

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8196 HOUSE TRANSPORTATION

466

injunction against continuing your sign removal program until regulations are adopted. Hopefully this will give the legislature time to act.

Yours truly,



Ted Smith

cc: Sen Menard  
Sen Kertulla  
Rep Larson  
Rep Carney

JAN 13 1993

Dear Kurt Menard

I am writing to you on the be-half of the Glacier View community council to thank you for your actions concerning the signing law you have been working on. We realize that we are not in your district now but would like to show our support.

We have also sent letters to senators, Lincoln, Kerttula, Halford, Representatives Olberg, and Carney urging them to support us on this issue. We know you have A very large work load but this is an important issue for us and all the businesses though out the state.

We heard there was a twenty five thousand bid to remove signs in this area. If the state would spend this much money helping us in stead pushing out of sight we would much happier. The state would like to increase tourist traffic. We would like to be able to do business we these people also.

Sincerely



Bill Stevenson  
HCO3 box 8449  
Palmer Alaska  
99645  
(907) 745-2534  
(907) 746-1696

	Date	Page	Action
1	03/13/91	527	(S) READ THE FIRST TIME - REFERRAL(S)
2	03/13/91	527	(S) TRANSPORTATION
3	04/23/91		(S) TRA AT 1:30 PM BELTZ ROOM 211
4	04/23/91		(S) MINUTE(TRA)
5	04/24/91	979	(S) TRA RPT 3DP
6	04/24/91	979	(S) ZERO FISCAL NOTE PUBLISHED (S.TRA/DOT)
7	04/24/91	979	(S) REFERRED TO RULES
8	04/26/91		(S) RLS AT 12:15 PM BUTROVICH ROOM 205
9	04/26/91		(S) MINUTE(RLS)

BASIS

Committee Minutes

The next order of business was SP 197, relating to outdoor advertising along highways. SENATOR SHULTZ, sponsor of the measure, explained that there is a problem along some highways which relate to signs. He said the reason that there are problems is because state law is more stringent

than federal law. The bill asks that it be mandated that the state adopt less stringent federal standards on class II roads.

KEITH GERKIN, Deputy Commissioner, DOT/PF, said the department is in favor of the legislation. Regarding the fiscal impact, there would be no additional costs. He noted there would be a one time cost for adopting regulations. Mr. Gerkin referred to a federal law, called the Ladybird bill, which banned outdoor advertising within certain distances of right-of-ways and said that law applies to interstate and federal primary systems. The state law makes the same prohibitions on the intrastate, primary, and the

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT

Committee Minutes

secondary systems of roads which adds more miles of road. He explained that the bill would make the areas of enforcement the same as what the federal government requires. It would lessen the burden of policing the roads for advertising outside of the right-of-way. Mr. Gerkin explained that the federal law already has the ability, within urban areas, to have zoning to designate commercial areas in which those laws don't apply. On site advertising for business would be allowed.

SENATOR SHULTZ said it would never impact anything that is on right-of-way, the signage would be excluded. Mr. Gerkin said signage within the legal limits of a right-of-way is an encroachment and has to be permitted or done away with.

CHAIRMAN MENARD asked if the right-of-ways vary from the center line. Mr. Gerkin explained that is one of the problems with enforcement as people who live along the right-of-ways don't always know where it is. He said the legislation removes some routes from some of the systems

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Committee Minutes

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HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT	
BASIS					Committee Minutes							

that had to be enforced. It makes fewer inconsistencies to explain and will still exist on the rest of the system to which the federal law applies.

SENATOR JONES referred to private lands being controlled and questioned if state land would be controlled. SENATOR SHULTZ said advertising isn't allowed on state land, but correctional or historical signs can be put up. He said current law says if you advertise along secondary roads, it has to be on the site where the business is. The committee members continued to discuss the current law and the proposed legislation.

There being no further testimony on the bill, SENATOR SHULTZ moved and asked unanimous consent to pass SB 197, out of the Senate Transportation Committee with individual recommendations and a zero fiscal note. Hearing no objection, the motion carried.

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT

SB 197

1 "An Act relating to outdoor advertising."  
 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
 3 \* Section 1. AS 19.25 is amended by adding a new section to read:  
 4 Sec. 19.25.091. OUTDOOR ADVERTISING. (a) Except as may be required for  
 5 participation in federal aid highway programs, outdoor advertising is  
 6 permitted outside of the  
 7 right-of-way of highways in the state.  
 8 (b) The department shall seek to obtain all exemptions from federal laws  
 9 relating to  
 10 outdoor advertising adjacent to federal aid highways that are available  
 11 under federal law.  
 12 (c) The department shall adopt regulations to implement AS 19.25.091 -  
 13 19.25.180.  
 14 \* Sec. 2. AS 19.25.130 is amended to read:  
 15 Sec. 19.25.130. PENALTY FOR VIOLATION. A person who violates \_AS  
 16 19.25.091 -  
 17 19.25.180\_ [AS 19.25.080 - 19.25.180], or a regulation adopted under \_AS  
 18 19.25.091 - 19.25.180\_

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD	FISCAL	FIRST	LAST	QUIT
BASIS	Text for SB 197								Page	1 of	2

12 19.25.180\_ [AS 19.25.080 - 19.25.180], or a regulation adopted under \_AS  
 13 19.25.091 - 19.25.180\_  
 14 [THEM], is guilty of a misdemeanor and upon conviction is punishable by a  
 15 fine of not less than  
 16 \$50 nor more than \$1,000.  
 17 \* Sec. 3. AS 19.25.160 is amended to read:  
 18 Sec. 19.25.160. DEFINITIONS. In \_AS 19.25.091 - 19.25.180\_ [AS 19.25.080  
 19 - 19.25.180]  
 20 (1) ["DEPARTMENT" MEANS THE DEPARTMENT OF TRANSPORTATION  
 21 AND PUBLIC FACILITIES;  
 22 (2)] "interstate system" means that portion of the National System of  
 23 Interstate  
 24 and Defense Highways located in this state, as officially designated, or  
 25 that\_ [AS] may hereafter  
 26 be [SO] designated, by the commissioner [,] and approved by the secretary of  
 27 transportation [(]  
 28 or by the secretary of commerce before the effective date of the transfer of  
 29 functions under

Selection=>

B002-INVALID SELECTION

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD	FISCAL	FIRST	LAST	QUIT
BASIS	Text for SB 197								Page	2 of	2

8 or by the secretary of commerce before the effective date of the transfer of  
 9 functions under  
 10 Public Law 89-670 [80 STAT. 931)], under the provisions of Title 23, United  
 11 States Code,  
 12 "Highways";  
 13 (2) [(3)] "outdoor advertising" includes \_an\_ [ANY] outdoor sign,  
 14 display, or device  
 15 used to advertise, attract attention, \_ or inform and \_that\_ [WHICH] is  
 16 visible to a person on the  
 17 main-traveled way of a highway [OF THE INTERSTATE, PRIMARY, OR SECONDARY

14 SYSTEMS] in this state, whether by printing, writing, painting, picture,  
light, drawing, or  
15 whether by the use of figures or objects, or a combination of these, or any  
other thing designed,  
16 intended, or used to advertise, inform, or attract attention;  
17 (3) [(4)] "primary system" or "secondary system" means that portion of  
connected  
18 main highways, as officially designated, or \_that\_ [AS] may hereafter be  
[SO] designated, by the

Selection=>

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BASIS	Text for SB 197								Page	2 of	2

18 main highways, as officially designated, or \_that\_ [AS] may hereafter be  
[SO] designated, by the  
19 commissioner [,] and approved by the secretary of transportation, \_ [ ( ] or  
by the secretary of  
20 commerce before the effective date of the transfer of functions under Public  
Law 89-670 [80  
21 STAT. 931)], under the provisions of Title 23, United States Code,  
"Highways".

22 \* Sec. 4. AS 19.25.180 is amended to read:  
23 Sec. 19.25.180. INTERPRETATION. \_AS 19.25.091 - 19.25.180\_ [AS 19.25.080

24 19.25.180] may not be construed to abrogate or affect \_a\_ [ANY] law,  
ordinance, regulation, \_ or  
25 resolution that is more restrictive than the provisions of \_AS 19.25.091 -  
19.25.180

26 [AS 19.25.080 - 19.25.180].

27 \* Sec. 5. AS 19.25.080, 19.25.090, 19.25.105(a), and 19.25.105(c) are  
repealed.

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HELP		EXIT	MENU		PRINT	BWD	FWD	FISCAL	FIRST	LAST	QUIT

## SENATE BILL NO. 197

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR SHULTZ

Introduced: 3/13/91  
 Referred: Transportation

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to outdoor advertising."

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

3 \* Section 1. AS 19.25 is amended by adding a new section to read:

4 Sec. 19.25.091. OUTDOOR ADVERTISING. (a) Except as may be required for  
 5 participation in federal aid highway programs, outdoor advertising is permitted outside of the  
 6 right-of way of highways in the state.

7 (b) The department shall seek to obtain all exemptions from federal laws relating to  
 8 outdoor advertising adjacent to federal aid highways that are available under federal law.

9 (c) The department shall adopt regulations to implement AS 19.25.091 - 19.25.180.

10 \* Sec. 2. AS 19.25.130 is amended to read:

11 Sec. 19.25.130. PENALTY FOR VIOLATION. A person who violates AS 19.25.091 -  
 12 19.25.130 [AS 19.25.080 - 19.25.180], or a regulation adopted under AS 19.25.091 - 19.25.180  
 13 [THEM], is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than  
 14 \$50 nor more than \$1,000.

THE NEXT ORDER OF BUSINESS WAS SB 197, RELATING TO OUTDOOR ADVERTISING ALONG HIGHWAYS. SENATOR SHULTZ, SPONSOR OF THE MEASURE, EXPLAINED THAT THERE IS A PROBLEM ALONG SOME HIGHWAYS WHICH RELATE TO SIGNS. HE SAID THE REASON THAT THERE ARE PROBLEMS IS BECAUSE STATE LAW IS MORE STRINGENT

THAN FEDERAL LAW. THE BILL ASKS THAT IT BE MANDATED THAT THE STATE ADOPT LESS STRINGENT FEDERAL STANDARDS ON CLASS II ROADS.

KEITH GERKIN, DEPUTY COMMISSIONER, DOT/PP, SAID THE DEPARTMENT IS IN FAVOR OF THE LEGISLATION. REGARDING THE FISCAL IMPACT, THERE WOULD BE NO ADDITIONAL COSTS. HE NOTED THERE WOULD BE A ONE TIME COST FOR ADOPTING REGULATIONS. MR. GERKIN REFERRED TO A FEDERAL LAW, CALLED THE LADYBIRD BILL, WHICH BANNED OUTDOOR ADVERTISING WITHIN CERTAIN DISTANCES OF RIGHT-OF-WAYS AND SAID THAT LAW APPLIES TO INTERSTATE AND FEDERAL PRIMARY SYSTEMS. THE STATE LAW MAKES THE SAME PROHIBITIONS ON THE INTRASTATE, PRIMARY, AND THE SECONDARY SYSTEMS OF ROADS WHICH ADDS MORE MILES OF ROAD. HE EXPLAINED THAT THE BILL WOULD MAKE THE AREAS OF ENFORCEMENT THE SAME AS WHAT THE FEDERAL GOVERNMENT REQUIRES. IT WOULD LESSEN THE BURDEN OF POLICING THE ROADS FOR ADVERTISING OUTSIDE OF THE RIGHT-OF-WAY. MR. GERKIN EXPLAINED THAT THE FEDERAL LAW ALREADY HAS THE ABILITY, WITHIN URBAN AREAS, TO HAVE ZONING TO DESIGNATE COMMERCIAL AREAS IN WHICH THOSE LAWS DON'T APPLY. ON SITE ADVERTISING FOR BUSINESS WOULD BE ALLOWED.

SENATOR SHULTZ SAID IT WOULD NEVER IMPACT ANYTHING THAT IS ON RIGHT-OF-WAY, THE SIGNAGE WOULD BE EXCLUDED. MR. GERKIN SAID SIGNAGE WITHIN THE LEGAL LIMITS OF A RIGHT-OF-WAY IS AN ENCROACHMENT AND HAS TO BE PERMITTED OR DONE AWAY WITH.

CHAIRMAN MENARD ASKED IF THE RIGHT-OF-WAYS VARY FROM THE CENTER LINE. MR. GERKIN EXPLAINED THAT IS ONE OF THE PROBLEMS WITH ENFORCEMENT AS PEOPLE WHO LIVE ALONG THE RIGHT-OF-WAYS DON'T ALWAYS KNOW WHERE IT IS. HE SAID THE LEGISLATION REMOVES SOME ROUTES FROM SOME OF THE SYSTEMS THAT HAD TO BE ENFORCED. IT MAKES FEWER INCONSISTENCIES TO EXPLAIN AND WILL STILL EXIST ON THE REST OF THE SYSTEM TO WHICH THE FEDERAL LAW APPLIES.

SENATOR JONES REFERRED TO PRIVATE LANDS BEING CONTROLLED AND QUESTIONED IF STATE LAND WOULD BE CONTROLLED. SENATOR SHULTZ SAID ADVERTISING ISN'T ALLOWED ON STATE LAND, BUT CORRECTIONAL OR HISTORICAL SIGNS CAN BE PUT UP. HE SAID CURRENT LAW SAYS IF YOU ADVERTISE ALONG SECONDARY ROADS, IT HAS TO BE ON THE SITE WHERE THE BUSINESS IS. THE COMMITTEE MEMBERS CONTINUED TO DISCUSS THE CURRENT LAW AND THE PROPOSED LEGISLATION.

THERE BEING NO FURTHER TESTIMONY ON THE BILL, SENATOR SHULTZ MOVED AND ASKED UNANIMOUS CONSENT TO PASS SB 197, OUT OF THE SENATE TRANSPORTATION COMMITTEE WITH INDIVIDUAL RECOMMENDATIONS AND A ZERO FISCAL NOTE. HEARING NO OBJECTION, THE MOTION CARRIED.

↓  
Ted also wanted  
you to see this  
TESTIMONY on  
SB 197

→B

>



## Willow Trading Post Lodge

Box 49

Willow, Alaska 99688

Phone: 1-907-495-6457

Dear Representative Foster

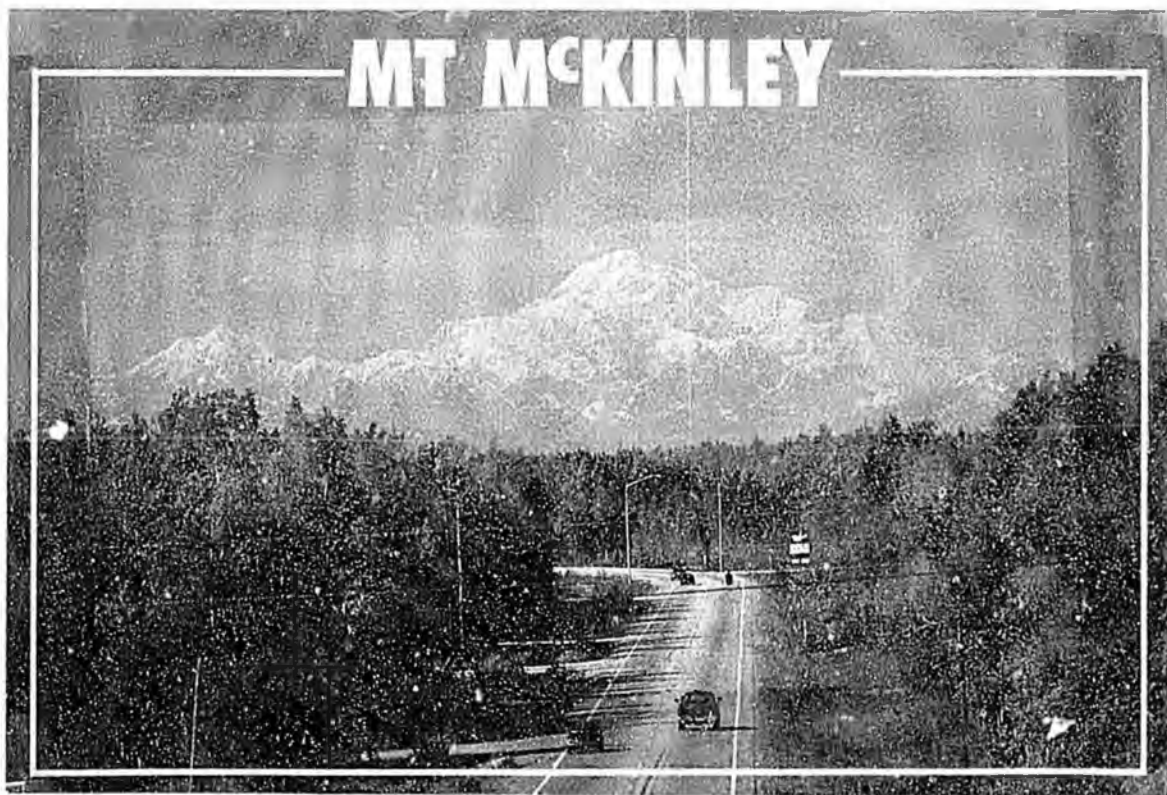
You and your fellow legislators hold in your hands the fate of my business and many others similarly situated.

Enforcement by the DOT of Alaska sign law has removed all distinctive directional signs to the Willow Trading Post Lodge which is situated about 1/2 mile from the Parks Highway on a road which also has the Post Office and other businesses. Since the loss of my sign, my business has declined and I relate it directly to potential customers inability to locate my business. I have installed a TODS sign according to DOT requirements but it is nearly totally ineffective because it is lost in the number of signs at the intersection. Also, the TODS sign can only carry one symbol and we offer six additional services.

The cure for this situation is not very difficult. All we need to do is amend Alaska law to conform with Federal law and regulations, then adopt reasonable state regulations that will preserve our scenic beauty without imposing a penalty on businesses without highway frontage.

House Bill 26 pre-filed by Rep. Menard will accomplish that. I urge your support for the bill and encourage you to do anything you can to accomplish its early passage. Please write or call if I can give you any additional information.

Sincerely yours  
Helen Tucker





*Department of Transportation  
and Public Facilities*

# POSITION PAPER

BILL NO: HB 26

APPROVED:

A handwritten signature in black ink, likely of a department official, written over the word "APPROVED".

TITLE: Prohibited Highway Advertising      DATE: February 3, 1993

The proposed legislation would eliminate state prohibitions on outdoor advertising leaving only federal prohibitions. This would have the effect of allowing for outdoor advertising along highways which are not ultimately categorized as highways of national significance (HNS). Briefly, HNS-category roads are some (but not all) major arterials of the state such as Egan Drive, Seward Highway and the Alaska Highway.

This means that most lesser roads and some major highways would be unregulated with regard to outdoor advertising and that, subject to the property owner's approval, outdoor advertising in any form (off-site business advertising, bill boards, product advertising) would be permissible. Municipal zoning restrictions, if any, would still apply.

This bill will likely have both strong supporters and opponents. Having dealt with the enforcement of outdoor advertising for many years, the department is familiar with the many interest groups with a stake in this issue. Arguments can be made pro and con: "It makes it easier for business, but it blights Alaska; it improves the flow of information for traveler's but brings Alaska scenic standards down to those of ordinary states".

The issue of visual pollution from billboards should not be taken lightly. According to a *Sixty Minutes* program on outdoor advertising, Alaska is only one of four states which has not allowed billboards to encroach upon it's scenic beauty. The Alaska Division of Tourism considers the highway system to be the single largest attraction for visitors to the state, based on the number of people who drive our highways just to see the grand majesty of Alaska.

One possible consequence will be that businesses on similar highway settings (depending upon the HNS classification) are treated differently under the law. The Seward Highway, south of the Sterling Highway, may contain outdoor advertising; the remainder will not. Most of the Richardson Highway will be eligible for outdoor advertising, but that portion north of Delta Junction will not. These "inequities" will create hard feelings and some difficulties in administering the law.

As a department charged with operating the state highway system, we are neutral toward the bill. It will bring both relief and additional work for our crews with little net change.

*For Further Information contact Katy McHugh at 465-3900.*

On one hand we must still ensure that signs are not placed within the right-of-way, and that HNS -category roads contain no outdoor advertising. Where permissible, the bill would relieve the pressure for illegal advertising, directing it to lawful locations.

However, as a department which is striving to emphasize the positive aspects of our highway system as a feature of national and international tourism, the environmental sensitivity of the new national transportation policy and marketing the uniqueness of Alaska through the new STEP program, we believe that this bill may have negative public relations consequences far outweighing any business advantages.

**HB**

**46**

ELECTIVE DISTRICT 14  
ELMENDORF A.F.B.  
EAST ANCHORAGE  
GOVERNMENT HILL

REP. TERRY MARTIN



HOME  
355 DONNA DR., #11  
ANCHORAGE, AK 99504  
PHONE: 333-6990

DURING SESSION  
P.O. BOX V  
STATE CAPITOL BUILDING  
JUNEAU, AK 99811  
PHONE: 465-3783

Alaska House of Representatives  
**SPONSOR STATEMENT**

**HB 46**

**" An Act relating to frequent traveler credit for state-paid travel."**

In an effort to reduce the budget, I see travel expenses as an excellent cost saving measure. In the Governor's proposed FY 94 budget, more than \$46 million was allotted for travel expenses. In days of declining revenue, it is necessary to "trim the fat" cushioning our agencies budgets.

I believe any frequent flyer mileage awarded to a state employee while conducting state business, at state expense, is the property of the state rather than personal property of the employee. All frequent flyer award certificates must be applied to future travel expenses incurred by the department.

The purpose of this legislation is to require state agencies to establish practices for travel that are consistent with the agencies resources and to develop telecommunication systems to be used in lieu of travel. Thus this will require agencies to develop information sharing for reporting and other aspects that have benefits to more than one agency and it will limit the number of employees who may attend the same meeting, thereby enhancing efficiency.

At present, fourteen states have a frequent flyer policy. All fourteen describe the mileage as "property of the state" and the enforcement by each individual agency or by a specific travel agency who handles all ticket transactions for the state. In some instances, for the best resolution of the problem, states whose employees travel extensively have two frequent flyer mileage numbers, one for personal travel and one for state business.

In an effort to curb travel expenses, I deem it necessary the agencies maintain a permanent, cumulative file of all travel by agency personnel. The file shall include at a minimum the total current airline frequent flyer mileage accrued by the individual state employee for those employees who frequently travel at state expense. Tracking and recording funds spent on travel will help reduce waste in each departmental budget.

## FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSHB 46 (STA)

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "An Act relating to frequent traveler credit for state-paid travel..." BRU: Personnel/OEEO  
 Component: Personnel/OEEO  
 Sponsor: Rep. Martin  
 Requestor: (H) Transportation COMPONENT SERIAL NO. 56

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
<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 (FY93) impact: \$ none

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Kevin Ritchie, Director Phone: 465-4430  
 Division: Personnel/OEEO Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usura *NBCU* Date: 4/9/93  
 Agency: Department of Administration

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# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSHB 46 (STA)

Revision Date: \_\_\_\_\_ Dept. Affected: Statewide  
 Title: Frequent traveler credit for State-paid travel. BRU: Statewide  
 Component: Statewide  
 Sponsor: Representative Martin  
 Requestor: State Affairs COMPONENT SERIAL NO. 60

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 CF Match	0	0	0	0	0	0
1004 CF	0	0	0	0	0	0
1006 CF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

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

Estimate of current year (FY93) impact: \$ -0-

ANALYSIS: (attach a separate page if necessary.)

This bill would prohibit State employees from accepting mileage credits when traveling on State business for the agency he/she is employed by if the State pays for or reimburses the employee for the transportation costs.

Continued on attached page.

Prepared By: Dugan Petty, Director Phone: 465-2250  
 Division: General Services Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usara Date: 4/9/93  
 Agency: Department of Administration

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## FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSHB 46 (STA)

### ANALYSIS:

This bill does not establish a requirement to grant mileage credits to the State. However, State agencies may be able to benefit if employees voluntarily establish a separate account in their name (as is currently allowed by Alaska and Delta Airlines) for use by their employing agency. If such accounts are established, they could be monitored and administered by an agency representative to ensure appropriate use of any credits accrued.

While this type of arrangement will offset some agencies' transportation costs, the much greater benefits gained by pooling mileage into agency accounts can not be achieved.

This Department's fiscal note for HB 46 was contingent on pooling mileage into State accounts and capturing awards for every mile flown. There is no way to estimate the fiscal impact of this committee substitute as no data is available on miles flown by individual employees.

## PROPOSED AGENCY TRAVEL BUDGETS FY94

AGENCY	FY 93	FY 94
GOVERNOR	636.4	704.2
ADMINISTRATION	1103.9	1132.6
LAW	1041.1	1117.1
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ALASKA COURT SYSTEM	924.3	911.8
LEGISLATURE	2268.5	2167.8
DEBT SERVICE & MISC PROG	0	0
<b>TOTAL</b>	<b>43101</b>	<b>46268.6</b>

FROM : NCSL <DENVER> TO : 465-4565 1993.01-20 03:08PM #121 P.02

3/15/92

ATTACHMENT C

FREQUENT FLYER PROGRAMS						
STATE	POLICY	DESCRIBE	TRACK/ ENFORCE	WORTH EFFORT	IF NO POLICY, CONSIDERING ONE	COMMENTS
Alabama						travel agency keeps track
Alaska						
Arizona	X	property of state	no			
Arkansas						
California						
Colorado					X	
Connecticut						
Delaware						economic times dictate
Florida						encouraged to use for state business
Georgia						individual agencies require to give back
Hawaii						checking into ethics & attorney general "return it to state"
Idaho						
Illinois						can't capture
Indiana	X	'on honor'				
Iowa					would like to	have tried to set up, but airlines won't let them use one FF#
Kansas					X	benefit goes to employees
Kentucky						benefit goes to employees
Louisiana						benefit goes to employees; can't keep track
Maine						
Maryland	X		no			suppose to use for state business

## ATTACHMENT C

FREQUENT FLEET PROGRAMS						
STATE	POLICY	DESCRIBE	TRACK/ ENFORCE	WORTH EFFORT	IF NO POLICY, CONSIDERING ONE	COMMENTS
Massachusetts					X	
Michigan					X	looking a contract airfare that excludes mileage benefits
Minnesota	X	state property	impossible			"honor system"
Mississippi	X	state property	impossible			honor tried dup accts. did not work
Missouri					possibly	
Montana	X	state property	no	no		
Nebraska						
* Nevada	X	state property	by each agency	?		
New Hampshire						considered a plan, but travel became so restricted they dropped it
New Jersey	X	not allowed				"no one wants to touch it"
New Mexico					X	benefit goes to employee
New York						benefit goes to employee; too difficult to track
North Carolina	X					benefit goes to employee
* North Dakota	X	each individual has 2 FF #'s	yes	yes		one travel agency, so easy to track
Ohio						individual agencies may have one
Oklahoma					X	travel agency must monitor reports
* Oregon	X	state property	agency	?		
Pennsylvania	X	state property	?	?		underdeveloped
Rhode Island					X	
South Carolina						under study

ATTACHMENT C

FREQUENT FLYER PROGRAMS						
STATE	POLICY	DESCRIBE	TRACK/ ENFORCE	WORTH EFFORT	IF NO POLICY, CONSIDERING ONE	COMMENTS
South Dakota		honor system				
Tennessee	X		not cost efficient	no		benefit goes to employee
Texas						too much trouble, airline says. belongs to traveler
Utah					X	
Vermont						too many problems
Virginia	X	hono: system	no			
Washington						
West Virginia						
Wisconsin						
Wyoming						

# Air miles wanted by state

By TROY K. SCHNEIDER  
Governing Magazine

Alaska's state employees rack up millions of frequent-flier miles traveling back and forth over a state that's bigger than Texas, California and Colorado combined.

Alaska officials would like to capture all of that free air travel for the state's own use, but so far the effort doesn't seem to be able to get off the ground.

Alaska's government spends \$15.5 million a year on travel, delivering services in a state where the distance from the capital, Juneau, to the biggest city, Anchorage, is 571 miles.

Naturally, state employees' frequent-flier miles add up quickly. The Alaska State Employees Association, the state's major employee union, takes the position that the miles constitute an employee benefit. But state officials argue that benefits earned at taxpayer expense should be going to the state for official travel.

Last spring, when the state solicited bids for exclusive contracts on nine frequently traveled routes, officials hoped to emulate California's arrangement. There, employees fly for as little as half the standard fare and no frequent-flier miles are given.

## State gets nowhere in efforts to capture frequent-flier miles

By SHEILA TOOMEY  
Daily News reporter

Pity the poor state worker who must travel from Juneau to Anchorage twice a month on state business. What a drag.

True, he's probably well paid and traveling is part of his job description. But still, that's 29,692 miles a year in airplanes.

Enough miles to earn Mr. Bureaucrat a free vacation trip to Mexico on Alaska Airlines' frequent-flier plan. Or he may prefer to accumulate another 11,308 miles

of travel on official state business and get a free ticket to Europe, Hawaii or Asia instead.

Is something wrong with this picture?

Frequent-flier plans were designed to encourage brand loyalty among people who fly a lot, to get frequent fliers to buy all their tickets from the same airline or group of airlines. The reward for buying all those tickets can be hundreds, even thousands, of dollars in free air travel.

The hitch is, when state

employees travel on state business, they don't pay for their tickets. The people of Alaska do, to the tune of \$15.5 million a year, according to Robert Libbey, deputy commissioner of administration.

No one in government seems to know how many miles all that state money buys each year, so it's impossible to figure out how many free trips the state could reap if it captured the mileage awards for govern-

# MILES: State travel pays for private trips

Continued from Page A-1

ment use. A mere 15,000 miles — about 13 round trips between Juneau and Anchorage — earns a free round-trip ticket to anywhere in the state that Alaska Airlines flies. Which means that every 14th trip could be free.

Right now, the state of Alaska makes no effort to capture the miles it pays for, and it does not contract with airlines for cut rates in lieu of the mileage awards.

Before it stopped flying to Southeast, MarkAir, one of Alaska's two major carriers, offered the Hickel administration \$10 million worth of air travel for \$7 million and state officials "just sat on it," according to MarkAir spokesman Larry Anderson.

"We heard all this rhetoric about the state trying to cut their budget. They could have saved 30 percent of their travel budget," Anderson said.

State officials say MarkAir's offer came with a short take-it-or-leave-it deadline that a government committed to fair procurement practices couldn't possibly meet.

Capturing air travel benefits for the state is very complicated and probably impossible, said Nancy Bear Usera, commissioner of administration. The airlines won't cooperate and the unions say those miles are a benefit that can't be taken away.

But there is little doubt

the state has a legal right to take them away, even if "it can't get all of them transferred to public use.

"(B)e assured that, in our view, even a very strict position on the acceptance of these premiums would be wholly defensible," wrote Assistant Attorney General Jim Baldwin in a 1983 attorney general's opinion.

There certainly are obstacles, but other states, the federal government and even some private corporations have overcome most of them.

□

Of the three states along the West Coast of the United States, two forbid personal use of frequent-flier miles earned by state workers traveling on state business. Washington lets state workers keep them. But state employees don't fly often, said Gary Ogden of the Office of Financial Management in Olympia. Their cities are connected by roads. The state capital doesn't even have an airport.

In Oregon, frequent-flier miles have been classified as a benefit and using them for personal travel is a violation of the state ethics law, said Theresa McHugh of the Oregon state Executive Department. "If you're on state business, those are state miles."

The state buys its tickets through a single travel agent, who bids for the con-

tract. "It's generally pretty easy for us to track," McHugh said.

In 1991, Oregon adopted a policy of encouraging state employees to join frequent-flier clubs so the mileage could be used by the people who earned it for future state trips, said Barbara Carranza of the Executive Department budget and management division. Each employee is required to keep travel records going back three years. Agencies monitor their own staffs, Carranza said.

"It's really cumbersome," she said. "The airlines don't make it easy." They won't allow the miles to be pooled and used by someone other than the person who earned them. "They're banking on a lot of these miles never being used."

A lot of state employees just don't collect the mileage, Carranza said. "It's too much trouble."

Again, most travel in Oregon is by car.

□

California is big enough to require a lot of in-state air travel, and no one keeps any benefits earned while traveling on state business, according to James Lee in Gov. Pete Wilson's office in Sacramento.

The state negotiates exclusive paired-cities contracts with airlines in return for significantly cheaper fares — usually half the standard coach ticket, said Charles

Adams of the California General Services Department. No one flying on a state ticket gets frequent-flier miles.

Policing the program is pretty simple, according to Lee. Except in rare circumstances, state tickets must be purchased with special state air travel charge cards. The cards may only be used to buy approved tickets on contract airlines. Use of the charge cards triggers the special state rate and blocks the awarding of frequent-flier miles.

The federal government has a similar program. Federal employees who use frequent-flier miles earned on government-purchased tickets are stealing government property and can be punished if caught — anything from a reprimand to criminal prosecution, said Larry Tucker, chief of the regulatory policy branch of the General Services Administration in Virginia.

Federal workers must use designated carriers. And because the contract rate is so much lower than standard fares, other airlines won't let them trace in their tickets so they can fly on, and illegally collect benefits from, an unauthorized carrier.

Ticket switching is one of the loopholes any government travel plan must address. In Alaska, MarkAir

Please see Back Page, MILES

**FISCAL NOTE**

Revision Date: Department Affected: DOT&PF  
 Title: State-Paid Travel Mileage Credits BRU: Office of the Commissioner  
 Sponsor: Martin Component: Commissioner's Office  
 Requestor: Martin Component Serial Number: #530

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

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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
<b>TOTAL OPERATING:</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE FUND SOURCE</b>	0	0	0	0	0	0

**FUNDING: (Thousands of Dollars)**

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL FUNDING:</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 (FY94) impact: \$0

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

As the airlines serving Juneau have already stated they will not establish a separate account for State mileage, mileage accrued during state travel will not be credited to anyone, there will be no cost savings to the state.

Prepared by: Carol Shelp

Phone: 465-8977

Division: Administrative Services

Date: November 2, 1993

Approved by Commissioner:   
B.A. Campbell

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: November 23, 1993

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Alaska House of Representatives

SPONSOR STATEMENT

CSHB46 (STA)

**FREQUENT TRAVELER CREDIT FOR  
STATE-PAID TRAVEL**

In an effort to reduce the budget and potential waste in departmental operations, CSHB 46 (STA) represents a simple and efficient cost-saving measure. It targets the abuse and under-regulated tabulation of frequent flyer credit miles by state employees during state-paid flights.

The purpose of the bill is to apply all mileage earned through state travel to the specific department authorizing the ticket. State employees conducting business, at state expense, should relinquish awarded miles as property of the state. As frequent flyer award certificates are issued, they should in-turn be applied to future travel expenses incurred by the department.

The bill should also enhance efficiency by deterring and limiting the number of employees attending the same meeting. In the same instance it will promote information sharing and increase a team effort to reduce excessive travel in certain divisions. In terms of the national perspective, as of last year, 14 states had frequent flyer policies. All 14 describe the mileage as "property of the state" and require a central collection location in a division to maintain enforcement and consolidate travel data. In some cases, states whose employees travel extensively have two frequent flyer mileage numbers: one for personal travel and one for state business.

In an effort to curb travel expenses, all state agencies should maintain a permanent, cumulative file of their personnel's travel records. The file should include, at a minimum, the total current airline frequent flyer mileage accrued by state employees at state-expense. Coupled with the passage of CSHB46 (STA), tracking and recording funds spent on travel will help reduce waste in each departmental budget and should assist administrators in reaching a more fiscally conservative approach to state operations.



AGENCY TRAVEL BUDGET

AGENCY	FY 93	FY 94	INCR/DECR
GOVERNOR	636.4	704.2	67.8
ADMINISTRATION	1103.9	1132.6	28.7
LAW	1041.1	1117.1	76
REVENUE	1600.4	1508.2	<92.20>
EDUCATION	1554.3	1836.9	282.6
HEALTH & SOCIAL SERVICES	3832.4	4205	372.6
LABOR	1208.7	1201.3	<7.40>
COMMERCE & ECON DEVEL	2072	2142.9	70.9
MILITARY & VET AFFAIRS	588.6	630.3	41.7
NATURAL RESOURCES	1726.5	1766.6	40.1
FISH AND GAME	4166	4259.9	93.9
PUBLIC SAFETY	3225.3	3478.4	253.1
TRANS/PUBLIC FACILITIES	5618.1	5645.4	27.3
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ALASKA COURT SYSTEM	924.3	911.8	<12.50>
LEGISLATURE	2268.5	2167.8	<100.70>
DEBT SERVICE & MISC PROG	0	0	0
<b>TOTAL</b>	<b>43101</b>	<b>46268.6</b>	<b>3167.6</b>

\*Compiled by Representative Martin's office.

\*Information taken from Governors proposed FY94 Budget

# THE VOICE OF THE TIMES

## Frequent flyers soar on state's money

By LEW WILLIAMS, JR.

The new fiscal year started July 1 for Alaska. The governor signed the \$2.41 billion state operating budget the day before. Whether it will be a happy new year depends upon whether one is a state employee or a critic of state government. I'd write "taxpayer" instead of "critic" except that there are few taxpayers in a state which hands out more to its people than it collects from them.

More than 150 state employees who received layoff notices in the last few weeks are not happy. The number of unhappies — those whose jobs are terminated — will increase throughout the year because of the fiscal '93 budget. It is the only way to stay within the budgeted amount and absorb the increase in state worker pay, the increase in school support and the increase in other entitlement programs which by law must be funded.

Last year, in Walter J. Hickel's first year as governor, the administration cut 400 jobs. Most of those were unfilled positions — phantom workers. This fiscal year the cuts draw blood. The positions eliminated will be held by flesh and blood people.

The governor and the Legislature only followed what they perceived as the consensus of Alaskans when they cut the state budget by not allowing for increases required by law or inflation. Now Alaskans will see if they like it.



Williams

State trooper posts have been closed. Fisheries surveillance has been reduced. State jails have been closed. The number of certified nurses in Pioneer Homes are being reduced. Department of Transportation has reduced road maintenance crews, and so it goes throughout state agencies.

All of those cuts have evoked complaints. When those complaints exceed the demand to cut government costs, maybe some will agree to pay for the services the state provides.

With all lawmakers standing for election next year, it is up to the people of the state to tell the candidates what they expect in state services, what they are willing to pay for and how, and what they want abolished or reduced.



The Hickel administration is working on a government reorganization plan whereby some departments may be combined to absorb cuts and maintain the level of service. The governor has promised a committee to look at revenue enhancement. The results of the governor's studies and public reaction will give the Legislature plenty to work on in January.

In the meantime, it behooves state workers and administrators to avoid questionable actions which create reaction against the 16,000 men and women who are collectively doing a good job, or as good as the budget and public opinion will allow.

A questionable action, which also creates resentment among agency personnel, is that of state workers capitalizing on state travel for personal benefit.

The state spends \$15.5 million a year with major airlines to fly state employees on state business.

Each employee collects frequent flyer miles to his or her personal account although it is the state taxpayers paying for the airline ticket. Alaskans who have to buy their own airline tickets and those in state agencies whose jobs don't require state travel resent the practice.

Alaska Airlines and other carriers have been uncooperative in trying to credit those frequent flyer miles to the state to use for further state business travel. The state

tried asking for bids on travel without the frequent flyer miles but had no response. And the employees' unions say the frequent flyer miles are a benefit that can't be taken away. The practice of state employees receiving the free miles could be banned.

The federal government bans the practice, taking the view that accepting such free miles is misappropriation of public funds.

The state of Oregon has a plan that Alaska might adopt.

Because the airlines won't credit the miles to a state account, the state business travelers keep track of their miles and use them for tickets on future state business travel. It couldn't be simpler, except that state workers are inclined to be negligent in keeping the mileage records where they don't benefit individually.

The private use of public financed frequent flyer miles is a bigger issue in Alaska than in any other state because of Alaska's unique transportation system. In most states, a state worker jumps in a car and drives to the next town. In Alaska, everyone flies.

Alaska's \$2.41 billion budget and talks of deficits of \$500 million make the frequent flyer leak of state funds a small issue. But taking care of those small leaks will help keep the ship of state afloat.

Lew Williams Jr. is former publisher of the Ketchikan Daily News.

## REP. TERRY MARTIN

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Alaska House of Representatives

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#### CSHB46 (STA)

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\*Compiled by Representative Martin's office.

\*Information taken from Governors proposed FY94 Budget

**HB**

**61**

# HOUSE COMMITTEE REPORT

(7)

Date Referred: January 15, 1993

FURTHER REFERRALS:

Judiciary  
Finance

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

Chris hi

The TRANSPORTATION Committee considered:

HB 61

HOUSE BILL NO. 61

LOWER ALCOHOL LIMIT TO 0.08 FOR OMVI'S

"An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated; and providing for an effective date."

**RECOMMENDATIONS:**

be replaced with \_\_\_\_\_

CS HB 61 (Trans)  the same title  
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_

\* Hi Chris → never  
the C.S. - new  
section 5 - teff date  
change due to  
committee to  
Sec. 5 to Jan 1, 1995

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S):

(Dept)

APPROVES PREVIOUS:

(Dept/Date)

fiscal impact <sup>(3)</sup> DPS, D.Lew, Admin.

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		[Signature]		X	
		Richard J. [Signature]		*	
		[Signature]	✓		
[Signature]	X	[Signature]	X		
		Gabe [Signature]	X		

Chris  
Christianson

Richard J. [Signature]  
CHAIRMAN'S SIGNATURE

1ST DOCUMENT of Level 1 printed in FULL format.

FULL TEXT OF BILLS

103RD CONGRESS; 1ST SESSION  
IN THE SENATE OF THE UNITED STATES  
AS INTRODUCED IN THE SENATE

S. 605

1993 S. 605;

SYNOPSIS:

A BILL

To amend title 23, United States Code, to require the Secretary of Transportation to withhold certain funds from States that fail to deem a person driving with a blood alcohol concentration of 0.08 percent or greater to be driving while intoxicated, and for other purposes.

DATE OF INTRODUCTION: MARCH 17, 1993

DATE OF VERSION: MARCH 18, 1993 --- VERSION: 1

SPONSOR(S):

Mr. DOMENICI introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

TEXT:

\* Be it enacted by the Senate and House of Representatives of the United\*  
\*States of America in Congress assembled,  
SECTION 1. SHORT TITLE.

This Act may be cited as the "Drunk Driving Prevention Act of 1993".

SEC. 2. WITHHOLDING OF FUNDS FOR CERTAIN BLOOD ALCOHOL CONCENTRATIONS.

(a) IN GENERAL.—CHAPTER 1 OF TITLE 23, UNITED STATES CODE, IS AMENDED BY ADDING AT THE END THE FOLLOWING NEW SECTION:

"161. Withholding of funds for certain blood alcohol concentrations

"(a) WITHHOLDING OF FUNDS FOR NONCOMPLIANCE; STANDARD.—THE SECRETARY SHALL WITHHOLD AN AMOUNT (DETERMINED UNDER SUBSECTION (B)) REQUIRED TO BE APPORTIONED TO ANY STATE UNDER EACH OF PARAGRAPHS (1), (3), AND (5) OF SECTION 104(B) THAT FAILS TO PROVIDE THAT A PERSON WITH A BLOOD ALCOHOL CONCENTRATION OF 0.08 PERCENT OR GREATER WHEN DRIVING A MOTOR VEHICLE SHALL BE DEEMED TO BE DRIVING WHILE INTOXICATED.

"(B) FORMULA FOR WITHHOLDING.—

"(1) FIRST YEAR.—THE SECRETARY SHALL WITHHOLD 5 PERCENT OF THE AMOUNTS TO BE APPORTIONED TO A STATE, AS DESCRIBED IN SUBSECTION (A), ON THE FIRST DAY OF THE FIRST FISCAL YEAR OR ON THE FIRST DAY OF THE FIRST FISCAL YEAR AFTER THE EXPIRATION OF THE NEXT REGULAR SESSION OF THE STATE LEGISLATURE, WHICHEVER IS LATER, IN WHICH THE STATE IS NOT IN COMPLIANCE WITH THE STANDARD DESCRIBED IN SUBSECTION (A).

"(2) AFTER THE FIRST YEAR.—THE SECRETARY SHALL WITHHOLD 10 PERCENT OF THE AMOUNTS TO BE APPORTIONED TO A STATE, AS DESCRIBED IN SUBSECTION (A), ON THE FIRST DAY OF EACH FISCAL YEAR AFTER THE FIRST FISCAL YEAR DESCRIBED IN PARAGRAPH (1) IN WHICH THE STATE IS NOT IN COMPLIANCE WITH THE STANDARD DESCRIBED IN SUBSECTION (A).

"(C) RELEASE OF AMOUNTS WITHHELD.—

"(1) STATES NOT ADOPTING STANDARD.—

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1993 S. 605; MARCH 18, 1993

-- VERSION: 1

"(A) IN GENERAL.-SUBJECT TO SUBPARAGRAPH (B), IF THE SECRETARY WITHHOLDS FUNDS FROM APPORTIONMENT TO A STATE UNDER THIS SECTION FOR A PERIOD IN EXCESS OF 3 FISCAL YEARS, THE SECRETARY SHALL RELEASE TO THE STATE THE FUNDS WITHHELD FROM APPORTIONMENT FOR THE PERIOD EXCEEDING 3 FISCAL YEARS.

"(B) USE OF CERTAIN RELEASED FUNDS.-FUNDS RELEASED TO A STATE UNDER SUBPARAGRAPH (A) MAY BE USED BY THE STATE ONLY TO CARRY OUT PROGRAMS APPROVED BY THE ADMINISTRATOR OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION THAT PREVENT DRIVING WHILE INTOXICATED, INCLUDING-

"(I) ENFORCEMENT OF LAWS DESIGNED TO PREVENT OR PUNISH DRIVING WHILE INTOXICATED; AND

"(II) ESTABLISHMENT OF SYSTEMS TO MAINTAIN RECORDS OF REPEAT OFFENDERS OF LAWS DESIGNED TO PREVENT OR PUNISH DRIVING WHILE INTOXICATED.

"(2) STATES ADOPTING STANDARD.-IF THE SECRETARY WITHHOLDS FUNDS FROM APPORTIONMENT TO A STATE UNDER THIS SECTION AND THE STATE SUBSEQUENTLY PROVIDES THAT A PERSON WITH A BLOOD ALCOHOL CONCENTRATION OF 0.08 PERCENT OR GREATER WHEN DRIVING A MOTOR VEHICLE SHALL BE DEEMED TO BE DRIVING WHILE INTOXICATED, THE SECRETARY SHALL RELEASE TO THE STATE THE FUNDS WITHHELD FROM APPORTIONMENT AND NOT PREVIOUSLY RELEASED UNDER PARAGRAPH (1).

"(3) AVAILABILITY OF RELEASED FUNDS.-FUNDS RELEASED TO A STATE UNDER THIS SUBSECTION SHALL REMAIN AVAILABLE UNTIL THE END OF THE THIRD FISCAL YEAR SUCCEEDING THE FISCAL YEAR IN WHICH THE FUNDS ARE RELEASED. IF FUNDS ARE NOT EXPENDED BY THE END OF THE THIRD FISCAL YEAR, THE AUTHORITY OF THE STATE TO EXPEND THE FUNDS SHALL EXPIRE."

(B) CONFORMING AMENDMENT.-THE ANALYSIS FOR CHAPTER 1 OF TITLE 23, UNITED STATES CODE, IS AMENDED BY ADDING AT THE END THE FOLLOWING:  
"161. National standard for drunk driving prevention."  
SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on October 1, 1994.

**LEXIS·NEXIS**

Services of Mead Data Central, Inc.

**LEXIS·NEXIS****LEXIS·NEXIS**

167 DOCUMENT of Level 1 printed in FULL format.

## FULL TEXT OF BILLS

103RD CONGRESS; 1ST SESSION  
IN THE HOUSE OF REPRESENTATIVES  
AS INTRODUCED IN THE HOUSE

H. R. 1386

1993 H.R. 1386;

## SYNOPSIS:

## A BILL

To amend title 23, United States Code, to require the Secretary of Transportation to withhold certain funds from States that fail to deem a person driving with a blood alcohol concentration of 0.08 percent or greater to be driving while intoxicated, and for other purposes.

DATE OF INTRODUCTION: MARCH 17, 1993

DATE OF VERSION: MARCH 18, 1993 -- VERSION: 1

## SPONSOR(S):

Mr. SCHIFF introduced the following bill; which was referred to the Committee on Public Works and Transportation

## TEXT:

\* Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, \*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Drunk Driving Prevention Act of 1993".

## SEC. 2. WITHHOLDING OF FUNDS FOR CERTAIN BLOOD ALCOHOL CONCENTRATIONS.

(a) IN GENERAL.—Chapter 1 of title 23, United States Code, is amended by adding at the end the following new section:

"161. Withholding of funds for certain blood alcohol concentrations  
"(a) WITHHOLDING OF FUNDS FOR NONCOMPLIANCE; STANDARD.—THE SECRETARY SHALL WITHHOLD AN AMOUNT (DETERMINED UNDER SUBSECTION (B)) REQUIRED TO BE APPORTIONED TO ANY STATE UNDER EACH OF PARAGRAPHS (1), (3), AND (5) OF SECTION 104(B) THAT FAILS TO PROVIDE THAT A PERSON WITH A BLOOD ALCOHOL CONCENTRATION OF 0.08 PERCENT OR GREATER WHEN DRIVING A MOTOR VEHICLE SHALL BE DEEMED TO BE DRIVING WHILE INTOXICATED.

"(B) FORMULA FOR WITHHOLDING.—

"(1) FIRST YEAR.—THE SECRETARY SHALL WITHHOLD 5 PERCENT OF THE AMOUNTS TO BE APPORTIONED TO A STATE, AS DESCRIBED IN SUBSECTION (A), ON THE FIRST DAY OF THE FIRST FISCAL YEAR OR ON THE FIRST DAY OF THE FIRST FISCAL YEAR AFTER THE EXPIRATION OF THE NEXT REGULAR SESSION OF THE STATE LEGISLATURE, WHICHEVER IS LATER, IN WHICH THE STATE IS NOT IN COMPLIANCE WITH THE STANDARD DESCRIBED IN SUBSECTION (A).

"(2) AFTER THE FIRST YEAR.—THE SECRETARY SHALL WITHHOLD 10 PERCENT OF THE AMOUNTS TO BE APPORTIONED TO A STATE, AS DESCRIBED IN SUBSECTION (A), ON THE FIRST DAY OF EACH FISCAL YEAR AFTER THE FIRST FISCAL YEAR DESCRIBED IN PARAGRAPH (1) IN WHICH THE STATE IS NOT IN COMPLIANCE WITH THE STANDARD DESCRIBED IN SUBSECTION (A).

"(C) RELEASE OF AMOUNTS WITHHELD.—

"(1) STATES NOT ADOPTING STANDARD.—

LEXIS·NEXIS®

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LEXIS·NEXIS®

Services of Mead Data Central, Inc.

1993 H.R. 1386, MARCH 18, 1992

-- VERSION: 1

"(A) IN GENERAL.--SUBJECT TO SUBPARAGRAPH (B), IF THE SECRETARY WITHHOLDS FUNDS FROM APPORTIONMENT TO A STATE UNDER THIS SECTION FOR A PERIOD IN EXCESS OF THREE FISCAL YEARS, THE SECRETARY SHALL RELEASE TO THE STATE THE FUNDS WITHHELD FROM APPORTIONMENT FOR THE PERIOD EXCEEDING THREE FISCAL YEARS.

"(B) USE OF CERTAIN RELEASED FUNDS.--FUNDS RELEASED TO A STATE UNDER SUBPARAGRAPH (A) MAY BE USED BY THE STATE ONLY TO CARRY OUT PROGRAMS APPROVED BY THE ADMINISTRATOR OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION THAT PREVENT DRIVING WHILE INTOXICATED, INCLUDING--

"(I) ENFORCEMENT OF LAWS DESIGNED TO PREVENT OR PUNISH DRIVING WHILE INTOXICATED; AND

"(II) ESTABLISHMENT OF SYSTEMS TO MAINTAIN RECORDS OF REPEAT OFFENDERS OF LAWS DESIGNED TO PREVENT OR PUNISH DRIVING WHILE INTOXICATED.

"(2) STATES ADOPTING STANDARD.--IF THE SECRETARY WITHHOLDS FUNDS FROM APPORTIONMENT TO A STATE UNDER THIS SECTION AND THE STATE SUBSEQUENTLY PROVIDES THAT A PERSON WITH A BLOOD ALCOHOL CONCENTRATION OF 0.08 PERCENT OR GREATER WHEN DRIVING A MOTOR VEHICLE SHALL BE DEEMED TO BE DRIVING WHILE INTOXICATED, THE SECRETARY SHALL RELEASE TO THE STATE THE FUNDS WITHHELD FROM APPORTIONMENT AND NOT PREVIOUSLY RELEASED UNDER PARAGRAPH (1).

"(3) AVAILABILITY OF RELEASED FUNDS.--FUNDS RELEASED TO A STATE UNDER THIS SUBSECTION SHALL REMAIN AVAILABLE UNTIL THE END OF THE THIRD FISCAL YEAR SUCCEEDING THE FISCAL YEAR IN WHICH THE FUNDS ARE RELEASED. IF FUNDS ARE NOT EXPENDED BY THE END OF THE THIRD FISCAL YEAR, THE AUTHORITY OF THE STATE TO EXPEND THE FUNDS SHALL EXPIRE."

(B) CONFORMING AMENDMENT.--THE ANALYSIS FOR CHAPTER 1 OF TITLE 23, UNITED STATES CODE, IS AMENDED BY ADDING AT THE END THE FOLLOWING: "161. Withholding of funds for certain blood alcohol concentrations." SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on October 1, 1994.

L  
R

Kodiak Liquor Licence Association  
P.O. Box 947  
Kodiak, Alaska 99615  
March 9, 1993

Representative Richard Foster  
House Of Representatives  
State Of Alaska

Re: House Bill 61

Dear Representative Foster:

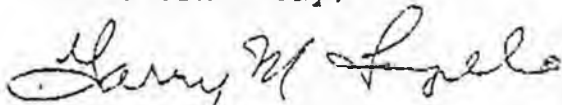
I am writing on behalf of our Association to oppose what we believe to be serious consequences for our industry of HB # 61.

We believe that those that drink and drive should take full responsibility for their actions and that their actions need to be stopped. What our industry is most concerned with is the fact that in Alaska we are also liable and .08 is a very low level for our staff to guage ( it might be only two drinks for some people, yet they would show few visible effects ) Also there is provision here for the courts to look at .04. The .04 is very scary. We do not mind that ways be made to stop drinking and driving ( the level is a technical point, the liability is the issue). We also want to see those in our industry who over serve to be removed, and if current laws were inforced this could be dealt with.

Our industry is in a very great squeeze, on one hand consumption is down 16% over the last 7 years and insurance rates ( if you can get coverage) has gone through the roof. The most seriously affected are those Ma and Pa operations that make up the majority of our members.

Please give our thoughts serious consideration.

Yours sincerely,



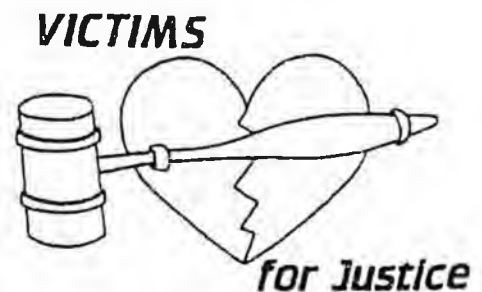
Garry M. Langille  
President



**POSITION STATEMENT  
FROM THE COALITION OF**

**THE ALASKA PEACE OFFICER'S ASSOCIATION  
and MOTHERS AGAINST DRUNK DRIVERS**

before the  
19th Alaska Legislature  
March 1993



**SB 32/HB 61**  
**LOWERING THE PRESUMPTIVE LEVEL TO .08%**

Drinking and driving under the influence of drugs or alcohol continues to be a matter of grave concern to the citizens of Alaska. Behavior and attitudes toward the drinking driver have changed remarkably in the last decade. Drinking and driving is no longer as socially acceptable as it once was. People have come to understand and realize the high price we pay for such excesses. As attitudes change in recognition of the problem, so should our laws.

The trend nationally has been to lower the presumptive level in Driving While Intoxicated cases from .10% to .08%. Studies show that drivers with this lower level of alcohol in their blood are significantly impaired. Drivers with this level of impairment are responsible for a large percentage of motor vehicle accidents causing untold damage to property and human life.

We believe that there is a relationship between a lower limit of blood alcohol content and the reduction of the alcohol related accidents. The passage of this bill will assist law enforcement in removing the impaired driver off the roadways, and the citizens of Alaska will be better protected.

Besides lowering the presumptive level of intoxication from .10% to .08%, we encourage the legislature to change the Implied Consent Law to require motorists to submit to a test of any combination of blood, breath, or urine tests, with the type of test to be administered left to the discretion of the arresting officer. Presently, the only test required is a breath test which is incapable of determining drug intoxication.

Further, we propose rescinding the statutory language that became effective in 1991 which allows people who refuse to take a breath test and people who are DWI re-offenders to have a limited license. This language makes Alaska ineligible for Federal 410 Funds (approximately \$400,000 annually). Another requirement of 410 Funds is that the state adopt the .08% presumptive intoxication level within 4 or 5 years of the receipt of the funds. Unless the legislature changes the language mentioned above, the State of Alaska will continue to be ineligible for federal funds.

# Is MADD Veering off the Road?

by Candy Lightner, founder of MADD

Cleveland Plain Dealer

Thursday, May 21, 1992

I founded Mothers Against Drunk Driving 12 years ago after my 13-year-old daughter, Cari, was killed by a hit-and-run drunken driver. Two days before he killed my daughter, the man had been arrested for another hit-and-run drunken driving with injury. His blood alcohol content was 0.22% -- more than twice the 0.10%, the current legal limit in most states.

My grief and anger made me determined to do everything in my power to stop the senseless slaughter caused by impaired drivers. Though still deeply committed to that goal, I worry that the movement I helped create has lost direction.

Our biggest obstacle was society's tolerance of drinking and driving. So we passed more than 1,000 laws, and attitudes changed. Society no longer considers impaired driving socially acceptable.

This led to significant reductions in alcohol-related fatalities; 50% in 1988 involved alcohol, as compared to 57% in 1982. But we are still nowhere near the point of eliminating this horrible tragedy from our streets and highways.

Lately, anti-drunken driving groups are working on legislation that would lower the BAC to .08. The recent federal highway bill conditions access to highway aid on implementing anti-drunken driving measures, including the suggestion that states adopt the .08 standard. Unfortunately, this ignores the real core of the problem, individuals who, despite new laws and the change in attitude, continue to drink and drive.

While no one can deny that the safest BAC is no BAC, this is also unrealistic given our limited resources and energies. What is realistic, is attacking the problem drinker or chronic drunken driver, the most dangerous threat to our safety.

In our rush to "do the right thing" let's not lose sight of the facts:

- \* Half of the drinking drivers involved in fatal crashes have a BAC of 0.17 or greater. Most drivers with a level this high are problem drinkers and repeat offenders.
- \* Even among young people aged 16 to 24, the great majority of deaths involved drinkers with a BAC of at least .15%.

Lowering the blood alcohol content won't make a difference to these offenders. After 12 years we should be past the point of just raising public consciousness. We need to bring creativity into play and focus on the programs and laws that will make the most difference.

Ohio, for example, is concentrating on measures that would reduce recidivism. In the past 10 years, 53% of all drunken driving offenses were committed by repeat offenders. The State Highway Patrol now notifies law enforcement officers of individuals whose driving record includes five or more DUI convictions and whose licenses were suspended. The repeat offenders were also contacted directly and told they risked re-arrest if they continued to drive.

The results: 16% were arrested in the first month of the crackdown. Law enforcement officers also use "boots" to immobilize the vehicles of repeat offenders after their licenses have been suspended.

Similarly, Oregon impounds the vehicles of those who drive with a suspended license and forfeits them to the city. I am still amazed that the man who killed my daughter is barred from ever owning a handgun, but he can own a car, even though he has been arrested six times for impaired driving and injured two other people.

In addition to measures aimed at repeat offenders, why not issue "graduated licenses" to young people instead of giving them "carte blanche" to drive at the age of 16? They can gain valuable driving experience under less hazardous circumstances, such as daytime driving only, with a limited number of passengers, at restricted speeds, and without alcohol impairment.

Where it has been tried it has worked. Crash rates among young drivers showed dramatic reduction.

We accomplished our goal of changing attitudes. Now it's time for new direction. Rather than put our limited resources into laws that fail to address the real problem, we need better enforcement of existing laws and proven policies that have demonstrated a significant impact, such as swift and sure license suspension, sobriety checkpoints and designated driver programs.

If we really want to save lives, let's go after the most dangerous drivers on the road. Putting our trust in new laws and regulations that attack only the tip of the iceberg will not make our highways safer.

# HOUSE COMMITTEE REPORT

(7)

Date Referred: January 15, 1993

FURTHER REFERRALS:

Judiciary  
Finance

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

The TRANSPORTATION Committee considered:

HB 61

HOUSE BILL NO. 61

LOWER ALCOHOL LIMIT TO 0.08 FOR OMVI'S

"An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated; and providing for an effective date."

**RECOMMENDATIONS:**

be replaced with \_\_\_\_\_

CS HB 61 (Trans)

the same title  
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact DPS, D.Law, Admin.

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		<i>[Signature]</i>		X	
		<i>[Signature]</i>		X	
		<i>[Signature]</i>	✓		
<i>[Signature]</i>	X	<i>[Signature]</i>	X		
		<i>[Signature]</i>	X		

*Richard J. Foley*  
CHAIRMAN'S SIGNATURE



**Public Safety Employees Association, Inc.**

*"Representing Alaska's Finest"*

1569 S. Bragaw #201, Anchorage, AK 99508

(907) 337-1979

Fax (907) 337-1753



**International Union of  
Police Associations  
Local 92 AFL-CIO**

February 17, 1993

Representative Jim Nordlund  
State Capital  
Juneau, AK 99801-1182

Dear Representative Nordlund,

I would like to commend you on your sponsorship on HB61. This legislation is long overdue and I wish you success in your endeavor to further the safety and welfare of the citizens of Alaska.

As President of the Public Safety Employee's Association, I represent law enforcement officers working throughout the State of Alaska. We fully endorse this proposed legislation. It would not only assist law enforcement officers with their responsibilities, but would take another step towards getting Alaska's most dangerous and lethal drivers off the roads.

It is readily apparent that the current regulations do not go far enough. At a .08 alcohol level drivers are extremely dangerous. Their vision is impaired, their reactions are slowed and they are more inclined to take risks. A .10 limit is just too high. We as citizens of the State of Alaska need this legislation. Our lives may depend on it. If there is any assistance our Association can provide in seeing HB61 prevail, don't hesitate to call. Good luck and thank you for your hard work.

Sincerely,

Keith Perrin  
President

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FEB 22 1993

Ans'd.....

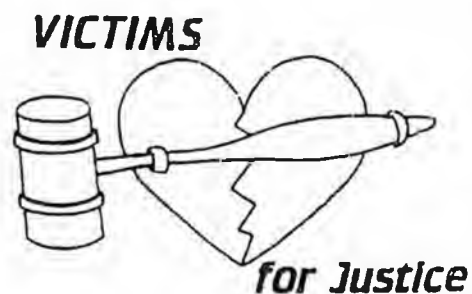
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**POSITION STATEMENT  
FROM THE COALITION OF**

**THE ALASKA PEACE OFFICER'S ASSOCIATION  
and MOTHERS AGAINST DRUNK DRIVERS**

before the  
19th Alaska Legislature  
March 1993



## FOREWORD

This Coalition, consisting of the Alaska Peace Officers Association, Victims for Justice, and MADD, have jointly identified our six top priorities involving legislation affecting public safety statewide.

We strongly urge your support of these issues. We believe that every citizen in Alaska is affected by this legislation. Our Coalition strives to improve the professionalism of the Justice System and asks that the Legislature continue to support us by passing laws which enable us to better serve the people of Alaska.

We will continue to work vigorously against any legislation we feel does not support professional law enforcement and the public's safety. However, we will support other bills that serve our needs and the public's needs in these areas. We are always ready to work with both the Governor's Office and the Legislature.

We thank you for your interest and consideration. The Coalition invites any of you to call or meet with our Executive Boards. These people can be contacted and identified through APOA's Anchorage office, P.O. Box 240106, Anchorage, Alaska, 99524 or phone (907) 277-0515.

## CONSPIRACY

Law Enforcement officers are dealing with people who in increasing numbers act in concert to commit crimes, usually homicide and drug offenses. There appears to be a lot of misconceptions about conspiracy legislation and the following is an effort to "de-mystify" it.

Black's law dictionary defines "conspiracy" as, "A combination or confederation between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or some act which is lawful in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful.

### FICTION

People will get charged for "thinking about a crime".

### FACT

By definition two or more people must act together by committing an overt act with the intention of violating a law.

### FICTION

The current laws relating to aiding and abetting suffice.

### FACT

Under Alaska's aiding and abetting statute, a person is legally accountable for the conduct of another constituting an offense if that person acts with a specific "intent to promote or facilitate the commission of the offense." When several persons combine to violate the law, the police will seldom be able to show that each of the co-conspirators acted with a specific intent to promote the commission of the crime.

Simply put, our aiding and abetting law places too great a burden on law enforcement. A conspiracy statute would permit prosecution of those who acted "knowingly" to violate the law even though they may not have "intended" the result. In short, those who act with guilty knowledge could be punished.

Under aiding and abetting, all participants must act with a specific intent to accomplish the target offense. A conspiracy may be a continuing one; actors may drop out, and others drop in; the details of the operation may change from time to time; the members need not know each other or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose.

This legislation also creates a separate crime of conspiracy which is a crime different from the target offense.

We are long overdue for this legislation. Alaska is the only state that does not have conspiracy legislation. The US Congress long ago promulgated a strong conspiracy statute. Forty-nine other states and the US Congress can't be wrong. This legislation is imperative for law enforcement in Alaska to do its job effectively.

## ISSUES RELATING TO THE JUVENILE JUSTICE SYSTEM

The following are suggested changes to the current statute/rules relating to Juvenile Criminal laws/procedures.

1. **JUVENILE WAIVER (SB 54)** - People ages 16 and 17 charged with an Unclassified or Class A Felony (these are violent crimes against people) should be treated as adults and prosecuted in adult court.

2. **CONFIDENTIALITY** - There is an assumption that confidentiality in criminal matters relating to juveniles will prevent recidivism. The basis for this assumption is questionable. As a result of confidentiality, there is no public awareness of the crime or the criminal. Reaffirmation of societal norms is minimized. The victim as well as the entire community needs to have an ability to voice their outrage and condemnation. There should be non-confidential sentencings to allow public scrutiny into the juvenile criminal justice system. We propose a change to allow a juvenile's first criminal charge be handled in a confidential manner. After the first conviction, all other criminal proceedings should be handled publicly.

3. **TWELVE PERSON JURIES** - In adult court, those charged with misdemeanors are entitled to a six person jury; felony defendants get twelve person juries. The Delinquency Rules of Court allow all juveniles charged with any crime, misdemeanor, or felony, to be tried by a twelve person jury. With the constraints on the court system and the attorneys for both the prosecution and defense, this puts an undue burden on the system. Juveniles charged with misdemeanors should get six person juries like adults.

4. **JUVENILE SENTENCING** - Under Title 12 of the Alaska Statutes, Courts may only use an adult's juvenile criminal history as an aggravator. The court should be required to review any juvenile criminal records. We recommend in cases where an adult with one prior juvenile adjudication on a felony charge is being sentenced on a felony in adult court, the judge should consider the juvenile record as an aggravator for a subsequent adult felony conviction. If the

adult has more than one juvenile felony adjudication, the court should be required to use presumptive sentencing. If presumptive sentencing does not apply to the particular offense, the court should consider the juvenile record as an aggravator to the possible sentence.

Further, there should be statutory guidelines for the sentencing of the juvenile offender similar to the Chaney Criteria for adult sentencing. The juvenile's probability of rehabilitation should be evaluated, but it should not be the overriding consideration. The judge should also be required to base his sentence upon the need to isolate the offender, to fashion a sentence based upon community condemnation of the offender and deterrence of other juveniles who are likely to know or learn about the case.

5. **RESTITUTION** - The principle crimes committed by juveniles are property offenses, in particular, burglaries, thefts, and auto theft. The punishments for these crimes should be more severe. Presently, there is no reason for the offender to stop offending. As a matter of policy, courts do not order juveniles to pay more than \$2000 in restitution. The principle of restitution is to make a victim whole within the possible means of the offender.

Further, restitution orders by the court are presently not enforceable after the juvenile reaches 19 years of age. If a juvenile makes only token payments until his or her 19th birthday, the court loses jurisdiction and the balance of the restitution owed can not be compelled. The juvenile's debt to the victim should survive his 19th birthday and the court should retain the authority to force restitution.

6. **INSTITUTIONALIZATION** - The Court of Appeals in R.P. v State (718 P2nd 168) held that institutionalization of juveniles should be used only as a last resort, that juveniles should be placed in the least restrictive placement. Rehabilitation is an important goal, however it should not be at the expense of the protection of the community. These goals are not mutually exclusive. With more rehabilitative efforts within the institutional environment, these goals can compliment one another. The court should also be mindful of protection of the community and the other sentencing criteria mentioned above.

## INDEMNIFICATION OF GOVERNMENT EMPLOYEES

We believe that government must be held responsible for its actions. When someone is wrongly harmed through the actions of the government, injured parties should be able to make claims as appropriate. However, we believe very strongly that government employees should be defended and protected when their actions are made in good faith.

Generally when a lawsuit is filed, employees are listed as parties to the action. In the past, employees have not been held personally liable for actions taken at the behest of their employer, unless they were clearly working outside the scope of their authority. This seems to be changing. Recent court rulings imposing personal punitive damages are placing the livelihoods of our public employees in jeopardy.

The trend where public employees are being held personally liable places employees in a position where their own personal assets are at risk. All government employees are in danger, from the highest level policy maker to the lowest level of workers where those policies are carried out. The social worker, the road maintenance supervisor, the police officer, the medic, the fire fighter, the department manager, and elected officials are all vulnerable.

We in law enforcement believe this is an undue burden upon the state's public employees. It carries great potential for the workings of government to become bogged down because employees fear that decisions they make in good faith may result in the loss of their assets.

When employees are doing the work of the government, within the scope of their authority and without malice, they should not be held personally liable when they are named as parties to law suits.

**Legislation should be passed that indemnifies public employees and frees them from the burden of working under the constant threat that the good faith judgments they make can result in the loss of their homes, their cars, or their savings.**

**SB 32/HB 61**  
**LOWERING THE PRESUMPTIVE LEVEL TO .08%**

Drinking and driving under the influence of drugs or alcohol continues to be a matter of grave concern to the citizens of Alaska. Behavior and attitudes toward the drinking driver have changed remarkably in the last decade. Drinking and driving is no longer as socially acceptable as it once was. People have come to understand and realize the high price we pay for such excesses. As attitudes change in recognition of the problem, so should our laws.

The trend nationally has been to lower the presumptive level in Driving While Intoxicated cases from .10% to .08%. Studies show that drivers with this lower level of alcohol in their blood are significantly impaired. Drivers with this level of impairment are responsible for a large percentage of motor vehicle accidents causing untold damage to property and human life.

We believe that there is a relationship between a lower limit of blood alcohol content and the reduction of the alcohol related accidents. The passage of this bill will assist law enforcement in removing the impaired driver off the roadways, and the citizens of Alaska will be better protected.

Besides lowering the presumptive level of intoxication from .10% to .08%, we encourage the legislature to change the Implied Consent Law to require motorists to submit to a test of any combination of blood, breath, or urine tests, with the type of test to be administered left to the discretion of the arresting officer. Presently, the only test required is a breath test which is incapable of determining drug intoxication.

Further, we propose rescinding the statutory language that became effective in 1991 which allows people who refuse to take a breath test and people who are DWI re-offenders to have a limited license. This language makes Alaska ineligible for Federal 410 Funds (approximately \$400,000 annually). Another requirement of 410 Funds is that the state adopt the .08% presumptive intoxication level within 4 or 5 years of the receipt of the funds. Unless the legislature changes the language mentioned above, the State of Alaska will continue to be ineligible for federal funds.

## FORFEITURE IN DRUG CASES

Among the most serious problems affecting the health and welfare of the citizens of Alaska is illegal trafficking in drugs. One of the most effective tools for combating this illegal trade is the judicious seizing of property that is owned or purchased as a direct result of unlawful activity.

The federal government has had asset forfeiture laws for several years. The concept of asset forfeiture is simple. It takes the profit out of crime by seizing money or property that was purchased with the proceeds of illegal drug activity. The property is then used or converted to cash which in turn can only be used by law enforcement for the continued battle against crime.

When the federal government extended the use of its forfeiture to state and local law enforcement, it was expected that each state would enact their own forfeiture laws. Most states have already enacted or are considering forfeiture legislation. The use of federal law was almost stopped two years ago, however, the U.S. Congress extended the law to allow states more time to enact their own legislation. We do not know for certain how much longer we can continue to use Federal Asset Seizure laws.

If this legislation is enacted, it would work much like its federal counterpart. The bill is very specific as to when and how law enforcement can seize property, and all seizure of assets is subject to judicial review.

State and local law enforcement in Alaska have had several years of experience in the utilization of federal asset seizure. We believe that it is timely for Alaska to enact its own laws concerning forfeiture. When used properly, the seizure of assets can be one of the most powerful weapons available for use against illegal drug activity. We can not continue to allow crime to pay.

## FELONY VEHICLE THEFT

In the State of Alaska, vehicle joyriding is a misdemeanor. If the state can prove the defendant intended to permanently deprive the owner of the property (i.e., they change the Vehicle Identification Number [VIN]), the charge then becomes a felony. It is nearly impossible to prove the defendant intended to permanently deprive the owner so people are rarely convicted of felony vehicle theft.

Using this scenario, a person can take your \$30,000 vehicle and drive it for two months. Unless they change the VIN or they try to sell the vehicle to someone or do some other act which evidences their intent to permanently deprive the owner of the vehicle, the thief will be charged with only a misdemeanor, even though you were not able to use your property. By policy, the most a juvenile is required to pay restitution is \$2000. (Refer to "Changes in Juvenile Statutes/ Rules" for further information on restitution.)

As you know, the price of vehicles is ever increasing. If a vehicle is stolen, it should be a felony. This is the second most expensive investment a person usually makes in their lifetime. We feel this is no longer acceptable.

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561-7007

WHILE IN SESSION:  
ALASKA STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
465-4968

Alaska State Legislature  
House of Representatives



DISTRICT 11:  
SAND LAKE  
SPENARD  
TAKU-CAMPBELL

Representative Jim Nordlund

MEMORANDUM

TO: Representative Richard Foster, Chair  
Transportation Committee

FROM: Representative Jim Nordlund *JN*

RE: HB 61 - Lowering Blood Alcohol Level for DWI

DATE: February 16, 1993

*TENNIE  
2.2.R*

I would greatly appreciate it if a Transportation hearing could be scheduled as soon as possible on House Bill 61, which reduces the legal definition of intoxication for DWI from .10% to .08% blood alcohol content. A number of states, Canada, and all European nations have lowered their legal definition of intoxication from .10% based on medical evidence that shows driving ability is significantly impaired at the lower blood alcohol level.

The National Highway Traffic Safety Administration has notified us that Alaska currently receives \$688,000 in federal funds annually for Highway Safety Planning and may be eligible for a 30% or more increase if House Bill 61 passes. If similar legislation had passed last year, Alaska would have already received received the benefits of the increase.

A study by the state of California showed that traffic fatalities were reduced by 12% after the implementation of .08 DWI laws. Alaska averages approximately 100 traffic related fatalities per year. If we were to achieve the same results this bill could save approximately 12 lives per year. In order to begin saving lives, I believe that it is important for the legislature to act quickly in passing House Bill 61.

Dennis Poshard of my staff is preparing the necessary back up and will provide it to you as soon as necessary.

Thank you for your consideration of this matter.



*Alaska Cabaret, Hotel,  
Restaurant & Retailers Association*

P.O. Box 104830 • Anchorage, Alaska 99510  
401 K Street • (907) 272-5133 • Fax: (907) 271-8630

February 23, 1993

Representative Richard Foster  
House of Representatives  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Foster,

House Bill 61, shortly to be considered by the Transportation Committee, would lower the legal definition of intoxication from a Blood Alcohol Content (BAC) of 0.10 to 0.08%. This bill does not address the real cause of the drunk driving problem, the alcohol abuser, and may in fact, impede efforts to reduce the number of accidents and fatalities caused by intoxicated drivers. The State of Maine adopted the lower BAC standard in 1988, one of only 5 states to do so. Between 1988 and 1990, the arrest rate increased by 16% as more people were considered technically intoxicated. At the same time, the alcohol-related fatality rate increased, by more than 7%.

These deaths were the unintended result of diluting the law enforcement and judicial resources available to combat the real culprit, the alcohol abuser. The average BAC of someone involved in an alcohol-related accident is over 0.15%. To direct scarce resources against the responsible consumer is counterproductive. We are continually reminded by the media of our overloaded court and jail facilities, to the point of serious recommendations that jail time for first time DWI offenders under the current definition be abolished.

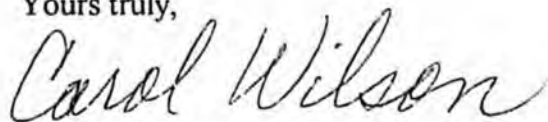
Addressing the problem by restricting responsible consumption is clearly misdirected. Instead, our efforts should be directed to pursue realistic solutions to this terrible social problem by providing our law enforcement, judiciary, and corrections systems the assets they require to implement current laws and to provide stiffer penalties against repeat offenders.

Candy Lightner, the founder of Mothers Against Drunk Drivers (MADD), has doubts about lowering the BAC to 0.08% which she has expressed publicly on several occasions. I am enclosing a copy of a newspaper column that she wrote issue in 1992. Also enclosed is a reprint of a report originally published by the Beverage Retailers

Against Drunk Driving which is a concise presentation of the industry position on this issue.

CHARR members are united in their opposition to this legislation and we ask for your support of our position. Thank you for your consideration.

Yours truly,

A handwritten signature in cursive script that reads "Carol Wilson". The signature is written in dark ink and is positioned below the typed name.

Carol Wilson  
Executive Director

Enclosures

**DWI — ARE WE OFF TRACK?**

*by Terry M. Klein*

**American Beverage Institute**

# DWI — Are We Off Track?

*by Terry M. Klein*

*ABOUT THIS REPORT —*

In 1986 several state legislatures explored the idea of reducing allowed blood alcohol content levels (BAC) while driving in an effort to reduce highway accidents. Beverage Retailers Against Driving Drunk (BRADD) published this report five years ago to add new evidence to the ongoing discussions at that time. While most legislatures eventually focused on more effective means of addressing drunk driving, the BAC issue is being discussed again as a method to control DWI incidents. The American Beverage Institute has republished the original Klein analysis with an updated foreword by Dr. H. Laurence Ross.

## FOREWORD

In reprinting this 1986 report by Terry Klein, the American Beverage Institute has chosen wisely. Although new data are available today, they serve to reinforce the assumptions made in Klein's work of a few years ago.

It remains true that alcohol is often present in the blood of drivers involved in fatal crashes. Now, as then, the bulk of the problem is accounted for by drivers who have blood alcohol concentrations (BACs) of 0.10% or more (suggesting the consumption of more than 5 drinks in a couple of hours).

There is a need for our society to reduce deaths due to drunk driving. A common response to this need has been to increase the severity of the punishment for drunk driving, especially by mandating jail, at least for repeat offenders. Unfortunately, this approach has not led to important progress in reducing alcohol-related fatalities. Not only are the nation's jails so crowded that additional misdemeanants often cannot be accommodated, but the threat of a severe penalty for convicted drunk drivers has become inherently unbelievable as the proportion of those arrested is typically on the order of one in a thousand.

Because the risk of a fatality increases steeply with more alcohol in the blood, a second response has been to lower the limit of legal tolerance from 0.10% BAC to 0.08%. This is currently the law in four states. Such a concentration could be achieved by some people with three drinks in an hour. Klein's report addresses this policy. He properly argues that the heart of the drunk driving fatality problem is not at these levels—and that it is inefficient to squander resources in dealing with drivers who have relatively low BACs. Instead, policy should focus on heavier drinking drivers, who are disproportionately involved in fatal crashes.

Recent research supports Klein's assessment that 0.10% BAC is a reasonable legal limit. Drivers with BACs between 0.10% and 0.15% appear to be over four times more likely to cause a fatal crash than those who, in most states, are obeying the current law. Drivers over 0.15% BAC appear to be over 30 times more dangerous. Clearly, the heart of the problem lies in the area of extremely heavy drinking—the drinker with a BAC of more than 0.15%, who has probably consumed more than a dozen drinks in a few hours.

Data from a national survey of drivers indicate that reducing the tolerated BAC below 0.10% would not necessarily be good public safety policy. Reducing the limit to 0.08% would increase the number of law violators by about 60%. Prohibiting BACs of 0.05% would more than double their numbers. Unless enforcement is increased proportionately, this might result in a decrease in the probability of arrest for extreme violators. To the extent that the law's threats lack credibility (because of a low risk of apprehension), the change could greatly exacerbate enforcement difficulties and possibly reduce the existing effectiveness of the law.

A related problem arises from the fact that BACs under 0.10% are extremely difficult to identify through behavioral cues. Although breath-testing instruments can reliably detect BACs down to 0.05%, in the absence of arbitrary and random breath testing, it is likely that most law violators with BACs below 0.10% would be undetected, even if stopped by police for another traffic offense or at a safety check.

Finally, it can be argued that at BACs below 0.10%, the ratio of the benefits of drinking to the costs associated with it is far more favorable than at higher BACs. It is an error to allocate scarce resources to this segment of drinkers when the more dangerous segment is seldom apprehended. Further research into benefits deriving from alcohol consumption is needed, but plausible claims have been made for reductions in stress and cardio-vascular problems. Folklore and literature as well as common experience suggest that other socially valued goals are achieved in moderate drinking.

Drunk driving is still a significant social problem in America but laws lowering the tolerated BAC below 0.10% are unlikely to be helpful in addressing the problem. Such laws may reduce the credibility of the threat to punish the heaviest drinkers thus possibly reducing deterrence of the most dangerous drivers. At the same time, they would brand as criminal much behavior that is customary, pleasurable, and much less risky to society. I concur with Klein that reducing the BAC limit is unlikely to be either fair or effective in reducing deaths due to drunk driving.

H. Laurence Ross, Ph. D.

*Professor of Sociology*

*University of New Mexico*

*June 1991*

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**ABOUT DR. ROSS —**

H. Laurence Ross is Professor of Sociology at the University of New Mexico. He is author of numerous studies and reviews dealing with the effect of law on driving while impaired by alcohol, including Deterring the Drinking Driver; Legal Policy and Social Control, published by Lexington Books in 1982. In 1989, he received the Widmark Award For Lifetime Achievement from the International Committee on Alcohol, Drugs, and Traffic Safety. He spent 1990-91 as Visiting Scholar at the Insurance Institute for Highway Safety, during which he completed a manuscript, Life Saving: Policy for Reducing Drunk Driving in America, to be published by Yale University Press in 1992.

## POSITION SUMMARY

Alcohol abuse is one of the major social problems of our day. Alcohol abusers who drive are a particularly serious threat.

A recent wave of proposed state legislation, however, causes us concern. The proposed legislation is off target and detracts from focusing on the people who unquestionably cause the great majority of alcohol related accidents and fatalities.

The proposed legislation would lower the criterion of intoxication from the current 0.10 percent blood alcohol concentration rate to 0.08 or 0.05 percent (about two drinks for the average person in a two hour period).

On the surface, the legislation (now being reviewed in many states) might appear to be a "fix" to a problem that concerns us all. But let's look deeper.

- The 0.10 percent blood alcohol concentration rate is the historical standard for intoxication supported by the National Highway Traffic Safety Administration based on their in-depth studies and their analysis of driving drinking problems.
- Research (both government and independent studies) over the past 20 years shows that 70 to 75 percent of those convicted of driving while drunk have blood alcohol concentrates of at least 0.15 percent and many have levels of 0.20 percent or higher. They are way past the official "drunk" mark.
- Multiple studies have shown that in a breakdown of the statistics of alcohol-related traffic fatalities, more than half of those killed are the drunk drivers themselves. Twenty percent are passengers in the car with the drunk driver, and eleven percent are drunk pedestrians who are at fault by walking into the paths of oncoming cars.
- Half of the fatally injured drivers who are legally drunk have blood alcohol contents at or above 0.20 percent.
- Studies have shown that problem drinking drivers have other identifiable problems: a record of one or more alcohol related arrests; previous contacts with police or social agencies; reports of marital, employment or social problems.

What does this information tell us? **That the person doing *most* of the damage drinks far in excess of the current legal limit.** He is not a "social" drinker. He drinks irresponsibly, and he tends to have other identifiable problems related to his problem drinking. Further, in most driving fatalities, it is the drunk driver killing himself and/or those riding with him.

Lowering the legal BAC will have little or no effect on these persons. The main target of such a measure would be drivers who currently drink and drive within the legal limits and who account for under ten percent of all drivers involved in fatal accidents (and many of these are due to non-alcohol related factors).

Aside from the fact that research has yet to pinpoint a need for lowering the recommended blood alcohol concentration levels, the costs of enforcing low limits are staggering. In a time of economic belt tightening, do we want to further burden state and local agencies with enforcing legislation that just sounds good? Could not our money be better spent to seriously crack down on enforcement of the 0.10% and over blood alcohol concentration levels that we know are connected to the majority of drunk driving accidents?

We've heard the public outcry for tough and consistent DWI laws. Let's join community efforts to implement strong and well-funded treatment and rehabilitation programs that will surely help the excessive drinker—the repeat offender.

Public education programs have done a great deal to create an environment where drunk driving is socially unacceptable. Our young people are getting the message. Let's keep the education effort strong.

Beverage retailers are working hard to promote safe attitudes and behavior among guests and customers. Whether it's in the form of providing food and attractive non-alcoholic drink options, educating beverage servers and sellers, or enforcing minimum drinking age laws, retailers are joining in this important health and safety effort.

The following report by traffic safety expert Terry Klein addresses the issues in more detail. Specific recommendations that will work to attack the drunk driving problem can be found on pages 8-10 of this publication.

— *American Beverage Institute*

## DWI — ARE WE OFF TRACK?

*by Terry M. Klein \**

Proposed drunk driving legislation, now being discussed in many states, calls for the reduction of the legal BAC (blood alcohol concentration) level from 0.10 percent to 0.05 percent.

The relative effectiveness of such a measure will depend on that group of drivers at which it is focused; that is, drivers with BAC levels between 0.06 and 0.09 percent, generally referred to as the "social drinker." To analyze the issue of lowering the BAC limit, the following question should be addressed: "What are the drinking characteristics of those persons currently apprehended for drunk driving and involved in the majority of fatal traffic accidents?" The answer to this question will shed light on which drivers constitute the greatest drunk driving threat and where new countermeasures can be effectively focused to achieve the maximum benefits.

In almost all states, it is illegal to drive with a BAC of 0.10 percent, which translates to an average person consuming about five drinks in two hours. At this level of intoxication, researchers have estimated that the risk of this person causing a traffic accident is about six times as great as that of a sober person. This factor increases to twenty-five times as great a risk at a BAC of 0.15 percent (approximately seven drinks in two hours). In contrast, to reach the proposed lowered limit of 0.05 BAC, the average person would consume about two drinks in a two-hour period.

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*\* As president of Sigmastat, Inc., Terry M. Klein is a consultant to the National Center for Statistics and Analysis of the National Highway Traffic Safety Administration (NHTSA). He is currently developing a large-scale computer model for estimating the prevalence of driver and pedestrian alcohol-impairment in fatal traffic accidents.*

*Klein also spent ten years with NHTSA in the U.S. Department of Transportation as chief evaluator in the Planning and Evaluation Division of the Office of Occupant Protection and as senior statistician in the Information Systems and Modeling Division of the Office of Alcohol Countermeasures.*

*Klein holds a B.S. in Mathematics and an M.S. in Statistics from the University of Maryland. He is author of numerous articles and papers on DWI and traffic safety.*

## A Lowered Level Would Affect About 10 Percent of the Problem

The general experience has been that 60 to 75 percent of convicted drunk drivers are considered to be problem drinkers, with BACs at the time of arrest of at least 0.15 percent, many at 0.20 percent or higher. At these excess levels of intoxication, the risk of causing an accident increases very fast.

In 1984, accidents involving legally drunk drivers (BAC of at least 0.10 percent) resulted in about 40 percent of all traffic fatalities. Accidents involving persons who drank but were not legally drunk accounted for only 10 percent of all traffic fatalities. The remaining 50 percent of the fatalities occurred in accidents involving drivers who had not been drinking.<sup>1</sup>

It seems evident that the greatest safety benefits could be derived from reducing drunk driving by problem drinkers, who constitute the greatest part of the problem and who repeatedly drive at high BAC levels of 0.10 and above. It has been estimated that half of the fatally injured drivers who are legally drunk have a BAC at or above 0.20 percent,<sup>2</sup> an indicator of extreme excess drinking. Most researchers in the alcohol area consider attaining this BAC level alone to indicate problem drinking. Lowering the legal BAC to 0.05 percent should have little or no effect on these persons who generally drink far in excess of the current 0.10 percent BAC.

The main target of such a measure would be drivers who currently drink and drive within the legal limit and who account for about ten percent of all drivers involved in fatal accidents. (It should also be noted that alcohol involvement is not necessarily the cause of accidents. The same factors that cause non-alcohol-related accidents are most certainly present here, too.)

Countermeasures aimed at what are today considered responsible drivers can only serve to divert resources away from the larger part of the problem and potentially could have negative effects. The increased burden of "more legally drunk drivers" could stretch the current enforcement and judicial resources beyond their means. In addition, application of the harsh mandatory sanctions upon drivers who do not appear even mildly drunk at a BAC of 0.05 percent could become a source of alienation to the enforcement and judicial communities.

## Results of Current Countermeasures

The question arises of how the current programs have fared in terms of reducing drunk driving, especially by problem drinkers? While this question cannot be fully addressed in the current study, some indications of their progress can be found in analyses of accident data.

Recent analyses of changes in alcohol involvement in fatal crashes have indicated that current programs are much more effective in deterring drunk driving by social drinkers than problem drinkers. While consistent reductions in alcohol involvement have been observed since 1982, the greatest changes occurred at times of low problem drinking-driving. For example, daytime alcohol involvement decreased more than nighttime alcohol involvement. A pages based on these accident analyses and recently presented at the International Congress and Exposition of the Society of Automotive Engineers noted this pattern of change:

*"Problem drinker-drivers and most high BACs are frequently found in crashes between midnight and 6 a.m. These 'hard core' drinking drivers may not be affected by alcohol campaigns. Responsible, social drinkers, for the most part, would most likely be affected by these campaigns."*<sup>3</sup>

This feeling is apparently shared by the authors of a City of Philadelphia study,<sup>4</sup> who contend that a short jail sentence for the first offenders will have little effect on the problem drinkers: ". . . will scare the unfortunate social drinker who got caught in the net, but the problem drinker who goes to jail for 30 days will be drunk on the 31st day."

## **What Will Work? Fresh Solutions**

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Drunk driving is symptomatic of the larger problem of chronic alcoholism. Greater benefits could be realized by focusing new resources on programs involving prevention, and the treatment and rehabilitation of problem drinkers, rather than on making criminals out of responsible citizens by lowering the legal BAC to 0.05 percent.

Programs should focus on solutions to the problem drinker aspect of drunk driving, since this is where the greatest benefits can accrue. Police agencies, which form the bulwark of any drunk driving deterrence program, require continuous financial resources to maintain effectiveness. One method of achieving this is the adoption of a plan like the New York State STOP-DWI Program. This legislation mandates minimum fines of \$250 to \$350 for each DWI conviction, with much of these funds returned to the counties where the arrests are made, if the county has a comprehensive plan. In 1984, \$13 million was returned to the counties to pay for increased efforts.

Forty-six percent of the total dollars budgeted on the STOP-DWI program were for the enforcement component. An evaluation of program effectiveness found significant reductions in alcohol-related crashes after the program began and concluded that:

*"The Counties should continue to receive monies for their STOP-DWI efforts under the present funding arrangement. Experience during the initial years of this program demonstrates its value in reducing accidents and injuries."*<sup>5</sup>

Such funding mechanisms provide the support for long-term continuous programs. To support the enforcement effort, there is a need for the consistent levying of effective penalties for drunk driving, such as automatic administrative license suspension and mandatory treatment/education programs. Suspending the driving privilege of drunk drivers draws their attention to the existence of a problem; mandatory treatment/education programs involve the problem drinker in a long-term commitment to solve his/her drinking problem. These approaches can have widespread benefits beyond saving lives by reducing the disruptions in family and job that can result from problem drinking.

These recommendations and others are presented in greater detail in a 1985 BRADD report titled "Straight Talk About the Drunk Driving Problem."<sup>6</sup>

## **Background Case Studies**

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To get a rough idea of the magnitude of the drinking problem among drunk drivers, contacts were made<sup>7</sup> with a number of agencies responsible for the screening and disposition of convicted drunk drivers. The purpose of these contacts was to ask what types of drinkers are passing through the system. While the precise definition of the terms "problem" and "social" drinker are not universally agreed upon, the latest consensus seems to be that a problem drinker is a person who, whenever he or she drinks, generally drinks too much (cannot stop at "just a few").

### **Albuquerque**

Over a three-year period beginning in 1982, the National Council on Alcoholism in Albuquerque, New Mexico, screened over 7,000 drunk drivers who were considered to be first-time offenders. The classification of these drunk drivers was based on scores on questionnaires, diagnoses by trained interviewers, and the person's BAC at the time of arrest. This was the case with almost all of the agencies contacted. The average BAC of these first offenders was 0.168, with many at or above 0.20 BAC or a consumption of approximately 15 drinks. Of these 7,000 persons reviewed, almost 60 percent were considered to be problem drinkers. Considering that this survey only covered first offenders, one should expect a higher proportion of problem drinking among multiple offenders.

### **Colorado**

In Colorado the law requires that everyone arrested for drunk driving must be screened for alcohol problems; in 1985 over 25,000 persons were screened. The average BAC of these persons was found to be 0.17 percent. Over 50 percent of these persons were classified as problem drinkers, and another 30 percent were considered to be "incipient" problem drinkers (those in the early stages of problem drinking).

## **New York**

The Pre-trial Services Corp. of the Monroe County, New York Bar Association runs a county-funded screening and assessment program. In New York all persons with at least one prior drunk driving conviction must be screened. In the over 300 interviews in 1985, over 70 percent were considered problem drinkers. The average BAC of this multiple-offender group was 0.20 percent.

## **Maryland**

The DWI Monitoring Program of the State of Maryland is responsible for tracking the progress of over 16,000 persons arrested for drunk driving in 1985. According to assessments made by the Health Department, over 70 percent of these persons are considered problem drinkers. It seems to be the consensus of physicians working in the area of alcohol abuse that "95 percent of second-offender drunk drivers are alcoholics, and that almost every third offender certainly is."<sup>8</sup>

## **Philadelphia**

A recent study of the DUI treatment program in the City of Philadelphia found that 75 percent of the 21,000 convicted drunk drivers were problem drinkers or alcoholics. The average BAC at the time of arrest was 0.19 percent.

## **New Jersey**

The State of New Jersey Division of Alcoholism estimated that half the people evaluated in their screening program were referred for treatment for serious alcohol problems, and that most drivers convicted of drunk driving were "usually well over 0.10 percent BAC."

## References

1. J. C. Fell and T. M. Klein, The Nature of the Reduction in Alcohol in U. S. Fatal Crashes, February, 1986
2. National Highway Traffic Safety Administration, "The Fatal Accident Reporting System," 1982-1986.
3. H. Laurence Ross, Deterrence of the Drinking Driver: An International Survey, National Highway Traffic Safety Administration, March, 1981, DOT-HS-805-820.
4. E. W. Fine, P. Scholes and R. A. Steer, "Personality Characteristics and Drinking Patterns of High Risk Drivers Never Apprehended for Driving While Intoxicated," Journal of Studies on Alcohol, Vol. 45, No. 4, pp. 411-416, 1984.
5. A. McCartt and A. Dowling, An Impact Evaluation of the New York State STOP-DWI Program, The Institute for Traffic Safety Management and Research, March 1985.
6. Charles F. Livingston, Straight Talk About the Drunk Driving Problem, Beverage Retailers Against Driving Drunk, Inc., September, 1985.
7. The National Council On Alcoholism, Albuquerque, New Mexico; Alcohol and Drug Abuse Division of the Colorado State Department of Health, Denver, Colorado; Pre-trial Services Corp. of the Monroe County, New York Bar Association, Rochester, New York; The Division of Parole and Probation, Drinking Drivers Monitor Program, Baltimore, Maryland.
8. This comment was made by the Director of the Division of Parole and Probation, State of Maryland Drinking Drivers Monitor Program during the interview conducted by the author. One of the Director's responsibilities is a liaison with the State Health Department's physicians, who have espoused this opinion. This feeling has also been expressed by physicians attending meetings and seminars to discuss the health status of drunk drivers and alcoholics.



Official Business

# Alaska State Legislature

State Capitol

Juneau, Alaska 99801-1182

HOUSE TRANSPORTATION COMMITTEE  
THURSDAY, FEBRUARY 25, 1993  
CAPITOL, ROOM 17  
5:00 P.M.

HB 61 - "An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated; and providing for an effective date."

## I N D E X:

1. ORIGINAL VERSION, HB 61
2. SECTIONAL ANALYSIS, HB 61
3. SPONSOR STATEMENT, HB 61
4. MEMO DATED 2/16/93 TO: REP. FOSTER FROM REP. NORDLUND  
RE: HB 61
5. CONTROLLED DRINKING GUIDE INFORMATION
6. FISCAL NOTES

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561-7007

WHILE IN SESSION:  
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JUNEAU, ALASKA 99801-1182  
465-4968

Alaska State Legislature  
House of Representatives



DISTRICT 11:  
SAND LAKE  
SPENARD  
TAKU-CAMPBELL

Representative Jim Nordlund

SECTIONAL ANALYSIS

Section 1. Findings and purpose.

Section 2. Reduces the level of alcohol at which a person commits the crime of driving while intoxicated from 0.10% to 0.08%.

Section 3. Imposes a mandatory minimum fine of \$250 for a person convicted of driving while intoxicated who had a level of at least 0.08% but less than 0.10%. Imposes existing penalties for a person with a level of intoxication of 0.10% or more.

Section 4. Amends the presumptions of intoxication in a civil or criminal action relating to driving while intoxicated to conform with amendments in section 2.

Section 5. Effective date.

# Alaska State Legislature

## House of Representatives

3111 C STREET  
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561-7007

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DISTRICT 11:  
SAND LAKE  
SPENARD  
TAKU-CAMPBELL

Representative Jim Nordlund

### SPONSOR STATEMENT

House Bill 61 reduces the legal definition of intoxication for the crime of driving while intoxicated from .10% to .08% blood alcohol content. This means it would be illegal for a person to be in control of a motor vehicle, aircraft, or watercraft with a blood alcohol level of .08% or greater.

Five states have already lowered their legal definition of intoxication to .08%: California, Oregon, Utah, Maine, and Vermont. All of Canada has a .08% blood alcohol threshold, and all European nations prohibit driving with a .08% or lower blood alcohol level.

Scientific evidence persuasively establishes that the risk of a driver being involved in a serious or fatal crash increases as the alcohol concentration in the body increases. Many studies have shown that measurable impairment to operate a motor vehicle begins in most drivers at or below .05% blood alcohol level, and that all drivers are impaired at a blood alcohol level of .08%.

Setting the allowable blood alcohol level at .08% will greatly increase the probability of obtaining convictions for drunk driving. Because the law will increase the certainty of conviction, it will also be more effective than current law in deterring drunk driving and in reducing the number of alcohol related crashes.

A study by the state of California showed that traffic fatalities were reduced by 12% after the implementation of .08 DWI laws. Alaska averages approximately 100 traffic related fatalities per year. If we were to achieve the same results this bill could save approximately 12 lives per year.

In addition to the inherent benefits of the bill, the National Highway Traffic Safety Administration has notified us that Alaska currently receives \$688,000 in federal funds annually for Highway Safety Planning and may be eligible for a 30% or more increase if House Bill 61 passes. If similar legislation had passed last year, Alaska would have already received the benefits of the increase.

In the past, the argument against this type of law has been that it will further burden our corrections system. However, section 3 of this bill establishes the minimum penalty for newly affected drivers (those with blood alcohol levels between .08% and .10%) as a \$250 fine only. It is therefore not likely to have any effect on overcrowding except in the rare instance when a judge imposes jail time.

Since it was introduced, House Bill 61 has received an overwhelming amount of public support. In addition to the support of many individual Alaskans, House Bill 61 is endorsed by:

National Highway Traffic Safety Administration  
Allstate Insurance Company  
State Farm Insurance  
American Medical Association  
American Association of Neurological Surgeons  
American Spinal Injury Association  
National Safety Council  
Mothers Against Drunk Driving (MADD)  
Remove Intoxicated Drivers (RID)  
Insurance Institute for Highway Safety  
National Committee on Uniform Traffic Laws and Ordinances  
National Commission Against Drunk Driving

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House of Representatives



DISTRICT 11:  
SAND LAKE  
SPENARD  
TAKU-CAMPBELL

Representative Jim Nordlund  
MEMORANDUM

TO: Representative Richard Foster, Chair  
Transportation Committee

FROM: Representative Jim Nordlund

RE: HB 61 - Lowering Blood Alcohol Level for DWI

DATE: February 16, 1993

I would greatly appreciate it if a Transportation hearing could be scheduled as soon as possible on House Bill 61, which reduces the legal definition of intoxication for DWI from .10% to .08% blood alcohol content. A number of states, Canada, and all European nations have lowered their legal definition of intoxication from .10% based on medical evidence that shows driving ability is significantly impaired at the lower blood alcohol level.

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A study by the state of California showed that traffic fatalities were reduced by 12% after the implementation of .08 DWI laws. Alaska averages approximately 100 traffic related fatalities per year. If we were to achieve the same results this bill could save approximately 12 lives per year. In order to begin saving lives, I believe that it is important for the legislature to act quickly in passing House Bill 61.

Dennis Poshard of my staff is preparing the necessary back up and will provide it to you as soon as necessary.

Thank you for your consideration of this matter.

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SAND LAKE  
SPENARD  
TAKU-CAMPBELL

Representative Jim Nordlund

	# OF DRINKS TO .10 BAC (1HR PERIOD)	#OF DRINKS TO .08 BAC (1HR PERIOD)
FEMALE 100 LBS.	2	2
FEMALE 140 LBS.	3	3
FEMALE 180 LBS.	4	3
MALE 120 LBS.	3	3
MALE 160 LBS.	5	4
MALE 200 LBS.	6	5
MALE 240 LBS.	7	6

\* Information from the "Controlled Drinking Guide" published by The Alaska Center for Responsible Alcohol Control

# FISCAL NOTE

**STATE OF ALASKA**  
**1993 LEGISLATIVE SESSION**

**BILL NO:** HB 61

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: "An Act relating to offense of operating a motor vehicle while intoxicated." BRU: Alaska State Troopers  
 Sponsor: Representative Nordlund Component: Detachments  
 Requestor: Representative Nordlund COMPONENT SERIAL NO. 799

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

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	12.5	12.5	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>12.5</b>	<b>12.5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL						
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REVENUE FUND SOURCE:						
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**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	12.5	12.5	0	0	0	0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>12.5</b>	<b>12.5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: \$ \_\_\_\_\_

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

Please see attached.

*Handwritten initials and date: 2-2-93*

Prepared By: C.E. Swackhammer Phone: 465-4322  
 Division: Office of the Commissioner Date: 1/22/93  
 Approved by Commissioner: *[Signature]* Date: 1/22/93  
 Agency: Richard I. Burton, Dept. of Public Safety

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Analysis:

Statistics show that "lower level" or "borderline" DWI offenders are not being apprehended now. The average breath alcohol concentration (BAC) of DWI arrestees in 1989 was .19 percent--well over the legal limit of .10. Concerted, long-term training will be needed to assist law enforcement officers to detect and apprehend DWI offenders at lower BAC levels. The need for such training, and for more effective enforcement efforts will be an issue addressed in the Department's FY 94 budget request. In the meantime, \$25,000 in contractual funding (\$12,500 in each of the next two fiscal years) is needed to develop and implement a concentrated public information program to educate the public about the dangers of drinking and driving and about the content of the new law.

FISCAL NOTE

BJLL NO. HB 61

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Revision Date: February 22, 1993  
Title: "...relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated..."  
Sponsor: Representative Nordlund  
Requestor: Representative Nordlund

Department Affected: Department of Law  
BRU: Prosecution  
Component: Third Judicial District  
COMPONENT SERIAL NO. 0097

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	54.8	109.6	109.6	109.6	109.6	109.6
TRAVEL	2.5	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	6.0	11.9	11.9	11.9	11.9	11.9
SUPPLIES	5.8	4.8	4.8	4.8	4.8	4.8
EQUIPMENT	15.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	69.1	131.3	131.3	131.3	131.3	131.3

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF	69.1	131.3	131.3	131.3	131.3	131.3
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL						

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

*Richard I. Peque*

Prepared by: Richard I. Peque, Director  
Division: Administrative Services Division

Phone: 465-3672  
Date: February 22, 1993

Approved by Commissioner: Charles E. Cole, Attorney General  
Agency: Department of Law

Date: February 22, 1993

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## FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 61

### ANALYSIS CONTINUATION:

This bill amends AS 28.35.030(a) and AS 28.35.033(a) to lower the blood alcohol limit for the crime of driving while under the influence of intoxicating liquor, a class A misdemeanor, from 0.10 percent to 0.08 percent. The bill also provides that a court shall impose a minimum mandatory fine of not less than \$250 when there was at least 0.08 but less than 0.10 percent blood alcohol.

Other jurisdictions, most notably California and Maryland, experienced about a ten percent increase in DWI arrests in the year immediately following their lowering of the limit to 0.08 percent. However, Oregon, which lowered its limit in 1983, saw a small decrease in arrests. It is not known why their results differed, or what impact enforcement and public information efforts may have had on them. Consequently, we cannot predict the result in Alaska, but some increase in arrests will probably occur if the bill is approved. And although it could be that the bill will result in less litigation, the amount of litigation will most probably increase.

The bill provides for a fine of at least \$250 when a person's blood alcohol content is below 0.10 percent, but the underlying crime is still a class A misdemeanor, and a court is free to impose a far harsher penalty, including imprisonment. This means that defendants must be accorded a jury trial and, if eligible, a publicly-funded defense. Even in those cases where a person might expect to face only the potential of a \$250 fine, defendants can still be expected to wage an aggressive defense because of the serious collateral consequences of a guilty verdict. These include most particularly the restriction or suspension of a person's privilege to drive (as ordered by the court or as a result of an administrative process) and the certainty of a substantially increased cost for insurance.

The defense of these types of 0.08 DWI cases will be easier than normal DWI cases and therefore more defendants may decide to go to trial. In a normal DWI case the state can obtain a conviction by proving either that a breath-test yielded a result of 0.10% or that the person was "under the influence." Therefore even if the results of the breath-test are suppressed or if the jury does not believe the breath-test results (which often happens), the person is nonetheless convicted because bad driving or other symptoms of intoxication prove that the person was "under the influence." In 0.08 cases, the only issue is the validity of the test results; if the jury does not believe the test result, the defendant is acquitted.

Ironically, the existence of a different penalty for 0.08% cases than for normal DWI cases is an advantage to all DWI defendants, not merely for those whose blood alcohol is below 0.10%. The reason is because this new offense may be considered to be a "lesser included offense" of normal DWI, and thus every DWI defendant will ask that the jury be permitted to find that this lesser offense, rather than normal DWI, was committed. The possibility of this kind of compromise verdict may encourage more defendants to take their chances at trial. Alternatively, defendants may ask for a "special verdict", in which the jury is asked to determine the specific amount of blood alcohol. This may tend to prolong jury deliberations and may lead to jury confusion if the jury cannot agree on a specific amount.

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 61

ANALYSIS CONTINUATION:

During FY 92, nearly 4,000 DWI complaints were referred to Department of Law prosecutors. If Alaska follows the California example, a ten percent increase would result in 400 new DWI cases statewide. The largest number of new cases would be experienced in the Anchorage and Mat-Su Valley areas. When we commented on similar legislation in 1992 (HB 102) we indicated that although we expected an increase in the misdemeanor caseload we were not going to request fiscal note funds because of the recent addition of three new prosecutors in Anchorage. Subsequently, the department's budget was reduced and the three attorney positions, plus one paralegal and two clerical positions were eliminated in Anchorage. We expect that this bill will cause us to prosecute 300 or more additional class A misdemeanors in the Third Judicial District, where the effects of the bill will be felt most. Because of staffing cutbacks in Anchorage, and because the Anchorage office is the hub from which prosecutors are sent to other offices to assist in times of overload, it will therefore be necessary to add one Attorney III at Anchorage.

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HE 61

ANALYSIS CONTINUATION:

	<u>Attorney III</u> (22A)	<u>Legal Secretary I</u> (10B)	<u>Total</u>
Personal Services	72.3	37.3	109.6
Travel	5.0	--0--	5.0
Contractual	7.4	4.5	11.9
Supplies	4.1	4.1	8.2
Equipment	6.5	8.5	15.0
	<hr/>	<hr/>	<hr/>
Total	95.3	54.4	149.7