

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 14, 2003

3:16 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Bob Lynn, Vice Chair
Representative Nancy Dahlstrom
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

Representative Carl Gatto
Representative Norman Rokeberg

COMMITTEE CALENDAR

HOUSE BILL NO. 155

"An Act relating to the submission of payroll information by contractors and subcontractors performing work on a public construction contract; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 159

"An Act relating to the frequency of examinations of certain persons licensed to engage in the business of making loans of money, credit, goods, or things in action; repealing the requirement for a state examination and evaluation of the Alaska Commercial Fishing and Agriculture Bank; and providing for an effective date."

- MOVED HB 159 OUT OF COMMITTEE

HOUSE BILL NO. 164

"An Act relating to the state's sovereign immunity for certain actions regarding injury, illness, or death of state-employed seamen and to workers' compensation coverage for those seamen; and providing for an effective date."

- BILL HEARING POSTPONED

PREVIOUS ACTION

BILL: HB 155

SHORT TITLE:PUBLIC CONSTRUCTION PROJECT REQUIREMENTS

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
03/05/03	0423	(H)	READ THE FIRST TIME - REFERRALS
03/05/03	0423	(H)	L&C, FIN
03/05/03	0423	(H)	FN1: (LWF)
03/05/03	0423	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/05/03	0423	(H)	REFERRED TO LABOR & COMMERCE
03/14/03		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 159

SHORT TITLE:FINANCIAL INSTITUTION EXAMINATIONS/CFAB

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
03/05/03	0429	(H)	READ THE FIRST TIME - REFERRALS
03/05/03	0429	(H)	L&C, FIN
03/05/03	0429	(H)	FN1: (CED)
03/05/03	0429	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/14/03		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

GREG O'CLARAY, Commissioner
Department of Labor & Workforce Development
Juneau, Alaska
POSITION STATEMENT: Presented HB 155 for the governor.

JOHN BITNEY, Lobbyist
for Alaska State Homebuilders Association
Palmer, Alaska
POSITION STATEMENT: Asked for additional time to submit
testimony on HB 155; stated that homebuilders do many small jobs
and would be handicapped by \$100 fees at the start and end of
each job.

DON ETHERIDGE, Lobbyist
Alaska State AFL-CIO
Juneau, Alaska
POSITION STATEMENT: Spoke in opposition to HB 155, specifically
against having contracting agencies collect certified payroll

reports and charging all contractors and subcontractors the same \$200 in fees.

JOHN BROWN, President
Fairbanks Central Labor Council;
Operating Engineers
Fairbanks, Alaska

POSITION STATEMENT: Opposed having contractors send certified payroll reports to contracting agencies under HB 155.

DON SHIESL, Public Works Director
City of Wasilla
Wasilla, Alaska

POSITION STATEMENT: Spoke in opposition to HB 155, noting his agency has neither the staff nor expertise to process certified payroll reports.

RON TRUINI
Ironworkers Local 751
Anchorage, Alaska

POSITION STATEMENT: Opposed HB 155 and supported increasing penalties for contractors who don't file certified payroll reports.

BLAKE JOHNSON
Laborers International Union of North America Local 341
Anchorage, Alaska

POSITION STATEMENT: Testified against HB 155 and asked how contracting agencies would handle the certified payroll reports.

SCOTT BRIDGES, Business Representative
General Teamsters Local 959 Alaska
Anchorage, Alaska

POSITION STATEMENT: In testifying against HB 155, noted that department investigators are unable to prosecute prevailing wage claims unless they have all the facts at hand.

VINCE BELTRAMI, President
Anchorage Western Alaska Building & Trades Council
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 155, noting the department's difficulty in researching prevailing wage claims without having all the information in house; also favored a graduated fee to take into account the small contractor.

TIM ROGERS, Legislative Program Coordinator
Municipality of Anchorage

Anchorage, Alaska

POSITION STATEMENT: Spoke against HB 155, noting the bill makes the municipality the record keeper for the state with no compensation or direction.

RAYMOND SMITH, Business Manager

International Union of Painters and Allied Trades Local 1140
Anchorage, Alaska

POSITION STATEMENT: Opposed the department weakening its enforcement of prevailing wages in HB 155.

MARK DAVIS, Director

Division of Banking, Securities & Corporations
Department of Community & Economic Development
Anchorage, Alaska

POSITION STATEMENT: Presented HB 159 for the governor and answered questions about small loan companies and audit procedures for the Alaska Commercial Fishing and Agriculture Bank.

ACTION NARRATIVE

TAPE 03-21, SIDE A

Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 3:16 p.m. Representatives Anderson, Dahlstrom, and Crawford were present at the call to order. Representatives Lynn and Guttenberg arrived as the meeting was in progress.

HB 155-PUBLIC CONSTRUCTION PROJECT REQUIREMENTS

Number 0075

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 155, "An Act relating to the submission of payroll information by contractors and subcontractors performing work on a public construction contract; and providing for an effective date."

Number 0102

GREG O'CLARAY, Commissioner, Department of Labor & Workforce Development, presented HB 155, legislation introduced at the request of the governor. He described how the Wage and Hour section of the Division of Labor Standards & Safety enforces the

prevailing wage law [AS 36.05, Wages and Hours of Labor]. The office investigates complaints of noncompliance against contractors on public projects by examining their certified payroll reports. He explained that budget cuts have reduced the clerical staff who examine the thousands of certified payrolls submitted by contractors. At one time, there were five employees doing this work; now there is one person, he said.

Number 0358

COMMISSIONER O'CLARAY displayed a certified payroll form; the back of the form includes a statement of compliance with Title 36 [Public Contracts] which must be signed by the contractor. During the height of the construction season, the department receives 24,000 of these forms a week, he noted. The lone clerk who receives the forms barely has time to file the forms, much less check for errors, he said. Organized labor and individual citizens "police" the accuracy of these payroll forms and notify the department if a contractor appears to be out of compliance. An investigator is assigned to the complaint, scheduling a site visit to review payroll records. Commissioner O'Claray said that the department's head investigator estimates that only 20 percent of the payroll errors are caught.

Number 0602

COMMISSIONER O'CLARAY said HB 155 does two things. First, it sets up a user fee that will support the cost of the Division's staff. Second, the bill follows the Washington state law that requires the various contracting agencies to receive the certified weekly payrolls. He said his department does not have the staff to go through these volumes of reports to catch and correct contractors who are not in compliance. He noted that last year the Wage and Hour section conducted 540 investigations: 491 under Title 23 [Labor and Workers' Compensation] and 49 under Title 36.

Number 0723

REPRESENTATIVE CRAWFORD noted from his personal experience that many complaints don't get to the investigation stage. He said that if a payroll certification is lacking certain classes of workers on a job, the clerk will request the information from the contractor who usually corrects the payroll certification right away. He said the department is able to recover thousands of dollars of back or incorrectly reported wages before a complaint reaches the investigation stage.

COMMISSIONER O'CLARAY asked whether these corrections occur because the clerk discovered the errors.

REPRESENTATIVE CRAWFORD explained that a labor representative gets lists of jobs by contractors and compares that information with the payroll reports. The union person notifies the department clerk; she will call the contractor directly, and many times that will result in a correction. He said the majority of contractors are not trying to cheat; once they are made aware of an error, they correct it. He said that this process is much preferred to a full-fledged investigation.

COMMISSIONER O'CLARAY stated that this bill is a means for making the department more effective in enforcement. He said he welcomes suggested improvements by the committee, labor, and the public.

Number 1002

COMMISSIONER O'CLARAY noted that HB 155 would produce \$1 million in revenue a year by charging contractors and subcontractors \$100 fees at the start and finish of each job. He said the administration is seeking sustainable revenue for the division's work to protect it from future cuts. The bill does not set up a particular fund for these fees; the money would flow into the state's general fund. The contractors would send the certified payrolls to the contracting agencies. He predicted that this change would improve compliance by contractors.

Number 1149

REPRESENTATIVE GUTTENBERG asked if the low rate of compliance would improve with additional investigators. He asked if there would be increased revenue [from fines].

COMMISSIONER O'CLARAY said enforcement staff were cut several years ago, and the administration is trimming the budget, not adding more positions.

Number 1219

REPRESENTATIVE CRAWFORD expressed strong concerns about dispersing the certified payrolls to different contracting agencies. He explained that federal contracts use that system. He said it has taken him as long as a year to track down a federal contracting agent and to get the payroll information.

He said it is so much more convenient to call the Department of Labor & Workforce Development offices in Juneau, Anchorage, or Fairbanks, where the payroll reports are in a central repository. He asked if the department eliminates this single position, who would [do this function] in the different contracting agencies. Who will make sure that the contractors are paying the correct wages, he queried.

Number 1313

COMMISSIONER O'CLARAY replied that each contracting agency receives a percentage of the contract funds to monitor contract compliance to meet Title 36 requirements. He said he understands that it's more convenient to have the documents all filed in the Department of Labor & Workforce Development but indicated that the clerk has no time to find errors. He invited the committee to find a solution and funding for this problem. He suggested that HB 155 could require the contracting agent to assign a person to review payroll compliance. He agreed that it's a cost shift from the general fund [Department of Labor & Workforce Development] to the [contracting agencies].

REPRESENTATIVE CRAWFORD commented that it's important to make the payroll compliance as streamlined as possible. He suggested requiring a bi-weekly or monthly-certified payroll report -- instead of a weekly report -- or an on-line filing for those who have computer capability. He said he spoke to his union counterparts in Washington state and was told that the certified payroll reports are accessible in the Seattle area but not in the remote areas. He said that he is very concerned about tracking down certified payrolls in rural Alaska, for example, a Department of Transportation and Public Facilities contract in Bethel. He said that the best part of Alaska's system is having [the payroll reports] in a centralized place. He said he has watched the office shrink from three clerks to one person who is very overworked. He said she saves people thousands of dollars per month.

Number 1605

REPRESENTATIVE DAHLSTROM asked about the amount of the fees and why they are being charged: \$100 at the beginning and end of the project. She also noted on page 2, line 19-20, that the contractor must get approval from the Department of Labor & Workforce Development to pay the subcontractor. Payment can be withheld if the contractor hasn't paid the \$200 fees and for several other reasons, including subcontractor violations.

COMMISSIONER O'CLARAY said the intent is that the violator would not be paid. Withholding of payment is used to enforce the current law. The department has to wait until the end of the job to withhold final payment; however the contracting agency can stop payment immediately upon proof of a violation.

Number 1734

REPRESENTATIVE CRAWFORD said he received many faxes and letters opposing HB 155. He referenced a [March 14, 2003 fax] from Alaska Concrete Sawing [in Anchorage], which illustrates what the \$100 fee means to a small contractor who spends less than four hours total on a job. Representative Crawford said he often does welding jobs that take only a day or two. If the fee is \$100 in and \$100 out of a job, contractors won't be able to pass that along to the contracting agency. He suggested a fee break on the size of job. He said for a general contractor building a job the size of the Houston high school, \$100 is not an issue, but for a business like Alaska Concrete Sawing, it is.

COMMISSIONER O'CLARAY said he agreed and suggested that the bill use a graduated fee based on the amount of the contracts.

Number 1816

JOHN BITNEY, Lobbyist for Alaska State Homebuilders Association ["Homebuilders"], asked for additional time for his group to review the bill. For the most part, he said, homebuilders are small family-owned operations. If they're going to bid on prevailing wage jobs, they prefer a level playing field that has a consistent compliance system. He said the Homebuilders would like to work with the department to make this bill work. In response to a question from Chair Anderson, he stated that the \$100 in and out fee would severely impact homebuilders. Homebuilders are doing very small, one- or two-day jobs at the request of numerous agencies; they augment their normal work with these small jobs. He agreed to bring in correspondence next week from the Homebuilders group.

Number 1936

DON ETHERIDGE, Lobbyist, Alaska State AFL-CIO, stated that his group opposes HB 155 as drafted. He said his main concern is who gets the certified payrolls. This bill increases revenue to the department but shifts work away from it. He said he agrees that the fees should be increased on a graduated scale, but the

funds should be dedicated to the department so it can do the job correctly.

MR. ETHERIDGE said he wants to see a level playing field and everybody paid at the proper rate. Most of his union members are informed about their rate of pay; if they're not paid correctly, they call the union office, which addresses the problem with the department. However, he expressed concern about the nonunion workers who are not paid properly. If the department stays on the contractor, the employees will get paid the proper rate. He said that having the contracting agency monitor the worker's wages is like sending the dog to watch the hamburger. In most cases, the contracting agency would prefer to pay workers a lower wage because it can get more work done at a lower price.

MR. ETHERIDGE expressed concern that the contracting agencies would set aside and forget [the payroll reports]. He said in some areas, the mandatory worker training is not happening. The contracting agencies are supposed to be monitoring the training, and they're not doing it.

Number 2070

JOHN BROWN, President, Fairbanks Central Labor Council; Operating Engineers, said that the Department of Labor & Workforce Development needs the certified payroll reports to continue enforcing the prevailing wage. He said in his work he needs that information easily available. Sending the payroll reports to various agencies would hinder the unions' ability to help the department enforce the prevailing wage law. Any increased revenue should be given to the department, which needs it to enforce the law as written.

Number 2140

DON SHIESL, Public Works Director, City of Wasilla, asked Commissioner O'Claray if a \$100 fee must accompany the submission of every payroll.

COMMISSIONER O'CLARAY explained that the \$100 fee would be paid at the initial registration and then again at the close of the job.

MR. SHIESL testified that in larger contracts, these fees will be passed on to the contracting agency. An agency like the City of Wasilla will ultimately be paying these fees out of their

contracts. He said his bigger concern is in the contract compliance part of HB 155. He said he has neither the manpower nor the training to monitor certified payroll reports. Wasilla and other small cities do not receive a percentage of funds for contract compliance. He said he is concerned about a new type of compliance whose cost will be shifted to local government. He also said the committee should look at increasing penalties to force contractors to submit these certified payrolls.

Number 2255

RON TRUINI, Ironworkers Local 751, testified that his main concern with HB 155 is enforcement. He said that penalties are not severe enough; he said they are currently Class A misdemeanors. He said ignorance of the law [requiring the payment of prevailing wages] is no excuse for contractors. His other concern involves the contracting officer [who would be receiving the certified payroll reports]. Organized labor will be monitoring the contracting officers rather than focusing on the real problem of watching that contractors comply with state wage and hour laws.

TAPE 03-21, SIDE B

Number 2367

BLAKE JOHNSON, Laborers International Union of North America Local 341, said that contractors will have a hard time keeping track of where to send their certified payrolls if they are sent to other agencies besides the Department of Labor & Workforce Development. He used the example of the Anchorage School District, which wouldn't have the personnel to deal with certified payroll reports. He said the state won't save much money eliminating the two positions that handle the certified payroll reports. If the reports are in one location, the unions can [continue to] come in and look at the reports. He recommended increasing the fines of contractors who are not in compliance, and then the state would have more money for investigations.

Number 2294

REPRESENTATIVE CRAWFORD commented that [paying prevailing wages] is not just a union issue. He said there are many nonunion firms that check the payroll reports to see if their competitors are paying the correct prevailing wages, making sure that there is a level playing field. He said that one of his constituents, Consolidated Enterprises, [Anchorage] submitted a [March 13,

2003] letter contained in the members' packets. He said this company is a nonunion company that regularly checks its competitors' wage records

Number 2220

SCOTT BRIDGES, Business Representative, General Teamsters Local 959 Alaska, said he represents workers in the construction industry and favors a graduated approach to the user fee. He proposed having the contractor on the larger project pay a larger fee. He said this is an enforcement issue as well. He said investigators at the Wage and Hour section take far more [wage complaints] than they can respond to adequately. He said he didn't think department investigators can pursue claims that don't come with all the facts in hand. He said from his experience with the division, unprosecuted claims reach into the hundreds of thousands of dollars annually. The dispersal of the department's responsibilities to these contracting agencies would further dilute the wage earner's [opportunity to receive a fair wage]. The contract compliance money given to contracting agencies might cover technical issues but it does not include monitoring wage and hour issues. Contractors could send two copies by email to the department, which could forward the second copy to the contracting agency.

Number 2081

VINCE BELTRAMI, President, Anchorage Western Alaska Building & Trades Council, Anchorage, opposed HB 155. He said if the department lets the certified payroll go out the door to the contracting agencies, department employees will be chasing after the information instead of having it at their fingertips as they presently do; they need it in hand to efficiently process a payroll violation claim. He cited the bill's briefing paper that states that contractors are required to file duplicate reports with both the contractor and the department, but that's true only under limited circumstances. He disagreed that eliminating a range 12 position, which costs the state less than \$40,000 a year, would save the state money. He opined that the absence of that position would create additional work for the wage and hour investigators and cost the state much more than \$40,000. The department has the authority under the statute to do enforcement and impose fines and penalties. The user fee has some merit if it could be applied to enforcement of this program.

Number 1926

REPRESENTATIVE LYNN asked if he preferred a graduated or a flat fee, if a fee were imposed.

MR. BELTRAMI replied that a graduated fee would be fairer to smaller contractors. He said he wants any fee funneled back to the department to make this a viable program. The prevailing wage program falls a little short of being highly effective.

Number 1882

TIM ROGERS, Legislative Program Coordinator, Municipality of Anchorage, noted that HB 155 makes the city the record keeper for the Department of Labor & Workforce Development. There's no instruction on how to handle the forms nor compensation for staffing the work. The state would collect \$200 per contractor but pass the work on to the contracting agency. There's no provision for emergency work, for example, the recent windstorm [in Anchorage]. The city cannot approve final payment until authorized by the state, but the city has no idea how long that will take, and it has to pay high interest on the monies owed to the contractors. If every contractor and subcontractor is assessed the \$200 fees, either small contractors won't bid on the projects, thus driving up the cost of projects, or they will pass the expense on to the municipality. One way or another, the municipality will end up doing more work and will pay more money on the contracts. He said Mayor George Wuerch will be sending in a letter [detailing these concerns].

Number 1786

RAYMOND SMITH, Business Manager, International Union of Painters and Allied Trades Local 1140, said he has no problem with a graduated user fee, which would be passed on [to the contracting agency] anyway. He said it would be a real detriment if the department gave up [this monitoring] on behalf of the worker. He said he has just sent a letter today to the commissioner about a contractor with violations in two locations. Because the person filing the reports doesn't have time to review them, everybody has to be watching for payroll abuses, including union and nonunion contractors. If the department is looking for more revenue, he said, the state should nail the violators with large fines. He said he couldn't stress enough the state's need to enforce the laws on the books and to return user fees to the Department of Labor & Workforce Development. The prevailing wage program is viable and needs to stay where it is, he affirmed.

Number 1656

CHAIR ANDERSON summarized that HB 155 needs some revision. People have testified that there's merit in the fees if they are graduated. He said the committee will consider the idea of having contractors file certified payroll reports with contracting agencies instead of the Department of Labor & Workforce Development. He said he will hold testimony open and keep the bill in committee.

Number 1613

REPRESENTATIVE LYNN commented on the consistent testimony of the public favoring graduated fees for this program, for the business license, and for other programs.

CHAIR ANDERSON said that the starting point for an amendment to HB 155 will be a graduated fee. [HB 155 was held in committee.]

HB 159-FINANCIAL INSTITUTION EXAMINATIONS/CFAB

Number 1580

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 159, "An Act relating to the frequency of examinations of certain persons licensed to engage in the business of making loans of money, credit, goods, or things in action; repealing the requirement for a state examination and evaluation of the Alaska Commercial Fishing and Agriculture Bank; and providing for an effective date."

Number 1542

MARK DAVIS, Director, Division of Banking, Securities & Corporations, Department of Community and Economic Development, presented HB 159 on behalf of the governor. He explained that the bill makes two changes, one to the banking code and the other to Title 44 [State Government]. The first change reduces the frequency of the division's examination of small loan companies from every 12 months to every 18 months. He said this change will bring the schedule for examinations for small loan companies in line with the rest of the banking code and will eliminate the need for an additional bank examiner. He opined that this change will not affect the integrity of the examinations, and it still allows the division to examine a small loan company more frequently, if that is deemed advisable.

MR. DAVIS said the second change would discontinue the division's annual examination of the Alaska Commercial Fishing and Agriculture Bank (CFAB). At present CFAB has no state funds and does not accept deposits from the public. He explained that CFAB operates as a cooperative for the benefit of its members and borrowers, and it is required by statute to prepare an annual audit by an independent outside auditor. That audit requires CFAB to include financial statements audited by outside auditors; the audit must discuss the bank's circumstances and any other pertinent information under AS 44.81.200 [Reports and publications]. House Bill 159 does not alter that requirement nor does it change CFAB from being subject to a legislative audit. He said that if HB 159 is passed, the audited report will still be provided to the legislature. In conclusion, he said that division officials believe an annual bank exam is unnecessary because CFAB has repaid its state funding; it does not lend money to the public; and it's subject to both independent and legislative audits.

Number 1388

MR. DAVIS replied to a question from Chair Anderson about whether there are enough examiners now to complete all the required exams. He said if the requirement for the CFAB examination is deleted and the small loan exams change to the 18-month frequency, there is sufficient staff to handle the workload in a timely manner.

Number 1354

REPRESENTATIVE LYNN asked if the bill affects pawnbrokers and second hand dealers.

MR. DAVIS explained that the division will continue to examine small loan companies that lend up to \$25,000 and are allowed to charge in excess of usury under specific procedures. Under the FDIC [Federal Deposit Insurance Corporation] and the National Credit Union Administration rules, all bank institutions are examined 18 months or more frequently. He said the division would like the authority to do examinations using that same schedule. That way, he said, the division could concentrate on small loan companies that have had violations or appear to need guidance.

REPRESENTATIVE LYNN asked how many companies would be affected by this bill.

MR. DAVIS said he did not know how many small loan companies the division reviews but said he would provide that information.

Number 1254

REPRESENTATIVE GUTTENBERG asked if CFAB had a position on HB 159.

MR. DAVIS responded that he met with the president of CFAB regarding the previous administration's practice of posting the division's report on the Internet. The CFAB officials said the report should be confidential under the banking statutes, and Mr. Davis said he agreed. The bank would still be subject to legislative audit so this same information would be provided [to the legislature]. He didn't learn from CFAB officials whether they benefited from the division's examination.

REPRESENTATIVE GUTTENBERG asked about the liability of an outside independent auditor, given the recent audit scandal at Enron Corporation.

Number 1098

MR. DAVIS replied that outside auditors owe duty both to the board and to the shareholders.

CHAIR ANDERSON reiterated that the auditor KPMG, formerly Pete Marwick, is liable if there are errors in the audit.

REPRESENTATIVE GUTTENBERG mentioned that his concern was about financial oversight.

MR. DAVIS said an outside auditor could be liable either to the board or to a shareholder because of fiduciary duties that run from a director to a shareholder. He said the directors would have negotiated the contract and scope of engagement for an outside auditor. If there was an error in the audit, the auditor could be held liable in a lawsuit.

REPRESENTATIVE GUTTENBERG asked if anything has changed in Alaska since the Enron scandal.

MR. DAVIS said he couldn't comment about changes in Alaska but said the accounting industry's Financial Accounting Standards Board is revising audit practices.

Number 0950

REPRESENTATIVE DAHLSTROM moved to report HB 159 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HB 159 was reported from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:37 p.m.