

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

6204 HOUSE TRANSPORTATION

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Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

February 26, 1990

HAND DELIVERED

Senator Lloyd Jones
Alaska State Legislature
P. O. Box Y
Juneau, AK 99811

Re: SB 499 - An Act relating to appeal of administrative action
against a driver's license.

Dear Senator Jones:

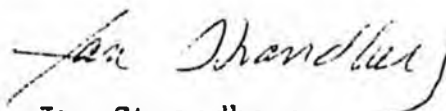
The purpose of SB 499 is to conform the Department of Motor Vehicle driver's license revocation appeal procedure to the procedure followed by other DMV and non-DMV administrative appeals.

The present statute, AS 28.05.141(d), provides that license revocation appeals are to be heard de novo by the district court "in accordance with the applicable Rules of Court governing appeals in civil matters". However, there are no rules governing appeals to district court because there are no other appeals to district court. The statutes defining district court jurisdiction (AS 22.15) do not give the district court appellate jurisdiction. Jurisdiction over appeals from administrative agencies is specifically given to the superior court by AS 22.10.020(d).

This bill would give the superior court appellate jurisdiction over driver's license revocation appeals and these appeals would be on the record rather than de novo. This would both simplify and standardize the administrative appeal process.

Thank you for this opportunity to explain the reason why the court system requested this proposed legislation. I would be happy to answer questions you may have about it.

Sincerely,



Jan Strandberg
Staff Counsel

JS:gb

cc: Senate Transportation Committee members:

Senator Fahrenkamp
Senator Fischer
Senator Pourchot
Senator Coghill



FEB 24 1990

Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEER STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

February 16, 1990

Senator Lloyd Jones
Chair, Senate Transportation Committee
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Re: SB 499 - An Act regarding appeals of administrative
revocations of driver's licenses

Dear Senator Jones:

The Alaska Court System would appreciate a hearing on this bill at your earliest convenience. The purpose of SB 499 is to bring certain Division of Motor Vehicle appeals into conformity with the regular procedure for administrative agency appeals. The current statute, AS 28.05.141(d), requires driver's license revocation appeals to be filed in the district court and to be heard de novo. There are no court rules that allow appeals to the district court or de novo hearings on appeal. This bill would bring driver's license revocation appeals into conformity with other administrative appeals that are brought in superior court and are based on the record made at the Division of Motor Vehicle hearing.

I would be happy to answer any questions you may have about this bill.

Sincerely,

Jan Strandberg
Staff Counsel

JS:gb

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Alaska Court System
 Title: An Act relating to appeal of administrative action against a driver's license BRU: Trial Courts
 Sponsor: Judiciary Committee Components: _____
 Requestor: Transportation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
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)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 284-8228
 Date: 02/27/90
 Date: 02/27/90

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: Appeal from driver's license
revocation BRU: Motor Vehicles
 Sponsor: Judiciary Committee Component: _____
 Requestor: Senate Transportation

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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
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)

No fiscal impact.

Prepared by: Bill Brown
 Division: Motor Vehicles

Phone: 465-4335
 Date: 02-26-90

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

Date: 2-28-90
 Page 1 of 1

Handwritten: 2/24/90

Collateral references. — Inspection of motor vehicle records, right as to, 84 ALR2d 1261.

Sec. 28.15.160. Court reports. [Repealed, § 19 ch 178 SLA 1978.]

Article 2. Cancellation, Suspension, Revocation or Limitation of Drivers' Licenses.

Section	Section
161. Cancellation of driver's license	181. Court suspensions, revocations, and limitations
165. Administrative revocations resulting from chemical sobriety tests and refusals to submit to tests	185. Court revocation of a minor's license to drive
166. Administrative review of revocation	191. Court reports to department
171. Suspending privileges of a person licensed in another jurisdiction; reporting convictions, suspensions, and revocations	201. Limitation of driver's license
	211. Periods of limitation, suspension or revocation; opportunity for hearing and surrender of license

Sec. 28.15.161. Cancellation of driver's license. (a) The department shall cancel a driver's license upon determination that

(1) the licensee is not medically or otherwise entitled to the issuance or retention of the license, or has been adjudged incompetent to drive a motor vehicle;

(2) there is an error or defect in the license;

(3) the licensee failed to give the required or correct information in the licensee's application; or

(4) the license was obtained fraudulently.

(b) The licensee may apply for a new license at any time after cancellation upon removal of the cause for the cancellation. (§ 19 ch 178 SLA 1978)

NOTES TO DECISIONS

Intent of act. — This act plainly expresses the intent that all revocations and suspensions of operators' licenses be the act of the Department of Public Safety. *Knudsen v. City of Anchorage*, 358 P.2d 375 (Alaska 1960), overruled on other grounds, *Roberts v. State*, 458 P.2d

340 (Alaska 1969); *Glasgow v. State*, 469 P.2d 682 (Alaska 1970), and *Baker v. City of Fairbanks*, 71 P.2d 386 (Alaska 1970) (Decided under former AS 28.15.170).

Cited in *Smith v. State*, 756 P.2d 913 (Alaska Ct. App. 1988).

Collateral references. — 7A Am. Jur. 2d, *Automobiles and Highway Traffic*, § 112 et seq.

60 C.J.S., *Motor Vehicles*, § 164.1 et seq.

Civil rights and liabilities as affected by failure to comply with regulations as to licensing of automobile operator, 16 ALR 1108; 35 ALR 62; 38 ALR 1038; 43 ALR

1153; 54 ALR 374; 58 ALR 532; 61 ALR 1190; 78 ALR 1028; 87 ALR 1469; 111 ALR 1258; 163 ALR 1375.

Validity of statute relating to granting or revocation of license or permit to operate automobile, 71 ALR 616; 108 ALR 1162; 125 ALR 1459.

Denial, suspension, or cancellation of

driver's license because of physical disease or defect, 38 ALR3d 452.

Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 ALR3d 361.

Sufficiency of notice and hearing before revocation or suspension of motor vehicle

driver's license, 60 ALR3d 427.

Validity of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of or ability to operate motor vehicle, 86 ALR3d 1251.

Sec. 28.15.165. Administrative revocations resulting from chemical sobriety tests and refusals to submit to tests. (a) If a chemical test administered under AS 28.35.031(a) to a person driving a motor vehicle for which a driver's license is required produces a result described in AS 28.35.030(a)(2) or if a person under arrest for driving a motor vehicle for which a driver's license is required refuses to submit to a chemical test under AS 28.35.031(a), a law enforcement officer shall read a notice and deliver a copy to the person. The notice must advise that

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

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

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

(4) revocation of the person's driver's license or nonresident privilege to drive, or a determination not to issue an original license shall take effect upon expiration of the temporary driver's license unless the person within seven days requests an administrative review.

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

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

(d) The period of revocation of a driver's license by the department under this section shall be for the appropriate minimum period for court revocations under AS 28.15.181(c). (§ 3 ch 77 SLA 1983)

NOTES TO DECISIONS

"Motor vehicle for which driver's license is required." — When viewed in context, the phrase "a motor vehicle for which a driver's license is required" refers to a type of motor vehicle, rather than to the vehicle's location. *Caulkins v. State*, Dep't of Pub. Safety, 743 P.2d 366 (Alaska 1987).

Revocation for operating in parking lot. — The Department of Public Safety may revoke the driver's license of an intoxicated person who operates a motor vehicle in a privately owned parking lot held open to the public. *Caulkins v. State*, Dep't of Pub. Safety, 743 P.2d 366 (Alaska 1987).

Admission of suppressed test results held improper. — Because no breath sample was preserved and no second test

was given to the defendant, the hearing officer's decision to admit breathalyzer test results which had been suppressed on due process grounds in a criminal prosecution was improper in a subsequent license revocation hearing. *Briggs v. State*, Dep't of Pub. Safety, 732 P.2d 1078 (Alaska 1987).

Applied in *Champion v. Department of Pub. Safety*, 721 P.2d 131 (Alaska 1986).

Quoted in *Barcott v. State*, Dep't of Pub. Safety, 741 P.2d 226 (Alaska 1987); *Tulowitzke v. State*, Dep't of Pub. Safety, 743 P.2d 368 (Alaska 1987); *State, Dep't of Pub. Safety v. Conley*, 754 P.2d 232 (Alaska 1988).

Cited in *Thorne v. Department of Pub. Safety*, Sup. Ct. Op. No. 3445 (File No. S-2566), P.2d (1989).

Sec. 28.15.166. Administrative review of revocation. (a) A person who has received a notice under AS 28.15.165(a) may make a written request for administrative review of the department's action under AS 28.15.165(c). If the person's driver's license has not been previously surrendered to the department, it shall be surrendered to the department at the time the request for review is made.

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

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

(d) A person who has requested a hearing under this section and who fails to appear at the hearing, for reasons other than lack of

actual notice of the hearing or physical incapacity such as hospitalization or incarceration, waives the right to a hearing. The determination of the department that is based upon the enforcement officer's report becomes final.

(e) Notwithstanding AS 28.05.141(b), the hearing under this section shall be held at the office of the department nearest to the residence of the person requesting the hearing unless

(1) a district court judge or a magistrate has been designated as a hearing officer in the matter by the commissioner; or

(2) the department and the person agree that the hearing is to be held elsewhere.

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

(1) administer oaths and affirmations;

(2) examine witnesses and take testimony;

(3) receive relevant evidence;

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

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

(6) make a final ruling on the issue.

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

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

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

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

(i) Testimony given by the person at the hearing is not admissible against the person in a criminal trial unless the person's testimony at the trial is inconsistent with that given at the hearing.

(j) If the issues set out in (g) of this section are determined in the affirmative by a preponderance of the evidence, the hearing officer

shall sustain the action of the department. If one or more of the issues is determined in the negative, the department's action shall be rescinded.

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

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

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

(n) The filing of an appeal under (m) of this section does not automatically stay the department's revocation order. The court may grant a stay of the order only upon a motion and hearing, and upon a finding that there is a reasonable probability that the petitioner will prevail on the merits and that the petitioner will suffer irreparable harm if the order is not stayed. (§ 3 ch 77 SLA 1983)

NOTES TO DECISIONS

Due process considerations. — Since the same procedural safeguards apply in civil driver's license revocation proceedings for driving while intoxicated as apply in criminal prosecutions for that offense, due process requires consideration of the

margin of error inherent in the breath testing procedure used. *Barcott v. State, Dep't of Pub. Safety*, 741 P.2d 226 (Alaska 1987).

Collateral estoppel effect of ruling in criminal proceedings. — Where de-

fendant in criminal driving while intoxicated proceedings did not testify at a suppression hearing on the question of the legality of the stop, the suppression ruling that the officer's stop was legal should have had no collateral estoppel effect against the defendant in a civil driver's license revocation proceeding. The hearing officer was correct to examine the stop issue de novo, and the superior court incorrectly invoked collateral estoppel in refusing to review this aspect of the hearing officer's decision. *Miller v. State, Dep't of Pub. Safety, 761 P.2d 117 (Alaska 1988).*

Standard of review of supreme court. — The supreme court uses the same standard as set out in subsection (m) for judicial review by the superior court, since it conducts independent review. *Miller v. State, Dep't of Pub. Safety, 761 P.2d 117 (Alaska 1988).*

The state's failure to preserve a videotape of field sobriety tests taken one hour after arrest violates the due process rights of an accused at an administrative license revocation hearing where the accused is entitled to challenge whether the

arresting officer had reasonable grounds at the time of arrest to believe that the suspect was driving while intoxicated. *Thorne v. Department of Pub. Safety, Sup. Ct. Op. No. 3445 (File No. S-2566), P.2d (1989).*

The state's failure to preserve a videotape of field sobriety tests taken one hour after arrest did not violate defendant's right to confront and cross-examine the witnesses against him, where the officer who conducted the tests appeared at defendant's license revocation review hearing and was subjected to vigorous cross-examination by defendant's attorney. *Thorne v. Department of Pub. Safety, Sup. Ct. Op. No. 3445 (File No. S-2566) P.2d 1989.*

Applied in *Champion v. Department of Pub. Safety, 721 P.2d 131 (Alaska 1986); Barcott v. State, Dep't of Pub. Safety, 741 P.2d 226 (Alaska 1987).*

Quoted in *State, Dep't of Pub. Safety v. Conley, 754 P.2d 232 (Alaska 1988).*

Cited in *Tulowitzke v. State, Dep't of Pub. Safety, 743 P.2d 368 (Alaska 1987).*

Sec. 28.15.170. Cancellation. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.171. Suspending privileges of a person licensed in another jurisdiction; reporting convictions, suspensions, and revocations. (a) The privilege of driving a motor vehicle on a highway or vehicular way or area of this state given to a person licensed in another jurisdiction is subject to suspension, revocation, or limitation by the department or a court in the same manner and for the same reasons as a driver's license issued under this chapter.

(b) The department may, upon receiving the record of a conviction of a person licensed in another jurisdiction for a vehicle, driver, or traffic offense in this state, or upon suspending or revoking the person's driving privilege, forward a copy of the record or suspension or revocation to the motor vehicle administrator for the jurisdiction in which the person convicted is licensed. (§ 19 ch 178 SLA 1978; am § 13 ch 60 SLA 1986)

Effect of amendments. — The 1986 amendment in subsection (a) substituted a comma for "or" following "suspension"

and inserted ", or limitation" and "or a court."

Sec. 28.15.180. Suspending privileges of nonresidents. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.181. Court suspensions, revocations, and limitations. (a) Conviction of any of the following offenses is grounds for the immediate revocation of a driver's license:

- (1) manslaughter or negligent homicide resulting from driving a motor vehicle;
- (2) a felony in the commission of which a motor vehicle is used;
- (3) failure to stop and give aid as required by law when a motor vehicle accident results in the death or personal injury of another;
- (4) perjury or making a false affidavit or statement under oath to the department under a law relating to motor vehicles;
- (5) driving a motor vehicle while intoxicated;
- (6) reckless driving;
- (7) using a motor vehicle in unlawful flight to avoid arrest by a peace officer;
- (8) refusal to submit to a chemical test under AS 28.35.032;
- (9) driving while license canceled, suspended, revoked or in violation of a limitation.

(b) A court convicting a person of an offense described in (a)(1) — (4), (6), or (7) of this section shall revoke that person's driver's license for not less than 30 days for the first conviction, unless the court determines that the person's ability to earn a livelihood would be severely impaired and a limitation under AS 28.15.201 can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public. If a court limits a person's license under this subsection, it shall do so for not less than 60 days. Upon a subsequent conviction of a person for any offense described in (a)(1) — (4), (6), (7) of this section occurring within 10 years after a prior conviction, the court shall revoke the person's license and may not grant the person limited license privileges for the following periods:

- (1) not less than one year for the second conviction; and
- (2) not less than three years for a third or subsequent conviction.

(c) A court convicting a person of an offense described in (a)(5) or (8) of this section arising out of the operation of a motor vehicle for which a driver's license is required shall revoke that person's driver's license. The revocation may be concurrent with or consecutive to an administrative revocation under AS 28.15.165. The court may not, except as provided in (e) of this section, grant limited license privileges for the following periods:

- (1) not less than 90 days if, within the preceding 10 years, the person has not previously been convicted of an offense
- (A) described in (a)(5) or (8) of this section; or

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

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

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

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

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

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

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

(d) A court convicting a person of an offense described in (a)(9) of this section shall revoke that person's driver's license for not less than the minimum period under AS 28.15.291(c).

(c) A court revoking a driver's license under (c) of this section, or sustaining the action of the department under AS 28.15.165(c), may grant limited license privileges for the final 60 days during which the license is revoked if the

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

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

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

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

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

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

(f) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction. (§ 19 ch 178 SLA 1978; am §§ 7 — 9 ch 117 SLA 1982; am §§ 4 — 7 ch 77 SLA 1983)

Collateral references. — Validity of statute or ordinance relating to granting or revocation of license or permit to operate automobile, 71 ALR 616; 108 ALR 1162; 125 ALR 1459.

What amounts to conviction or adjudication of guilt for purposes of refusal, revocation, or suspension of automobile driver's license, 113 ALR 1179; 79 ALR2d 866.

Suspension or revocation of driver's license for refusal to take sobriety test, 88 ALR2d 1064.

Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 ALR3d 452.

Validity and construction of statute or ordinance mandating imprisonment for habitual repeated traffic offender, 2 ALR4th 618.

Revocation or suspension of operator's license for "habitual," "persistent," or "frequent" traffic violations, 48 ALR4th 367.

Sec. 28.15.185. Court revocation of a minor's license to drive.
 (a) A person who is at least 13 years of age but not older than 17 years of age who is adjudicated by a juvenile court of misconduct involving a controlled substance under AS 11.71 or possession or consumption of alcohol under AS 04.16.050 is subject to revocation of the person's driver's license under (b) of this section.

(b) The court shall impose the revocation for an offense described in (a) of this section as follows:

(1) for a first conviction or adjudication, the revocation may be for a period not to exceed 90 days;

(2) for a second or subsequent conviction or adjudication, the revocation may be for a period not to exceed one year.

(c) Upon conviction or adjudication of an offense listed in (a) of this section the court may, upon petition of the person, review the revocation and may restore the driver's license, except a court may not restore the driver's license until

(1) at least one-half of the period of revocation imposed under this section has expired; and

(2) the person has taken and successfully completed a state approved program of drug rehabilitation if convicted of misconduct involving a controlled substance under AS 11.71, or alcohol rehabilitation if convicted of possession or consumption of alcohol under AS 04.16.050; this paragraph does not apply to a person who resides in an area that does not offer a state approved drug or alcohol rehabilitation program or a person that the court determines does not need alcohol or drug rehabilitation.

(d) Notwithstanding the provisions of AS 28.20.240 and 28.20.250, upon conviction of an offense specified in (a) of this section, the department may not require proof of financial responsibility before restoring or issuing the person's driver's license. (§ 1 ch 130 SLA 1988)

Sec. 28.15.190. Forwarding surrendered licenses. (Repealed, § 19 ch 178 SLA 1978.)

Sec. 28.15.191. Court reports to department. (a) A court that convicts a person of an offense under this title or a regulation adopted under this title, or another law or regulation of this state, or a municipal ordinance that regulates the driving of vehicles, shall forward a record of the conviction to the department. A conviction of a standing or parking offense need not be reported.

(b) A conviction on a plea of nolo contendere accepted by the court or a forfeiture of bail or collateral deposited to secure a defendant's appearance in court that has not been vacated is equivalent to a conviction for purposes of this chapter.

(c) A court that suspends, revokes, or limits a driver's license shall require the surrender of the license, and shall immediately forward it to the department with the record of conviction and notification of the effective date of the suspension, revocation, or limitation as determined under AS 28.15.211(b).

(d) A court that limits a driver's license, in addition to the actions required under (c) of this section, shall issue to the licensee a form specifying the court's limitations imposed upon a person's driver's license, and shall immediately forward to the department a copy of the limitations imposed upon the license.

(e) A court shall report to the department every change of name authorized by it, and the name, address, age, description, and driver's license number if available, of every person adjudged to be afflicted with or suffering from a mental disability or disease, or to be an habitual user of alcohol or another drug. The department shall prescribe and furnish the forms for making these reports.

(f) A municipality that accepts a fine payment after a plea of no contest to a charge of a violation of a municipal ordinance for which a scheduled fine has been established shall forward a record of the payment to the department; however, a conviction for a standing or parking offense need not be reported. (§ 19 ch 178 SLA 1978; am § 9 ch 76 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, added subsection (f).

NOTES TO DECISIONS

For case where magistrate recommended suspension of driver's license for three years, see *Hanrahan v. City of Anchorage*, 377 P.2d 381 (Alaska 1962). (Decided under former AS 28.15.190.)

Stated in *Anderson v. Municipality of Anchorage*, 645 P.2d 205 (Alaska Ct. App. 1982).

Sec. 28.15.200. Suspending license upon conviction in another jurisdiction. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.201. Limitation of driver's license. (a) A court of competent jurisdiction may, for good cause, impose limitations upon the driver's license of a person that will enable the person to earn a livelihood without excessive risk or danger to the public. However, no limitation may be placed upon a driver's license until after a review has been made of the person's driving record and other relevant information, nor may a limitation be imposed when a statute specifically prohibits the limitation of a license for a violation of its provisions.

(b) A court imposing a limitation under this section shall (1) require the surrender of the driver's license; and (2) issue to the licensee a certificate valid for the duration of the limitation.

(c) After the termination of a limitation as shown on the certificate issued under (b) of this section, the license of a person from whom a limitation was imposed is revoked until the person receives a new license in accordance with AS 28.20.240. (§ 19 ch 178 SLA 1978; am §§ 10, 11 ch 117 SLA 1982; am §§ 8, 9 ch 77 SLA 1983)

NOTES TO DECISIONS

For construction with AS State, 654 P.2d 1323 (Alaska Ct. App. 28.15.291 a), which prohibits driving while license is suspended, see *Uhde v.* 1982).

Sec. 28.15.210. Mandatory revocation. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.211. Periods of limitation, suspension or revocation; opportunity for hearing and surrender of license. (a) Except for a point system suspension or revocation under AS 28.15.221 — 28.15.241 and unless provided otherwise by law, and unless the suspension or revocation was for a cause that has been removed, a person whose driver's license or privilege to drive a motor vehicle in this state has been suspended or revoked may not apply for a new license nor may the person's driving privilege be restored until the expiration of

(1) one month from the date on which the license was suspended or revoked for a first conviction of the particular offense from which the suspension or revocation resulted;

(2) three months from the date on which the license was suspended or revoked for a second conviction within 12 consecutive months of the same offense from which the suspension or revocation resulted;

(3) one year from the date on which the license was suspended or revoked for a third or subsequent conviction within 12 consecutive

months of the same offense from which the suspension or revocation resulted.

(b) A limitation, suspension, or revocation of a driver's license imposed by a court takes effect on the date of final judgment, except that if another limitation, suspension, or revocation of license is in effect on the date of final judgment, the effective date of the last imposed limitation, suspension, or revocation is at the end of the last day of the previous limitation, suspension, or revocation unless the court specifies otherwise.

(c) At the end of a period of suspension or limitation, when that limitation follows a suspension, the person whose license has been suspended or limited may apply to the department and, upon payment of the proper fees, including a reinstatement fee of \$100, be issued a duplicate driver's license if the person is otherwise entitled to the license under this title.

(d) At the end of a period of revocation or limitation following a revocation, a person whose driver's license has been revoked may apply to the department for the issuance of a new license, but shall submit to reexamination and pay all required fees including a reinstatement fee of \$100.

(e) At the end of a period of limitation, suspension, or revocation under this chapter, the department may not issue a driver's license or a duplicate driver's license to the licensee until the licensee has complied with AS 28.20 relating to proof of financial responsibility.

(f) Unless otherwise provided by law, periods of limitation shall be made at the discretion of the court. (§ 19 ch 178 SLA 1978; am § 12 ch 117 SLA 1982; am § 25 ch 77 SLA 1983; am § 7 ch 70 SLA 1984)

Opinions of attorney general. — The \$100 fee to be imposed for reinstatement of a revoked, suspended, or limited license under subsections (c) and (d) applies to all reinstatements made after the effective date of the law — January 1, 1985 — re-

gardless of when the driving privileges were taken away or when the incident occurred which precipitated the revocation, suspension or limitation. July 1, 1985, Op. Att'y Gen.

NOTES TO DECISIONS

Applied in *Uhde v. State*, 654 P.2d 902 (Alaska Ct. App. 1988); *Smith v. State*, 756 P.2d 913 (Alaska Ct. App. 1988).
Cited in *State v. Robertson*, 749 P.2d 1988).

Sec. 28.15.220. Discretionary suspension, etc. [Repealed, § 19 ch 178 SLA 1978.]

Alaska Statutes

Title 28. Motor Vehicles.

Chapter

- 01. Scope and Interpretation of Title (§§ 28.01.010 — 28.01.020)
- 05. Administration (§§ 28.05.011 — 28.05.151)
- 10. Vehicle Registration and Title (§§ 28.10.011 — 28.10.661)
- 11. Abandoned Vehicles (§§ 28.11.010 — 28.11.110)
- 15. Drivers' Licenses (§§ 28.15.011 — 28.15.291)
- 17. Commercial Driver Training Schools (§§ 28.17.011 — 28.17.071)
- 20. Motor Vehicle Safety Responsibility Act (§§ 28.20.010 — 28.20.640)
- 22. Mandatory Motor Vehicle Insurance (§§ 28.22.011 — 28.22.311)
- 32. Commercial Motor Vehicle Safety Inspections (§§ 28.32.010 — 28.32.900)
- 33. Commercial Motor Vehicle Financial Responsibility (§ 28.33.010)
- 35. Miscellaneous Provisions (§§ 28.35.015 — 28.35.255)
- 37. Driver License Compact (§§ 28.37.010 — 28.37.190)
- 40. General Provisions (§§ 28.40.050 — 28.40.110)

Revisor's notes. — The provisions of this title were redrafted in 1994 to remove personal pronouns pursuant to § 4, ch. 58, SLA 1982, and to make other minor word changes.

NOTES TO DECISIONS

Stated in *Buckalew v. Holloway*, 604 P.2d 240 (Alaska 1979).

Chapter 01. Scope and Interpretation of Title.

Section

- 10. Provisions uniform throughout state
- 20. Short title

Sec. 28.01.010. Provisions uniform throughout state. (a) The provisions of this title and the regulations adopted under this title are applicable within all municipalities of the state. A municipality may not enact an ordinance that is inconsistent with the provisions of this title or the regulations adopted under this title. A municipality may not incorporate into a publication of traffic ordinances a provision of this title or the regulations adopted under this title without specifi-

cally identifying the provision or regulation as a state statute or regulation.

(b) A municipality may adopt by reference all or a part of this title and regulations adopted under this title, and may request and shall receive from the Departments of Public Safety and Community and Regional Affairs assistance in the drafting of model ordinances for adoption by reference. Notwithstanding (a) of this section, a municipality may enact necessary ordinances to meet specific local requirements.

(c) A copy of all traffic ordinances enacted by a municipality shall be forwarded to the commissioner and specific notice of any inconsistent ordinances shall be given by the municipality when the copy of the ordinances is forwarded. So far as practicable, the section number identifying a particular municipal traffic ordinance must be the same as the section number identifying a corresponding provision of this title or regulations adopted under this title.

(d) A municipality shall erect necessary official traffic control devices on streets and highways within its jurisdiction that as far as practicable conform to the current edition of the Alaska Traffic Manual prepared by the Department of Transportation and Public Facilities.

(e) Copies of all traffic ordinances enacted by a municipality shall be incorporated in a manual and made available to the general public.

(f) Regulations adopted pertaining to a matter partially or wholly governed by this title must be mutually consistent and compatible, and must complement each other, as far as practicable. For the purpose of uniformity, the department shall offer and receive reasonable assistance in the coordination and adoption of these regulations.

(g) Regulations adopted under this title must, as far as practicable, conform to the recommendations of the current edition of the Uniform Vehicle Code adopted by the National Committee on Uniform Traffic Laws and Ordinances. (§ 1 ch 91 SLA 1974; am §§ 1, 2 ch 241 SLA 1976; am §§ 1 — 5 ch 178 SLA 1978)

Revisor's notes. — Pursuant to E.O. No. 39, § 11, a reference to Department of Transportation and Public Facilities was

substituted for Department of Highways in (d) of this section in 1977.

NOTES TO DECISIONS

A city ordinance, to the extent it is in conflict with the state traffic regulations, constitutes an exercise of home-rule power expressly prohibited by the legislature. Adkins v. Lester, 530 P.2d 11 (Alaska 1974).

The word "inconsistent" describes that which reveals lack of uniformity in

over-all purpose or design. Cremer v. Anchorage, 575 P.2d 306 (Alaska 1978).

Similarity to Uniform Vehicle Code. — Subsection (a) is similar in substance and purpose to the provisions of § 15-101 of the Uniform Vehicle Code Annotated adopted by the National Committee on Uniform Traffic Laws and Ordinances in

1962. Simpson, 635 P.2d 1197.

Under the provision (a) of the standard of a local or of a motor vehicle of Anchorage Ct. App. 1981.

Nature of the question of ordinance (a) is raised is a mere law and inquiry of uniformity in the statute of police v. M.P.2d 1197.

The same (b) by the twofold ordinance (a) can be upon the existence. Second, the ordinance words, the could not consistent with Simpson 635 P.2d.

Posting not required of this section shall erect 30 mile per the Alaska condition Bailey v. 1981).

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1962. *Simpson v. Municipality of Anchorage*, 635 P.2d 1197 (Alaska Ct. App. 1981).

Under the express terms of subsection (a) it is clear that inconsistency is the standard that governs the validity of a local ordinance regulating the operation of a motor vehicle. *Simpson v. Municipality of Anchorage*, 635 P.2d 1197 (Alaska Ct. App. 1981).

Nature of inconsistency. — When the question of inconsistency between a local ordinance and state law under subsection (a) is raised, the issue is not whether there is a mere discrepancy between the state law and local ordinance; rather, the inquiry must focus on whether any discrepancy in the ordinance impedes or frustrates policy expressed by state law. *Simpson v. Municipality of Anchorage*, 635 P.2d 1197 (Alaska Ct. App. 1981).

The saving provisions of subsection (b) by their express terms, require a twofold showing to be made before an ordinance inconsistent under subsection (a) can be upheld. First, it is incumbent upon the municipality to demonstrate the existence of a "specific local requirement." Second, the municipality must show that its ordinance was "necessary," in other words, that the specific local problem could not be addressed in a manner consistent with the provisions of this title. *Simpson v. Municipality of Anchorage*, 635 P.2d 1197 (Alaska Ct. App. 1981).

Posting of state-wide speed limits not required. — Although subsection (d) of this section states that a municipality shall erect signs, the effectiveness of the 30 mile per hour limit set by the state in the Alaska Administrative Code is not conditioned upon the posting of signs. *Bailey v. Lenord*, 625 P.2d 849 (Alaska 1981).

Ordinance held inconsistent. — See *Simpson v. Municipality of Anchorage*, 635 P.2d 1197 (Alaska Ct. App. 1981).

Home rule ordinance held not inconsistent with former AS 28.15.300(a). — Home rule ordinance which prohibited driving a motor vehicle while one's license is suspended or revoked as did former AS 28.15.300(a) but which was not limited to public highways as was former AS 28.15.300(a) was not in conflict with AS

28.15.300(a) and, therefore, was not invalid. *Cremer v. Anchorage*, 575 P.2d 306 (Alaska 1978).

A slight discrepancy between former AS 28.15.300(a) and an ordinance which prohibited the same acts but was not limited to public highways, i.e., the driving of motor vehicles on private property, was not of such a nature that the exercise of municipal power has been directly or indirectly prohibited by legislative action. *Cremer v. Anchorage*, 575 P.2d 306 (Alaska 1978).

The over-all or basic purpose or design of former AS 28.15.300(a) and a home rule ordinance which prohibited the same acts but was not limited to public highways is the same: to prohibit the driving of a motor vehicle while one's license is suspended or revoked. *Cremer v. Anchorage*, 575 P.2d 306 (Alaska 1978).

The fact that former AS 28.15.300(a) referred to the license suspension being effected by a "court of competent jurisdiction" did not mean that the ordinance was inconsistent with the statute because it might have encompassed a valid license suspension effected by a state agency rather than by a court. *Cremer v. Anchorage*, 575 P.2d 306 (Alaska 1978).

Noncompliance with subsection (c) did not illustrate any inconsistency between an ordinance prohibiting the driving of a motor vehicle while one's license is suspended or revoked and former AS 28.15.300(a). *Cremer v. Anchorage*, 575 P.2d 306 (Alaska 1978).

Jury instructions. — Although a city ordinance set the speed limit on the streets in question at 20 miles per hour, the trial court did not err in instructing the jury that the applicable speed limit was the state-wide limit of 30 miles per hour since the city did not post speed limit signs as required by the Alaska Administrative Code. *Bailey v. Lenord*, 625 P.2d 849 (Alaska 1981).

Stated in *City of Anchorage v. Richards*, 654 P.2d 797 (Alaska Ct. App. 1982).

Cited in *Anderson v. Municipality of Anchorage*, 645 P.2d 205 (Alaska Ct. App. 1982); *Cooley v. Municipality of Anchorage*, 649 P.2d 251 (Alaska Ct. App. 1982).

Collateral references. — Conflict between statutes and local regulations as to

automobiles, 21 ALR 1180 64 ALR 993; 147 ALR 522.

Sec. 28.01.020. Short title. This chapter may be cited as the Alaska Uniform Traffic Laws Act. (§ 3 ch 241 SLA 1976)

Chapter 05. Administration.

Article

- 1. Powers and Duties of Department of Public Safety (§§ 28.05.011 — 28.05.071)
- 2. Vehicle Equipment Standards (§§ 28.05.081 — 28.05.099)
- 3. Subpoenas, Notices and Hearings (§§ 28.05.111 — 28.05.141)
- 4. Disposition of Certain Vehicle and Traffic Offenses (§ 28.05.151)

Article 1. Powers and Duties of Department of Public Safety.

Section

- 11. Duty of commissioner to adopt regulations
- 21. Commissioner to enter compacts and reciprocal agreements
- 31. Department to publish statutes and regulations relating to vehicles, vehicle use and pedestrians
- 35. Approval of accident prevention courses

Section

- 41. Commissioner to prescribe forms, examine applications, and administer oaths
- 45. Voter registration
- 51. Suspended or revoked documents
- 61. Records of department and certified copies of records
- 71. Change of name or address

Sec. 28.05.010. Powers and duties. [Repealed, § 6 ch 178 SLA 1978.]

Sec. 28.05.011. Duty of commissioner to adopt regulations. The commissioner shall, unless otherwise provided by statute, adopt regulations in compliance with the Administrative Procedure Act (AS 44.62) necessary to carry out the provisions of this title and other statutes the administration of which is vested in the department. The regulations must include, but are not limited to:

- (1) rules of the road relating to the driving, stopping, standing, parking, and other conduct of vehicles, to pedestrians and to official traffic control devices;
- (2) minimum equipment for vehicles, including, but not limited to, minimum standards of compliance to be met by manufacturers and vehicle sales and repairs businesses;
- (3) inspection of vehicles, and the removal of vehicles from areas of public use when they are found to be in a defective or unsafe condition;
- (4) registration, titling, transfer, and abandonment of vehicles;
- (5) licensing of drivers of vehicles;
- (6) financial responsibility relating to vehicles;
- (7) management of records of the department required for the administration of this title and regulations adopted under this title,

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including provisions for ensuring the accuracy of information contained in automated and manual information retrieval systems;

(8) [Repealed, § 3 ch 77 SLA 1982.]

(9) definitions of words and phrases used in this title and in regulations adopted under this title unless otherwise provided by statute;

(10) registration of motor vehicle, trailer, and semi-trailer dealers; and

(11) certification and regulation of junk yards. (§ 6 ch 178 SLA 1978; am § 3 ch 77 SLA 1982)

Cross references. — For regulations adopted under this section, see generally 13 Alaska Admin. Code 02 — 40 and 70; for rules of road, see 13 AAC 02; for required equipment and inspection, see 13 AAC 04; for authority of Department of Transportation and Public Facilities to establish weight, size and load limitations, see AS 19.10.060; for present provisions of former paragraph (8) of this section, see AS 44.33.020(25).

Opinions of attorney general. — Statutes may be enforced on streets not within state highway system. The Department of Public Safety has the authority to enforce all traffic statutes and regulations upon dedicated or public subdivision streets, regardless of whether they are in the state highway system. 1965 Op. Att'y Gen., No. 10.

NOTES TO DECISIONS

Editor's notes. — Many of the cases cited below were decided under former AS 28.05.030.

Power of commissioner includes regulation of motorcycle construction and safety apparel. — The power of the commissioner of public safety to adopt regulations governing rules of the road has been interpreted as including the regulation of motorcycle construction and safety apparel insofar as such regulations are reasonable and do not violate constitutional rights of the individual. *Kingery v. Chapple*, 504 P.2d 831 (Alaska 1972).

Wholesale frontal assault on traffic laws not intended. — Although the supreme court strongly presumes that most traffic regulations do in fact provide standards of reasonable behavior, it is conceivable that in highly unusual cases certain traffic laws may be so obscure, oblique or irrational that they could not be said as a matter of law to provide such a standard. In the event the courts of Alaska are faced with such arbitrary and unreasonable laws, they may provide that violations thereof merely indicate some evidence of negligence or no evidence at all. But it should be emphasized that the supreme court does not intend to signify a wholesale frontal assault on Alaska's wise and comprehensive traffic laws. *Ferrell v. Baxter*, 484 P.2d 250 (Alaska 1971).

Certain class of individual to be protected from certain type of harm. — In promulgating traffic laws and regulations the legislature, sometimes expressly, but more often by implication, indicates a policy that a certain class of individual be protected from a certain type of harm. For example, in the case at bar the regulation requiring drivers to remain within their lanes was at least partly designed to protect oncoming motorists against head-on collisions. By enacting the regulation pursuant to statutory authority, the Department of Public Safety has implicitly indicated that no reasonable person would move from his lane before ascertaining it could be done safely. Therefore, before a plaintiff is entitled to an instruction defining the violation as negligence per se, he must first demonstrate that he is among the protected class and, second, that the injury was caused by a harm against which the law was designed to protect. *Ferrell v. Baxter*, 484 P.2d 250 (Alaska 1971).

Restatement rules adopted. — The rules the supreme court adopts to be applied in this state in trials held after the date of this opinion are those set forth in the Restatement (Second) of Torts §§ 286, 288A, and 288B (1965). Trial courts should apply these rules whether the actor is alleged to have violated a traffic

fense. *Ferrell v. Baxter*, 484 P.2d 250 (Alaska 1971).

Violation excused under § 288A(2)(c) of Restatement. — If a trial court holds that a statute sets forth the standard of reasonable behavior and admits evidence of its violation, the court still may, in appropriate cases, permit the defendant to introduce evidence that although he did in fact violate the law, its meaning was so obscure or unreasonable that he acted with all due care in attempting to obey it. In this case his violation could be excused under § 288A(2)(c) of the Restatement. *Ferrell v. Baxter*, 484 P.2d 250 (Alaska 1971).

Construction of 13 AAC 02.485(a). — Study of 13 AAC 02.485(a), which pro-

vides that "a driver of a vehicle may not back the vehicle unless the movement can be made with safety and without interfering with the traffic," and this section, under which this regulation was promulgated, reveals no reason why the regulation should be construed to prohibit an emergency excuse. *Wilson v. Sibert*, 535 P.2d 1034 (Alaska 1975).

For application of rules and regulations governing roads and highways to military base in absence of federal statute, see *Hundley v. United States*, 15 Alaska 551, 131 F. Supp. 655 (D. Alaska 1955).

Cited in *Anderson v. Municipality of Anchorage*, 645 P.2d 205 (Alaska Ct. App. 1982).

Collateral references. — Power to limit weight of vehicle or load thereon, with respect to use of highways, 26 ALR 747; 75 ALR2d 376.

Constitutionality of legislative delegation of powers to prescribe or vary regulations concerning motor vehicles used on highways, 87 ALR 546.

Sec. 28.05.020. Authority of highway commissioner. [Repealed, § 6 ch 178 SLA 1978.]

Sec. 28.05.021. Commissioner to enter compacts and reciprocal agreements. (a) The commissioner may, under terms and conditions best calculated to promote the interests of the state, enter into a compact or agreement with an authorized representative of another jurisdiction in a matter relating to driver licensing, vehicle registration, or other activity authorized under this title. A compact or agreement affecting state finances or driving privileges must be approved by adoption of a concurrent resolution approved by a majority vote of each house of the legislature before it becomes effective.

(b) The commissioner of administration shall separately account for money that is derived from activities authorized under this section and that the department deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this section, including payment to commissioned agents. (§ 6 ch 178 SLA 1978; am § 47 ch 138 SLA 1986)

Effect of amendments. — The 1986 amendment added subsection (b).

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Secs. 28.05.025, 28.05.030. Authority of Department of Commerce and public safety commissioner. [Repealed, § 6 ch 178 SLA 1978.]

Sec. 28.05.031. Department to publish statutes and regulations relating to vehicles, vehicle use and pedestrians. (a) The department shall publish current state statutes and regulations relating to vehicles and their driving or movement, to drivers of vehicles, and to pedestrians. The cost of publication shall be jointly shared by the department and other state agencies that administer statutes and regulations included in the publication prescribed under this section.

(b) A single copy of a facsimile of the publication prescribed in (a) of this section shall be available to the public without charge at all offices of the department. However, a municipality may request and receive without charge a reasonable number of copies of the publication. (§ 6 ch 178 SLA 1978)

Sec. 28.05.035. Approval of accident prevention courses. For the purposes of AS 21.89.025(a)(3), the commissioner may approve driver education courses intended to prevent motor vehicle accidents and promote safe driving practices. (§ 2 ch 9 SLA 1988)

Sec. 28.05.040. Duty of public safety commissioner. [Repealed, § 6 ch 178 SLA 1978.]

Sec. 28.05.041. Commissioner to prescribe forms, examine applications, and administer oaths. (a) The commissioner shall prescribe and provide suitable application forms, certificates of title and registration, driver's licenses, and all other forms necessary to carry out the provisions of this title and regulations adopted under this title, the administration of which is vested in the department, including a standard citation form that meets the requirements of AS 12.25.200 and that is in a form necessary to identify the offender and the offense and otherwise necessary to meet the needs of the public safety and the administration of justice as required under that section.

(b) The department shall examine and approve or disapprove any application for registration of, or certificate of title for, a vehicle, and for a driver's license and any other application made to the department. The department may make any investigation it considers necessary and may require additional information before approving an application. The department shall reject an application if it is not satisfied with the genuineness, regularity, or legality of the application, the truth of a statement contained in it, or the adequacy or sufficiency of information requested by the department. The department shall reject an application when the applicant is not entitled to issuance of the registration, title, license, or permit for which the person is applying or for any other reason required by law.

(c) The commissioner and officers and employees of the department designated by the commissioner may, for the purpose of administering this title and regulations adopted under this title, administer oaths and acknowledge signatures, and do so without charging a fee. (§ 6 ch 178 SLA 1978; am § 7 ch 76 SLA 1987)

Effect of amendments. — The 1987 subsection (a) substituted "AS 12.25.200" amendment, effective January 1, 1988, in for "AS 28.05.151."

Sec. 28.05.045. Voter registration. A state resident, who will be 18 years of age or older within 90 days, who applies in an office of the division of motor vehicles for a driver's license, identification card issued under AS 18.65.310, or vehicle registration under AS 28.10 shall at the time of application be advised by the department that the resident may also register to vote. The department shall use a form for voter registration prepared by the division of elections and shall forward completed forms to the division of elections. The department shall prominently display notice of the right to apply for voter registration at each place that the public may apply for a driver's license, identification card, or vehicle registration. (§ 3 ch 47 SLA 1989)

Sec. 28.05.050. Publication of laws. [Repealed, § 6 ch 178 SLA 1978.]

Sec. 28.05.051. Suspended or revoked documents. (a) When the department suspends or revokes a vehicle registration, certificate of registration, registration plate, permit, or certificate of title or suspends, cancels, or revokes a license, the owner or person in possession of the document shall, immediately upon receiving notice of the suspension, revocation, or cancellation, mail or deliver the registration, certificate, plate, permit, or license to the department.

(b) The commissioner, officers and employees of the department designated by the commissioner, judges and employees of a court, and all peace officers, may take possession of a certificate of title, registration, or license issued by this jurisdiction that has been revoked, canceled, limited, or suspended, or is fictitious, stolen, or altered. (§ 6 ch 178 SLA 1978; am § 1 ch 77 SLA 1983)

Sec. 28.05.060. School patrols. [Repealed, § 2 ch 68 SLA 1964.]

Sec. 28.05.061. Records of department and certified copies of records. (a) The department shall file, maintain, and appropriately index records of

- (1) vehicle registrations under AS 28.10.071(a) — (c);
- (2) stolen, converted, recovered, and unclaimed vehicles under AS 28.10.071(d);

(3) titles and documents creating and evidencing liens or encumbrances under AS 28.10.381;

(4) abandoned vehicles under AS 28.11.030(c); and

(5) driver's license and driving records under AS 28.15.151.

(b) The department may file and maintain any other records considered necessary for the administration of this title and regulations adopted under it.

(c) The commissioner and officers and employees of the department designated by the commissioner shall, upon request, prepare under the seal of the department and deliver, unless otherwise prohibited by law, a certified copy of any record of the department maintained under this title or regulations adopted under this title, charging a fee for each certified copy. A certified copy is admissible in a proceeding in a court in the same manner as the original document. (§ 6 ch 178 SLA 1978)

Collateral references. — Inspection of motor vehicle records, right as to, 84 ALR 2d 1261.

Sec. 28.05.071. Change of name or address. A person who has applied for or been issued a certificate, registration, title, license, permit, or other form under this title, and who changes the person's name or moves from the address shown on the department's records or forms, shall notify the department in writing of the change in name or address within 30 days. (§ 6 ch 178 SLA 1978)

Secs. 28.05.072 — 28.05.080. Notice, hearing, and offense disposition. [Repealed, § 6 ch 178 SLA 1978.]

Article 2. Vehicle Equipment Standards.

Section

- 81. Approval of vehicle equipment
- 91. Vehicle impoundment
- 95. Child safety devices
- 96. Exemptions and alternative safety devices

Section

- 97. Child safety device loan program
- 98. Sale of child safety devices
- 99. Penalty

Sec. 28.05.081. Approval of vehicle equipment. (a) When the commissioner has reason to believe that vehicle equipment being sold commercially in the state does not comply with the requirements of this title or regulations adopted under this title or other statutes and regulations, the commissioner may, after giving 30 days notice to the person holding the certificate of approval for the equipment in this state, conduct a hearing upon the question of compliance of the equipment. After the hearing, the commissioner shall determine whether the equipment is in compliance. If the equipment is not in compliance

with the law, the commissioner shall give notice of that fact to the person holding the certificate of approval for the equipment in this state.

(b) If, at the end of 90 days after the notice of noncompliance given under (a) of this section, the person holding the certificate of approval for the vehicle equipment has failed to satisfy the commissioner that the equipment as sold after the 90 days is in compliance with the law, the commissioner shall suspend or revoke the approval issued for the equipment until the equipment is resubmitted to, and retested by, a testing agency approved by the commissioner and is found to be in compliance with the law. The commissioner may, at the time of retest, purchase in the open market and submit to the testing agency one or more sets of the equipment. If the equipment upon retest fails to comply with the law, the commissioner may refuse to renew the certificate of approval of the equipment.

(c) After January 1, 1978, a motorcycle helmet may not be manufactured or sold in this state that does not conform to standards established in regulations adopted by the commissioner. These regulations must provide for helmets that allow normal peripheral vision and hearing and minimize neck injuries to the wearer potentially caused by the helmet. For the purposes of this section and AS 28.05.011(2), a motorcycle helmet is considered to be vehicle equipment. (§ 6 ch 178 SLA 1978)

Collateral references. — 7A Am. Jur. 60 C.J.S., Motor Vehicles, § 26.
2d, Automobiles and Highway Traffic,
§§ 185 to 203.

Sec. 28.05.090. Citation form. [Repealed, § 6 ch 178 SLA 1978.]

Sec. 28.05.091. Vehicle impoundment. A motor vehicle that is driven on a highway or vehicular way or area, and that has been determined to be defective in equipment so as to be unsafe for driving, or on which the vehicle identification number has been removed, defaced, or otherwise altered, is an unlawful vehicle and may be impounded by a peace officer or an employee of the department officially designated for that purpose. The owner or person in lawful possession of a vehicle that is driven on a highway or vehicular way or area and that is so defective in equipment as to be unsafe for driving shall pay the necessary costs of impounding and storing the vehicle. The impounding of a vehicle is in addition to any other penalty. Nothing in this section prevents the driving or moving of a defective vehicle in the manner directed by the peace officer or employee to a place for

- (1) the correction of a defect in the equipment;
- (2) dismantling or wrecking; or
- (3) storage without repair. (§ 6 ch 178 SLA 1978; am § 1 ch 60 SLA 1986)

Effect of amendments. — The 1986 amendment rewrote the catchline, in the first sentence made minor word changes and inserted "or on which the vehicle identification number has been removed, defaced, or otherwise altered," and in the second sentence substituted "a vehicle that is driven on the highway or vehicular way or area and that is so defective in equipment as to be unsafe for driving" for "the vehicle."

Sec. 28.05.095. Child safety devices. (a) Except as provided in (b) of this section, a driver may not transport a child under the age of seven in a motor vehicle unless the driver has provided and properly secured each child as described in this subsection. If the child is less than four years of age, the child shall be properly secured in a child safety device meeting the standards of the United States Department of Transportation for a child safety device for infants. If the child is between four and six years of age, the child shall be properly secured in a child safety device approved for a child of that age and size by the United States Department of Transportation or in a seatbelt, whichever is appropriate for the particular child.

(b) Subsection (a) does not apply to

(1) a school bus or an emergency vehicle;

(2) a child or class of children exempted by regulation under AS 28.05.096;

(3) a child required to be restrained by seatbelts under (a) of this section if the motor vehicle is not equipped with seatbelts; or

(4) a motor vehicle exempt under AS 28.10.011(11).

(c) A person may not remove a seatbelt from a vehicle solely to be exempted under (b)(3) of this section. (§ 1 ch 99 SLA 1984)

Sec. 28.05.096. Exemptions and alternative safety devices.

(a) The commissioner of public safety may adopt regulations to exempt a child or a class of children from the requirements of AS 28.05.095 if the commissioner determines that the use of a child safety device is impractical because of physical or medical conditions of the child.

(b) The commissioner of public safety shall specify alternative means of protection for children exempted under this section. (§ 1 ch 99 SLA 1984)

Sec. 28.05.097. Child safety device loan program. (a) There is established a child safety device loan program in the Department of Public Safety, highway safety planning agency.

(b) The director of the highway safety planning agency shall design the child safety device loan program to work in conjunction with private and federal programs operating in the state and shall

(1) provide to every hospital and birthing center in the state, subject to the availability of funds, child safety devices for infants and children to be loaned to the public at nominal fees;

(2) disseminate materials, printed advertisements, and radio and television messages to educate the public about the risks of injury to and death of unrestrained infants and children in motor vehicles and to explain to the public the provisions of AS 28.05.095.

(c) A peace officer who stops a driver for an all violation of AS 28.05.095 shall inform the driver about the loan p. m. (§ 1 ch 99 SLA 1984)

Sec. 28.05.098. Sale of child safety devices. A person may not sell, offer for sale, or install in any motor vehicle a child safety device that does not conform to all applicable federal standards for the device on the date of the sale, offering, or installation. (§ 1 ch 99 SLA 1984)

Sec. 28.05.099. Penalty. (a) A person convicted of a violation of AS 28.05.095(a) or (c) is guilty of an infraction and may be assessed demerit points as determined by regulations of the department, notwithstanding the provisions of AS 28.15.231(b).

(b) A person who violates AS 28.05.095(a) by failing to provide a child safety device or seatbelt may provide a peace officer, including a village safety officer, proof of purchase or acquisition, and installation, of an approved child safety device or seatbelt. If the proof is provided within 30 days after the issuance of a citation for the infraction, the court shall dismiss the citation and no points shall be assessed under (a) of this section unless the person has

(1) been convicted previously for violating that section by failing to provide a child safety device or seatbelt;

(2) been cited for failure to provide a child safety device or seatbelt and has forfeited the bail required by the citation; or

(3) provided the proof required by this subsection on a prior occasion. (§ 1 ch 99 SLA 1984)

Article 3. Subpoenas, Notices and Hearings.

Section	Section
111. Subpoenas; witnesses and documents	131. Opportunity for hearing required
121. Giving of notice	141. Hearings and appeals

Collateral references. — Necessity and sufficiency of notice and hearing before revocation of driver's license, 10 ALR2d 833; 60 ALR3d 361; 60 ALR3d 427.

Sec. 28.05.111. Subpoenas; witnesses and documents. (a) The commissioner and officers and employees of the department designated by the commissioner may, for good cause, subpoena witnesses to give testimony under oath or to give written deposition upon a matter under the jurisdiction of the department with respect to this title, and regulations adopted under this title. A subpoena issued under this section may require the production of relevant books, papers, documents, records, or other tangible things designated in the subpoena.

(b) A subpoena issued under this section shall be served at least five days before the return date, either by personal service made by a peace officer or another person who is not less than 18 years of age or by registered or certified mail. Return acknowledgment is required to prove service by mail. The fees for the attendance and travel of witnesses are the same as for witnesses appearing before the district court.

(c) A subpoena issued under this section may be enforced by the district court. (§ 6 ch 178 SLA 1978)

Sec. 28.05.121. Giving of notice. When the department is authorized or required to give notice under this title or regulations adopted under this title, unless a different method of giving notice is otherwise expressly provided, notice shall be given by a qualified person, either by personal delivery to the person to be notified or by registered or certified mail, return receipt requested, addressed to the person at the address of the person as shown in the records of the department. The giving of notice by mail is considered complete upon the return of the receipt or upon return of the notice as undeliverable, refused, or unclaimed. Proof of the giving of notice in either manner may be made by the affidavit of the person giving the notice by personal delivery or by mail, naming the person to whom the notice was given and specifying the time, place, and manner of giving the notice. (§ 6 ch 178 SLA 1978)

NOTES TO DECISIONS

The notice provisions of this section are valid, since a person who has not received actual notice under the statute will not be precluded from presenting a defense to a charge under AS 28.15.291

based upon reasonable failure to know of his license suspension. *Jeffcoat v. State*, 639 P.2d 308 (Alaska Ct. App. 1982).

Quoted in *Alexander v. State*, 712 P.2d 416 (Alaska Ct. App. 1986).

Sec. 28.05.131. Opportunity for hearing required. (a) Unless otherwise specifically provided, or unless immediate action in suspending, revoking, cancelling, limiting, restricting, denying, or impounding is necessary for the protection of the health, safety or welfare of the public, the department shall give notice of the opportunity for an administrative hearing before a license, registration, title, per-

mit, or privilege issued or allowed under this title or regulations adopted under this title is suspended, revoked, cancelled, limited, restricted, or denied or a vehicle is impounded by the department. If action is required under this section and prior opportunity for a hearing cannot be afforded the department shall promptly give notice of the opportunity for a hearing as soon after the action as possible to the parties concerned.

(b) The notice under this section must state the reasons for the department's proposed action and provide for a reasonable attendance date of not less than 10 days after service of the notice. If there is no request for a hearing by the attendance date specified in the notice, the hearing is considered to have been waived. (§ 6 ch 178 SLA 1978)

NOTES TO DECISIONS

This section does not apply to a re- 28.35.032. *Graham v. State*, 633 P.2d 211
vocation of a license under AS (Alaska 1981).

Sec. 28.05.141. Hearings and appeals. (a) Unless otherwise specifically provided, all hearings required under this title or regulations adopted under this title shall be conducted by the department under regulations adopted by the commissioner governing practice and procedure and consistent with due process of law. Hearings must be informal, and technical rules of evidence do not apply. A person who requests a hearing may retain an attorney. The hearing officer shall be appointed by the commissioner and may be appointed from the department. A hearing officer need not be an attorney, but must be impartial and may not have participated in the decision that is under review. The hearing officer does not have to file a full opinion or make formal findings of fact or conclusions of law, but the hearing officer must state the reasons for the determination and indicate the evidence relied upon. The proceedings at the hearing shall be recorded.

(b) A hearing ordered under (a) of this section shall be held at the office of the department nearest to the residence of the person requesting the hearing unless the department and the person agree that the hearing is to be held elsewhere. The department shall grant a hearing delay if the person presents good cause for the delay. If a person fails to appear for the hearing at the time and place stated by the department and if a hearing delay has not been granted, the person's failure to appear is considered a waiver of the hearing and the department may take appropriate action with respect to the person.

(c) If at the hearing under (a) of this section it appears that the record of the person sustains suspension, revocation, limitation, denial, or other remedial action, the hearing officer shall so order and the department may suspend, revoke, limit, deny, or take other remedial action against that person's license, registration, or title and, if

appropriate, the department shall adjust the person's point total accumulated under AS 28.15.231.

(d) A person aggrieved by the decision of the hearing officer may, within 30 days, initiate a proceeding in district court to rescind the department's action by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. The court shall conduct a hearing de novo. The decision of the department suspending, revoking, canceling, limiting, restricting, or denying a license, registration, title, permit, or privilege is stayed and does not take effect during the pendency of an appeal. (§ 6 ch 178 SLA 1978; am § 2 ch 60 SLA 1986)

Cross references. — For rules of court relating to appeals from administrative proceedings, see App. Rules 601-611.

Effect of amendments. — The 1986 amendment in subsection (c) inserted ", registration, or title."

NOTES TO DECISIONS

This section does not apply to a revocation of a license under AS 28.35.032. *Graham v. State*, 633 P.2d 211 (Alaska 1981).

Article 4. Disposition of Certain Vehicle and Traffic Offenses.

Section

151. Citations for scheduled vehicle and traffic offenses

Sec. 28.05.151. Citations for scheduled vehicle and traffic offenses. The supreme court shall determine by rule or order those motor vehicle and traffic offenses, except for offenses subject to a scheduled municipal fine, that are amenable to disposition without court appearance and shall establish a scheduled amount of fine and jail, not to exceed fines prescribed by law, for each offense. Each municipality shall determine by ordinance the municipal motor vehicle and traffic offenses that may be disposed of without court appearance and shall establish a fine schedule for each offense. (§ 6 ch 178 SLA 1978; am § 8 ch 76 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, rewrote this section.

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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

SB 506

House: Transportation

4/17/90

HOUSE COMMITTEE REPORT

4/17

(5)

Date Referred: March 22, 1990

FURTHER REFERRALS:

LABOR & COMMERCE

Date of Committee Action: _____

The TRANSPORTATION Committee considered:

SB 506

SENATE BILL NO. 506 OVERTIME WAGE REQUIREMENTS/TRUCK DRIVERS

"An Act exempting certain employment of line haul truck drivers from overtime wage requirements."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
- [] _____ [] a new title
- [] have attached amendment(s)
- [X] 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 _____
- [] zero with analysis _____

- [] Senate fiscal note(s) _____
- [X] zero fiscal note(s) Labor 3/15/90
- [] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass
No Rec
Amend

<u>Bill Hudson</u> HUDSON	<u>Ben Grussendorf</u> GRUSSENDORF	X		
<u>Loren A. Leman</u> LEMAN				
<u>Richard J. Foster</u> FOSTER				

FOSTER
Richard J. Foster
Chairman's Signature

ALASKA STATE SENATE



SENATOR DICK ELIASON
SITKA
CHAIRMAN

SENATOR PAT RODEY
ANCHORAGE
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE


MEMBERS
SENATOR JAN FAIKS
ANCHORAGE

SENATOR JACK COGHILL
NENANA

SENATOR JALMAR KERTTULA
PALMER

MEMORANDUM

TO: Senate Labor and Commerce Committee Members

FROM: Senator Dick Eliason, Chair
Senate Labor and Commerce Committee 

DATE: February 21, 1990

RE: Proposed legislation

Attached is a proposed legislation addressing a problem recently brought to my attention. Please let me know if you have any concerns about this legislation being introduced as a Senate Labor and Commerce Committee bill.

In October, 1988, the Washington State Supreme Court ruled that the State of Washington Minimum Wage Act was not inconsistent with the Federal Motor Carriers Act for the purpose of compliance with the state's overtime pay requirements. Prior to the ruling, motor carriers typically paid a flat rate per mile to the owner/operators of trucks which carry freight over long distances. After the ruling, there was considerable concern by both motor freight companies and owner/operators about problems created by the decision, including possible retroactive payments and the way in which the Department of Labor would draft new regulations.

The Alaska motor carriers followed the events in Washington with interest, as Alaska's overtime wage statutes are very similar to Washington State statutes, and a similar court decision would likely occur here if a suit was filed.

The State of Washington has recently passed legislation to allow the historic practice of flat rate/mile compensation so long as it reasonably approximates payment under the overtime

statute. The legislation was supported by both management and labor in Washington.

This proposed legislation contains the same language as adopted in Washington. This approach will eliminate uncertainty within the motor freight industry in Alaska, and is supported by management, labor, and the Department of Labor. The legislation assures that the intent of the overtime statute will be followed while allowing motor carriers the flexibility of doing so under a method which all carriers are familiar.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 506
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
Title: " An Act exempting certain
employment of line haul truck drivers..." BRU: Labor Standards & Safety
Sponsor: Senate Labor & Commerce Components: Wage & Hour
Requestor: Senate Labor & Commerce

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 on FY 90.

Prepared by: Tom Stuart, Director *Stuart* Phone: 264-2452
Division: Labor Standards & Safety Date: 3/5/90
Approved by Commissioner: Jim Sampson *Sampson* Date: 3/5/90
Agency: Department of Labor

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

Executive Vice President's Report

On October 20, 1988 the Washington State Supreme Court handed down its decision in the case of Common Carriers, Inc. versus the State of Washington. The decision stated in effect that there was no conflict between the Federal Motor Carrier Act and the Washington State Minimum Wage Act, and that these two could be enforced simultaneously and without conflict.

This meant the requirement for payment of time and one-half for overtime work in excess of 40 hours per week, which had been established by the Washington State Minimum Wage Act, was now imposed upon those motor carriers engaged in interstate commerce. These carriers had previously been exempted from these state requirements by the Federal Motor Carrier Act. However, since most carriers had already been paying time and one-half or its equivalent, this court decision did not affect them significantly, or at least that was their impression.

At the present time the Department of Labor and Industries is auditing somewhere in excess of 50 individual companies in the state with a eye to enforcing the payment of overtime retroactively up to two years. Their interpretation presently is that unless a labor contract states specifically that the salary involved reflects at least time and one-half for hours worked beyond 40 hours a week, they will be required to compensate an employee for time worked up to two years previously.

Let me stress that the Department has been most cooperative in affording us opportunities to discuss the nature of our business with them and to offer arguments

as to why certain procedures within the industry do presently reflect the payment of overtime. They, however, are charged with the administration of this law and, of course, have no alternative but to proceed with the application of the findings of the court.

Many of our members expressed concern about their practice of paying a flat mileage rate, a flat rate for the haul involved, or a percent of gross for services performed and whether this would be accepted as constituting payment of time and a half for overtime. We therefore introduced a bill which stated that drivers paid on some basis other than straight time with time and a half for overtime would be exempted from the requirements of this law, provided the compensation was "reasonably equivalent" to time and a half as required under the state's Minimum Wage Act.

After several discussions, both the Department of Labor and Industries and the Teamsters supported the legislation, which was enacted and signed into law in April of this year.

We have had several discussions with the Department on the appropriate rules for implementation of this law, and appeared in force at a hearing conducted by Mark McDermott, Assistant Director of Employees, ESAC of the Department of Labor and Industries, who is in charge of drafting the appropriate regulations along with Paul Parker, Rules Officer. A hearing on the proposed rules took place in Olympia on Thursday, August 31, 1989, and the following individuals appeared on behalf of their companies:



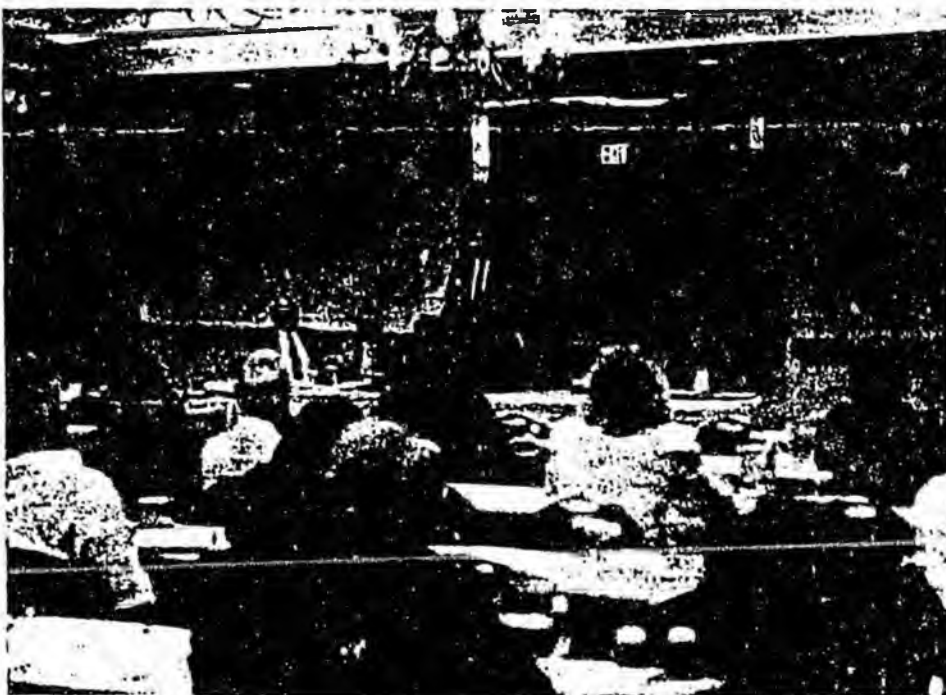
Marty Sangster, Executive Vice President

- Don Frey, Vice President, Metro Hauling, Inc.
- Wayne Klenda, General Manager, Fedderly Marion Freight Lines
- Don Lemmons, President, Interstate Wood Products
- Eldon Renfro, President, Renfro Trucking
- Mac Williams, Director, Industrial Relations, Puget Sound Freight Lines
- Dan Lavaty, Line Haul Payroll Manager, Consolidated Freightways
- Steve Hillstead, Puget Sound Group Manager, Consolidated Freightways
- Marty Sangster, Executive Vice President, WTA

We retained legal counsel, Phil Talmadge, who did an excellent job of analysis of the regulations from a legal standpoint.

We had hoped to select a company whose set of circumstances would afford an objective review in court of the issue of retroactive overtime pay, and were awaiting the development of the final rules in order to select the most representative for a court test of retroactivity. This approach to the issue was rendered moot on August 10, 1989 when the Department of Labor and Industries, through the Attorney General's office, served a Summons and Complaint against "PUGET SOUND TRUCK LINES, INC., individually and as representative of the Washington Trucking Association, and as a representative of all employer motor carriers similarly situated subject to RCW 49".

A question of whether a class action can be brought by the State against the defendants is questionable, but nevertheless it brings the matter to a head. President John Bredeson called a meeting of the Legislative Committee on September 7, 1989, at which a lengthy discussion and evaluation of the situation was held. Puget



Executive Committee Meeting on overtime issue

(Continued on page 12)

49.46.090

Title 49 RCW: Labor Regulations

of this chapter, the director may take an assignment under this chapter or as provided in RCW 49.48.040 of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. [1959 c 294 § 9.]

49.46.100 Prohibited acts of employer—Penalty.

(1) Any employer who hinders or delays the director or his authorized representatives in the performance of his duties in the enforcement of this chapter, or refuses to admit the director or his authorized representatives to any place of employment, or fails to make, keep, and preserve any records as required under the provisions of this chapter, or falsifies any such record, or refuses to make any record accessible to the director or his authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the director or his authorized representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this chapter, or otherwise violates any provision of this chapter or of any regulation issued under this chapter shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.

(2) Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, to the director, or his authorized representatives that he has not been paid wages in accordance with the provisions of this chapter, or that the employer has violated any provision of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor. [1959 c 294 § 10.]

49.46.110 Collective bargaining not impaired. Nothing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of this chapter. [1959 c 294 § 11.]

49.46.120 Chapter establishes minimum standards and is supplementary to other laws—More favorable standards unaffected. This chapter establishes a minimum standard for wages and working conditions of all employees in this state, unless exempted herefrom, and is in addition to and supplementary to any other federal, state, or local law or ordinance, or any rule or regulation issued thereunder. Any standards relating to wages, hours, or other working conditions established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more

favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued hereunder, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law. [1961 ex.s. c 18 § 4; 1959 c 294 § 12.]

49.46.130 Minimum rate of compensation for employment in excess of forty hour work week—Exceptions. (1) No employer shall employ any of his employees for a work week longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed, except that the provisions of this subsection (1) shall not apply to any person exempt pursuant to RCW 49.46.010(5) as now or hereafter amended and the provision of this subsection shall not apply to employees who request compensating time off in lieu of overtime pay nor to any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel, nor to seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year, nor to any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay, nor to an individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week.

(2) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) in a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred and forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he is employed; *Provided*, That this section shall not apply to any individual employed (1) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management

(b) The lien claimant, a representative of the claimant, or the trustee of the fund on behalf of the claimant must record a notice of claim within 60 days after the employer's payment is due with the recorder of the recording district in which the employer's place of business is located or in which the claimant resides. The notice contains

(1) the name of employee;

(2) the name of the employer and the name of the person employing the claimant if known;

(3) a statement of the pertinent terms and conditions of the employee benefit plan;

(4) the date when the payments are due and were to have been paid; and

(5) a statement of the demand including the amounts due to the claimant if expenses have been incurred.

(c) The notice of claim of lien is served on the employer in the same manner as a summons and complaint in civil actions or mailed to the employer by registered mail.

(d) The lien created by the recording of the notice of claim of lien is enforced within the same time and in the same manner as a mechanic's lien is foreclosed if the lien is on real property, or as a chattel lien is enforced if the lien is on personal property. The court may allow, as part of the costs of the action, the recording fees for the notice of claim, reasonable attorney's fees, and court costs.

(e) The lien created under (a) of this section is preferred and superior to an encumbrance which attaches after the employer's payments became due, and is also preferred and superior to an encumbrance which has attached previously, but which was not recorded and of which the lien claimant had no notice. (§ 43-2-14 ACLA 1949; added by § 1 ch 145 SLA 1962)

Revisor's notes. — Minor word and (e) of this section in 1988 under sec. changes related to the recording of documents were made in subsections (b), (d), 42, ch. 161, SLA 1988.

Article 3. Alaska Wage and Hour Act.

NOTES TO DECISIONS

Punitive damages may not be awarded for a willful violation of the Alaska Wage and Hour Act. Gore v. Schlumberger Ltd., 703 P.2d 1165 (Alaska 1985).

Sec. 23.1

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Sec. 23

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Sec

Quot 703 P.:

Sec. 23.10.050. Public policy.

NOTES TO DECISIONS

Purpose of the overtime statutes are to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment through inducing employers to shorten hours because of the pressure of extra cost. *Janes v. Otis Eng'g Corp.*, 757 P.2d 50 (Alaska 1988). Cited in *O'Dell v. Alyeska Pipeline Ser. Co.*, 856 F.2d 1452 (9th Cir. 1988).

Sec. 23.10.060. Payment for overtime.

NOTES TO DECISIONS

Purpose of the overtime statutes are to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment through inducing employers to shorten hours because of the pressure of extra cost. *Janes v. Otis Eng'g Corp.*, 757 P.2d 50 (Alaska 1988). State not bound to federal regulatory definitions. — See *Dresser Indus., Inc. v. Alaska Dep't of Labor*, 633 P.2d 998 (Alaska 1981), cert. denied, 455 U.S. 1019, 102 S. Ct. 1716, 72 L. Ed. 2d 137 (1982).

Sec. 23.10.065. Minimum wages.

NOTES TO DECISIONS

Cited in *Jeffcoat v. State, Dep't of Labor*, 732 P.2d 1073 (Alaska 1987).

Sec. 23.10.090. Administrative procedures.

NOTES TO DECISIONS

Cited in *Dayhoff v. Temsco Helicopters, Inc.*, 772 P.2d 1085 (Alaska 1989).

Sec. 23.10.110. Remedies of employee.

NOTES TO DECISIONS

Quoted in *Gore v. Schlumberger Ltd.*, 703 P.2d 1165 (Alaska 1985); *Jeffcoat v. State, Dep't of Labor*, 732 P.2d 1073 (Alaska 1987). Cited in *Dayhoff v. Temsco Helicopters, Inc.*, 772 P.2d 1085 (Alaska 1989).

Sec. 23.10.115. Enforcement by injunction.

NOTES TO DECISIONS

Quoted in *Gore v. Schlumberger Ltd.*, 703 P.2d 1165 (Alaska 1985). Cited in *Dayhoff v. Temsco Helicopters, Inc.*, 772 P.2d 1085 (Alaska 1989).

Sec. 23.05.330. Actions in courts of other states. The commissioner may, to the extent permitted by a reciprocal agreement with an agency of another state, maintain actions in the courts of that state for the collection of claims or judgments for wages, and may assign claims or judgments to the labor department or agency of that state for collection. (§ 1 ch 114 SLA 1966)

Sec. 23.05.340. Actions in this state for demands arising in other states. The commissioner may, upon the written request of the labor department or corresponding agency of another state or of a person, board, officer, or commission authorized to act on behalf of that department or agency, maintain actions in the courts of this state upon assigned claims or judgments for wages arising in another state in the same manner and to the same extent that such actions by the commissioner are authorized for claims arising in this state; provided that these actions may be maintained only in the event that the department or agency in the other state provides, by agreement, reciprocal services to the commissioner. (§ 1 ch 114 SLA 1966)

Chapter 10. Employment Practices and Working Conditions.

Article

1. Coercion and Fraud (§§ 23.10.015 — 23.10.037)
2. Payment of Wages (§§ 23.10.040 — 23.10.047)
3. Alaska Wage and Hour Act (§§ 23.10.050 — 23.10.150)
4. Employment of Children (§§ 23.10.325 — 23.10.370)
5. Transportation of Employees (§§ 23.10.375 — 23.10.400)
6. Employment in Underground Mines (§§ 23.10.405 — 23.10.415)

Article 1. Coercion and Fraud.

Section

15. False representations to procure employees prohibited
20. Penalty for violation of AS 23.10.015

Section

30. Worker's right of action
35. Limit of application
37. Lie-detector tests

Secs. 23.10.005 — 23.10.010. Coercion to use hotel or store prohibited; penalty. [Repealed. § 21 ch 166 SLA 1978. For current law on the crime of coercion see AS 11.41.530.]

Sec. 23.10.015. False representations to procure employees prohibited. A person doing business in this state may not personally or through an agent induce an individual to change from one place to another in this state, or bring an individual into this state to work as an employee in this state, by means of false or deceptive representations, false advertising, or false pretenses concerning the kind and character of the work to be done, or the amount and character of the compensation to be paid for the work, or the sanitary or other conditions of employment. (§ 43-2-43 ACLA 1949; am § 1 ch 59 SLA 1971)

Collateral references. — 48 Am. Jur.
2d. Labor and Labor Relations, §§ 6-9.
51 C.J.S., Labor Relations, §§ 6-15.

Sec. 23.10.020. Penalty for violation of AS 23.10.015. A person who, personally or as agent or servant for another, violates AS 23.10.015 is punishable by a fine of not more than \$2,000, or by imprisonment for not more than one year, or by both. (§ 43-2-44 ALCA 1949)

Sec. 23.10.025. Use of armed guards. [Repealed, § 3 ch 59 SLA 1976.]

Sec. 23.10.030. Worker's right of action. A worker induced to accept employment with a person mentioned in AS 23.10.015 by conduct violating that section has a right of action for damages caused by the false or deceptive representations used to induce the worker to change the worker's place of employment, against the person directly or indirectly causing the damages. In addition to the actual damages the worker has sustained, the worker may recover the reasonable attorney fees which the court shall fix, to be taxed as costs. (§ 43-2-46 ACLA 1949)

Sec. 23.10.035. Limit of application. AS 23.10.015 — 23.10.030 may not be construed to interfere with the right of a person to guard or protect the person's private property, or private interest as provided by law. AS 23.10.015 — 23.10.030 may be construed only to apply when a worker is brought into the state or induced to go from one place to another in the state by a false pretense, false advertising, or deceptive representation, or is brought into the state under arms, or is moved from one place to another in the state under arms. (§ 43-2-45 ACLA 1949)

Sec. 23.10.037. Lie-detector tests. (a) A person either personally or through an agent or representative may not request or suggest to an employee of the person or to an applicant for employment by the person or require as a condition of employment that the employee or applicant submit to an examination in which a polygraph or other lie-detecting device is used.

(b) The provisions of (a) of this section do not apply to the state or a political subdivision of the state when dealing with policemen in its employ or with persons applying to be employed as policemen.

(c) In this section "person" includes the state and a political subdivision of the state.

(d) A person who violates this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. (§ 1 ch 36 SLA 1964)

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Article 2. Payment of Wages.

Section

40. Payment of wages in state
43. Deposit of wages

Section

15. Payments into benefit fund
47. Employee's lien

Sec. 23.10.040. Payment of wages in state. (a) An employer of labor performing services in this state shall pay the wages or other compensation for the services with lawful money of the United States or with negotiable checks, drafts or orders payable upon presentation without discount by a bank or depository inside the state.

(b) *[Repealed, § 2 ch 28 SLA 1971.]*

(c) *[Repealed, § 2 ch 28 SLA 1971.]*

(d) A person who violates a provision of this section is guilty of a misdemeanor. (§ 43-2-12 ACLA 1949; am § 1 ch 35 SLA 1967; am §§ 1, 2 ch 28 SLA 1971)

Cross references. — For sentences for misdemeanors, see AS 12.55.135.

51B C.J.S., Labor Relations, § 1179. 56
C.J.S., Master and Servant, §§ 120, 121.

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, § 2584. 53
Am. Jur. 2d, Master and Servant, § 82.

Sec. 23.10.043. Deposit of wages. An employer may not deposit wages due or to become due or an advance on wages to be earned in an account in a bank, savings and loan association or credit union unless the employee has voluntarily authorized the deposit. All deposits under this section shall be in a bank, savings and loan association or credit union of the employee's choice. (§ 1 ch 120 SLA 1976)

Revisor's notes. — Enacted as AS 23.10.040(e). Renumbered in 1976.

Sec. 23.10.045. Payments into benefit fund. (a) If an employer agrees with an employee to make payments to a fund for the benefit of the employees, including but not limited to a fund for medical, health, hospital, welfare and pension benefits or any of them, or has entered into a collective bargaining agreement providing for these payments, the employer may not without just cause fail to make the payments required by the terms of the agreement.

(b) Each violation of this section is a separate offense and a person found guilty of a violation is punishable in accordance with the schedule of punishment set out in AS 23.10.415. (§ 43-2-13 ACLA 1949; added by § 1 ch 23 SLA 1957; am § 1 ch 111 SLA 1959; am § 10 ch 2 SLA 1964)

Sec. 23.10.047. Employer's lien. (a) If an employer agrees with an employee or group of employees to make payment to a medical, health, hospital, welfare, or pension fund or such other fund for the benefit of

the employees, or has entered into a collective bargaining agreement providing for the payments, but fails to make the payments when due, a lien is created in favor of each affected employee on the earnings of the employer and on all property of the employer used in the operation of the employer's business to the extent of the money, plus penalties due to be paid on the employee's behalf to qualify the employee for participation in the fund and for expenses incurred by the employee for which the employee would have been entitled to reimbursement under the fund if the required payments had been made.

(b) The lien claimant, a representative of the claimant, or the trustee of the fund on behalf of the claimant must file a notice of claim within 60 days after the employer's payment is due with the recorder of the judicial district in which the employer's place of business is located or in which the claimant resides. The notice contains

- (1) the name of employee;
- (2) the name of the employer and the name of the person employing the claimant if known;
- (3) a statement of the pertinent terms and conditions of the employee benefit plan;
- (4) the date when the payments are due and were to have been paid; and
- (5) a statement of the demand including the amounts due to the claimant if expenses have been incurred.

(c) The notice of claim of lien is served on the employer in the same manner as a summons and complaint in civil actions or mailed to the employer by registered mail.

(d) The lien created by the filing of the notice of claim of lien is enforced within the same time and in the same manner as a mechanic's lien is foreclosed if the lien is on real property, or as a chattel lien is enforced if the lien is on personal property. The court may allow, as part of the costs of the action, the filing and recording fees for the notice of claim, reasonable attorney's fees, and court costs.

(e) The lien created under (a) of this section is preferred and superior to an encumbrance which attaches after the employer's payments became due, and is also preferred and superior to an encumbrance which has attached previously, but which was not filed or recorded and of which the lien claimant had no notice. (§ 43-2-14 ACLA 1949; added by § 1 ch 145 SLA 1962)

Article 3. Alaska Wage and Hour Act.

Section	Section
50. Public policy	71. Wages for work therapy
55. Exemptions	75. Labor standards and safety division
60. Payment for overtime	80. Powers and duties of division
65. Minimum wages	85. Scope of administrative regulations
70. Exemptions from minimum wage	90. Administrative procedures

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95. Adoption of federal regulations	125. Collective bargaining
100. Employer to keep records	130. Statute of limitations
105. Posting summary required	135. Violations
110. Remedies of employee	140. Penalty
115. Enforcement by injunction	145. Definitions
120. Enforcement of subpoenas	150. Short title

NOTES TO DECISIONS

Based on Fair Labor Standards Act. — AS 23.10.050 — 23.10.150, enacted in 1959, have similar purposes to the federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219 and are based upon it. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980); *Nolan v. Sea Airmotive, Inc.*, Sup. Ct. Op. No. 2337 (File No. 5177), 627 P.2d 1035 (1981).

The federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219 and AS 23.10.050 — 23.10.150 were both enacted for the same purposes: to establish minimum wage, maximum workweek, and overtime com-

pensation standards which are adequate to maintain the health, efficiency and general well-being of workers. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Origins of AS 23.10.050 — 23.10.150. — See *Nolan v. Sea Airmotive, Inc.*, Sup. Ct. Op. No. 2337 (File No. 5177), 627 P.2d 1035 (1981).

AS 23.10.050 — 23.10.150 are not preempted by the federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 2551 — 2580, 2625 — 2652; 53 Am. Jur. 2d, Master and Servant, §§ 71 — 96.

51B C.J.S., Labor Relations, §§ 1141 — 1145, 1166, 1172 — 1174. 56 C.J.S., Master and Servant, §§ 15 — 17, 151 — 153.

What employees are within "hours of labor" statutes. 16 ALR 537.

Constitutionality of statute limiting hours of labor in private industry. 90 ALR 814.

Waiver or loss of statutory right as to maximum hours of labor. 102 ALR 842; 129 ALR 1145.

"Right to work" laws. 92 ALR2d 598.

Sec. 23.10.050. Public policy. It is the public policy of the state to

(1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency and general well-being, and

(2) safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency and general well-being of workers against the unfair competition of wage and hour standards which do not provide adequate standards of living. (§ 1 ch 171 SLA 1959)

NOTES TO DECISIONS

Based on Fair Labor Standards Act. — See notes under same catchline under article analysis. Webster v. Bechtel, Inc., Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980), Notes to Decisions.

AS 23.10.050 — 23.10.150 are directed toward a situation distinct from that of

the Equal Pay for Women Act. Brown v. Wood, Sup. Ct. Op. No. 1551 (File Nos. 2564, 2565), 575 P.2d 760 (1978), modified on rehearing on other grounds, 592 P.2d 1250 (1979).

Applied in Dresser Indus., Inc v. Alaska Dept of Labor, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Sec. 23.10.055. Exemptions. The provisions of AS 23.10.050 — 23.10.150 do not apply to

(1) an individual employed in agriculture, which includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices, including forestry and lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market;

(2) an individual employed in the catching, trapping, cultivating or farming, netting or taking of any kind of fish, shellfish, or other aquatic forms of animal and vegetable life;

(3) an individual employed in the hand picking of shrimp;

(4) an individual employed in domestic service, including a baby-sitter, in or about a private home;

(5) an individual employed by the United States or by the state or political subdivision of the state including prisoners not on furlough detained or confined in prison facilities;

(6) an individual engaged in the activities of a nonprofit religious, charitable, cemetery or educational organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis;

(7) an employee engaged in the delivery of newspapers to the consumer;

(8) an individual employed solely as a watchman or caretaker of a plant or property that is not in productive use for a period of four months or more;

(9) an individual employed in a bona fide executive, administrative or professional capacity or in the capacity of an outside salesman or a salesman who is employed on a straight commission basis;

(10) an individual employed in the search for placer or hard rock minerals;

(11) an individual under 18 years of age employed on a part-time basis not more than 30 hours in a week; or

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(12) employment by a nonprofit educational or child care facility to serve as a parent of children while the children are in residence at the facility if the employment requires residence at the facility and is compensated on a cash basis exclusive of room and board at an annual rate of not less than

(A) \$10,000 for an unmarried person; or

(B) \$15,000 for a married couple. (§ 2(1) ch 171 SLA 1959; am § 1 ch 2 SLA 1962; am § 1 ch 50 SLA 1972; am § 2 ch 124 SLA 1978; am § 1 ch 115 SLA 1982)

Cross references. — For wage rates for prisoners, see AS 33.30.227.

Effect of amendments. — The 1982 amendment added paragraph (12).

NOTES TO DECISIONS

Employees covered by and exempt from Fair Labor Standards Act. — AS 23.10.050 — 23.10.150 apply to both employees covered by the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and those who are, because of insufficient connections to interstate commerce, exempt from the Fair Labor Standards Act. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Prisoners excluded from operation of chapter. — See *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

Applied in Alaska Int'l Indus., Inc. v. Musarra, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

Cited in Dresser Indus., Inc. v. Alaska Dep't of Labor, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Collateral references. — Who is employed in "executive or administrative capacity" within exemptions from mini-

mum wage and maximum hours provisions of Fair Labor Standards Act. 40 ALR2d 332.

Sec. 23.10.060. Payment for overtime. An employer who employs employees engaged in commerce, or other business, or in the production of goods or materials in Alaska may not employ an employee not acting in a supervisory capacity, either male or female, for a workweek longer than 40 hours or for more than eight hours a day, except that if the employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid, and this provision is considered included in all contracts of employment. This section does not apply with respect to

(1) an employee employed by an employer employing less than four employees in the regular course of business, as regular course of business is defined by regulations of the commissioner;

(2) [Repealed, § 33 ch 127 SLA 1974.]

(3) [Repealed, § 1 ch 243 SLA 1970.]

(4) an employee employed in handling, packing, storing, pasteurizing, drying, preparing in their raw or natural state, or

canning agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products;

(5) an employee of an employer engaged in small mining operations where not more than 12 employees are employed, if the employee is employed not in excess of 12 hours a day or 56 hours a week during a period or periods of not more than 14 workweeks in the aggregate in a calendar year during the mining season, as the season is defined by the commissioner;

(6) [Repealed, § 1 ch 45 SLA 1972.]

(7) an employee engaged in agriculture;

(8) an employee employed in connection with the publication of a weekly, semiweekly, or daily newspaper with a circulation of less than 1,000;

(9) a switchboard operator employed in a public telephone exchange which has fewer than 750 stations;

(10) an employee of an employer engaged in the business of operating taxicabs;

(11) an employee in an otherwise exempted employment or proprietor in a retail or service establishment engaged in handling telegraphic, telephone, or radio messages for the public under an agency or contract arrangement with a telegraph or communications company where the telegraph message or communications revenue of the agency does not exceed \$500 a month;

(12) an employee employed as a seaman;

(13) an employee employed in planting or tending trees, cruising, or surveying, or bucking, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by the employer in the forestry or lumbering operations does not exceed 12;

(14) an individual employed as an outside buyer of poultry, eggs, cream, or milk in their raw or natural state;

(15) casual employees as may be liberally defined by regulations of the commissioner;

(16) an employee of a hospital whose employment includes the provision of medical services;

(17) work performed by an employee under a flexible work hour plan if the plan is included as part of a collective bargaining agreement;

(18) work performed by an employee under a voluntary flexible work hour plan if

(A) the employee and the employer have signed a written agreement and the written agreement has been filed with the department; and

(B) the department has issued a certificate approving the plan which states the work is for 40 hours a week and not more than 10 hours a day; for work over 40 hours a week or 10 hours a day under a flexible work hour plan not included as part of a collective bargaining

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agreement, compensation at the rate of one and one-half times the regular rate of pay shall be paid for the overtime. (§ 3 ch 171 SLA 1959; am § 1 ch 3 SLA 1962; am § 1 ch 243 SLA 1970; am § 1 ch 45 SLA 1972; am § 33 ch 127 SLA 1974; am § 1 ch 31 SLA 1980; am § 3 ch 47 SLA 1983)

Effect of amendments. — The 1980 amendment added paragraphs (17) and (18).

The 1983 amendment, substituted "hospital whose employment includes the provision of medical services" for "nonprofit hospital" in paragraph (16).

Opinions of attorney general. — The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 does not expressly preempt the AS 23.10.050 — 23.10.150 on the question of whether airline employees are excluded from the mandatory overtime directive of this section. April 15, 1980, Op. Att'y Gen.

In the case of pilots, flight crews, and other interstate air carrier employees whose activities are directly and substantially related to the transportation activities of the carrier, and who are covered by a valid existing collective bargaining agreement or agreements with the carrier, the state is precluded from applying its overtime laws due to the preemptive nature of the Railway Labor

Act, 45 U.S.C. §§ 151-188. April 15, 1980, Op. Att'y Gen.

In instances where no collective bargaining agreements apply, crews of interstate air carriers are nonetheless beyond the jurisdiction of state overtime law because of certain commerce clause implications. April 15, 1980, Op. Att'y Gen.

Nonflight personnel of interstate carriers who are not covered by valid existing collective bargaining agreements are not exempt from state law, and as to those individuals the provisions of state overtime law apply. April 15, 1980, Op. Att'y Gen.

Air carriers operating solely intrastate would not seem to fall under the exclusionary scope of either the Railway Labor Act, 45 U.S.C. §§ 151-188, or of the commerce clause absent unusual fact situations. Accordingly, the protections of AS 23.10.050 — 23.10.150 dealing with overtime extend to those individuals. April 15, 1980, Op. Att'y Gen.

NOTES TO DECISIONS

Article not void. — The Alaska Wage and Hour Act merely requires higher minimum and overtime pay than the Fair Labor Standards Act, 29 U.S.C. §§ 201-219. Although compliance with both is more expensive than compliance with the federal act, it is not, in any sense, impossible so as to make the Alaska law void. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Or preempted. — Since, under the Alaska Wage and Hour Act, the number of hours required for the overtime rate is less than that under the Fair Labor Standards Act, the Alaska act provides for a lower maximum workweek within the meaning of 29 U.S.C. § 213(a) and consequently, comes within the express saving clause so as not to be preempted by the federal law. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

State not bound to federal regulatory definitions. — AS 23.10.050 — 23.10.150 do not evince an intent to bind the state wage and hour division to federal regulatory definitions. *Dresser Indus., Inc. v. Alaska Dep't of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Definition of "supervisory" in the Alaska Administrative Code, that the term as used in this section means a person who directs the activities of other employees and who does not perform duties which are regularly performed by the employees supervised, except for brief periods of time not to exceed more than eight hours in the supervisor's workweek, is reasonable and not arbitrary. *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

Sec. 23.10.065. Minimum wages. An employer shall pay to each employee wages at a rate of not less than 50 cents an hour greater than the prevailing Federal Minimum Wage Law or \$2.60 an hour, whichever is greater, for hours worked in a pay period, whether the work is measured by time, piece, commission or otherwise. An employer may not apply tips or gratuities bestowed upon employees as a credit toward payment of the minimum hourly wage required by this section. Tip credit as defined by the Fair Labor Standards Act of 1938 as amended does not apply to the minimum wage established by this section. (§ 4 ch 171 SLA 1959; am § 2 ch 2 SLA 1962; am § 1 ch 41 SLA 1974)

Cross references. — For the Fair Labor Standards Act of 1938, see 29 U.S.C. 201-219.

NOTES TO DECISIONS

This section is based on the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219, and the terms used in the Alaska Statute are defined in the same way as in the federal act. *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975), decided prior to the 1978 amendment to AS 23.10.055(5).

Prisoners as employees of the state. — See *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312) 543 P.2d 1221 (1975), decided prior to the 1978 amendment to AS 23.10.055(5).

Article not void. — The Alaska Wage and Hour Act merely requires higher minimum and overtime pay than the Fair Labor Standards Act, 29 U.S.C. §§ 201-219. Although compliance with both is more expensive than compliance with the federal act, it is not, in any sense, impossible so as to make the Alaska law void. *Webster v. Bechtel, Inc.*, Sup. Ct. Op.

No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Concurrent coverage of minimum wage claims is not preempted by the Federal Fair Labor Standards Act. It appears that 29 U.S.C. § 218(a) was intended to allow the recovery of additional amounts under more protective state laws. It is logical that Congress contemplated that the state would allow for an action as to the whole claim, not just the increment, and, further, that Congress intended that the claims would be brought together, where possible, so that enforcement would not be costly. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Applied in *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

Cited in *Dresser Indus., Inc. v. Alaska Dept of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Collateral references. — Validity of minimum wage statutes relating to private employment. 39 ALR2d 740.

Sec. 23.10.070. Exemptions from minimum wage. To the extent necessary to prevent curtailment of opportunities of employment, the commissioner may by regulations or orders provide for the employment at wages lower than the minimum wage prescribed in AS 23.10.050 — 23.10.150 of

(1) an individual whose earning capacity is impaired by physical or mental deficiency, age, or injury, at the wages and subject to the restrictions and for the period of time which is fixed by the commissioner; and

(2) an apprentice at the wages which are approved by the commissioner; or

(3) a learner at the wages and subject to the restrictions and for the periods of time which are fixed by the commissioner. (§ 5 ch 171 SLA 1959; am § 3 ch 2 SLA 1962)

Sec. 23.10.071. Wages for work therapy. (a) For work therapy, as defined in AS 47.37.270, a participant in a residential drug abuse or alcoholism treatment program designed to extend more than 120 days may be paid less than the minimum wage prescribed in AS 23.10.050 — 23.10.150 if the rate has been approved by the commissioner under this section and is in compliance with federal law.

(b) The commissioner shall adopt regulations regarding the payment of wages for work therapy. In adopting the regulations, the commissioner shall consider whether the work performed by the patient

(1) is solely for the benefit of the patient and is that which is ordinarily carried on by patients in a residential treatment program;

(2) would ordinarily be performed by full-time employees of the program;

(3) is work that may produce income to the patient, other than wages;

(4) produces goods or services the proceeds of which will economically or otherwise benefit the owners, operators, or businesses of the rehabilitation program; and

(5) creates an unfair competition with private enterprise because of lower wage standards. (§ 1 ch 58 SLA 1983)

Sec. 23.10.075. Labor standards and safety division. There is established in the department the division of labor standards and safety. The director of the division is responsible to the commissioner. The director shall administer AS 18.60.010 — 18.60.105 and AS 23.10.050 — 23.10.150. (§ 6(1) ch 171 SLA 1959; am E.O. No. 52, § 4 (1982))

Effect of amendments. — The 1982 amendment rewrote this section.

Sec. 23.10.080. Powers and duties of division. The director, or an authorized representative of the director, shall

(1) investigate and ascertain the wages and related conditions and standards of employment of any employee in the state;

(2) enter the place of business or employment of an employer at reasonable times for the purpose of inspecting payroll records which relate to the question of wages paid or hours worked;

(3) require and subpoena from an employer a statement in writing, when the director or the representative considers it necessary, of hours worked by and the wages paid to a person in the employ of the employer, and the commissioner may require the employer to make the statement under oath;

(4) question an employee in a place of employment during work hours with respect to the wages paid and the hours worked by the employees;

(5) compel the attendance of witnesses and the production of books, papers and documents by subpoena when necessary for the purpose of a hearing or investigation provided for in AS 23.10.050 — 23.10.150. (§ 6(2) ch 171 SLA 1959)

Sec. 23.10.085. Scope of administrative regulations. (a) The director may adopt, amend or rescind administrative regulations not inconsistent with the purposes and provisions of AS 23.10.050 — 23.10.150 that are necessary for the administration of AS 23.10.050 — 23.10.150.

(b) The regulations may, without limiting the generality of (a) of this section, define terms used in AS 23.10.050 — 23.10.150, and restrict or prohibit industrial homework or other acts or practices that the director finds appropriate to carry out the purpose of AS 23.10.050 — 23.10.150, or to prevent the circumvention or evasion of AS 23.10.050 — 23.10.150.

(c) The regulations may permit deductions by an employer from the minimum wage applicable under AS 23.10.050 — 23.10.150 to employees for the reasonable cost, as determined by the director on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee. (§ 6(3) ch 171 SLA 1959)

NOTES TO DECISIONS

This section and AS 23.10.095 constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and other terms can be applied consistently with AS 23.10.050

— 23.10.150. *Dresser Indus., Inc. v. Alaska Dep't of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Applied in *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

Sec. 23.10.090. Administrative procedures. Regulations adopted or hearings conducted under AS 23.10.050 — 23.10.150 shall be adopted or conducted and be subject to judicial review in accordance with the Administrative Procedure Act (AS 44.62). (§ 6(4) ch 171 SLA 1959)

Sec. 23.10.095. Adoption of federal regulations. The commissioner may adopt regulations and interpretations which are made by the administrator of the Wage and Hour Division of the federal Department of Labor and which are not inconsistent with AS 23.10.050 — 23.10.150. (§ 6(5) ch 171 SLA 1959)

NOTES TO DECISIONS

This section and AS 23.10.085 constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and other terms can be applied consistently with Alaska's Wage and Hour Act. *Dresser Indus., Inc. v. Alaska Dep't of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Sec. 23.10.100. Employer to keep records. (a) An employer shall keep for a period of at least three years at the place where an employee is employed a record of the name, address, and occupation of each employee, the rate of pay and the amount paid each pay period to each employee, the hours worked each day and each workweek by each employee, and other payroll information which the commissioner may require.

(b) The commissioner or an authorized representative of the commissioner may copy the employer's records at any reasonable time. An employer shall furnish to the commissioner or the representative on demand a sworn statement of the employer's records, and the commissioner may require that the sworn statement be made upon forms the commissioner has prescribed or approved. (§ 7 ch 171 SLA 1959)

NOTES TO DECISIONS

Public policy interest and burden of proof. — If an employee produces sufficient evidence to show the amount and extent of the work for which the employee was improperly compensated, the burden shifts to the employer to come forward with evidence sufficient to negate the reasonableness of the inference drawn from the employee's evidence. Although this burden of proof in an action under the Alaska Wage and Hour Act is not binding on a bankruptcy court in a proceeding to determine the validity of a claim, it is

indicative of the public policy interest that proper records be kept by an employer and that an employee be properly compensated for any overtime worked. In re *Equipment Servs., Ltd.*, 36 Bankr. 241 (Bankr. D. Alaska 1983).

Applied in *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

Stated in *Nolan v. Sea Airmotive, Inc.*, Sup. Ct. Op. No. 2337 (File No. 5177), 627 P.2d 1035 (1981).

Sec. 23.10.105. Posting summary required. An employer subject to AS 23.10.050 — 23.10.150 shall keep a summary or abstract of these sections, approved by the commissioner, posted in a conspicuous location at the place where a person subject to them is employed. An employer shall be furnished copies of a summary by the state on request without charge. (§ 8 ch 171 SLA 1959)

Sec. 23.10.110. Remedies of employee. (a) An employer who violates a provision of AS 23.10.060 or 23.10.065 is liable to an employee affected in the amount of unpaid minimum wages, or unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages.

(b) An action to recover from the employer the wages and damages for which the employer is liable may be maintained in a competent court by an employee personally and for other employees similarly situated, or an employee may individually designate in writing an agent or representative to maintain an action for the employee. The consent shall be filed in the court in which the action is brought. At the request of a person paid less than the amount to which the person is entitled under AS 23.10.050 — 23.10.150, the commissioner may take an assignment in trust for the employee of the full amount to which the employee is entitled under this section and may bring any legal action necessary to collect the claim.

(c) The court in an action brought under this section shall, in addition to a judgment awarded to the plaintiff, allow costs of the action and reasonable attorney fees to be paid by the defendant. The attorney fees in the case of actions brought under this section by the commissioner shall be remitted by the commissioner to the Department of Revenue. The commissioner may not be required to pay the filing fee or other costs. The commissioner in case of suit has power to join various claimants against the same employer in one cause of action. (§ 9(3) ch 171 SLA 1959)

NOTES TO DECISIONS

Liquidated damages under this article must be granted as a matter of law. *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

No conflict with 29 U.S.C. §§ 216(b) and 260. — This section, which grants mandatory liquidated damages, does not conflict with 29 U.S.C. §§ 216(b) and 260, which make such awards discretionary if the employer shows he acted in good faith. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Concurrent coverage of minimum wage claims is not preempted by the federal Fair Labor Standards Act. It appears that 29 U.S.C. § 218(a) was intended to allow the recovery of additional amounts under more protective state laws. It is logical that Congress contemplated that the state would allow for an action as to the whole claim, not just the increment, and, further, that Congress

intended that the claims would be brought together, where possible, so that enforcement would not be costly. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Revival of agent or representative action. — The legislature plainly determined to revive the agent or representative action, where the employee individually designates in writing an agent or representative to maintain an action for him. *Nolan v. Sea Airmotive, Inc.*, Sup. Ct. Op. No. 2337 (File No. 5177), 627 P.2d 1035 (1981).

Class action procedures. — See *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Offsetting of award. — If suits are filed under both the federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and the Alaska Wage and Hour Act, AS 23.10.050 — 23.10.150, the Alaska award must be offset by any recovery under the

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621 P.2d 890 (1980).

Sec. 23.10.115. Enforcement by injunction. If it appears to the commissioner that an employer is engaged in an act or practice which violates or will violate a provision of AS 23.10.050 — 23.10.150 or of a regulation adopted under these sections, the commissioner may bring an action in a competent court to enjoin the act or practice, and to enforce compliance with AS 23.10.050 — 23.10.150 or with the regulation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. (§ 9(4) ch 171 SLA 1959)

Sec. 23.10.120. Enforcement of subpoenas. If a person fails to comply with a subpoena issued under AS 23.10.080, or if a witness refuses to produce evidence or to testify to a matter regarding which the witness may be lawfully interrogated, a competent court shall, upon application of the commissioner or an authorized representative, compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify before it. (§ 9(5) ch 171 SLA 1959)

Sec. 23.10.125. Collective bargaining. AS 23.10.050 — 23.10.150 do not limit the right of employees to bargain collectively through representatives of their own choosing to establish wages or conditions of work in excess of the applicable minimum under AS 23.10.050 — 23.10.150 or to establish hours of work shorter than the applicable maximum under AS 23.10.050 — 23.10.150. (§ 10 ch 171 SLA 1959)

Sec. 23.10.130. Statute of limitations. An action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages under AS 23.10.050 — 23.10.150 is forever barred unless it is started within two years after the cause of action accrues. For the purposes of this section an action is considered to be started on the date when the complaint is filed. (§§ 11, 12 ch 171 SLA 1959; am § 57 ch 59 SLA 1982)

Effect of amendments. — The 1982 amendment rewrote this section.

Sec. 23.10.135. Violations. An employer violates AS 23.10.050 — 23.10.150 if the employer (1) hinders or delays the commissioner or an authorized representative of the commissioner in the performance of their duties in the enforcement of AS 23.10.050 — 23.10.150; (2) refuses to admit the commissioner or an authorized representative to any place of employment; (3) fails to keep or falsifies a record required under the provisions of AS 23.10.050 — 23.10.150; (4) refuses to make a record

accessible, or to furnish a sworn statement of the record, or to give information required for the enforcement of AS 23.10.050 — 23.10.150, upon demand, to the commissioner or an authorized representative; (5) fails to post an abstract of AS 23.10.050 — 23.10.150 as required by AS 23.10.105; (6) discharges or in any other manner discriminates against an employee because the employee has filed a complaint, or has instituted or caused to be instituted any proceeding under or related to AS 23.10.050 — 23.10.150, or has testified or is about to testify in such a proceeding. (§ 9(1) ch 171 SLA 1959)

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Sec. 23.10.140. Penalty. An employer who violates a provision of AS 23.10.050 — 23.10.150, or of any regulation or order of the commissioner issued under it, upon conviction is punishable by a fine of not less than \$100 nor more than \$2,000, or by imprisonment for not less than 10 nor more than 90 days, or by both. Each day a violation occurs constitutes a separate offense. (§ 9(2) ch 171 SLA 1959; am § 1 ch 113 SLA 1972)

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Sec. 23.10.145. Definitions. If not defined in this title or in regulations adopted under this title, terms used in AS 23.10.050 — 23.10.150 shall be defined as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it. (§ 2(2) ch 171 SLA 1959; am § 4 ch 47 SLA 1983)

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Cross referonccs. — For the Fair Labor Standards Act of 1938, see 29 U.S.C. 201 — 219.

or in regulations adopted under AS 23" to the beginning of the section and deleted "where applicable" following "shall be defined."

Effect of amendments. — The 1983 amendment added "If not defined in AS 23

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NOTES TO DECISIONS

Applicability of federal regulatory definitions. — This section directs the courts to apply federal regulatory definitions "where applicable," and such definitions are "applicable" only when the state director of the wage and hour division and the commissioner of labor have refrained from defining terms in the state regulations, pursuant to their discretionary authority under AS 23.10.085 and

23.10.095. *Dresser Indus., Inc. v. Alaska Dep't of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

A prisoner is not an "employee" of the state under the federal act, and therefore is not so by virtue of AS 23.10.065. *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

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Sec. 23.10.150. Short title. AS 23.10.050 — 23.10.150 may be cited as the Alaska Wage and Hour Act. (§ 1 ch 171 SLA 1959)

Secs. 23.10.155 — 23.10.320. Equal pay for women, discrimination in employment, and age discrimination. [Repealed, § 8 ch 117 SLA 1965, § 5 ch 125 SLA 1980. For present provisions, see AS 18.80.220.]

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Representative Bette Cato, Chair House Transportation Committee

SUBJECT OF MEETING:
HB 506
HB 535

DATE: 4/17/90

PLACE: Room 17

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
J. R. CARR	Labour	3201 EAST ST	99510		264-2435	Y	<input checked="" type="radio"/> N	506
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HOUSE COMMITTEE REPORT

5/5
Rules

(5)
Date Referred: May 4, 1990

FURTHER REFERRALS:

Date of Committee Action: _____

The TRANSPORTATION Committee considered: CSSB 543 (LABOR & COMMERCE)

CS SB NO. 543 (L&C) AIDEA BONDS: AIRCRAFT MAINTENANCE FACILITY

"An Act authorizing the Alaska Industrial Development and Export Authority to issue bonds for an aircraft maintenance facility located at the Anchorage International Airport; relating to the accounts of the authority and the financing of development projects by the authority; granting the authority an exemption from the State Procurement Code for contracts relating to airports; and providing for an effective date."

EE

RECOMMENDATIONS: [] the same title

[] be replaced with _____ [] a new title

[] have attached amendment(s)

[] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] additional referral to the _____ Committee

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NOTES: _____ letter of intent

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

[] fiscal impact _____

Senate [] fiscal note(s) ~~5/1/90 Dept of Commerce~~

[] zero fiscal note _____

[X] zero fiscal note(s) CEB 5/1/90

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CSSB 543(L & C)

Section 1: Authorizes up to "50 million" in bonds for the aircraft maintenance facility.

Section 2: Limited Exemption. Same as DOT/PF currently has from the Procurement Code. Allows negotiation with air carriers who would be the prime tenants/users of facility. Exemption limited to airports.

Section 3: Allows authority funds to be used to secure bonds issued for "development projects" (44.48.172 et al.). Currently, majority of funds are in the enterprise account while statutes require that the economic account be used for projects that the authority would own. This section, in conjunction with section 5, solves this problem.

Section 4: Conforming change related to Section 3. Investment guidelines apply to the revolving fund (44.88.060), (i.e., whole fund), not just accounts within the fund.

Section 5: In conjunction with Section 3, allows authority to secure bonds by utilizing funds within the enterprise account. Removes prohibition. Allows authority assets to secure bonds issued under 172.

**AIRCRAFT MAINTENANCE FACILITY
ANCHORAGE INTERNATIONAL AIRPORT**

I. PROJECT DESCRIPTION

The Alaska Industrial Development and Export Authority (AIDEA) has agreed to explore with the Alaska International Airport System (AIAS), Federal Express, Alaska Airlines and other airlines the feasibility of developing an aircraft maintenance facility at Anchorage International Airport. Contacts within the airline industry indicate there is a need for a maintenance facility to serve both widebody and narrowbody aircraft.

II. PROJECT SCOPE

The maintenance facility would include an enclosed hangar and associated support shops, and an aircraft parking apron for outdoor maintenance and equipment staging. The final scope would be subject to negotiations with facility users.

III. COST ESTIMATE

Preliminary cost estimates range from \$25 million to \$50 million, depending on the number of users and their requirements. In addition, up to \$8 million would be required for site preparation, an aircraft parking apron, and a possible taxiway extension.

Financing of the facility would be through the issuance of AIDEA debt backed and financial guarantees secured from the airlines that will use the facility.

IV. DEVELOPMENT SCHEDULE

The project development sequence is as follows:

- Phase I - Obtain Airline consensus and commitments.
- Phase II - Design development, permitting, and financing.
- Phase III - Construction

Phases I and II are expected to be complete in 1990 and early 1991 with construction (Phase III) activities scheduled to start during mid to late 1991.

V. OPTIONS FOR FACILITY USE, OWNERSHIP, AND OPERATION

There are a wide variety of options for use, ownership, and operation of the maintenance facility. Private sector users could include either airlines, nonairline users such as Boeing Co., or perhaps a consortium of users. Public sector ownership by AIDEA will be advantageous because of the financial benefits of tax exempt financing.

Options for operation include:

- a) operation by a single airline such as Federal Express, Alaska Airlines, or another airline;
- b) operation by multiple airlines who lease parts of the facility; or
- c) operation by a third party nonairline operator.

VI. FACILITY NEEDS AND BENEFITS ANALYSIS

Anchorage and Fairbanks International Airports handle over 75,000 commercial aviation flights per year. Yet few facilities exist in the state to handle major and minor maintenance of the commercial jet aircraft that serve or transit the state. Instead, most aircraft maintenance is conducted in facilities in the lower 48 states.

- ° An aircraft maintenance facility in Alaska would create a high-tech industry and a new income source for Alaskans.
- ° The facility could strengthen Alaska's role as an international air cross roads at a time when overflights are reducing some of Alaska's international passenger flight.
- ° The facility would help to attract new international air carriers and solidify the presence of existing airlines by providing one of the basic support services that the international airlines need.
- ° The facility could also make maintenance activities more convenient for interstate and intrastate airlines by locating a maintenance base at the place from which many of their aircraft are operated.
- ° Approximately 125 construction jobs will be created by the project.
- ° Approximately 100 direct and indirect permanent jobs would be created as a result of the project.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
DENZARE

April 4, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 13, of the Alaska Constitution, I am transmitting a bill relating to the development of an aircraft maintenance facility at the Anchorage International Airport. This bill provides the authorization necessary for the Alaska Industrial Development and Export Authority (AIDEA) to issue bonds to finance the acquisition, design, and construction of a multi-bay aircraft maintenance facility. The facility will be owned by AIDEA.

The maintenance facility would include an enclosed hangar and associated support shops, and an aircraft parking apron for outdoor maintenance and equipment staging. An aircraft maintenance facility in Alaska would create jobs and income for state residents. The facility could strengthen the state's role as an international air crossroads at a time when overflights are reducing some of the state's international passenger flights. The facility would help to attract new international air carriers and solidify the presence of existing airlines by providing one of the basic support services that the international airlines need. The facility could also make maintenance activities more convenient for interstate and intrastate airlines by locating a maintenance base at the same airport through which many of the aircraft are routed.

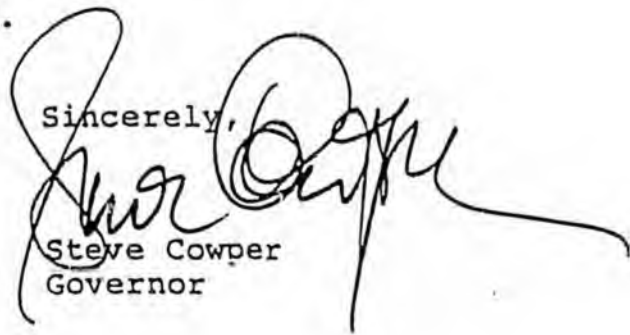
While no major airlines have committed to lease the facility, both Alaska Airlines and Federal Express have officially notified AIDEA of their interest. This bill will give AIDEA the ability to move quickly to finance the facility once negotiations for leases with potential users are successfully concluded. Out of respect for a coordinate branch of state government, I am seeking the authorization required by AS 44.88.172(c) to issue bonds to finance the maintenance facility; I have been advised by the attorney general that I am not required to obtain this approval because sec. 172(c) is of doubtful constitutional validity.

The bill also contains an exemption from the state procurement code (AS 36.30). This exemption would give airport projects owned by AIDEA the same treatment under the state procurement code afforded to the Department of Transportation and Public Facilities (DOT/PF). Under AS 36.30.850(b)(8), contracts relating to airports are exempt from the code. Airport projects are specialized facilities that must be tailored to industry standards. DOT/PF has learned that the primary users of airport facilities are eager to take responsibility for facilities that they will ultimately be required to use under the terms of a long-term financing lease. Such a transfer of responsibility not only assures a satisfied customer, it also shifts the responsibility from the state to the user for liability stemming from the implementation of the project.

The Alaska International Airport System will be submitting a separate budget amendment that will authorize the expenditure of up to \$8,000,000 in airport revenue for site development for the maintenance facility.

I urge you to pass this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name below.

Steve Cowper
Governor

PROJECT TITLE: AIAS DEVELOPMENT FUND

FISCAL YEAR 1991

REGION: AI

LOCATION: STATEWIDE

COMPLETION DATE:

ELECTION DISTRICT: 99

APPROPRIATION TO: DOT&PF

WORK TYPE:

PROGRAM: AVINTL

FUNDING	CAPITAL REQUEST	OPERATING COSTS	NEW POSITIONS (PFT)
1002 FEDERAL RECEIPTS:			
1003 GENERAL FUND MATCH:			0
1004 GENERAL FUND:		\$0.0	-----
1005 PROGRAM RECEIPTS:		-----	
1007 INTER-AGENCY RECEIPTS:			
1026 HWC:			
1027 IARF:	\$8,000.0		
1061 CIP RECEIPTS:			
OTHER FUND:			
TOTALS:	\$8,000.0		

****PROJECT DESCRIPTION:**

DEVELOPMENT FUNDS WILL BE USED TO STIMULATE NEW PRIVATE SECTOR DEVELOPMENT AT ANCHORAGE AND FAIRBANKS INTERNATIONAL AIRPORTS. FUNDS WILL BE USED FOR DESIGN AND CONSTRUCTION OF BASIC SITE PREPARATIONS AND LAND IMPROVEMENTS INCLUDING, BUT NOT LIMITED TO, EXCAVATION AND BACKFILL OF LEASELOTS, UTILITIES, RAMP, TAXIWAY, ACCESS ROAD DEVELOPMENT, VEHICLE PARKING AREAS, LOT DRAINAGE, AND SECURITY FENCING. PRIVATE DEVELOPMENTS MAY INCLUDE SUCH FACILITIES AS AIRCRAFT FACILITIES, CARGO STORAGE AND HANDLING, AIRCRAFT PARKING AND REFUELING AND OTHER PRIVATE DEVELOPMENTS.

****PROJECT JUSTIFICATION:**

THE AIAS HAS HAD EXPRESSIONS OF INTEREST FROM A NUMBER OF TENANTS FOR MAJOR NEW DEVELOPMENTS AT ANCHORAGE AND/OR FAIRBANKS INTERNATIONAL AIRPORTS. DEVELOPMENT FUNDS ARE NEEDED TO RESPOND QUICKLY TO AIRPORT TENANT NEEDS FOR CONSTRUCTION OF SITE IMPROVEMENTS, SUCH AS WAS PROVIDED TO FEDERAL EXPRESS IN 1989 AND 1990. IF THE AIAS IS UNABLE TO RESPOND QUICKLY TO TENANT NEEDS, THE PROPOSED DEVELOPMENT MAY NOT OCCUR OR IT MAY OCCUR AT ANOTHER AIRPORT OUTSIDE ALASKA. THE ABOVE FUNDING AMOUNT HAS BEEN DETERMINED BASED ON INFORMATION FROM COMPANIES WHO HAVE INDICATED THEIR INTEREST IN DEVELOPMENT AT AIAS IN FY 91.

the state have been constructed using federal funds even though these roads were not constructed to federal standards. He stated that this shows real success in working toward the goal of constructing "pioneer" type roads in rural Alaska.

Number 095

Rep. Grussendorf MOVED CSSCR 47 out with individual recommendations. Hearing no objection, it was so ordered.

Acting Chairman Kubina then moved to the next order of business, HB 594.

Riley Snell, Director, Alaska Industrial Development Authority (A.I.D.A.), provided testimony on the bill. He informed members that \$50 million in bonds would be issued to construct a maintenance facility at Anchorage International Airport. He stated two companies have expressed a strong interest in leasing the facility. Mr. Snell went on to explain that there are several management possibilities. The facility could be multi-user managed or single-user managed. He stated that A.I.D.A. is very excited about the project.

Rep. Hudson asked how long of a time period the bonds would be issued for. Mr. Snell replied that the bonds would be revenue bonds and they would be issued for 20-30 years.

Rep. Hudson then inquired how much debt A.I.D.A. is currently carrying on the books. Mr. Snell stated he was not sure and informed Rep. Hudson he would provide him with an answer in the near future.

Rep. Lemam asked where the facility would be located. Mr. Snell stated that the site location had not been determined at this time. However, it would probably be somewhere in the North Airport.

Rep. Lemam then asked about the impact on Northern Lights Boulevard. He asked Mr. Snell if there were any plans to do anything about the increased traffic in this area. Mr. Snell deferred to Commissioner Hickey to address the concern.

COMMISSIONER HICKEY stated the department was aware of the problem and the planning and design unit is addressing this concern.

Rep. Kubina asked if the \$8 million in capital funds had been approved. Commissioner Hickey stated these funds were in the capital budget. Rep. Kubina then asked if this money was federal funding. Commissioner Hickey stated

these funds come from the International Airport Revenue Fund. He informed members that this figure shows up in the capital budget because the department needs legislative authorization to expend monies from this fund.

Rep. Hudson asked if a market analysis had been done. Mr. Snell replied that a preliminary analysis has been performed. He stated that both Federal Express and Alaska Airlines have shown very strong interest in the project. No construction would commence until firm agreements are reached.

Rep. Kubina then asked if there are any state monies going toward this project. Mr. Snell replied there was not.

Rep. Leman stated that the proposed development to the north airport area would require use of water. He expressed concern that this use would impact the amount available for local area residents. REP. Leman asked if the department intended to provide additional water lines through the use of monies in the International Airport Revenue Fund. Commissioner Hickey stated that the project is generally considered a community project and therefore the department would attempt to tie into the local water utility. Commissioner Hickey then stated if the airport was unable to do this, a separate self-sufficient system would be constructed. He stated that the department has discussed this concern with the municipality. The question of whether monies made available to the City of Anchorage for new water lines would be considered a grant or a loan has still not been resolved

Number 0354

Rep. Hudson MOVED HB 594 out with individual recommendations. There were no objections.

Pete Carran, representing Senator Duncan provided a brief overview on CSSCR 25. He stated that this resolution is generic in nature, however, Senator Duncan became involved because of a desire to improve access to Juneau. He stated that Senator Duncan would like to see the DOT&PF focus on expansion of the transportation system, instead of strictly maintaining the existing system.

Deputy Commissioner Keith Gerkin expressed the DOT&PF's support of CSSCR 25. He stated that the department needs the authority to plan long term and commit to road projects. Deputy Commissioner Gerkin believes this resolution is a step in this direction.

Rep. Kubina asked how the department would prioritize projects. Mr. Gerkin replied that a professional analysis and needs assessment would be performed to determine project priority.

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 594

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act authorizing the Alaska Industrial Development
7 and Export Authority to issue bonds for an aircraft
8 maintenance facility located at the Anchorage Inter-
9 national Airport; granting the authority an exemption
10 from the state procurement code for contracts
11 relating to airports; and providing for an effective
12 date."

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

14 * Section 1. The Alaska Industrial Development and Export Authority may
15 issue bonds to finance the acquisition, design, and construction of a
16 multi-bay aircraft maintenance facility located at Anchorage International
17 Airport, to be owned by the authority. The principal amount of the bonds
18 may not exceed \$50,000,000. This section grants the legislative approval
19 required by AS 44.88.090 and 44.88.172(c).

20 * Sec. 2. AS 36.30.850(b)(F) is amended to read:

21 (8) acquisitions or disposals of property or other contracts
22 relating to airports under AS 02.15.070, 02.15.090, [AND] 02.15.091,
23 and AS 44.88;

24 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

25



Representative Bette Cato, Chair House Transportation Committee

SUBJECT OF MEETING:

DATE:

PLACE:

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Dale Steley	Semi Duncan			4566		<input checked="" type="radio"/> Y	N SB 483
Ben Waggoner	NIDEA	480 W. Tudor		345 4104	561- 8050	<input checked="" type="radio"/> Y	N SB 543
KEITH GERKEN	DOT & PF			3900		<input checked="" type="radio"/> Y	N SB 483
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N
						Y	N

S J R

15

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: _____
 Title: Am. Relating to the support of bilateral BRU
aviation agreements to better promote int. tourism, etc.
 Sponsor: Uehling, Pearce, et al. Components: _____
 Requestor: SITC

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						
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						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Mark Szymanski* Phone: _____
 Division: _____ Date: _____

Approved by Commissioner: Chairman Szymanski Date: 2-1-89
 Agency: Senate International Trade and Tourism Committee

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

PURPOSE:

The Aviation Bilateral Committee (ABC) has been established as a state policy coordination group with respect to aviation bilateral agreements and negotiations between the U.S. and various foreign governments. State aviation bilateral policy shall be reviewed and discussed by the ABC, and approved by the DOT&PF Commissioner.

MEMBERSHIP:

Commissioner of DOT&PF and/or his designee-
as Chairperson.

Deputy Commissioner, Budget & Finance, DOT&PF

Executive Director - AIAS

Development Manager - AIAS

Commissioner of Commerce and/or his designee.

Governor's Office - Special Counsel State/Federal
Relations.

Director - Office of International Trade

Governor's Office - Special Staff Assistant for
DOT&PF.

ABC ROLES AND RESPONSIBILITIES:

- The committee will review and comment on draft state policy as relates to aviation bilateral agreements and negotiations.
- Evaluate changes and modifications to state aviation bilateral policy.
- Identify changes in existing aviation bilateral agreements necessary to attract and accommodate additional business opportunities to benefit the state.
- Serve as a clearinghouse for information regarding changes

- Draft or review correspondence to appropriate federal officials and Congressional delegation
- Monitor any active aviation bilateral negotiations ABC deems important to the interests of the state
- Maintain contact with appropriate parties in Washington, D.C.
- Advocate state policy, as necessary, in appropriate Congressional, federal agencies, and other forums.

Alaska
International
Airport
System

P.O. Box 190649
Anchorage, Alaska
USA
99519-0649
(907) 266-1616

*Serving Alaska and
the world through
the Anchorage
and Fairbanks
International Airports*

Mr. Walter Hickel, Jr.
President
Alaska International Airport
Tourism Marketing Council
P.O. Box 104979
Anchorage, Alaska 99510

January 13, 1989

Dear Mr. Hickel,

The economic impact to the Alaska International Airport System and to the total economy of the State of Alaska due to the so-called "overflights" of our airports is great. The opening of Soviet airspace to Europe/Asia flights has negatively impacted the operations of the Alaskan airports. The planned operation by many major international carriers of new long-range aircraft such as the Boeing 747-400 series would most definitely mean fewer flights transitting Alaska as well.

Two international passenger carriers that are among the heaviest users of Anchorage International Airport, Japan Airlines and Lufthansa, have announced future plans for their Anchorage stations. Lufthansa will be eliminating passenger service through Anchorage in the summer of 1989. Anchorage's largest air carrier, JAL, has announced plans to reduce their passenger flights down to 4 a week by 1991, from the current 17 flights per week.

We calculate the loss to the State's economy caused by the elimination of these carrier's flights alone to equal approximately \$136,960,000 per year by 1991. This estimate includes the following components:

-AIAS Revenues		\$ 10,700,000
-Operations	\$2,900,000	
-Concession	7,800,000	
-State of Alaska General Fund		1,500,000
-Gasoline Tax	1,500,000	
-Non-Airport Revenue Losses		124,760,000
-concession	77,160,000	
-indirect impact	47,600,000	

		\$136,960,000 per year
		=====

Attached are the computations that support this estimate. These figures represent only the announced flight losses of two major international carriers and add up to a loss of about thirty percent of our international passenger flights.

The overflight plans of Air France, British Airways, China Airlines, Iberia Airlines, KLM, Korean Airlines, Sabena, Scandinavian Air Systems, and Swissair are not known at this time. The \$140,000,000 amount quoted above therefore represents what we believe to be the most conservative estimate of the possible negative effects to the economy and to AIAS and State General Fund revenues. A doubling of overflight losses to sixty percent of our current international flights is possible and would mean a loss to the state economy of approximately \$280,000,000 per year, \$20,000,000 loss of AIAS revenues, and \$3,000,000 in State General Fund revenues.

International airline and concession fees constitute fully sixty percent of the revenues of the International Airport System. The direct and indirect contributions of the international carriers keep costs down for all other operators, whether it be domestic airlines with flights to and from the Lower 48, commuter carriers, or businesses and individuals that lease tie-down spaces for small aircraft. It is therefore important to many Alaskans in Anchorage, Fairbanks and throughout the state that international flights through our airports continue at as high a level as possible.

As you are well aware, major airport marketing efforts began in earnest in November of 1987. While the Department of Transportation and Public Facilities has professionally managed and expanded the Anchorage and Fairbanks International Airports for many years, until last year there were no concerted efforts to market the airports. When the AIAS development team was created in November, 1987 we immediately did an analysis of the resources and strengths of the System. Two major directions for development seemed best to pursue: increased hub operations for international air cargo and international destination tourism. Alaska's major strength is its strategic location which means our major growth potential is in international markets.

With the Federal Express facility well under construction and cargo activity growing quickly, successful attainment of our first goal seems quite probable even in the short term. International destination tourism, however, remains a much more elusive target.

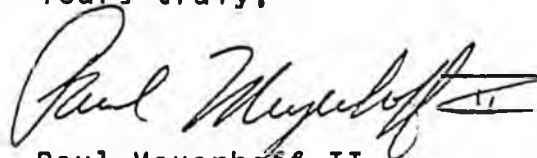
At an Anchorage Convention and Visitors Bureau event in Anchorage during the early summer of 1988, Governor Cowper announced a major new initiative to promote international tourism. The Governor's "Japanese Tourism Initiative" contains three major components: Increased development of Alaska visitor destinations, acquiring blocks of Alaska Destination airline seats, and increased promotion in Japan for Alaska travel opportunities. The Airport System heartily endorses the Governor's plan. We feel that successful completion of the plan in one of the keys to keeping a high level of international flights into our state.

While the Airport System continues to pursue the goal of attaining blocks of Alaska destination airline seats, we do not feel we should have a direct role in the development of Alaska destinations or in the promotion of Alaska travel opportunities. AIAS did fund \$140,000 in Japanese promotional efforts out of the FY88 AIAS Marketing monies, but we saw, and continue to see, our involvement as only a means to get tourism marketing efforts quickly expanded in Japan. We feel the Division of Tourism is the appropriate state agency to be in charge of this effort.

We wholeheartedly endorse your group's efforts to promote international destination tourism in Alaska. We understand quite clearly that failure to develop this relatively untapped market could mean a major drop in revenues to AIAS and the State General Fund and a catastrophic drop in economic activity within our state. Increased funding and focused planning for international tourism promotion is a move critical to retaining international passenger flights.

Please let us know what we can do to continue to assist you in your efforts.

Yours truly,



Paul Meyerhoff II
Executive Director

cc: D. Randy Simmons, DOT&PF Deputy Commissioner
Marketing Advisory Committee

MEMORANDUM

State of Alaska

TO: Mark Hickey
Commissioner

DATE: December 6, 1988

Randy Simmons
Deputy Commissioner
Budget & Finance

FILE NO: 413C

THRU:

Paul Meyerhoff II *PM 2*
Executive Director
AIAS

TELEPHONE NO: 266-1616

SUBJECT: Trip Report -
Luxembourg & Japan
Bilaterals

FROM: Gina Marie Lindsey *GML*
Development Manager *bsp*
AIAS

I was in Washington D.C. 11/29 - 11/30 to discuss Luxembourg and Japan bilateral aviation negotiations with federal government representatives, Alaska congressional staffers, Cargolux, and their legal representatives. The following is a summary of the meetings Eric Ostrovsky, and I had and an update of the bilateral status relative to Luxembourg, Japan, and Alaska's interests.

LUXEMBOURG:

Eric Ostrovsky and I met with Ted Kronmiller and Steve Lachter of Patton, Boggs & Blow and five Cargolux representatives on Monday. Cargolux currently has five gateways and three frequencies per week approved by the U.S. government through an informal permit -- no formal bilateral. Cargolux wants several additional gateways (possibly Alaska and Huntsville, AL) and additional frequencies (at least one more through Seattle) established in a formal bilateral. They knew negotiations would be tough and were asking for support from Alaska, Huntsville, and Seattle to help DOT and State consider the airport and regional economic benefits accruing to gateways receiving Cargolux service.

Eric and I met subsequently on Monday with DOT (Patrick Murphy, Ed Oppler, and Susan McDermott) and State (Jeff Shane and Michael Goldman). Their position appeared quite fixed against either additional gateways or frequencies essentially because Luxembourg has nothing the U.S. carriers want and, in the face of that, the existing permit is quite liberal. We presented Alaska's interest, discussed the fact that an Alaska gateway is not analogous to lower 48 gateways and should not be assumed to be. By virtue of our strategic position, and lack of major origin-destination market, our opportunities for expanding and diversifying our economy lie in exploiting that geographic location. Major expansion in movement of people and goods will be by air. Alaska must have help from the federal government to assure the overall economic benefits to our area are

considered important when evaluating reciprocal value of aviation bilateral rights -- air carrier benefits are not the only benefits that should be factored into the equation.

On Tuesday we met with Jaimie Boucher (Murkowski), Jeff Smith (Young), and Wally Burnett (Stevens). Jaimie's major concern centered on whether reciprocal rights would be available to U.S. carriers if they wanted to serve Luxembourg and determining if there would be competitive damage to a U.S. carrier by granting the Alaska gateway to Cargolux. We made it clear to all staffers that Cargolux has made no commitment to Alaska. Apparently several calls were made late Tuesday and early Wednesday which had the net effect of "turning up the heat" on DOT and State.

On Wednesday the U.S. offered to substitute Huntsville and Alaska for New York and Houston (2 Cargolux gateways currently not served), but no additional frequencies, refused formal bilateral status but assured permit renewal in two years when it expires (assuming there's no change in company ownership). The Luxembourg government refused this because the gateway substitution was worth nothing without additional frequencies, and the conditional permit renewal was a right they already have. The U.S. discouraged Luxembourg from coming to the table again soon, but Steve Lachter estimates talks to be requested and scheduled in 3-6 months. In the meantime, Eric will stay in contact with Patton, Boggs and Blow. We have indicated a willingness to develop more definitive economic benefits information but need more specific plans from Cargolux in order to do this. My sense is that some quantifiable data will have to be presented before there is much hope of softening the U.S. position.

JAPAN:

While Luxembourg was the most immediate concern, Eric and I spent as much or more time on Japan. The new U.S. proposal modifies the two paragraphs setting parameters for new gateway selection so Alaska could now compete, however, we could never realistically compete successfully with other candidate U.S. gateways.

There is, however, a new paragraph specific to Alaska which allows either country to designate a carrier or carriers to start turnaround Alaska service. There appears to be no practical difference between this and gateway designation except there could be no "beyond" rights in Japan which may limit the growth potential of the route but does not appear critical for our purposes.

The Japanese have agreed to talks December 7-9. Now that the Alaska proposal is in the U.S. platform we must assure it stays there and does not become a "throw-away". Eric will be getting a copy of the U.S. position to the Congressional delegation so they know specifically what to push for should they choose to do so.

The sixth freedom issue could present a bit of a quandary to the State. Apparently Japan has agreed to 3 flights/week for Tigers' sixth freedom cargo. Tigers initially agreed but now says no: they contend they already have unlimited rights so why settle for less than that and then have to trade additional benefits for more sixth freedom frequencies in the future.

The U.S. has not yet responded on Japan's offer of three and is currently determining how to respond. They requested an Alaska position if we have one to share. The dilemma is that while we may agree with Tigers philosophically, rejection of the three frequencies could stall progress on other issues including the potential turnaround passenger right. It is not imperative that we take a position, but if we do it should be soon.

Jeff Shane feels the U.S. proposal is "very heavy" for the Japanese and has no assurances talks will make much progress after the Japanese see it.

/s/

cc: Aviation Bilateral Committee
Chris Birch, Airport Manager, FIA
Paul Meyerhoff II, Executive Director, AIAS
D.C. Ruff, Airport Manager, AIA
Marketing Advisory Committee

ECONOMIC IMPACT OF OVERFLIGHTS

=====

I. LATEST ANNOUNCED AIRLINE OVERFLIGHT PLANS

A. Japan Airlines

Latest JAL plan shows flights through Anchorage will decrease from the current 17 round trip flights per week to 4 round trip flights per week in 1991

Result: A loss of 13 round trips per week or 1,352 flights per year.

B. Lufthansa

Planned complete elimination of passenger flights through Anchorage starting in July 1989. Lufthansa had 577 flights during FY1988.

Result: A loss of 577 flights per year.

C. Total Announced Overflight Plans

Japan Airlines	1,352 flights per year
Lufthansa	577 flights per year

	1,929 total flights per year

D. Announced Overflights as a Percentage of Existing International Passenger Flights

Announced Overflights	1,929
divided by:	
Total FY88 Flights (est.)	5,900
= 33% total loss of flights	

II. AVERAGE DIRECT REVENUE TO AIAS AND STATE PER FLIGHT
 -typical landing of B747-200
 -international passenger flight

Landing Fee:	775,000 lbs.	(\$.72/1000 lbs.)	=	\$ 558.00
Fuel Flowage:	32,000 gal.	(\$.02/gal.)	=	640.00
State Oil Tax:	32,000 gal.	(\$.025/gal.)	=	800.00
Docking Fee:				287.00
Federal Inspection Service Fee:				20.00

average total revenues per landing \$2,305.00
 =====

A. Direct AIAS Fees

Landing Fee \$	558.00
Fuel Flowage	640.00
Docking Fee	287.00
F.I.S. Fee	20.00

\$1,505.00/flight x 1929 flights = \$2,903,145
 =====

or approximate total estimated losses of \$2,900,000.
 =====

B. State General Fund

State Oil Tax \$800.00/flight x 1929 flights = \$1,543,200
 =====

or approximate total estimated losses of \$1,500,000.
 =====

III. CONCESSION REVENUES TO AIAS PER FLIGHT

-Duty Free shop, restaurants, currency exchange

A. Total FY88 North Terminal (International) Concession Revenues (to AIAS)

Marriott:	\$ 185,000.00
Forex:	79,217.44
Duty Free:	17,000,786.00
Alaskana:	135,541.61
David Green:	645,558.76
Meat & Seafood:	1,156,972.41

\$19,203,074.00

=====

B. Average Concession Revenues to AIAS Per Flight

\$19,203,074.00
divided by 5,900 (est.) FY88 Flights
= \$3,254.75 per flight

C. Estimated Losses to Concession Revenues to AIAS From
Announced International Passenger Flight Losses

\$3,254.75/flight x 1,929 flights = \$6,278,412.70

NOTE: The flights that are starting to "overfly" Anchorage primarily have Japanese travellers on board. Since the average Japanese traveller spends considerably more money at duty free shops world-wide than travellers from other countries, we have added a 25% factor above the \$6,278,412.70 figure to reflect the fact that many of the duty free shop's "best" customers are now starting to "overfly" Alaska.

\$6,278,412.70 x 1.25 ("Japanese Factor") = \$7,848,015.80
or approximate total losses of \$7,800,000.

=====

IV. AVERAGE REVENUES TO AIRPORT OPERATORS PER
INTERNATIONAL PASSENGER FLIGHT

A. These figures include revenues from the following organizations:

-duty free shops, restaurants, flight kitchens, ground handlers and airlines (fuel purchases, crew hotel and transportation costs, salaries and overhead for staffs, etc.)

B. Previous analysis has shown these costs to be approximately \$40,000/flight.

=====

C. Estimated direct losses to the Alaskan economy from the loss of these international passenger flights:

\$40,000/flight x 1,929 flights = \$77,160,000 less of airport operators' revenues.

D. Estimated indirect losses to the Alaskan economy from the loss of these airport operator revenues:

NOTE: To determine the indirect impact of the \$77,160,000 direct impact, we used a RIMS II Multiplier of .6174.

\$77,160,000 (direct) x .6174 (multiplier) = \$47,638,584
=====

or approximately \$47,600,000.
=====

E. Estimated total losses to the Alaskan economy from the loss of these airport operator revenues:

Direct Losses	\$ 77,160,000	
Indirect Losses	47,600,000	

	\$124,760,000	
	=====	

V. LOSS TO THE STATE'S ECONOMY

We calculate the loss to the State's economy caused by the elimination of these carrier's flights alone to equal approximately \$140,000,000 per year by 1991. This estimate includes the following components (rounded off):

-AIAS Revenues		\$ 10,700,000
-Operations	\$2,900,000	
-Concession	7,800,000	
-State of Alaska General Fund		1,500,000
-Gasoline Tax	1,500,000	
-Non-Airport Revenue Losses		124,760,000
-concession	77,160,000	
-indirect impact	47,600,000	

		\$136,960,000 per year
		=====

FISCAL YEAR

C. D.

Year	Passengers In	Passengers Out	Total In - Out Passengers	Through Passengers	Total All Passengers	Freight In (lbs.)	Freight Out (lbs.)	Total Freight (lbs.)	Revenue Landing	Jets
1957 thru 1964	952,539	1,000,576	1,953,115	574,407	2,527,602	120,260,537	224,141,581	344,402,118	76,250	
1965	109,451	195,335	304,786	152,003	536,789	20,627,935	32,097,259	52,725,194	10,349	4,145
1966	213,100	219,047	432,147	216,648	649,075	20,762,213	37,394,229	58,156,442	11,584	4,721
1967	268,557	269,459	538,016	414,809	952,825	22,400,979	49,776,762	72,177,741	15,783	7,590
1968	331,726	357,516	689,242	418,732	1,107,974	25,980,900	75,573,582	101,554,490	18,892	9,992
1969	391,050	424,314	815,364	648,821	1,464,185	30,526,580	50,137,204	80,663,784	23,099	15,135
1970	426,748	433,163	859,911	807,722	1,667,133	32,241,373	60,865,051	93,106,424	25,104	18,070
1971	413,735	420,449	833,984	778,211	1,612,195	36,618,783	60,493,202	97,111,985	23,307	17,825
1972	451,455	461,777	913,232	654,681	1,567,913	44,026,537	65,937,427	109,963,964	27,596	20,875
1973	478,895	488,624	967,519	633,111	1,600,630	39,638,120	70,230,262	109,868,382	26,201	19,006
1974	540,877	551,947	1,092,824	796,045	1,888,869	60,786,732	83,642,968	144,429,700	27,939	19,397
1975	700,161	712,433	1,412,594	880,472	2,293,066	90,331,365	111,884,498	202,215,863	34,607	22,799
1976	857,162	870,024	1,727,186	804,762	2,611,948	106,702,662	155,200,054	261,902,716	30,448	25,528
1977	945,048	962,392	1,907,440	936,032	2,843,472	94,276,412	162,304,099	256,580,511	42,945	24,791
1978	955,628	479,636	1,935,264	976,055	2,911,323	99,358,565	162,669,378	262,027,943	47,350	26,150
1979	995,760	1,018,508	2,014,340	1,166,400	3,180,748	103,589,738	155,885,827	259,475,565	47,413	26,046
1980	990,517	1,007,535	1,998,052	1,267,474	3,265,526	95,800,920	157,068,269	252,869,189	44,782	25,388
1981	1,059,823	1,073,088	2,132,911	1,456,894	3,589,805	119,343,401	186,479,723	305,823,124	51,230	26,392
1982	1,165,305	1,177,717	2,343,022	1,503,206	3,846,228	118,323,615	181,394,276	299,717,891	57,311	31,326
1983	1,283,720	1,295,433	2,579,153	1,425,082	4,004,235	130,138,571	191,784,538	321,923,109	62,300	32,115
1984	1,328,793	1,335,646	2,664,439	1,372,679	4,037,118	134,684,627	187,725,215	322,409,842	71,785	36,797
1985	1,467,831	1,471,494	2,939,325	1,561,172	4,500,497	140,821,197	198,091,335	338,912,532	76,404	38,793
1986	1,491,413	1,507,603	2,999,016	1,634,829	4,633,845	117,496,348	182,007,953	300,384,301	72,034	37,556
1987	1,369,793	1,359,127	2,728,920	1,627,554	4,356,474	106,525,079	178,377,806	284,902,965	73,846	40,547
1988	1,349,644	1,371,500	2,721,144	1,706,831	4,427,975	116,067,500	192,277,003	308,344,503	74,715	41,002

STAT 52160 68, 10 53 51

B.