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Testimony of Jeff Fontaine  
Deputy Director, Nevada Department of Transportation  
In Support of Assembly Bill 7 and Assembly Bill 104  
Assembly Judiciary Committee  
Friday, March 7, 2003

Mr. Chairman and members of the committee, for the record I am Jeff Fontaine, deputy director of the Nevada Department of Transportation, and I appreciate this opportunity to testify in support of AB 7 and AB 104 before your committee this morning.

We support these measures for two reasons:

First and foremost, in the interest of public safety, if lowering the maximum blood alcohol concentration law for operating a motor vehicle from 0.10 to 0.08 would help save the lives of Nevadans and visitors to our state, we need to do so.

Second, in October 2000, as part of the 2001 DOT Appropriations Act, Congress passed, and the president signed into law, a provision making .08 blood alcohol concentration the national standard for impaired driving.

Each state must enact and enforce a law that provides that any person with a blood alcohol concentration of .08 percent or greater while operating a motor vehicle in the state shall be deemed to have committed the per se offense of driving while intoxicated or an equivalent per se offense.

States that do not adopt .08 BAC laws by fiscal year 2004 would have highway construction funds withheld. To avoid sanctions for fiscal year 2004, states must have a .08 BAC law in effect by Sept. 30, 2003. If states do not enact such laws, 2% of highway construction funds will be withheld in fiscal year 2004, increasing by 2% each year to a total of 8% in fiscal year 2007 and thereafter. To date, 34 states, plus the District of Columbia and Puerto Rico, have adopted such laws.

The penalties for Nevada, if a .08 BAC law is not enacted, are approximately as follows:

|                          |                |
|--------------------------|----------------|
| FY 2004                  | \$2.8 million  |
| FY 2005                  | \$5.7 million  |
| FY 2006                  | \$8.5 million  |
| FY 2007 (and thereafter) | \$11.4 million |

That amounts to \$28.4 million in lost highway funds in the next four years if the .08 BAC law is not in force by Sept. 30. And these penalties will be greater if Nevada receives an increase in federal funding under the next highway reauthorization act. I emphasize that these are *mandatory* and not permissive or discretionary sanctions.

You have before you in a handout the applicable United States Code and supporting information from the National Highway Traffic Safety Administration. I should also mention, as the handout indicates, that these "lost" funds could be recoverable. States have four years after funds are withheld to enact a .08 law to recover the withheld funds. After four years the funds are lost forever. Therefore, beginning in October 2007, states without a .08 law would have funds lapse each year.

Both of these bills also apply to people operating vessels. While this is certainly something to consider, the federal sanctions apply only to a .08 BAC law for those operating vehicles on roadways.

AB 7, introduced by Assemblyman Manendo, and AB 104, proposed by NDOT, are identical bills. Lawyers for the U.S. DOT have indicated that both bills will comply with this federal BAC mandate.

We claim no pride of authorship or ownership on this issue. We believe the passage of either bill will be of great benefit to the residents of Nevada.

I will be happy to answer any questions.

the requirement is consistent with the authority provided in this chapter.

(f) **FEDERAL SHARE.**—The Federal share of the cost of carrying out a project under this section shall be 80 percent, except that, in the case of any scenic byway project along a public road that provides access to or within Federal or Indian land, a Federal land management agency may use funds authorized for use by the agency as the non-Federal share.

**§ 163. Safety incentives to prevent operation of motor vehicles by intoxicated persons**

(a) **GENERAL AUTHORITY.**—The Secretary shall make a grant, in accordance with this section, to any State that has enacted and is enforcing a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated (or an equivalent *per se* offense).

(b) **GRANTS.**—For each fiscal year, funds authorized to carry out this section shall be apportioned to each State that has enacted and is enforcing a law meeting the requirements of subsection (a) in an amount determined by multiplying—

(1) the amount authorized to carry out this section for the fiscal year; by

(2) the ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(c) **USE OF GRANTS.**—A State may obligate funds apportioned under subsection (b) for any project eligible for assistance under this title.

(d) **FEDERAL SHARE.**—The Federal share of the cost of a project funded under this section shall be 100 percent.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$55,000,000 for fiscal year 1998, \$65,000,000 for fiscal year 1999, \$80,000,000 for fiscal year 2000, \$90,000,000 for fiscal year 2001, \$100,000,000 for fiscal year 2002, and \$110,000,000 for fiscal year 2003.

(2) **AVAILABILITY OF FUNDS.**—Notwithstanding section 118(b)(2), the funds authorized by this subsection shall remain available until expended.

**§ 164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence**

(a) **DEFINITIONS.**—In this section, the following definitions apply:

(1) **ALCOHOL CONCENTRATION.**—The term “alcohol concentration” means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) **DRIVING WHILE INTOXICATED; DRIVING UNDER THE INFLUENCE.**—The terms “driving while intoxicated” and “driving under the influence” mean driving or being in actual physical

**UNCODIFIED PROVISION: 23 USC 163 note.**

**DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS,  
2001**

**October 23, 2000, Pub. L. 106-346-APPENDIX, 114 Stat. 1356A-35**

"Sec. 351. Notwithstanding any other provision of law, beginning in fiscal year 2004, the Secretary shall withhold 2 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23,

United States Code, if a State has not enacted and is not enforcing a provision described in section 163(a) of chapter 1 of title 23, United States Code, in fiscal year 2005, the Secretary shall withhold 4 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a provision described in section 163(a) of title 23, United States Code; in fiscal year 2006, the Secretary shall withhold 6 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a provision described in section 163(a) of title 23, United States Code; and beginning in fiscal year 2007, and in each fiscal year thereafter, the Secretary shall withhold 8 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a provision described in section 163(a) of title 23, United States Code. If within 4 years from the date the apportionment for any State is reduced in accordance with this section the Secretary determines that such State has enacted and is enforcing a provision described in section 163(a) of chapter 1 of title 23, United States Code, the apportionment of such State shall be increased by an amount equal to such reduction. If at the end of such 4-year period, any State has not enacted and is not enforcing a provision described in section 163(a) of title 23, United States Code, any amounts so withheld shall lapse."

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Revised 01/19/01

## 0.08 BAC SANCTION

- In October 2000, as part of the FY 2001 DOT Appropriations Act, Congress passed, and the President signed into law, a provision making .08 BAC the national standard for impaired driving. States that do not adopt .08 BAC laws by FY 2004 would have certain highway construction funds withheld. A joint NHTSA/FHWA regulation must be published to implement this sanction.
- **CRITERIA:** The Act requires that each state must have a law in effect that complies with the criteria established under Section 163 (Incentive Grant Program for 0.08 BAC), of title 23 of the U.S. Code. Each state must enact and enforce a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the state shall be deemed to have committed the per se offense of driving while intoxicated or an equivalent per se offense.
- According to the regulations that implement Section 163, a complying law must:
  1. Apply to all persons;
  2. Set a blood alcohol concentration of not higher than 0.08 percent as the legal limit;
  3. Make operation of a motor vehicle by an individual at or above the legal limit a per se offense;
  4. Provide for primary enforcement;
  5. Apply the 0.08 BAC legal limit to the state's criminal code and, if the state has an administrative license revocation (ALR) law, to its ALR law; and
  6. Be deemed to be or be equivalent to the standard driving while intoxicated offense in the state.
- **SANCTIONS:** States that do not adopt .08 BAC laws by FY 2004 would have 2% of certain highway construction funds withheld. The penalty increases, by 2% each year, to 8% in FY 2007 and thereafter. States adopting the standard by FY 2007 would have any withheld funds returned.

| Fiscal Year | WITHHOLD | LAPSE                      |
|-------------|----------|----------------------------|
| 2004        | 2%       |                            |
| 2005        | 4%       |                            |
| 2006        | 6%       |                            |
| 2007        | 8%       |                            |
| 2008        | 8%       | <i>2% withheld in FY04</i> |
| 2009        | 8%       | <i>4% withheld in FY05</i> |
| 2010        | 8%       | <i>6% withheld in FY06</i> |
| 2011        | 8%       | <i>8% withheld in FY07</i> |
| 2012        | 8%       | <i>8% withheld in FY08</i> |

- To avoid sanction for FY 2004, a state must have a .08 law in effect by October 1, 2003.
- To recover all funds **withheld** in FY 2004(2%), 05 (4%), 06 (6%), & 07 (8%), **the state must**

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**have a .08 law in effect by Oct. 1, 2007.**

- Beginning on October 1, 2007 (FY 2008), a state without an .08 law would have funds **lapse** ("lost") each year. A state has 4 years after funds are withheld to get a .08 law in effect and get the withheld funds back; after 4 years the funds **lapse**.
- Keep in mind that in FY 2008, a state without an .08 law has two things going on at the same time - the 8% is being withheld (not accessible for projects) and the 2% that was withheld in FY 2004 is actually being lost, and would not be recoverable. So as a state goes beyond FY 2008, more funds are subject of the withholding and lapsing.

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