

**ALASKA STATE LEGISLATURE**  
**SENATE LABOR AND COMMERCE STANDING COMMITTEE**

April 13, 2011

5:01 p.m.

**MEMBERS PRESENT**

Senator Dennis Egan, Chair  
Senator Joe Paskvan, Vice Chair  
Senator Linda Menard  
Senator Bettye Davis  
Senator Cathy Giessel

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 155(L&C)

"An Act relating to the applicability of prevailing wage rates to public construction contracts; and, with regard to public construction contracts, relating to notifications, bonding notifications, filings, notices, primary contractors, final payments, penalties, advertised specifications, required contract provisions, terminations, lists of violating contractors, and remedies."

- MOVED CSHB 155 (L&C) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 87(L&C)

"An Act relating to civil and criminal penalties for antitrust violations."

- MOVED CSHB 87 (L&C) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 155

SHORT TITLE: PUBLIC CONSTRUCTION CONTRACTS

SPONSOR(S): LABOR & COMMERCE

02/11/11	(H)	READ THE FIRST TIME - REFERRALS
02/11/11	(H)	L&C
02/25/11	(H)	L&C AT 3:15 PM BARNES 124
02/25/11	(H)	Heard & Held
02/25/11	(H)	MINUTE(L&C)

02/28/11 (H) L&C AT 3:15 PM BARNES 124  
 02/28/11 (H) Heard & Held  
 02/28/11 (H) MINUTE(L&C)  
 03/07/11 (H) L&C AT 3:15 PM BARNES 124  
 03/07/11 (H) Heard & Held  
 03/07/11 (H) MINUTE(L&C)  
 03/09/11 (H) L&C AT 3:15 PM BARNES 124  
 03/09/11 (H) Heard & Held  
 03/09/11 (H) MINUTE(L&C)  
 03/11/11 (H) L&C AT 3:15 PM BARNES 124  
 03/11/11 (H) Heard & Held  
 03/11/11 (H) MINUTE(L&C)  
 03/14/11 (H) L&C AT 3:15 PM BARNES 124  
 03/14/11 (H) Scheduled But Not Heard  
 03/16/11 (H) L&C AT 3:15 PM BARNES 124  
 03/16/11 (H) <Bill Hearing Canceled>  
 03/18/11 (H) L&C AT 3:15 PM BARNES 124  
 03/18/11 (H) Moved CSHB 155(L&C) Out of Committee  
 03/18/11 (H) MINUTE(L&C)  
 03/23/11 (H) L&C RPT CS(L&C) NT 1DP 5NR  
 03/23/11 (H) DP: OLSON  
 03/23/11 (H) NR: CHENAULT, THOMPSON, SADDLER,  
 HOLMES, MILLER  
 03/29/11 (H) TRANSMITTED TO (S)  
 03/29/11 (H) VERSION: CSHB 155(L&C)  
 03/30/11 (S) READ THE FIRST TIME - REFERRALS  
 03/30/11 (S) L&C  
 04/12/11 (S) FIN REFERRAL ADDED AFTER L&C  
 04/12/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)  
 04/12/11 (S) Scheduled But Not Heard  
 04/13/11 (S) L&C AT 5:00 PM BELTZ 105 (TSBldg)

BILL: HB 87

SHORT TITLE: ANTITRUST VIOLATION PENALTIES

SPONSOR(s): OLSON, HOLMES

01/18/11 (H) PREFILE RELEASED 1/14/11  
 01/18/11 (H) READ THE FIRST TIME - REFERRALS  
 01/18/11 (H) L&C, JUD  
 02/28/11 (H) L&C AT 3:15 PM BARNES 124  
 02/28/11 (H) Scheduled But Not Heard  
 03/07/11 (H) L&C AT 3:15 PM BARNES 124  
 03/07/11 (H) Moved CSHB 87(L&C) Out of Committee  
 03/07/11 (H) MINUTE(L&C)  
 03/09/11 (H) L&C RPT CS(L&C) NT 4DP 2NR  
 03/09/11 (H) DP: THOMPSON, HOLMES, MILLER, OLSON  
 03/09/11 (H) NR: CHENAULT, JOHNSON

03/23/11 (H) JUD AT 1:00 PM CAPITOL 120  
 03/23/11 (H) Moved CSHB 87(L&C) Out of Committee  
 03/23/11 (H) MINUTE(JUD)  
 03/25/11 (H) JUD RPT CS(L&C) NT 3DP 3NR  
 03/25/11 (H) DP: HOLMES, THOMPSON, GRUENBERG  
 03/25/11 (H) NR: PRUITT, LYNN, GATTO  
 04/04/11 (H) TRANSMITTED TO (S)  
 04/04/11 (H) VERSION: CSHB 87(L&C)  
 04/06/11 (S) READ THE FIRST TIME - REFERRALS  
 04/06/11 (S) L&C, JUD  
 04/12/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)  
 04/12/11 (S) Scheduled But Not Heard  
 04/13/11 (S) L&C AT 5:00 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

JENNIFER SENETTE

Staff to Representative Olson  
 Alaska State Legislature  
 Juneau, AK

**POSITION STATEMENT:** Presented HB 155.

REPRESENTATIVE OLSON, Chair  
 House Labor and Commerce Committee  
 Alaska State Legislature  
 Juneau, AK

**POSITION STATEMENT:** Commented on HB 155 as chair of the House Labor and Commerce Committee, sponsor.

KATHY WASSERMAN, Executive Director  
 Alaska Municipal League (AML)

**POSITION STATEMENT:** Supported HB 155.

BARBARA HUFF-TUCKNESS, Director  
 Governmental and Legislative Affairs  
 Teamsters Local 959

**POSITION STATEMENT:** Supported HB 155.

DON ETHERIDGE  
 Alaska AFL-CIO

**POSITION STATEMENT:** Supported HB 155.

REPRESENTATIVE HOLMES,  
 Alaska State Legislature  
 Juneau, AK

**POSITION STATEMENT:** Co-sponsor of HB 87.

ED SNIFFEN, Assistant Attorney General  
Department of Law (DOL)  
Anchorage, AK  
**POSITION STATEMENT:** Supported HB 87.

**ACTION NARRATIVE**

[5:01:55 PM](#)

**CHAIR DENNIS EGAN** called the Senate Labor and Commerce Standing Committee meeting to order at 5:01 p.m. Present at the call to order were Senators Davis, Giessel, Menard, and Chair Egan.

**HB 155-PUBLIC CONSTRUCTION CONTRACTS**

[5:03:08 PM](#)

CHAIR EGAN announced the first order of business to be HB 155, sponsored by the House Labor and Commerce Committee.

SENATOR PASKVAN joined the committee.

[5:04:05 PM](#)

JENNIFER SENETTE, staff to Representative Olson, chair of the House Labor and Commerce Committee, briefed the committee that during the Great Depression, Congress enacted a federal statute, the Davis Bacon Act, which prescribed that minimum wages must be paid to construction workers when they worked on federal public construction contracts. Subsequently state legislatures enacted similar laws, which came to be known as little Davis Bacon Acts (LDB). Alaska's LDB is found in Title 36 and it applies to public construction contracts under \$2,000. This limit was modeled after the limit of the federal Davis Bacon Act that was set in 1935. Currently, if a public construction contract is over \$2,000, workers must be paid at the prevailing wages for that job. A project under \$2000 would not be subject to LDB requirements.

She said the reason there is a threshold at all for LDB projects is due to the recognition that some projects are simply too small to justify the substantial administrative burden that is associated with LDB compliance. Right now, if a project is under \$2,000 it can be completed without jumping through the hoops like certified payroll, reporting requirements and filing with the Department of Labor. The problem is that in Alaska, especially rural Alaska, it's hard to find a public construction project that is under \$2,000. The federal \$2,000 limit was based on a workforce that was highly mobile and on communities that are easily accessible. In Alaska, transporting materials and

mobilizing a workforce is costly and logistically challenging. So, even if you have what everyone else would consider a small project, like filling pot holes or repairing a guard rail, it would probably cost more than \$2,000 in rural Alaska - making it the equivalent of not having a threshold at all.

Raising the threshold can also be seen as an economic development issue, because the rigidity of LDB compliance often discourages smaller local firms from even submitting bids. In rural areas, this often means that workers have to be imported from around the states to do a job that could have been done locally. Raising the threshold will open opportunities to smaller contractors who otherwise might not have the experience or the wherewithal to deal with LDB compliance. Inflationary pressures would also justify a significant increase, she added.

[5:07:56 PM](#)

MS. SENETTE said 19 other states have thresholds that are much higher than \$2,000 and of these states the average is about \$108,000.

She said this bill has been in the works for two years and this \$25,000 trigger was the result of a collaborative effort between several unions, the state and the Alaska Municipal League (AML). This is the amount the affected parties have indicated that they can all live with. The sponsor has never believed this to be an anti-union issue, but rather an antiquated statute issue and raising the threshold to \$25,000 largely addresses that.

[5:09:18 PM](#)

MS. SENETTE said that section 1 has the \$25,000 limit and the remaining sections can be described as slightly more technical and making everything consistent with the title.

[5:10:28 PM](#)

SENATOR MENARD remarked that if \$108,000 is the average, what can you get done for \$25,000! And said she is tired of doing legislation that doesn't make the difference it needs to make.

MS. SENETTE responded that they started out hearing at the beginning of session from municipalities throughout the state, and they came up with a large number of \$300,000 that probably would have topped all of the other threshold amounts. Representative Olson knew such a large jump may not get the support it needs to move forward. That's how they arrived at the original number which was \$75,000. Subsequently, the affected parties came to this compromise. Although no one is especially

pleased with this number, they have heard that some people have said the \$25,000 will help. Fairbanks, for instance, can do projects for under \$25,000.

5:13:13 PM

REPRESENTATIVE OLSON clarified that the \$108,000 was skewed by one state that was at \$500,000 and he could make a valid argument on everything from \$25,000 up to \$108,000, but basically, AML wanted \$50,000. A couple of weeks after the bill came out he was approached by the AML and two union representatives who wanted to work on a compromise and this is what they thought everyone could live with. This figure meets and exceeds inflation. There is also less involvement with the Department of Labor and Workforce Development (DOLWD) that has a trigger for projects above \$25,000.

SENATOR PASKVAN asked on page 3, line 1, the change from "shall" to "must", is that a different standard?

MS. SENETTE responded that a drafter said this change was necessary, but it doesn't change the standard.

SENATOR PASKVAN said that was interesting - as long as it doesn't change the standard.

SENATOR GIESSEL asked if he heard from any non-profits that also do projects about the \$25,000 limit.

REPRESENTATIVE OLSON responded that the bill will only apply to governmental subdivisions - boroughs and the State of Alaska.

SENATOR GIESSEL asked if this would not apply to non-profits at Eaglecrest or building a playground at a municipal park with volunteers.

REPRESENTATIVE OLSON replied the only volunteer situations like that would have been that a couple of municipalities that have built playgrounds with volunteers, which is not paid labor, so it wouldn't be accounted into the limit.

SENATOR GIESSEL said that is true, but a non-profit might be raising funds to do something. Is he saying that a non-profit would not be affected?

REPRESENTATIVE OLSON replied that non-profits are not affected.

SENATOR PASKVAN said he always understood LDB applied to the state and the political subdivisions created by the state, meaning the municipalities.

REPRESENTATIVE OLSON added that Fairbanks is perfect example where they have 108 road service areas down from 140. They have small jobs that are over \$2,000 and under \$25,000. This can work in other parts of the state, but Fairbanks has notable volume.

[5:19:50 PM](#)

KATHY WASSERMAN, Executive Director, Alaska Municipal League, agreed that they started with a goal of \$50,000, but got a lot of push back from the unions, and it didn't seem to be going anywhere. The two union representatives approached her and they discussed what they could all live with. They all walked out of the room at the end equally unhappy, so they felt they had come up with something that would work.

[5:21:26 PM](#)

BARBARA HUFF-TUCKNESS, Director, Governmental and Legislative Affairs, Teamsters Local 959, said they supported HB 155. She said she is one of the two union representatives who discussed this issue. She added, however, some comments on the impacts to workers who were worried about where the money for these construction projects will come from. Theoretically, it is coming out of the workers pockets and that was part of the discussion. The inflation issue became the important factor in actually establishing the new figure. They will continue to monitor the effects to see if it does anything different with respect to the economy. It was a tough round of negotiations, she said.

SENATOR MENARD asked how long the \$2,000 has been in place.

MS. HUFF-TUCKNESS replied since 1935.

[5:24:09 PM](#)

DON ETHERIDGE, Alaska AFL-CIO, said they had a lot of negotiations over this, but supported HB 155. He was curious about the "shall" and the "must" and contacted their attorneys who were "happy with it." He talked to the Department of Labor and Workforce Development (DOLWD) and they said it didn't change anything, too. He said they have all taken a "pretty good whipping" from their constituents along the way.

[5:25:32 PM](#)

SENATOR PASKVAN moved to report HB 155 [CSHB 155(L&C)], version D, from committee with individual recommendations and attached fiscal note(s). There were no objections and it was so ordered.

[5:26:11 PM](#)

At ease from 5:26:11 PM to 5:28:22 PM.

**HB 87-ANTITRUST VIOLATION PENALTIES**

[5:28:22 PM](#)

CHAIR EGAN announced the next order of business would be HB 87 [CSHB 87(L&C) was before the committee].

[5:28:48 PM](#)

REPRESENTATIVE HOLMES, co-sponsor of HB 87, said this measure simply raises the penalties that can be imposed for anti-trust violations in this state (price fixing and monopoly behavior) up to a maximum of \$50 million. The current penalties are capped at \$50,000 for a corporation. It also increases the penalty to a Class C felony and allows the department to collect civil penalties. These are mostly found in multi-state actions such as price fixing among drug companies or computer chip manufacturers where a \$50,000 penalty is not even a slap on the wrist for some.

She explained that the Alaska Department of Law goes into these actions, but it doesn't have the ability to impose higher fines and that gives them very little bargaining power. This was developed with the chair of the House Labor and Commerce Committee and the Department of Law as a collaborative effort.

CHAIR EGAN objected to take questions.

[5:30:05 PM](#)

SENATOR MENARD asked the effective date.

REPRESENTATIVE HOLMES replied that is has no actual effective date and so it would go into effect 90 days after being signed by the governor.

[5:30:34 PM](#)

ED SNIFFEN, Assistant Attorney General, Department of Law (DOL), said he supported HB 87 as this measure would give the department another enforcement tool to recover more money for the state in some of the anti-trust cases they get involved in. They have been in multiple cases in the recent past where if Alaska had stronger penalty provisions, they would have likely

recovered more money for the state. This will help them in that regard.

SENATOR MENARD asked how many cases of anti-trust violations occur over the period of one year in the State of Alaska.

[5:31:42 PM](#)

MR. SNIFFEN replied that not too many companies are actually in the State of Alaska, but the department gets involved in about two or three a year, mostly in connection with multi-state cases to pursue, for instance, pharmaceutical manufacturers or computer hardware manufacturers or other entities that sell products in Alaska. In the 10 years he has been in this position with the department, they have had at least a couple dozen anti-trust cases where this kind of penalty provision would have applied and would have made a difference in some of them.

He said the department is also contemplating some other cases going forward where this kind of provision would help with enforcement efforts.

SENATOR MENARD asked in those two or three cases are they ever repeat offenders.

MR. SNIFFEN replied generally not. Most of the cases he has dealt with are first time offenders. The conduct itself has been repeated it seems, but with different defendants. An example might be price fixing in the pharmaceutical arena where he has seen abuses between generic drug manufacturers and branded drug manufacturers colluding to keep generic drugs off the market. That is a pattern that has been around for several years, but they usually catch different defendants doing it.

SENATOR PASKVAN thanked Representative Holmes and Representative Olson for this measure. It's good for Alaskans.

CHAIR EGAN closed public testimony.

SENATOR PASKVAN moved to report CSHB 87(L&C) from committee with individual recommendations and attached fiscal note. There were no objections and it was so ordered.

[5:34:52 PM](#)

Finding no further business to come before the committee, Chair Egan adjourned the meeting at 5:35 p.m.