

12165

HOUSE

JUDICIARY

1 180 [90] days; (2) if the person has been previously convicted once of violating an
2 out-of-service order, not less than two years [ONE YEAR]; (3) if the person has been
3 previously convicted more than once of violating an out-of-service order, not less than
4 three years; (4) if the person operates a commercial motor vehicle transporting
5 hazardous materials or a vehicle designed to transport 16 or more passengers,
6 including the driver, in violation of an out-of-service order, not less than 180
7 days; (5) if the person has been previously convicted of operating a commercial
8 motor vehicle transporting hazardous materials or a vehicle designed to
9 transport 16 or more passengers, including the driver, in violation of an out-of-
10 service order two or more times in separate incidents within a 10-year period, not
11 less than three years. In this subsection, "previously convicted" means having been
12 convicted in this or another jurisdiction of an offense described in (a)(7) of this section
13 within 10 years preceding the date of the present offense.

14 * Sec. 22. AS 28.33.140(k) is amended to read:

15 (k) Upon conviction by a court of [A COURT CONVICTING] a person of
16 an offense described in (a)(8) of this section, the department shall disqualify that
17 person from operating a commercial motor vehicle for the following periods: (1) if the
18 person has not been previously convicted of violating a federal or state statute or
19 regulation, or a local law or ordinance, relating to railroad-highway grade crossings,
20 not less than 60 days; (2) if the person has been previously convicted once of violating
21 a federal or state statute or regulation, or a local law or ordinance, relating to railroad-
22 highway grade crossings, not less than 120 days; (3) if the person has been previously
23 convicted more than once of a violation of a federal or state statute or regulation, or a
24 local law or ordinance, relating to railroad-highway grade crossings, not less than one
25 year. In this subsection, "previously convicted" means having been convicted in this or
26 another jurisdiction of an offense described in (a)(8) of this section within three years
27 proceeding the date of the present offense.

28 * Sec. 23. AS 28.33.140 is amended by adding new subsections to read:

29 (l) A person who operates a commercial motor vehicle whose driving is
30 determined by the United States Department of Transportation to constitute an
31 imminent hazard is subject to disqualification as specified by the department in

1 regulation. The regulations adopted by the department under this subsection must be
2 substantially similar to those set by the federal government.

3 (m) A person who violates the standards for operating a commercial motor
4 vehicle set out by the department in regulation is subject to civil penalties established
5 by the department in regulation. An employer who knowingly allows an employee to
6 drive in violation of an out-of-service order or in violation of a railroad-highway grade
7 crossing is subject to civil penalties as described in 49 U.S.C. 521(b) as established by
8 the department in regulation. The department may adopt regulations under AS 44.62
9 to implement this subsection. The regulations adopted under this subsection must be
10 substantially similar to any applicable federal regulations.

11 * Sec. 24. AS 28.33.150(a) is amended to read:

12 (a) A person is guilty of a class A misdemeanor if the person drives a
13 commercial motor vehicle in this state

14 (1) without being licensed or privileged in this state to drive a
15 commercial motor vehicle;

16 (2) during a period when that person's driver's license, privilege to
17 drive, or privilege to obtain a license has been canceled, suspended, or revoked, or the
18 person has been disqualified, in this or another jurisdiction;

19 (3) in violation of a limitation placed upon that person's license or
20 privilege to drive in this or another jurisdiction;

21 (4) during a period when that person has been disqualified from
22 driving a commercial motor vehicle by a court or an administrative agency in this or
23 another jurisdiction; or

24 (5) in violation of an out of service order issued under AS 28.33.130 or
25 under a law in another jurisdiction having substantially similar requirements.

26 * Sec. 25. AS 28.33.190(11) is amended to read:

27 (11) "serious traffic violation" means

28 (A) speeding 15 miles per hour or more above the posted limit;

29 (B) reckless or negligent driving, in violation of AS 28.35.400
30 or 28.35.410 or an ordinance with substantially similar elements;

31 (C) violation of a provision of this title, or a regulation adopted

1 under this title, relating to improper lane changes or following too closely, or
2 an ordinance with substantially similar elements; [OR]

3 (D) violation of a law or ordinance relating to traffic control,
4 which was determined by the court by a preponderance of the evidence to have
5 been a factor in causing physical injury to a person;

6 (E) driving a commercial motor vehicle without obtaining a
7 license to drive a commercial motor vehicle;

8 (F) driving a commercial motor vehicle without a license to
9 drive a commercial motor vehicle in the driver's possession; however, if an
10 individual provides proof to the department by the date that the
11 individual was required to appear in court or pay any fine for that
12 violation that the individual held a valid license to drive a commercial
13 motor vehicle on the date the citation was issued, the driving may not be
14 considered as a serious traffic violation under this paragraph; or

15 (G) driving a commercial motor vehicle without the proper
16 class of license to drive a commercial motor vehicle and any required
17 endorsements for the specific vehicle group being operated, or for the
18 passengers or type of cargo being transported.

19 * Sec. 26. AS 28.33.190 is amended by adding new paragraphs to read:

20 (12) "commerce" means

21 (A) any trade, traffic, or transportation within the jurisdiction
22 of the United States between a place in a state and a place outside of the United
23 States; and

24 (B) trade, traffic, and transportation in the United States that
25 affects any trade, traffic, and transportation described in (A) of this paragraph;

26 (13) "commercial driver's license" means a license issued by a state or
27 other jurisdiction, in accordance with the standards contained in 49 C.F.R. 383, to an
28 individual authorizing the individual to operate a class of a commercial motor vehicle;

29 (14) "conviction" means an unvacated adjudication or conviction of
30 guilt, or a determination that a person has violated or failed to comply with the law in
31 a court of original jurisdiction or by an authorized administrative agency, an unvacated

1 forfeiture of bail or collateral deposited to secure the person's appearance in court, a
2 plea of guilty or nolo contendere accepted by the court, the payment of a fine or court
3 cost, or violation of a condition of release without bail, regardless of whether the
4 penalty is rebated, suspended, or probated;

5 (15) "domicile" means a state of the United States where a person has
6 the person's true, fixed, and permanent home and principal residence and to which the
7 person has the intention of returning whenever the person is absent;

8 (16) "hazardous material" means any material that has been designated
9 as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of
10 49 C.F.R. 172 or any quantity of a material listed as a select agent or toxin in 42
11 C.F.R. 73;

12 (17) "imminent hazard" means the existence of a condition that
13 presents a substantial likelihood that death, serious illness, severe personal injury, or a
14 substantial endangerment to health, property, or the environment may occur before the
15 reasonably foreseeable completion date of a formal proceeding by the United States
16 Department of Transportation begun to lessen the risk of that death, illness, injury or
17 endangerment.

18 * Sec. 27. AS 28.35.032(s) is amended to read:

19 (s) For purposes of this section, the director of the division within the
20 department responsible for administration of this section or a person designated by the
21 director may request and receive criminal justice information available under
22 AS 12.62. [IN THIS SUBSECTION, "CRIMINAL JUSTICE INFORMATION" HAS
23 THE MEANING GIVEN IN AS 12.62.900.]

24 * Sec. 28. AS 28.35.135(b) is amended to read:

25 (b) A person who has a certification, registration, title, license, or other form
26 issued under this title, or who has applied for a certification, registration, license, or
27 other form, and who changes the person's name or moves from the address shown on
28 the department's records or forms, shall notify the department [IN WRITING] of the
29 change in name or address within 30 days

30 **(1) on a form or in a format specified by the department; and**

31 **(2) in a manner prescribed in regulations adopted by the**

1 department.

2 * Sec. 29. AS 28.37.150 is amended to read:

3 **Sec. 28.37.150. Grounds requiring refusal to issue license.** Upon application
4 for a license to drive, the licensing authority in a party state shall ascertain whether the
5 applicant has ever held, or is the holder of a license to drive issued by another party
6 state. The licensing authority in the state where application is made may not issue a
7 license to drive to the applicant if

8 (1) the applicant has held a license, but the license has been suspended,
9 revoked, or canceled, or the applicant has been disqualified from operating a
10 commercial motor vehicle, by reason, in whole or in part, of a violation, and the
11 suspension period has not terminated;

12 (2) the applicant has held a license, but the license has been revoked by
13 reason, in whole or in part, of a violation, and the revocation has not terminated;
14 except that after the expiration of one year from the date the license was revoked, the
15 person may make application for a new license if permitted by law; the licensing
16 authority may refuse to issue a license to an applicant if, after investigation, the
17 licensing authority determines that it will not be safe to grant to the person the
18 privilege of driving a motor vehicle on the public highways;

19 (3) the applicant is the holder of a license to drive issued by another
20 party state and currently in force, unless the applicant surrenders the license;

21 (4) the applicant has held a license, but has been disqualified from
22 operating a commercial motor vehicle by reason, in whole or in part, of a
23 violation, and the disqualification has not terminated; however, a person may
24 make an application for a noncommercial driver license if permitted by other
25 law.

26 * Sec. 30. AS 28.90.990(a) is amended by adding a new paragraph to read:

27 (29) "criminal justice information" has the meaning given in
28 AS 12.62.900.

29 * Sec. 31. AS 28.33.140(b) and 28.33.190(8) are repealed.

30 * Sec. 32. The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 TRANSITION: REGULATIONS. The Department of Administration may proceed to
2 adopt regulations necessary to implement this Act. The regulations take effect under AS 44.62
3 (Administrative Procedure Act), but not before the effective date of the statutory changes.

4 * **Sec. 33.** Section 32 of this Act takes effect immediately under AS 01.10.070(c).

5 * **Sec. 34.** Except as provided in sec. 33 of this Act, this Act takes effect July 1, 2007.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Leg. Legal

Fax #: 2029

Number of pages including cover:

From: Jane Pierson

Date: February 21, 2007

Re: Judiciary CS for HB 126

Would you please draft a Judiciary CS for HB 126 to incorporate the following changes:

P. 1, L. 6-10 (a) For purposes of carrying out the provisions of AS 28.05, AS 28.15, AS 28.33, and AS 28.35, an employee of the department assigned to perform functions under those chapters may access information about an adult or a minor [juvenile] charged with or [,] convicted of [, or adjudicated a delinquent for] an offense.

P. 8, L.26 following "conviction"

Insert "of a person who holds or is required to have a commercial driver's license"

P. 10, L. 1 following "(a)(1)-(5)"

Insert ", (9), or (10)"

ε P. 13 ε 17

P. 14, L. 27 Delete "in writing"

Insert "[IN WRITING]"



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

The Honorable Sarah Palin
Governor of Alaska
Juneau, AK 99811

Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

Refer to: MC-ESL

JAN 31 2007

Dear Governor Palin:

This is a follow-up to the May 17, 2006, letter in which the Federal Motor Carrier Safety Administration (FMCSA) issued a determination of substantial noncompliance to the State of Alaska. That determination was based on the State's failure to adopt the statutory authority needed to enforce all the required Commercial Driver's License provisions of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). In addition, Alaska had not met the projected dates in its Action Plan (submitted in February 2006 to FMCSA) for beginning and passing the Structured Test administered by the American Association of Motor Vehicle Administrators (AAMVA) for transmitting and receiving via the Commercial Driver License Information System the new data elements required by MCSIA.

Since the May 17, 2006 letter, FMCSA has been encouraged that Alaska has established the date of January 29, 2007, to begin structured testing with AAMVA and has drafted legislation that it plans to introduce to the legislature that would bring the State into compliance with the MCSIA provisions for which it lacked statutory authority. Tracy Lewellyn, FMCSA Division Administrator in Alaska, has indicated to us that Kerry Hennings and Shelly Mellott deserve praise for their efforts in resolving compliance issues.

Nonetheless, this letter is a reminder that Alaska is scheduled to lose up to 5 percent of its Federal-aid highway funds on October 1, 2007. The FMCSA will withdraw this determination only when the required legislation is passed and signed by you and when the State successfully completes the structured test of the MCSIA data elements administered by AAMVA.

The FMCSA would like to see Alaska take the necessary steps to avoid sanctions and join other States in creating a system to keep unsafe drivers of commercial motor vehicles off our highways by implementing the provisions of MCSIA.

The FMCSA Division Administrator Tracy Lewellyn and her staff are available to assist you. She may be contacted at (907) 271-4068.

Sincerely yours,

John H. Hill

cc:

Annette Kreitzer, Commissioner, Alaska Department of Administration
Duane Bannock, Director, Alaska Division of Motor Vehicles
Leo von Scheben, Commissioner, Alaska Department of Transportation
Dominick Spataro, Division Chief, FMCSA CDL Division
Tracy Lewellyn FMCSA Division Administrator, Alaska
William R. Paden, FMCSA Field Administrator, Western Service Center
Kent Fleming, FMCSA Western Service Center
J. Richard Capka, Administrator, Federal Highway Administration

Alaska Trucking Association, Inc.

3443 Minnesota Drive · Anchorage, Alaska 99503 · Phone (907) 276-1149 · Fax (907) 274-1946
www.aktrucks.org

February 19, 2007

Chairman Bob Lynn
House State Affairs Committee
Alaska State Legislature
State Capitol, Room 104
Juneau, AK 99801

re: HB 126

Dear Chairman Lynn,

The Alaska Trucking Association is a state wide organization representing trucking interests from Barrow to Ketchikan. In another three weeks, we will conduct our 49th Annual Meeting celebrating over 49 years of representing our industry in Alaska. Our more than 200 members represent all of the diverse trucking operations in the state and many associate members who provide goods and services to our industry.

On behalf of ATA, I take this opportunity to express our support of HB126. HB 126 is an important bill relating to commercial drivers licenses, DMV operations and other driver issues.

In reviewing the bill, we are in agreement with the intent of the bill to reduce the number and severity of commercial motor vehicle related fatalities and injuries. Alaska has had an admirable commercial vehicle safety record over the years and we support efforts to continue to improve safety for commercial vehicles. One of the elements of our mission statement is to "...promote highway and driver safety."

Provisions of the bill will bring Alaska into compliance with Federal Motor Carrier Safety Administration regulations which will eliminate the possibility of federal sanctions against our federal-aid highway funds. These funds are currently in jeopardy due to Alaska's non-compliance.

Exemptions are included to expand the military exemption language to include more service members and to allow a non-CDL holder to operate snow removal equipment in case of emergency.

Chairman Bob Lynn
House State Affairs Committee
February 19, 2007

In line with FMCSA regulations, this change also allows a non-resident to operate a CMV using their home state license.

Bill language clearly states that 19 year old drivers may be issued a CDL to operate in intra state commerce. This clears up some previous ambiguities.

Many of the changes update penalties for drivers for disqualifying offenses. This will assist in keeping bad or unfit drivers off our highways thereby improving the safe driving environment.

To reiterate, Mr. Chairman, we support HB126 and urge the committee to move the bill with do pass recommendations.

Sincerely,



Aves D. Thompson
Executive Director

cc: Representative Kyle Johansen
Sponsor

Table
Penalties for Noncompliance and
Section of HB 126 to Federal Authority

Penalties	49 USC 31312 49 USC 31314
Section 1	49 USC 30304(e) 49 CFR 383.73(a)(3)
Section 2	49 CFR 383.141 49 CFR 384.205 49 CFR 384.206
Section 3	49 CFR 383.3(c) 49 CFR 383.3(d) 49 CFR 383.212
Section 4	49 CFR 383.5 49 CFR 384.201 49 CFR 383.210
Section 5	49 CFR 383.5 49 CFR 384.212
Section 6	49 CFR 383.93 49 CFR 383.123 49 CFR 384.201
Section 7	49 CFR 383.23(c)
Section 8	49 CFR 383.71 49 CFR 384.206
Section 9	49 USC 31311(a)(18) 49 CFR 384.207 49 CFR 384.225
Section 10	49 USC 31311(a)(19) 49 CFR 384.207 49 CFR 384.225
Section 11	49 CFR 384.225(c)
Section 12	49 USC 31311(a)(9)
Section 13	49 CFR 383.51
Section 14	49 CFR 383.51
Section 15	49 CFR 391.11(b)(1)
Section 16	49 USC 31310(b)(1)(D) 49 USC 31310(b)(1)(E)
Section 17	49 CFR 383.51(a)(4) 49 CFR 383.52(e)
Section 18	49 USC 5105 49 USC 5109 49 CFR 383.51(Tables)
Section 19	49 CFR 383.51 (Tables)
Section 20	Conforming amendment. It requires

	surrender of license of person who is disqualified from driving a commercial motor vehicle in an administrative action by the DMV.
Section 21	49 CFR 383.51(Table 4)
Section 22	Conforming amendment. It requires surrender of license of person who is disqualified from driving a commercial motor vehicle in an administrative action by the DMV.
Section 23	49 USC 31310(f) 49 CFR 383.52 49 CFR 383.53
Section 24	49 CFR 383.5 49 CFR 383.51
Section 25	49 USC 31301(12)
Section 26	49 CFR 383.5
Section 27	Conforming amendment
Section 28	DMV Forms
Section 29	49 CFR 383.5 49 CFR 383.51
Section 30	Conforming amendment
Section 31	Repealed section.
Section 32	Authority to DMV for regulations
Section 33	Effective Date for section 32
Section 34	Effective Date for rest of sections

PUBLIC LAW 106-159—DEC. 9, 1999

MOTOR CARRIER SAFETY IMPROVEMENT ACT
OF 1999

Public Law 106-159
106th Congress

An Act

Dec. 9, 1999
[H.R. 3419]

To amend title 49, United States Code, to establish the Federal Motor Carrier Safety Administration, and for other purposes.

Motor Carrier
Safety
Improvement Act
of 1999.
49 USC 101 note.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the "Motor Carrier Safety Improvement Act of 1999".

(b) **TABLE OF CONTENTS.**—

- Sec. 1. Short title; table of contents.
- Sec. 2. Secretary defined.
- Sec. 3. Findings.
- Sec. 4. Purposes.

TITLE I—FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

- Sec. 101. Establishment of Federal Motor Carrier Safety Administration.
- Sec. 102. Revenue aligned budget authority.
- Sec. 103. Additional funding for motor carrier safety grant program.
- Sec. 104. Motor carrier safety strategy.
- Sec. 105. Commercial motor vehicle safety advisory committee.
- Sec. 106. Saving provisions.
- Sec. 107. Effective date.

TITLE II—COMMERCIAL MOTOR VEHICLE AND DRIVER SAFETY

- Sec. 201. Disqualifications.
- Sec. 202. Requirements for State participation.
- Sec. 203. State noncompliance.
- Sec. 204. Checks before issuance of driver's licenses.
- Sec. 205. Registration enforcement.
- Sec. 206. Delinquent payment of penalties.
- Sec. 207. State cooperation in registration enforcement.
- Sec. 208. Imminent hazard.
- Sec. 209. Household goods amendments.
- Sec. 210. New motor carrier entrant requirements.
- Sec. 211. Certification of safety auditors.
- Sec. 212. Commercial van rulemaking.
- Sec. 213. 24-hour staffing of telephone hotline.
- Sec. 214. CDL school bus endorsement.
- Sec. 215. Medical certificate.
- Sec. 216. Implementation of Inspector General recommendations.
- Sec. 217. Periodic refiling of motor carrier identification reports.
- Sec. 218. Border staffing standards.
- Sec. 219. Foreign motor carrier penalties and disqualifications.
- Sec. 220. Traffic law initiative.
- Sec. 221. State-to-State notification of violations data.
- Sec. 222. Minimum and maximum assessments.
- Sec. 223. Motor carrier safety progress report.
- Sec. 224. Study of commercial motor vehicle crash causation.
- Sec. 225. Data collection and analysis.
- Sec. 226. Drug test results study.
- Sec. 227. Approval of agreements.
- Sec. 228. DOT authority.

SEC. 2. SECRETARY DEFINED.

49 USC 101 note.

In this Act, the term "Secretary" means the Secretary of Transportation.

SEC. 3. FINDINGS.

49 USC 113 note.

Congress makes the following findings:

(1) The current rate, number, and severity of crashes involving motor carriers in the United States are unacceptable.

(2) The number of Federal and State commercial motor vehicle and operator inspections is insufficient and civil penalties for violators must be utilized to deter future violations.

(3) The Department of Transportation is failing to meet statutorily mandated deadlines for completing rulemaking proceedings on motor carrier safety and, in some significant safety rulemaking proceedings, including driver hours-of-service regulations, extensive periods have elapsed without progress toward resolution or implementation.

(4) Too few motor carriers undergo compliance reviews and the Department's data bases and information systems require substantial improvement to enhance the Department's ability to target inspection and enforcement resources toward the most serious safety problems and to improve States' ability to keep dangerous drivers off the roads.

(5) Additional safety inspectors and inspection facilities are needed in international border areas to ensure that commercial motor vehicles, drivers, and carriers comply with United States safety standards.

(6) The Department should rigorously avoid conflicts of interest in federally funded research.

(7) Meaningful measures to improve safety must be implemented expeditiously to prevent increases in motor carrier crashes, injuries, and fatalities.

(8) Proper use of Federal resources is essential to the Department's ability to improve its research, rulemaking, oversight, and enforcement activities related to commercial motor vehicles, operators, and carriers.

SEC. 4. PURPOSES.

49 USC 113 note.

The purposes of this Act are—

(1) to improve the administration of the Federal motor carrier safety program and to establish a Federal Motor Carrier Safety Administration in the Department of Transportation; and

(2) to reduce the number and severity of large-truck involved crashes through more commercial motor vehicle and operator inspections and motor carrier compliance reviews, stronger enforcement measures against violators, expedited completion of rulemaking proceedings, scientifically sound research, and effective commercial driver's license testing, recordkeeping and sanctions.

TITLE I—FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

SEC. 101. ESTABLISHMENT OF FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION.

(a) IN GENERAL.—Chapter 1 of title 49, United States Code, is amended by adding at the end the following:

“§ 113. Federal Motor Carrier Safety Administration

“(a) IN GENERAL.—The Federal Motor Carrier Safety Administration shall be an administration of the Department of Transportation.

“(b) SAFETY AS HIGHEST PRIORITY.—In carrying out its duties, the Administration shall consider the assignment and maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in motor carrier transportation.

“(c) ADMINISTRATOR.—The head of the Administration shall be the Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be an individual with professional experience in motor carrier safety. The Administrator shall report directly to the Secretary of Transportation.

“(d) DEPUTY ADMINISTRATOR.—The Administration shall have a Deputy Administrator appointed by the Secretary, with the approval of the President. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.

“(e) CHIEF SAFETY OFFICER.—The Administration shall have an Assistant Federal Motor Carrier Safety Administrator appointed in the competitive service by the Secretary, with the approval of the President. The Assistant Administrator shall be the Chief Safety Officer of the Administration. The Assistant Administrator shall carry out the duties and powers prescribed by the Administrator.

“(f) POWERS AND DUTIES.—The Administrator shall carry out—

“(1) duties and powers related to motor carriers or motor carrier safety vested in the Secretary by chapters 5, 51, 55, 57, 59, 133 through 149, 311, 313, 315, and 317 and by section 18 of the Noise Control Act of 1972 (42 U.S.C. 4917; 86 Stat. 1249-1250); except as otherwise delegated by the Secretary to any agency of the Department of Transportation other than the Federal Highway Administration, as of October 8, 1999; and

“(2) additional duties and powers prescribed by the Secretary.

“(g) LIMITATION ON TRANSFER OF POWERS AND DUTIES.—A duty or power specified in subsection (f)(1) may only be transferred to another part of the Department when specifically provided by law.

“(h) EFFECT OF CERTAIN DECISIONS.—A decision of the Administrator involving a duty or power specified in subsection (f)(1) and involving notice and hearing required by law is administratively final.

“(i) CONSULTATION.—The Administrator shall consult with the Federal Highway Administrator and with the National Highway

Traffic Safety Administrator on matters related to highway and motor carrier safety.”

(b) ADMINISTRATIVE EXPENSES.—Section 104(a)(1) of title 23, United States Code, is amended—

(1) in paragraph (1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and by moving the text of such clauses 2 ems to the right;

(2) in paragraph (1) by striking “exceed 1½ percent of all sums so made available, as the Secretary determines necessary—” and inserting “exceed—

“(A) 1⅙ percent of all sums so made available, as the Secretary determines necessary—”;

(3) by striking the period at the end of paragraph (1)(A)(ii) (as redesignated by paragraphs (1) and (2) of this subsection) and inserting “; and” and the following:

“(B) one-third of 1 percent of all sums so made available, as the Secretary determines necessary, to administer the provisions of law to be financed from appropriations for motor carrier safety programs and motor carrier safety research.”; and

(4) by adding at the end the following:

“(4) LIMITATION ON TRANSFERABILITY.—Unless expressly authorized by law, the Secretary may not transfer any sums deducted under paragraph (1) to a Federal agency or entity other than the Federal Highway Administration and the Federal Motor Carrier Safety Administration.”

(c) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for chapter 1 of title 49, United States Code, is amended by adding at the end the following:

“113. Federal Motor Carrier Safety Administration.”

(2) FEDERAL HIGHWAY ADMINISTRATION.—Section 104 of title 49, United States Code, is amended—

(A) in subsection (c)—

(i) by striking the semicolon at the end of paragraph (1) and inserting “; and”;

(ii) by striking paragraph (2); and

(iii) by redesignating paragraph (3) as paragraph (2);

(B) by striking subsection (d); and

(C) by redesignating subsection (e) as subsection (d).

(d) POSITIONS IN EXECUTIVE SERVICE.—

(1) ADMINISTRATOR.—Section 5314 of title 5, United States Code, is amended by inserting after

“Administrator of the National Highway Traffic Safety Administration.”

the following:

“Administrator of the Federal Motor Carrier Safety Administration.”

(2) DEPUTY AND ASSISTANT ADMINISTRATORS.—Section 5316 of title 5, United States Code, is amended by inserting after

“Deputy Administrator of the National Highway Traffic Safety Administration.”

the following:

“Deputy Administrator of the Federal Motor Carrier Safety Administration.”

“Assistant Federal Motor Carrier Safety Administrator.”

(e) **PERSONNEL LEVELS.**—The number of personnel positions at the Office of Motor Carrier Safety (and, beginning on January 1, 2000, the Federal Motor Carrier Safety Administration) at its headquarters location in fiscal year 2000 shall not be increased above the level transferred from the Federal Highway Administration to the Office of Motor Carrier Safety. The Secretary shall provide detailed justifications to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives for the personnel requested for fiscal years 2001, 2002, and 2003 for the Federal Motor Carrier Safety Administration when the President submits his budget, including a justification for increasing personnel at headquarters above the levels so transferred.

49 USC 31136
note.

(f) **AUTHORITY TO PROMULGATE SAFETY STANDARDS FOR RETROFITTING.**—The authority under title 49, United States Code, to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture is vested in the Secretary and may be delegated.

49 USC 330 note.

(g) **CONFLICTS OF INTEREST.**—

(1) **COMPLIANCE WITH REGULATION.**—In awarding any contract for research, the Secretary shall comply with section 1252.209-70 of title 48, Code of Federal Regulations, as in effect on the date of the enactment of this section. The Secretary shall require that the text of such section be included in any request for proposal and contract for research made by the Secretary.

(2) **STUDY.**—

(A) **IN GENERAL.**—The Secretary shall conduct a study to determine whether or not compliance with the section referred to in paragraph (1) is sufficient to avoid conflicts of interest in contracts for research awarded by the Secretary and to evaluate whether or not compliance with such section unreasonably delays or burdens the awarding of such contracts.

(B) **CONSULTATION.**—In conducting the study under this paragraph, the Secretary shall consult, as appropriate, with the Inspector General of the Department of Transportation, the Comptroller General, the heads of other Federal agencies, research organizations, industry representatives, employee organizations, safety organizations, and other entities.

Deadline.

(C) **REPORT.**—Not later than 18 months after the date of the enactment of this Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the results of the study conducted under this paragraph.

SEC. 102. REVENUE ALIGNED BUDGET AUTHORITY.

(a) **IN GENERAL.**—Chapter 1 of title 23, United States Code, is amended—

(1) by redesignating the first section 110, relating to uniform transferability of Federal-aid highway funds, as section 126 and moving and inserting such section after section 125 of such chapter; and

(2) in the remaining section 110, relating to revenue aligned budget authority—

(A) in subsection (a)(2) by inserting “and the motor carrier safety grant program” after “relief”); and

(B) in subsection (b)(1)(A)—

(i) by inserting “and the motor carrier safety grant program” after “program”);

(ii) by striking “title and” and inserting “title,”; and

(iii) by inserting “, and subchapter I of chapter 311 of title 49” after “21st Century”.

(b) CONFORMING AMENDMENT.—The analysis for such chapter is amended—

(1) by striking

“110. Uniform transferability of Federal-aid highway funds.”;

(2) by inserting after the item relating to section 125 the following:

“126. Uniform transferability of Federal-aid highway funds.”;

and

(3) in the item relating to section 163 by striking “Sec.”.

SEC. 103. ADDITIONAL FUNDING FOR MOTOR CARRIER SAFETY GRANT PROGRAM.

(a) IN GENERAL.—There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for the Secretary of Transportation to carry out section 31102 of title 49, United States Code, \$75,000,000 for each of fiscal years 2001 through 2003.

(b) INCREASED AUTHORIZATIONS FOR MOTOR CARRIER SAFETY GRANTS.—

(1) IN GENERAL.—Section 4003 of the Transportation Equity Act for the 21st Century (112 Stat. 395-398) is amended by adding at the end the following:

“(i) INCREASED AUTHORIZATIONS FOR MOTOR CARRIER SAFETY GRANTS.—The amount made available to incur obligations to carry out section 31102 of title 49, United States Code, by section 31104(a) of such title for each of fiscal years 2001 through 2003 shall be increased by \$65,000,000.”

(2) CORRESPONDING REDUCTION TO OBLIGATION CEILING.—Section 1102 of such Act (23 U.S.C. 104 note; 112 Stat. 1115-1118) is amended by adding at the end the following:

“(j) REDUCTION IN OBLIGATION CEILING.—The limitation on obligations imposed by subsection (a) for each of fiscal years 2001 through 2003 shall be reduced by \$65,000,000.”

(c) MAINTENANCE OF EFFORT.—The Secretary may not make, from funds made available by or under this section (including any amendment made by this section), a grant to a State unless the State first enters into a binding agreement with the Secretary that provides that the total expenditures of amounts of the State and its political subdivisions (not including amounts of the United States) for the development or implementation of programs for improving motor carrier safety and enforcement of regulations, standards, and orders of the United States on commercial motor vehicle safety, hazardous materials transportation safety, and compatible State regulations, standards, and orders will be maintained at a level at least equal to the average level of such expenditures for fiscal years 1997, 1998, and 1999.

49 USC 31104
note.

49 USC 31102
note.

(d) **EMERGENCY CDL GRANTS.**—Section 31107 of title 49, United States Code, is amended by adding at the end the following:

“(c) **EMERGENCY CDL GRANTS.**—From amounts made available by subsection (a) for a fiscal year, the Secretary of Transportation may make a grant of up to \$1,000,000 to a State whose commercial driver’s license program may fail to meet the compliance requirements of section 31311(a).”.

49 USC 31102
note.

(e) **STATE COMPLIANCE WITH CDL REQUIREMENTS.**—

(1) **WITHHOLDING OF ALLOCATION FOR NONCOMPLIANCE.**—

If a State is not in substantial compliance with each requirement of section 31311 of title 49, United States Code, the Secretary shall withhold all amounts that would be allocated, but for this paragraph, to the State from funds made available by or under this section (including any amendment made by this section).

(2) **PERIOD OF AVAILABILITY OF WITHHELD FUNDS.**—Any funds withheld under paragraph (1) from any State shall remain available until June 30 of the fiscal year for which the funds are authorized to be appropriated.

(3) **ALLOCATION OF WITHHELD FUNDS AFTER COMPLIANCE.**—If, before the last day of the period for which funds are withheld under paragraph (1) from allocation are to remain available for allocation to a State under paragraph (2), the Secretary determines that the State is in substantial compliance with each requirement of section 31311 of title 49, United States Code, the Secretary shall allocate to the State the withheld funds.

(4) **PERIOD OF AVAILABILITY OF SUBSEQUENTLY ALLOCATED FUNDS.**—Any funds allocated pursuant to paragraph (3) shall remain available for expenditure until the last day of the first fiscal year following the fiscal year in which the funds are so allocated. Sums not expended at the end of such period are released to the Secretary for reallocation.

(5) **EFFECT OF NONCOMPLIANCE.**—If, on June 30 of the fiscal year in which funds are withheld from allocation under paragraph (1), the State is not substantially complying with each requirement of section 31311 of title 49, United States Code, the funds are released to the Secretary for reallocation.

49 USC 31100
note.

SEC. 104. MOTOR CARRIER SAFETY STRATEGY.

(a) **SAFETY GOALS.**—In conjunction with existing federally required strategic planning efforts, the Secretary shall develop a long-term strategy for improving commercial motor vehicle, operator, and carrier safety. The strategy shall include an annual plan and schedule for achieving, at a minimum, the following goals:

(1) Reducing the number and rates of crashes, injuries, and fatalities involving commercial motor vehicles.

(2) Improving the consistency and effectiveness of commercial motor vehicle, operator, and carrier enforcement and compliance programs.

(3) Identifying and targeting enforcement efforts at high-risk commercial motor vehicles, operators, and carriers.

(4) Improving research efforts to enhance and promote commercial motor vehicle, operator, and carrier safety and performance.

(b) **CONTENTS OF STRATEGY.**—

(1) **MEASURABLE GOALS.**—The strategy and annual plans under subsection (a) shall include, at a minimum, specific numeric or measurable goals designed to achieve the strategic goals of subsection (a). The purposes of the numeric or measurable goals are as follows:

(A) To increase the number of inspections and compliance reviews to ensure that all high-risk commercial motor vehicles, operators, and carriers are examined.

(B) To eliminate, with meaningful safety measures, the backlog of rulemakings.

(C) To improve the quality and effectiveness of data bases by ensuring that all States and inspectors accurately and promptly report complete safety information.

(D) To eliminate, with meaningful civil and criminal penalties for violations, the backlog of enforcement cases.

(E) To provide for a sufficient number of Federal and State safety inspectors, and provide adequate facilities and equipment, at international border areas.

(2) **RESOURCE NEEDS.**—In addition, the strategy and annual plans shall include estimates of the funds and staff resources needed to accomplish each activity. Such estimates shall also include the staff skills and training needed for timely and effective accomplishment of each goal.

(3) **SAVINGS CLAUSE.**—In developing and assessing progress toward meeting the measurable goals set forth in this subsection, the Secretary and the Federal Motor Carrier Safety Administrator shall not take any action that would impinge on the due process rights of motor carriers and drivers.

(c) **SUBMISSION WITH THE PRESIDENT'S BUDGET.**—Beginning with fiscal year 2001 and each fiscal year thereafter, the Secretary shall submit to Congress the strategy and annual plan at the same time as the President's budget submission.

(d) **ANNUAL PERFORMANCE.**—

(1) **ANNUAL PERFORMANCE AGREEMENT.**—For each of fiscal years 2001 through 2003, the following officials shall enter into annual performance agreements:

(A) The Secretary and the Federal Motor Carrier Safety Administrator.

(B) The Administrator and the Deputy Federal Motor Carrier Safety Administrator.

(C) The Administrator and the Chief Safety Officer of the Federal Motor Carrier Safety Administration.

(D) The Administrator and the regulatory ombudsman of the Administration designated by the Administrator under subsection (f).

(2) **GOALS.**—Each annual performance agreement entered into under paragraph (1) shall include the appropriate numeric or measurable goals of subsection (b).

(3) **PROGRESS ASSESSMENT.**—Consistent with the current performance appraisal system of the Department of Transportation, the Secretary shall assess the progress of each official (other than the Secretary) referred to in paragraph (1) toward achieving the goals in his or her performance agreement. The Secretary shall convey the assessment to such official, including identification of any deficiencies that should be remediated before the next progress assessment.

(4) **ADMINISTRATION.**—In deciding whether or not to award a bonus or other achievement award to an official of the Administration who is a party to a performance agreement required by this subsection, the Secretary shall give substantial weight to whether the official has made satisfactory progress toward meeting the goals of his or her performance agreement.

(e) **ACHIEVEMENT OF GOALS.**—

(1) **PROGRESS ASSESSMENT.**—No less frequently than semi-annually, the Secretary and the Administrator shall assess the progress of the Administration toward achieving the strategic goals of subsection (a). The Secretary and the Administrator shall convey their assessment to the employees of the Administration and shall identify any deficiencies that should be remediated before the next progress assessment.

(2) **REPORT TO CONGRESS.**—The Secretary shall report annually to Congress the contents of each performance agreement entered into under subsection (d) and the official's performance relative to the goals of the performance agreement. In addition, the Secretary shall report to Congress on the performance of the Administration relative to the goals of the motor carrier safety strategy and annual plan under subsection (a).

(f) **EXPEDITING REGULATORY PROCEEDINGS.**—The Administrator shall designate a regulatory ombudsman to expedite rulemaking proceedings. The Secretary and the Administrator shall each delegate to the ombudsman such authority as may be necessary for the ombudsman to expedite rulemaking proceedings of the Administration to comply with statutory and internal departmental deadlines, including authority to—

(1) make decisions to resolve disagreements between officials in the Administration who are participating in a rulemaking process; and

(2) ensure that sufficient staff are assigned to rulemaking projects to meet all deadlines.

49 USC 31100
note.

SEC. 105. COMMERCIAL MOTOR VEHICLE SAFETY ADVISORY COMMITTEE.

(a) **ESTABLISHMENT.**—The Secretary may establish a commercial motor vehicle safety advisory committee to provide advice and recommendations on a range of motor carrier safety issues.

(b) **COMPOSITION.**—The members of the advisory committee shall be appointed by the Secretary and shall include representatives of the motor carrier industry, drivers, safety advocates, manufacturers, safety enforcement officials, law enforcement agencies of border States, and other individuals affected by rulemakings under consideration by the Department of Transportation. Representatives of a single interest group may not constitute a majority of the members of the advisory committee.

(c) **FUNCTION.**—The advisory committee shall provide advice to the Secretary on commercial motor vehicle safety regulations and other matters relating to activities and functions of the Federal Motor Carrier Safety Administration.

(d) **TERMINATION DATE.**—The advisory committee shall remain in effect until September 30, 2003.

49 USC 113 note.

SEC. 106. SAVINGS PROVISION.

(a) **TRANSFER OF ASSETS AND PERSONNEL.**—Except as otherwise provided in this Act and the amendments made by this Act, those

personnel, property, and records employed, used, held, available, or to be made available in connection with a function transferred to the Federal Motor Carrier Safety Administration by this Act shall be transferred to the Administration for use in connection with the functions transferred, and unexpended balances of appropriations, allocations, and other funds of the Office of Motor Carrier Safety (including any predecessor entity) shall also be transferred to the Administration.

(b) **LEGAL DOCUMENTS.**—All orders, determinations, rules, regulations, permits, grants, loans, contracts, settlements, agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the Office, any officer or employee of the Office, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this Act or the amendments made by this Act; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date), shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Administration, any other authorized official, a court of competent jurisdiction, or operation of law.

(c) **PROCEEDINGS.**—

(1) **IN GENERAL.**—The provisions of this Act shall not affect any proceedings or any application for any license pending before the Office at the time this Act takes effect, insofar as those functions are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(2) **STATUTORY CONSTRUCTION.**—Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any proceeding described in paragraph (1) under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(3) **ORDERLY TRANSFER.**—The Secretary is authorized to provide for the orderly transfer of pending proceedings from the Office.

(d) **SUITS.**—

(1) **IN GENERAL.**—This Act shall not affect suits commenced before the date of the enactment of this Act, except as provided in paragraphs (2) and (3). In all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

(2) **SUITS BY OR AGAINST OMCS.**—Any suit by or against the Office begun before January 1, 2000, shall be continued, insofar as it involves a function retained and transferred under this Act, with the Administration (to the extent the suit involves

functions transferred to the Administration under this Act) substituted for the Office.

(3) REMANDED CASES.—If the court in a suit described in paragraph (1) remands a case to the Administration, subsequent proceedings related to such case shall proceed in accordance with applicable law and regulations as in effect at the time of such subsequent proceedings.

(e) CONTINUANCE OF ACTIONS AGAINST OFFICERS.—No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Office shall abate by reason of the enactment of this Act. No cause of action by or against the Office, or by or against any officer thereof in his official capacity, shall abate by reason of the enactment of this Act.

(f) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, an officer or employee of the Administration may, for purposes of performing a function transferred by this Act or the amendments made by this Act, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this Act or the amendments made by this Act.

(g) REFERENCES.—Any reference to the Office in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Office or an officer or employee of the Office is deemed to refer to the Administration or a member or employee of the Administration, as appropriate.

SEC. 107. EFFECTIVE DATE.

49 USC 104 note.

(a) IN GENERAL.—This Act shall take effect on the date of the enactment of this Act; except that the amendments made by section 101 shall take effect on January 1, 2000.

31 USC 1105 note.

(b) BUDGET SUBMISSIONS.—The President's budget submission for fiscal year 2001 and each fiscal year thereafter shall reflect the establishment of the Federal Motor Carrier Safety Administration in accordance with this Act.

TITLE II—COMMERCIAL MOTOR VEHICLE AND DRIVER SAFETY

SEC. 201. DISQUALIFICATIONS.

(a) DRIVING WHILE DISQUALIFIED AND CAUSING A FATALITY.—

(1) FIRST VIOLATION.—Section 31310(b)(1) of title 49, United States Code, is amended—

(A) by striking "or" at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph

(C) and inserting a semicolon; and

(C) by adding at the end the following:

"(D) committing a first violation of driving a commercial motor vehicle when the individual's commercial driver's license is revoked, suspended, or canceled based on the individual's operation of a commercial motor vehicle or when the individual is disqualified from operating a commercial motor vehicle based on the individual's operation of a commercial motor vehicle; or

"(E) convicted of causing a fatality through negligent or criminal operation of a commercial motor vehicle."

(2) SECOND AND MULTIPLE VIOLATIONS.—Section 31310(c)(1) of such title is amended—

(A) by striking "or" at the end of subparagraph (C);

(B) by redesignating subparagraph (D) as subparagraph (F);

(C) by inserting after subparagraph (C) the following:

"(D) committing more than one violation of driving a commercial motor vehicle when the individual's commercial driver's license is revoked, suspended, or canceled based on the individual's operation of a commercial motor vehicle or when the individual is disqualified from operating a commercial motor vehicle based on the individual's operation of a commercial motor vehicle;

"(E) convicted of more than one offense of causing a fatality through negligent or criminal operation of a commercial motor vehicle; or"; and

(D) in subparagraph (F) (as redesignated by subparagraph (B) of this paragraph) by striking "clauses (A)–(C) of this paragraph" and inserting "subparagraphs (A) through (E)".

(3) CONFORMING AMENDMENT.—Section 31301(12)(C) of such title is amended by inserting ", other than a violation to which section 31310(b)(1)(E) or 31310(c)(1)(E) applies" after "a fatality".

(b) EMERGENCY DISQUALIFICATION; NONCOMMERCIAL MOTOR VEHICLE CONVICTIONS.—Section 31310 of such title is amended—

(1) by redesignating subsections (f), (g), and (h) as subsections (h), (i), and (j), respectively;

(2) by inserting after subsection (e) the following:

"(f) EMERGENCY DISQUALIFICATION.—

"(1) LIMITED DURATION.—The Secretary shall disqualify an individual from operating a commercial motor vehicle for not to exceed 30 days if the Secretary determines that allowing the individual to continue to operate a commercial motor vehicle would create an imminent hazard (as such term is defined in section 5102).

"(2) AFTER NOTICE AND HEARING.—The Secretary shall disqualify an individual from operating a commercial motor vehicle for more than 30 days if the Secretary determines, after notice and an opportunity for a hearing, that allowing the individual to continue to operate a commercial motor vehicle would create an imminent hazard (as such term is defined in section 5102).

"(g) NONCOMMERCIAL MOTOR VEHICLE CONVICTIONS.—

"(1) ISSUANCE OF REGULATIONS.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall issue regulations providing for the disqualification by the Secretary from operating a commercial motor vehicle of an individual who holds a commercial driver's license and who has been convicted of—

"(A) a serious offense involving a motor vehicle (other than a commercial motor vehicle) that has resulted in the revocation, cancellation, or suspension of the individual's license; or

"(B) a drug or alcohol related offense involving a motor vehicle (other than a commercial motor vehicle).

Deadline.

“(2) REQUIREMENTS FOR REGULATIONS.—Regulations issued under paragraph (1) shall establish the minimum periods for which the disqualifications shall be in effect, but in no case shall the time periods for disqualification for noncommercial motor vehicle violations be more stringent than those for offenses or violations involving a commercial motor vehicle. The Secretary shall determine such periods based on the seriousness of the offenses on which the convictions are based.”; and

(3) in subsection (h) (as redesignated by paragraph (1) of this subsection) by striking “(b)–(e)” each place it appears and inserting “(b) through (g)”.

(c) SERIOUS TRAFFIC VIOLATIONS.—Section 31301(12) of such title is amended—

(1) by striking “and” at the end of subparagraph (C);

(2) by redesignating subparagraph (D) as subparagraph (G); and

(3) by inserting after subparagraph (C) the following:

“(D) driving a commercial motor vehicle when the individual has not obtained a commercial driver’s license;

“(E) driving a commercial motor vehicle when the individual does not have in his or her possession a commercial driver’s license unless the individual provides, by the date that the individual must appear in court or pay any fine with respect to the citation, to the enforcement authority that issued the citation proof that the individual held a valid commercial driver’s license on the date of the citation;

“(F) driving a commercial motor vehicle when the individual has not met the minimum testing standards—

“(i) under section 31305(a)(3) for the specific class of vehicle the individual is operating; or

“(ii) under section 31305(a)(5) for the type of cargo the vehicle is carrying; and”.

(d) CONFORMING AMENDMENTS.—Section 31305(b)(1) of such title is amended—

(1) by striking “to operate the vehicle”; and

(2) by inserting before the period at the end the following: “to operate the vehicle and has a commercial driver’s license to operate the vehicle”.

SEC. 202. REQUIREMENTS FOR STATE PARTICIPATION.

(a) REQUESTS FOR DRIVING RECORD INFORMATION.—Section 31311(a)(6) of title 49, United States Code, is amended—

(1) by inserting “or renewing such a license” before the comma; and

(2) by striking “commercial” the second place it appears.

(b) RECORDING OF VIOLATIONS.—Section 31311(a)(8) of such title is amended by inserting before the period at the end the following: “, and the violation that resulted in the disqualification, revocation, suspension, or cancellation shall be recorded”.

(c) NOTIFICATION OF STATE OFFICIALS.—Section 31311(a)(9) of such title is amended to read as follows:

“(9) If an individual violates a State or local law on motor vehicle traffic control (except a parking violation) and the individual—

“(A) has a commercial driver’s license issued by another State; or

“(B) is operating a commercial vehicle without a commercial driver’s license and has a driver’s license issued by another State, the State in which the violation occurred shall notify a State official designated by the issuing State of the violations not later than 10 days after the date the individual is found to have committed the violation.”

(d) PROVISIONAL LICENSES.—Section 31311(a)(10) of such title is amended—

(1) by striking “(10)” and inserting “(10)(A)”; and

(2) by adding at the end the following:

“(B) The State may not issue a special license or permit (including a provisional or temporary license) to an individual who holds a commercial driver’s license that permits the individual to drive a commercial motor vehicle during a period in which—

“(i) the individual is disqualified from operating a commercial motor vehicle; or

“(ii) the individual’s driver’s license is revoked, suspended, or canceled.”

(e) PENALTIES.—Section 31311(a)(13) of such title is amended—

(1) by inserting “consistent with this chapter that” after “penalties”; and

(2) by striking “vehicle” the first place it appears and all that follows through the period at the end and inserting “vehicle.”

(f) RECORDS OF VIOLATIONS.—Section 31311(a) of such title is amended by adding at the end the following:

“(18) The State shall maintain, as part of its driver information system, a record of each violation of a State or local motor vehicle traffic control law while operating a motor vehicle (except a parking violation) for each individual who holds a commercial driver’s license. The record shall be available upon request to the individual, the Secretary, employers, prospective employers, State licensing and law enforcement agencies, and their authorized agents.”

(g) MASKING.—Section 31311(a) of such title is further amended by adding at the end the following:

“(19) The State shall—

“(A) record in the driving record of an individual who has a commercial driver’s license issued by the State; and

“(B) make available to all authorized persons and governmental entities having access to such record, all information the State receives under paragraph (9) with respect to the individual and every violation by the individual involving a motor vehicle (including a commercial motor vehicle) of a State or local law on traffic control (except a parking violation), not later than 10 days after the date of receipt of such information or the date of such violation, as the case may be. The State may not allow information regarding such violations to be withheld or masked in any way from the record of an individual possessing a commercial driver’s license.”

(h) NONCOMMERCIAL MOTOR VEHICLE CONVICTIONS.—Section 31311(a) of such title is further amended by adding at the end the following:

"(20) The State shall revoke, suspend, or cancel the commercial driver's license of an individual in accordance with regulations issued by the Secretary to carry out section 31310(g)."

SEC. 203. STATE NONCOMPLIANCE.

(a) **IN GENERAL.**—Chapter 313 of title 49, United States Code, is amended by inserting after section 31311 the following:

"§ 31312. Decertification authority

"(a) **IN GENERAL.**—If the Secretary of Transportation determines that a State is in substantial noncompliance with this chapter, the Secretary shall issue an order to—

"(1) prohibit that State from carrying out licensing procedures under this chapter; and

"(2) prohibit that State from issuing any commercial driver's licenses until such time the Secretary determines such State is in substantial compliance with this chapter.

"(b) **EFFECT ON OTHER STATES.**—A State (other than a State subject to an order under subsection (a)) may issue a non-resident commercial driver's license to an individual domiciled in a State that is prohibited from such activities under subsection (a) if that individual meets all requirements of this chapter and the non-resident licensing requirements of the issuing State.

"(c) **PREVIOUSLY ISSUED LICENSES.**—Nothing in this section shall be construed as invalidating or otherwise affecting commercial driver's licenses issued by a State before the date of issuance of an order under subsection (a) with respect to the State."

(b) **CONFORMING AMENDMENT.**—The chapter analysis for chapter 313 of such title is amended by inserting after the item relating to section 31311 the following:

"31312. Decertification authority."

SEC. 204. CHECKS BEFORE ISSUANCE OF DRIVER'S LICENSES.

Section 30304 of title 49, United States Code, is amended by adding at the end the following:

"(e) **DRIVER RECORD INQUIRY.**—Before issuing a motor vehicle operator's license to an individual or renewing such a license, a State shall request from the Secretary information from the National Driver Register under section 30302 and the commercial driver's license information system under section 31309 on the individual's driving record."

SEC. 205. REGISTRATION ENFORCEMENT.

Section 13902 of title 49, United States Code, is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

"(e) **PENALTIES FOR FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS.**—In addition to other penalties available under law, motor carriers that fail to register their operations as required by this section or that operate beyond the scope of their registrations may be subject to the following penalties:

"(1) **OUT-OF-SERVICE ORDERS.**—If, upon inspection or investigation, the Secretary determines that a motor vehicle providing transportation requiring registration under this section is operating without a registration or beyond the scope of its registration, the Secretary may order the vehicle out-of-service. Subsequent to the issuance of the out-of-service order, the

Secretary shall provide an opportunity for review in accordance with section 554 of title 5, United States Code; except that such review shall occur not later than 10 days after issuance of such order.

"(2) PERMISSION FOR OPERATIONS.—A person domiciled in a country contiguous to the United States with respect to which an action under subsection (c)(1)(A) or (c)(1)(B) is in effect and providing transportation for which registration is required under this section shall maintain evidence of such registration in the motor vehicle when the person is providing the transportation. The Secretary shall not permit the operation in interstate commerce in the United States of any motor vehicle in which there is not a copy of the registration issued pursuant to this section."

SEC. 206. DELINQUENT PAYMENT OF PENALTIES.

(a) REVOCATION OF REGISTRATION.—Section 13905(c) of title 49, United States Code, is amended—

(1) by inserting "(1) IN GENERAL.—" before "On application";

(2) by inserting "(A)" before "suspend";

(3) by striking the period at the end of the second sentence and inserting "; and (B) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder: (i) for failure to pay a civil penalty imposed under chapter 5, 51, 149, or 311 of this title; or (ii) for failure to arrange and abide by an acceptable payment plan for such civil penalty, within 90 days of the time specified by order of the Secretary for the payment of such penalty. Subparagraph (B) shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11, United States Code.

"(2) REGULATIONS.—Not later than 12 months after the date of the enactment of this paragraph, the Secretary, after notice and opportunity for public comment, shall issue regulations to provide for the suspension, amendment, or revocation of a registration under this part for failure to pay a civil penalty as provided in paragraph (1)(B)."; and

Deadline

(4) by indenting paragraph (1) (as designated by paragraph (1) of this section) and aligning such paragraph with paragraph (2) of such section (as added by paragraph (3) of this section).

(b) PROHIBITED TRANSPORTATION BY COMMERCIAL MOTOR VEHICLE OPERATORS.—Section 521(b) of such title is amended—

(1) by redesignating paragraphs (8) through (13) as paragraphs (9) through (14), respectively; and

(2) by inserting after paragraph (7) the following:

"(8) PROHIBITION ON OPERATION IN INTERSTATE COMMERCE AFTER NONPAYMENT OF PENALTIES.—

"(A) IN GENERAL.—An owner or operator of a commercial motor vehicle against whom a civil penalty is assessed under this chapter or chapter 51, 149, or 311 of this title and who does not pay such penalty or fails to arrange and abide by an acceptable payment plan for such civil penalty may not operate in interstate commerce beginning on the 91st day after the date specified by order of the Secretary for payment of such penalty. This paragraph shall not apply to any person who is unable to pay a

civil penalty because such person is a debtor in a case under chapter 11 of title 11, United States Code.

Deadline.

“(B) REGULATIONS.—Not later than 12 months after the date of the enactment of this paragraph, the Secretary, after notice and an opportunity for public comment, shall issue regulations setting forth procedures for ordering commercial motor vehicle owners and operators delinquent in paying civil penalties to cease operations until payment has been made.”

SEC. 207. STATE COOPERATION IN REGISTRATION ENFORCEMENT.

Section 31102(b)(1) of title 49, United States Code, is amended—

(1) by aligning subparagraph (A) with subparagraph (B) of such section; and

(2) by striking subparagraph (R) and inserting the following:

“(R) ensures that the State will cooperate in the enforcement of registration requirements under section 13902 and financial responsibility requirements under sections 13906, 31138, and 31139 and regulations issued thereunder;”.

SEC. 208. IMMINENT HAZARD.

Section 521(b)(5)(B) of title 49, United States Code, is amended by striking “is likely to result in” and inserting “substantially increases the likelihood of”.

SEC. 209. HOUSEHOLD GOODS AMENDMENTS.

(a) DEFINITION OF HOUSEHOLD GOODS.—Section 13102(10)(A) of title 49, United States Code, is amended by striking “, including” and all that follows through “dwelling,” and inserting “, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder;”.

(b) ARBITRATION REQUIREMENTS.—Section 14708(b)(6) of such title is amended by striking “\$1,000” each place it appears and inserting “\$5,000”.

49 USC 14104
note.

(c) STUDY OF ENFORCEMENT OF CONSUMER PROTECTION RULES IN THE HOUSEHOLD GOODS MOVING INDUSTRY.—The Comptroller General shall conduct a study of the effectiveness of the Department of Transportation’s enforcement of household goods consumer protection rules under title 49, United States Code. The study shall also include a review of other potential methods of enforcing such rules, including allowing States to enforce such rules.

SEC. 210. NEW MOTOR CARRIER ENTRANT REQUIREMENTS.

(a) SAFETY REVIEWS.—Section 31144 of title 49, United States Code, is amended by adding at the end the following:

“(c) SAFETY REVIEWS OF NEW OPERATORS.—

Regulations.

“(1) IN GENERAL.—The Secretary shall require, by regulation, each owner and each operator granted new operating authority, after the date on which section 31148(b) is first implemented, to undergo a safety review within the first 18 months after the owner or operator, as the case may be, begins operations under such authority.

“(2) ELEMENTS.—In the regulations issued pursuant to paragraph (1), the Secretary shall establish the elements of the safety review, including basic safety management controls. In establishing such elements, the Secretary shall consider their effects on small businesses and shall consider establishing alternate locations where such reviews may be conducted for the convenience of small businesses.

“(3) PHASE-IN OF REQUIREMENT.—The Secretary shall phase in the requirements of paragraph (1) in a manner that takes into account the availability of certified motor carrier safety auditors.

“(4) NEW ENTRANT AUTHORITY.—Notwithstanding any other provision of this title, any new operating authority granted after the date on which section 31148(b) is first implemented shall be designated as new entrant authority until the safety review required by paragraph (1) is completed.”

(b) MINIMUM REQUIREMENTS.—The Secretary shall initiate a rulemaking to establish minimum requirements for applicant motor carriers, including foreign motor carriers, seeking Federal interstate operating authority to ensure applicant carriers are knowledgeable about applicable Federal motor carrier safety standards. As part of that rulemaking, the Secretary shall consider the establishment of a proficiency examination for applicant motor carriers as well as other requirements to ensure such applicants understand applicable safety regulations before being granted operating authority.

49 USC 31144
note.

SEC. 211. CERTIFICATION OF SAFETY AUDITORS.

(a) IN GENERAL.—Chapter 311 of title 49, United States Code, is amended by adding at the end the following:

“§ 31148. Certified motor carrier safety auditors

“(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this section, the Secretary of Transportation shall complete a rulemaking to improve training and provide for the certification of motor carrier safety auditors, including private contractors, to conduct safety inspection audits and reviews described in subsection (b).

Deadline.

“(b) CERTIFIED INSPECTION AUDIT REQUIREMENT.—Not later than 1 year after completion of the rulemaking required by subsection (a), any safety inspection audit or review required by, or based on the authority of, this chapter or chapter 5, 13, or 315 of this title and performed after December 31, 2002, shall be conducted by—

Deadline.

“(1) a motor carrier safety auditor certified under subsection (a); or

“(2) a Federal or State employee who, on the date of the enactment of this section, was qualified to perform such an audit or review.

“(c) EXTENSION.—If the Secretary determines that subsection (b) cannot be implemented within the 1-year period established by that subsection and notifies the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the determination and the reasons therefor, the Secretary may extend the deadline for compliance with subsection (b) by not more than 12 months.

“(d) APPLICATION WITH OTHER AUTHORITY.—The Secretary may not delegate the Secretary’s authority to private contractors to issue ratings or operating authority, and nothing in this section authorizes any private contractor to issue ratings or operating authority.

“(e) OVERSIGHT RESPONSIBILITY.—The Secretary shall have authority over any motor carrier safety auditor certified under subsection (a), including the authority to decertify a motor carrier safety auditor.”

(b) CONFORMING AMENDMENT.—The analysis for such chapter 311 is amended by adding at the end the following:

“31148. Certified motor carrier safety auditors.”

SEC. 212. COMMERCIAL VAN RULEMAKING.

Deadline.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall complete Department of Transportation’s rulemaking, Docket No. FHWA-99-5710, to amend Federal motor carrier safety regulations to determine which motor carriers operating commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver) for compensation shall be covered. At a minimum, the rulemaking shall apply such regulations to—

- (1) commercial vans commonly referred to as “camionetas”; and
- (2) those commercial vans operating in interstate commerce outside commercial zones that have been determined to pose serious safety risks.

In no case should the rulemaking exempt from such regulations all motor carriers operating commercial vehicles designed or used to transport between 9 and 15 passengers (including the driver) for compensation.

SEC. 213. 24-HOUR STAFFING OF TELEPHONE HOTLINE.

Section 4017 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31143 note; 112 Stat. 413) is amended—

- (1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively;
- (2) by inserting after subsection (b) the following:

“(c) STAFFING.—The toll-free telephone system shall be staffed 24 hours a day 7 days a week by individuals knowledgeable about Federal motor carrier safety regulations and procedures.”; and

- (3) in subsection (e) (as redesignated by paragraph (1) of this section)—
 - (A) by striking “104(a)” and inserting “104(a)(1)(B)”; and
 - (B) by striking “for each of fiscal years 1999” and inserting “for fiscal year 1999 and \$375,000 for each of fiscal years 2000”.

49 USC 31305
note.
Regulations.

SEC. 214. CDL SCHOOL BUS ENDORSEMENT.

The Secretary shall conduct a rulemaking to establish a special commercial driver’s license endorsement for drivers of school buses. The endorsement shall, at a minimum—

- (1) include a driving skills test in a school bus; and
- (2) address proper safety procedures for—
 - (A) loading and unloading children;
 - (B) using emergency exits; and
 - (C) traversing highway rail grade crossings.

SEC. 215. MEDICAL CERTIFICATE.

The Secretary shall initiate a rulemaking to provide for a Federal medical qualification certificate to be made a part of commercial driver's licenses.

49 USC 31305
note.
Regulations.

SEC. 216. IMPLEMENTATION OF INSPECTOR GENERAL RECOMMENDATIONS.

(a) **IN GENERAL.**—The Secretary shall implement the safety improvement recommendations provided for in the Department of Transportation Inspector General's Report TR-1999-091, except to the extent that such recommendations are specifically addressed in sections 206, 208, 217, and 222 of this Act, including any amendments made by such sections.

(b) REPORTS TO CONGRESS.—

(1) **REPORTS BY THE SECRETARY.**—Not later than 90 days after the date of the enactment of this Act, and every 90 days thereafter until each of the recommendations referred to in subsection (a) has been implemented, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the specific actions taken to implement such recommendations.

Deadline.

(2) **REPORTS BY THE INSPECTOR GENERAL.**—The Inspector General shall periodically transmit to the committees referred to in paragraph (1) a report assessing the Secretary's progress in implementing the recommendations referred to in subsection (a) and analyzing the number of violations cited by safety inspectors and the level of fines assessed and collected for such violations, and of the number of cases in which there are findings of extraordinary circumstances under section 222(c) of this Act and the circumstances in which these findings are made.

SEC. 217. PERIODIC REFILEING OF MOTOR CARRIER IDENTIFICATION REPORTS.

The Secretary shall amend section 385.21 of the Department of Transportation's regulations (49 CFR 385.21) to require periodic updating, not more frequently than once every 2 years, of the motor carrier identification report, form MCS-150, filed by each motor carrier conducting operations in interstate or foreign commerce. The initial update shall occur not later than 1 year after the date of the enactment of this Act.

Deadline.

SEC. 218. BORDER STAFFING STANDARDS.

(a) **DEVELOPMENT AND IMPLEMENTATION.**—Not later than 1 year after the date of the enactment of this Act, the Secretary shall develop and implement appropriate staffing standards for Federal and State motor carrier safety inspectors in international border areas.

49 USC 31133
note.
Deadline.

(b) **FACTORS TO BE CONSIDERED.**—In developing standards under subsection (a), the Secretary shall consider volume of traffic, hours of operation of the border facility, types of commercial motor vehicles, types of cargo, delineation of responsibility between Federal and State inspectors, and such other factors as the Secretary determines appropriate.

(c) **MAINTENANCE OF EFFORT.**—The standards developed and implemented under subsection (a) shall ensure that the United

States and each State will not reduce its respective level of staffing of motor carrier safety inspectors in international border areas from its average level staffing for fiscal year 2000.

(d) BORDER COMMERCIAL MOTOR VEHICLE AND SAFETY ENFORCEMENT PROGRAMS.—

(1) **ENFORCEMENT.**—If, on October 1, 2001, and October 1 of each fiscal year thereafter, the Secretary has not ensured that the levels of staffing required by the standards developed under subsection (a) are deployed, the Secretary should designate the amount made available for allocation under section 31104(f)(2)(B) of title 49, United States Code, for such fiscal year for States, local governments, and other persons for carrying out border commercial motor vehicle safety programs and enforcement activities and projects.

(2) **ALLOCATION.**—If the Secretary makes a designation of an amount under paragraph (1), such amount shall be allocated by the Secretary to State agencies, local governments, and other persons that use and train qualified officers and employees in coordination with State motor vehicle safety agencies.

(3) **LIMITATION.**—If the Secretary makes a designation pursuant to paragraph (1) for a fiscal year, the Secretary may not make a designation under section 31104(f)(2)(B) of title 49, United States Code, for such fiscal year.

49 USC 14901
note.

SEC. 219. FOREIGN MOTOR CARRIER PENALTIES AND DISQUALIFICATIONS.

(a) **GENERAL RULE.**—Subject to subsections (b) and (c), a foreign motor carrier or foreign motor private carrier (as such terms are defined under section 13102 of title 49, United States Code) that operates without authority, before the implementation of the land transportation provisions of the North American Free Trade Agreement, outside the boundaries of a commercial zone along the United States-Mexico border shall be liable to the United States for a civil penalty and shall be disqualified from operating a commercial motor vehicle anywhere within the United States as provided in subsections (b) and (c).

(b) **PENALTY FOR INTENTIONAL VIOLATION.**—The civil penalty for an intentional violation of subsection (a) by a carrier shall not be more than \$10,000 and may include a disqualification from operating a commercial motor vehicle anywhere within the United States for a period of not more than 6 months.

(c) **PENALTY FOR PATTERN OF INTENTIONAL VIOLATIONS.**—The civil penalty for a pattern of intentional violations of subsection (a) by a carrier shall not be more than \$25,000 and the carrier shall be disqualified from operating a commercial motor vehicle anywhere within the United States and the disqualification may be permanent.

(d) **LEASING.**—Before the implementation of the land transportation provisions of the North American Free Trade Agreement, during any period in which a suspension, condition, restriction, or limitation imposed under section 13902(c) of title 49, United States Code, applies to a motor carrier (as defined in section 13902(e) of such title), that motor carrier may not lease a commercial motor vehicle to another motor carrier or a motor private carrier to transport property in the United States.

(e) **SAVINGS CLAUSE.**—No provision of this section may be enforced if it is inconsistent with any international agreement of the United States.

(f) **ACTS OF EMPLOYEES.**—The actions of any employee driver of a foreign motor carrier or foreign motor private carrier committed without the knowledge of the carrier or committed unintentionally shall not be grounds for penalty or disqualification under this section.

SEC. 220. TRAFFIC LAW INITIATIVE.

49 USC 31131
note.

(a) **IN GENERAL.**—In cooperation with one or more States, the Secretary may carry out a program to develop innovative methods of improving motor carrier compliance with traffic laws. Such methods may include the use of photography and other imaging technologies.

(b) **REPORT.**—The Secretary shall transmit to Congress a report on the results of any program conducted under this section, together with any recommendations as the Secretary determines appropriate.

SEC. 221. STATE-TO-STATE NOTIFICATION OF VIOLATIONS DATA.

49 USC 31311
note.

(a) **DEVELOPMENT.**—In cooperation with the States, the Secretary shall develop a uniform system to support the electronic transmission of data State-to-State on convictions for all motor vehicle traffic control law violations by individuals possessing a commercial drivers' licenses as required by paragraphs (9) and (19) of section 31311(a) of title 49, United States Code.

(b) **STATUS REPORT.**—Not later than 2 years after the date of the enactment of this Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the status of the implementation of this section.

Deadline.

SEC. 222. MINIMUM AND MAXIMUM ASSESSMENTS.

49 USC 521 note.

(a) **IN GENERAL.**—The Secretary of Transportation should ensure that motor carriers operate safely by imposing civil penalties at a level calculated to ensure prompt and sustained compliance with Federal motor carrier safety and commercial driver's license laws.

(b) **ESTABLISHMENT.**—The Secretary—

(1) should establish and assess minimum civil penalties for each violation of a law referred to in subsection (a); and

(2) shall assess the maximum civil penalty for each violation of a law referred to in subsection (a) by any person who is found to have committed a pattern of violations of critical or acute regulations issued to carry out such a law or to have previously committed the same or a related violation of critical or acute regulations issued to carry out such a law.

(c) **EXTRAORDINARY CIRCUMSTANCES.**—If the Secretary determines and documents that extraordinary circumstances exist which merit the assessment of any civil penalty lower than any level established under subsection (b), the Secretary may assess such lower penalty. In cases where a person has been found to have previously committed the same or a related violation of critical or acute regulations issued to carry out a law referred to in subsection (a), extraordinary circumstances may be found to exist when the Secretary determines that repetition of such violation does not demonstrate a failure to take appropriate remedial action.

(d) REPORT TO CONGRESS.—

(1) **IN GENERAL.**—The Secretary shall conduct a study of the effectiveness of the revised civil penalties established in the Transportation Equity Act for the 21st Century and this Act in ensuring prompt and sustained compliance with Federal motor carrier safety and commercial driver's license laws.

(2) **SUBMISSION TO CONGRESS.**—The Secretary shall transmit the results of such study and any recommendations to Congress by September 30, 2002.

SEC. 223. MOTOR CARRIER SAFETY PROGRESS REPORT.

Not later than May 25, 2000, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a status report on the Department of Transportation's quantitative progress toward reducing motor carrier fatalities by 50 percent by the year 2009.

49 USC 31100
note.

SEC. 224. STUDY OF COMMERCIAL MOTOR VEHICLE CRASH CAUSATION.

(a) **OBJECTIVES.**—The Secretary shall conduct a comprehensive study to determine the causes of, and contributing factors to, crashes that involve commercial motor vehicles. The study shall also identify data requirements and collection procedures, reports, and other measures that will improve the Department of Transportation's and States' ability to—

- (1) evaluate future crashes involving commercial motor vehicles;
- (2) monitor crash trends and identify causes and contributing factors; and
- (3) develop effective safety improvement policies and programs.

(b) **DESIGN.**—The study shall be designed to yield information that will help the Department and the States identify activities and other measures likely to lead to significant reductions in the frequency, severity, and rate per mile traveled of crashes involving commercial motor vehicles, including vehicles described in section 31132(1)(B) of title 49, United States Code. As practicable, the study shall rank such activities and measures by the reductions each would likely achieve, if implemented.

(c) **CONSULTATION.**—In designing and conducting the study, the Secretary shall consult with persons with expertise on—

- (1) crash causation and prevention;
- (2) commercial motor vehicles, drivers, and carriers, including passenger carriers;
- (3) highways and noncommercial motor vehicles and drivers;
- (4) Federal and State highway and motor carrier safety programs;
- (5) research methods and statistical analysis; and
- (6) other relevant topics.

(d) **PUBLIC COMMENT.**—The Secretary shall make available for public comment information about the objectives, methodology, implementation, findings, and other aspects of the study.

(e) REPORTS.—

(1) **IN GENERAL.**—The Secretary shall promptly transmit to Congress the results of the study, together with any legislative recommendations.

(2) **REVIEW AND UPDATE.**—The Secretary shall review the study at least once every 5 years and update the study and report as necessary.

(f) **FUNDING.**—Of the amounts made available for each of fiscal years 2001, 2002, and 2003 under section 4003(i) of the Transportation Equity Act for the 21st Century (112 Stat. 395-398), as added by section 103(b)(1) of this Act, \$5,000,000 per fiscal year shall be available only to carry out this section.

SEC. 225. DATA COLLECTION AND ANALYSIS.

49 USC 31100
note.

(a) **IN GENERAL.**—In cooperation with the States, the Secretary shall carry out a program to improve the collection and analysis of data on crashes, including crash causation, involving commercial motor vehicles.

(b) **PROGRAM ADMINISTRATION.**—The Secretary shall administer the program through the National Highway Traffic Safety Administration in cooperation with the Federal Motor Carrier Safety Administration. The National Highway Traffic Safety Administration shall—

(1) enter into agreements with the States to collect data and report the data by electronic means to a central data repository; and

Contracts.

(2) train State employees and motor carrier safety enforcement officials to assure the quality and uniformity of the data.

(c) **USE OF DATA.**—The National Highway Traffic Safety Administration shall—

(1) integrate the data, including driver citation and conviction information; and

(2) make the data base available electronically to the Federal Motor Carrier Safety Administration, the States, motor carriers, and other interested parties for problem identification, program evaluation, planning, and other safety-related activities.

(d) **REPORT.**—Not later than 3 years after the date on which the improved data program begins, the Secretary shall transmit a report to Congress on the program, together with any recommendations the Secretary finds appropriate.

Deadline.

(e) **FUNDING.**—Of the amounts deducted under section 104(a)(1)(B) of title 23, United States Code, for each of fiscal years 2001, 2002, and 2003 \$5,000,000 per fiscal year shall be available only to carry out this section.

(f) **ADDITIONAL FUNDING FOR INFORMATION SYSTEMS.**—

(1) **IN GENERAL.**—Of the amounts made available for each of fiscal years 2001, 2002, and 2003 under section 4003(i) of the Transportation Equity Act for the 21st Century (112 Stat. 395-398), as added by section 103(b)(1) of this Act, \$5,000,000 per fiscal year shall be available only to carry out section 31106 of title 49, United States Code.

(2) **AMOUNTS AS ADDITIONAL.**—The amounts made available by paragraph (1) shall be in addition to amounts made available under section 31107 of title 49, United States Code.

SEC. 226. DRUG TEST RESULTS STUDY.

49 USC 31306
note.

(a) **IN GENERAL.**—The Secretary shall conduct a study of the feasibility and merits of—

(1) requiring medical review officers or employers to report all verified positive controlled substances test results on any driver subject to controlled substances testing under part 382

of title 49, Code of Federal Regulations, including the identity of each person tested and each controlled substance found, to the State that issued the driver's commercial driver's license; and

(2) requiring all prospective employers, before hiring any driver, to query the State that issued the driver's commercial driver's license on whether the State has on record any verified positive controlled substances test on such driver.

(b) **STUDY FACTORS.**—In carrying out the study under this section, the Secretary shall assess—

(1) methods for safeguarding the confidentiality of verified positive controlled substances test results;

(2) the costs, benefits, and safety impacts of requiring States to maintain records of verified positive controlled substances test results; and

(3) whether a process should be established to allow drivers—

(A) to correct errors in their records; and

(B) to expunge information from their records after a reasonable period of time.

Deadline.

(c) **REPORT.**—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the study carried out under this section, together with such recommendations as the Secretary determines appropriate.

SEC. 227. APPROVAL OF AGREEMENTS.

(a) **REVIEW.**—Section 13703(c) of title 49, United States Code, is amended—

(1) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively;

(2) by striking "The Board" and inserting the following:

"(1) **IN GENERAL.**—The Board";

(3) by adding at the end the following:

"(2) **PERIODIC REVIEW OF APPROVALS.**—Subject to this section, in the 5-year period beginning on the date of the enactment of this paragraph and in each 5-year period thereafter, the Board shall initiate a proceeding to review any agreement approved pursuant to this section. Any such agreement shall be continued unless the Board determines otherwise."; and

(4) by moving the remainder of the text of paragraph (1) (as designated by paragraph (2) of this subsection), including subparagraphs (A) through (D) (as designated by paragraph (1) of this subsection), 2 ems to the right.

(b) **LIMITATION.**—Section 13703(d) of such title is amended to read as follows:

"(d) **LIMITATION.**—The Board shall not take any action that would permit the establishment of nationwide collective ratemaking authority."

(c) **EXISTING AGREEMENTS.**—Section 13703(e) of such title is amended—

(1) by striking "Agreements" and inserting the following:

"(1) **AGREEMENTS EXISTING AS OF DECEMBER 31, 1995.**—Agreements";

(2) by adding at the end the following:

"(2) **CASES PENDING AS OF DATE OF THE ENACTMENT.**—Nothing in section 227 (other than subsection (b)) of the Motor

Carrier Safety Improvement Act of 1999, including the amendments made by such section, shall be construed to affect any case brought under this section that is pending before the Board as of the date of the enactment of this paragraph.”; and

(3) by aligning the left margin of paragraph (1) (as designated by paragraph (1) of this subsection) with paragraph (2) (as added by paragraph (2) of this subsection).

SEC. 228. DOT AUTHORITY.

5 USC app.

(a) **IN GENERAL.**—The statutory authority of the Inspector General of the Department of Transportation includes authority to conduct, pursuant to Federal criminal statutes, investigations of allegations that a person or entity has engaged in fraudulent or other criminal activity relating to the programs and operations of the Department or its operating administrations.

(b) **REGULATED ENTITIES.**—The authority to conduct investigations referred to in subsection (a) extends to any person or entity subject to the laws and regulations of the Department or its operating administrations, whether or not they are recipients of funds from the Department or its operating administrations.

Approved December 9, 1999.

LEGISLATIVE HISTORY—H.R. 3419:

CONGRESSIONAL RECORD, Vol. 145 (1999):

Nov. 18, considered and passed House.

Nov. 19, considered and passed Senate.



Assault with a dangerous weapon. — The supreme court declined to hold that intoxication ought to be considered with respect to the general criminal intent necessary to the commission of the former crime of assault with a dangerous weapon. *Menard v. State*, 578 P.2d 966 (Alaska 1978) (decided under former AS 11.70.030).

Failure to remain at scene of accident. — Trial court did not err in instructing the jurors that they could not consider defendant's intoxication in deciding whether he acted knowingly with regard to the of-

fenses of failing to remain at the scene of an accident and failing to render assistance to an injured person. *Williams v. State*, 737 P.2d 360 (Alaska Ct. App. 1987).

Applied in *Fox v. State*, 685 P.2d 1267 (Alaska Ct. App. 1984); *Abruska v. State*, 705 P.2d 1261 (Alaska Ct. App. 1985).

Cited in *Baden v. State*, 667 P.2d 1275 (Alaska Ct. App. 1983); *Brown v. State*, 739 P.2d 182 (Alaska Ct. App. 1987); *Stevens v. State*, 748 P.2d 771 (Alaska Ct. App. 1988).

Collateral references. — Modern status of rules as to voluntary intoxication as defense to criminal charge, 8 ALR3d 1236.

Drug addiction or related mental state as defense to criminal charge. 73 ALR3d 16.

When intoxication deemed voluntary so as to constitute a defense to criminal charge, 73 ALR3d 195.

Adequacy of defense counsel's representation of criminal client — pretrial conduct or conduct at unspecified time regarding issues of diminished capacity, intoxication, and unconsciousness. 79 ALR5th 419.

Sec. 11.81.640. Application of AS 11.81.600 — 11.81.630. AS 11.81.600 — 11.81.630 apply only to this title. (§ 10 ch 166 SLA 1978)

NOTES TO DECISIONS

Stated in *Neitzel v. State*, 655 P.2d 325 (Alaska Ct. App. 1982).

Cited in *Brown v. State*, 739 P.2d 182 (Alaska Ct.

App. 1987); *Cole v. State*, 828 P.2d 175 (Alaska Ct. App. 1992); *Alvarez v. Ketchikan Gateway Borough*,

91 P.3d 289 (Alaska Ct. App. 2004).

Article 6. Definitions.

Section

900. Definitions

Sec. 11.81.900. Definitions. (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to

AMENDMENT #1

OFFERED IN THE HOUSE

BY _____

STATE AFFAIRS COMMITTEE

TO: HB 126

- 1 Page 8, line 26, following "conviction":
- 2 Insert "of a person who holds or is required to have a commercial driver's license"
- 3
- 4 Page 10, line 1, following "(a)(1) - (5)":
- 5 Insert ", (9), or (10)"
- 6
- 7 Page 14, line 27:
- 8 Delete "in writing"
- 9 Insert "[IN WRITING]"

Randall Ruaro

From: Kerry Hennings [kerry_hennings@admin.state.ak.us]
Sent: Wednesday, February 21, 2007 9:16 AM
To: Randall Ruaro
Cc: Duane Bannock; Deborah Behr; Margaret Paton-Walsh
Subject: Re: CDL Bill

Randy,

Spoke with Tony over at D''SS. He would like to see a slight language change in Section 1.

Am#2

AS 28.05.065. Access to Information. (a) For purposes of carrying out the provisions of AS 28.05, AS 28.15, AS 28.33, and AS 28.35, an employee of the department assigned to perform functions under those chapters may access information about an adult or **a minor** [juvenile] charged with or [.] convicted of [, or adjudicated a delinquent for] an offense.

Adjudication of a delinquent is not needed in this section as all offenses minors may be convicted of under Title 28 are reported through DPS. Adjudications are reported through a different system with DHHS. He would just like the verbiage to be correct.

Can this be added to the amendment you'll be putting forth next week?

Kerry

Randall Ruaro wrote:

Duane / Kerry / Mags:

Thanks for all your help getting the bill through State Affairs. I have meetings lined up for 2/27 with members of the Judiciary committee to line up support for the bill there. The schedule is: Ramras @ 9:30; Holmes @ 11:30; Samuels @ 3:30. Please let me know if any of you can attend telephonically or in person if you happen to be in Juneau.

We will be submitting a scheduling request to House Judiciary today, along with a copy of your amendment language for that committee to incorporate into a CS.

One issue has popped up. DHSS – Juvenile Justice (Tony Newman) have concerns about the language giving DMV access to juvenile records. Please call him and discuss these provisions of the bill with him right away so this does not become an issue that hangs us up in committee.

Thanks

Randy

HB

133



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

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Rep. Ralph Samuels
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Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: March 27, 2007

To: Representative Kevin Meyer
Co-Chairman House Finance Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: CSHB133(JUD) 25-LS0465\O

Accompanying this memo, please find the referral-file for CSHB133(JUD).

Attached are the following documents:

- CSHB133(JUD) 25-LS0465\O
- Sponsor Statement
- Fiscal Notes
- Sectional
 - COR – indeterminate
 - LAW – 0
 - CTS – indeterminate
 - ADM, OPA – indeterminate
- Proposed changes to HB133
- HJUD Committee report
- Work draft CSHB133(JUD) 25-LS0465\E
- HB133 25-LS0465\A
- Support
- Committee correspondence
- Legal Opinion 3/2/07, Luckhaupt
- Relevant Statutes and AACs



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT: HOUSE BILL 133

"An Act relating to requiring electronic monitoring as a special condition of probation for offenders whose offense was related to a criminal street gang."

Anchorage has seen an increase in gang violence in recent years. The Anchorage Police Department has entered 20 gang related crimes in 2007 alone. In 2006, the Police Department reported 122 gang-related cases.

This bill, which is a legislative priority for the municipality of Anchorage, addresses a problem that has been documented by the Anchorage Police Department and prosecutors where gang members who have been convicted of violent gang-related crimes go back to gang activity when they are released on probation.

HB 133 would require people who are convicted of violent, gang-related crimes to wear electronic monitoring devices as a condition of their probation. The bill will help law enforcement officials, through the use of technology in the form of ankle bracelets with global positioning systems, to monitor the movement of violent offenders, and supervise their activity.

The scope of HB 133 is narrowly defined. It applies only to those people who have been convicted of violent crimes that are proven in a court of law to be gang related. It would not be used on other offenders.

Office of Representative Bob Buch
House District 27

State Capitol, Room 430 / Juneau, Alaska 99801
907.465.4968 Office / 907.465.2040 Fax

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 14, 2007

SUBJECT: HB 133 - Sectional Summary

TO: Representative Bob Buch

FROM: Gerald P. Luckhaupt
Legislative Counsel 

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1. Amends AS 16.55.100 by adding a new subsection that requires electronic monitoring (with GPS location and tracking ability) as a special condition of probation for offenders whose offense involved a criminal street gang.

GPL:med
07-100.med

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB133-DOC-A&O-3-13-0
 Bill Version: HB 133
 () Publish Date: _____

Revisor: Date/Time (Note if correction): 3/13/07 1:45pm Dept. Affected: Corrections
 Title: An Act relating to electronic monitoring of a gang RDU: Administration and Operations
 probationer. Component: Statewide Probation & Parole
 Sponsor: Representatives Buch, Gruenberg, Holmes, Lynn
 Requester: House Judiciary Component No. 2826

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	*	*	*	*	*	*
Travel	*	*	*	*	*	*
Contractual	*	*	*	*	*	*
Supplies	*	*	*	*	*	*
Equipment	*	*	*	*	*	*
Land & Structures	*	*	*	*	*	*
Grants & Claims	*	*	*	*	*	*
Miscellaneous	*	*	*	*	*	*
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	*	*	*	*	*	*
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	*	*	*	*	*	*
1003 GF Match	*	*	*	*	*	*
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts	*	*	*	*	*	*
1037 GF/Mental Health	*	*	*	*	*	*
Other (Receipt Supported Services 1156)	*	*	*	*	*	*
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time	*	*	*	*	*	*
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Department of Corrections (DOC) can not determine the fiscal impact of this legislation. Data is not available on the number of offenders who would be impacted by this legislation. Active GPS - Intensive Supervision Surveillance Program (ISSP) monitoring would require the department to have one probation officer per every 15 offenders. This is the most intensive supervision program available, 24 hours a day, 7 days a week. Passive GPS - ISSP would require one probation officer per every 20 offenders and Passive GPS without ISSP would require one probation officer per every 40 offenders. These programs have less contact monitoring but are monitored by a computer and alarm system that contacts the probation officer if an offender goes in a prohibited area. Each offender would be required to pay \$17.04 per day to be on active or passive monitoring however, the department estimates only 30% of offenders will be able to pay. There are currently 96 offenders on probation that (continued on Page 2)

Prepared by: Sharleen Griffin, Director
 Division: Administrative Services
 Approved by: Dwayne Peoples, Deputy Commissioner
 Agency: Department of Corrections

Phone (907) 465-3339
 Date/Time 3/13/07 1:44 PM
 Date 3/13/2007

FISCAL NOTE

**STATE OF ALASKA
2007 LEGISLATIVE SESSION**

BILL NO. HB 133

ANALYSIS CONTINUATION

that have gang related indicators, of these 36 are under intensive supervision. The DOC does not currently conduct a uniform assessment of offenders to identify gang related offenders. It is expected that the number of offenders in the system is much higher than currently identified. The Juvenile System currently has 50 probationers and 23 pending probationers that may filter through this legislation. This indicates that a higher number will need to be under supervision in the future by DOC than currently estimated.

Please see below for costs the department has identified.

<u>Ratio</u>	<u>ACTIVE GPS (ISSP)</u>	<u>PASSIVE GPS (ISSP)</u>	<u>PASSIVE GPS (w/out ISSP)</u>
Number of PO's	1	1	1
Number of Offenders	15	20	40
<u>Annual Costs- 1 Probation Officer</u>			
Personal Services	\$107,814.00	\$107,814.00	\$107,814.00
Travel	\$2,000.00	\$2,000.00	\$2,000.00
Services (exclude GPS)	\$11,700.00	\$11,700.00	\$11,700.00
Commodities*	\$13,100.00	\$13,100.00	\$13,100.00
TOTAL	\$134,614.00	\$134,614.00	\$134,614.00
<i>*Includes One Time Start Up Costs of \$10,700</i>			
<u>Annual Revenues</u>			
Number of Offenders	15	20	40
Daily Cost per Offender	\$17.04	\$17.04	\$17.04
Annual Cost Per Offender	\$6,219.60	\$6,219.60	\$6,219.60
Estimate of Collections	30%	30%	30%
TOTAL	\$27,988.20	\$37,317.60	\$74,635.20
<u>Cost Per Offender / Per Day</u>			
GPS Monitoring Cost	\$9.25	\$9.25	\$9.25
Weekly Cost for 1 Offender	\$64.75	\$64.75	\$64.75
Annual Cost for 1 Offender	\$3,367.00	\$3,367.00	\$3,367.00
<u>Annual Contractual Cost for GPS</u>			
Number of Offenders	15	20	40
Daily GPS Cost	\$9.25	\$9.25	\$9.25
Number of Days	365	365	365
TOTAL	\$50,643.75	\$67,525.00	\$135,050.00
TOTAL ESTIMATED COST	\$185,257.75	\$202,139.00	\$269,664.00
Revenues (Receipt Services)	\$27,988.20	\$37,317.60	\$74,635.20
General Funds	\$157,269.55	\$164,821.40	\$195,028.80

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB133-LAW-CJL-2-16-07
 Bill Version: HB 133
 () Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Law

Title An Act relating to electronic monitoring of gang probationers.

RDU Criminal

Component Criminal Justice Litigation

Sponsor Representative Buch

Requester House Judiciary

Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill would require electronic monitoring as a special condition of probation for offenders whose offense was related to a criminal street gang. The department does not anticipate any significant fiscal impact.

Prepared by: Robert Meiners, Acting Director
 Division: Administrative Services Division
 Approved by: Robert Meiners for Talis Colberg, Attorney General
 Agency: Department of Law

Phone 465-5427
 Date/Time 2/16/07 9:27 AM
 Date 2/16/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB133-Court-2-22-07
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Electronic monitoring of gang probationer RDU Alaska Court System
 Component Trial Courts
 Sponsor Representative Buch
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2007) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

House Bill 133 requires that a defendant be subject to electronic monitoring during the period of probation if the crime for which he or she was convicted was proven to be related to a criminal street gang. This bill would result in much closer monitoring of those probationers and likely lead to more petitions to revoke probation coming to the court. This increase in workload will mean an increase in the resources necessary to resolve those cases. However, because the number of cases likely to come before the court as a result of this new probationary condition is unknown, the extent of the bill's impact on the court system is too speculative to support a fiscal note at this time.

Prepared by: Doug Wooliver, Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 2/22/07 2:30 PM
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 2/22/2007
 Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB133-DOA-OPA-3-28-07
 Bill Version: HB 133
 () Publish Date: 2/14/2007

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act relating to requiring electronic monitoring RDU Legal and Advocacy Services
as a special condition of probation... Component Office of Public Advocacy
 Sponsor Rep. Buch
 Requester House Judiciary Component No. 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	*	*	*	*	*	*
Travel	*	*	*	*	*	*
Contractual	*	*	*	*	*	*
Supplies	*	*	*	*	*	*
Equipment	*	*	*	*	*	*
Land & Structures	*	*	*	*	*	*
Grants & Claims	*	*	*	*	*	*
Miscellaneous	*	*	*	*	*	*
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts	*	*	*	*	*	*
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill requires the court to impose, as a special condition of probation, electronic monitoring with GPS tracking for persons convicted of criminal offenses related to gang related activity. This requirement appears to cover the entire period of probation, which may last five to ten years, and does not provide guidance on who would bear the cost. The burden of this additional requirement could impact the negotiation process and affect the litigation and trial rate. It is not possible, however, to determine with any accuracy the potential fiscal impact of this requirement. The Agency, therefore, submits an indeterminate fiscal note.

Prepared by: Joshua P. Fink
 Division: Office of Public Advocacy
 Approved by: Rachael Petro, Deputy Commissioner
 Agency: Administration

Phone 907-269-3501
 Date/Time 3/28/07 9:00AM
 Date 3/26/07 9:30AM

Pilot Project

Jane

PROPOSED CHANGES TO HB 133

Section 1. AS 12.55.100 (f)

(f) While on probation and as a special condition of probation for an offense where the aggravating factor provided in AS 12.55.155 c(29) has been proven or admitted [or the penalty for the offense was aggravated under AS 12.55.137] * **OR FOR JUVENILES WHO ARE CONVICTED FOR VIOLATIONS UNDER AS 47.12.030** ** the court shall require that the defendant submit to electronic monitoring. Electronic monitoring under this subsection must provide for [continuous] *** monitoring of the defendant's location and movements by Global Positioning System technology. A defendant subject to electronic monitoring under this subsection is not entitled to credit for time served IN A CORRECTIONAL FACILITY AS DEFINED IN AS 33.30.901 WHILE THE ~~DEFENDANT~~ DEFENDANT is on probation.

(g) In addition to other conditions of parole imposed under this section for a prisoner serving a sentence for an offense where the aggravating factor provided in the AS 12.55.155 c (2) has been proven or proven or admitted [or the penalty for the offense was aggravated under AS 12.55.137.1] **OR FOR JUVENILES WHO ARE CONVICTED FOR VIOLATIONS UNDER AS 47.12.030** the board shall impose as a condition of special, medical, discretionary and mandatory parole a requirement that the defendant submit to electronic monitoring. Electronic monitoring under this subsection must provide for [continuous] monitoring of the defendant's location and movements by Global Positioning System technology. A defendant subject to electronic monitoring under this subsection is not entitled to credit for time served IN A CORRECTIONAL FACILITY AS DEFINED IN AS 33.30.901 WHILE THE DEFENDANT is on parole.

Explanations:

* This will be deleted for two reasons. First, AS 12.55.137 has never been used by prosecutors (per Annie Carpeneti) so including it here essentially accomplishes nothing. Second, this statute includes misdemeanants, which is what is driving up the fiscal note (per Dwayne Peoples). By deleting this, we reduce the number of offenders who come under the purview of the bill, limit the bill's application only to the most serious, violent offenders and significantly reduce the fiscal impact of the legislation.

** "Heinous Hooligan" provision: By adding this language, we will address Rep. Ramras' concerns about the violent teens in Fairbanks who kicked the homeless man to death. Under our original bill, they would not have been subject to monitoring because they didn't meet the strict legal definition of "criminal street gang." This provision will now make those teens subject to electronic monitoring, along with gang members.

*** ~~Delete the word "continuous."~~ This word means there is a probation officer sitting in front of a computer screen monitoring offenders 24/7. There are other, more cost-effective forms of active monitoring that rely on technology to "sound the alarm" when an offender goes into a forbidden zone. DOC says that using these other forms of active monitoring will reduce the fiscal note without reducing safety.

**** per the House Judiciary Committee (Max Gruenberg drafted this language)

Syso 125

25-LS0465E
Luckhaupt
2/20/07

CS FOR HOUSE BILL NO. 133(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES BUCH, Gruenberg, Holmes, Lynn, Roses, Crawford, Fairclough, Neuman

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to requiring electronic monitoring as a special condition of probation**
2 **or parole for offenders whose offense was related to a criminal street gang."**

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

4 *** Section 1.** AS 12.55.100 is amended by adding a new subsection to read:

5 (f) While on probation and as a special condition of probation for an offense
6 where the aggravating factor provided in AS 12.55.155(c)(29) has been proven or
7 admitted or the penalty for the offense was aggravated under AS 12.55.137, the court
8 shall require that the defendant submit to electronic monitoring. Electronic monitoring
9 under this subsection must provide for continuous monitoring of the defendant's
10 location and movements by Global Positioning System technology. A defendant
11 subject to electronic monitoring under this subsection is not entitled to a credit for
12 time served while on probation.

13 *** Sec. 2.** AS 33.16.150 is amended by adding a new subsection to read:

14 (g) In addition to other conditions of parole imposed under this section for a

1 prisoner serving a sentence for an offense where the aggravating factor provided in
2 AS 12.55.155(c)(29) has been proven or admitted or the penalty for the offense was
3 aggravated under AS 12.55.137, the board shall impose as a condition of special
4 medical, discretionary, and mandatory parole a requirement that the defendant submit
5 to electronic monitoring. Electronic monitoring under this subsection must provide for
6 continuous monitoring of the defendant's location and movements by Global
7 Positioning System technology. A prisoner subject to electronic monitoring under this
8 subsection is not entitled to a credit for time served while on parole.



Municipality of Anchorage



3501 Bragaw Street • Anchorage, Alaska 99507-1500 • Telephone: (907) 740-4500 • <http://www.muni.org>

Mayor Mark Begich

Anchorage Police Department

February 12, 2007

Representative Bob Buch
State Capitol, Room 430
Juneau, Alaska 99801

Re: APD Support for Electronic Ankle Monitors

Dear Representative Buch:

As Chief of the Anchorage Police Department, I endorse the concept of electronic monitoring as a special condition of probation for offenders whose crimes were for the benefit of, at the direction of, or in association with a criminal street gang. This was a public safety priority contained in the Municipality of Anchorage's legislative package.

While the technology is no substitute for regular visits by human monitors, the combination of such visits with the electronic monitoring of the convicted person's movements and location will help ensure that conditions of probation are adhered to. Key to the employment of such devices will be the reasonableness that there is a clear link between the offense and the restriction. It is certainly reasonable to expect convicted violent gang members to keep authorities informed as to their whereabouts.

The fact that this bill uses the court as the deciding factor as to whether the threshold articulated in AS 12.55.155 (c)(29) and AS 12.55.137 was met ensures the defendant's due process rights are adhered to prior to requiring the defendant to submit to the electronic monitoring. As a Police Chief, it is important to me that such conditions of probation are determined after the case has been adjudicated.

Once again, I endorse the concept of electronic monitoring as a special condition of probation for individuals who have been convicted of a crime where the aggravating factors regarding criminal street gangs are proven.

Sincerely,

Rob Heun
Chief of Police

Community, Security, Prosperity

**2007 STATE LEGISLATIVE PROGRAM
MUNICIPAL PRIORITY ISSUES**

Legislation

Public Safety

ISSUE/PROJECT NAME: Require Monitoring Devices For Violent Youth Offenders

PRIORITY: 2

ISSUE/PROJECT DESCRIPTION:

Criminal activity by youth and members of criminal street gangs has increased in Alaska in recent years. The Municipality of Anchorage has several initiatives to prevent and crack down on youth and gang violence, launching a five-part anti-gang effort in June 2005. That includes the Anchorage Police Department reinstating its special gang unit, seeking greater citizen involvement, holding a gang summit with the U.S. Attorney's Office and hiring two prosecutors to work in partnership with federal prosecutors on gang violence.

These efforts have produced some progress. In 2006, the special APD anti-gang unit arrested 121 people on 101 state felony charges, six federal charges and 70 misdemeanor charges confiscated 63 guns and seized 22 batches of drugs.

However, a particular problem documented by APD and prosecutors is that certain offenders released on probation encourage continued gang activity.

The purpose of this amendment is to use advanced technology to monitor the movements of these offenders who have been released on probation. The Municipality requests that the legislature amend AS 12.55 to provide that the court shall impose as a condition of probation a requirement that a defendant against whom an aggravating circumstance under AS 12.55.155(c)(29)(commission of crime for benefit of, at direction of or in association with criminal street gang) has been proven, or who is subject to the provisions of AS 12.55.137(misdemeanors treated as higher offense if committed for benefit of, at direction of or in association with criminal street gang) be supervised by means of electronic monitoring using a global positioning system.

Legislative District (s):

House: 99

Senate: A

CONTACT PERSON: James Reeves, Municipal Attorney, 343-4534



FAIRBANKS POLICE DEPARTMENT

911 Cushman Street
Fairbanks, AK 99701-4616
Phone: (907) 450-6500
Fax: (907) 452-1588
Email: fpd@ci.fairbanks.ak.us



Alaska State Legislature
Juneau, AK 99801

RE: Senate Bill 89

March 2, 2007

Dear Members:

It has come to my attention that Senate Bill 89, *Electronic Monitoring of Gang Probationers*, is currently under consideration. I would like to add my voice in strong support of this legislation.

While Fairbanks currently does not experience the scope and extent of gang violence that has been evidenced in Anchorage, I'm somewhat concerned that it is only a matter of time before such activity migrates northward.

We need to act swiftly to deter gang activity and its associated violence, before this problem becomes entrenched throughout Alaska. Senate Bill 89 provides a positive step in keeping those who have been convicted of gang-related crimes of violence from returning to- and associating with- other gang members upon release from prison. Common sense dictates that such associations will likely lead to repeated negative (and often violent) behavior.

Please feel free to call me if you would like to discuss this issue further.

Sincerely,

A handwritten signature in black ink that reads "Daniel P. Hoffman".

Daniel P. Hoffman, Chief
Fairbanks Police Department

adn.com

Anchorage Daily News

Print Page

Close Window

Gang-related crimes increase**ALASKA DIGEST***(Published: February 17, 2007)*

JUNEAU -- Anchorage police say gang-related crimes are on the rise, with 20 reports of violence or other crimes reported in January alone.

But while police say they are getting tougher on prosecuting gang members, keeping convicted gang members from returning to a life of crime has been a challenge.

Lawmakers are pushing legislation that would help police keep up with convicted gang members by requiring the use of electronic monitoring devices as a condition of their probation. Supporters of the bill say the use of bracelets with global positioning systems would help police supervise the activity of convicted gang members.

If the bill passes, the devices would be required for those convicted of gang-related violent crimes only, according to Rep. Bob Buch, D-Anchorage. The device would not be used in cases of gang members convicted of non-violent crimes, he said.

"The bill will give police a tool to keep tabs on gang members convicted of violent crime," Buch said. "But it won't give them a tool for rounding up every kid who comes home with a tattoo."

Implementing the use of the electronic devices would be easy for the state as it already uses the ankle bracelets for convicted sex offenders. The state currently has about 200 such monitoring devices, Buch said.

The bill, which has bipartisan support in the House, will be heard in a House Judiciary Committee hearing on Monday.

-- Anchorage Daily News

Print Page

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ALASKA STATE LEGISLATURE

While in Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4968
Fax: (907) 465-2040



While in Anchorage
716 West 4th Avenue
Anchorage, Alaska 99501
(907) 269-0117
Fax: (907) 269-0119

REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

Date: March 14, 2007
To: Representative Nancy Dahlstrom
From: Representative Bob Buch
Re: Proposed Legislation (HB 133)

Dear Nancy:

This is to follow up on your questions about HB 133 (electronic monitoring of gang probationers and parolees). In particular you had questions about how the Dept. of Corrections would handle the contracting for the GSP technology, and about ending the program should it prove not to be effective or affordable.

I met with Dwayne Peoples, Deputy Commissioner of the Department of Corrections and Annie Carpeneti in the Department. of Law to get the answers to your questions.

In regards to the contracting procedures for the GSP technology, Dwayne Peoples advised me that the Department of Corrections currently has a multi-year contract with BI Incorporated to provide the state of Alaska with electronic monitoring services. This contract was competitively bid in 2005. The effective dates of the state's contract with BI Incorporated are February 1, 2006-September 30, 2010 with provisions for annual amendments and renewals based on program needs. Should HB 133 be passed into law, the Department would implement electronic monitoring under their current contract.

I share your concerns about giving the state of Alaska an "out" should the electronic monitoring program prove to be ineffective or costly. To that end, I am proposing that we try electronic monitoring as a pilot project for a five year period in order to assess its effectiveness before making it a permanent program.

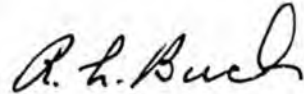
I originally proposed that we undertake it as a three year pilot project; however, both the Dept. of Law and the Dept. of Corrections thought that three years would not be enough time to assess the program because of the lag time it will take to get it going in the court system. Once the program becomes law, prosecutors will have to start using the gang provision as an aggravating factor in their prosecutions of felonies. This court process

alone can take up to a year, and sometimes even longer. If the prosecutors are successful, the convicted gang members will then do jail time for their felonies. (Depending on the particular crime, jail time will vary, but because these offenders are felons their jail time could be substantial). This means that the earliest we could see convicted gang members getting out of jail and being put on GSP monitoring, is 2-3 years away. If we sunset the bill after 3 years, we will not have had enough time or experience with GSP monitoring to assess whether or not it is working. Giving the bill a 5-year sunset provision would give us enough experience with the program to assess its effectiveness.

In light of this discussion, I have added a sunset provision to HB 133 so that the program would have to come before the Legislature in 2012 for review before it could be continued.

I hope this addresses your concerns. Feel free to contact me if you have any other questions about the bill. I'm hoping to have this before the Judiciary Committee sometime in the next two weeks.

Thanks very much for your support. I appreciate it.



Representative Bob Buch
Alaska State Legislature
House District 27

STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF JUVENILE JUSTICE

Sarah Palin, GOVERNOR

*P.O. BOX 110635
JUNEAU, ALASKA 99811-0635
PHONE: (907) 465-1382
FAX (907) 465-2333*

February 26, 2007

The Honorable Representative Jay Ramras
Alaska State Capitol, Room 118
Juneau, AK 99801

Dear Representative Ramras:

In last week's House Judiciary Hearing (2/21/07) on House Bill 133 (Electronic Monitoring for Gang Members) the following questions were posed regarding the Division of Juvenile Justice's management of electronic monitoring and gang members. Here are the questions with responses:

1.) What is the youngest person placed on Electronic Monitoring by the Division of Juvenile Justice? (Rep. Dahlstrom)

The youngest juveniles to be placed on Electronic Monitoring since the adoption in 2003 of a statewide policy and procedure regarding its use have been 12 years old, according to a review of Division data. Probation officers who have supervised these young offenders report that they typically had committed crimes against property or weapons offenses. Electronic monitoring was provided to these youth because their probation officers were concerned that the youth lacked adequate adult supervision.

2.) What are recidivism rates for gang members, and how do these compare with other youth? Are the crimes committed by juveniles involved in gangs more serious than others? (Rep. Holms)

As noted at the hearing, this question is difficult to answer because of the lack of data specific to gang membership and whether offenses are gang related. Intake officers are not always made aware of gang information when they receive police reports and do not have standardized definitions that clearly state when a youth should be considered a gang member or when an offense was specifically gang related. As a result, data the Division has collected about gang members should be considered anecdotal. Over the time period 2000-2006, 26 juveniles were referred to the Division of Juvenile Justice and noted by Division staff to have a gang affiliation. Of these, 15 were managed through the formal court process and placed on probation supervision (with or without custody) or in a secure juvenile treatment facility. Of these 15, 4 juveniles (27%) had committed a reoffense within 12 months of their release from supervision or treatment that resulted in a conviction or re-adjudication. This recidivism rate is approximately the same as for the Division's overall recidivism rate of 28% noted both for youth placed

on formal probation or in secure treatment facilities. Again, the small number of youth noted to have a gang affiliation dictate that this information should be considered anecdotal.

The 26 juveniles noted in the Juvenile Offender Management Information System were noted to have committed 39 offenses as follows: 18 (46.2%) were felonies, 9 (23.1%) were misdemeanors, 10 (25.6%) were probation violations, and 2 (5.1%) were other types of violations. Compared with all juveniles referred to the Division, the youth with gang affiliations were noted to have a higher percentage of offenses that were felonies compared with the general population of Alaska juveniles. For example, in FY 06, the percentage of offenses for all youth referred to DJJ that were felonies was 29.6%, with the percentage of misdemeanors 52.2%, probation violations 1.0%, and other violations 17.2% (out of a total of 5,713 offenses). These results suggest that youth with a gang affiliation commit more serious offenses than juveniles generally; however, again because of the small number of youth noted to have a gang affiliation, this information should be considered anecdotal at best.

Please let us know if we can be helpful in answering any other questions.

Sincerely,

A handwritten signature in black ink that reads "Tony Newman". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Tony Newman
Social Services Program Officer

ALASKA STATE LEGISLATURE

While in Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4968
Fax: (907) 465-2040



While in Anchorage
716 West 4th Avenue
Anchorage, Alaska 99501
(907) 269-0117
Fax: (907) 269-0119

REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

Date: March 13, 2007
To: Representative John Coghill
From: Representative Bob Buch
Re: Proposed Legislation

Dear John:

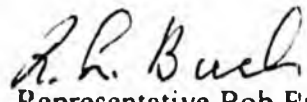
This is to follow up on your question about the language in HB 133 (electronic monitoring of gang probationers). In particular you had a question about the opening phrase "While on probation and as a special condition of probation ...etc."

I contacted Gerry Luckhaupt in Legal Services and asked him why the language of the bill was constructed in this manner, and if this could create some possible loophole in the future that lawyers could exploit.

Gerry said that this wording won't create loopholes; it simply creates clarity that electronic monitoring will be used for offenders on probation, as a special condition of their probation. He also said that this wording has been used before by the Legislature. By including it here, it will make our new subsection consistent with the wording and form of the statute that HB 133 is being added to (AS 12:55:100). I've attached a highlighted copy of the statute so you can see what he means.

I hope this addresses your concerns. Feel free to contact me if it doesn't, or if you have any other questions about the bill. I'm hoping to have this before the Judiciary Committee sometime in the next two weeks.

Thanks very much for your support. I appreciate it.


Representative Bob Buch
Alaska State Legislature
House District 27

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

DRAFT

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 2, 2007

SUBJECT: Inclusion of Minors Prosecuted as Adults - CSHB 133()
(Work Order No. 25-LS0465\K)

TO: Representative Bob Buch

FROM: Gerald P. Luckhaupt 
Legislative Counsel

Enclosed is the bill draft you requested. I have one comment. Requiring electronic\GPS monitoring of minors prosecuted as adults under the automatic waiver provisions of AS 47.12.030 may be subject to challenge. Alaska uses a sliding scale approach to equal protection analysis.

Analysis under our state equal protection clause is considerably more fluid than under its federal counterpart. Instead of using three levels of scrutiny, we apply a sliding scale under which "the applicable standard of review for a given case is to be determined by the importance of the individual rights asserted and by the degree of suspicion with which we view the resulting classification scheme." *State v. Ostrosky*, 667 P.2d 1184, 1192-93 (Alaska 1983). As the right asserted becomes "more fundamental" or the classification scheme employed becomes "more constitutionally suspect," the challenged law "is subjected to more rigorous scrutiny at a more elevated position on our sliding scale." *Id.*, at 1193. The importance of the asserted right and the suspectness of the classification scheme determine the ends-means scrutiny to be applied.

Our general approach is as follows:

As the level of scrutiny selected is higher on the [sliding] scale, we require that the asserted governmental interests be relatively more compelling and that the legislation's means-to-ends fit be correspondingly closer. On the other hand, if relaxed scrutiny is indicated, less important governmental objectives will suffice and a greater degree of over/or underinclusiveness in the means-to-ends fit will be tolerated.

...

Minimal scrutiny under our state constitution may be more demanding than under the federal constitution. As under the federal constitution, the

Representative Bob Buch

March 2, 2007

Page 2

challenged exclusion must be designed to achieve a "legitimate" governmental objective; however, the exclusion must bear a "fair and substantial" relationship to the accomplishment of the legitimate objective.

Department of Revenue v. Cosio, 858 P.2d 621, 629 (Alaska 1993). The legislature should identify the justification for this classification. Is a minor automatically waived into adult court any more dangerous than an 18 year convicted of the same or a greater crime?

GPL:med

07-141.med

Enclosure



22 AAC 05.620. Prisoner responsibilities for electronic monitoring services

(a) Except as provided in (b) and (h) of this section, the department will assess a prisoner who is designated to serve a term of imprisonment or period of temporary confinement, or a part of the term or period, by electronic monitoring a fee of \$12 per day to pay the costs of the monitoring.

(b) A prisoner who believes that making full payment for electronic monitoring would cause undue hardship may request the prisoner's probation officer to make a determination of undue hardship. The prisoner, subject to the penalties for unsworn falsification under AS 11.56.210, shall certify on a form provided by the department, that full payment would cause undue hardship and state what amount, if any, the prisoner can pay. The prisoner's probation officer shall determine in writing whether undue hardship exists and the amount the prisoner must pay, after considering the factors set out in (c) of this section. If requested to do so by the prisoner's probation officer, a prisoner shall submit copies of income tax records and other records needed to substantiate information provided by the prisoner and shall sign a release authorizing the department to obtain such records.

(c) The prisoner's probation officer shall make a determination that undue hardship exists if, after considering the prisoner's income, property owned, other assets, and outstanding obligations, the number and ages of the prisoner's dependents, and similar factors, the probation officer determines that the prisoner is unable financially to provide for the basic needs, including food, shelter, utilities, and health care, of the prisoner and the prisoner's dependents.

(d) A prisoner whom the department determines must make full payment to participate in electronic monitoring may request a determination of undue hardship from the prisoner's probation officer if the prisoner subsequently has a significant change in circumstances that affects the prisoner's ability to make full payment.

(e) If the prisoner pays less than full payment for electronic monitoring or requests a determination of undue hardship based on a significant change of circumstances, the prisoner shall report on a weekly basis to the prisoner's probation officer any significant changes in circumstances that occur in the prisoner's ability to make full or partial payment.

(f) A prisoner who disagrees with a probation officer's determination under (b) of this section as to undue hardship or the amount of payment may appeal the probation officer's determination to the deputy commissioner by submitting a written appeal through the prisoner's probation officer within five days of receipt of the determination. The notice of appeal must be submitted on a form provided with the determination, and must contain a statement of the reasons upon which the appeal is based. The deputy commissioner shall respond to the appeal within 15 working days of receipt. Failure of the deputy commissioner to respond within 15 working days must be considered a denial of the appeal. However, a late response granting an appeal is valid. The deputy commissioner's decision is the final administrative action.

(g) Except as provided in (h) of this section, a prisoner who is required to pay less than full payment for electronic monitoring shall pay the department the difference between the amount of full payment and the amount the prisoner was required to pay, if the department subsequently determines that full payment would not have caused undue hardship for the prisoner. The department will base its determination upon the discovery of

- (1) additional information about the prisoner's financial circumstances;
 - (2) fraud, misrepresentation or other misconduct by a person who provided information relating to the initial determination of undue hardship; or
 - (3) a clerical or mathematical mistake arising from an oversight or omission by the department.
- (h) The department will, in its discretion, require a prisoner on electronic monitoring to use an alcohol breath monitor as a component of electronic monitoring. Full payment for a prisoner who is required to use an alcohol breath monitor as a component of electronic monitoring is \$14 per day.
- (i) In this section, unless the context requires otherwise, "dependent" has the meaning set out at 26 U.S.C. 152 (Internal Revenue Code), revised as of February 25, 1999, and adopted by reference.

History: Eff. 4/2/99, Register 149

Authority: AS 33.30.065

22 AAC 05.660. Definitions

- (a) In this chapter, unless the context requires otherwise,
- (1) "administrative segregation" means a form of separation from the general facility population, in accordance with 22 AAC 05.485, if the continued presence of a prisoner in the general population would be a serious threat to life, property, self, staff, other prisoners, or the security or orderly administration of the facility; "administrative segregation" does not include maximum custody housing under 22 AAC 05.271;
 - (2) "administrative transfer" means the transfer of a prisoner between facilities for any purpose related to an emergency or potentially hazardous situation or to facilitate an administrative action that can be more efficiently accomplished at another facility, such as parole hearing, court action, medical or mental health treatment, military tribunal, family emergency, or population management;
 - (3) "admission" means the administrative process of accepting a prisoner into an adult correctional facility;
 - (4) "assistant superintendent" means the deputy chief administrator of an adult correctional facility or any employee of the department designated by the assistant superintendent, superintendent, regional director, deputy commissioner or the commissioner to carry out an official function of the assistant superintendent;
 - (5) "body cavity search" means the intrusive manual, mechanical, or instrument examination of a person's body appendages and openings by medical personnel;
 - (6) "central classification" means the staff in the department responsible for system-wide classification and coordination, or any employee of the department designated by the commissioner or deputy commissioner to carry out any official function relating to system-wide classification and coordination;
 - (7) "classification form" means the form used to provide specific guidelines for the review and

HB

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HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

Rep. Bob Lynn
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Rep. Ralph Samuels
Room 204
(907) 465-2095

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: April 11, 2007

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File CSHB149(RES)

Accompanying this memo are the following documents:

- CSHB149(RES) 25-GH1018\C
- HB149 25-GH1018\A
- House Judiciary Committee Report
- Fiscal Notes
 - DEC - 0
 - LAW - 0
- Acting Commissioner Mike Maher letter of 1/24/07
- Governor's transmittal letter
- DEC Overview and Status
- NPDES Program Approval Criteria
- Lynn Kent letter to Representative Paul Seaton, dated 3/19/07
- Lynn Kent letter to Resources Co-Chairs, dated 3/15/07
- National Pollutant Discharge Elimination System Primacy Workgroup Report, dated 2/24/05
- DEC NPDES Primary Resource Comparison
- Support
- Applicable Statutes

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: CSHB149-LAW-ENV-4-6
 Bill Version: CSHB 149
 () Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Law

Title An Act relating to the authority of the Dept. of Env. Cons. to require certain monitoring sampling. RDU Civil
 Component Environmental

Sponsor Rules Committee
 Requester HOUSE JUDICIARY Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This proposed legislation would not have a fiscal impact on the Department of Law. This bill would align the state's wastewater permitting and compliance requirements with the Environmental Protection Agency's (EPA) in order to make Alaska's program approvable by EPA.

Prepared by: Robert Meiners, Admin. Services Manager
 Division: Administrative Services Division
 Approved by: Robert Meiners for Talis Colberg, Attorney General
 Agency: Department of Law

Phone: 465-3427
 Date/Time: 4/6/07 8:07 AM
 Date: 4/6/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 149
 (H) Publish Date: 2/21/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Dept of Environmental Conservation
 Title: "An Act relating to the authority of the Dept. of Env. RDU Division of Water
Cons. to require certain monitoring, sampling." Component: Water Quality
 Sponsor: Rules Committee
 Requester: Governor Component No. 2062

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill would align the state's wastewater permitting and compliance requirements with the Environmental Protection Agency's (EPA) in order to make Alaska's program approvable by EPA. This bill will have no fiscal impact.

Prepared by: Lynn J. Tomich Kent, Director
 Division: Water
 Approved by: Mike Maher - Acting Commissioner
 Agency: Department of Environmental Conservation

Phone: (907) 269-6281
 Date/Time: 1/10/07 9:00 AM
 Date: _____

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER

SARAH PALIN, GOVERNOR
410 Willoughby Ave., Ste 303
Post Office Box 111800
Juneau, Alaska 99811-1800
Phone: 907-465-5065
Fax: 907-465-5070
www.dec.state.ak.us

January 24, 2007

The Honorable Lyda Green
President of the Senate
Alaska State Legislature
State Capitol, Room 516
Juneau, Alaska 99801

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, Alaska 99801

Dear President Green and Speaker Harris:

The 24th Alaska Legislature passed Senate Bill 110 during its 1st regular session in 2005 directing the Department of Environmental Conservation (DEC) to seek primacy from the Environmental Protection Agency (EPA) for the National Pollutant Discharge Elimination System (NPDES) wastewater discharge program. Governor Murkowski signed this legislation into law on August 27, 2005 with an effective date of November 25, 2005. Section 6 of the bill reads as follows:

REPORT TO THE LEGISLATURE. Until full authority for administering the National Pollutant Discharge Elimination System has been transferred to the Department of Environmental Conservation, the Department of Environmental Conservation shall submit, within 10 days after the date the Legislature convenes in regular session, a report to both houses of the Legislature and the governor that includes the following information:

(1) the department's progress in preparing and submitting its application to the United States Environmental Protection Agency by June 30, 2006;

(2) a description of the progress by the United States Environmental Protection Agency in reviewing the state's application and the expected or actual date and contents of the agency's approval; and

(3) the progress made by the Department of Environmental Conservation and the United States Environmental Protection Agency during the five-year National Pollutant Discharge Elimination System program transition period, the identification of the program responsibilities that have been transferred to the Department of Environmental Conservation and the program

Dear President Green and
Speaker Harris

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January 24, 2007

responsibilities retained by the United States Environmental Protection Agency, whether the transition is proceeding on schedule, and identification of relevant statutory, regulatory, or financial impediments to obtaining National Pollutant Discharge Elimination System primacy as intended by the Legislature.

This letter is the Department's second progress report to the Legislature. The first progress report was transmitted on January 9, 2006.

As required by Section 5 of SB 110, the Department has continued to confer with the NPDES Primacy Work Group, which includes representatives of affected permittees. The Work Group met three times and participated in one teleconference during the last calendar year, providing key assistance in the design of the APDES program, regulations, and primacy application development.

The Work Group's members are listed at the DEC website at: http://www.dec.state.ak.us/water/npdes/work_group.htm, along with agendas, meeting summaries, and other documents germane to the Work Group process. All Work Group meetings have been publicly noticed and open to the public with a specific allocation of time on the agenda for public comment. In addition to the Work Group, DEC met with staff from other State agencies to provide updates on our progress toward NPDES assumption. Staff also presented status reports at conferences attended by affected permittees.

Section 5 of SB 110 provided legislative direction to the Department to submit the NPDES primacy application to the U.S. Environmental Protection Agency (EPA) before July 1, 2006. The Department completed a major element of the primacy application by adopting program regulations on June 28, 2006. The complete primacy application was submitted to EPA on time, on June 29, 2006.

EPA provided an extensive list of comments on our application on October 31, 2006 and met with Department staff in mid November 2006 to discuss and clarify those comments. The Department and EPA have developed a work plan and process to address all EPA comments and to make any necessary revisions to the NPDES application components. The Department's goal is to resubmit the NPDES application to EPA by June 15, 2007.

Despite EPA opportunity to review SB 110 language and prior legislative direction regarding NPDES primacy (HB 546 in 2004), it was not until EPA reviewed the Department's full June 29, 2006 application submission that they identified what EPA believes are several statutory shortcomings that must be corrected in order to demonstrate that the Department has the necessary authority to implement the NPDES program. Legislative action on these statutory amendments will be pursued during the current legislative session.

Dear President Green and
Speaker Harris

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January 24, 2007

Notwithstanding EPA's opportunities to review and provide comment on the pre-public and public comment versions of the Department's draft regulations for the NPDES program, EPA responded to the state's application with several comments that will also require revisions to the program regulations that were adopted on June 28, 2006. The Department intends to propose these regulatory changes for public comment this spring. The revised regulations must be adopted prior to re-submitting the primacy application to EPA.

There are currently no financial impediments to obtaining NPDES primacy.

Once EPA determines that the application is complete and meets all federal requirements for a state-run NPDES program, they will initiate a public review and consultation process. The Department expects that EPA can complete this process and issue program approval by the end of December 2007.

Concurrent with developing the NPDES primacy application, the Department has successfully implemented several components of its capacity development plan to ensure the Department has the staffing and training to implement the NPDES program when authority is transferred from EPA. For example, ten of the fourteen new positions allocated to the Department as part of SB 110 have been filled, and over 35 staff have attended two EPA courses - the NPDES Permit Writers' course and EPA's Basic Inspector course. A third course, the Water Quality Standards Academy, is scheduled in February 2007.

As noted in the January 9, 2006 Report to the Legislature, the case proceedings in *Defenders of Wildlife v. EPA*, 420 F.3d 946 (9th Cir. 2005), in which the United States Ninth Circuit Court of Appeals reversed EPA's decision to grant NPDES primacy to the State of Arizona, is still ongoing. In this case, the plaintiffs alleged that EPA had failed to consider, pursuant to the endangered Species Act (ESA), the possible harm that could be caused to habitat and wildlife by Arizona's assumption of primacy. The Ninth Circuit Court reversed and remanded the primacy-granting decision to EPA with instructions to weigh Arizona's application under the ESA. In the fall of 2006, through the Department of Justice, EPA petitioned for Supreme Court review of the Ninth Circuit's decision. The State of Alaska filed an *amicus* brief (i.e., "friend of the court") in support of EPA's petition. In January 2007, the Supreme Court decided to hear the case. While awaiting a Supreme Court decision, we continue to prepare the NPDES application as if EPA consultation under the ESA will not be required to approve our application. If, however, the Supreme Court decides that EPA must conduct an ESA consultation when considering approval of Alaska's NPDES program, it could cause considerable delays in EPA's approval action. EPA would have to conduct ESA consultation in a unique arena - one where they will have to consider potential impacts to endangered species of future state permits not yet issued or even applied for.

Dear President Green and
Speaker Harris

4

January 24, 2007

The Department looks forward to working with you on legislation to ensure full authority to implement the NPDES program and is prepared to answer any questions you may have about our progress toward primacy.

Sincerely,



Mike Maher
Acting Commissioner

cc: John Bitney, Legislative Director, Office of the Governor
Kirsten Waid, Senate Secretary, Alaska State Legislature
Suzi Lowell, House Chief Clerk, Alaska State Legislature

SARAH PALIN
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



P.O. Box 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 20, 2007

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the authority of the Department of Environmental Conservation (department) to require certain monitoring, sampling, and reporting and to require permits for certain discharges of pollutants, and to criminal penalties for violations of the permit program.

Under the federal Clean Water Act, discharges of pollutants to surface waters require a permit either from the United States Environmental Protection Agency (EPA), or from a state that has received approval from the EPA to administer the permitting program. Alaska has applied to the EPA for approval of a state permitting program, and the EPA is currently reviewing Alaska's application. Under federal law, the EPA cannot approve a state program unless it is as stringent as the EPA's program. This bill would revise certain provisions of law governing the department's permitting and enforcement authority, in order to align the state's permit requirements with the EPA's. The changes are all designed to help facilitate final approval by the EPA of Alaska's program.

Three of the proposed changes would involve current exclusions from the requirement of getting a discharge permit. The first exclusion is for sewage. Current state law provides that the discharge of sewage into a "sewerage system" does not need a permit. Federal law exempts only discharges of sewage into "publicly owned treatment works." The difference is that the federal exemption is for sewage going to a place where it will receive treatment; while the state exemption is broader and needs to be amended in order to reflect a treatment requirement. The solution offered by this bill would be simply to change the state exemption so that it matches the EPA's: only sewage discharged to a publicly owned treatment works would be exempt from the permit requirement.

The Honorable John Harris

February 20, 2007

Page 2

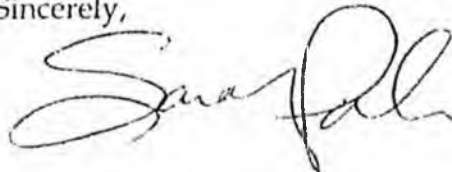
The second exclusion would be for discharges that are incidental to certain drilling and trenching activities. Current state law exempts those discharges from the permit requirement if they don't result in a discharge "directly into any surface water." To align state law with the federal permit program, that phrase would be changed by deleting the word "directly" and changing "surface water" to "waters of the United States," a term defined identically in state and federal regulations.

The third and final exclusion is for the discharge of munitions on active ranges. The federal definition of "pollutant" at 40 C.F.R. 122.2 includes munitions, so a permit is required for their discharge to waters of the United States. Yet state law exempts the discharge of munitions from the permit requirement. This bill would limit the state's munitions exemption to discharges that do not enter waters of the United States, again to bring state law into line with federal law.

The bill includes three other provisions. One would give the department the authority to require site sampling and reporting of results analogous to what the EPA exercises under sec. 308 of the Clean Water Act. Another clarifies that the department's permitting authority extends to all "pollutants" listed under federal law. The third provision also follows federal law (33 U.S.C. 1319(c)) by allowing the department to pursue criminal enforcement for negligent violations of any aspect of the state permit program.

This bill is an essential component of the state's effort to receive primacy from the EPA in the permitting of discharges in our state. I support continuing forward with efforts to receive primacy, and I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sarah Palin".

Sarah Palin
Governor

Department of Environmental Conservation
NPDES Primacy
Overview and Status – February 2007

Background

Section 402 of the Clean Water Act (CWA) requires that all discharges to surface waters be permitted under the National Pollutant Discharge Elimination System (NPDES) permit program.

The CWA intends for states to implement (to have "primacy" for) the NPDES program with the Environmental Protection Agency (EPA) acting in an oversight role.

Forty-five states have primacy for the NPDES program. The four other states, aside from Alaska, that do not have NPDES primacy are Idaho, New Mexico, New Hampshire and Massachusetts.

EPA is the NPDES authority in Alaska. DEC plays a secondary role "certifying" that EPA permits meet state water quality standards and issuing state permits for very small discharges that EPA cannot get to.

In 2005, the Alaska legislature (SB 110) directed DEC to take all actions necessary to assume the NPDES discharge permitting authority including responsibility for issuing and monitoring compliance with the permits.

NPDES Program Components

There are six components to the NPDES permit program. The State intends to assume responsibility for the first five.

1. *NPDES Permitting* which amounts to developing, issuing, modifying and renewing the permits.
2. *Stormwater Program* which consists of permitting stormwater discharges from construction and industrial activities as well as permitting the stormwater collected and discharged by large municipal storm sewer systems.
3. *Compliance and Enforcement* which includes monitoring compliance with permit terms and conditions and taking enforcement action when necessary.
4. *Federal Facilities* which involves permitting of discharges from federally-owned facilities, such as Department of Defense installations.
5. *Pre-treatment Program* which consists of regulating highly toxic discharges into sewerage systems.
6. *Biosolids Management Program* which regulates the disposal of sewage treatment byproducts, or "sludge."

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The Biosolids component is a small component of the NPDES program in Alaska. States have the option whether to assume primacy for this part of the program.

NPDES Primacy Application

The application to assume NPDES primacy includes:

1. A *letter from the Governor* requesting approval of the state's application;
2. A *program narrative* that describes how the state will issue permits, ensure permit compliance, perform enforcement, fund the program, track issued permits and enforcement actions, and submit periodic reports to EPA;
3. An *Attorney General statement* of legal authority that confirms the state's laws and regulations are sufficient to implement the NPDES program;
4. A signed *Memorandum of Agreement (MOA)* between the state and EPA that establishes timeframes for the state to assume authority for the program components over a five-year period; and
5. A *compliance assurance agreement* developed between the State and EPA that describes the methods the State will employ to assure that permittees comply with the terms and conditions of their permits.

Application Status

DEC submitted the NPDES primacy application to EPA by July 1, 2006, as directed by the legislature.

EPA provided an extensive list of comments on the application on October 31, 2006. It was not until EPA reviewed the Department's full application submission that they identified several statutory shortcomings that must be corrected in order to demonstrate that the Department has the necessary authority to implement the NPDES program. Legislative action on these statutory amendments is being pursued during the current legislative session (HB 149 and SB 91).

DEC is also making revisions to the program description, Attorney General's statement, MOA, and regulations in response to EPA comments.

DEC intends to submit a revised application to EPA this summer, and anticipates EPA program approval by the end of the calendar year.

Sectional Analysis of SB 91/HB 149

Sec. 1.

Gives ADEC authority equivalent to that of EPA under sec. 308 of the Clean Water Act (CWA), to require monitoring, sampling and reporting.

Sec. 2.

Broadens the scope of ADEC's permitting authority to cover discharges of waste material as well as disposal. Also deletes an exemption for domestic sewage, which is dealt with elsewhere (see sec. 4 of bill, amending AS 46.03.100(e)(1)).

Sec. 3.

Clarifies that it is up to ADEC what form of authorization to require for any given discharge or activity.

Sec. 4.

This section changes three current exemptions from the permit requirement, in all cases to comply with the scope of the federal NPDES program. The exemptions are for domestic sewage, discharges incidental to drilling and trenching, and munitions.

Sec. 5.

Expands ADEC's authority to include monitoring and reporting requirements in APDES permits to be equivalent to EPA's authority under the CWA.

Secs. 6 & 7.

Clarify that the state term "waste material" covers "pollutants" as defined under federal law.

Sec. 8.

This follows the CWA in making negligent violations of the NPDES permit program enforceable through criminal misdemeanor charges.

Sec. 9.

Provides for an immediate effective date, to facilitate timely program approval by EPA.