



FEDERAL DWI FUNDING -- PENALTIES AND INCENTIVES

The Transportation Equity Act for the 21st Century (TEA-21) passed by Congress in 1998 is best known in the state for the substantial increase in federal funds made available to the state for highway construction. The increase in the motor fuel excise tax and the increase in noncommercial motor vehicle license fees passed by the 1999 Legislature were necessary for the state to come up with the local match for these federal funds. However, TEA-21 is a complex federal law covering many more highway safety and transportation issues, including a number of provisions to encourage states to crack down on drunk driving.

TEA-21 establishes certain mandates regarding drunk driving that the states must comply with by October 1, 2000, or the states will face penalties involving the federal funds available for highway construction. The federal act also provides funding incentives for states that comply with certain requirements directed at the enforcement of drunk driving laws. This issue memorandum will take a look at some of these federal requirements that the Legislature must consider in the near future in order to avoid the penalties or to take advantage of the incentives provided by TEA-21.

Penalties

TEA-21 imposes penalties on states that have not enacted open container laws and that have not enacted laws providing specific penalties for repeat drunk driving

offenders. The act requires states to have these laws in effect by October 1, 2000. During the 1999 Legislature, House Bills 1053 and 1054 were introduced at the request of the Department of Transportation (DOT) to bring South Dakota in compliance with the mandates of TEA-21.

TEA-21 requires states to have an open container law that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway, or the right-of-way of a public highway. House Bill 1053, passed by the 1999 Legislature, made minor changes to the state's open container law. South Dakota is now one of the eighteen states which is in compliance with the open container requirements of TEA-21.

House Bill 1054 attempted to modify the state law establishing minimum penalties for second or subsequent offenses of driving under the influence. That legislation failed to make it out of the House Transportation Committee and, consequently, South Dakota still does not comply with the repeat offender requirements of TEA-21. Currently, only eight states meet these requirements.

For South Dakota to comply with the repeat offender requirements, the state must enact all of the following penalties for repeat offenders, which TEA-21

defines as a second or subsequent drunk driving offense:

- Suspend a repeat offender's driver's license for not less than one year;
- Impound or immobilize the driver's motor vehicles or have an ignition interlock installed on each vehicle owned by the driver;
- Screen repeat offenders for underlying alcohol abuse problems and provide appropriate treatment; and
- Impose not less than 30 days of community service or not less than five days of imprisonment for a second offense. Impose not less than 60 days of community service or not less than 10 days of imprisonment for third and subsequent offenses.

Currently South Dakota law contains only the one-year suspension of a repeat offender's driver's license; but that provision is not in full compliance with the TEA-21 requirements since the law allows for a work permit. TEA-21 does not allow any such waiver.

The DOT, or the Governor, will most likely make a renewed attempt in the 2000 Legislature to have legislation passed to bring the state in compliance with these requirements of TEA-21. If the state does not pass legislation to comply by October 1, 2000, a portion of the state's federal-aid for highway construction will be redirected to the state's highway safety program or to the state's hazard elimination program. If the state is not in compliance for federal fiscal years 2001 and 2002, the redirection amount for the state will be one and one-half percent of federal-aid highway construction funds. The redirection amount for federal fiscal year 2003 and subsequent years will be three percent of those construction funds. For South Dakota the estimated penalty for federal fiscal years 2001, 2002, and

2003 is \$2,098,000, \$2,137,000, and \$4,370,000, respectively.

Currently, the state spends a little over one million dollars of federal funds each year through its highway safety program, so a redirection of construction funds to this program would be a substantial increase. These funds are used to support highway safety programs designed to reduce traffic accidents and the resulting deaths, injuries, and property damage. At least 40 percent of these funds are to be used to address local traffic safety problems. There is no state or local match necessary for these federal funds. These federal funds can only be used for highway safety purposes. The Office of Highway Safety, which is located in the Department of Commerce and Regulation, administers these federal funds at the state level.

For the past five years the state has obligated about \$900,000 a year under the state's hazard elimination program, so a redirection of construction funds to this program would also be a significant increase. This program is funded through TEA-21 and requires a 10 percent state match. The DOT administers these funds at the state level. These funds can be used on any public road. These funds can be used for a variety of projects to eliminate or reduce the severity of crashes at hazardous highway locations, including the installation or upgrading of traffic signs and signals, pavement markings, bridges, and guardrail and the widening of highway lanes and shoulders. These funds, however, are more difficult to tap because a cost-benefit analysis has to be done for each proposed project to justify the use of these federal funds. In many cases it takes a traffic fatality to occur before enough of a benefit can be shown to justify expenditures on a project under this program.

Incentives

TEA-21 also established a couple of grant programs to encourage state activities to reduce drunk driving. One program provides incentive grants to states that have adopted illegal *per se* laws with a blood alcohol content (BAC) limit of .08 percent. The other program provides incentive grants to states that adopt certain drunk driving countermeasures or meet specific performance criteria in reducing drunk driving deaths.

Under the first program, any state that has in effect a .08 BAC law by July 1 of each fiscal year is eligible to receive incentive funds for that year. The law must provide that any person with a blood alcohol concentration of .08 percent or greater while operating a motor vehicle in the state is deemed to have committed a *per se* offense of driving while intoxicated. South Dakota law makes it a crime to drive with a BAC level above .10 percent, instead of .08 percent, so the state does not qualify for these funds. In federal fiscal year 1999, seventeen states and the District of Columbia were awarded grants totaling \$57.4 million under this incentive program. This program is funded for \$80 million in FY2000 and this funding will increase to \$110 million a year by FY2003.

States that have .08 BAC laws will be splitting these funds each fiscal year. These funds are particularly attractive to the states because they may be used for any highway construction or safety project. If South Dakota would pass a .08 BAC law, the state would receive somewhere between \$500,000 and \$1,000,000 a year. The actual amount would depend on the number of states qualifying for a portion of the money.

Under the second program, a state can

qualify for incentive grants in one of two ways. A state can qualify for a Basic Grant A if the state adopts specific drunk driving countermeasures. A state can qualify for a Basic Grant B if it can meet certain criteria in reducing drunk driving deaths.

For a state to qualify for a Basic Grant A, the state must meet five of the following seven criteria:

- An administrative license revocation law;
- A program to prevent drivers under age 21 from obtaining alcoholic beverages;
- A program for intensive enforcement of laws forbidding driving while impaired;
- A graduated licensing law with nighttime driving restrictions and zero tolerance;
- A program to target drivers with high BAC;
- A program to reduce impaired driving by persons age 21 to 34, inclusive;
- An effective system for increasing the rate of testing for blood alcohol levels of drivers in fatal crashes; in FY2001 and after, the testing rate must be above the national average.

For a state to qualify for a Basic Grant B, the state must demonstrate:

- A reduction in its percentage of fatally injured drivers with a .10 BAC or greater, in each of the last three years; and
- Its percentage of drivers with a .10 BAC or greater is lower than the national average for each of the last three years.

A state that qualifies for either of these basic grants can also qualify for six supplemental incentive grants if the state

can demonstrate it implements any of the following:

- Videotaping of drunk drivers by police;
- A self-sustaining drunk driving prevention program;
- Laws to reduce driving with a suspended license;
- Use of passive alcohol sensing devices by police;
- A tracking system for information on drunk drivers; and
- Other innovative programs to reduce drunk driving.

For federal FY1999, thirty-one states plus the District of Columbia were awarded \$33.25 million in incentive grants for developing alcohol-impaired driving countermeasures or meeting the performance criteria for reducing drunk driving deaths. South Dakota was not one of those states. The program is funded at \$36 million for FY2000 and that will increase by two million dollars a year to \$40 million in FY2003. A state may only use these grant funds to implement and enforce impaired driving programs.

Conclusion

Just as the 1999 Legislature considered legislation to help the state take full advantage of construction funds available under TEA-21, the 2000 Legislature must decide which course the state should take regarding the penalties and incentives

contained in TEA-21 to encourage states to crack down on drunk driving. In making such a decision the Legislature will have to determine whether the receipt of federal funds for highway construction projects and for highway safety projects is worth the restrictions that must be imposed on the citizens of the state in order to get those funds.

If the Legislature does not pass legislation to establish mandatory minimum penalties for second and subsequent offenses of driving under the influence, the state will face a penalty that will redirect some of the state's TEA-21 funds earmarked for highway construction to highway safety programs. The amount that would be redirected would be about two million dollars a year at first and would increase to a little over four million dollars by federal fiscal year 2003. These amounts would be a significant increase over what the state currently spends for highway safety programs.

Legislation is also necessary for the state to take advantage of the incentive funds that are available; primarily, legislation to lower the BAC limit to .08 percent. Moneys under these incentive programs could amount to over a million dollars a year for the state. Some of these incentive funds can be used for highway construction projects and highway safety projects while others can only be used for highway safety projects.

This issue memorandum was written by David L. Ortbahn, Principal Research Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
