

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7696 SENATE STATE AFFAIRS

*252*

# MEMORANDUM

# State of Alaska

RECEIVED

MAR 19 1991

ASEA ANCHORAGE

TO: Curtis Young  
PNA

DATE: March 18, 1991

FILE NO:

TELEPHONE NO:

SUBJECT: Requested statistics

FROM: *Donna C. Todtenhagen*  
Donna C. Todtenhagen  
Admin Support Tech

Following are that statistics you requested for calendar years 1988, 1989 and 1990:

	1990	1989	1988
Admissions	834	979	1074
Discharges	833	1004	1069
Assaults	647	897	591
Locked quiet room	742	860	639
Restraints	356	526	290

cc: Reta J. Sullivan, ART  
Medical Record Administrator

PERSONNEL REPORT

NOVEMBER 14, 1990

NUMBER OF PCN's: 304

NUMBER OF FULL-TIME EQUIVALENTS: 292

	<u>Number PCN's</u>	<u>Part-Time &amp; Seasonal</u>	<u>Number FTE's</u>	<u>Vacancies</u>
Medical Staff	11	1	10.5	4
Ancillary Services	4	1	3.5	1
Nursing Services	164	20	154	4
RN's	72(*)	3	70.5	3
LPN's	3	0	3	0
PNA's	83	17	74.5	1
Clerical	6	0	6	0
Social Services	9	0	9	1
Psychology	7	0	7	1
Forensics	4	0	4	0
Activity Therapy	10	0	10	1
<u>SUPPORTING SERVICES:</u>				
Administration (Includes Volunteer Services Coordinator and Chaplain)	14	2	13	4
Medical Records	11	0	11	0
Maintenance	14	0	14	2
Housekeeping	22	0	22	1
Business Office	9	0	9	1
Dietary	21	0	21	0
Supply	4	0	4	0
TOTALS	304	24	292	20 (FTE's 18)

Includes 2 Mental Health Clinician II positions with nursing specialty.

Presently there are 2 non-penns. working in Maintenance which are not indicated on this report.

JG/bj/WISC4 4152

r. 11/1/90  
t. 11/6/90

## MEMORANDUM

State of Alaska

TO: Al Finneseth  
Administrator

DATE: January 24, 1991

FILE NO:

TELEPHONE NO:

THRU:

SUBJECT: Workmen's Compensation  
Report, 1990

FROM: Jim Gordon  
Administrative Assistant I

<u>Calendar year</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
Total Days Lost Due to Injury	210.9	258.73	448.6	803.1	319.2
Total Days Lost Due to Non-Patient Injury	93.5	84	353.7	593.7	84.6
Total Days Lost Due to Patient-Connected Injury	117.4	174.73	94.9	209.4	234.6

For the calendar year 1990, API had a total of 2394 hours lost from work due to injuries.

There were 106 incidents reported, 36 involving lost time (12 of which resulted from a combative patient).

There were 70 incidents filed which did not result in any lost time, of these 32 were small abrasions and bumps suffered while subduing patients.

There were five staff injuries resulting in more than 150 hours away from the job. Three were the result of combative or uncooperative patients. One was the result of a fall in gym activities. One was a recurring hand injury that required surgery.

Additionally, there were 412 hours carried over as a result of prior year injuries that were not included in this report.

JG/ojb/MISC33/5024

r. & t. 1/25/91

1990

Reports Involving No Lost Time

Lifting.....6  
Walking.....2  
    in Hospital.....1  
    On Grounds.....1  
Gym Activities.....7  
Responding to Aide Calls.....4  
Miscellaneous.....19  
Combative Patients.....32  
TOTAL.....70

Reports Involving Lost Time

Lifting.....5  
Walking.....6  
    In Hospital.....1  
    On Grounds.....5  
Gym Activities.....4  
Responding to Aide Calls.....2  
Miscellaneous.....7  
Combative Patients.....12  
TOTAL.....36

JG/ojb/MISC33/5024

r. & t. 1/25/91

# RN UPDATE

## IT MAY NOT BE SO HARD TO HIRE FOREIGN NURSES

Hospitals that want to hire foreign nurses with temporary visas will not have to face the stringent paperwork requirements proposed last July by the Labor Department. After hospital protests—with which the Office of Management and Budget agreed—that the record-keeping and review process would be much too burdensome and time-consuming, the Department issued revised interim rules that are expected to become final soon.

Under the new rules, hospitals must still submit forms stating they are doing everything they can to recruit and retain American nurses, but the supporting documentation they need to submit has been simplified and the department will not routinely review each application as was originally proposed.

## NURSING STUDENTS SAY THEY NEED FINANCIAL AID

More than 85% of nursing students who responded to a survey from the Nation-

al Student Nurses' Association get some sort of financial aid—and of those, 70% say they could not continue their education without it.

Nearly 17% of respondents reported that they have had to delay their education because of the unavailability of federal funding and three in 10 said they'll have to postpone further studies because they don't have financial assistance.

Upon graduation, 36% of respondents will have to repay more than \$5,000 in educational loans. For one in 10, the debt will be more than \$10,000.

## DANGEROUS JOBS? NURSING IS HIGH ON THE LIST

Nursing is one of the most dangerous ways to earn a living, according to the Bureau of Labor Statistics. Its most recent survey of workplace injuries found that nine industries—hospitals and nursing care facilities among them—reported at least 100,000 individual injuries in 1989. Those employed in health services in general averaged seven injuries, resulting in 3.7 workdays lost, per 100 full-

time employees.

The BLS survey pegged at more than 6.5 million the total number of Americans who sustained work-related injuries or illnesses. Union officials have used that data to call



for legislation that would require high-risk workplaces to form labor/management hazard prevention committees.

## THE GOVERNMENT WILL REIMBURSE NURSES DIRECTLY

Two pieces of legislation passed by Congress make last year a successful one for the profession. Both allow nurse specialists to receive direct reimbursement for services they provide.

Under the Rural Nursing Incentive Act nurse

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# NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

### ANCHORAGE REGIONAL OFFICE

1411 W. 33RD AVENUE  
ANCHORAGE, ALASKA 99503  
(907) 274-0536  
FAX: (907) 274-0551

### JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302  
JUNEAU, ALASKA 99801  
(907) 586-3090  
FAX: (907) 586-2744

### FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET  
FAIRBANKS, ALASKA 99701  
(907) 456-4435  
FAX: (907) 456-2159

March 26, 1991

To: **Senator Rodey, Chair**  
**Members, Senate State Affairs Committee**

Re: **SB 225: "An Act relating to credited service in the public employees' retirement system; and providing for an effective date."**

NEA-Alaska strongly supports and encourages your favorable consideration of SB 225.

Certificated employees of school districts working under the TRS receive a full year of service credit in the system for each school year in which they are employed by their district. Non-certificated employees of school districts, under the PERS, receive only pro-rata credit for the actual school year as part of the twelve month calendar year. By way of example, a non-certificated public school secretary who has twenty (20) years of service with a district receives only fifteen (15) years of credited service under the PERS.

The situation for a non-certificated employee is compounded by the fact that they are not eligible for unemployment compensation for the period of time when school is not in session. Further, they are generally unable to find other interim public employment under the PERS since they are unable to make a long term commitment to a prospective employer if they desire to continue their employment with the school district.

This inequity becomes even more glaring when the non-certificated employee is compared to a local school board member who is participating in the PERS by virtue of being compensated as a board member. The school board person is given a full year of credit in the PERS even though their responsibility may only require that they attend two or three meetings per month.

Finally, since the basis for calculation of retirement benefits utilizes the final average salary a nine-month employee would not be receiving a benefit advantage over a twelve-month employee.

It is time for all public school employees to be treated in the same manner under their retirement systems.

Thank you for your consideration of our position and recommendations.

Respectfully submitted,

Bob Manners  
Executive Director

Don Oberg  
President

cc: **Senator Menard**

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(41) "territorial employment" means non-teaching employment with the Territory of Alaska as provided under AS 14.25.105; territorial employment is not membership service;

(42) "vested member" or "vested teacher" means an active member who has completed either

(A) 15 years of service, the last five of which have been membership service, for a member first hired before July 1, 1975; or

(B) eight years of membership service; or

(C) five years of membership and three years of BIA service;

(43) "year of service" means service, except for military and territorial service, during the dates set for a school year; partial-year service credit is given for membership and BIA service as follows:

(A) before July 1, 1969, during any school year,

(i) less than 20 days, no credit;

(ii) 20 days or more but less than 35 days, 0.2 years;

(iii) 35 days or more but less than 49 days, 0.3 years;

(iv) 49 days or more but less than 63 days, 0.4 years;

(v) 63 days or more but less than 77 days, 0.5 years;

(vi) 77 days or more but less than 91 days, 0.6 years;

(vii) 91 days or more but less than 105 days, 0.7 years;

(viii) 105 days or more but less than 119 days, 0.8 years;

(ix) 119 days or more but less than 133 days, 0.9 years;

(x) 133 days or more, 1.0 years;

(B) on or after July 1, 1969, during any school year,

(i) less than nine days, no credit;

(ii) nine days or more but less than 27 days, 0.1 years;

(iii) 27 days or more but less than 45 days, 0.2 years;

(iv) 45 days or more but less than 63 days, 0.3 years;

(v) 63 days or more but less than 81 days, 0.4 years;

(vi) 81 days or more but less than 100 days, 0.5 years;

(vii) 100 days or more but less than 118 days, 0.6 years;

(viii) 118 days or more but less than 136 days, 0.7 years;

(ix) 136 days or more but less than 154 days, 0.8 years;

(x) 154 days or more but less than 172 days, 0.9 years;

(xi) 172 days or more, 1.0 years;

(C) service performed on a part-time basis will be credited with one-half credit for each day of service. (§ 2 ch 145 SLA 1955; am § 1 ch 142 SLA 1957; am § 2 ch 89 SLA 1960; am § 7 ch 179 SLA 1960; am §§ 1, 2 ch 78 SLA 1962; am §§ 8 — 12 ch 86 SLA 1963; am § 1 ch 76 SLA 1968; am §§ 15 — 19 ch 84 SLA 1969; am § 21 ch 46 SLA 1970; am §§ 13 — 18 ch 138 SLA 1970; am §§ 3 — 5 ch 229 SLA 1970; am §§ 16 — 18 ch 32 SLA 1971; am §§ 6 — 8 ch 86 SLA 1971; am §§ 30 — 33 ch 66 SLA 1973; am § 3 ch 57 SLA 1974; am § 21 ch 127 SLA 1974; am §§ 12, 13 ch 173 SLA 1975; am §§ 1, 6 ch 155 SLA 1976; am § 5 ch 169 SLA 1976; am §§ 12, 13 ch 128 SLA 1977; am §§ 4, 5 ch 174 SLA 1978; am §§ 4 — 7 ch 82 SLA 1979; am § 24 ch 13 SLA 1980;

FISCAL NOTE

BILL NO. SB 225

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: An act relating to credited service in the  
public employees retirement system

Department Affected: Administration  
BRU: Retirement and Benefits

Sponsor: Menard  
Requestor: \_\_\_\_\_

Component: Retirement and Benefits

COMPONENT SERIAL NO. 64

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	50.0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	50.0	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	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	50.0	0	0	0	0	0
TOTAL	50.0	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

Estimate of current year impact: \$50,000

ANALYSIS: (attach a separate page if necessary.) This bill is estimated to increase school district contribution rates by 1.46% in the PERS. This would result in an increase in personal services costs of \$2,047,000 per year. There is no anticipated cost to the state.

The \$50,000 cost in contractual services will be to make the necessary changes to the PERS system.

The attached sheet discusses the fiscal implications of this bill to the Public Employees' Retirement System.

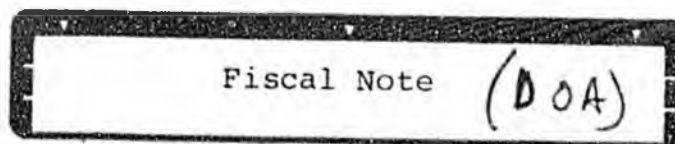
Prepared By: Garv Bader  
Division: Retirement and Benefits

Phone: 465-4460  
Date: April, 1991

Approved by Commissioner: Millett Keller  
Agency: Department of Administration

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

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB & Impacted Agency(ies).



Senate Bill 225  
Analysis of Financial Impact to the Retirement Fund  
Prepared by Division of Retirement & Benefits  
Department of Administration  
April 1, 1991

Analysis: To fund this bill the school district Public Employees' Retirement System (PERS) contribution rate would increase by 1.46% in FY 93. The school district PERS payroll is estimated to be \$140,204,085 in FY 93 and increase by 3% each year thereafter.

The school districts' cost of \$2,047,000 is calculated as follows:

School district FY 93 estimated PERS salaries	\$ 140,204.1
Increase in PERS rate	<u>X 1.46%</u>
TOTAL SCHOOL DISTRICT COST...	<u>\$ 2,047.0</u>

Passage of this bill will result in an increase in the PERS unfunded liability of \$25,000,000. It will also result in a decrease in the PERS funding ratio of .9%.

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 225

Revision Date: \_\_\_\_\_ Department Affected: Education  
 Title: Credited service in the Public SRU: K-12 Support  
Employees' Retirement System Component: Foundation and Mt. Edgecumbe  
 Sponsor: Menard  
 Requestor: Menard COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Mary Hakala Phone: 465-2809  
 Division: Commissioner's Office Date: 4/3/91  
 Approved by Commissioner: Steve Hilde, Acting Commissioner  
 Agency: Education Date: 4/3/91

Distribution (by preparer): Legis \_\_\_\_\_ Impacted Agency(ies).

# University of Alaska Classified Employees Association

## **APEA/AFT** Southeast Chapter

### TESTIMONY ON BEHALF OF APEA/AFT

BEFORE THE SENATE STATE AFFAIRS COMMITTEE 4/5/91

Chairman Pourchot and members of the committee: my name is Carol Burton and I am here today representing the Alaska Public Employees Association/American Federation of Teachers. I urge your support of SB 225 for school district employees and ask that it be amended to include the University of Alaska classified employees.

School district teachers and University faculty who work a 9 month academic year receive a full calendar year's credit in the Teachers Retirement System (TRS). Classified employees working the same period of time are only credited with 9 months service. It is inequitable that the lower paid classified employees are discriminated against in this way, merely because their retirement system is PERS and not TRS.

Thank you for the opportunity to address the committee on this important issue for classified employees.





# Alaska State Legislature

*~*  
Senator Curt Menard



*While in  
Session:*  
P.O. Box V  
Juneau, Alaska  
99811  
(907)465-2679

*Interim:*  
165 E. Parks  
Highway  
Wasilla, Alaska  
99687  
(907)373-2878

*Senate  
District  
E*

## SPONSOR STATEMENT:

SB 225: "An Act relating to credited service in the Public Employees Retirement System; and providing for an effective date."

I have introduced this legislation to correct an inequity in the manner public school employees accrue service credit toward retirement. Currently non-certificated school district employees receive only partial retirement credit although they are employed for the entire school year. Their certificated co-workers receive a full year of retirement credit for the same period of time.

This legislation will use the same formula for retirement credit for non-certificated school employees that is set out in AS 14.25.220 for certificated employees.

This inequity can not be solved through contract negotiations or by any other avenue. It is up to the legislature to recognize that all public school employees should be treated in an even manner under their retirement systems.

Your support is greatly appreciated.

WE SUPPORT



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FISCAL NOTE

BILL NO. SB 237

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: An act relating to credited service under the PERS and TRS and increasing benefits for territorial retirees.

Department Affected: Administration  
BRU: Retirement and Benefits

Sponsor: Duncan  
Requestor: \_\_\_\_\_

Component: Retirement and Benefits

COMPONENT SERIAL NO. 64

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	24	24	24	24	24	24
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.4	2.4	2.4	2.4	2.4	2.4

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	24	24	24	24	24	24
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	2.4	2.4	2.4	2.4	2.4	2.4

POSITIONS

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

Estimate of current year impact: Zero

ANALYSIS: (attach a separate page if necessary.) The increase in general fund authorization is the result the increase of \$200 per month to the benefit of the one remaining territorial retiree. This bill is estimated to cost the state of Alaska \$ 62.6 in increased personal services for FY 93 and each year thereafter. It will also increase personal services cost to political subdivisions by approximately \$ 42.2 in FY 93 and each year thereafter.

Prepared By: Garv Bader *Dale Statuab*  
Division: Retirement and Benefits

Phone: 465-4460

Date: 4/26/91

Approved by Commissioner: Millett Keller  
Agency: Department of Administration

Date: 5/1/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB & Impacted Agency(ies).

Senate Bill 237  
 Analysis of Fiscal Implications to the Retirement Fund  
 Prepared by Division of Retirement & Benefits  
 Department of Administration  
 April 26, 1991

Analysis: Passage of this bill will allow members vested in PERS to claim active duty federal military service while with state national guard unit. We estimate that approximately 2,500 members will claim on average 6 months of additional PERS service under this provision. This is the only provision of this bill which will have a measurable impact on the PERS system.

To fund this bill, the State PERS contribution rate would increase by .01%. The State payroll is estimated to be \$561,946,558 in FY93 and remain stable each year thereafter. The University of Alaska (U of A) PERS payroll is estimated to be \$64,208,199 in FY93 and remain stable each year thereafter.

The State cost of \$ 62.6 is calculated as follows:

Estimated FY93 state PERS salaries	\$561,946,558	
The increase in contribution rate	<u>.01%</u>	
Total State PERS cost.....		\$ 56.2
Plus estimated U of A PERS salaries	\$64,208,199	
The increase in contribution rate	<u>.01%</u>	
Total U of A PERS cost.....		<u>6.4</u>
<b>TOTAL FY93 STATE COSTS...</b>		<b><u>\$ 62.6</u></b>

In addition to the State's cost's above, political subdivision costs would increase by \$ 42.2 in FY93 based on estimated salaries of \$421,887,360. The political subdivision salaries are estimated to remain constant each year thereafter.

Estimated FY93 Political Subdivision PERS salaries	\$421,887,360	
The increase in contribution rate	<u>.01%</u>	
<b>TOTAL FY93 POLITICAL SUBDIVISION COSTS...</b>		<b><u>\$ 42.2</u></b>

Passage of this bill will have no impact on the PERS funding ratio and would increase the present value of the PERS unfunded liability by \$ 1,300,000.

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FISCAL NOTE

BILL NO. SB 255

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: An act requiring that Automatic PRPA's in the PERS and TRS be paid by July 31 each year when due.

Department Affected: Administration  
BRU: Retirement and Benefits

Sponsor: Duncan  
Requestor: \_\_\_\_\_

Component: Retirement and Benefits  
COMPONENT SERIAL NO. 64

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	30.0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	30.0	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	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	30.0	0	0	0	0	0
TOTAL	30.0	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

Estimate of current year impact: Zero

ANALYSIS: (attach a separate page if necessary.) The \$30.0 cost to personal services are to pay for the personal services effort to make the needed computer changes to the PRPA automated systems. There is no measurable financial impact to the Teachers' or Public Employees' Retirement System with passage of this bill.

Prepared By: Gary Bader *Bob Statuora*  
Division: Retirement and Benefits

Phone: 465-4460  
Date: 4/25/91

Approved by Commissioner: Millett Keller *Millett Keller*  
Agency: Department of Administration

Date: 4/25/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB & Impacted Agency(ies).

1991 LEGISLATION  
POSITION PAPER  
DEPARTMENT OF ADMINISTRATION

Division Retirement and Benefits Bill Number SB 255

Bill Title "An act requiring that automatic PRPA's in the PERS and TRS be paid by July 31 each year when due."

Position Statement: Explain briefly what bill does, its impacts and Departments' position, i.e. a) support, b) do not support, c) neutral or d) oppose.

We oppose this bill. This bill would require that automatic post retirement pension adjustments (PRPA) in both the PERS and TRS be paid by July 31 of each year. This would require a change to the division's automated systems as well as the division's policies towards issuing PRPA's.

The Alaska constitution requires that a retiree receive the best benefit accrued during their period of participation under the retirement system. In the case of PRPA's, 98% of retirees in the PERS and TRS can qualify for either of two PRPA's, the automatic or ad-hoc PRPA. Information concerning the ad-hoc PRPA is not available until the end of September each year. At that time, the Commissioner of Administration can consider the merits of issuing an ad-hoc. The current automated systems are designed to compare the benefits granted under both PRPAs and apply the highest one in each case.

To apply the automatic PRPA each year before the status of the ad-hoc is determined will mean that any time that an ad-hoc is granted, the division will be required to retroactively adjust the amount of benefits that many retirees have received to reflect the correct PRPA. We feel that the extra effort and cost each year is unnecessary when considering that most PRPAs have been paid retroactively to July 1 by November of each year.

APPROVED:

Director Gary M. Bader Division Retirement and Benefits

Signature Bob Statuokke Date 4/25/91

Commissioner Millett Keller

Signature Millett Keller Date 4/25/91

(For more information, call Barbara Pritchett 465-2200)

Rev. 1/91



# NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

## Don Oberg, President

Claudia Douglas  
Vice President  
P O. Box 74837  
Fairbanks, AK 99707

Judy Salo  
NEA Director

4510 Kenaitze Court  
Kenai, AK 99611

Paul Jarvi  
Region I Director

P O. Box 5876  
Ketchikan, AK 99901

Deedie Sorensen  
Region I Director

6703 Sunny Dr.  
Juneau, AK 99801

Bruce Garrett  
Region II Director

1218 Malutin Lane  
Kodiak, AK 99615

DeWynne Craig  
Region III Director

406 S Forest Dr. #3-A  
Kenai, AK 99611

Kathy Gross  
Region IV Director

P O. Box 1652  
Bethel, AK 99559

Marilyn Rosene  
Region IV Director

Box 1170  
Dillingham, AK 99576

Susan Annis  
Region V Director

1633 Kivalina Street  
Fairbanks, AK 99709

Mary Lou Brent  
Region V Director

Box 80074  
Fairbanks, AK 99705

Gayle Harbo  
Region V Director

Box 80522  
College, AK 99708

Don Hadley  
Region VI Director

3259 Wesleyan Dr.  
Anchorage, AK 99508

Richard Kronberg  
Region VI Director

3511 Chiniak Bay Dr.  
Anchorage, AK 99515

Pam McCarl  
Region VI Director

2116 Sorbus Way  
Anchorage, AK 99508

Kathi McCord  
Region VI Director

1601 Hidden Lane  
Anchorage, AK 99501

Leslie Vandergaw  
Region VI Director

P O. Box 91236  
Anchorage, AK 99509

Sandy Pevan  
Region VII Director

Box 871256  
Wasilla, AK 99687

Carolyn Tolson  
Region VII Director

Box 873933  
Wasilla, AK 99687

Hank Harrison  
Region R Director

Box 110325 S Station  
Anchorage, AK 99511

## ANCHORAGE REGIONAL OFFICE

1411 W. 33RD AVENUE  
ANCHORAGE, ALASKA 99503  
(907) 274-0536  
FAX: (907) 274-0551

## JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302  
JUNEAU, ALASKA 99801  
(907) 586-3090  
FAX: (907) 586-2744

## FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET  
FAIRBANKS, ALASKA 99701  
(907) 456-4435  
FAX: (907) 456-2159

April 25, 1991

**TO:** Sen. Pat Rodey, Chair, and  
Members of Senate State Affairs Committee

**FROM:** Don Oberg

**RE:** SB 255; *An Act requiring the administrator of the teachers' retirement system and the public employees' retirement system to include a post retirement pension adjustment in benefits before August 1 each year; and providing for an effective date.*

The purpose of this legislation is clearly to provide that payment of the post retirement adjustment is made in a timely manner consistent with the intent of the original legislation which recognized the need and the equity of such action.

Since the automatic pension adjustment applies only to retired teachers over the age of 60, those affected are on very limited incomes. The pension adjustment and its timelines are very important to these recipients. For purposes of financial planning and for tax reasons the payment should be made monthly as intended rather than lump sum payments due to administrative delay.

Passage of this legislation will ensure promptness of payment as was intended by the original legislation on this issue. NEA-Alaska encourages your support for SB 255.

Thank you for your consideration of our position.

LE04/Pnsnadj/dl

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261

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE  
P.O. BOX 100  
JUNEAU, ALASKA 99811-0310  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

May 13, 1991

The Honorable Pat Rodey  
Alaska State Senate  
P.O. Box V  
Juneau, AK, 99811

Re: SB 261, relating to commercial motor vehicle drivers

Dear Senator Rodey:

This is in response to your request for an explanation of the anticipated impact of changing the burden of proof from a "preponderance" to "clear and convincing" evidence in AS 28.15.166(j), which governs administrative proceedings to revoke driver's licenses. The perceived need for the change is apparently to assure that commercial motor vehicle drivers are not treated unfairly in license revocation proceedings provided in SB 261.

The standard of "preponderance of the evidence" is the standard ordinarily applied in civil courts to justify awarding millions of dollars in tort cases, to impose years of incarceration in probation revocation actions, to civilly commit persons who are mentally ill, and to take a variety of other actions that have serious legal consequences. We do not view this historical allocation of burden of proof as somehow "too low", nor has there been any dissatisfaction in the application of this standard to the hundreds of driver license revocation proceedings that occur every year.

The number of commercial motor vehicle drivers who will be subject to these revocation procedures is expected to be minimal: perhaps 10 per year. By contrast, there are 5000 administrative revocations currently imposed annually involving ordinary drivers of passenger motor vehicles. About 20% take steps to challenge the revocation.

The issues to be determined by the hearing officer in a driver license revocation relate to whether the arresting officer had "reasonable grounds to believe that the person" was under the influence, whether the person refused to take a breath test, or

The Honorable Pat Rodey

May 13, 1991

Page 2

whether the chemical test produced a certain result, AS 28.15.166(g). These are essentially the same issues that are litigated in any criminal trial involving DWI or refusal to take a breath test. In other words, an administrative hearing officer is required to hear all the evidence in the case.

If the burden of proof is increased, as has been suggested, and some part of the evidence is later found by a court not to have been "clear and convincing", the case is reversed and the person's license cannot be administratively revoked. The public thus has less protection from potentially dangerous drivers.

A higher burden of proof makes it more difficult to revoke licenses and certainly gives drivers a greater incentive to pursue litigation in license revocation cases. It is conceivable that the Department of Public Safety would require a fiscal note to handle the additional contested proceedings that can be expected. Similarly, the budget of the civil division of the Department of Law, which handles these proceedings for the state, might also be impacted.

To impose upon the state an additional burden in so many administrative proceedings is, in our opinion, not warranted under the circumstances presented by this bill. As indicated by the testimony from the Alaska Truckers Association, it is hard to overstate the danger presented by these big rigs (in excess of 26,000 pounds) and by vehicles carrying hazardous substances. It does not seem unreasonable to impose upon these commercial drivers the same standard of proof that has worked well for many years as applied to ordinary drivers.

If I can provide additional information, please contact me.

Very truly yours,

CHARLES E. COLE  
ATTORNEY GENERAL

By: *Dean J. Guaneli*  
Dean J. Guaneli  
Assistant Attorney General

DJG:ma

# ALASKA TRUCKING ASSOCIATION, INC.

3443 Minnesota Drive • Anchorage, Alaska 99503 • Phone (907) 276-1149 • Fax (907) 274-1948

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TESTIMONY OF FRANK J. DILLON, EXECUTIVE DIRECTOR  
ALASKA TRUCKING ASSOCIATION, INC.,  
BEFORE THE SENATE STATE AFFAIRS COMMITTEE  
MAY 10, 1991

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE

MY NAME IS FRANK DILLON. I AM EXECUTIVE DIRECTOR OF ALASKA TRUCKING ASSOCIATION, INC. ATA IS A 31-YEAR OLD TRADE ASSOCIATION REPRESENTING ALASKA'S TRUCKING INDUSTRY. ATA'S 300 MEMBER COMPANIES OPERATE FROM KETCHIKAN TO BARROW AND INCLUDE BOTH LARGE AND SMALL FIRMS, UNION AND NON-UNION. I'M HERE TODAY ON BEHALF OF ATA'S MEMBERSHIP TO ASK YOUR SUPPORT OF S.B. 261,

TO SAFELY DRIVE HEAVY TRUCKS IN ALASKA REQUIRES A HIGH DEGREE OF SKILL. CROWDED STREETS, POOR HIGHWAYS AND HARSH WEATHER COMBINE TO MAKE THE TASK OF OPERATING LARGE TRUCKS A FORMIDABLE ONE. COMPETENT, QUALIFIED PROFESSIONAL DRIVERS ARE NEEDED. ENACTMENT OF S.B. 261 WILL HELP ASSURE IMPROVED HIGHWAY SAFETY BY REQUIRING THAT TRUCK DRIVERS ARE SOBER AND DRUG-FREE. S.B. 261 MANDATES HARSH PENALTIES FOR THOSE COMMERCIAL VEHICLE DRIVERS WHO DO NOT CHOOSE TO OPERATE THEIR VEHICLES IN A REASONABLE, PRUDENT AND SAFETY-CONSCIOUS MANNER. FOR THE VAST MAJORITY OF ALASKA'S PROFESSIONAL DRIVERS AND TRUCKING COMPANIES S.B. 261 WILL HAVE NO IMPACT. MOST TRUCK DRIVERS DO NOT DRIVE IMPAIRED, NOR DO MANY COMPANIES TAKE THE RISK OF PERMITTING IMPAIRED DRIVERS TO DRIVE. HOWEVER, ATA FEELS THAT EVEN A VERY SMALL NUMBER OF IMPAIRED TRUCK DRIVERS IS TOO MANY AND STEPS SHOULD BE TAKEN TO KEEP THEM OFF THE ROAD. S.B. 261 WILL DO JUST THAT. ATA ASKS THAT YOU PASS S.B.261 FROM THIS COMMITTEE AND THAT YOU ACTIVELY HELP IT BECOME LAW.

THANK YOU FOR THIS OPPORTUNITY TO TESTIFY ON THIS IMPORTANT ISSUE.



# Alaska State Legislature

## Senate

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

May 10, 1991

To: Senator Pat Rodey  
Members, State Affairs Committee

From: Max Gifford  
Committee staff

Subj: SB-261, operating commercial motor vehicles

At the last hearing members expressed concerns that changes proposed in SB-261 could impact both the Courts and Corrections system. At the time neither department had submitted either fiscal note or position papers.

**THE COURT** has submitted a **zero fiscal note** and notes any potential impact depends on the "level of enforcement" of the new law. The Court indicates it will monitor the effects of the legislation to ascertain if additional funding is needed in the future. (Fiscal note in bill file).

**CORRECTIONS** has submitted a **zero fiscal note** and concluded the effects of the new law *"will not have a significant impact upon the Department."* (See attached fiscal note and attachment in bill file.)

**AMENDMENT REQUESTED:** Page 4, lines 19 and 20, licensed commercial vehicle operators have expressed concern with *"a preponderance of the evidence"* which is the standard to be used in seeking a conviction under the proposed legislation. Using the new blood alcohol content level (0.04 percent, or 0.04 or more grams of alcohol per 210 liters of the person's breath; Sec. 15) a person convicted by *"a preponderance of the evidence"* may lose their license for lifetime. The request was to change "preponderance" to "clear and convincing" evidence.

I discussed the matter with Mr. Guanelli from the Department of Law and Juanita Hensley from Public Safety. Both concluded the proposed changes would more than likely result in non-compliance with federal law. As you know, failure to adopt the standards established by the federal government may well result in the loss of federal highway matching funds, estimated to be about \$12.2 million for FY93.

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: An Act relating to Commercial  
 Driver's Licenses  
 Sponsor: Rules Committee  
 Requestor: Governor

Department Affected: \_\_\_\_\_  
 BRU: Motor Vehicles  
 Component: Drivers Services

COMPONENT SERIAL NO. 

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

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
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<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
<b>TOTAL</b>	-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

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Juanita Hensley  
 Division: Drivers Services

Phone: 465-4335  
 Date: 4/10/91

Approved by Commissioner: Richard L. Burton  
 Agency: Department of Public Safety

Richard L. Burton  
 Date: 4/10/91

Distribution (by preparer):

Fiscal Note - DPS

OMB, & Impacted Agency(ies).

Rev 10/90

Page 1 of 2

This bill is the second phase of a two-phase process to revise state law to meet the requirements of the federal Commercial Motor Vehicles Safety Act. Phase one dealt with the licensing of commercial drivers, and passed the Legislature last year (Ch 53, SLA 1990). A fiscal note accompanied that legislation, and was approved. That fiscal note funded a position to handle the workload expected from the commercial driver's license program. At the present time, the position is assigned the duties of determining the eligibility of applicants for a commercial driver's license.

This bill requires the Division of Motor Vehicles to remove an operator's commercial motor vehicle license upon conviction for certain traffic violations. The additional workload resulting from this bill will be absorbed by present staff, hired as a result of Ch 53, SLA 1990.

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BI No. 1  
Bill Version: SA 261  
(S) Publish Date: 4/22/91

FISCAL NOTE

Revision Date: Draft 4/9/91 Department Affected: DOT&PF  
Title: An Act relating to operating commercial motor vehicles, BRU:  
motor vehicles, aircraft, and watercraft; and providing for an  
effective date  
Sponsor: Rules Committee Component:  
Requestor: Governor Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0
CAPITAL	0	-12197.1*	-24394.3*	-27361.6*	-34323.9*	Unk*
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS	0	-12197.1*	-24394.3*	-27361.6*	-34323.9*	Unk*
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	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

Estimate of current year impact: None

\* Estimates of future year impacts are based on the Federal Highway Administrations proposed highway program submitted to Congress as H.R. 1351. The proposed highway program is a 5 year program and, therefore, funding impact in FY 96 is unknown.

ANALYSIS: (Attach a separate page if necessary)

Failure to enact legislation to bring Alaska into compliance with the Commercial Motor Vehicle Act of 1986 (CMVSA 86) will put our highway dollars in jeopardy. CMVSA provides for 5% highway funding for states that do not comply in FY 93 and 10% for each fiscal year thereafter. Without draft legislation will bring Alaska into compliance with CMVSA 86. We recommend approval of the legislation.

Prepared by: M. Clyde Stoltzfus

Phone: 465-3900

Division: Commissioners Office

Date: April 10, 1991

Approved by Commissioner: Frank G. Tompkins

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: April 10, 1991

Distribution By Preparer: Legis

REV 2/7/91

Fiscal Note - DOT

Agency(ies).

Page 1 of 1

COURTS <sup>SB-261</sup>  
Financials?

CORRECTIONS <sup>FISCAL</sup>  
NOTES →

Graveli - Enforcement  
policies re: pot, etc.

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MAX.

re: SB-261 ✓

WALTER J. HICKEL  
GOVERNOR



261

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

April 22, 1991

The Honorable Richard I. Eliason  
President of the Senate  
P.O. Box V  
Juneau, AK 99811

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to operating commercial motor vehicles, motor vehicles, and aircraft.

The main thrust of the bill relates to the operation of a commercial motor vehicle while intoxicated. The primary provisions of the bill are (1) the statutory blood alcohol level for an operator of a commercial motor vehicle is lowered from 0.10 percent to 0.04 percent for purposes of a new offense of operating a commercial motor vehicle while intoxicated; (2) persons are prohibited from consuming alcohol or controlled substances, or having any such substance in their blood, for four hours before operating or being on-duty to operate such a vehicle; and (3) violators are subject to appropriate action against their commercial driver's licenses. Most of these provisions are required by federal statutes and regulations relating to the operation of commercial motor vehicles.

If this bill is not enacted into law there will be two major consequences. The first will occur on the federal deadline of April 1, 1992, when Alaska's authority to issue commercial motor vehicle driver's licenses (CDLs) will be revoked. This means that Alaska residents operating commercial vehicles in Alaska will be in violation of federal law, since the licenses previously issued to them will no longer be valid. It also means that Alaska commercial vehicle drivers will no longer be allowed to operate in any other state. The only "legal" commercial vehicle operators in Alaska would be out-of-state drivers with a valid CDL from their home state. Alaskans could not go to another state to get a license, because a state may only issue CDLs to its own residents.

The Honorable Richard Eliason - 2 -

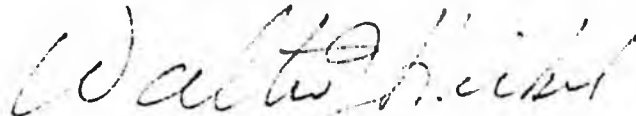
The second consequence of a failure to adopt this proposed legislation is the loss of a percentage of federal highway money, beginning on October 1, 1993. The first year's loss would be five percent of the total allotment, approximately \$12,000,000. The second and subsequent years' losses would be 10 percent. This penalty would continue until the state complies with the federal requirement.

The bill also contains procedural provisions as well as housekeeping and technical amendments. These provisions, in addition to the ones mentioned above, are described in more detail in the attached section-by-section description of the bill.

Drivers of commercial motor vehicles have a tremendous responsibility for ensuring the safety of their passengers and the driving public, and must be held to a high standard of conduct. I believe that this bill takes an important and necessary step toward better ensuring the safety of the people of Alaska.

I urge your favorable action on this bill.

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel".

Walter J. Hickel  
Governor

SECTION-BY-SECTION DESCRIPTION OF LEGISLATION  
RELATING TO COMMERCIAL MOTOR VEHICLES

Section 1 of the bill gives regulation adoption authority to the commissioner of public safety to implement a commercial motor vehicle safety inspection program (AS 28.32) and a commercial motor vehicle driver license program (AS 28.33). These laws are required by federal regulations as a condition to the state receiving additional federal highway money. This section of the bill gives the commissioner the authority to adopt appropriate regulations to avoid the loss or withholding of federal money.

Federal regulations in 49 C.F.R. 383.51(d) require states to apply their licensing sanctions to commercial motor vehicle drivers with blood alcohol at or above the 0.04 percent level. Thus, sections 2 - 6 of the bill amend portions of AS 28.15.165 and 28.15.166, which govern department revocations of driver licenses. The amendments would require the department to disqualify a person (as defined in sec. 13 of the bill) from driving a commercial motor vehicle if a chemical test of the breath indicates a blood alcohol reading at or above the federally-mandated level of 0.04 percent. The amendments in these sections also give commercial drivers the right to have that disqualification administratively and judicially reviewed under the same procedure as is now applied to ordinary drivers. Federal regulations do not mandate a review process, but considerations of due process make such a procedure advisable.

Section 7 of the bill amends AS 28.15.171 to be in compliance with federal law (sec. 12009(a)(8) of the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570, 49 U.S.C. app 2708), which requires notification to another state when a commercial driver licensed in that other state violates a traffic law in Alaska, and notification to the U.S. Department of Transportation when an out-of-state commercial driver is disqualified for a period of 60 days or more.

Sections 8 - 10 amend AS 28.15.181 to require, in addition to the current reasons for a court revoking a driver license, that a license be revoked if a commercial driver refuses to submit to a chemical test. A housekeeping amendment is also made to AS 28.15.181(a)(9) in sec. 8 of the bill.

Sections 11, 12, and 14 amend the definitions of the term "previously convicted" in AS 28.15.181, 28.15.201, and 28.15.291 to make clear that a person is considered a second, third, or subsequent offender whether the person is convicted of offenses set out in current law or the new commercial driver offenses created by this bill. Section 23 makes a similar change with respect to AS 28.35.030. Section 30 makes it clear that a person is considered a second, third, or subsequent offender even if prior convictions occur before the effective date of the legislation.

Section 15 creates a new offense of operating a commercial motor vehicle while intoxicated, adopting the federally-mandated blood alcohol level of 0.04 percent, with punishment precisely the same as for ordinary drivers who operate motor vehicles while intoxicated. As mandated by federal regulations (49 C.F.R. 383.5), the federal definition of "controlled substance" is used (sec. 20 of the bill). Although the federal regulations do not specifically require that states enact a criminal offense of driving a commercial vehicle while intoxicated, fairness dictates that commercial operators, moving large and potentially dangerous conveyances on our highways, should face at least the same criminal penalties as ordinary drivers. Proposed AS 28.33.030. Under the definition of "operating a commercial motor vehicle" in sec. 20 of the bill, a mechanic or other person responsible for servicing or inspecting a commercial motor vehicle could be subject to this new provision.

In compliance with 49 C.F.R. 383.72, sec. 15 also provides "implied consent" so that commercial drivers, just like ordinary drivers under current AS 28.35.032, are deemed to have consented to a chemical test of breath or blood when they are under arrest for operating while intoxicated. As with ordinary drivers under AS 28.35.032, this section also gives law enforcement officers the right under certain circumstances to request the operator to submit to a "preliminary test" without the necessity of placing the person under arrest, which permits officers to administer breath tests in the field with the type of hand-held instruments used by many police departments. Proposed AS 28.33.031.

Section 15 also creates the necessary legal presumptions to effectuate the new offense of operating a commercial motor vehicle while intoxicated. Proposed AS 28.33.033. The provisions in this section presume that a person operating a commercial motor vehicle is under the influence of an intoxicating substance (that is, the person's physical or mental abilities are impaired so that the person cannot operate the vehicle with the degree of caution characteristic of a person who is not under the influence) when the person's blood alcohol level is 0.04 percent or higher. No presumption is created for levels below 0.04 percent. The procedures set out in this section are almost identical to those in current AS 28.35.033, governing presumptions when persons operate non-commercial motor vehicles, and apply in civil cases as well as criminal.

Section 16 amends AS 28.33.100 to make clear that a commercial motor vehicle license is required when a person "drives" a commercial motor vehicle. The current language requiring a license to "operate" a commercial motor vehicle is inappropriate in light of the definition of "operate" adopted in sec. 20 of the bill, which could include mechanics or other persons who are responsible for inspecting or servicing the vehicle.

Section 17 amends AS 28.33.100 to provide, as required by federal regulations (49 C.F.R. 383.73(g)), that a person is disqualified for 60 days from driving a commercial motor vehicle if the Department of Public Safety determines that the person falsified any information required to be submitted in an application for a commercial driver's license or in an application for employment as a commercial motor vehicle driver.

Section 18 amends AS 28.33.120 to prohibit an employer from permitting a person to drive a commercial motor vehicle unless the person is licensed to do so.

Section 19 creates proposed AS 28.33.130, which prohibits operators of commercial motor vehicles from consuming or being under the influence of alcohol or a controlled substance within four hours of operating or going on-duty, and, with limited exceptions, from possessing any alcohol or controlled substance while operating or being on-duty. An employer or peace officer who has reasonable grounds to believe that such a situation exists must place a violator "out-of-service" for 24 hours. Federal regulations require such a statute as to the use of alcohol (49 C.F.R. 392.5; 53 F.R. 39048), but this proposal extends the prohibitions to use of controlled substances.

Section 19 also creates proposed AS 28.33.140, which requires a court to disqualify a person from operating a commercial motor vehicle for any one of several violations of laws relating to operation of commercial motor vehicles. The federal regulations require such disqualifications to occur if a person is convicted of driving a commercial motor vehicle while intoxicated, refusing to submit to a chemical test, leaving the scene of an accident, committing a felony using the vehicle, or committing a serious traffic violation. 49 C.F.R. 383.51. This proposal also adds serious license violations as a grounds for disqualification. The periods of disqualification set out in the bill are the minimum periods specified under the federal regulations. In addition, the federal regulations permit, and this bill would enact, a means for most drivers who have been disqualified for life to obtain reinstatement after 10 years.

Section 19 also adds proposed AS 28.33.150, which is the offense of driving a commercial motor vehicle in violation of a license restriction. Although such a provision is not expressly required by federal law, the only way to make court or department disqualifications and out-of-service orders truly effective is to create criminal penalties. This provision is thus similar to the offense applied to ordinary drivers in current AS 28.15.291, though the penalties applied to commercial drivers are more severe.

Section 20 amends AS 28.33.190 by adding several necessary definitions. The most important definitions are described below.

The definition of "employer" comes into play in proposed AS 28.33.130 (sec. 19 of the bill), requiring employers to place operators "out-of-service" if they have been consuming alcohol or controlled substances within the four hours before operating a commercial motor vehicle or being on-duty. The definition includes those who provide compensation to the operator, as well as supervisors, dispatchers, and any other agents who have authority to allow, require, permit, assign, or authorize the operation of a commercial motor vehicle.

The definitions of "drive" and "operate" distinguish between "driving" a commercial motor vehicle, which requires a commercial driver's license, and the broader concept of "operating" a commercial motor vehicle, which comes into play when alcohol or controlled substances are involved. The definitions of these terms are intended to be in keeping with decisions of the Alaska courts in Jacobson v. State, 551 P.2d 935 (Alaska 1976); Dept. of Public Safety v. Conley, 754 P.2d 232 (Alaska 1988); and Lathan v. State, 707 P.2d 941 (Alaska App. 1985).

The definition of "serious traffic violation" is derived from that required by federal regulations (49 C.F.R. 383.5), and covers those traffic violations that, if committed using a commercial motor vehicle, subject the driver to disqualification for up to 120 days upon a second or subsequent offense.

Section 21, and the repealer in sec. 29 of the bill, make necessary amendments in AS 28.35.029 (open containers) to be consistent with other provisions in this bill.

Section 22 makes necessary amendments in AS 28.35.030(a) (DWI) to be consistent with other provisions in this bill and to correct a vagueness problem noted by the Alaska courts in the phrase "or other substance," which appears in current AS 28.35.030(a)(3). In addition, because federal regulations (49 C.F.R. 383.5) require that the federal definition of controlled substances be used in provisions for operating commercial motor vehicles while intoxicated, sec. 23 of the bill amends AS 28.35.030(k) to adopt proposed AS 28.33.190's definition of "controlled substance" (sec. 20 of the bill). That term is used in proposed AS 28.33.030 (sec. 15 of the bill). This change provides consistency between AS 28.33 and AS 28.35.

Sections 24 - 27 make necessary amendments to AS 28.35.032 (refusal to submit to chemical test) to be consistent with other provisions in this bill. Section 28 makes necessary amendments to AS 28.35.035 (chemical tests without consent) to be consistent with other provisions in this bill.

Section 30 provides, consistently with settled case law, that convictions for offenses committed before the effective date of the Act are considered previous convictions for purposes of this Act.

Section 31 provides an effective date of January 1, 1992, to give carriers sufficient time to put procedures in place to comply with the new law, while at the same time giving the Department of Public Safety sufficient time to implement a commercial motor vehicle licensing and revocation system before the federal deadline of April 1, 1992. 49 C.F.R. 383.23.

SB261

An act relating to operating commercial motor vehicles, motor vehicles, aircraft, and watercraft; and providing for an effective date.

In an effort to reduce the amount of deaths, injuries and property damage caused by certain motor vehicles, the United States Congress passed the Commercial Motor Vehicle Safety Act of 1986.

That Act set some specific requirements that driver's and employer's must meet, plus set requirements that each state must meet. If the State does not meet these standards, the federal government will withhold Federal Highway funds.

This bill is the second phase of a two phase process caused by the delay in federal rule making. Phase one dealt with the issuance of a commercial driver's license and passed the Legislature last year (Ch.53 SIA 1990).

This phase deals with the disqualification and penalties that will occur if a commercial driver is in violation of certain laws pertaining to alcohol, drugs, traffic accidents and violations.

If this bill is not passed there will be two major consequences.

1. April 1, 1992 is the deadline set by federal regulations. Alaska's authority to issue a commercial license will be revoked. This means that Alaska CDL holders will not be allowed to operate commercial vehicles in any other state and will be in violation of the federal law. Alaska CMV operators will not be allowed to go to any other state to be licensed because states can only license their own residents.
2. Loss of Federal Highway funds begins October 1, 1993. The first years loss is 5% of the total allotment, which is approximately 12 million dollars. The second and subsequent years losses' until compliance will be 10%, approximately 24 million dollars.

Last years legislation passed with a fiscal note which adequately funded the commercial driver license program, therefore, this phase does not require additional funding.

We feel that it is extremely important for this legislation to pass as it will allow the state to be in full compliance with the federal regulations and will not put any undue hardships on Alaska's commercial motor vehicle operators.

A brief section by section analysis. A more detailed analysis was prepared and is in the packet.

Section 1

Allows the Commissioner of Department of Public Safety, to adopt regulations which will conform to the federal regulations.

Section 2 through 6

Amends current law allowing the Department of Public Safety to revoke or disqualify a commercial driver's license at .04 percent blood alcohol concentration. It also allows for due process rights to the commercial operator.

Section 7

Amends current law and requires the state to notify another state if a driver from the other state is disqualified for a violation of a traffic law in Alaska.

Section 8 through 10

Amends current law by adding additional reasons for the Court to revoke or disqualify CDL holders upon convictions of certain traffic law violations.

Section 11, 12, and 14

Redefines previously convicted.

Section 13

Adds definitions for disqualification, or to disqualify.

Section 15

Creates new offense for operating a commercial motor vehicle while intoxicated, implied consent and presumption of intoxication.

Section 16

Clears up the definition of "to drive a commercial motor vehicle."

Section 17

Amends current law by substituting "drive" instead of "operate" and allows the department to disqualify a commercial operator for falsification of documents for a commercial license or other documentation required of CFR49.

Section 18

Amends current law by prohibiting an employer from permitting an unlicensed driver to operate a CMV or operating when prohibited.

Section 19

Creates a new section by allowing a peace officer or employer to place an operator "out of service" for 24 hours for any detectable level of alcohol or controlled substance.

It also requires the Court to disqualify a CMV operator for several traffic law violations. The period of disqualifications are minimum and according to CFR49.

It also creates penalties for operating a CMV after withdrawal.

Section 20  
Adds definitions

Section 21  
Amends current law pertaining to open containers.

Section 22 and 23  
Amends current law to be consistent to the DWI provisions and controlled substances.

Section 24 through 27  
Amends current law to be consistent to refusal to submit to a breath test and defines previously convicted.

Section 28  
Amends current law to be consistent to chemical test without consent.

Section 29  
Repeals a current section of the law.

Section 30  
Provides consistently with current case law regarding convictions.

Section 31  
Allows for an effective date which will allow Public Safety time to implement prior to the April 1, 1992 deadline.

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STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO.          S.B. 261

Revision Date: April 29, 1991 Department Affected: Corrections  
 Title: "An Act relating to operating commercial motor vehicles..." BRU: Statewide Operations  
 Component: Various

Sponsor: \_\_\_\_\_  
 Requestor: Governor COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
 See Attached.

Prepared By: Tom Sutton, Director Phone: 465-3376  
 Division: Administrative Services Date: 04-29-91

Approved by Commissioner: \_\_\_\_\_ Date: 04-29-91  
 Agency: Department of Corrections

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Department of Corrections  
Division of Administrative Services

One of the features of Senate Bill No. 261, lowers the blood alcohol level for drunk driving from .10 percent to .04 percent for the operators of commercial motor vehicles.

The Department contacted three police departments, Anchorage, Fairbanks and Juneau. We asked each Department if data was available for us to determine the blood alcohol level of those who have been charged for drunk driving. Fairbanks and Anchorage police departments did not have that information readily available. However, for both cities, the staff stated it would be their best estimate that there would be few instances where the blood level would fall within the .04 to .10 percentage rate.

Fortunately, the Juneau Police department was able to provide us with records for testing on the intoximeter for the entire year of 1990. Our review of 148 charged with a DWI provided us with the following information:

Average Blood Alcohol Level	=	.1998
Blood Alcohol Level below .100	=	2
Blood Alcohol Level above .100	=	146
Blood Alcohol Level between .080 - .100%	=	0
Blood Alcohol Level between .050 - .080	=	2

The Department of Corrections reviewed its own records relative to DWI offenders and found the following admission rates and sentenced offenders in our institutions:

Calendar Year	1986	1987	1988	1989	1990
Admissions for DWI (A)	3536	3686	3603	3539	4033
Sentenced for DWI	3560	3081	2603	2584	2544

(A) Admission into facilities relates to those who are in an unsentenced status.

Considering the zero frequency rate of the number of offenders whose test results fall into .04 and .10; and the declining impact of sentenced DWI offenders on our system, it is my opinion that SB 261 will not have a significant fiscal impact upon the Department.

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Bill No. SB 261

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act relating to operating BRU: Trial Courts  
commercial motor vehicles Components: \_\_\_\_\_  
 Sponsor: Rules Committee by request  
 Requestor: Office of the Governor COMPONENT SERIAL NO. 000 | 000 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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						
REVENUE						

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						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact. The impact of this legislation on the Alaska Court System will depend on the level of enforcement, and thus cannot be determined at this time. We will monitor the effects of the legislation to ascertain if additional funding is needed in the future.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228  
 Division: Alaska Court System Date: 05/09/91

Approved by: Arthur H. Snowden, II, Administrative Director  
 Agency: Alaska Court System Date: 05/09/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

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2 6 6

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB266

Revision Date: \_\_\_\_\_  
Title: Interexchange Consumer  
Protection Act of 1991

Department Affected: DCED  
BRU: APUC  
Component: \_\_\_\_\_

Sponsor: Labor & Comm., Judiciary  
Requestor: Labor & Comm., Judiciary

COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

No Fiscal Impact for FY91

Prepared By: Ray Wipperman Phone: 276-6222  
Division: Alaska Public Utilities Commission Date: 5/2/91

Approved by Commissioner: \_\_\_\_\_  
Agency: Department of Commerce & Economic Development Date: \_\_\_\_\_

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

## I. INTRODUCTION

The purpose of competition is to encourage the most efficient allocation of resources, the lowest prices and the highest quality of consumer products. Competition promotes the protection of consumer interests. Sometimes, however, the pressures of competition within a particular industry to win customers and thereby increase revenues, may lead to the use of undesirable, deceptive and fraudulent marketing techniques which are not in the best interest of the consumer.

The long distance telephone industry, once considered virtually immune from the effects of recession has shown a recent decline in growth from the annual 12% per year in the late 1980's to an estimated 7% per year in 1990. Competition for market share in this \$50 billion-dollar-a-year industry has become one of the fiercest fought battles in any American business arena. With the expected advent of competition in Alaska in mid-year 1991, it is appropriate for the Legislature to examine the potential for undesirable marketing practices in the state.

## II. THE PROBLEM

Competitive pressures in the long distance industry have led to the use of deceptive sales and telemarketing methods as each long distance carrier strives to increase its revenues by increasing their market share.

Telemarketing is used extensively in the long distance industry and the industry's two largest carriers (AT&T and MCI) estimate that they make a combined 12 million calls a month to consumers. Telemarketing firms are used to solicit new business and there is some concern that these firms are being paid on a commission basis directly related to the number of new customers they develop. This may result in "slamming", the unauthorized transfer of a customer from one long distance carrier to another.

Slamming is blamed on overzealous sales people and usually occurs after a high pressure sales pitch from another long distance carrier over the telephone. Even if the consumer does not wish to change his long distance carrier he or she may find that the change has been made without his or her knowledge or consent.

During a recent Congressional subcommittee hearing to examine the issue of slamming, AT&T said it received 90,000 complaints of slamming from customers during a six month period in

Submitted by:  
PTI / Alascom

1990. Bell Atlantic, a local telephone company which is responsible for making the actual change from one long distance carrier to another, received 18,000 slamming complaints in 1988, 37,000 complaints in 1989, and estimated it received over 80,000 slamming complaints in 1990.

Concern with the problem of slamming has recently caught the attention of Congress, the Federal Communications Commission and the California State Legislature. Federal legislation to regulate changes in consumers' selection of long distance carriers has been introduced in the House. The FCC has issued a notice of proposed rulemaking that would require long distance carriers to secure written authorization, electronic authorization, or third-party oral verification from consumers before implementing a change in the selection of a long distance carrier. Last year, the California legislature passed its own anti-slamming legislation, which went into effect in January.

### III. THE ISSUES

The current FCC rules governing the transfer of long distance service were modified following the 1984 breakup of the Bell Telephone System to benefit the new alternative carriers emerging after the breakup. In an effort to help dissolve the AT&T monopoly, federal regulators decided that new carriers would need only verbal permission to sign up prospective customers.

Once verbal permission is granted for the change by the consumer, the long distance provider informs the local phone company which makes the switch. Although Federal rules require that long distance companies follow up by sending customers forms to be signed and returned, it is estimated that 70% of the forms are not returned. Still, the switch can be legally made.

Long distance customers are particularly vulnerable to potential fraudulent and deceptive sales and marketing practices by representatives of long distance carriers. Telemarketers typically prey on elderly and infirm consumers and those with language disabilities.

As a result of slamming practices the consumer is not only deprived of knowledgeable decision making but is further burdened and inconvenienced with having to ensure that his long distance service is switched back to the carrier of his preference.

Local telephone companies have typically been made to bear the burden of switching back the customer who has been slammed. This constant churn increases the overall costs of telecommunications services and reduces industry efficiency.

#### IV. THE PROPOSED LEGISLATION

Because slamming is fostered by loose regulations and the fierce competition among long distance carriers, it is necessary to protect long distance consumers by adopting appropriate rules and prescribing procedures for switching from one long distance carrier to another.

This proposed legislation is designed to protect consumers from being switched to other long distance companies without their knowledge or consent. It prescribes specific procedures and a verification process for authorized changes in a consumers selection of a long distance carrier. The existing Alaska Public Utilities Commission regulations recognize this need, but provide only a one-sentence requirement concerning the need for a written authorization for change of service. Neither the need for informed consent, nor the need for verification is addressed.

Customer solicitation must be on a fully disclosed basis. Certain relevant disclosures are required to be made. The request for a change in a consumer's selection of a long distance carrier must be verified, after solicitation and before execution, by an independent third party. The customer is given a cooling-off period, similar to laws governing door-to-door solicitation, during which he may reflect on and/or cancel any change in a long distance carrier.

The independent third party confirming the change in the selection of a consumer's long distance carrier is required to make specific disclosures to the consumer to further increase consumer awareness and provide a knowledgeable basis for decision making. A written record of all solicitations and confirmations are required to be made and maintained by each long distance carrier and made available for Commission inspection.

#### V. BENEFITS

The protection of consumers against slamming while preserving competition in the long distance industry would be the ultimate benefit of this legislation.

The consumer would receive relevant, accurate information upon which to make telecommunication services decisions. All competitors would be required to adhere to the same standards, discouraging high pressure tactics for soliciting customers. Consumers are spared the burden and inconvenience of the switching of long distance carriers without their knowledge and consent and local telephone companies can avoid the costs and inefficiencies involved with churning practices employed by long distance carriers.

The procedures and verifications proposed should substantially diminish the problem of unauthorized switching of long distance customers while continuing to encourage carriers to compete for a customer's business.

## VI. CONCLUSION

Consumers should have the right to choose their long distance carriers without being victimized by deceptive, fraudulent or unfair marketing practices. The best way to ensure consumer protection against slamming is to put the control where it belongs -- in the hands of the consumer. Written authorization is the best way to protect the consumer's freedom of choice.

Deceptive and fraudulent marketing practices inconvenience consumers and deny them basis for making informed telecommunications choices. Further, such practices defeat legislative purposes in opening Alaska to intrastate competition.

The process of choosing a long distance carrier should be driven by the informed choice of consumers and not by deceptive sales and advertising practices of long distance companies.

102D CONGRESS  
1ST SESSION

# H. R. 1039

To regulate the submission of changes in customers' selections of interexchange carriers, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 20, 1991

Mr. WISE (for himself and Mr. STARK) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To regulate the submission of changes in customers' selections of interexchange carriers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 8 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Telephone Slamming  
5 Prohibition Act of 1991".

### 6 SEC. 2. AMENDMENT.

7 Title II of the Communications Act of 1984 is amended  
8 by adding at the end thereof the following new section:

1 "SEC. 227. CONFIRMATION PROCEDURES FOR CUSTOMER  
2 CARRIER SELECTIONS.

3 "(a) DEFINITIONS.—As used in this section:

4 "(1) The term 'customer-initiated change' means  
5 an order to change a customer's primary interexchange  
6 carrier that is generated as a result of a communication  
7 to an interexchange carrier or local exchange carrier  
8 originated by a customer.

9 "(2) The term 'independent third party' means a  
10 person qualified, in accordance with Commission regu-  
11 lations, to perform large scale verification processes—

12 "(A) which is retained by an interexchange  
13 carrier to perform verification or auditing func-  
14 tions described in this section;

15 "(B) in which the interexchange carrier has  
16 no ownership interest; and

17 "(C) which performs no telemarketing, direct  
18 mail, or other sales solicitation functions for the  
19 interexchange carrier.

20 Tie definition  
to AS 4205 competition  
21 "(3) The term 'interexchange carrier' includes a  
22 person (other than an independent third party) acting  
23 on behalf of an interexchange carrier.

24 "(4) The term 'local exchange carrier' means a  
25 provider of local exchange services.

26 "(b) GENERAL PROHIBITION.—No interexchange carri-  
er may submit to any local exchange carrier any order to

1 change a customer's selection of a primary interexchange  
2 carrier except in accordance with this section and regulations  
3 thereunder.

4       “(c) MANDATORY DISCLOSURES.—Any interexchange  
5 carrier that makes any solicitation seeking to change a cus-  
6 tomer's selection of a primary interexchange carrier shall—

7               “(1) identify the interexchange carrier making the  
8 solicitation;

9               “(2) state that the purpose of the solicitation is to  
10 solicit a change of the customer's primary interex-  
11 change carrier;

12               “(3) state that the customer's primary interex-  
13 change carrier may not be changed unless and until the  
14 sale is confirmed;

15               “(4) describe any charge for processing the pri-  
16 mary interexchange carrier change that may be im-  
17 posed by the customer's local exchange carrier; and

18               “(5) identify and describe the confirmation proce-  
19 dure which the carrier will use pursuant to subsection  
20 (d) to obtain confirmation that the customer has au-  
21 thorized the primary interexchange carrier change.

22       “(d) CONFIRMATION.—

23               “(1) CONFIRMATION REQUIRED.—No interex-  
24 change carrier shall submit a primary interexchange  
25 carrier change order (other than a customer-initiated

1 primary interexchange carrier change) to a local ex-  
2 change carrier unless and until it has obtained confir-  
3 mation of the order.

4 "(2) INFORMATION REQUIRED TO BE EX-  
5 CHANGED IN CONFIRMATION.—For purposes of this  
6 subsection, a confirmation is not effective unless—

7 "(A) the confirmation is solicited more than  
8 24 hours after the carrier obtains from the cus-  
9 tomer the initial authorization to submit the pri-  
10 mary interexchange carrier change;

11 "(B) the carrier provides to the customer an  
12 explanation of what occurs when a primary inter-  
13 exchange carrier is changed;

14 "(C) the carrier verifies the customer's bill-  
15 ing name and address and each telephone number  
16 to be covered by the primary interexchange carri-  
17 er change order;

18 "(D) the carrier informs the customer of the  
19 amount of and method for collecting the primary  
20 interexchange carrier change fee; and

21 "(E) the customer verifies the authorization  
22 of the primary interexchange carrier change.

23 "(8) METHODS FOR OBTAINING CONFIRMA-  
24 TION.—A carrier may obtain an effective confirmation

1 in accordance with paragraph (c) using any one of the  
2 following methods:

3           “(A) The carrier obtains the customer’s sig-  
4 nature on a written confirmation of the primary  
5 interexchange carrier change.

6           “(B) The interexchange carrier obtains the  
7 customer’s electronic confirmation, placed from  
8 the telephone number or numbers on which the  
9 primary interexchange carrier is to be changed, of  
10 the change order. A carrier electing to obtain con-  
11 firmations pursuant to this subparagraph shall es-  
12 tablish one or more toll-free telephone numbers  
13 exclusively for that purpose. Calls to such num-  
14 bers shall connect a customer to a voice response  
15 unit, or similar mechanism, that records the re-  
16 quired information regarding the primary interex-  
17 change carrier change, including automatically re-  
18 cording the originating telephone number.

19           “(C) An independent third party operating in  
20 a location physically separate from the telemar-  
21 keting representatives of the interexchange carrier  
22 obtains confirmation of the change order. No con-  
23 tract between any carrier and such a party for ob-  
24 taining confirmations under this subsection may

1 provide compensation based upon the percentage  
2 or number of changes confirmed.

3 "(e) AUDITING REQUIREMENTS.—The Commission  
4 shall prescribe auditing procedures to ensure compliance with  
5 the disclosure and confirmation provisions of this section.  
6 Such audits shall include an analysis to confirm that the in-  
7 terexchange carrier is only submitting primary interexchange  
8 carrier changes (other than customer-initiated primary inter-  
9 exchange carrier changes) that have been confirmed in one of  
10 the ways specified in subsection (d).

11 "(f) RECORDS.—The interexchange carrier shall retain  
12 all records and data pertaining to the customer's authoriza-  
13 tion for a period of 12 months after submission of the primary  
14 interexchange carrier change order. The carrier shall make  
15 available for inspection by the Commission and the Control-  
16 ler General copies of written contracts with each independent  
17 third party used to obtain confirmations pursuant to subsec-  
18 tion (d)(3)(C).

19 "(g) FRAUDULENT AND MISLEADING PRACTICES.—  
20 The Commission shall, by regulation, prohibit interexchange  
21 carriers from engaging in fraudulent or misleading practices  
22 with respect to activities soliciting primary interexchange  
23 carrier changes. The regulations shall include such proce-  
24 dures as the Commission may require to verify compliance  
25 with such regulations.

1       “(h) SCHEDULE FOR REGULATIONS.—The Commission  
2 shall prescribe the regulations required by this subsection not  
3 later than 90 days after the date of enactment of this section.

4       “(i) EFFECTIVE DATE.—This section shall take effect  
5 90 days after the date of enactment of this section.”.

○

ALASKA PUBLIC UTILITIES COMMISSION

Comments on SB 266

May 6, 1991

The Commission endorses the intent of this bill but, for several reasons, does not believe such legislation is currently necessary. To the extent legislation in this area may eventually prove to be necessary, SB 266 in its present form is overexacting and mechanically cumbersome.

The Commission is well aware that competitive pressures in the long distance telephone industry in other states have led to the use of undesirable or fraudulent marketing techniques to increase market share. One aspect of this problem concerns the unauthorized transfer of a customer from one interexchange carrier to another, or "slamming."

The Commission is not aware of any evidence that such practices have been occurring in Alaska. However, in order to control, if not prevent, the prospect of slamming, the Commission has already promulgated a regulation (3 AAC 52.390(d)) which requires written authorization from the consumer before a change in long distance telephone companies can be transacted. Therefore, the Commission has already accomplished the essential purpose of this bill. If, however, the Legislature desires to formalize this policy in law, then it is recommended that any legislation should be simple in its approach and augmented, as necessary, by specific Commission regulation. A section-by-section analysis of the bill follows:

APUC Comments on SB 266  
May 13, 1991  
Page 1 of 3

TESTIMONY - A.P.U.C.

## Section-by-Section Analysis

**Section 1:** No Comment

**Section 2:** The Commission is unaware of any evidence that slamming has been occurring in Alaska (Finding No. 4). The Legislature need not necessarily act in this regard (Finding No. 6) because the Commission has already promulgated 3 AAC 52.-390(d) which requires written authorization from the consumer before a change can be made in intrastate interexchange carriers.

**Section 3:** This section requires two separate manifestations of a consumer's desire to change his carrier: a change order and a "confirmation." Section 42.05.870(d) states that a long distance carrier may not submit a change order to a local exchange carrier until the long distance carrier has obtained confirmation of the order (p.2, lines 29-31). A change order is defined in (j) as a customer's instruction to a local telephone company to change his long distance carrier (p.4, lines 15-18). It is unclear whether the "change order" can be other than in writing. The bill is clear, however, that the second requirement of a confirmation can be satisfied by either a written authorization by the customer or oral verification of the change order by an independent third party within 72 hours of the customer's initial change order. (P. 3, lines 1-5). Section 42.05.870(d) further sets forth very exacting and detailed criteria for valid third-party verification.

The Commission has reservations about whether such compounded authorization is efficient in a competitive marketplace, much less warranted at this time. In particular, since even a change order initiated by a customer must be verified again by the customer, (p.4, lines 12-14) the bill seems excessive in its approach to ensure consumer consent.

Section 42.05.870(h) requires very broad record retention ("any record") by the long distance and local telephone companies. Additionally, this section requires record inspection, prescription of auditing procedures, and promulgation of regulations by the Commission to police marketing practices. Once instate competition begins and a track record develops, the Commission and Legislature will be in a better position to determine what, if any, records are necessary to facilitate the investigation of allegations of abuses like slamming.

**Section 4:** It is not clear whether this bill, if it were to pass and become effective this session, would impact equal access dialing decisions which the Commission has already ordered to be implemented on or after the commencement of intrastate interexchange competition in May, 1991.

Existing A.P.U.C. regulation, 3 AAC 52.390(d)

Register , 1990 COMMERCE AND ECONOMIC DEVELOPMENT 3 AAC 52.3

(c) A dominant carrier is responsible for providing intrastate interexchange telephone service as the carrier of last resort.

→ (d) A message telephone service subscriber of an interexchange carrier may not be transferred to another interexchange carrier unless the subscriber signs a written request for the change.

(e) No implicit modification or waiver of any statutory or regulatory requirements is intended by 3 AAC 52.350 --- 3 AAC 52.399 for either dominant or nondominant carriers; absent specific modification or waiver, all statutory and regulatory requirements remain in effect for both dominant and nondominant carriers. (Eff. \_\_/\_\_/\_\_, Register \_\_)

Authority: AS 42.05.141(b) AS 42.05.371  
AS 42.05.151(a) AS 42.05.381  
AS 42.05.221 AS 42.05.401  
AS 42.05.241 AS 42.05.411  
AS 42.05.311 AS 42.05.431  
AS 42.05.321 AS 42.05.451  
AS 42.05.361 AS 42.05.711(d)  
AS 42.05.720(4) (B)

3 AAC 52.399. DEFINITIONS. Unless the context indicates otherwise, in 3 AAC 52.350 -- 3 AAC 52.399

(1) "commission" means the Alaska Public Utilities Commission;

(2) "dominant carrier" means any interexchange carrier determined by the commission to have market power;

# **CORRECTION**

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

Existent A.P.U.C. regulation, 3 AAC 52.390(d)

(c) A dominant carrier is responsible for providing intrastate interexchange telephone service as the carrier of last resort.

→ (d) A message telephone service subscriber of an interexchange carrier may not be transferred to another interexchange carrier unless the subscriber signs a written request for the change.

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Authority:	AS 42.05.141(b)	AS 42.05.371
	AS 42.05.151(a)	AS 42.05.381
	AS 42.05.221	AS 42.05.401
	AS 42.05.241	AS 42.05.411
	AS 42.05.311	AS 42.05.431
	AS 42.05.321	AS 42.05.451
	AS 42.05.361	AS 42.05.711(d)
		AS 42.05.720(4)(B)

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(1) "commission" means the Alaska Public Utilities Commission;

(2) "dominant carrier" means any interexchange carrier determined by the commission to have market power;

MCI TELECOMMUNICATIONS CORPORATION  
STATEMENT REGARDING SB 266

MCI Telecommunications Corporation has serious concerns about the anticompetitive nature of SB 266, the Interexchange Consumer Protection Act of 1991. The legislation in its current form would undo much of the progress made by the Legislature and the Alaska Public Utilities Commission (APUC) toward providing intrastate competition.

- o SB 266 is not in the best interest of consumers depriving them of the advantages of a competitive marketplace and subjecting them to additional delays and increased costs for telecommunications services.
- o Today consumers routinely purchase good and services over the telephone. To require another written confirmation or an independent third party verification in addition to the APUC requirement of written authorization is inconsistent with the current practices in the marketplace, is likely to cause customer confusion and denies the consumer the flexibility of easily switching companies to take advantage of lower prices or to choose a service which will better fit his/her needs.
- o The bill provides an unfair advantage to Alascom reinforcing its dominant position in the marketplace by creating additional hurdles for other carriers to overcome in obtaining new customers.
- o SB 266 is more restrictive than the current proposal being considered by the Federal Communications Commission (FCC). The FCC's Rulemaking in CC Docket No. 91-64 proposes to allow an interexchange carrier to use any of the following three actions before switching a customer's long distance service: 1) long distance carrier has on hand an authorization card signed by the customer and sent back to the carrier; 2) consumer initiates a call from home to an automated 800 number, and through a sequence of prompts, confirms the choice of the long distance carrier; or 3) consumer's choice of a long distance carrier is verified by an independent firm unaffiliated with any long distance carrier. This proposal will not undermine consumers' access to the benefits of the competitive marketplace.

FAX COVER PAGE

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

CC Docket No. 91-64

In the Matter of

American Telephone  
and Telegraph Company

RM 7245

Petition for Rule Making

### NOTICE OF PROPOSED RULE MAKING

Adopted: March 14, 1991; Released: March 25, 1991

By the Commission:

#### I. INTRODUCTION

1. Pursuant to the Modification of Final Judgment (MFJ),<sup>1</sup> the Bell Operating Companies (BOCs) were ordered to provide equal access<sup>2</sup> to their customers. Under the MFJ, the BOCs were permitted to route to American Telephone and Telegraph Company (AT&T) the calls of any customer who, by the time equal access was available, failed to select an interexchange carrier (IXC). In 1985, the Commission concluded that routing such default traffic<sup>3</sup> to AT&T was an unreasonable practice that violated the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* We prescribed a uniform Allocation Plan in order to remedy that violation. The Allocation Plan established a comprehensive set of procedures, designed to ensure that customers were fully informed of the choices available to them, and that the customer's choice of a primary interexchange carrier (PIC) was implemented by the local exchange carrier (LEC).

2. Equal access, now virtually complete, encouraged the growth of vigorous competition in the interexchange market. Millions of customers selected their long distance carrier. Over time, many have decided to change carriers, often to take advantage of discounts and other plans being offered by all of the carriers. At the same time, however, some customers have found they were switched to carriers they did not select. AT&T, upon discovery that some of its customers had been switched to another carrier without the customers' permission, filed the above-captioned petition for Rule Making, asking that the Commission reinstate a written letter of agency (LOA) requirement,<sup>4</sup> a requirement which AT&T had earlier opposed. Simultaneously, AT&T filed a civil suit in Federal District Court against MCI Telecommunications Corporation (MCI), charging MCI with unfair telemarketing practices. Previously, in October 1989, AT&T and MCI had filed legal claims against each other alleging false and deceptive advertising.

3. Forty parties filed comments, letters, and reply comments in response to AT&T's request that this Commission impose an LOA requirement. Many of these parties have suggested alternative approaches to resolving

the problem of unauthorized switches in customers' long distance service.<sup>5</sup> In addition, during the months following the AT&T filing, Congress, state Public Utility Commissions (PUCs), and the news media focused their attention upon customers' complaints that their long distance carrier had been changed without the customers' authorization.

4. On December 11, 1990, AT&T and MCI informed this Commission that they had reached an out-of-court settlement of their suits, agreeing, as part of the settlement, to propose to the Commission safeguards designed to protect consumers against being switched without their permission.<sup>6</sup> AT&T has not withdrawn its petition and it remains pending before us.

5. Equal access procedures designed to increase consumer choice in telecommunications service should not be used to subvert those choices. We tentatively conclude that a modification of carrier selection procedures is necessary to protect the interests of consumers. We also conclude that the safeguards now proposed by AT&T and MCI in their settlement agreement will be more effective and less burdensome than the amendment to the carrier selection rules originally requested by AT&T in its petition for Rule Making. We seek comment on our tentative conclusion that these revised procedures will serve to diminish substantially the problem of unauthorized switching while continuing to encourage carriers to compete for consumers' business. We also invite comment regarding alternative procedures to discourage unauthorized switching, particularly alternatives suggested in comments filed in response to AT&T's petition.

#### II. BACKGROUND

6. The Commission, in its *Allocation Order* and its subsequent *Waiver Order* and *Reconsideration Order*,<sup>7</sup> set forth rules and procedures for implementing equal access and presubscription to an IXC. These Orders established, *inter alia*, the use of a LOA, to be filled out by the customer and kept on file by the IXC as evidence that the customer had selected that IXC as its carrier. *Allocation Order*, Appendix B, 101 FCC 2d at 929.

7. The original allocation plan adopted by the Commission required IXCs to have an LOA on file before submitting a PIC change order to the LEC on behalf of the customer.<sup>8</sup> In the face of vigorous objections from various IXCs, including AT&T, that this requirement would hamper competitive efforts by IXCs to market their services to consumers, particularly through telemarketing efforts, the Commission modified the LOA requirement to allow IXCs to place PIC change orders if they had "instituted steps designed to obtain signed" LOAs. *Waiver Order*, 101 FCC 2d at 942. The Commission next considered the issue in 1987, in the context of a petition filed by the Illinois Citizens Utility Board, requesting revision of the Commission's carrier selection rules. The Commission denied the petition, finding in part that the rules were intended to "facilitate the IXCs' marketing efforts while maintaining the protection embodied in the letter of agency requirement." Illinois CUB Order at 1729.

8. On January 10, 1990, AT&T filed a petition requesting revision of the Commission's carrier selection rules. AT&T proposed returning to the Commission's original rules, allowing an IXC to submit PIC change orders to a LEC on behalf of a customer only when the IXC has an LOA for that customer on file. AT&T alleged that there

has been an increase in the unauthorized switching of customers during the past year, causing inconvenience for customers and creating expense for LECs who must resolve the resultant disputes. AT&T Petition at 7. Comments on AT&T's petition were filed on March 2, 1990; replies were filed March 19, 1990.

#### A. AT&T Petition for Rule Making

9. The AT&T petition contends that the Commission's existing carrier selection rules were designed to facilitate the equal access process during a period in which millions of customers made IXC selections within a relatively short time. It speculates that the LECs' involvement in distributing customer information and soliciting ballots at that time helped keep the initial rate of errors in processing customer selections reasonably low. AT&T Petition at 5. AT&T claims that recently, however, there has been a sharp increase in unauthorized switching. It reports that it conducted a survey of customers whose service was changed from AT&T to other IXCs, which showed that between 10 and 15 percent of the residential customers switched away from AT&T between February and November, 1989, had not authorized the change. *Id.* at 6. These erroneous switches, AT&T charges, have resulted in inconvenience to customers and increased expense to ICs and LECs. *Id.* at 7. The remedy, it contends, is to change the Commission's rule to require that IXCs obtain written customer authorization prior to submitting customer information to the LEC for processing. AT&T emphasizes that the LOA would not be sent to the LEC, but would remain in possession of the IXC. *Id.* at 8.

10. Parties opposing AT&T's petition<sup>10</sup> assert that a change in the existing rules is not warranted by current market conditions, would be anticompetitive in its effect, and would be harmful to consumers. They argue that the current rules represent a reasonable balance between the IXCs' need for marketing flexibility and the need to protect the public against possible abuses. Opponents deny that the rules were appropriate only during the period of equal access conversions and contend that AT&T has failed to show why a more restrictive rule is necessary at this time. *See, e.g.,* Sprint Comments at 2, 5; MCI Comments at 10-14.

11. According to parties opposing AT&T's petition, AT&T would be the primary beneficiary of any rule change that would make it more difficult for consumers to switch carriers. Sprint Comments at 8; CompTel Comments at 5-7; MCI Comments at 15-16. MCI argues that requiring a signed LOA prior to submission of the customer's order would have little effect on AT&T, but would create a major burden for the rest of the interexchange industry, making it more difficult and costly for its competitors to penetrate the 80 percent of the market AT&T now serves. MCI Comments at 16-17.

12. Several commenters remark that the Commission previously considered and rejected AT&T's proposed rule in the *Wauver Order* and the *Illinois CLB Order*. They note that both MCI and AT&T, in their comments on the Illinois Club petition, supported continuation of the existing LOA rules, and opposed adoption of the signed LOA requirement. *Id.* at 6-7; CompTel Comments at 2-4; Sprint Comments at 4-6. MCI observes that AT&T also argued at that time that the inability of a carrier to provide a signed document did not prove that the conversion was unauthorized. AT&T explained that "customers frequently ignore requests for return of letters of agency, delay their

signatures, or simply fail to comprehend the significance of confirmation forms." MCI Comments at 7, quoting AT&T Comments on Petition for Rule Making, filed July 15, 1986, at 4. Sprint observes that AT&T previously argued that if a signed customer statement were required prior to the submission of a PIC change to the LEC, "telemarketing will be virtually foreclosed . . . ; customer convenience will be hindered; and customer selections can be expected to decline." Sprint Comments at 4, quoting AT&T Petition for Clarification at 6.

#### B. Alternative Proposals

13. The National Association of Regulatory Utility Commissioners (NARUC) agrees that a change is needed in the Commission's current equal access conversion procedure, but cautions that any rule change should be sensitive to the needs of consumers and competing toll carriers. In lieu of the prior authorization requested by AT&T, NARUC recommends an alternative rule which would require the IC to supply to a customer requesting a change written verification within three business days of the request. NARUC believes that this system would protect against unauthorized changes while keeping the changeover process simple for consumers. NARUC Reply Comments at 1-3. Under the NARUC proposal, the IXC would be required to send the customer a form which would contain at least the following information concerning the changes requested:

- a. The current primary interexchange carrier's name;
- b. The name of the requested PIC of choice;
- c. A complete listing of any terms, conditions, or charges that will be incurred;
- d. The name of the person ordering the change;
- e. The name, address, and telephone number of the customer and the requested carrier of choice.

*Id.* at 4. NARUC asserts that its proposal would modify the Commission's current rules only slightly, and that by standardizing what is required of an IC before it initiates a changeover, the Commission would make it more difficult for an IXC to switch a customer without authorization.<sup>11</sup>

14. On December 11, 1990, AT&T and MCI jointly advised this Commission that they had settled their civil suits alleging false and deceptive advertising and telemarketing practices.<sup>12</sup> They further informed the Commission that, as part of the settlement agreement, each had agreed to support adoption by the Commission of certain confirmation procedures designed to guard against unauthorized switching.<sup>13</sup>

### III. DISCUSSION

15. We have reviewed AT&T's petition, the comments and letters filed in response to that petition, and the Settlement Proposal submitted by AT&T and MCI. In considering the advisability of imposing a signed LOA requirement, we cannot ignore the earlier arguments made by AT&T, and echoed by other IXCs, against the very rule AT&T, in its petition, seeks to reintroduce.

The telephone is a convenient and efficient way for customers to make an affirmative choice of a [PIC]. Customers can make a decision and have that decision implemented immediately, as they are accustomed to doing, without the inconvenience of signing and returning any documents and without the delay inherent in that process.

AT&T Petition for Clarification of *Waiver Order* at 4.

However, if the language of paragraph 10 of Appendix B [of the *Allocation Order*] . . . is construed to require a physical handwriting, customers will no longer be able to place orders over the telephone. Telemarketing will be virtually foreclosed under such a restrictive reading of the Order; customer convenience will be hindered; and customer selections can be expected to decline.

*Id.* at 6.

16. The Commission, in originally imposing the LOA requirement, anticipated that the signed LOA would be filed and retrieved by the IXC to resolve disputes. In the contemporary telecommunications marketplace, this seldom happens. Both MCI and AT&T offer similar descriptions of their ordering processes: the change order for the customer is entered onto a computer tape by the telemarketer, and the LOAs, if and when they are received, are shipped to a warehouse. If the customer challenges the change, the IXC frequently finds it more cost effective to pay the applicable change charges to the LEC rather than attempt to retrieve the LOA. It is unclear, therefore, that the mandatory LOA requirement would do anything other than slow down the telemarketing process.

17. We are concerned, however, that a large number of customers appear to have been switched to long distance carriers they did not select.<sup>14</sup> Although, as Sprint suggests, it may be impossible in a competitive market to totally eliminate errors in the ordering process, some revision in the procedures IXCs must follow in submitting change orders for long distance service appears to be necessary. In deciding what action to take, we have weighed the need to prevent fraudulent or abusive sales practices against the possibility that some remedies that have been suggested would unnecessarily impede the competitive process and thereby deny consumers the benefits of this process. We have tentatively concluded that the AT&T and MCI Settlement Proposal represents a reasonable method for resolving the problem of unauthorized switching.

18. The safeguards proposed under the Settlement Agreement would require that at least one of the following actions take place before a consumer's long distance service is switched:

1. The long distance carrier has on hand an authorization card signed by the customer and sent to the long distance carrier;
2. The consumer initiates a call from home to an automated 800 number, and through a sequence of prompts, confirms the choice of long distance carrier; or
3. The consumer's choice of a long distance carrier is verified by an independent firm unaffiliated with any long distance carrier.<sup>15</sup>

The Settlement Proposal acknowledges that customers have the right, of course, to initiate changes in their long distance service by calling their local exchange carrier or long distance carrier directly.<sup>16</sup>

19. The Settlement Proposal also contains a sample script for third party confirmation and describes a "Quality Assurance Program" (QAP). This program would be managed under the direction and authority of an independent auditor selected by each IXC obligated to maintain a QAP, subject to review by this Commission. The full text of the Settlement Proposal, including the confirmation procedures, sample script, and Quality Assurance Program, is provided at Appendix A.

20. Under this proposal, a customer's order for service would be verified in any one of three ways. (Customer-initiated calls would not require verification). This proposal offers greater flexibility to the ICs than would a mandatory LOA requirement and allows competitors to select a verification procedure which best meets their needs and those of their customers.

21. Therefore, we have tentatively concluded that the letter of agency procedures set forth in Appendix B of the Commission's *Allocation Order*, as modified by the *Waiver Order*, should be revised to require IXCs which seek to submit orders to LECs on behalf of customers to certify to the LEC that they have instituted the procedures set forth at Appendix A. Unlike our current procedures, these proposals specify three specific methods to be used in verifying non customer-initiated orders for changed service. We seek comment on our tentative conclusion that these procedures will serve to reduce to a minimal level the number of unauthorized switches in customers' long distance service.

22. We seek comment regarding whether these procedures will be adequate to protect consumers from unauthorized switches in their long distance service. We invite comment regarding whether this Commission should adopt all of the procedures described in the AT&T and MCI proposal, or whether we should adopt only certain portions of the proposal. We also request comment regarding the effect of revised verification procedures on our current requirement that the IXC pay all change charges associated with changes which the customer disputes if the IXC cannot produce a letter of agency. Further, we seek comment on whether the procedures set forth in Appendix A, or alternative procedures, should apply to customer-owned payphones.

23. We also invite comment regarding whether the various alternatives proposed by NARUC and other parties who have presented their comments in this Rule Making, or any other alternatives, would be preferable to the Settlement Proposal. In particular, we seek comment on the following alternative:

- 1) Within three business days of the customer's request for a change, the IXC sends each new customer an information package containing at least the following information concerning the requested change: a) the name of the customer's current primary long distance carrier; b) the name of the newly requested long distance carrier; c) a description of any terms, conditions, or charges that will be incurred; d) the name of the person ordering the change; e) the name, address, and telephone number of both the customer and the newly requested

long distance carrier: f) a postpaid postcard which the customer can use to deny, cancel, or confirm a service order.

2) The IXC should not submit an order to the LEC for that customer until 14 days after the form is mailed to the customer.

24. Finally, we invite comment on the cost of implementation of the Settlement Proposal procedures and whether these procedures would impose undue burdens on interexchange carriers. In evaluating alternative approaches, we must weigh the need to prevent abusive sales practices against the possibility that some remedies suggested by the parties would unnecessarily impede the competitive process and thereby deny consumers its benefits. We are particularly concerned lest smaller carriers find the proposed procedures burdensome. We therefore ask for comment on whether the procedures we adopt should apply only to carriers of a particular size. We also request comment regarding whether any of the alternative approaches noted above would be more appropriate for small carriers.

#### IV. PAPERWORK REDUCTION ACT

25. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found not to impose new or modified information collection requirements on the public.

#### V. REGULATORY FLEXIBILITY ACT INITIAL ANALYSIS

26. *Reason for action.* The Commission is issuing this Notice of Proposed Rule Making to protect consumers from unauthorized switching of their long distance carriers and to ensure that consumers are fully informed of the costs associated with changes in long distance service.

27. *Objectives.* The objective of this Notice of Proposed Rule Making is to initiate a proceeding to revise the procedures interexchange carriers must follow prior to entering a change order on behalf of a consumer.

28. *Legal basis.* Sections 1, 4(i), 4(j), 201-205, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 303(r).

29. *Description, potential impact and number of small entities affected.* The proposed rules will require that interexchange carriers adopt one of three methods for verifying customer orders to change long distance carriers. The rules will also require that customers be provided information about charges and services to allow them to make informed choices. Small entities may feel some economic impact due to the proposed verification requirements.

30. *Reporting, recordkeeping, and other compliance requirements.* The proposed rules impose no reporting requirements and no new recordkeeping requirements. Carriers currently are required to obtain and retain records of customer orders.

31. *Federal rules which overlap, duplicate, or conflict with the Commission's proposal.* None.

32. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives.* The Notice of Proposed Rule Making solicits comments on whether the verification requirements should be adapted to the size of the carrier.

33. *Comments are solicited.* We request written comments on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to this Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act. See 5 U.S.C. § 601, *et seq.*

#### VI. EX PARTE REQUIREMENTS

34. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. See generally Section 1.1206(a) of the Commission's Rules, 47 C.F.R. § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of the public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f) of the Commission's Rules, 47 C.F.R. § 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203 of the Commission's Rules, 47 C.F.R. § 1.1203.

35. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.202(b) of the Commission's Rules, 47 C.F.R. § 1.1202(b). Any person who makes or submits a written *ex parte* presentation shall provide on the same day it is submitted two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding to which it relates and the fact that two copies of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation.

36. Any person who is making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its face

the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation. Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206.

37. All relevant and timely comments and reply comments will be considered by this Commission. In reaching our decision, this Commission may take into account information and ideas not contained in the comments, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of this Commission's reliance on such information is noted in the Order.

#### VII. ORDERING CLAUSES

38. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described above, and that COMMENT IS SOUGHT on these proposals.

39. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 U.S.C. §§ 1.415, 1.419, comments SHALL BE FILED with the Secretary, Federal Communications Commission, Washington, D.C. 20554 on or before May 1, 1991. Reply comments should be filed no later than May 31, 1991. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. In addition, parties should file two copies of any such pleadings with the Tariff Division, Common Carrier Bureau, Room 518, 1919 M Street N.W., Washington, D.C. Parties should also file one copy of any documents filed in this docket with this Commission's copy contractor, Downtown Copy Center, room 246, 1919 M Street, N.W., Washington, D.C. 20554.

40. IT IS FURTHER ORDERED that the Secretary shall mail a copy of this Notice of Proposed Rule Making to the Chief Counsel for Advocacy of the Small Business Administration.

#### FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy  
Secretary

#### APPENDIX A

#### AT&T AND MCI SETTLEMENT AGREEMENT PROPOSAL

#### CONFIRMATION PROCEDURES

*PIC Changes.* No interexchange carrier may submit orders to change a customer's primary interexchange carrier (PIC) except in accordance with the provisions of this section.

#### A. Definitions

- "customer means a person with two or fewer residential telephone lines;
- "customer-initiated PIC change" means an order to change a customer's PIC that is generated as a result of a communication to an IC or LEC originated by a customer;
- "independent third party" means an appropriately qualified (*i.e.*, capable of performing large scale verification processes as specified herein) person retained by an IXC to perform verification or auditing functions described in this section and in which the IXC has no ownership interest and which performs no telemarketing, direct mail, or other sales solicitation functions for the IXC;
- "IXC" means an interexchange carrier or a person (other than an independent third party) acting on behalf of an interexchange carrier;

B. *Mandatory Disclosures.* Any IXC telemarketing solicitations seeking to change a customer's PIC must include the following disclosures:

- 1) identification of the IXC placing the call;
- 2) the purpose of the call is to solicit a change of the customer's PIC;
- 3) the customer's PIC may not be changed unless and until the sale is confirmed, together with a description of the confirmation process to be used;
- 4) a description of any charge for processing the PIC change that may be imposed by the customer's LEC; and
- 5) the IXC will send the customer a form that meets the requirements of subsection (c)(1) that authorizes the carrier to submit the PIC change, with a request that the customer sign and return the form to the IXC.

C. *Confirmation.* No IXC shall submit a PIC change order (other than a customer-initiated PIC change) to a LEC unless and until the order has first been confirmed in accordance with the following procedures:

- 1) the IXC has obtained the customer's written authorization to submit the order that explains what occurs when a PIC is changed and confirms:
  - a) the customer's billing name and address and each telephone number to be covered by the PIC change order.
  - b) the decision to change the PIC to the IXC, and
  - c) the customer's understanding of the existence of the PIC change fee; or
- 2) the IXC has obtained the customer's electronic authorization, placed from the telephone number(s) on which the PIC is to be changed, to submit the order that confirms the information described in subsection (1) above to confirm the authorization.

IXCs electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC change, including automatically recording the originating ANI; or

3) an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the customer's oral authorization to submit the PIC change order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number). The independent third party will use a script substantially similar to the form attached. The IXC must retain the independent third party's services pursuant to a written contract that will be available for inspection by the FCC and that does not provide compensation based upon the percentage of sales confirmed.

4) Regardless of which of the above confirmation procedures is used, the IXC must retain all records and data pertaining to the customer's authorization for a period of 12 months after submission of the PIC change order.

**D. Auditing Requirements.** IXCs shall implement auditing procedures to ensure that the disclosure and confirmation provisions of this section are followed. Such audits will include an analysis to confirm that the IXC is submitting only PICs (other than customer-initiated PIC changes) that have been confirmed in one of the ways specified above. Audits must be performed by a qualified third party at least once every month. If any such audit reveals (1) non-compliance in any material respect with the confirmation requirements of Section C, or (2) a rate of non-compliance in excess of two percent (at a 98 percent level of confidence plus or minus 1 percent) plus the upper bound of the confidence interval, the IXC shall immediately implement corrective measures specified by the auditor, and submit the auditor's report to the FCC.

#### QUALITY ASSURANCE PRINCIPLES

**A. Quality Assurance Program.** The Quality Assurance Program ("QAP") to be adopted by the FCC is intended to ensure that interexchange carriers ("IXCs") which make more than outbound telemarketing calls per year are not making blatantly false and misleading claims (as defined in Section D below) in their telemarketing sales practices. The QAP is to be managed under the direction and authority of an independent auditor ("QAP Director") selected by each IXC obligated to maintain a QAP, subject to review by the FCC. The QAP Director shall have full and complete access to all items subject to review.

**B. QAP Director's Responsibilities.** The QAP Director shall conduct a quality assurance audit quarterly (1) to determine whether an IXC is making blatantly false and misleading claims ("blatant falsehoods") in its telemarketing practices, and (2) where such blatant falsehoods have been found to occur, to certify when the problem that caused the blatant falsehoods has been corrected. The QAP Director is only to evaluate and report

on cases of blatant falsehoods and is expressly prohibited from disclosing to any IXC the marketing claims being made by any other IXC.

**C. Items Subject To Review.** Any IXC subject to the QAP shall provide the QAP Director with any and all information, reports, methods and practices, guidelines, training materials and cooperative assistance requested by the QAP Director for the purpose of making an independent evaluation of (1) scripts and (2) the conduct of telemarketing by the IC. The QAP Director may examine all management controls, including, but not limited to the following:

1. remote monitoring with random selection of monitored representatives;
2. on-site monitoring; and
3. recordkeeping and retention.

**D. Blatant Falsehoods.** Blatant falsehoods are representations that seriously and substantially misstate the nature, characteristics, qualities and geographic boundaries of a competing IXC. Examples include:

1. "[IXC] is going out of business."
2. "[IXC #1] is, by its own choice, no longer providing your services and [IXC #2] has instead been designated as your new long distance carrier."
3. "[IXC #1] and [IXC #2] are part of the same company and/or [IXC #1] has merged with [IXC #2] (or any other similar misrepresentation of a corporate relationship)."
4. "You have no choice about your long distance service" and must change to [IXC]."
5. "Your long distance company or your LEC have authorized the switch to [IXC]."
6. "[IXC] and your local phone company are one and the same."

**E. Corrective Measures.** On a quarterly basis, the QAP Director will monitor a sufficient number of telephone calls in progress to achieve a 98 percent (plus or minus 1 percent) level of confidence that the percentage of calls in which blatant falsehoods are occurring does not exceed 2 percent. If that level is exceeded, the IXC must implement corrective measures immediately. The QAP Director shall then commence monitoring of the IXC on a monthly basis until the IXC reduces the percentage of blatant falsehoods below 2 percent. A report on the non-compliance shall be submitted to the FCC until the corrective measures are effective.

**F. Costs.** Costs of each IXC's QAP will be borne by the IXC subject to the QAP.

#### SAMPLE SCRIPT FOR THIRD PARTY CONFIRMATION

Hello, my name is \_\_\_\_\_ from \_\_\_\_\_ an independent verification company. I'm calling to confirm your order for [IXC] long distance service.

Q1. I'd like to confirm your name, address and telephone number(s). IF AVAILABLE ON SCREEN, READ BACK. Is that correct? TAKE ANY CORRECTIONS. IF NOT ON SCREEN, ASK FOR EACH ITEM AND RECORD.

Q1A. Did you or another person in your household recently receive a call asking you to select [IXC] as your long distance company?

Q2. I'd like to confirm that you have decided to select [IXC] to carry long distance calls from this (these) telephone(s). Is that correct?

Q3. I'd like to confirm that you are an adult resident of this household. Is that correct? IF QUESTIONED BY CUSTOMER, MAY STATE THAT PURPOSE IS TO DETERMINE IF YOU ARE A DECISION MAKER FOR LONG DISTANCE SERVICE FOR THE HOUSEHOLD.

Q4. I'd like to confirm that you were advised that the local telephone company may charge a fee for switching to [IC]. Is that correct? IF CUSTOMER ASKS HOW MUCH, VERIFIER MAY STATE AMOUNT FROM LEC TARIFFS.

Q5. Finally, to show that I've spoken to you, please give me the last four digits of your Social Security Number. RECORD INFORMATION; IF CUSTOMER REFUSES, TRY DATE OF BIRTH OR MOTHER'S MAIDEN NAME.

I will now process the order. Thank you and goodbye.

IF RESPONSE IS NEGATIVE ON ANY ITEM, INFORM CUSTOMER THAT YOU CANNOT PROCESS THE ORDER AND THAT THE CUSTOMER MAY SPEAK DIRECTLY WITH IXC OR MAY CALL THE LOCAL PHONE COMPANY TO ORDER THE SWITCH IN SERVICE TO THE IXC. ANY QUESTIONS (EXCEPT THOSE IN THE Q AND A) ABOUT THE LONG DISTANCE SERVICES OR RATES ARE TO BE REFERRED BACK TO THE IXC.

Would you like me to return you to an IXC representative? IF YES, THE CALL CAN GO BACK TO THE IXC REPRESENTATIVE.

#### APPENDIX B

Pleadings Filed in Rule Making No. 7245

Petition for Rule Making, filed January 10, 1990 by American Telephone and Telegraph Company

Comments, filed March 2, 1990

Ameritech Operating Companies (Ameritech)

Competitive Telecommunications Association (CompTel)

General Communications, Inc. (GCI)

MCI Telecommunications Corporation (MCI)

Pennsylvania Office of Consumer Advocacy and the National Association of State Utility Consumer Advocates (PAOCA/NASUCA)

Southwestern Bell Telephone Company (Southwestern Bell)

US Sprint Communications Company Limited Partnership (Sprint)

Replies, filed March 19, 1990

AT&T

America's Carriers Telecommunications Association (ACTA)

MCI

National Association of Regulatory Utility Commissioners (NARUC)

Nebraska Public Service Commission (Nebraska PSC)

Operator Service Providers of America (OSPA)

Southwestern Bell

Sprint

United States Telephone Association (USTA)

#### Letters

California Public Utilities Commission

CFW Telephone Company

Citizens Telephone Cooperative

City of Charleston, West Virginia

Consumer Action

State of Colorado

Conference of Consumer Organizations

Dubois Telephone Exchange, Inc.

Illinois Commerce Commission

Iowa Network Services, Inc.

Iowa State Utilities Board

Lincoln Telephone Co.

Louisiana Consumers League

Maryland Public Service Commission

Minnesota Department of Public Service

Minnesota Public Utilities Commission

Office of Minnesota Attorney General

Montana Public Service Commission

Nebraska Public Service Commission

Ohio Public Service Commission

Oklahoma Corporation Commission

Roosevelt County Rural Telephone Cooperative, Inc.

South Carolina Public Service Commission

United Refining Co. of Pennsylvania

Virginia State Corporation Commission  
 West Virginia Public Service Commission  
 Western New Mexico Telephone Co., Inc.  
 Wisconsin Public Service Commission (Wisconsin  
 PSC)

## FOOTNOTES

<sup>1</sup> See *United States v. American Tel. & Tel.*, 553 F. Supp. 131 (D.D.C. 1982) *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

<sup>2</sup> Equal access is that which is equal in type, quality, and price to access to local exchange facilities provided to AT&T and its affiliates. *Id.* at 227.

<sup>3</sup> Default traffic refers to the interexchange telephone calls of any customer who failed to make a selection of an interexchange carrier.

<sup>4</sup> A letter of agency is a document, signed by the customer, which states that a particular carrier has been selected as that customer's long distance carrier. In its petition, AT&T seeks a requirement that an IXC have a customer's LOA on file before submitting an order to the local exchange carrier to switch that customer to the IXC's service.

<sup>5</sup> AT&T describes the unauthorized switching of customers as "slamming." MCI describes such switches as SWOPs (switched without permission).

<sup>6</sup> See Letter from James L. Lewis, MCI Telecommunications Corporation, to Secretary, Federal Communications Commission, Dec. 12, 1990 (MCI Letter).

<sup>7</sup> Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 911 (1985) (*Allocation Order*), *recon. denied*, 102 FCC 2d 503 (*Reconsideration Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 935 (1985) (*Waiver Order*). See also *Illinois Citizens Utility Board Petition for Rule Making*, 2 FCC Rcd 1725 (1987) (*Illinois CUB Order*).

<sup>8</sup> Customers may also order service directly from the LEC.

<sup>9</sup> AT&T later refined this figure, alleging that 13.9 percent of the end users switched away from AT&T are unauthorized PIC changes. AT&T Reply at App. I.

<sup>10</sup> A list of parties filing pleadings in this matter appears at Appendix B.

<sup>11</sup> Alternative approaches to the problem of unauthorized switching were also suggested by MCI, Sprint, Ameritech, Bell Atlantic, and Comptel.

<sup>12</sup> See MCI Letter, n.4. *supra*.

<sup>13</sup> On February 12, 1991, MCI and AT&T formally filed a joint request that the Commission adopt the proposal contained in Attachment A of this NPRM.

<sup>14</sup> In recognition of the problems consumers have encountered, the Commission issued a Public Notice on November 2, 1990, informing consumers of their rights and describing steps they might take to protect themselves against unauthorized switches.

<sup>15</sup> At the present time, AT&T's own supervisors verify telemarketing orders for long distance service; MCI reports that it has initiated a system of third party verification, which is not yet complete.

<sup>16</sup> See Settlement Proposal, Confirmation Procedures, at Section C.

S B

2 7 4



Official Business

# Alaska State Legislature

## Senate

SENATOR VIRGINIA COLLINS

Pouch V  
State Capitol  
Juneau, Alaska 99811

### SPONSOR STATEMENT

#### Senate Bill 274

Senate Bill 274, "An Act relating to the operation of personal watercraft and specialty prop-craft."

Personal watercraft, commonly referred to as "jet skis" have become increasingly popular since the craft's introduction into the U.S. in 1971. By 1988, it was estimated that over 200,000 personal watercraft were in use.

With increased use of personal watercraft, citizens in Alaska as well as other states have expressed concerns regarding the impacts of this watercraft on water safety, wildlife, and aesthetics. In Alaska, nesting birds are being disturbed, and, in many instances, abandoning their nests. Complaints about misconduct involving the use of personal watercraft have increased.

The Personal Watercraft Industry Association, composed of manufacturers and distributors of personal watercraft, developed a model bill in response to the increased concerns. The model, or portions thereof, have been adopted in 12 states. Two other states currently have legislation pending.

The proposed Senate State Affairs committee substitute incorporates much of the aforementioned model act. Senate Bill 274 would increase the safety of the personal watercraft operators and their passengers as well as the safety of others on the water. It would limit the age of the operator, the hours of operation, the speed, and the method of operation. Senate Bill 274 would also provide more protection for the wildlife and their habitat on or near the waters.

I would appreciate your support of the proposed committee substitute for Senate Bill 274.

# Alaska State Legislature

During Session  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-2828



During Interim  
3111 C Street, Suite 540  
Anchorage, Alaska 99503  
(907) 561-2040

## Senator Virginia Collins

CSSB 274 (5/16/91)

### Operation of Personal Watercraft and Specialty Prop-Craft

#### The "Jet Ski" Bill

CSSB 274 (5/16/91) sets guidelines for the operation of personal watercraft and specialty prop-craft in order to promote safety and to protect wildlife and habitat from the misuse of this craft. The bill requires operators:

- \* to wear life jackets;
- \* to be 16 years of age or over;
- \* to be accompanied by an adult when under the age of 16;
- \* to use an engine cut-off switch where provided; and,
- \* to not knowingly harass wildlife; tow a person on water skis; operate through floating vegetation faster than no-wake speed; and operate between 9:00 a.m. and 9:00 p.m.

Compared with the version the committee addressed last year, CSSB 274 (5/16/91) responds to the concerns expressed in committee by:

- \* replacing the section on the manner in which the craft is operated (page 2, lines 8 - 15, CSSB 274 (5/7/91)) with a section prohibiting the operator to travel at a speed faster than no-wake speed when within a posted shoreline erosion area, a posted fish spawning area, or a posted swimming area (page 2, lines 9 -11);
- \* prohibiting the damaging of wildlife nesting sites (page 2, lines 7 - 8);
- \* requiring a passenger to wear a life jacket (page 1, line 8); and,
- \* prohibiting an owner or one having control of a craft to allow anyone under the age of 16 to operate the craft unless accompanied by an adult (page 2, lines 12 - 16).



1990



...PILOTS, but dropped the next two, including Sunday...

# Wasilla toys with jet ski ban on lake

By ROBERT HOWK.

Procederman staff

Motorboats and jet skis on Lake Lucille may become distant memories, or at least come under new regulations, if some members of the Wasilla City Council have their way.

Noise, lakeside erosion and harassment of wildlife are emerging as major gripes from lakeside residents. And some of those homeowners are in positions of power.

"These jet skis have been running and ripping around here and they stick close to the shoreline and they put on a show for their friends on the public access. There have been eggs disturbed; loons' eggs out on the island have been disturbed and ruined," complained city councilman Mike Carson.

Carson and fellow councilman Pat Carter are also concerned about the grebe population on the lake. The birds nest in shallow water on the lake edge, and they said motorized vessels — especially jet skis — have been kicking up so much wave action that grebes have been abandoning their eggs.

"I wouldn't want to see them stop motorized traffic. But basically that 60 foot wide right-of-way (on the east shore of Lake Lucille) is only about 100 feet long. And there's no toilet facility there or anything and it's just

the wrong place to have something like that," Carson said.

The Mat-Su Borough has a large, more appropriate public access site on the south shore of the lake, Carson said. But he said the area lacks a boat ramp, and that makes it unattractive for people who want to launch jet skis and other watercraft.

Like his two colleagues, councilman Nick Carney is also a lakeside resident. Carney has proposed a seasonal, part-time ban of motorized traffic on the east end of the lake.

"It's possible we might be doing something (such as) restricting jetskis until the first of July. I'm looking for some way to protect the bird nesting during that critical time when they're sitting on the eggs. We've seen people going out there with jet skis and harassing the birds, and in some cases even chasing the birds, trying to run them down," Carney said.

Whether the city has authority to enact any ban remains to be seen. As Carter pointed out, "The state owns the land at the bottom of the lake. The state owns the water in the lake."

The Wasilla utility and planning commission was scheduled to look at ways of reducing impact on the lake at a public hearing Tuesday evening at Wasilla City Hall.

# ears head again

The assembly needs to look at rules on foreclosures, sales, coverage taxes and fees, more said. "These things should be done in a comprehensive fashion."

The Assembly must approve the tax at least 60 days prior to election, in order to have the question included on the Oct. 2 ballot. Mayo said he has grave concerns for FY92, when the borough will need to find up to \$9 million to support the current

level of services. The question that has to be asked this year is: What programs do the constituents of the borough want the borough to do? Mayo said. "If they want all of them we'll have to propose a balanced budget. If not we need a mill rate based upon that."

The \$9 million figure represents \$5 million in reserves used in the FY 1991 budget to subsidize the mill rate and \$4 million in cuts. Mayo said the \$4 million should be included in the discussion. (See Tax Back Page)

# in argue ethics policy

on education issues and law added. The board is requesting a judge's opinion, based on state and the Alaska Constitution,

guidelines for school district employees. The definition of which political body has the authority to administer an ethics policy overseeing the district's employees

# Alys Vickaryous dies

By ANNE H. PURDY

Procederman staff

Alys Hope Saundis Vickaryous, 80, was as much a part of the Valley's landscape as the range of mountains behind her Colony farm on the Palmer-Wasilla Highway. Her passing on Monday brings to a close another chapter in the story of Palmer's colonization period begun as Franklin Delano Roosevelt's experiment in relocating farm families devastated by the depression in 1935.

A visitation for Alys will be held at St. Michael's Catholic Church in Palmer at 6 p.m. Thursday, June 14. A funeral mass will be held at 7 p.m., and a



Alys Vickaryous

depression-era Minnesota along with 285 other men, women and children more than 50 years ago. She had two more children while living on farm.

# **CORRECTION**

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

1990

# er action



...PACIFICIDE MARILYN SCHWETZ...  
...Pilot, but dropped the next two, including Sunday...

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Frontierman staff

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Alys Vickaryous

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# New rules afloat for Valley boaters

By ROBERT HOWK

Frontiersman staff

Any cautious mariner knows conditions in a given area can change from year to year.

And as this boating season gets underway, there is much more to watch for than shifting shoals in Mat-Su Valley waters.

One big change will be an increased level of public safety enforcement, especially at Big Lake and other popular waterways.

Alaska State Troopers, Alaska State Park Rangers, Department of Fish and Game officers and the U.S. Coast Guard will be on patrol at Big Lake during the Memorial Day weekend and other times during the summer. They'll be on the lookout for obvious trouble and "accidents waiting to happen."

"Primarily; just major problems they have with the boating out there. DWI, reckless operation of boats. Our 'problem children' that we have," Lt. John Glass, commander of the Palmer state trooper post said.

Of particular interest to author-

ities are the increasingly popular jet-skis — the aquatic equivalent of a motorcycle. Two deaths involving jet-skiers occurred last summer at Big Lake. Glass said they won't be picking on jet-skiers, but will be watching them along with everyone else on the water.

"We're not going to target any one select group, we're just going to try to make a safe and sane boating season where we don't have any fatalities on Big Lake this year.

"We don't want to spoil anybody's weekend, but we damn sure don't want it spoiled, ei-

ther," Glass said.

The Coast Guard has the same attitude, Ensign Brian Mosley said.

"This is really a public education focus. We're not there to be a bunch of hardcases or anything like that. We're really there just to have a presence and hope that will quell some of the rowdy behavior that has led to some injuries. (But) we'll do enforcement when necessary," Mosley said.

The Coast Guard has an official sounding term — "Termination Criteria" — for ordering someone to pull their craft out of the water. Mosley said there are four basic conditions they will prompt a "termination." They are:

- Insufficient or non-servicable life preservers. One is required for every person aboard a boat.
- Overloading of passengers or equipment beyond a vessel's safe carrying capacity.
- Boating while intoxicated.
- Negligent or reckless operation.

(See Boating Page 13)

## Safety inspections free

By ROBERT HOWK

Frontiersman staff

Before you get your boat wet this summer, you might want to take a few minutes to get it stuck.

With a Coast Guard Auxiliary Safety Decal, that is.

Members of the Mat-Su Flotilla of the Coast Guard Auxiliary are gearing up for another season of "Courtesy Marine Examinations," and they say the brief time it takes to check a boat for required safety equipment can save a lot of grief later if an emergency should arise.

"People should have their boats (examined) before they put them in the water, really, because then they don't want to take the time," Carrol Palmer, public education officer with the Mat-Su Flotilla said.

(See Inspect Page 13)

NEWS PAPER

ARTICLE

## Boating

(Continued from Front Page)  
Get registered

Another thing officials will be checking for is legally required state registration numbers which must be prominently displayed on any craft that produces more than 10 horsepower. And that includes jet-skis.

If your boat or jet-ski is not registered there are numerous places in the Valley where the needed paperwork can be obtained. Those include: Big Lake

Marina; Big Lake Post Office; Burkeshore Marina; Power Sports; Homesteader's Hardware; Wasilla Post Office; Wasilla City Hall; Outdoors and More; Chimo Guns; NAFA Auto Parts in Wasilla; the Department of Motor Vehicles office and the Alaska State Troopers' headquarters in Palmer.

The registration fee is \$6 and the paperwork takes about four weeks to process. Mosley said if boaters plan to be in the water before their registrations are

complete, they should make a photocopy of the registration form and the check used to pay for it, and keep that paperwork with their watercraft.

### Radio static

Anyone fooling around the wrong way with a marine radio-telephone can expect trouble this summer. Authorities including the Federal Communications Commission are running a crackdown on improper usage of

Channel 16.

Stick to the required procedure — using 16 as a hailing frequency only to bump conversations to another channel — and keep 16 clear for emergency communications, and you won't have the feds on your case.

### New rules

Anyone boating or jet-skiing on lakes within the Wasilla city limits — all of Lake Lucille and the western end of Wasilla Lake

*"We're not there to be a bunch of hard-cases or anything..."*

*-Ensign Brian Mosley*

near downtown — should also be aware of some new rules.

An ordinance passed by the city last summer puts a "no-wake" speed limit into effect near the shores of Lake Lucille and imposes noise restrictions on boaters after 11 p.m.

Wasilla Deputy City Administrator Bob Harris said the city has received a large supply of small floating buoys which will be strung around the perimeter of Lake Lucille 100 feet from the shoreline.

"We hope people will comply with that and try to avoid running over them or (creating) wakes in that zone," Harris said.

"We're not planning on any active patrol or pursuit out there ... but people will be able to prosecute, if they wish," for noise violations and reckless or intoxicated boaters, Harris said.

Lt. Glass said while the main focus will be on Big Lake during the Memorial Day and Fourth of July weekends, officials are also planning a "surprise, unannounced weekend," of enforcement patrols.

**FISCAL NOTE**

**STATE OF ALASKA**  
**1992 LEGISLATIVE SESSION**

**BILL NO. DRAFT CSSB 274(SA)**

Revision Date: \_\_\_\_\_ Department Affected: Public Safety  
 Title: "Operation of personal watercraft and specialty prop-craft" BRU: Alaska State Troopers  
 Component: Detachments  
 Sponsor: Senator Collins  
 Requestor: Senate State Affairs COMPONENT SERIAL NO. 

	7	9	9
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**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
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<b>REVENUE FUND SOURCE:</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
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**FUNDING: (Thousands of Dollars)**

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

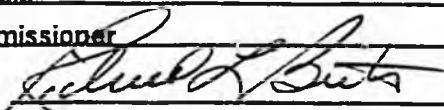
**POSITIONS:**

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

Estimate of current year impact: \_\_\_\_\_

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

Enforcement of this legislation would be provided through the normal course of duties, and would be prioritized with other requests for service. Thus, no significant fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Gayle A. Horetski Phone: 465-4322  
 Division: Office of the Commissioner Date: 03/02/92  
 Approved by Commissioner:  Richard L. Burton  
 Agency: Department of Public Safety 03/02/92

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. Proposed CSSB 274(SA)

Revision Date: \_\_\_\_\_  
Title: "Operation of personal water-craft and specialty prop-craft"  
Sponsor: Senator Collins  
Requestor: Senate State Affairs

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

COMPONENT SERIAL NO. 

	7	9	9
--	---	---	---

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

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
<b>TOTAL</b>	-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

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact upon the Alaska State Troopers is anticipated.

Prepared by: Gavle A. Horvath Phone: 465-4322  
Division: Office of the Commissioner Date: 5/9/91  
Approved by Commissioner: Richard L. Burton Richard L. Burton  
Agency: Department of Public Safety Date: 5/9/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

**BILL NO:** DRAFT CSSB 274(SA)

**DATE:** March 2, 1992

**TITLE:** "Operation of personal watercraft and specialty prop-craft"

**CONTACT:** Gayle A. Horetski  
Deputy Commissioner  
465-4322

MAR 03 1992

POSITION PAPER - Department of Public Safety

The draft State Affairs CS for SB 274 creates a new section in AS 05.25 regulating the use and operation of "personal watercraft" such as jet skis. Under the general penalty provisions of AS 05.25, violation of this new section would be a misdemeanor offense punishable by a fine of up to \$500, or by imprisonment for up to six months, or both. (AS 05.25.090).

The Department of Public Safety shares the public's concern about noise, nuisance, and danger caused by thoughtless or careless jet ski operators. The Department supports this bill, but cautions the legislature and the public that there are practical limits to the degree that it can be successfully enforced. Any enforcement activity likely would be after the fact, and would be based on the statements of witnesses or victims. Examination of the "crime scene" would not produce useful evidence in most cases.

The bill prohibits operation of a jet ski by persons under 16 unless accompanied by a person over 18. It might be difficult to verify the age of a person operating a jet ski. Swimming attire is commonly worn for that activity, and a driver's license or other proof of age is not likely to be carried at the time. The bill also prohibits operation of a jet ski "through emergent or floating vegetation at a speed faster than a no-wake speed". After the fact, it may be difficult to prove "beyond a reasonable doubt" what path a jet ski took over a given water area, and the speed at which the ski was operated.

Enforcement of this bill, should it become law, would be prioritized with other demands for law enforcement services statewide. Response to citizen's complaints would depend on the limited personnel and resources available.



Richard L. Burton  
Commissioner

