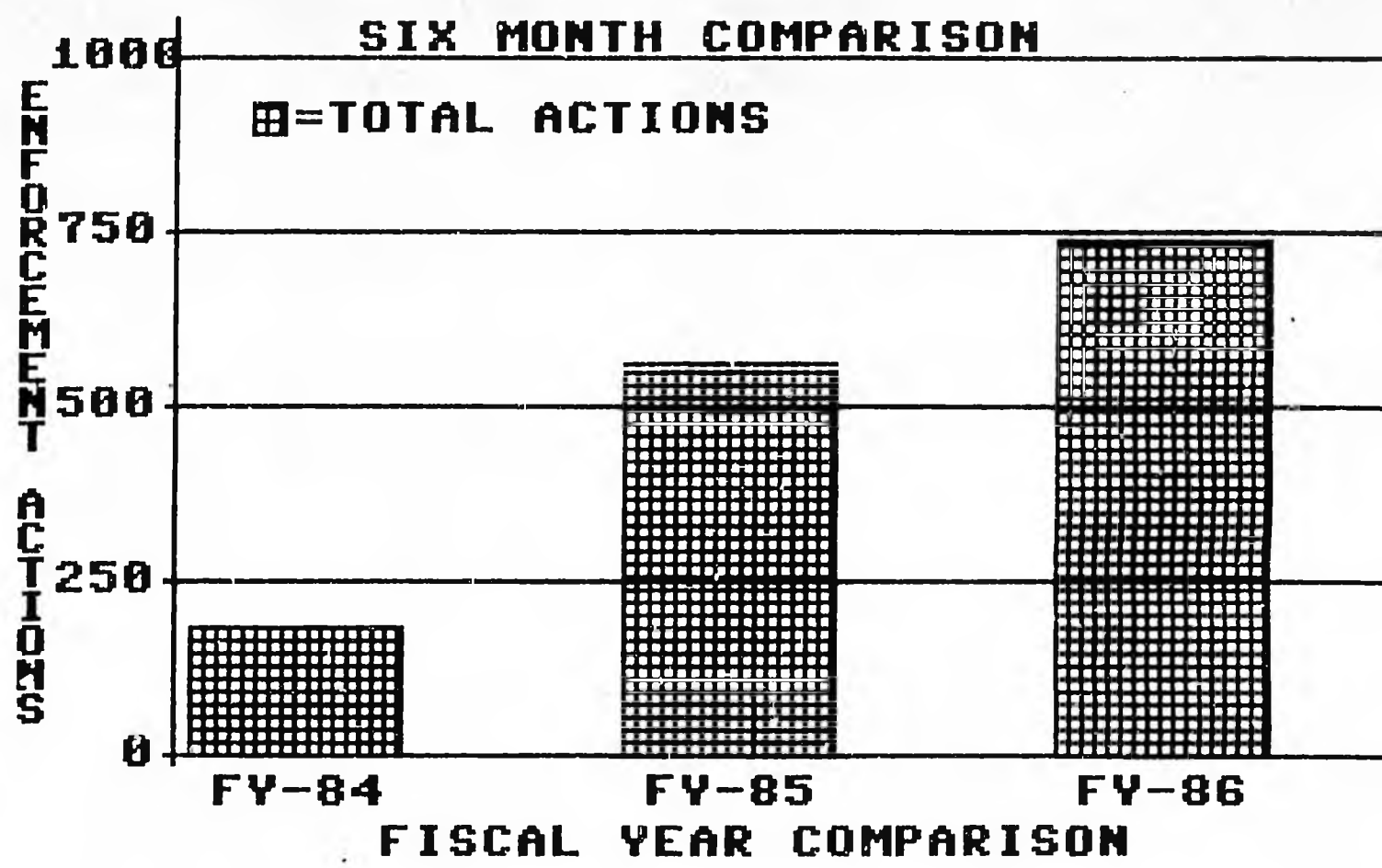
Karla L. Forsythe  
Staff Counsel

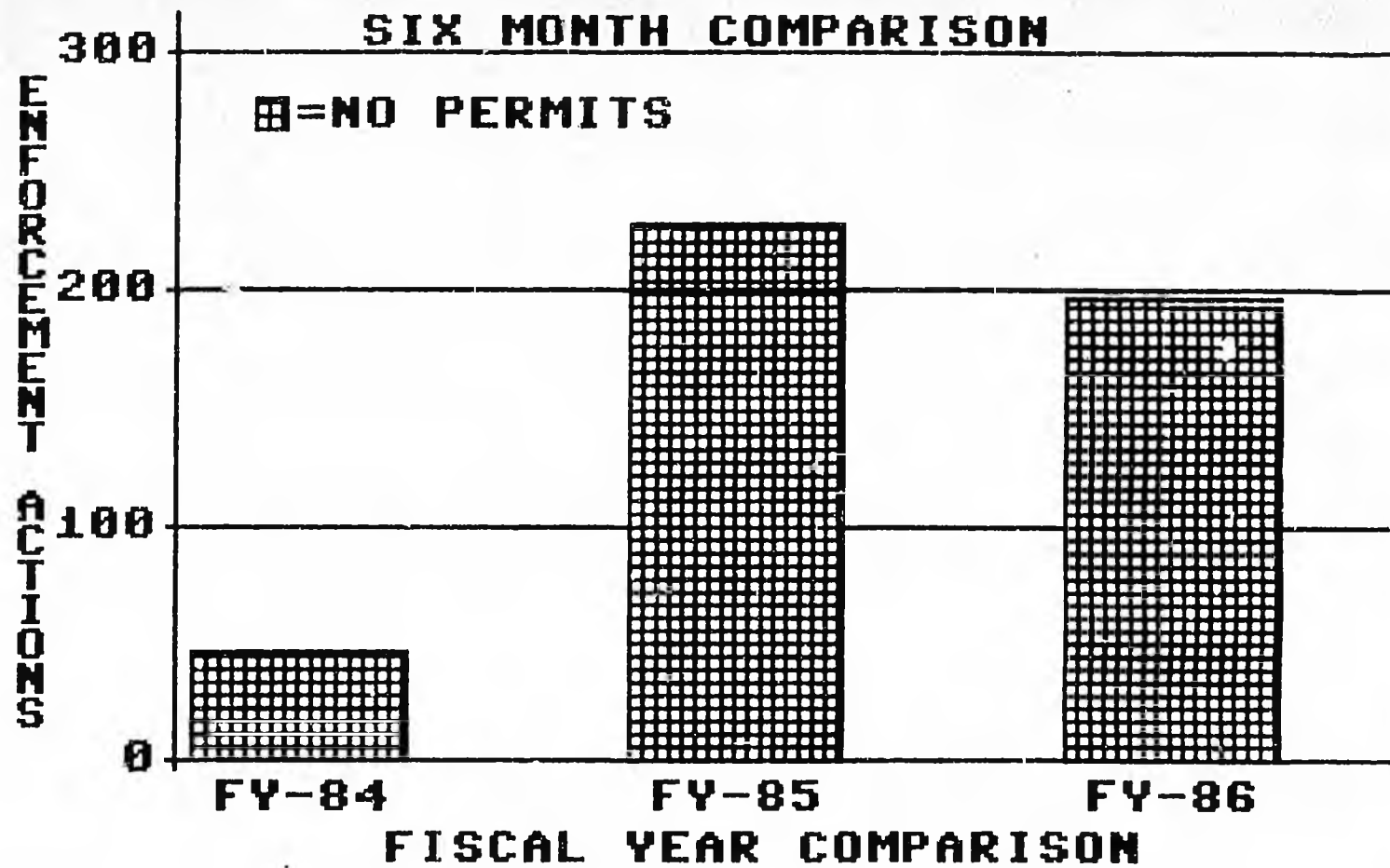
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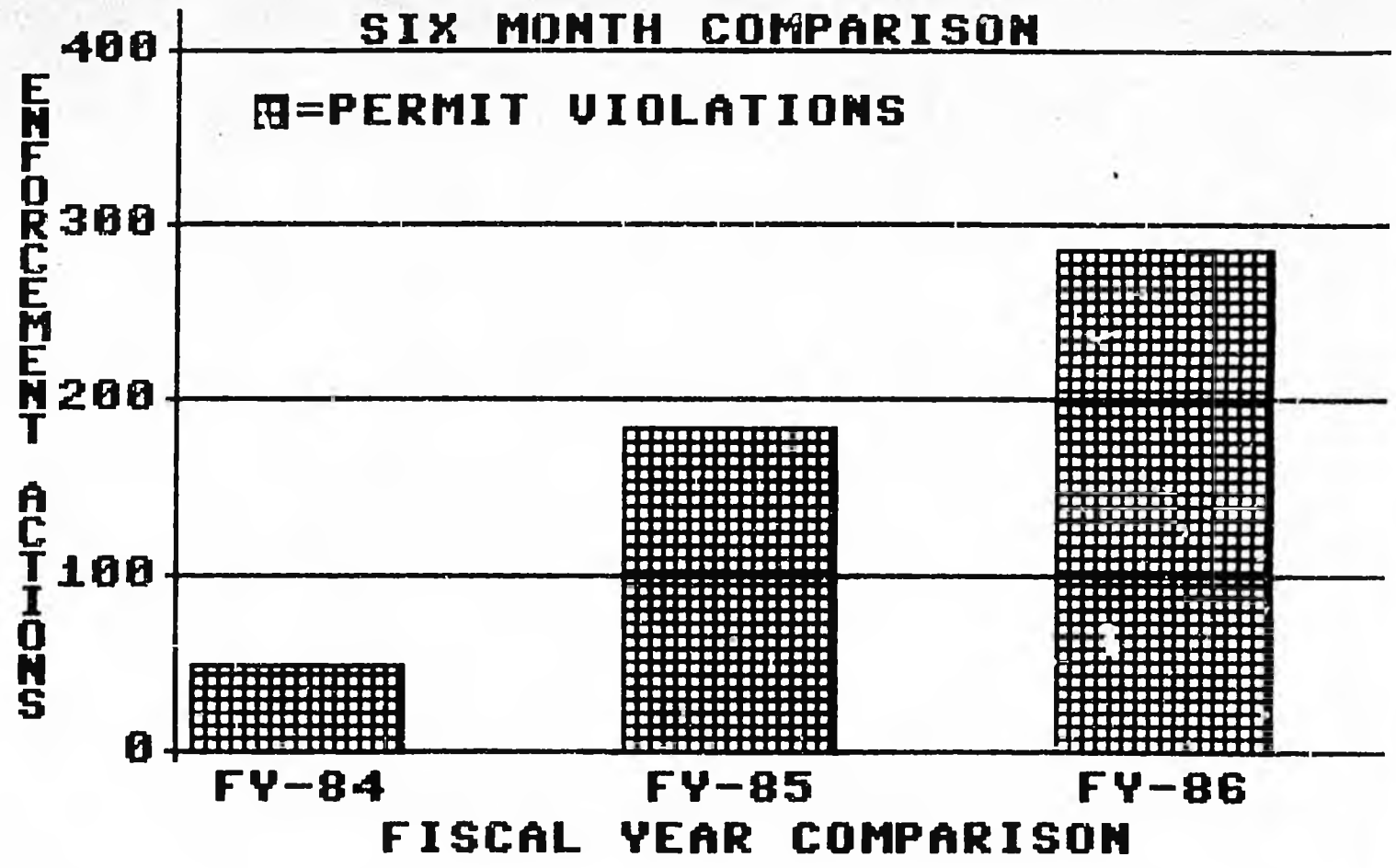
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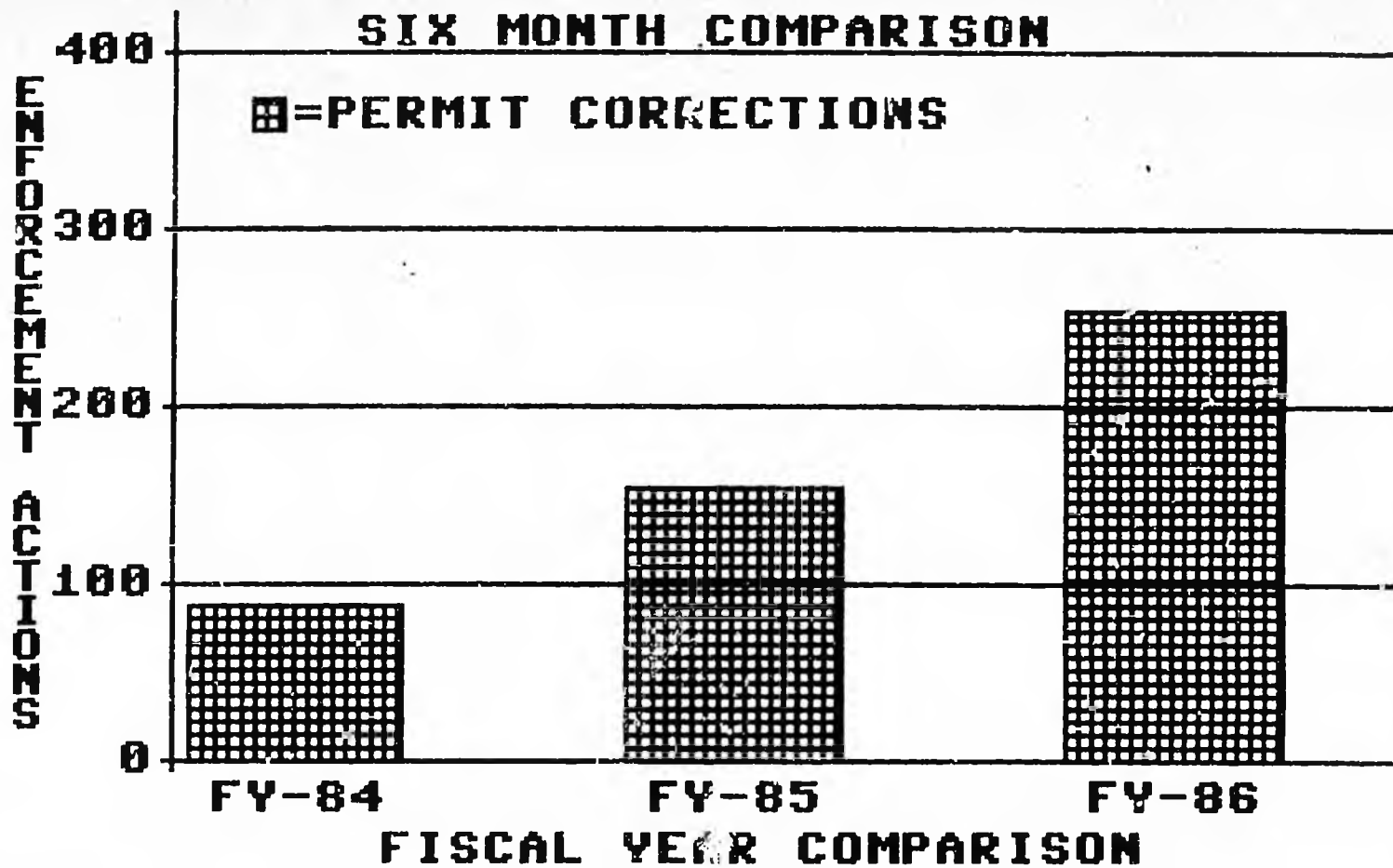
cc: Arthur H. Snowden, II, Administrative Director  
Susan Miller, Manager, Special Projects  
Acting Public Safety Commissioner William Nix  
Judge Glen C. Anderson  
Magistrate Skip Slater  
Magistrate Roy Williams  
Sandy Ganong, Anchorage Traffic Supervisor  
Joe Swanson, Division of Weights and Means,  
Department of Commerce and Economic Development

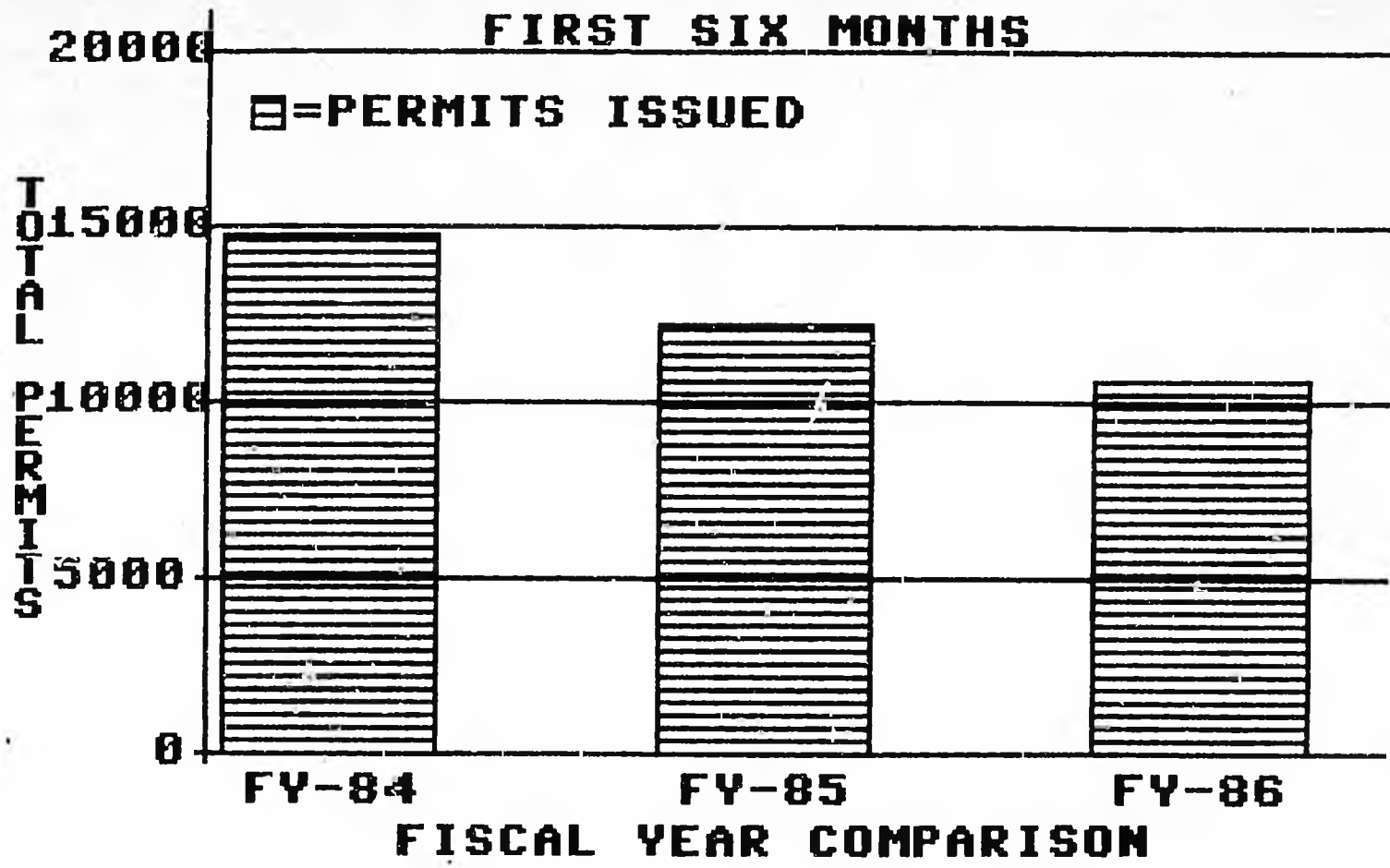
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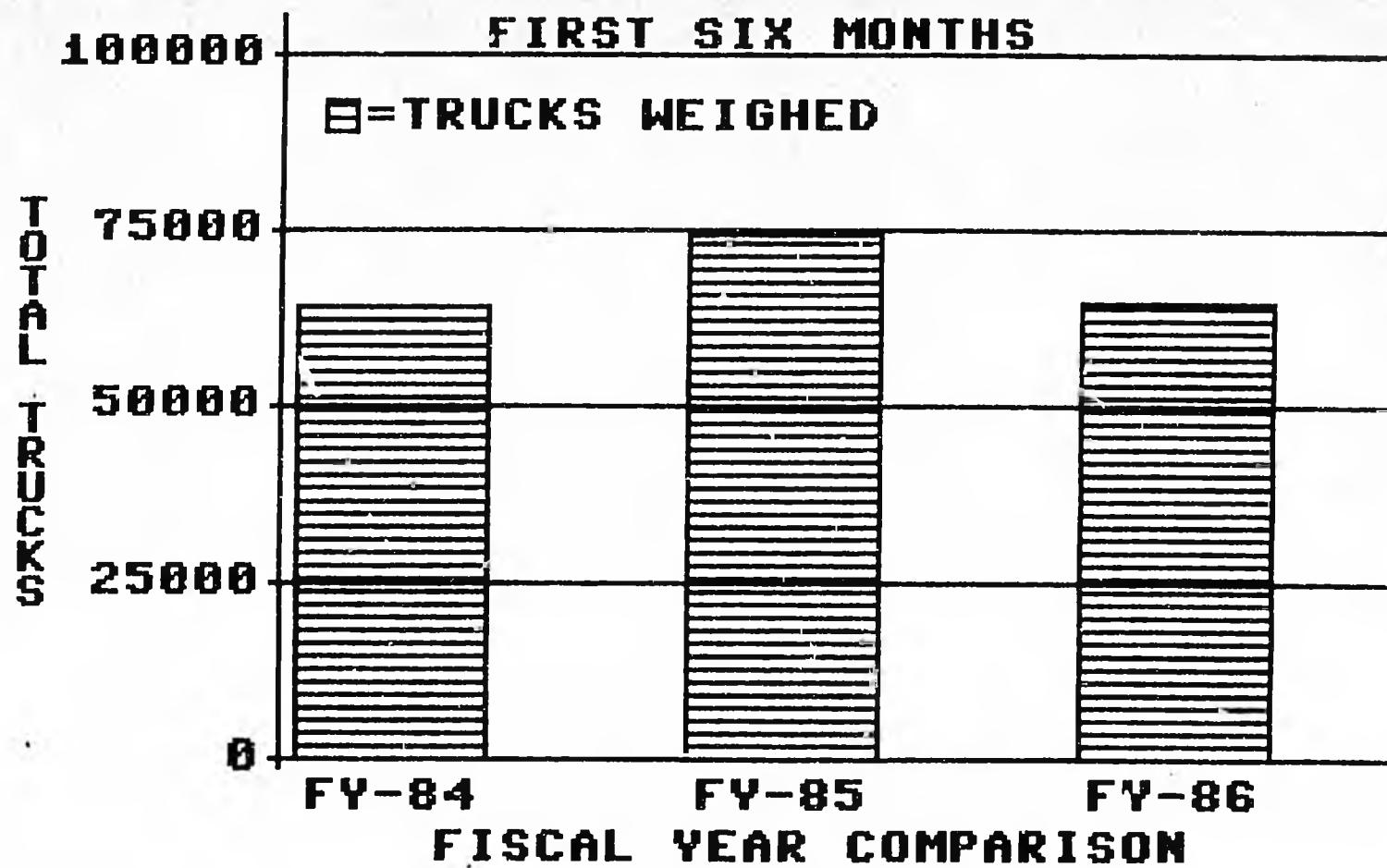












BILL NO: CSSB 146(L&C)

DATE: 4/14/87

TITLE: "An Act relating to weights and measures; and providing for an effective date."

CONTACT: James D. Vaden  
Deputy Commissioner  
465-4322

DEPARTMENT OF PUBLIC SAFETY

Provides authority for certain employees of the Department of Commerce and Economic Development, in addition to peace officers, to enforce specific commercial vehicle regulations; establishes procedures, and provides an effective date.

This proposed legislation would provide authority for certain employees of the Department of Commerce and Economic Development to issue citations for size, weight, and load violations on vehicles, as well as violation of provisions of oversize and/or overweight permits.

This legislation corrects a deficiency in Title 19 and provides for penalties for violation of overweight and oversize vehicles as well as violation of permit limitation.

Sec. 45.75.131 may be redundant and may contradict AS 12.25.200.

The Department of Public Safety does not feel it should be placed in the position of determining who can be employed by another executive department. Nor should the Commissioner of the Department of Public Safety be in a position to determine the individuals in another executive agency authorized to enforce the statutory responsibilities of that agency.

Proposed Amendments:

AS 45.75.131 Change the Commissioner of Public Safety to the Commissioner of Commerce & Economic Development.

Add to Sec 45.75.131: (4) equipment violations detected at scale house operation.

Delete Sec. 45.75.131(b) through (g).

Change paragraph (4) to paragraph (b); add paragraph (c) which states a citation issued under this Section be in accordance with AS 12.25.200.

The Division of Alaska State Troopers opposes this legislation, however, would support with amendments.

*Arthur English*  
Arthur English  
Commissioner

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: CSSB 146 (L&C)

Publish Date: \_\_\_\_\_

REQUEST \_\_\_\_\_

Revision Date: \_\_\_\_\_

Agency Affected: Public Safety

Title: "An Act relating to weights and measures."

BRU: Alaska State Troopers

Sponsor: Transportation Committee

Components: Detachments & CIB

Requestor: Senate Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING:: (Thousands of Dollars)

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan  
Division: Alaska State Troopers

Phone: 269-5691

Date: 4/15/87

Approved by Commissioner: \_\_\_\_\_  
Agency: Public Safety

Date: 4/15/87

Distribution (by preparer):

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

page \_\_\_\_ of \_\_\_\_

JMA  
4/16/87

*[Handwritten signature]*