

HB 255 Letters of Opposition  
3/14/2018



**ASSOCIATED GENERAL CONTRACTORS of ALASKA**

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March 14, 2018

House Finance Committee Members  
State Capitol  
Juneau AK, 99801

Re: House Bill 255

Dear Committee members,

The Associated General Contractors of Alaska is a trade association representing over 640 Alaskan businesses in the construction industry. On behalf of the AGC, I offer the following concern and objection for Bill 255.

HB 255 would give to certain state employees the authority to make jurisdictional determinations and write citations. This is an inappropriate intrusion into the relationship between general contractors and their subcontractors. It also has the potential to give the Department of Labor broader jurisdiction authority. Following this letter is a more detailed explanation of our opposition.

I urge you to carefully consider your action on this bill and not allow it to pass.

Sincerely,

A handwritten signature in blue ink, appearing to read 'John MacKinnon'.

John MacKinnon, Executive Director  
Associated General Contractors of Alaska

In 2013, the Department of Labor (DOL&WD) went through a lengthy public comment process to establish where the requirements for an electrical certificate of fitness (COF) and work associated with electrical wiring began and where it did not necessarily apply. That process resulted in an affirmation of an Attorney General Opinion 166-300-84 (May 1, 1984) that the DOL&WD has the authority to interpret the statute consistent with the legislative intent of establishing minimal electrical safety. The Opinion determined that certain associated work, subject to electrical code requirements, did not necessarily constitute “electrical wiring” which would require a COF. This was clearly spelled out in MIPL 146 (Amended) issued January 10, 2014.

That interpretation in 2014 affirmed construction practices that had worked well for decades.

Eighteen months later, in July 2015, with no warning to industry, the Department rescinded the 2014 version and issued a new version of MIPL 146. The new version redefined that past practices of equipment operators working with licensed electricians could no longer operate equipment used to backfill trenches that contained conduit or set heavy pre-cast concrete light pole bases. Those tasks constituted electrical wiring and equipment associated with that work had to be operated by a licensed electrician.

There has been a trend over the past few years of the Department of Labor dictating who will do what work on a construction site. While there may be some legitimate concerns about misclassification issues, HB 255 is not about misclassification. It is an inappropriate intrusion into the right and responsibility of the contractors. It is the DOL&WD making a jurisdictional decision that is traditionally between a contractor the terms and limits of a labor contract. A clear example of regulatory creep.

In the construction world, there are many tasks with clear distinctions on who is to perform the work. Truck drivers drive trucks, operators operate heavy equipment and laborers perform more traditional manual labor. There are also many areas that are not so clear – gray areas, where multiple crafts claim the work. These gray areas include surveying, storm water management, skid steers and forklifts to name a few. While Equipment Operators would like to have exclusivity over fork lifts, the practical matter is they are often run by the craft

that is responsible for the materials being moved. These are jurisdictional matters and are discussed, negotiated and decided between the contractors and the trades involved.

Of the tens of thousands of miles of sewer lines and water lines that have been installed in the state over the past century, almost all of it has been installed by unlicensed trades. State law clearly gives unlicensed trades this jurisdiction 5 feet outside of building lines. It's conceivable the next step, with the aid of this bill, and a determination similar to MIPL 146 would require outside water and sewer line installations be done by licensed plumbers. Given recent actions by the DOL, this is not an unreasonable stretch of the imagination

Our Collective Bargaining Agreements – Labor Contracts - include language about these gray areas of jurisdiction. In those areas where more than one craft claims the work, it is the contractors right to choose who will do the work. That choice is often dictated by efficiency, convenience and economics. It is the contractors right to choose, it is in our contract language and it has worked well for decades. It does not need intervention to fix what isn't a problem.

This bill intrudes into the relationship between a contractor and the various trades. It is another step in the Department exerting jurisdictional authority. It is especially bad policy to give this power to a mid-level bureaucrat. It is taking away the right and responsibility of the contractor as well as traditional area practice to decide who will do what work. Further, with the ease of assessing penalties (writing tickets) you might see significant enforcement effort in urban areas and virtually no enforcement in rural areas. Passing a law that will have unequal and thus unfair enforcement is poor policy.

**MEMORANDUM**  
DEPARTMENT OF LABOR  
AND WORKFORCE DEVELOPMENT

**STATE OF ALASKA**  
Labor Standards and Safety Division

TO: Mechanical Inspection Staff

DATE: January 10, 2014

PHONE: (907) 465-4855

FROM: Grey Mitchell  
Assistant Commissioner/Director

SUBJECT: MIPL 00-146 (Amended 01-10-2014) COF Requirements - Equipment Operators

This policy rescinds all previous versions of MIPL 00-146 and MIPL 00-161. The intent is to provide guidance for effective and consistent electrical certificate of fitness (COF) enforcement to maximize inspector resources. It does not address all situations and inspectors are expected to consult with the Mechanical Inspection Manager as necessary.

Attorney General Opinion 166-300-84 (May 1, 1984), provides the following guidance, "The department has the authority to interpret the statute, including the definition of electrical wiring, in a manner which reasonably furthers and is consistent with legislative intent of establishing minimal electrical safety standards." This Attorney General Opinion determined that work such as operating a helicopter or operating tree trimming equipment to trim brush around electrical lines, though subject to electrical code requirements, does not necessarily constitute "electrical wiring" work which would require a COF.

In keeping with this logic, a person whose sole task in connection with electrical work is to operate equipment, such as an excavator or loader used for trenching and backfill, will not characteristically be considered to be performing electrical wiring work and, thus, will not be required to possess a COF to operate the equipment. Similarly, operators of equipment such as helicopters, cranes, backhoes, loaders, piledriving equipment, tree-trimming equipment or other construction heavy equipment used in connection with electrical work, will not be required to possess a COF to operate the equipment.

**MEMORANDUM**  
DEPARTMENT OF LABOR  
AND WORKFORCE DEVELOPMENT

**STATE OF ALASKA**  
Labor Standards and Safety Division

TO: Mechanical Inspection Staff

DATE: July 7, 2015

PHONE: (907) 465-4855

FROM: Grey Mitchell  
Director 

SUBJECT: MIPL 146 (Amended)  
Installation of Street Lighting

This policy rescinds all previous versions of MIPL 00-146 and MIPL 00-161.

The placement and installation of prefabricated street light bases require the responsible contractor to have the assignment of an Electrical Administrator in the appropriate category for the work. In most cases this will be Unlimited Commercial Wire. In addition, the tradesman actually performing the placement are required to hold a current, valid electrical journeyman or trainee certificate of fitness issued by the state of Alaska.

The installation of all conduit, anchor bolts, wiring and other associated electrical apparatus in connection with street light bases requires current Alaska certificate of fitness licensing with oversight by the appropriate electrical administrator license holder.

The bedding, backfilling and compaction methods subject to either the National Electrical Code or the National Electrical Safety Code would further be accomplished by a current Alaska certificate of fitness holder and that work overseen by the appropriate electrical administrator.

In keeping with previous versions of MIPL 00-0146, the operator of a backhoe used solely for the digging of a trench, prior to the installation of any electrical apparatus, could be performed by personnel who do not hold a certificate of fitness for the work.

With regard to pile driving for street lighting, the following policy shall continue to apply:

The responsible company, contractually bound, to drive pilings to support street lighting must have an electrical administrator assigned to their Alaska contractor license but, the operator of the pile driver is not required to hold an Alaska certificate of fitness. All other personnel attending to the installation of the bolt pattern and associated electrical apparatus are required to be current Alaska certificate of fitness holders.

cc: State Electrical Inspectors