

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
5775 HOUSE JUDICIARY

# ALASKA RAILROAD CORPORATION



107500 • Anchorage, Alaska 99510-7500

## News Release

No. 79

April 4, 1989

For Immediate Release

Contact: Vivian Hamilton (907) 265-2675

or: Ombudsman's Office (800) 478-4970

### Ombudsman To Review Railroad/Highway Crossing Issues

The Alaska Railroad Corporation has asked the state ombudsman to review its railroad/highway crossing permit process in an attempt to resolve differences between the railroad and local communities regarding crossing liability and crossing maintenance costs.

"The ombudsman is an impartial third party who can review both sides of the issue objectively and suggest solutions that might be acceptable to all of us," explained Frank Turpin, railroad president and CEO.

Recently several Railbelt communities have expressed concerns about accepting liability for railroad/highway crossings in their communities and about what they consider high maintenance costs for crossings and automatic crossing signals.

It is the railroad's position that all costs relating to highway crossings on the railroad right-of-way should be the responsibility of the road owner.

There are 359 crossings along the Alaska Railroad, the majority of which are public crossings permitted to local, state or federal

(more)

## ADD ONE--Railroad Seeks Ombudsman Review

governmental agencies. The railroad's crossing permits require road owners to have liability insurance or be self-insured to cover crossings. Some communities have argued that crossing liability should be the responsibility of the railroad.

Of the 359 crossings, 76 have signals which are inspected weekly by a specialized maintenance team. The cost for signal maintenance is billed to the signal owners. In addition, any maintenance required for crossing upkeep is charged to the road owner. Some communities have argued that the cost of maintenance for crossings and automatic signals should be borne by the railroad.

The Alaska Railroad is a state-owned corporation which is operated as a for-profit business without state funding. In 1988 the railroad reported \$58 million in revenue and a net income of \$5.8 million, which is being reinvested in capital improvements during 1989.

###

### RAILROAD/HIGHWAY CROSSING PERMITS IN ALASKA

	Number of <u>Crossings</u>	Number with <u>Signals</u>
DOT/PF	106	48
Anchorage	55	16
Fairbanks	20	0
Other Local Gov't	33	3
Alaska Railroad	27	2
Military	19	5
University of Alaska Fairbanks	2	0
Other State/Federal Agencies	9	1
Private/Commercial	48	1
Unpermitted	<u>40</u>	<u>0</u>
TOTAL	359	76

4/6/89  
FBKs DNM

## Ombudsman to review ARR crossings policy

AP and News-Miner reports

ANCHORAGE—A flap between the Alaska Railroad and some communities over the issue of railroad crossing upkeep and liability is headed for review by the state Ombudsman.

Duncan Fowler said his office is looking into the flap at the request of the railroad. He will review the railroad's current crossing permit policy, which requires the owner of roads crossing railroad tracks to be responsible for the costs and to have liability insurance or assume self-insurance.

The community of North Pole initiated complaints, and Wasilla joined in questioning the current policy requiring communities, agencies and entities to take responsibility for some of the 359 crossings in the state.

In North Pole, signals have been proposed for the crossing at Eighth Avenue. An ARR spokeswoman said the railroad's position is the city should maintain the signals because those would be installed to benefit community residents and visitors.

The railroad estimates it costs \$3,200 a year for average maintenance on crossings without signals.

There are 76 crossings with signals; the railroad provides weekly maintenance on those, and bills the permit-holder.

According to ARR information, 106 of the 359 crossings are the responsibility of the Alaska Department of Transportation and Public Facilities.

Twenty crossings are assigned to Fairbanks and 33 to local governments other than Anchorage and Fairbanks. Another 19 are assigned to the military, two to the University of Alaska Fairbanks, nine to other agencies and 88 are either on private or commercial properties or are unpermitted.

"The ombudsman is an impartial third party who can review both sides of the issue objectively and suggest solutions that might be acceptable to all of us," Frank Turpin, ARR chief executive officer and president, said in a news release.

"We're going to open up an ombudsman-initiated complaint and take a look at the fairness of the railroad policy regarding crossings," Fowler said. That will include examining policies of other railroads, he added.

The railroad is a state-owned corporation operated as a business.

2/2/89  
ANC. DAILY NEWS  
MARCH 2ND

# Towns fight rail crossing fees

By CHARLES WOHLFORTH  
Daily News reporter

WASILLA — The Alaska Railroad has made enemies here and in North Pole with fees it charges cities to cross the tracks.

North Pole Mayor Carleta Lewis said she will allow the railroad to cut her town in half before she agrees to take responsibility for the level crossings that separate a school, a refinery and other buildings from the rest of North Pole.

"We are at war with them," she said.

A railroad official said it has no intention of closing North Pole's crossings.

Wasilla Mayor John Stein said his city is spending about 20 percent of its annual road budget on three rail crossings. He is trying to organize other towns around the cause of getting rid of the fees.

Last year Wasilla paid the railroad \$18,000 to maintain the signals on the crossings. In addition to the \$200 each it pays annually for permits for the crossings, the city last month paid \$398 each

for inspections of each of the signals, said city deputy administrator Bob Harris.

The railroad has a full-time signal inspector in Wasilla. He inspects each signal each week and does maintenance work. The railroad bills the city — after adding a 175 percent overhead charge.

The city also has received the marked-up bills for having the inspector manually operate one of the crossing signals to protect railroad workers doing other work, Stein said.

The railroad and Alaska Department of Transportation decided recently that a signal was needed at a crossing in North Pole, and acquired state and federal funds to pay for putting it up. But when the city refused to pay the same maintenance fees as Wasilla, the project was shelved.

Currently, North Pole's city roads cross the railroad tracks without signals. Although they require relatively little maintenance, Lewis said, the city doesn't want to pay for them or be legally

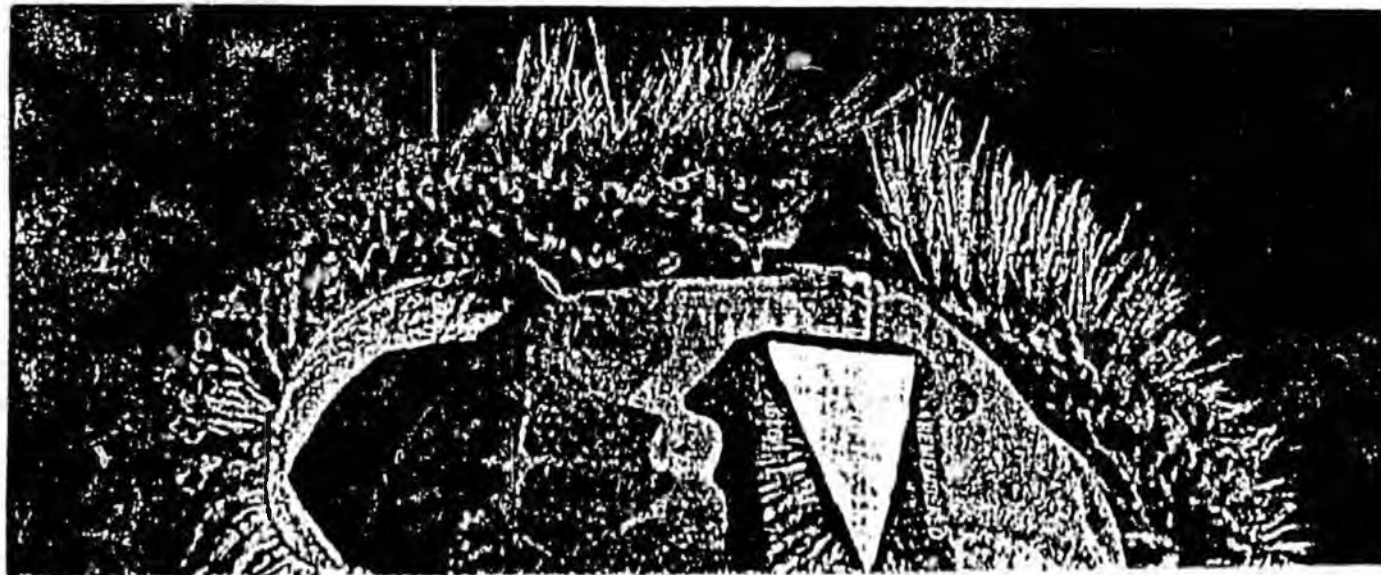
liable for them.

"We will not be responsible for all this that the railroad wants us to take responsibility for," she said. "Verbally, I've been told they'll shut us down and won't allow us to use the crossings anymore."

Danny Lommel, manager of the railroad's telecommunications and signaling division, said the railroad does not plan to close the crossings. Such a move would be bad public relations and, be-

Please see Page E-3, RAILROAD

## WHAT'S IN A NAME? TRY A LAWSUIT



## Fur Rondy files suit over pins

By MARILEE ENGE  
Daily News reporter

The organization that puts on the Fur Rendezvous has sued an Anchorage man for marketing a lapel button bearing the name of the winter carnival, which is registered under federal trademark laws.

Greater Anchorage, Inc., claims that Vern Nowell's pins are pirate products, illegally using the trademark name



ower  
ines uphill battle

ghter and a scrappy  
l just the man to take  
ne Defense Depart-  
the spokesman said.  
ater said the White  
s in full accord with  
Republican Leader  
le's plans to delay a  
on Tower.

think everybody  
ave a chance to regis-  
r vote. And you never  
you might change  
at the last minute,"  
er said. But, when  
the White House could  
ie Democrat who had  
n over, he said: "Not

r, meanwhile, at-  
meeting this morning  
hite House with Bush,  
William Crowe, chair-  
the Joint Chiefs of  
rd acting Defense Se-  
William H. Taft IV.  
ater said the meeting  
Pentagon manage-  
ns and an ongoing  
of strategic issues, not  
ally with Tower's con-  
n battle.

developments came  
a backdrop of the Re-  
s' determination to  
lengthy and vigorous  
debate over Tower,  
e man at the center of  
m said he has no inten-  
iving up.

er surrender or re-  
the former Texas sen-  
J at his press club ap-  
e Wednesday, quoting  
mander of the Texas  
t the Alamo.

5/12/89

# Communities rail against higher crossing fees

By BILL KELDER  
Times Valley Bureau

WASILLA — Maybe it's a reflection of the state's economy and tight money, but city officials and others from Seward to Fairbanks are upset with the Alaska Railroad Corp.

Some, like Kenai Peninsula Borough Mayor Don Gilman, are only mildly concerned, while others, like North Pole Mayor Carleta Lewis are so angry they will deal with the railroad only through attorneys.

The uproar was sparked when the railroad announced it was increasing its crossing maintenance fees and asked local governments and private businesses assume sole insurance liability for the crossings.

Railroad officials say they are merely following both the law and the corporation's policies. They say the communities and individuals asked for easements across rail lines and therefore are responsible for covering the cost of maintenance.

But North Pole's Lewis sees it differently. "We never had to pay those costs when the railroad was owned by the federal government," she said. "We're a small city with a total budget of \$1.5 million, we can't afford these increases."

Lewis said she had signed a 20-year contract sent by the railroad but later was informed by the city attorney that she couldn't financially tie the hands of the city council on future expenses.

"We're fighting it, but the railroad people have been intransigent, they've been rude and arrogant," Lewis said.

She said the city had refused to pay increased maintenance fees for two crossings in her community and the railroad responded by closing the crossings, effectively shutting two city streets.

The railroad wants North Pole to pay \$3,000 a year for maintenance on one signal crossing, Lewis said.

"That's just for having their people check the crossing once a week," she said. "If any maintenance actually has to be done, they want to bill us extra for it, but they won't even provide us with a maintenance schedule or estimate of anticipated costs."

"How can this city budget for those expenses when we don't have any idea what

they will be?"

The city also asked if its crews could check and maintain the crossings, but the railroad refused, Lewis said.

She said the railroad was threatening to close other crossings if the city didn't pick up the maintenance tab and assume sole insurance liability for the crossings.

If the dispute is not worked out, it could pose safety and economic problems.

"We have another crossing here and if they close that, we won't have any way to get firetrucks or other emergency vehicles to North Pole High School or to the Mapco and Petrostar refineries on that road," Lewis said. "In my opinion, if they shut us off, they will be contributing to serious damage in this community."

"I don't see how they can build the crossings, maintain the crossings and then hold this city solely responsible for anything that goes wrong. It just isn't right," Lewis said.

The railroad's chief engineer, Oble Weeks, said things had changed since the state bought the railroad from the federal government.

"For one thing, there's more signalized crossings, which are more expensive to maintain. Another factor is that local governments have gotten more involved in requesting crossings across railroad easements," Weeks said.

Weeks and Vivian Hamilton, the railroad's director of corporate communications, said they were surprised to hear that officials have been calling the corporation's approach arrogant or rude.

"We're willing to sit down and work with everyone who got a notice," Hamilton said.

According to another railroad official, there are more than 80 crossings statewide and more than half are on state land. In those cases, the state Department of Transportation and Public Facilities pays for maintenance, said Dan Lommel, telecommunications and signaling manager.

"There's some real problems here with the railroad's new policy," said Robert Weaver, Fairbanks City's right-of-way agent. "We have taken exception to their new policies and are negotiating."

"If our negotiations fail, I expect them to

try to twist our arms to force us to comply," he said. Weaver said the arm-twisting probably would consist of threats to close crossings in Fairbanks as the railroad has done in North Pole.

"With a railroad yard right in the middle of the city and lots of crossings, we're talking about millions of dollars in potential increases and liabilities," Weaver said. "We take exception to the fact that they claim no liability for the crossings they build and maintain."

"Potentially, we're talking about the entire health and welfare of this city."

At Healy, Usibelli Coal Mine Inc. officials also are having problems with the new policy, according to company controller Richard Hundrup. The mine ships coal via rail north to Fairbanks.

"Our position is that the railroad has historically picked up maintenance costs and we shouldn't have to pay," he said.

Hundrup said the railroad was upping Usibelli's maintenance fees for one crossing from \$20 a year to \$400 a year.

"That's not a big problem for us, other than the fact that we feel it's their responsibility, not ours," Hundrup said. "But there are some people in this area who live along the Railbelt. They aren't a business, they're just people who live here and the railroad is telling some of them who have traditionally paid maintenance fees of \$50 to \$150 a year that they (now) will have to pay \$650 a year or the railroad will close the crossing near their property. For some of those folks, the crossing is the only way to get to their property," Hundrup said.

Hundrup said the 20-year contract the railroad sent Usibelli would require the mine to assume all liability payments and to indemnify the railroad corporation on each of the company's insurance policies.

"We believe they have some liability for the crossings and consider the contract onerous. We have at least a dozen insurance policies and to do what they're asking would cost quite a bit," Hundrup said.

Kenai Peninsula Borough Mayor Don Gilman said his borough wasn't having too many problems with the new fees because it didn't have many crossings.

up festival, according to  
unk, McShea. The suit claims  
ince Nowell is unfairly compet-  
Fur ing, creating confusion with  
ules Rondy goods and trading on  
said the "fame and goodwill" of  
how Fur Rendezvous.

"If he would do that, any-  
well one would do that and we'd  
Fur have all kind of sub-par  
t a products all over the place.  
in a We lose the money we would  
vell gain by selling memberships  
fu- for \$100," said McShea. "If  
try we want to keep our rights,  
we have to police it."

ATU workers, city and union officials  
said.

The injunction extends his Feb. 17  
temporary restraining order on the lay-  
offs. However, the judge refused to grant  
the union's request that the city be  
required to rehire the 10 ATU employees  
laid off before Feb. 17.

The order will stand until an arbitrator  
issues a ruling in the labor dispute  
between the city and the IBEW. Arbitrator  
Howell Lankford, of Milwaukie, Ore.,  
is scheduled to begin hearing the case  
March 10, city and union officials said.

The ruling "freezes us in our tracks,"

time convincing the pink administration  
that employees have legal rights that are  
enforceable," she said.

In his decision, Gonzalez noted the  
employees and their families faced the  
loss of income and medical insurance. "In  
weighing the harm that will be suffered  
by the employees targeted for layoff ...  
against the harm that will be imposed  
upon the Municipality of Anchorage ...  
the hardships tip decidedly toward the  
employees," he wrote.

The labor dispute reaches back to  
November and December, when the city's  
plans to lay off 33 ATU employees be-  
came known.

istration.

The delegates had  
stuck on the Alaska si  
the Bering Sea for two  
days after a week of  
talks, cultural excha  
and folk and rock r  
performances. The Aer  
jet assigned to pick the  
was first stuck in Anad  
high winds and limited  
bility Monday.

Tuesday, the plane r  
it to Anchorage, left  
the visitors, then came  
after finding the Sibe  
town fogged in again.

## es in question

a state lawsuit would be  
"virtually certain if, as the  
administration proposes, the  
state's share of ANWR re-  
ceipts is zero."

The report also ques-  
tioned the administration's  
assumption that it would re-  
ceive \$1 billion next year  
from money placed in es-  
crow pending the outcome of  
a state lawsuit over proceeds  
from offshore oil develop-  
ment near the arctic refuge.

The state maintains that  
the lands — and thus the  
revenues — belong to the  
state. The matter is before a  
special master appointed by  
the Supreme Court.

The report said there is  
"no firm basis" for assum-  
ing that the Supreme Court  
will decide the case next  
year, let alone that the deci-  
sion will be in the federal  
government's favor.

## RAILROAD: Towns go to battle over rail crossing fees

Continued from Page E-1

sides, the railroad already  
has a signed document from  
North Pole taking responsi-  
bility for them, he said.

Stein met with railroad  
President Frank Turpin  
Monday, and Wednesday a  
team of railroad officials  
came to Wasilla to look at a  
crossing without a signal  
they are considering closing.  
The railroad has agreed to  
give the city standardized,  
predictable billings, but will  
not take over any of the  
costs, said spokeswoman  
Vivian Hamilton.

She said the Alaska Rail-  
road is like railroads in 17  
other states in not accepting  
any of the costs of crossings.

"Hey, we were here  
first," she said. "We'd rather  
not have any crossings."

Hamilton said the rail-  
road pays for maintenance

on signals at crossings the  
railroad built across high-  
way rights-of-way. At all the  
other crossings, the railroad  
was there first — it was  
built in 1914 — and the road  
crossed its right-of-way.

She said the weekly in-  
spections are based on indus-  
try standards and the 175  
percent overhead charge is  
set by Department of Trans-  
portation auditors who use a  
federal formula.

But the overhead charge  
has risen steadily since the  
state bought the railroad  
from the federal government  
in 1985. In that year, it was  
93 percent.

Lommel said the increas-  
ing overhead is due to the  
railroad's need to replace  
equipment that previously  
the federal government pro-  
vided.

But Lewis thinks differ-  
ently.

"They're making a profit,  
and I guess they're making  
it off people like us," she  
said.

Harris, the deputy city  
administrator, has become a  
railroad crossing activist,  
and is coordinating with oth-  
er towns and giving them  
railroad crossing informa-  
tion. He said he recently  
advised the city of Houston  
to turn down an offered  
crossing signal. Fairbanks  
refused to sign its permits  
the way they were written,  
he and Lewis said.

But Wasilla has more in-  
terest in the issue than any  
other town. Other than An-  
chorage, which has 14 cross-  
ings, Wasilla is the only lo-  
cal government in the state  
that owns a crossing with a  
signal.

The Department of Trans-  
portation pays for crossings  
on state roads, including

those inside towns. It  
the bill for 47 of the  
road's 74 crossings with  
nals, Hamilton said.

Stein said Wasilla's c  
are unfair.

"The railroad is more  
burden to this commu-  
than a direct benefit,"  
said. "It's a great ben-  
statewide, but all we hav-  
do with it is get acros-  
... Here, they roar thro-  
town at 50 miles per h  
and that's all we see  
them."

He said good public p  
would place more of the  
of the railroad on its u-

But from the railro  
point of view, the cross-  
aren't a cost of the rail-  
— they are a cost of pe-  
who want to cross  
tracks.

"They're not to pro-  
the trains, they're to pro-  
the public," Lommel sai



WINTER SALE



Official Business

# Alaska State Legislature

P.O. BOX V  
State Capitol  
Juneau, Alaska 9981

December 2, 1987

James Campbell  
Chairman  
Alaska Railroad Board of Directors  
P.O. Box 107500  
Anchorage, AK 99501

Dear Mr. Campbell:

On July 13, 1987 the Alaska Railroad Corporation, (ARRC), sent out a letter to crossing permit holders regarding their responsibility to maintain adequate site distances on their crossings. This letter was signed by Larry Houle.

We have seen a crossing permit contract that does not mention the requirement of the permit holder to keep sight distances clear of obstruction, such as brush and trees. Therefore, the permit holder did not know they would be responsible for brush cutting near the crossing. We have also reviewed the "Alaska Policy on Railroad/Highway Crossings" which was adopted by the ARRC Board of Directors on November 20, 1986. The only reference to sight triangles in this policy is under the new crossing section, it does not mention existing crossings.

We have been informed that ARRC will be sending out new contracts that includes sight triangle responsibilities for permit holders. In essence ARRC has unilaterally decided that this responsibility will be held by the permit holder without any input from the permit holder. Likewise, ARRC also makes decisions involving maintenance, upgrading and the closing of railroad crossings with minimal or no input from railbelt communities. Many railbelt communities feel they are continually given "take it or leave it" proposals by ARRC.

We strongly believe ARRC should make every effort to have better communication with railbelt communities and involve them in decisions which directly effect them. ARRC has taken a step in this direction by forming a Community Briefing Council. It is our hope that this council not only disseminates information to the communities for ARRC, but will also provide railbelt community input to the ARRC Board of Directors.

We would greatly appreciate the Board taking the time to discuss better communications with railbelt communities.

  
Senator Jack Coghill

Sincerely,  
  
Representative Mike Miller

SEN COGILL & REP MILLER - A R R 12/2/87

PER. MIKE MILLER

PO BOX 5709  
NORTH POLE, ALASKA  
99705



TOP OF THE WORLD  
PHONE 907 486 2201  
AT YOUR SERVICE

December 14, 1987

Honorable Juanita Helms  
Mayor  
Fairbanks North Star Borough  
P.O. Box 1267  
Fairbanks, Alaska 99707

Dear Juanita:

I am writing to you as a member of the Alaska Railroad Community Briefing Council, so that the City of North Pole's concerns can be formally considered by the Council. I believe that there are several communities that have or will have the problems North Pole is experiencing.

The Alaska Railroad has North Pole "Between a rock and a hard place." The City of North Pole has within its boundaries several street crossings of the Nielson Spur Line. The Alaska Railroad has required the City to execute a Contract with them and pay an annual fee in order to keep them open.

~~The Railroad is stating that the City of North Pole must bear the cost of maintaining these crossings while the railroad keeps the right to decide what work is to be done and to contract it out at our expense, without our approval. It is virtually impossible to budget for these costs since the community has no control over the decision making process, or indeed any input into it. This situation is made even more offensive by the Railroad's broad interpretation of the Contract. They now insist that brush removal along sight distances which they establish is included in the Contract. However, before we commence with our brush cutting we are to notify the Railroad so they can send out their Flagmen (at \$45.00 per hour?). As you can see, the costs are escalating, and we do not have a choice in the matter, as the Railroad can close our crossings if we do not comply!~~

Mayor Lewis to Mayor Helms 12/14/87

Mayor Helms,  
ARR  
12/14/87


The City received a letter from DOT a few days ago advising us that they are going to install lights and a gate at one of our crossings. We have been told that we will be responsible for all maintenance costs, and electricity. The annual inspection costs for the railroad representatives to check out this one facility are supposed to be in the neighborhood of \$3,000.00.

Juanita, as you know, Revenue Sharing and other sources of municipal revenue have been declining and will most likely continue to decline in the coming years. Communities are having enough economic problems providing basic services without adding expenses at this time. These unknown costs are a real factor in our budget. Meanwhile, the Alaska Railroad is making a profit, and I can see why! The communities through which the Railroad passes are being forced to shoulder the Railroad's financial responsibilities.

In all fairness, there should be a common ground where we can work out a compromise. We will pay our fair share, but we would also like to have input and a choice in the issue. Perhaps the yearly fee can be adjusted to cover the City's cost, or the Railroad could be responsible for some portion of them. Shared, the burden would be less damaging economically and more tolerable philosophically.

I am requesting a 10 year maintenance cost projection. From Obbie Weeks in an effort to get a handle on the budgetary impact of Railroad on our community, but the fact remains that we may not be able to afford the Alaska Railroad in our town.

Sincerely,



Carleta Lewis,  
Mayor

# ALASKA RAILROAD CORPORATION



P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

January 5, 1988

JAN - 8 1988

Senator John B. "Jack" Coghill  
Representative Mike Miller  
Alaska State Legislature  
P.O. Box V (MS-3100)  
Juneau, Alaska 99811

Gentlemen:

Thank you for your recent letter regarding Alaska Railroad correspondence pertaining to the maintenance of crossings and sight distances. First, I wish to apologize for not being able to respond sooner.

You are correct that the old permits issued prior to the transfer of the Railroad to the State are vague when it comes to required maintenance. Without knowing the specific permit that your letter refers to it is hard for me to address language that may be in that contract. However, typical Road Crossing Permits require the permittee to be responsible for operation and maintenance of crossings including the costs. Additionally, the permittee is required to comply with the Standard Specifications for Work on Railroad Property and any revisions to those standards.

The goal of any transportation agency, which includes providers of roads and related railroad crossings, is to provide for the safe, efficient, and economical movement of people, goods, and services. In order to accomplish the SAFE portion of this goal, it is necessary for permittees to periodically inspect and maintain their crossings according to established standards. I think that we all understand that standards for safety change over time.

Given the vagueness of the language in the permits, the introduction of concepts such as sight triangles is an attempt to better communicate with our permittees by providing quantifiable guidelines. The ARRC first notified permittees of sight triangle clearances in a letter dated August 12, 1986 which more fully explained the concept. The letter sent on July 13, 1987 was intended to be a reminder of the need to keep adequate sight distances cleared and quite frankly an effort towards better communications.


ARR TO SEN. COGHILL & REP. MILLER 1/5/88

As you noted, the Alaska Policy on Railroad/Highway Crossings is not specific with regard to existing crossings and sight triangle maintenance. However, it was the understanding of the ARRC Engineering staff who participated in the development of the policy that the sight triangle requirements were to apply as a guideline for existing as well as new crossings. Therefore, our engineering staff is preparing an amendment to the policy to make the language specific. That language should come before the board for approval soon.

Even though it is the ARRC's position that the Corporation does have the unilateral right to establish maintenance standards and requirements for road crossings that will insure safety, I believe as you have suggested that we should get public input on this as well as other subjects and that the recently established Community Briefing Council can provide a forum for this.

Additionally, one of the basic concepts of the Crossing Policy is that community input is needed regarding the upgrading or closing of crossings. I have been informed that at least twelve crossings were looked at in 1987 by diagnostic teams. At each of these reviews the local governments and boroughs have been represented.

Sincerely,

  
James O. Campbell Chairman  
Board of Directors

cc: ARRC Board of Directors  
F. G. Turpin, President and CEO

Thanks for you Christmas  
card. See you in June  
JOC

# ★ Fairbanks North Star Borough

809 Pioneer Road

P.O. Box 1267

Fairbanks, Alaska 99707

907 452-4761

May 4, 1988

Francis C. (Obie) Weeks  
Chief Engineer  
Alaska Railroad Corporation  
P.O. Box 7-2111  
Anchorage, AK 99510-7069

Dear Mr. Weeks:

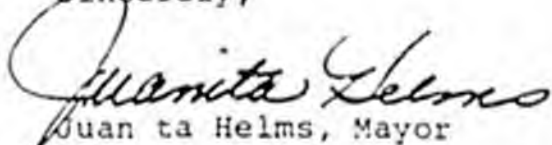
We appreciated the opportunity to participate in the workshop last week on proposed changes to the Alaska Policy on Railroad/Highway Crossings. Since revisions are being entertained at this time, it seems appropriate to address several ongoing concerns.

In September of 1986 the Borough reviewed the draft Alaska Policy on Railroad/Highway Crossings. The comments we made at that time are included as Attachment 1. A review of the policy that the railroad subsequently adopted shows that none of our comments were addressed. The organization of the policy was changed, but the working of the body of the policy remains nearly identical to the previous version.

The comments contained in the previous letter are still of concern to the Borough. Attachment 2 details some of the prior issues and raises new concerns that have surfaced in subsequent months.

We hope that these comments will be considered in making changes to the Alaska Policy on Railroad/Highway Crossings.

Sincerely,

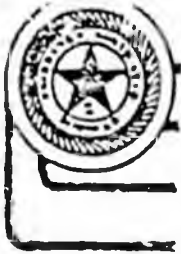


Juanita Helms, Mayor  
Fairbanks North Star Borough

Attachments

JH/TB/bjs

MAYOR HELMS TO A.R.R. 5/4/88



**Fairbanks  
North  
Star  
Borough**

ATTACHMENT 1

**COPY**

Mayor: Juanita Helms

September 19, 1986

Mr. John Simpson, Director  
Standards and Technical Services  
Alaska Dept. of Transportation and  
Public Facilities  
3132 Channel Drive  
Juneau, Alaska 99801

Dear Mr. Simpson:

The Fairbanks North Star Borough has reviewed the Draft Executive Summary describing Alaska Railroad Crossing (ARRC) Policy. We have the following comments:

Section 2.2. Current permits make the road agency responsible for construction and maintenance costs associated with crossings, and makes the road agency responsible for all claims concerning the crossing. Concerning this policy; 1) who actually does the construction and maintenance of the crossing?, and 2) if it is the Railroad, how do they bill the road agency?

Page 2. When the APV was applied to the state's crossings, the Task Force found that the crossings could be upgraded with available state and federal funds. Were local crossings considered?

Section 2.3.5. The program "Operation Lifesaver" is not familiar to all readers and therefore, a short description should be included within this section of text.

Section 2.4.1. The railroad's policy of not permitting new crossings without the concurrence of the diagnostic team is concerning. While the Borough recognizes the need for maintaining safe lines, we are concerned that the diagnostic team consists of ARRC and ADOT/PF officials with the local agency being "invited to attend". Currently, much of the land use planning in

Mr. John Simpson  
September 19, 1986  
Page 3

realities in our Borough which the ARRC and Task Force must recognize and deal with accordingly before such a policy can be implemented.

Thank you for the opportunity to review and comment on this matter.

Sincerely,

Juanita Helms, Mayor  
Fairbanks North Star Borough

JH:pe

## ATTACHMENT 2

### GENERAL COMMENTS

#### Authority

The policy makes no reference to the source of authority by which the ARR and DOT&PF developed the "Alaska Policy on Railroad/Highway Crossings".

#### Procedures

There is no reference to a policy of appeal rights nor is there any specified avenue for relief from the administrative decisions of the task force.

#### Liability

Although the railroad would physically do all of the maintenance of crossings, the policy implies that liabilities due to improper maintenance are the responsibility of the permittee. Expecting the permittee to incur a liability for something that they have no control over, is unreasonable.

#### Costs

Permittees are supposed to agree to pay all construction and maintenance costs for crossings, yet there are no cost figures included with the permit. This is essentially asking the permittee to sign a blank check, and it makes it impossible to budget for the expense.

In locations where a road right-of-way supercedes the railroad right-of-way, all crossing expenses should be the responsibility of the railroad.

#### Jurisdiction

The policy does nothing to address how a government entity such as FNSB, with no road powers, can comply with the recommendations. In areas outside of the cities of North Pole and Fairbanks, that are not in service areas, we have no road authority. This power can only be designated by a vote of residents in the area. Until this occurs, we could not expend money for a crossing improvement.

#### Makeup of Diagnostic Team

The only required members of the diagnostic team are ARRC and DOT&PF. Policy 4.3.2 states,

Diagnostic teams should include as a minimum representative of the ARRC and the DOT&PF Region. Where appropriate representatives of the following should be informed and invited to participate in any on-site evaluation leading to an improvement decision:

- a. The FNSB;
- b. The Agency maintaining the road, if not DOT&PF;
- c. The Borough;

This wording provides nothing to ensure that the permitting agency will have any say in the recommendations of the diagnostic team. Policy 4.5.4. requires diagnostic team evaluation before any new crossing is approved. This could result in all future crossing locations being determined by the ARR and DOT&PF. As the land use regulatory agency for the Borough, we find this unacceptable.

So far the ARR and DOT&PF have been very cooperative in having the Borough participate in this process. However, we request that the permitting agency be made a regular member of the diagnostic team.

SPECIFIC COMMENTS

4.5.4.6 This policy states that the dedicated road right-of-way for public crossings must include dedicated clear sight triangles for maximum design highway and train speeds. In some cases this would require right-of-way acquisition. Would the permittee be responsible for this process and the associated costs?

New crossings

4.6 The heading for 4.6 should be changed to accurately reflect the content of the recommendations "Public vs. Private Crossing Criteria". We recommend deleting 4.6.1.1 with regard to the number of parcels as defining the reclassification of "truly 'private' crossings" since three or more parcel owners may indeed wish to have a restricted crossing.

ARR to Review by host

4.6.1 With regard to 4.6.1(3), we strongly urge the insertion of the word "public" and recommend the sentence to read: "The roadway is designated as a public road by the governmental authority responsible for planning and/or zoning..."

Special education buses in the F&SB presently use private roads to transport students. In some instances, regular school buses are also allowed to travel on private easements. This does not make them public roads, according to F&SB definition.

3  
4.7.1(4) It seems unreasonable that the permittee should be required to post a sign stating "ARRC Property - Proceed at Your Own Risk". This should be the ARR's responsibility.

R.R. is responsible

Sight Triangle  
Train Speed / Traffic Speed  
→ P.L.O.  
private land owner

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

August 18, 1988

The Honorable Carleta Lewis  
Mayor, City of North Pole  
Post Office Box 55109  
North Pole, AK 99705

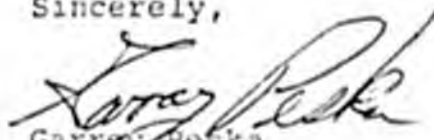
Dear Mayor Lewis:

On August 16, the Governor and I met with Mr. Frank Chapados who, as you know, is a member of the Alaska Railroad Board of Directors.

I told Mr. Chapados that the Railroad appears headed for a confrontation with the City of North Pole and with the Fairbanks North Star Borough over the decision to require municipal maintenance of crossing areas.

I recommend that you contact Mr. Chapados in his role as acting Board Chairman and express your views on this matter. Mr. Chapados expressed a willingness to ask the Board to review the crossing maintenance policy.

Sincerely,

  
Garret Peska  
Chief of Staff

cc: Governor Cowper  
Mayor Helms  
Comm. Tony Smith  
Comm. Mark Hickey  
Frank Chapados

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

Dear Mayor Lewis

I have asked that Public Safety contact you regarding the problem with your city vehicles. I would expect that Gary Horvitz, the Deputy Commissioner would be in touch shortly. Also I have talked with Mark Hickey, Commissioner of DOT/AF to talk about the Railroad Crossing Problem. We have to sit down and have a more in depth conversation. I'll keep you informed.

Thank you for meeting with me. I look forward to seeing you again soon.

Sincerely  
Bob Evans

# Alaska State Legislature

Representative Mike W. Miller  
P.O. Box 55094  
North Pole, Alaska 99705



While in Juneau  
Pouch V  
Juneau, Alaska 99811  
(907) 465-4976

## House of Representatives

September 13, 1988

Mr. George Sullivan, Chairman  
Alaska Railroad Board  
of Directors  
P.O. Box 107500  
Anchorage, Alaska 99510

Dear George:

I understand the Alaska Railroad Board of Directors will meet this Thursday, September 15th, to discuss amendments to the Railroad Crossing Policy. I would like to request that you take a few moments of the Board's time to discuss a deadlock between the City of North Pole and the Railroad regarding improvements to the existing crossing at Eighth Avenue in North Pole.

The Department of Transportation and the Alaska Railroad have determined the crossing at Eighth Avenue should be upgraded to include warning lights and gates. Since federal funds are available for improvements of this nature, the project was made bid-ready but has subsequently been shelved due to questions of responsibility and liability.

The City of North Pole did not request or play a role in designing the crossing upgrade yet they are being pressured to assume the ongoing inspection, maintenance and liability expense associated with it. The yearly inspection fee alone is estimated to be in the neighborhood of \$3000 which does not include the expense of the yearly permit fee, electrical hookup, maintenance or liability. The Railroad would determine what yearly maintenance was needed, when it would be done and simply bill North Pole for reimbursement of their cost. This scenario is unacceptable for small municipalities and the City has therefore refused to sign the Automatic Crossing Signal Construction Agreement.

The circumstances of this particular crossing epitomize the feeling of frustration that many of the smaller railbelt municipalities are experiencing with regard to the railroad crossing issue. This issue has continued, unresolved, for at least two years and I feel the Board of Directors should take


REP MILLER TO A R R. BOARD 9/13/88

George Sullivan  
Page 2  
9/13/88

decisive action to reach an acceptable agreement with the municipal leaders. I believe the City of North Pole would be receptive to discussion of a flat yearly fee for individual crossings that they could budget for.

George, I look forward to hearing the Board's thoughts on this issue.

Sincerely,

  
Mike Miller  
Representative  
District 18

cc: Mr. Frank Turpin

# ALASKA RAILROAD CORPORATION



P.O. Box 107500 • Anchorage, Alaska 99510-7500

September 26, 1988

The Honorable Carleta Lewis  
Mayor  
City of North Pole  
P. O. Box 55109  
North Pole, AK 99705

Dear Carleta,

George Sullivan asked that I answer your letter of September 12, 1988, in which you requested that your protest to the Alaska Railroad Crossing Policy be officially entered into the record.

Judging from the objections expressed in your letter, I believe you have confused the crossing policy with the contract the Alaska Railroad has with the City of North Pole that permits your road crossings. The Alaska Policy on Railroad/Highway Crossings does not state that governmental entities bear the responsibility and liability for the crossings. The maintenance and liability responsibilities are set by the contract between the Alaska Railroad Corporation (ARRC) and the owner of the road (Permittee). In the case of the City of North Pole, this is Contract No. 5719. None of your comments indicated any problem with the Alaska Policy on Railroad/Highway Crossings, and the Board of Directors accordingly approved the policy as presented. However, considerable time was spent discussing your questions about maintenance.

There are five types of crossing maintenance:

1. Ongoing routine maintenance for signals. This is inspection of the signal once per week for deteriorated wiring, burned out lights, corrosion, or other indications of potential malfunction, plus lubrication of any moving parts. We follow industry standards recommended by the Association of American Railroads for this inspection plus some additional precautions dictated by the extreme Alaska weather. Technicians performing this very important work must be trained in electronic circuitry and possess detailed knowledge of Alaska Railroad signal equipment. Training and qualification for these technicians requires a minimum of four years of classroom and on-the-job experience. The average cost today to the railroad for this inspection, including labor, vehicle, travel time and normal maintenance parts, is \$62, or about \$3200 per crossing per year. We would be happy to bill the City a fixed annual fee for this service if it would help you with your budgeting.

MR. TURPIN TO MAYOR LEWIS 9/26/88

2. Trouble calls. Frequently, calls are made to the railroad to report an inoperative signal. Although many of these are false alarms and no malfunction is found, they all must be investigated immediately, and when necessary, repaired, whether it be after hours, a holiday, etc. As you can see, it is very difficult to estimate the frequency or cost of these repairs, but the entire railroad averages about \$10 per week or \$500 per year per crossing for these types of repairs. Again, we would be happy to bill you our average cost as a fixed annual fee.
3. Sight triangle maintenance. Sight triangle requirements are set by Appendix A of the revised crossing policy. This requires removal of any obstructions or control of brush in the sight triangle to afford the motorist a clear view of the track. The cost of this maintenance varies considerably with the location, but in every case it is much more cost effective for the Permittee to perform this work at the time it is performing routine road maintenance. When work is within 20 feet of the track centerline, the railroad requires a flagman to protect workers from train movements. We provide this service at no cost to the Permittee.
4. Periodic major repairs, such as replacing the crossing. This work is frequently initiated by the Permittee, but in any event, it is a joint decision. In most cases it can be projected at least two years in advance to allow time for budgeting.
5. Vandalism and accident damage. If local authorities are able to apprehend the party responsible for either vandalism or accident damage, the cost can usually be collected from them. Otherwise, this becomes the responsibility of the Permittee, which in the case of a municipality is also the party responsible for controlling vandalism and vehicles.

By signing its crossing permit (Contract No. 5719), the City of North Pole has accepted responsibility for all maintenance. Section 5 reads as follows: "During the term of this permit, the Permittee shall maintain the facility to industry standards, or to those standards or levels of maintenance prescribed by federal, state or municipal laws and regulations."

Your contract also is very clear and specific on crossing liability. As stated in Section 7, "Permittee shall assume complete liability for any and all claims resulting from the construction, reconstruction, maintenance, use and existence of the facility located on or over the permit area. This provision shall not be interpreted to mean that the Permittee shall assume liability for the negligence of railroad employees while acting within the scope of their employment." Since you have agreed to assume liability on the present crossing, I should think your liability risk would be considerably less with crossing signals. This may even be reflected in lower insurance premiums.

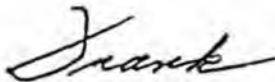
Regarding automatic crossing signals, Section 12 of your permit reads "If automatic crossing signal devices are required by either party, such signals shall be furnished, installed and maintained by Railroad at the expense of the Permittee."

Mayor Carleta Lewis  
September 26, 1988  
Page 3

Unfortunately, the signalization of the 8th Avenue crossing was being decided at the same time the Alaska Policy on Railroad/Highway Crossings was being developed. Consequently, the City of North Pole was not involved in the decision to proceed. To conform with the Policy, we believe a Diagnostic Team evaluation should be conducted. Obie Weeks will be in Fairbanks on Monday, October 17, 1988, and will be available to conduct the Diagnostic Team evaluation that afternoon. The Diagnostic Team members will include you, City of North Pole; Obie Weeks, ARRC; Ron Tanner, DOT/PF - Northern Region; and Todd Boyce, FNSB Transportation. Other participants to be included are Martin Gutoski, FNSB Platting; Bob Shefchik, FNSB School District; and Captain Shover, Alaska State Troopers. Correspondence will be mailed this week to the team members and other participants detailing the exact time and location.

I hope I have been able to clarify some of the confusion between our crossing policy and your contract to permit the crossing. I am very anxious to have full participation by the affected community in selecting crossings for signalizing. The Diagnostic Team meeting on October 17, 1988, should meet that need.

Sincerely,



F. G. Turpin  
President and Chief Executive Officer

cc: Steve Cowper, Governor, State of Alaska  
George Sullivan, Chairman of the Board, ARRC  
Juanita Holms, Mayor, Fairbanks North Star Borough  
Harry Gieseler, Mayor, City of Seward  
Obie Weeks, Chief Engineer, ARRC

# ALASKA RAILROAD CORPORATION



P.O. Box 107500 • Anchorage, Alaska 99510-7500

September 28, 1988

Representative Mike W. Miller  
P. O. Box 55094  
North Pole, Alaska 99705

Dear Mike,

Thank you for the copy of your letter to ARRC Board Chairman George Sullivan. Your letter was discussed at the board meeting on September 15, 1988, and George has asked me to comment on some of the points you raised.

The Department of Transportation and Public Facilities, by letter dated February 11, 1988, offered to have a Diagnostic Team review of the 8th Avenue crossing and include the City of North Pole in the decision-making process. The City refused their offer. A copy of this correspondence is attached.

Nevertheless, we have again offered to convene a Diagnostic Team to review the 8th Avenue crossing in my letter to Mayor Lewis of September 27, 1988. A copy of this letter is attached for your information.

Your comment about small communities being frustrated with the railroad attitude on road crossings is disturbing but, I suspect, very true. Two things have happened since the State purchased the railroad. One, in an attempt to reduce crossing accidents, we have been much more demanding that brush and other obstructions in the sight triangle be removed. Second, with the help of DOT&PF, we have been successful in obtaining more Federal funding for upgrading crossings with signalization. Both of these steps have contributed to a significant reduction in accidents for which we and the municipalities are both very thankful, but both have also contributed to much higher maintenance costs. Communities, eager to gain a crossing as a convenience to a subdivision or whatever, are quick to agree to provide all maintenance when they obtain the permit. Later, as budgets have grown tighter, they look on the maintenance costs as something the railroad should be paying even though their citizens benefit from the crossing and they have signed a contract with the railroad to permit the crossing which clearly states that they pay for all maintenance.

I hope this letter and my letter to Mayor Lewis will help clear some of the confusion on maintenance charges and liability for the 8th Avenue crossing. Please do not hesitate to give me a call if you would like to discuss any of these points.

Regards,

F. G. Turpin  
President & CEO

Attachments (2)

cc: Senator John B. Coghill

MR. TURPIN TO REP. MILLER 9/28/88

P.O. BOX 55109  
NORTH POLE, ALASKA  
99705



TOP OF THE WORLD  
PHONE: 907-488-2281  
AT YOUR SERVICE

September 12, 1988

STATE OF ALASKA  
Alaska Railroad Corporation  
PO Box 7-2111  
Anchorage, Alaska 99510-7019

ATTN: George Sullivan, Chairman

RE: Railroad Crossing Policy

Dear Mr. Sullivan and Alaska Railroad Boardmembers:

The City of North Pole protests the Alaska Railroad Crossing Policy as written and desires that this objection be officially entered into the record. The Railroad is stating that municipalities and other governmental entities must bear the cost of maintaining these crossings while the railroad retains the right to decide what work is to be done and to contract it at our expense. Therefore, it is impossible to budget for these costs since the community has no control or input into the decision making process.

The City of North Pole does not question the need for safety at these crossings. However, the municipality cannot accept responsibility for two reasons: availability of funds and potential liability. As you are aware, most governmental agencies are suffering severe cutbacks in funding. Secondly, the city insurance broker is extremely hesitant to accept crossing maintenance and the accompanying liability problem.

Regarding this issue of safety, federal and state dollars were appropriated for crossing signalization at 8th Avenue in North Pole. The state D.O.T. and the Alaska Railroad have "shelved" this project because the City will not accept the accompanying crossing maintenance agreement. It appears that the


MAYOR LEWIS TO GEORGE SULLIVAN 9/12/88

Page 2, Alaska Railroad Crossing Policy

issue of safety is not as important as coercing the City of North Pole to accept an unworkable crossing policy arrangement. At the present time it appears the project will not be constructed. Voluminous correspondence to Railroad officials has thus far failed to rectify the situation.

It is my sincere wish that the City and the Railroad can come to some sort of workable agreement regarding this problem. The City of North Pole is more than willing to work with the Alaska Railroad towards that end.

Sincerely

A handwritten signature in cursive script, appearing to read 'Carleta Lewis', with a long horizontal flourish extending to the right.

Carleta Lewis, Mayor  
The City of North Pole

cc.

The Honorable Governor Steve Cowper  
The Honorable Mayor Juanita Helms, Fairbanks North Star Borough  
The Honorable Mayor Harry E. Gieseler, City of Seward

Effect of amendments. — The 1987 amendment inserted "rotor" in paragraph (3).

## \*Chapter 40. Alaska Railroad Corporation.

### Article

1. Establishment and Organization (§§ 42.40.010 — 42.40.060)
2. Management (§§ 42.40.100 — 42.40.120)
3. Administrative Provisions (§§ 42.40.150 — 42.40.230)
4. Powers and Duties (§§ 42.40.250 — 42.40.310)
5. Corporation Property (§§ 42.40.350 — 42.40.450)
6. Financial Provisions (§§ 42.40.500 — 42.40.540)
7. Bonds (§§ 42.40.600 — 42.40.700)
8. Personnel and Labor Relations (§§ 42.40.705 — 42.40.890)
9. General Provisions (§§ 42.40.900 — 42.40.990)

Cross references. — For legislative findings and purpose in enacting this chapter, see § 1, ch. 153, SLA 1984 in the Temporary and Special Acts; for special reports required, see § 3, ch. 153, SLA 1984 in the Temporary and Special Acts.

Legislative history reports. — For legislative letter of intent relating to ch. 153, SLA 1984 (SCS CSHB 512 (Fin.) am S), see 1984 Senate Journal, p. 3221.

### Article 1. Establishment and Organization.

#### Section

10. Establishment of the corporation
20. Board of directors
30. Term of office

#### Section

40. Vacancies
50. Compensation and expenses
60. Board officers

Sec. 42.40.010. Establishment of the corporation. There is established the Alaska Railroad Corporation. The corporation is a public corporation and is an instrumentality of the state within the Department of Commerce and Economic Development. The corporation has a legal existence independent of and separate from the state. The continued operation of the Alaska Railroad by the corporation as provided in this chapter is considered an essential government function of the state. (§ 2 ch 153 SLA 1984)

Sec. 42.40.020. Board of directors. (a) The powers of the corporation are vested in the board of directors. The board consists of the commissioner of commerce and economic development, the commissioner of transportation and public facilities, and five members appointed by the governor. The five appointed members must be registered voters in the state except as provided in (1) and (2) of this subsection. Except for the commissioners and the member appointed under (5) of this section, a member may not be a state officer or employee. Appointed members shall have the following qualifications:

**Sec. 42.40.300. Use of corporation assets.** The corporation shall apply all money, property, other assets, and credit of the corporation toward activities authorized by this chapter. The corporation may not issue shares of stock, pay dividends, make private distributions of assets, make loans to board members or employees, or engage in business for private benefit. The use of money, property, another asset, or credit of the corporation for a purpose not authorized by law by a person having the possession or control of it is prohibited. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.310. Indemnification.** (a) The corporation may defend and indemnify a current or former member of the board, employee, or agent of the corporation against all costs, expenses, judgments, and liabilities, including attorney's fees, incurred by or imposed upon that person in connection with a civil or criminal action in which the person is involved by affiliation with the corporation, if the person acted in good faith on behalf of the corporation and within the scope of official duties or powers.

(b) The corporation may purchase insurance to protect and hold personally harmless its employees, agents, and board members from an action, claim, or proceeding arising out of the performance, purported performance, or failure of performance, in good faith, of duties for, or employment with, the corporation and to hold them harmless from expenses connected with the defense, settlement, or monetary judgments from that action, claim, or proceeding. The purchase of insurance is discretionary with the board and insurance is not considered to be compensation to the insured person. (§ 2 ch 153 SLA 1984)

#### Article 5. Corporation Property.

Section	Section
350. Land	400. Vacation of easements
365. Prohibition	410. Federal land
360. Request for land	420. Public use of railroad land
370. Conveyance of land	430. Acquisition of government property
380. Use of state land	435. Exchange of land
385. Eminent domain	440. Use of pesticides and herbicides
390. Land use rules	450. Adverse possession

\* **Sec. 42.40.350. Land.** (a) The corporation shall receive from the United States and, in its own name, take title to all rail property transferred under 45 U.S.C. 1201 — 1214 (Alaska Railroad Transfer Act of 1982). All land that is transferred or acquired by the corporation is designated as follows:

- (1) railroad rights-of-way are railroad utility corridors;
- (2) land outside railroad utility corridors is rail land.

(b) Railroad utility corridors shall be of a width at least 100 feet on both sides of the centerline of the extended main or branch line, unless

the corporation does not own or control sufficient land to allow a corridor of that width. Railroad utility corridors may be surveyed by the metes and bounds method. The corporation may not convey its entire interest in land within a utility corridor except as provided in AS 42.40.285, 42.40.370(d) and 42.40.400. However, the corporation may lease, subject to AS 42.40.285 and (d) of this section, grant easements in or permits for, or otherwise authorize use of portions of a utility corridor for transportation, communication, and transmission purposes and support functions associated with those purposes, and for commercial and other uses authorized under this chapter if the use does not restrict other parallel uses of the utility corridor.

(c) The corporation may lease, subject to AS 42.40.285 and (d) of this section, grant easements in or permits for, or otherwise authorize use of portions of rail land. However, the corporation may not convey its entire interest in rail land except as provided in AS 42.40.285, 42.40.370(d) and 42.40.400.

(d) A lease or disposal of land approved by the legislature under AS 42.40.285 by the corporation to a party other than the state shall be made at fair market value as determined by a qualified appraiser or by competitive bid. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.355. Prohibition.** Notwithstanding any other provision in AS 42.40, the state-owned railroad as defined under 45 U.S.C. 1202(14) may not apply for a right-of-way across, or exercise eminent domain in, the western (Kobuk River) unit of the Gates of the Arctic National Preserve under 16 U.S.C. 410hh(4)(b)-(e). (§ 2 ch 153 SLA 1984)

**Sec. 42.40.360. Request for land.** (a) The board may nominate federal land it determines may be useful for present or future railroad purposes for selection under the Alaska Statehood Act (P.L. 85 — 508, 72 Stat. 339), as amended, and request the commissioner of natural resources to select the land for the state through the federal land selection process.

(b) The board may identify and request the commissioner of natural resources to convey land necessary or useful for present or future railroad purposes owned by or tentatively approved for transfer to the state, including land not contiguous with a railroad utility corridor or rail land. The request must include a statement of and justification for the present or future railroad use. Upon receipt of a request, the commissioner shall temporarily reserve the land identified in the request for railroad purposes and defer disposal or lease of that land under other laws to a party other than the corporation. The temporary reservation of land is subject to valid existing rights and remains in effect for 180 days. (§ 2 ch 153 SLA 1984)

### Article 3. Effect of Statutes.

Statutes become law and take effect

**Sec. 01.10.070. Time statutes become law and take effect.**

(a) All bills passed by the legislature become law upon the governor's signature or upon the governor's veto being overridden or, when the governor allows a bill to become law without signature, on the day after expiration of the period allowed for gubernatorial action by art. II, § 17 of the Alaska Constitution. Acts become effective 90 days after becoming law, unless the legislature, by concurrence of two-thirds of the membership of each house, provides for another effective date.

(b) The actual effective date of an Act having no effective-date provision is determined by starting with the day after it is signed by the governor or the day after the governor's veto is overridden or the day after expiration of the period allowed for gubernatorial action by art. II, § 17 of the Alaska Constitution, and counting 90 calendar days, the Act becoming effective at 12:01 a.m., Alaska Standard Time on the 90th day.

(c) The actual effective date and time of an Act having an immediate-effective-date provision is 12:01 a.m., Alaska Standard Time, on the day after it is signed by the governor or on the day after the governor's veto is overridden or on the day after expiration of the period allowed for gubernatorial action by art. II, § 17 of the Alaska Constitution.

(d) An Act which specifies a definite effective date becomes effective at 12:01 a.m., Alaska Standard Time on the date specified.

(e) When the governor allows a bill to become law without signature, the governor shall give written notice of that fact to the legislature. The date of this notice has no effect upon the date the bill becomes law nor upon the date the Act takes effect.

(f) In this section

(1) "Act" means a bill which has become law;

(2) "bill" means a legislative document proposing an Act;

(3) "becomes effective" means becomes applicable; "effective date" does not mean date of enactment (or date of becoming law), although the two will coincide when a bill which has an immediate-effective-date provision is allowed to become law without the governor's signature;

(4) "becomes law" means is enacted; "enactment" occurs when any one of the following takes place:

(A) a bill which is passed by the legislature is signed by the governor;

H B

2 3 5

# HOUSE COMMITTEE REPORT

(7)

Date Referred: March 22, 1989  
Date of Committee Action: \_\_\_\_\_

FURTHER REFERRALS: JUDICIARY

The LABOR & COMMERCE Committee considered:

HB 235

HOUSE BILL NO. 235

[ICEBOX/CONTAINER SAFETY]

"An Act relating to safety involving certain kinds of equipment and containers."

RECOMMENDATIONS:

- [ ] be replaced with \_\_\_\_\_ [ ] the same title
- [ ] have attached amendment(s) [ ] a new title
- [  ] do pass
- [ ] do not pass
- [ ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:  
(Date/Dept)

- [ ] fiscal impact \_\_\_\_\_ [ ] fiscal note(s) \_\_\_\_\_
- [ ] zero fiscal note \_\_\_\_\_ [ ] zero fiscal note(s) \_\_\_\_\_
- [ ] zero with analysis \_\_\_\_\_ [ ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

David Donley  
Mark Bogan  
[Signature]  
[Signature]  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

SIGNING:  
(Check approp. column)

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David Donley  
Chairman's Signature

\* HONORING \*  
\* ISAAC FRAZIER \*

The members of the Fifteenth Alaska Legislature take great pride in honoring a fine young Alaskan, Isaac Frazier, who saved the lives of four young children.

On April 17, 1988, Rebecca Mary, age six, Janna Excelia, age five, and Shannon Bernice, age two, daughters of Jimmy and Chrystal Smith, and William, age four, foster son of Hielbent and Sarah Frazier were playing in the halls of the Bureau of Indian's housing complex in Bethel. These children being full of adventure and naivete during a game of "hide 'n' go seek" discovered an unplugged refrigerator that did not have the door removed. Not knowing the danger, they became locked in the refrigerator.

If Isaac, age nine, had not been looking for his little brother and heard the children's muffled cries for help, most likely they would have perished. When he found them, all were red in the face and short of breath, a very close call!

This near tragedy should serve as an example to Alaskans. All unused refrigerators and freezers should have the doors removed for the safety of our precious resource, children.

This Legislature congratulates Isaac Frazier and joins his family, friends and the residents of the Yukon-Kuskokwim Delta in celebrating life.



*James S. ...*  
SPEAKER OF THE HOUSE      *James ...*  
PRESIDENT OF THE SENATE

May 6, 1988

Requested by Representative Hoffman;  
Senator Binkley

1 31021

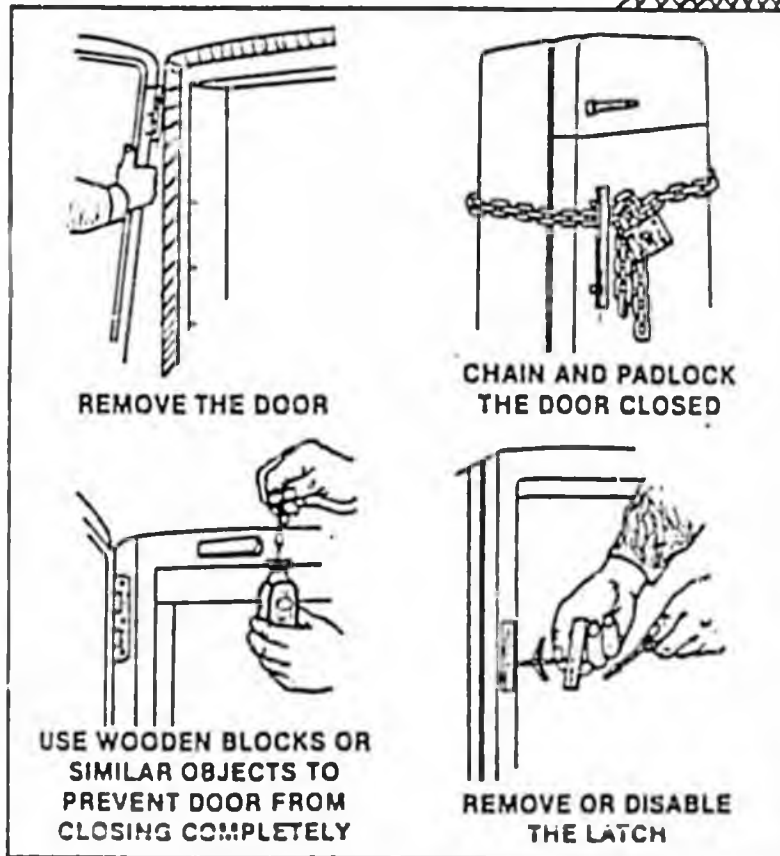
**Consumer Product SAFETY ALERT**  
FROM THE U.S. CONSUMER PRODUCT SAFETY COMMISSION, WASHINGTON, D.C. 20207  
June 1984

*Under laws administered by CPSC, an estimated 325 million potentially hazardous products have been called back from the marketplace and consumers since 1973 (when CPSC was created). Most of these were voluntarily recalled by manufacturers who established programs to repair or replace the products, or to refund the purchase price.*

**CPSC Warns About Suffocation  
and Death of Children  
in Old Refrigerators**

L.S. & S.  
ANCHORAGE

JUL 27 1988



The U.S. Consumer Product Safety Commission (CPSC) urges that all unused old-style refrigerators around the home be rendered "child-proof" or, if on public property, appropriate authorities be called to safely dispose of the product. CPSC continues to receive reports about the tragic deaths of young children who are suffocated because of entrapment in old refrigerators.

The Refrigerator Safety Act was enacted August 2, 1956. The

Act's regulations which became effective October 30, 1958 require a mechanism (usually a magnetic latch) which enables the door to be opened from the inside in the event of accidental entrapment. This type of latch, therefore, makes the hazardous refrigerators manufactured before that date easy to identify. The serious entrapment hazard occurs when children, during play, climb inside the old abandoned or carelessly stored refrigerators to hide. Many of these refrigerators are still in

RECEIVED

JUN 27 1988

OSII Anchorage

# Suffocation and Death of Child in Old Refrigerators

(continued)

57  
10

use, and when they are carelessly discarded or stored where they are accessible to children, they become a danger.

The CPSC has records of 96 children's deaths since 1973 caused by suffocation resulting from entrapment in those old refrigerators. Children in the 3 and 4 year age brackets have been the most vulnerable.

While there has been some decline in deaths in recent years, 3 children died during 1983 from refrigerator entrapment. Three of these instances were double deaths occurring in Missouri, Texas and West Virginia. The other deaths were separate, involving two 3 year olds in California.

The grim statistics from refrigerator entrapments have already begun for 1984. CPSC has recently received a report of the deaths on January 31, 1984 of cousins, ages 3 and 4 in an old refrigerator in Berkley Township, New Jersey. The refrigerator was one of the old prestandard models with the self-latching mechanism on the door and was stored in an unused neighborhood garage. The children apparently both sat down on the single metal shelf near the bottom of the empty, unplugged refrigerator and the door became latched.

Double deaths are not uncommon because children naturally enjoy playing together, and old refrigerators provide an interesting place to share this fun. However, when the door slams shut, there is sudden darkness, and the normally innocent and familiar refrigerator becomes a

death trap. Suffocation then ensues because the tight fitting gasket, which is on the inside of the door to seal in the cold, cuts off the child's air. This along with the insulated construction of a refrigerator also prevents the children's screams for help from being heard.

There are several ways to "child-proof" these old discarded refrigerators. The surest method is to take off the door completely and in most cases this is a simple process using a screwdriver. If the door will not come off, chain and padlock the door permanently and tightly closed. A third alternative is to remove or disable the latch completely so the door will no longer lock when closed. A wooden block screwed to the door to keep it from closing is also a possibility. Another helpful deterrent is to leave the shelves in the refrigerator to discourage children from getting inside. Also, it is unlawful in many local jurisdictions to discard old refrigerators without first removing the door.

Old electric refrigerators are not the only killer of children. The CPSC is aware of the death of a 3 year old because of suffocation in a self-locking ice refrigerator in a camper. The parents had probably never realized that an ice box which cannot be opened from the inside presents a suffocation hazard to small children.

Consumers wishing additional information should call CPSC's toll-free Hotline at 800-638-CPSC. A teletypewriter number for the hearing impaired is 800-638-8270. (Maryland only, 800-492-8104.)

# HOUSE COMMITTEE REPORT

( 7 )

Date Referred: January 29, 1990

FURTHER REFERRALS:

Date of Committee Action: \_\_\_\_\_

The JUDICIARY Committee considered:

HB 235

HOUSE BILL NO. 235

ICEBOX/CONTAINER SAFETY

"An Act relating to safety involving certain kinds of equipment and containers."

RECOMMENDATIONS:

- be replaced with CSHB 235 (JUD)  the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact \_\_\_\_\_
- zero fiscal note labor
- zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_
- zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

Peter Jones

Michael D. [Signature]

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNING:	Do Not Pass	No Rec	Amend
<u>Mike Hill</u>		<input checked="" type="checkbox"/>	
<u>Terry Masten</u>		<input checked="" type="checkbox"/>	

Peter Jones / [Signature]  
Chairman's Signature

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 235 (L&C)

PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to safety involving  
certain kinds of equipment and containers."  
Sponsor: Gruenberg and Hoffman  
Requestor: House Judiciary

Agency Affected: Labor  
BRU: Labor Standards & Safety  
Components: Mechanical Inspection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: there is no fiscal impact in FY 90.

Prepared by: Tom Stuart, Director Phone: 264-2452  
Division: Labor Standards & Safety Date: 1/18/90  
Approved by Commissioner: Jim Sampson Date: 1/18/90  
Agency: Department of Labor

Distribution (by preparer) :  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Original sponsor(s): REP. GRUENBERG, Hoffman

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 235 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to safety involving refrigerators  
7 and similar equipment."

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

9 \* Section 1. AS 18.60.400 is repealed and reenacted to read:

10 Sec. 18.60.400. REFRIGERATOR SAFETY REQUIREMENTS. A person may  
11 not dispose of an icebox, refrigerator, freezer, or similar equipment  
12 of a kind and size sufficient to permit the suffocation of a person  
13 inside the equipment without first removing the latches, hinges, or  
14 cover or otherwise rendering it safe. A person may not maintain  
15 equipment described in this section in an area that is unattended by  
16 an adult and accessible to a person under the age of 11 unless the  
17 person ensures that the equipment does not present an unreasonable  
18 hazard to the safety of a person under the age of 11. A person may  
19 not allow a violation of this section on premises or in an area under  
20 the person's control.

21 \* Sec. 2. AS 18.60.410 is repealed and reenacted to read:

22 Sec. 18.60.410. EQUIPMENT TO HAVE OPENING DEVICE ON INSIDE. A  
23 person may not offer for sale an icebox, refrigerator, freezer, or  
24 similar equipment of a kind and size sufficient to permit the suffo-  
25 cation of a person unless the door can be opened easily from the  
26 inside, either by application of an outwardly directed force to the  
27 inside of the door or by the rotation of a knob similar to a conven-  
28 tional door knob.

29 \* Sec. 3. AS 18.60.420 is amended to read:

1           Sec. 18.60.420. ADMINISTRATION OF AS 18.60.400 - 18.60.460. The  
2 Department of Labor shall administer AS 18.60.400 - 18.60.460. It may  
3 appoint inspectors and [SHALL] inspect all iceboxes, refrigerators,  
4 freezers, and similar equipment of a kind and size sufficient to  
5 permit the suffocation of a person if the equipment is shipped into  
6 the state.

7 \* Sec. 4. AS 18.60 is amended by adding a new section to read:

8           Sec. 18.60.435. EXEMPTION. Equipment of less than 1.5 cubic  
9 feet in capacity is exempt from the provisions of AS 18.60.400 -  
10 18.60.460.

11 \* Sec. 5. AS 18.60.440 is amended to read:

12           Sec. 18.60.440. REVIEW [APPEALS]. A person aggrieved by an  
13 order or act of the Department of Labor or of an inspector under  
14 AS 18.60.400 - 18.60.460 may, within 15 days after notice of the order  
15 or act, request a hearing under AS 44.62.330 - 44.62.640 [APPEAL IN  
16 THE MANNER PRESCRIBED BY AS 18.60.370].

17 \* Sec. 6. AS 18.60.450 is repealed and reenacted to read:

18           Sec. 18.60.450. VIOLATIONS AND PENALTIES. (a) Except as pro-  
19 vided in (b) of this section, a person who violates a provision of  
20 AS 18.60.400 - 18.60.460 is guilty of a violation.

21           (b) A person who violates a provision of AS 18.60.400 - 18.60.460  
22 who has previously been convicted of violating AS 18.60.400 - 18.60.-  
23 460 is guilty of a misdemeanor for which the maximum term of imprison-  
24 ment that may be imposed is 30 days and the maximum fine that may be  
25 imposed is \$500.

26           (c) The mental states that must be proved for an offense under  
27 (a) or (b) of this section are those described in AS 11.81.610(b).  
28  
29

6-0645G ✓  
Lauterbach  
1/26/90

Original sponsor(s): REP. GRUENBERG, Hoffman

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 235 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

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27 (a) or (b) of this section are those described in AS 11.81.610(b).  
28  
29

Offered: 4/18/89  
Referred: Judiciary

6-0545M

Original sponsors: Gruenberg and  
Hoffman

" P6 "

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2

CS FOR HOUSE BILL NO. 235 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to safety involving certain kinds of

7

equipment and containers."

8

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

9

\* Section 1. AS 18.60.400 is repealed and reenacted to read:

10

Sec. 18.60.400. CONTAINER SAFETY REQUIREMENTS. A person may not

11

dispose of an icebox, refrigerator, freezer, or <sup>SIMILAR</sup> ~~other~~ equipment

12

~~container~~ of a kind and size sufficient to permit the ~~entrapment~~ or

13

suffocation of a person under the age of 11 inside the container with-

14

out first removing the latches, hinges, or cover or otherwise render-

15

ing it safe. A person may not maintain a container described in this

16

section in an area that is unattended by an adult and accessible to a

17

person under the age of 11 unless the person ensures that the

18

container does not present an unreasonable hazard to the safety of a

19

person under the age of 11. A person may not allow a violation of

20

this section on premises or in an area under the person's control.

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24

<sup>SIMILAR</sup> ~~other~~ equipment ~~or container~~ of a kind and size sufficient to permit *the*

25

~~the entrapment or~~ suffocation of a person under the age of 11 unless

26

the door can be opened easily from the inside, either by application

27

of an outwardly directed force to the inside of the door or by the

28

rotation of a knob similar to a conventional door knob.

29

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PH

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3 appoint inspectors and [SHALL] inspect all iceboxes, refrigerators,  
4 freezers, and <sup>SIMILAR</sup> ~~other equipment or containers~~ of a kind and size suffi-  
5 cient to permit the ~~exposure~~ or suffocation of a person ~~under the~~  
6 ~~apex~~ if the equipment or containers are [SIMILAR EQUIPMENT]  
7 shipped into the state.

8 \* Sec. 4. AS 18.60 is amended by adding a new section to read:

9           Sec. 18.60.435. EXEMPTION. Equipment or containers of less than  
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11 60.400 - 18.60.460.

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13           Sec. 18.60.440. REVIEW [APPEALS]. A person aggrieved by an  
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28 (a) or (b) of this section are those described in AS 11.81.610(b).

H B

2 3 6

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMFR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HB 236

H. HESS

4/19/89

H. HESS

4/17/89

H. HESS

1/26/90

H. HESS

2/4/90

# HOUSE COMMITTEE REPORT

3/12

(7)

Date Referred: March 22, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3-8-90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 236

HOUSE BILL NO. 236 [LEVEL OF BLOOD ALCOHOL FOR DWI OFFENDERS]  
"An Act relating to the offense of driving while intoxicated and establishing presumptions of intoxication arising against persons 21 years of age or older and persons under 21 years of age in civil and criminal actions; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CS HB 236 (HESS)  the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact \_\_\_\_\_
- fiscal note(s) \_\_\_\_\_
- 2  zero fiscal note: P.S./Court
- zero fiscal note(s) \_\_\_\_\_
- 1  zero with analysis Law
- zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>John Ellis</u>			
<u>Chris Davis</u>	X		
<u>Monroe Boman</u>	X		
<u>Boyer</u>	X		
<u>H. Peters</u>	X		
_____			
_____			
_____			
_____			

John Ellis  
Chairman's Signature

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to the offense of driving while intoxicated..."  
 Sponsor: Rep. Donley  
 Requestor: Rep. Donley

Agency Affected: Department of Corrections  
 BRU: \_\_\_\_\_  
 Components: \_\_\_\_\_

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		10.5	10.5	10.5	10.5	10.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-	10.5	10.5	10.5	10.5	10.5

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	-	10.5	10.5	10.5	10.5	10.5
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-	10.5	10.5	10.5	10.5	10.5

**POSITIONS:**

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

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

See Attached.

*Susan E. Knighton*

Prepared by: Susan E. Knighton, Director  
 Division: Administrative Services

Phone: 465-3376  
 Date: 4-16-89

Approved by Commissioner: *Susan Humphrey-Barnett*  
 Agency: Department of Corrections

Date: 4-16-89

**Distribution (by preparer):**

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

FISCAL NOTE  
HB 236  
Page 2

ANALYSIS

This bill amends AS 28.35.030(a) and AS 28.35.033(a) to lower the percentage of alcohol in a person's breath or blood from 0.10 percent to 0.05 percent, for commission of the offense of driving while intoxicated if the person is under 21 years of age. Data collected by the Municipality of Anchorage reveals that about four percent of the persons stopped under the suspicion of driving while intoxicated, including adults, had a blood alcohol recording of from .00 to .09. Consequently, the number of drivers between the age of 18 and 21 years who would be presumed to be intoxicated under the bill is estimated to be around 100 youths.

This would result in approximately 100 additional persons being held in a soft bed for 3 days at a cost of \$35 per day. Total cost will be \$10,500.

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to the offense of driving while intoxicated."  
 Sponsor: Representative Donlev  
 Requestor: Representative Donlev

Agency Affected: Department of Corrections  
 BRU: \_\_\_\_\_  
 Components: \_\_\_\_\_

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

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	6.3	6.3	6.3	6.3	6.3	6.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>6.3</b>	<b>6.3</b>	<b>6.3</b>	<b>6.3</b>	<b>6.3</b>	<b>6.3</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	6.3	6.3	6.3	6.3	6.3	6.3
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>6.3</b>	<b>6.3</b>	<b>6.3</b>	<b>6.3</b>	<b>6.3</b>	<b>6.3</b>

**POSITIONS:**

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

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

See Attached.

*Susan E. Knighton*

Prepared by: Susan E. Knighton, Director

Division: Administrative Services

Phone: 465-3376

Date: 01/25/90

Approved by Commissioner: *Humphrey Barnett*

Agency: Department of Corrections

Date: 01/25/90

**Distribution (by preparer):**

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

FISCAL NOTE  
House Bill 236  
Page 2

ANALYSIS

Data collected by the Municipality of Anchorage reveals that about four percent of the persons stopped under the suspicion of driving while intoxicated, including adults, had a blood alcohol recording of from .05 to .09. Consequently, the number of drivers between the age of 18 and 21 years who would be presumed to be intoxicated under the bill is estimated to be around 50 youths.

This would result in approximately 50 additional persons being held in a soft bed for 3 days at a cost of \$42 per day. Total cost will be \$6,300.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Public Safety  
 Title: Level of blood alcohol for BRU: Alaska State Troopers  
DWI offenders  
 Sponsor: Representative Donley Component: Detachments  
 Requestor: House HESS

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Some additional arrests are expected as a result of this bill, but there is no way to accurately predict how many. If the numbers are small, the impact could be absorbed within existing staffing levels.

Prepared by: Lt. Pat Kasnick  
 Division: Alaska State Troopers

Phone: 269-5691  
 Date: 12/19/89

Approved by Commissioner: A. H. English  
 Agency: Department of Public Safety

Date: 1-29-90  
 Page 1 of 1

*12/22/89*

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Level of blood alcohol for  
DWI offenders  
Sponsor: Representative Donley  
Requestor: House HESS

Agency Affected: Public Safety  
BRU: Alaska State Troopers  
Component: Detachments

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Some additional arrests are expected as a result of this bill, but there is no way to accurately predict how many. If the numbers are small, the impact could be absorbed within existing staffing levels.

Prepared by: Lt. Pat Kasnick  
Division: Alaska State Troopers

Phone: 269-5691  
Date: 04/14/89

Approved by Commissioner: Arthur English  
Agency: Department of Public Safety

Date: 04/14/89

## FISCAL NOTE

**REQUEST:**

Revision Date:		Agency Affected:	<u>Alaska Court System</u>
Title:	<u>An Act relating to the offense of driving while intoxicated</u>	BRU:	<u>Trial Courts</u>
Sponsor:	<u>Donley, Koponen, Brown, Leman...</u>	Components:	
Requestor:	<u>Donley</u>		

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUNDING:** (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

Full-time						
Part-time						
Temporary						

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

No fiscal impact.

Prepared by:	<u>John Strandberg, General Counsel</u>	Phone:	<u>264-8228</u>
Division:	<u>Alaska Court System</u>	Date:	<u>04/03/89</u>
Approved by:	<u>Arthur H. Snowden, II, Administrative Director</u>	Date:	<u>04/03/89</u>
Agency:	<u>Alaska Court System</u>		

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management & Budget  
 Impacted Agency(ies)

## FISCAL NOTE

**REQUEST:**

Revision Date: January 25, 1990  
 Title: "An Act relating to the offense  
 of driving while intoxicated..."  
 Sponsor: Repr. Donley  
 Requestor: Repr. Donley

Agency Affected: Department of Law  
 BRU: Prosecution  
 Components: All

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

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

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

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

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director  
 Division: Administrative Services  
 Approved by Commissioner: Douglas B. Bailly, Attorney General  
 Agency: Department of Law

Phone: 465-3672  
 Date: January 25, 1990  
 Date: January 25, 1990

**Distribution (by preparer):**

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 236

This bill amends AS 28.35.030(a) and AS 28.35.033(a) to lower the percentage of alcohol in a person's breath or blood from 0.10 percent to 0.05 percent, for commission of the offense of driving while intoxicated, if the person is under 21 years of age. Data collected by the Municipality of Anchorage reveals that about four percent of the persons stopped under the suspicion of driving while intoxicated, including adults, had a blood alcohol recording of from .00 to .09. Consequently, the number of drivers under the age of 21 years who would be presumed to be intoxicated under the bill, those with a blood alcohol recording of between 0.05 and 0.09 percent, is expected to be relatively small. Because of the small number of anticipated cases, probably fewer than 100 cases statewide, the bill is not expected to have a fiscal impact of the Department of Law.



# HOUSE COMMITTEE REPORT

3/12

B

(7)  
Date Referred: March 22, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3-8-90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 236

HOUSE BILL NO. 236 [LEVEL OF BLOOD ALCOHOL FOR DWI OFFENDERS]  
"An Act relating to the offense of driving while intoxicated and establishing presumptions of intoxication arising against persons 21 years of age or older and persons under 21 years of age in civil and criminal actions; and providing for an effective date."

RECOMMENDATIONS:  
[X] be replaced with CS HB 236 (HESS) [ ] the same title  
[X] a new title  
[ ] have attached amendment(s)  
[ ] do pass  
[ ] do not pass  
[X] no recommendation  
[ ] individual recommendations  
[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal impact \_\_\_\_\_ [ ] fiscal note(s) \_\_\_\_\_  
2 [X] zero fiscal note Public Safety [ ] zero fiscal note(s) \_\_\_\_\_  
1 [X] zero with analysis Law [ ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:  
(Check approp. column)

Do Not Pass No Rec Amend

_____	<u>John Golt</u>	GOLT		
_____	<u>Chen Davis</u>	C. DAVIS	X	
_____	<u>MANN BOYER</u>	BOYER	X	
_____	<u>Boyer</u>	JACKO	X	
_____	<u>Ellis</u>	ELLIS	X	
_____				
_____				
_____				
_____				
_____				
_____				

John Ellis  
Chairman's Signature

A M E N D M E N T

OFFERED IN THE HOUSE

BY DCNLEY

TO: HB 236

Page 3, lines 7 - 8:

Delete "one milligram"

Insert "10 milligrams"

Page 3, line 9:

Delete "one milligram"

Insert "0.01 grams"

A M E N D M E N T #2

OFFERED IN THE HOUSE

BY DONLEY

TO: HB 236

Page 1, after line 12:

Insert a new bill section to read:

"\* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

(1) the number of persons under 21 who are drinking and driving in an impaired condition is a matter of serious concern;

(2) a given amount of alcohol generally has a greater effect on a driver who is under the age of 21 than on a person who is 21 years of age or older;

(3) for purposes of establishing an effective legal limit of alcohol consumption above which a person under age 21 is considered to have committed the crime of driving while intoxicated, it is necessary to distinguish between those people who are under age 21, and those who are 21 years of age or older;

(4) establishing a lower limit of alcohol consumption for persons under age 21 is consistent with existing law that prohibits a person under age 21 from legally consuming an alcoholic beverage;

(5) there is a rational relationship between establishing a lower limit of alcohol consumption for persons under age 21, and reducing the number of alcohol-related accidents and fatalities.

(b) It is the purpose of this Act to promote the general welfare and public safety by imposing a more restrictive legal limit on

alcohol consumption for persons who are under age 21, above which the person has committed the crime of driving while intoxicated."

Page 1, line 13:

Delete "\* Section 1."

Insert "\* Sec. 2."

Renumber the following bill sections accordingly.

Original sponsor(s): REP. DONLEY, Koponen, Brown, Leman, Collins, Hudson,  
Menard, Ulmer

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 236 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the offenses of driving while  
7 intoxicated and refusal to take a chemical test of  
8 breath; and providing for an effective date."

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

10 \* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

11 (1) the number of persons under 21 who are drinking and driving  
12 in an impaired condition is a matter of serious concern;

13 (2) a given amount of alcohol generally has a greater effect on  
14 a driver who is under the age of 21 than on a person who is 21 years of age  
15 or older;

16 (3) for purposes of establishing an effective legal limit of  
17 alcohol consumption above which a person under age 21 will lose their  
18 privilege to drive, it is necessary to distinguish between those people who  
19 are under age 21, and those who are 21 years of age or older;

20 (4) establishing a lower limit of alcohol consumption for per-  
21 sons under age 21 is consistent with existing law that prohibits a person  
22 under age 21 from legally consuming an alcoholic beverage;

23 (5) there is a rational relationship between establishing a  
24 lower limit of alcohol consumption for persons under age 21, and reducing  
25 the number of alcohol-related accidents and fatalities.

26 (b) It is the purpose of this Act to promote the general welfare and  
27 public safety by imposing a more restrictive legal limit on alcohol con-  
28 sumption for persons who are under age 21, above which the person will lose  
29 their privilege to drive.

1 refuse to issue an original license to the person;

2 (2) the person has the right to administrative review of  
3 the revocation or determination not to issue an original license;

4 (3) if the person has a driver's license or a nonresident  
5 privilege to drive, the notice itself is a temporary driver's license  
6 that expires seven days after it is delivered to the person;

7 (4) revocation of the person's driver's license, privilege  
8 to drive, or privilege to obtain a license, or a determination not to  
9 issue an original license takes effect seven days after delivery of  
10 the notice required under (a) of this section unless the person,  
11 within seven days, requests an administrative review.

12 (c) After reading the notice required under (a) of this section,  
13 the law enforcement officer shall seize the person's driver's license  
14 if it is in the person's possession and shall deliver it to the de-  
15 partment with a sworn report describing the circumstances under which  
16 it was seized.

17 (d) The department shall revoke a person's driver's license,  
18 privilege to drive, or privilege to obtain a license, or refuse to  
19 issue an original license effective seven days after delivery of the  
20 notice required under (a) of this section, upon receipt of a sworn  
21 report of a law enforcement officer

22 (1) that

23 (A) a chemical test under AS 28.35.031(a)(1) adminis-  
24 tered to the person produced a result described in AS 28.35.-  
25 030(a)(2);

26 (B) a chemical test under AS 28.35.031(a)(2) adminis-  
27 tered to the person produced a result described in (a)(2) of this  
28 section; or

29 (C) a person refused to submit to a chemical test

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

Original sponsor(s): REP. DONLEY, Koponen, Brown, Leman, Collins, Hudson, Menard, Ulmer

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 236 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the offenses of driving while  
7 intoxicated and refusal to take a chemical test of  
8 breath; and providing for an effective date."

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

10 \* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

11 (1) the number of persons under 21 who are drinking and driving  
12 in an impaired condition is a matter of serious concern;

13 (2) a given amount of alcohol generally has a greater effect on  
14 a driver who is under the age of 21 than on a person who is 21 years of age  
15 or older;

16 (3) for purposes of establishing an effective legal limit of  
17 alcohol consumption above which a person under age 21 will lose their  
18 privilege to drive, it is necessary to distinguish between those people who  
19 are under age 21, and those who are 21 years of age or older;

20 (4) establishing a lower limit of alcohol consumption for per-  
21 sons under age 21 is consistent with existing law that prohibits a person  
22 under age 21 from legally consuming an alcoholic beverage;

23 (5) there is a rational relationship between establishing a  
24 lower limit of alcohol consumption for persons under age 21, and reducing  
25 the number of alcohol-related accidents and fatalities.

26 (b) It is the purpose of this Act to promote the general welfare and  
27 public safety by imposing a more restrictive legal limit on alcohol con-  
28 sumption for persons who are under age 21, above which the person will lose  
29 their privilege to drive.

1 \* Sec. 2. AS 12.55.102(a) is amended to read:

2 (a) The court may order as a condition of probation that a  
3 defendant convicted of an offense involving the use, consumption, or  
4 possession of an alcoholic beverage may not operate a motor vehicle  
5 during the period of probation unless the vehicle is equipped with a  
6 properly functioning, monitored, and maintained ignition interlock  
7 device. A condition of probation imposed under this subsection takes  
8 effect after any period of license revocation imposed under AS 28.15.-  
9 165(e) [AS 28.15.165(d)] or 28.15.181(c).

10 \* Sec. 3. AS 28.15.165 is repealed and reenacted to read:

11 Sec. 28.15.165. ADMINISTRATIVE REVOCATIONS RESULTING FROM CHEMI-  
12 CAL SOBRIETY TESTS AND REFUSALS TO SUBMIT TO TESTS. (a) A law en-  
13 forcement officer shall read the notice required under (b) of this  
14 section, and deliver a copy to a person operating a motor vehicle if  
15 the person

16 (1) takes a chemical test administered under AS 28.35.-  
17 031(a)(1) and the test produces a result described in AS 28.35.-  
18 030(a)(2);

19 (2) takes a chemical test administered under AS 28.35.-  
20 031(a)(2) and the test reveals that there is 0.04 percent or more by  
21 weight of alcohol in the person's blood or 40 milligrams or more of  
22 alcohol per 100 milliliters of blood, or that there is 0.04 grams or  
23 more of alcohol per 210 liters of the person's breath; or

24 (3) refuses to submit to a chemical test under AS 28.35.-  
25 031(a).

26 (b) The notice required under (a) of this section must advise  
27 that

28 (1) the department intends to revoke the person's driver's  
29 license, privilege to drive, or privilege to obtain a license, or

1 refuse to issue an original license to the person;

2 (2) the person has the right to administrative review of  
3 the revocation or determination not to issue an original license;

4 (3) if the person has a driver's license or a nonresident  
5 privilege to drive, the notice itself is a temporary driver's license  
6 that expires seven days after it is delivered to the person;

7 (4) revocation of the person's driver's license, privilege  
8 to drive, or privilege to obtain a license, or a determination not to  
9 issue an original license takes effect seven days after delivery of  
10 the notice required under (a) of this section unless the person,  
11 within seven days, requests an administrative review.

12 (c) After reading the notice required under (a) of this section,  
13 the law enforcement officer shall seize the person's driver's license  
14 if it is in the person's possession and shall deliver it to the de-  
15 partment with a sworn report describing the circumstances under which  
16 it was seized.

17 (d) The department shall revoke a person's driver's license,  
18 privilege to drive, or privilege to obtain a license, or refuse to  
19 issue an original license effective seven days after delivery of the  
20 notice required under (a) of this section, upon receipt of a sworn  
21 report of a law enforcement officer

22 (1) that

23 (A) a chemical test under AS 28.35.031(a)(i) adminis-  
24 tered to the person produced a result described in AS 28.35.-  
25 030(a)(2);

26 (B) a chemical test under AS 28.35.031(a)(2) adminis-  
27 tered to the person produced a result described in (a)(2) of this  
28 section; or

29 (C) a person refused to submit to a chemical test

1 under AS 28.35.031(a);

2 (2) that notice under (a) of this section was provided to  
3 the person; and

4 (3) describing

5 (A) the circumstances surrounding the arrest and the  
6 grounds for the officer's belief that the person was intoxicated  
7 while operating a motor vehicle if the chemical test was adminis-  
8 tered under AS 28.35.031(a)(1); or

9 (B) the grounds for the officer's belief that the  
10 person was operating a motor vehicle with 0.04 percent or more by  
11 weight of alcohol in the person's blood or 40 milligrams or more  
12 of alcohol per 100 milliliters of blood, or 0.04 grams or more of  
13 alcohol per 210 liters of the person's breath if the chemical  
14 test was administered under AS 28.35.031(a)(2).

15 (e) Except as provided in (f) of this section, the period of  
16 revocation of a driver's license, privilege to drive, or privilege to  
17 obtain a license by the department under this section shall be for the  
18 appropriate minimum period for court revocations under AS 28.15.-  
19 181(c).

20 (f) If the person is less than 21 years of age, the department  
21 shall revoke the person's driver's license, privilege to drive, or  
22 privilege to obtain a license

23 (1) for one year, if the person's license, privilege to  
24 drive, or privilege to obtain a license has not been previously  
25 revoked under this section;

26 (2) for two years or until the person is 21 years of age,  
27 whichever is longer, if the person's license, privilege to drive, or  
28 privilege to obtain a license has been previously revoked once under  
29 this section;

1 (3) for the appropriate minimum period for court  
2 revocations under AS 28.15.181(c), if the person's license, privilege  
3 to drive, or privilege to obtain a license has been previously revoked  
4 two or more times under this section.

5 \* Sec. 4. AS 28.15.166(a) is amended to read:

6 (a) A person who has received a notice under AS 28.15.165(a) may  
7 make a written request for administrative review of the department's  
8 action under AS 28.15.165(d) [AS 28.15.165(c)]. If the person's  
9 driver's license has not been previously surrendered to the depart-  
10 ment, it shall be surrendered to the department at the time the re-  
11 quest for review is made.

12 \* Sec. 5. AS 28.15.166(b) is amended to read:

13 (b) A request for review shall be made within seven days after  
14 receipt of the notice under AS 28.15.165 or the right to review is  
15 waived and the action of the department under AS 28.15.165(d) [AS 28.-  
16 15.165(c)] is final. If a written request for a review is made after  
17 expiration of the seven-day period, and if it is accompanied by the  
18 applicant's verified statement explaining the failure to make a timely  
19 request for a review, the department shall receive and consider the  
20 request. If the department finds that the person was unable to make a  
21 timely request because of lack of actual notice of the revocation or  
22 because of factors of physical incapacity such as hospitalization or  
23 incarceration, the department shall waive the period of limitation,  
24 reopen the matter, and grant the review request.

25 \* Sec. 6. AS 28.15.166(c) is repealed and reenacted to read:

26 (c) Upon receipt of a request for review, if it appears that the  
27 person holds a valid driver's license and that the driver's license  
28 has been surrendered, the department shall issue a temporary driver's  
29 permit that is valid until the scheduled date for the review. A person

1 who has requested a review under this section may request, and the  
2 department may grant for good cause, a delay in the date of the hear-  
3 ing. If necessary, the department may issue additional temporary  
4 permits to stay the effective date of its action under AS 28.15.165(d)  
5 [AS 28.15.165(c)] until the final order after the review is issued.

6 \* Sec. 7. AS 28.15.166(g) is repealed and reenacted to read:

7 (g) The hearing under this section shall be limited to the  
8 issues of whether the

9 (1) arresting officer had reasonable grounds to believe  
10 that the person was operating a motor vehicle while intoxicated if the  
11 chemical test was required under AS 28.35.031(a)(1) and whether

12 (A) the person refused to submit to a chemical test  
13 after being advised that refusal would result in the suspension,  
14 revocation, or denial of the person's license, privilege to  
15 drive, or privilege to obtain a license, and that the refusal is  
16 a misdemeanor; or

17 (B) the chemical test produced a result described in  
18 AS 28.35.030(a)(2); or

19 (2) the law enforcement officer had probable cause to  
20 believe that the person was operating a motor vehicle with 0.04 per-  
21 cent or more by weight of alcohol in the person's blood or 40 milli-  
22 grams or more of alcohol per 100 milliliters of blood, or 0.04 grams  
23 or more of alcohol per 210 liters of the person's breath if the chemi-  
24 cal test was administered under AS 28.35.031(a)(2) and whether

25 (A) the person refused to submit to a chemical test  
26 after being advised that refusal would result in suspension,  
27 revocation, or denial of the person's license, privilege to  
28 drive, or privilege to obtain a license, and that refusal is a  
29 misdemeanor if the person's license, privilege to drive, or

1 privilege to obtain a license has been previously revoked two or  
2 more times under AS 28.15.165(f); or

3 (B) the chemical test produced a result described in  
4 AS 28.15.165(a)(2).

5 \* Sec. 8. AS 28.15.166(1) is amended to read:

6 (1) A hearing officer revoking a driver's license because a  
7 chemical test administered to the person produced a result described  
8 in AS 28.15.165(a)(2) or AS 28.35.030(a)(2) may grant limited license  
9 privileges if the person has not been previously convicted within the  
10 preceding 10 years of an offense (A) described in AS 28.15.181(a)(5)  
11 or (8); or (B) under a law or ordinance in another jurisdiction with  
12 elements substantially similar to an offense described in AS 28.15.-  
13 181(a)(5) or (8). The privileges may be granted for for the final 60  
14 days during which the license is revoked if the hearing officer deter-  
15 mines that the person's ability to earn a livelihood would be severely  
16 impaired and a limitation under AS 28.15.201 can be placed on the  
17 license that will enable the the person to earn a livelihood without  
18 excessive danger to the public. A hearing officer may not grant  
19 limited license privileges when revoking a driver's license because  
20 the person refused to submit to a chemical test.

21 \* Sec. 9. AS 28.15.181(e) is amended to read:

22 (e) A court revoking a driver's license under (c) of this sec-  
23 tion, or sustaining the action of the department under AS 28.15.165(d)  
24 [AS 28.15.165(c)], may grant limited license privileges for the final  
25 60 days during which the license is revoked if the

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

29 (2) person has not been previously convicted within the

1 preceding 10 years of an offense

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

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

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

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

11 \* Sec. 10. AS 28.35.030(a) is amended to read:

12 (a) A person commits the crime of driving while intoxicated if  
13 the person operates or drives a motor vehicle or operates an aircraft  
14 or a watercraft

15 (1) while under the influence of intoxicating liquor, or  
16 any controlled substance listed in AS 11.71.140 - 11.71.190;

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

23 (3) while the person is under the combined influence of  
24 intoxicating liquor and another substance; or

25 (4) when, as determined by a chemical test taken within  
26 four hours after the alleged offense was committed, there is 0.04  
27 percent or more by weight of alcohol in the person's blood or 40  
28 milligrams or more of alcohol per 100 milliliters of blood, or when  
29 there is 0.04 grams or more of alcohol per 210 liters of the person's

1 breath, the person is less than 21 years of age, and the person's  
2 driver's license has previously been revoked two or more times under  
3 AS 28.15.165(a)(2).

4 \* Sec. 11. AS 28.35.031(a) is amended to read:

5 (a) A person who operates or drives a motor vehicle in this  
6 state or who operates an aircraft as defined in AS 28.35.030(h)(1) or  
7 who operates a watercraft as defined in AS 28.35.030(h)(2) shall be  
8 considered to have given consent to a chemical test or tests of the  
9 person's breath for the purpose of determining the alcoholic content  
10 of the person's blood or breath if (1) lawfully arrested for an of-  
11 fense arising out of acts alleged to have been committed while the  
12 person was operating or driving a motor vehicle or operating an air-  
13 craft or a watercraft while intoxicated; or (2) the person is under  
14 the age of 21 and a law enforcement officer has probable cause to  
15 believe that the person was operating a motor vehicle with 0.04 per-  
16 cent or more by weight of alcohol in the person's blood or 40 milli-  
17 grams or more of alcohol per 100 milliliters of blood, or 0.04 grams  
18 or more of alcohol per 210 liters of the person's breath. The test or  
19 tests shall be administered at the direction of a law enforcement  
20 officer [WHO HAS REASONABLE GROUNDS TO BELIEVE THAT THE PERSON WAS  
21 OPERATING OR DRIVING A MOTOR VEHICLE OR OPERATING AN AIRCRAFT OR A  
22 WATERCRAFT IN THIS STATE WHILE INTOXICATED].

23 \* Sec. 12. AS 28.35.031(b) is amended to read:

24 (b) A person who operates or drives a motor vehicle in this  
25 state or who operates an aircraft or watercraft shall be considered to  
26 have given consent to a preliminary breath test for the purpose of  
27 determining the alcoholic content of the person's blood or breath. A  
28 law enforcement officer may administer a preliminary breath test at  
29 the scene of the incident if the officer has reasonable grounds to

1 believe that a person's ability to operate a motor vehicle, aircraft,  
2 or watercraft is impaired by the ingestion of alcoholic beverages, or  
3 probable cause to believe that a person under age 21 was operating a  
4 motor vehicle with 0.04 percent or more by weight of alcohol in the  
5 person's blood or 40 milligrams or more of alcohol per 100 milliliters  
6 of blood, or 0.04 grams or more of alcohol per 210 liters of the  
7 person's breath and that the person

8 (1) was operating or driving a motor vehicle, aircraft, or  
9 watercraft that is involved in an accident;

10 (2) committed a moving traffic violation or unlawfully  
11 operated an aircraft or watercraft; in this paragraph, "unlawfully"  
12 means in violation of any federal, state, or municipal statute, regu-  
13 lation, or ordinance [, EXCEPT FOR VIOLATIONS THAT DO NOT PROVIDE  
14 REASON TO BELIEVE THAT THE OPERATOR'S ABILITY TO OPERATE THE AIRCRAFT  
15 OR WATERCRAFT WAS IMPAIRED BY THE INGESTION OF ALCOHOLIC BEVERAGES];  
16 or

17 (3) was operating or driving a motor vehicle in violation  
18 of AS 28.35.029(a).

19 \* Sec. 13. AS 28.35.031(f) is amended to read:

20 (f) If a driver or operator is arrested, the provisions of  
21 (a)(1) [(a)] of this section apply. If the person is not arrested and  
22 is under the age of 21 years, the provisions of (a)(2) of this section  
23 apply. The preliminary breath test authorized in this section is in  
24 addition to any tests authorized under (a) of this section.

25 \* Sec. 14. AS 28.35.032(a) is repealed and reenacted to read:

26 (a) A chemical test may not be given, except as provided by  
27 AS 28.35.035, if a person refuses the request of a law enforcement  
28 officer to submit to a chemical test under

29 (1) AS 28.35.031(a)(1), after being advised by the officer

1 that the refusal

2 (A) will, if that person was arrested while operating  
3 or driving a motor vehicle, result in the denial or revocation of  
4 the person's driver's license, privilege to drive, or privilege  
5 to obtain a license;

6 (B) may be used against the person in a civil or  
7 criminal action or proceeding arising out of an act alleged to  
8 have been committed by the person while operating or driving a  
9 motor vehicle or operating an aircraft or a watercraft while  
10 intoxicated; and

11 (C) is a misdemeanor; or

12 (2) AS 28.35.031(a)(2), after being advised by the officer  
13 that the refusal

14 (A) will result in the denial or revocation of the  
15 person's driver's license, privilege to drive, or privilege to  
16 obtain a license,

17 (B) may be used against the person in a civil or  
18 criminal action or proceeding arising out of an act alleged to  
19 have been committed by the person while the person was operating  
20 a motor vehicle with 0.04 percent or more by weight of alcohol in  
21 the person's blood or 40 milligrams or more of alcohol per 100  
22 milliliters of blood, or 0.04 grams or more of alcohol per 210  
23 liters of the person's breath; and

24 (C) is a misdemeanor if the person's license, privi-  
25 lege to drive, or privilege to obtain a license has been previ-  
26 ously revoked two or more times under AS 28.15.165(f).

27 \* Sec. 15. AS 28.35.032(e) is amended to read:

28 (e) The refusal of a person to submit to a chemical test of  
29 breath under AS 28.35.031(a) [(a) OF THIS SECTION] is admissible

1 evidence in a civil or criminal action or proceeding arising out of an  
2 act alleged to have been committed by the person

3 (1) while operating or driving a motor vehicle or operating  
4 an aircraft or watercraft while intoxicated; or

5 (2) while operating a motor vehicle with 0.04 percent or  
6 more by weight of alcohol in the person's blood or 40 milligrams or  
7 more of alcohol per 100 milliliters of blood, or 0.04 grams or more of  
8 alcohol per 210 liters of the person's breath.

9 \* Sec. 16. AS 28.35.032(f) is amended to read:

10 (f) Refusal to submit to a chemical test of breath authorized by  
11 AS 28.35.031(a)(1) [AS 28.35.031(a)] is a class A misdemeanor. Re-  
12 fusal to submit to a chemical test of breath authorized by AS 28.-  
13 35.031(a)(2) is a class A misdemeanor if the person's driver's license  
14 has been previously revoked two or more times under AS 28.15.-  
15 165(a)(2).

16 \* Sec. 17. This Act takes effect July 1, 1990.  
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# Alaska State Legislature



Legislative Research Agency

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Fax: (907) 163-3351

January 19, 1990

## MEMORANDUM

TO: Representative Dave Donley

ATTN: Michael Ward

FROM: Leola Weimer *LW*  
Legislative Analyst

RE: Blood Alcohol Levels for Minors  
Research Request 90.172

You asked which states have imposed more restrictive blood alcohol concentration (BAC) levels on drivers under the age of 21 than over the age of 21. Specifically, you wanted to know if there has been 1) any litigation challenging the constitutionality, or 2) any studies demonstrating the impact of such laws.

### Summary

Seven states impose more restrictive BAC levels on drivers under the age of 21: Maine, Maryland, New Mexico, North Carolina, Oregon, Rhode Island and Wisconsin.

The only constitutional challenge to a more restrictive BAC level for drivers under the age of 21 has occurred in Maine. In both 1984 and 1989 Maine's statute was upheld.

Studies of the effect of lower BAC levels for drivers under the age of 21 suggest that the stricter treatment of minors significantly reduces the frequency of drunk driving convictions of minors.

### More Restrictive BAC Levels

Seven states impose more restrictive blood alcohol concentration (BAC) levels on drivers under the age of 21. Oregon was the most recent state to adopt such a standard. Regulations regarding age restrictions, BAC levels and penalties are different for each state.

<u>State</u>	<u>Adult BAC Level</u> <sup>1</sup>	<u>Youth BAC Level</u>
Maine	0.08	0.02 (under 21)
Maryland	0.07 to 0.10 <sup>2</sup>	0.02 (under 21)
New Mexico	0.10	0.05 (under 18)
North Carolina	0.10	0.00 (under 18)
Oregon	0.08	0.00 (under 18)
Rhode Island	0.10	0.04 (under 18)
Wisconsin	0.10	0.00 (under 19)

In each case, the penalty for violating the youth BAC level is suspension of driving privileges. In Maine, an automatic one-year suspension is imposed. Maryland allows for up to a one-year suspension. New Mexico revokes a driver's licence for six months for first offenders and one year for second offenders. North Carolina revokes the driver's licence for forty-five days or until their eighteenth birthday, whichever is greater. Oregon suspends driving privileges for ninety days for first offenders and for one year for repeat offenders. Rhode Island revokes first offender's licenses for six months, and second offender's license until their twenty-first birthday. Each subsequent offense causes an additional two years suspension of driving privileges after the driver's twenty-first birthday. Wisconsin suspends driving privileges for three months but allows for an occupational hardship license.

Other states allow for the suspension or revocation of a person's privilege to operate a motor vehicle based upon conviction of possessing a controlled substance. These laws apply both to the illegal possession of a controlled drug

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<sup>1</sup> Measured in terms of grams of alcohol per deciliter of blood.

<sup>2</sup> Maryland has no illegal per se BAC level. It does, however, have a presumptive BAC of 0.07 to 0.10. The difference between illegal per se and presumptive BAC levels is the burden of proof required. Presumptive BAC assumes that the accused is under the influence of alcohol but an individual has the opportunity to demonstrate that he or she is acting responsibly. Sobriety road tests and other evidence may be used to prove that although an individual is under the influence of alcohol, he or she is not in fact intoxicated. The burden of proof rests with the arresting officer. Per se BAC levels, on the other hand, establish a definitive limit above which an individual is considered intoxicated and therefore driving illegally.

A list of the illegal per se and presumptive BAC levels for each of the fifty states, District of Columbia and Puerto Rico is attached (see attachment A).

and to persons under twenty-one in possession of alcohol. For an explanation of these types of restrictions, see attachment B.

### Constitutional Challenges

Only one state, Maine, has had to defend the constitutionality of a stricter drunk driving standard based on lower BAC levels for minors. Maine's statute was first challenged soon after its implementation in 1984 and again in 1989.

In the first case, *William R. Maines, et al. v. Secretary of State*, the Supreme Judicial Court of Maine dismissed the case on procedural grounds and the issue of constitutionality was not addressed.<sup>3</sup> However, in the 1989 case of the *State of Maine v. Nathaniel W. Hunt*, the Supreme Judicial Court of Maine upheld a superior court decision that this statute did not violate the Fourth Amendment.<sup>4</sup> Copies of each case are found in attachment C.

### Impact Studies

There have been several studies on driving while intoxicated that have identified youth drunk driving as a problem area that needs special attention. The Surgeon General's Workshop on Drunk Driving, December 14-16, 1988, endorsed the proposal to enforce additional penalties over and above standard liquor law violations for those under age twenty-one with a 0.02 BAC or above.<sup>5</sup>

The National Commission Against Drunk Driving's Progress Report on Recommendations Proposed by the Presidential Commission on Drunk Driving, December 1987, also emphasized the need to develop special programs for youth and drunk driving. The 0.02 BAC policy of Maine was applauded as an example of an effective program. It was determined that increases in license suspensions

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<sup>3</sup> 493 *Atlantic Reporter*, 2d Series, p. 326.

<sup>4</sup> 556 *Atlantic Reporter*, 2d Series, pp. 653-4.

<sup>5</sup> Surgeon General's Workshop on Drunk Driving, Proceedings, Washington, DC, December 14-16, 1988, p. 70.

since the implementation of this program has significantly reduced the number of drunk driving convictions of minors.<sup>6</sup>

The Maine example was also the subject of an independent study by Hingson et al. in 1986. This study revealed that "self-reported DWI and self-reported nonfatal crash involvement among drivers 19 and under declined significantly when compared to Massachusetts teens and Maine adults. Declines were most dramatic for teens who were aware of the law."<sup>7</sup> Follow-up studies have confirmed the declines in youth drunk driving. The difference between Massachusetts and Maine teens, however, has declined to a nonsignificant level. Hingson researchers attribute this lack of difference to high level anti-drug and anti-DWI activity in both states. They also noted that "the enforcement of Maine's 0.02 BAC law has become sporadic, and police appear to arrest juveniles with less regularity than adult offenders."<sup>8</sup>

The zero tolerance law in Wisconsin has also been the focus of a study on youth and drunk driving. Initial studies produced dramatic results showing a "sixty percent decrease in the incidence of teen drivers involved in alcohol-related crashes."<sup>9</sup> Subsequent studies have shown that there have been similar decreases for drivers nineteen and older.<sup>10</sup> According to Judge Foley of Milwaukee's testimony before the National Commission Against Drunk Driving in October 1987, however, "lack of comparison data render interpretation of these reductions

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<sup>6</sup> National Commission Against Drunk Driving. *Progress Report on Recommendations Proposed by the Presidential Commission on Drunk Driving*, December 1987, p.7-8.

<sup>7</sup> Surgeon General's Workshop on Drunk Driving, *Background Papers*. Washington, D.C., December 14-16, 1988, pp.198-9.

<sup>8</sup> Ibid.

<sup>9</sup> *Governing Magazine*, "Teen Blood Alcohol Levels," October 1989, pp. 12-13.

<sup>10</sup> Schroeder, Ron. "Not-A-Drop Laws," *Trends & Issues*, vol. 1, no. 3, November 1989, p. 3.

Representative Donley  
January 19, 1990  
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difficult."<sup>11</sup> There is little question that the existence of a zero BAC law in Wisconsin has increased public awareness of youth and drunk driving. Whether Wisconsin's "not-a-drop" law is the main factor or simply a contributing factor for this decrease has yet to be determined.

Please contact this office if you have questions or need further information.

Attachments

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<sup>11</sup> Surgeon General's Workshop on Drunk Driving, *Background Papers*, Washington, D.C., December 14-16, 1988, p.199.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

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January 22, 1990

The Honorable Dave Donley  
Alaska State Representative  
P.O. Box V  
Juneau, Alaska 99811

Re: HB 236 - Blood Alcohol Level for  
Drivers Under 21

Dear Representative Donley:

Last year you introduced HB 236, a bill that would lower the permissible blood alcohol level for drivers under 21 to 0.05 percent. You have asked whether this legislation is constitutional. The short answer to your question is that the law is likely to be challenged on constitutional equal protection grounds, and we are unable, at this time, to reach an opinion as to the likely outcome of the challenge.

As we discussed last year, the court's analysis will focus on the factual basis for distinguishing between the permissible blood alcohol level for persons under 21 and persons over 21. Therefore, we continue to recommend (1) that the legislation contain a section setting out, as findings, those facts that provide a basis for making the distinction; and (2) that factual support for the findings be presented during the legislative hearing process. In the absence of factual support for such findings, we believe it is unlikely that the statute would be upheld.

As a general principle, when analyzing claims that statutes deny equal protection, the Alaska court requires legislation to pass a more rigorous test than is required under federal law. <sup>1/</sup> In Herrick's Aero-Auto-Aqua Repair v. DOT, 754 P.2d 1111 (1988), the court explained its expansive equal protection analysis as follows:

In reviewing equal protection claims under the Alaska constitution ... the minimum burden that the state must meet when defending legislation

1/ See, e.g. Isakson v. Rickey, 550 P.2d 359 (Alaska 1976).

The Honorable Dave Donley

January 22, 1990  
Page 2

challenged on equal protection grounds under the Alaska constitution is greater than that required under the United States Constitution. The burden on the state increases in proportion to the primacy of the interest involved. 2/

Because HB 236 does not contain findings, and because a factual basis for setting different blood alcohol levels for minors and adults has not yet been presented during the hearing process, we are unable at this time to reach an opinion as to whether HB 236 would pass constitutional muster in Alaska. 3/

If you have any questions about the matters addressed in this letter, please let us know.

Very truly yours,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By: 

Laurie H. Otto  
Assistant Attorney General

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2/ 754 P.2d at 1114. The court in Herrick also pointed to an additional burden placed on the state in defending against an equal protection challenge. "[T]he rational basis test articulated by the Supreme Court allows a court to 'hypothesize' facts. Under that test, a party challenging legislation on equal protection grounds, cannot prevail so long as 'it is evident from all the considerations presented to [the legislature], and those of which we may take judicial notice, that the question is at least debatable.'" Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464 (1981). In Alaska, the court will not hypothesize facts.

3/ You provided us with two opinions by the Maine Supreme Court that discuss a law similar to HB 236. (The Maine law, however, imposes civil rather than criminal liability.) Neither case addresses whether the law violates equal protection. In one case, Maines v. Secretary of State, 493 A.2d 326 (Maine 1985), the court refused to consider an equal protection challenge to the statute because an appeal was not filed in a timely manner. In the second case, State v. Hunt, 556 A.2d 653 (Maine 1989), the court rejected a claim that the fourth amendment protection against unreasonable searches and seizures was violated by a statute requiring a person to submit to a breath test when probable cause exists to believe that the person operated a vehicle while having a blood alcohol level of 0.02 percent or more.