

2-1-82

HOB 146

HOB 303

HOUSE LABOR & COMMERCE  
STANDING COMMITTEE  
February 1, 1982  
1:05 p.m.

Members Present: Rep. Martin, Chairman  
Rep. Byisma, Vice-Chairman  
Rep. Randolph

Members Absent: Rep. Gardiner  
Rep. Rogers

COMMITTEE CALENDAR

HB 303 An act relating to employment preference for residents of depressed areas.

HB 146 An act relating to payment procedures on certain public contracts.

WITNESS REGISTER

Jeff Barry  
Committee Aide  
House Labor & Commerce Committee  
Pouch V  
Juneau, Alaska 99811  
465-3669  
Position Statement: Overview of HB 146 and proposed amendments.

Judy Knight, Special Assistant to the Commissioner  
Department of Labor  
PO Box 1149  
Juneau, Alaska 99801  
465-2700  
Position Statement: Gave department's position and suggested amendments on both bills.

Al Gordon, Assistant Director  
Wage & Hour Division  
Department of Labor  
PO Box 630  
Juneau, Alaska 99811  
465-4500  
Position Statement: Testified with Knight regarding Department's position regarding HB 146.

Sharon Mackland, lobbyist  
Utility Contractors Association  
no phone or address given  
Position Statement: Supported HB 146; gave suggested amendments.

Jean Kline  
Alaska Chapter  
Associated General Contractors (AGC)  
586-1740  
Position Statement: Questions and clarifications (HB 146).

Ginny Chitwood  
Alaska Municipal League  
no phone or address given  
Position Statement: Various criticisms of HB 146; spoke from prepared testimony.

John Scribner  
Department of Transportation & Public Facilities  
Juneau, Alaska  
Position Statement: Opposed to HB 146 as written.

PREVIOUS ACTION

HB 146

No previous action.

Statutory Reference: AS 36

Action Taken: Amendment #1: Rep. Randolph moved, on page 1 of the Committee Substitute for SSHB 146, to delete subsection (b) (lines 16-19), and insert language recommended in memo dated 5/19/81 to Committee from Department of Labor, which reads: "The state shall initiate payment to the contractor for the amount due under the public construction or public works contract within 15 days after the contractor submits to the state a bill for materials and services with a certification issued by the Department of Labor that all employees employed on the project by the contractor and by all subcontractors have been paid not less than the established prevailing rate of pay as determined and published by the Department of Labor." There being no objection, the motion passed.

Amendment #2: Rep. Bylsma moved to delete subsection (d), lines 25-28, page 1. There being no objection, the motion passed.

Amendment #3: Rep. Randolph moved, on page 1, line 29, to insert between the words "state" and "is", the following: "or a political subdivision of the state". There being no objection, the motion passed.

Rep. Randolph moved to rescind the committee's action in adopting Amendment #1. For: Randolph. Against: Martin, Bylsma. Motion failed.

Rep. Randolph moved to pass CSSSHB 146 (L&C) from committee with individual recommendations. There being no objection, the motion passed.

HB 303

No previous action.

Statutory Reference: AS 36.

Action Taken: Rep. Randolph moved to table bill; there being no objection, motion passed.

ACTION NARRATIVE

Tape #001  
Recording  
Number 0326

The meeting was called to order by Chairman Martin at 1:05 p.m. Members present were: Representatives Martin, Bylsma, and Randolph. Members absent were: Representatives Gardiner and Rogers. First bill considered by the committee was HB 146.

Number 0343

Jeff Barry, Labor & Commerce Committee aide, gave an overview of the bill and proposed amendments.

Number 0410

Judy Knight, Special Assistant to the Commissioner of Labor, felt the committee substitute does not address the problem. Knight presented the committee with a position paper. Specifically, she felt the term "certified payroll" was unclear, and that 15 days is too short a time for state to pay. She referred to the paper she presented to the committee for a list of suggested amendments.

Number 0451

Al Gordon, Assistant Director of the Wage & Hour Division, joined Knight in presenting testimony. There was discussion about what is a reasonable time in which to expect the state to pay contractors.

Number 0482

Knight said there needs to be clarification between the terms "certified payroll" and "payroll certified by..."

Number 0492                    There was discussion about which branches of the state government the bill should address.

Number 0540                    Knight explained the state's normal procedure for payment of contractors.

Number 0559                    Barry said the intention of the bill was that "certified payroll" would mean sworn to or attested by the contractor that employees have been paid. Gordon said that, without certification, the Department of Labor cannot enforce paying prevailing wages; the employee would have to go through a lengthy process to get his money.

Number 0588                    Sharon Mackland, Utility Contractors Association, supported the bill. She was concerned with "retainage". She felt the definition of "state" needed to be expanded. Knight suggested using words, "contracting agency", to replace word "state". Barry said he had asked legal services for a definition; they said that "state", as used, means the state or any political subdivision. There was discussion.

Number 0666                    Jean Kline, Alaska Chapter, Associated General Contractors, also wanted "political subdivision" included in the definition of "state". She had several questions about the impact of the bill; there was discussion. Kline commended DOT's handling of contracts.

Number 0715                    Ginny Chitwood, Alaska Municipal League, said there was no objection by the municipalities to interest accruing, but felt that interest on retainage destroys the function of retainage and removes incentive to complete contracts on time. She said the definition doesn't differentiate between the various types of retainage. (Chitwood spoke from prepared testimony.) Rep. Martin asked why contractors should have to compensate money withheld; Chitwood responded that retainage is to ensure a contractor finishes the work. There was discussion of retainage and various methods which could be used.

Number 0811                    John Scribner, Department of Transportation and Public Facilities, opposed the bill as written. He said it increases the risk that the contractor will not complete the job.

He felt the increased risk would increase the cost of bonding, and that increased bonding would be difficult for small contractors to obtain. He felt adequate procedures exist--bidding, bonding, and mobilization costs are paid up front; materials payments are made when materials are delivered; and progress payments are currently being made. He said the total turnaround is two weeks. He said an analysis had been done, and it was found that most payments get out quickly, but a few take as long as 30-35 days. He noted that mail sometimes takes over a week. Scribner explained retainage as it is presently being used, and the costs of retainage.

Number 0898

Rep. Randolph moved to delete, on page 1, lines 16-19, subsection (b) of the committee substitute, and replace with language recommended by the Department of Labor in the paper they presented to the committee. There being no objection, the motion passed.

Number 0921

Rep. Bylsma moved to delete subsection (d), lines 25-28, page 1 of committee substitute. There being no objection, the motion passed.

Number 0936

Rep. Randolph moved to insert "or a political subdivision of the state" between the words "state" and "is" on line 29 of page 1 of the committee substitute. There being no objection, the motion passed.

Number 0942

Judy Knight said that, in the Department's preferred amendment, when the final billing occurs, the contracting agency would contact the Department of Labor, who would send a memo verifying that wages were paid. She gave a timeframe of a couple days at most if payrolls had been submitted throughout the project. There was discussion.

Number 0965

Rep. Randolph said the issue of the bill is to speed the flow of money; he felt the amendment passed by the committee had the potential to be a problem. He moved to rescind the adoption of amendment #1. There was discussion. On the question, Rep. Randolph voted in favor of rescinding; Reps. Bylsma and Martin opposed rescinding. The motion failed.

Rep. Randolph moved to pass the committee substitute with individual recommendations. There being no objection, the motion passed, and the committee substitute was passed from committee with amendments.

Number 1014

Rep. Martin gave an introduction to HB 303.

Number 1020

Judy Knight, Special Assistant to the Commissioner of Labor, said the Department of Labor, the Attorney General, and the Governor would like to give employment preference to residents. She said they had attempted to do this constitutionally. Knight explained that there is a large amount of paperwork involved, and that it is difficult to determine residence and ensure the intention to stay in the state. She said she is not sure if the cost of the legislation justifies the intent. Knight noted that people outside the state are looking to Alaska for employment. The Department of Labor is concerned about this influx of people. She said the bill addresses the issues in a positive manner, but information needed to make the bill workable is not available. There was discussion.

Number 1128

Rep. Randolph moved to table the bill. There being no objection, the motion passed.

Number 1135

There being no further business to come before the committee, the meeting was adjourned at 2:20 p.m.

2/1/82

meter

- 0326 Call to order by Ch. Martin
- 0330 CS 55HB 146 (intro)
- 0343 Jff Barry - overview of bill + amendments
- 0410 ~~Judy~~ Knight - CS does not address problem.  
(handed out memo to explain their position)  
"certified payroll" unclear term. 15 days too short  
a time to pay. ~~suggested~~, see memo for suggested  
amendment.
- 0451 Al Gordon, Asst Dir, Wage & Hour Div joined  
Ms. Knight. <sup>Knight -</sup> "Want method to ensure employees  
have been paid.
- 0467 Randolph - agree w/ that, but need to be sure contractor  
is paid in timely fashion.
- 0472 Knight - agree, but bill needs changes.
- 0481 Martin - clarification
- 0482 Knight - CS says "certified payroll" rather than  
"payroll certified by".
- ~~0490~~ Martin said
- 0492 Martin - Knight discussed definitions of "state"  
Byloma - in this definition, wd  
only apply to executive branch.
- 0535 Byloma - suggested a mt (see memo) could under-  
mine purpose of whole bill - Dept Labor cd hld up 30-60 days.
- 0540 Knight - wd not intentionally. ~~State~~ went through  
normal procedure.
- 0558 Barry - intention was that certified payroll means  
sworn to or attested by contractor that employees have been paid.

- 0575 ~~E~~ Gordon - without certification, Dept of Labor cannot enforce paying prevailing wages; employee has to go through lengthy process & sue to get his money. This way, Department monitors
- 0588 Sharon Mackland, Utility Contractors Assoc - supports bill. Concerned w/ "retainage". Sec E says state is liable to contractor; original bill included political subdivisions (boroughs, cities) - this version needs definition, Sec d, of state expanded or made same as on pg 3, line 9, or including "political subdivision" in pg 1 definition.  
Discussion Martin/Mackland re definition of "state".
- 0646 Knight - suggested "contracting agency" to replace word "state".
- 0647 Barry - asked lawyers for definition - they said "state" as used, means state or any political subdivision.  
Discussion w/Knight.
- 0666 Jeanne Kline, At Chap, Gen Assoc Contractors - ~~again~~ also wanted "political subdivision" included in definition. Oola about administration - AGC contracts administered through DOT - will this cling that? Knight said Labor has nothing to do w/DOT pymts - He just monitor them. Kline asked why add'n was changed from Title 35 to 36. Barry said this just clarifies penalties ~~for~~ for late pymt. Commended DOT's handling of ~~project~~ contracts.

0715 Gerry Chitwood, Alaska Municipal League - no objection by municipalities to interest accruing, but interest on retainage destroys function of retainage; removes incentive to complete contracts on time. Definition doesn't differentiate between various types of retainage. (read from prepared testimony.)

742 Martin - why should contractors have to ~~pay~~ <sup>compensate</sup> about money withheld? Chitwood - retainage is to ensure contractor finishes work. Martin - prob has been that smaller subdivisions of state have been holding money after job is done. <sup>Chit</sup> She felt it should be written into contract rather than law. Martin felt contractor would be victim in that set. They discussed retainage & various methods.

772 - Bylsma said he had to study it further

778 - Kline re retainage - money retained is contractor's money - why shouldn't he rec benefits, esp if it is bearing interest.

Barry - as written, intent is monies withheld & liened won't be pd; no monies "retained" are disputed

Kline - 90 day w/holding can make or break some small contractors



Randolph moved to add "or political subdivision"

on pg —, line —.

No obj. - passed

942 Judy Knight - in preferred amendt, when final billing occurred, contracting agency wd contact Dept Labor, who wd send memo verifying wages were pd. Gave timeframe of a couple days at most if payrolls had been submitted throughout project. Randolph - questions.

0965 Randolph - issue of bill is to speed flow of money; amendt passed has potential to be problem. Moved to rescind adoption of amendt # 1.

Discussion: Bylsma <sup>supports</sup> ~~feels~~ using #1 removes possibility of legal maneuvers to

Martin agrees w/ Rep. Bylsma

Randolph - disagreed, upheld his position

Thinks amendt thwart's reason for bill.

~~Bylsma~~

Randolph - for ~~Rep~~ Bylsma Martin - no motion to rescind amendt failed.

Randolph moved to pass w/ individual recommendations; no objections.

Bill passed for committee.

Chuck  
Hollwell

1014 HB 303 - Martin gave intro to bill.

1020 Judy Knight, Special Asst to Commissioner, Dept Labor -  
Dept, AG, & Governor wd like to give employment  
preference to residents. Tried to do this constitutionally.  
Large amt of paperwork involved; hard to determine  
residency, ensure intention to stay, <sup>not sure</sup> Cost of legislation  
justifies intent. People outside looking to Alaska  
for employment. Dept of Labor concerned about this  
influx of people. Bill addresses issues in positive  
manner, but info needed to make bill workable is not  
available. Not sure of intent of bill.

1111 Randolph - comment (good explanation); are we  
ready to seriously consider issue  
Knight - believe in employment preference; no answer  
to how to do that constitutionally. Have not found workable  
solution.

Randolph - comments. Moved to table bill -  
no objection, motion passed  
Mtg adjourned 2:30 pm  
meter 1135

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P. O. BOX 1149  
JUNEAU, ALASKA 99811

Ph: 465-2700

May 19, 1981

Mr. Ken Spray  
House Labor & Commerce Committee  
Alaska House of Representative  
Pouch V  
Juneau, Alaska 99811

Dear Mr. ~~Spray~~: *Ken*

My apologies for the confusion that has resulted from the hearings and conversations concerning a proposed committee substitute for House Bill 146, "An Act relating to payment procedures on certain public contracts." The confusion seems to relate to "certified" payroll as opposed to "certification." The following amendment is proposed to address the concerns expressed by members of the Department to provide security for the payment of wages to employees on public works projects.

Preferred Delete subsection (b), lines 16-19, page 1.  
Amendment: Insert the following.

- (b) The state shall initiate payment to the contractor for the amount due under the public construction or public works contract within 15 days after the contractor submits to the state a bill for materials and services with a certification issued by the Department of Labor that all employees employed on the project by the contractor and by all subcontractors have been paid not less than the established prevailing rate of pay as determined and published by the Department of Labor.

Alternative Delete section (b), lines 16-19, page 1.  
Amendment: Insert the following.

- #1 { (b) The state shall initiate payment to the contractor for the amount due under the public construction or public works contract within 15 days after the contractor submits to the state a bill for materials and services and a sworn certification that all employees employed on the project by the contractor and by all subcontractors have been paid not less than the established prevailing rate of pay as determined and published by the Department of Labor.

Test of use of money - coup

SIGN-IN SHEET

Name (please print)	Address	Representing	Testify? (YES or NO)	Phone Number
Eileen R. Lutz	P.O. Box 1149	Dept. Labor	NO	465-2750
Judy Knight	" "	" "	?	"
Chuck Caldwell	" "	" "		465-4500
Al Gordon	P.O. Box 630	" "	Yes	465-4870
Janet King		A.H.C.	?	6-1740
Harold Macklin				
Denny Chitwood	Municipality Local. D.O.T. - opposed - Push that contractors would not complete job increase cost of bonds for small contractors D.O.T. can give advances for equip. material. progress payment schedule is usually quick depends on mail.			
John Strubinos				

LABOR & COMMERCE COMMITTEE  
DAILY COMMITTEE HEARING

Date: 2/1/82

Place: \_\_\_\_\_

<u>Members</u>	<u>Present</u>	<u>Absent</u>	<u>Time Arrived</u>	<u>Time Left</u>
Rep. B. Bylsma, V. Chair	✓		1:00	2:00
Rep. D. Randolph	✓		1:05 1:55	1:35 → 2:00
Rep. B. Rogers				
Rep. T. Gardiner				
Rep. T. Martin, Chair	✓		1:00	2:00

Subject Matter:

House Bill No. 303 <sup>- tabled</sup> (SS) HR 146 <sup>- amended & passed</sup>

Senate Bill No. \_\_\_\_\_

Special Orders:

3 amendments.

amendment passed

Original sponsor: Brown by request

1 IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 146 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to payment procedures on certain public  
7 contracts."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 36 is amended by adding a new chapter to read:

10 CHAPTER 90. MISCELLANEOUS PROVISIONS.

11 Sec. 36.90.001. PUBLIC CONSTRUCTION CONTRACT PAYMENTS. (a) At  
12 the request of a contractor the state shall pay the contractor 20  
13 percent of the amount of the contract on or before the date the state  
14 gives the contractor notice to proceed with the public construction or  
15 public work covered by the contract.

16 #1 (b) The state shall initiate payment to the contractor for the  
17 amount due under the public construction or public work contract within  
18 15 days after the contractor submits a bill with a certified payroll to  
19 the state for materials or services.

20 (c) If the state fails to make a payment due under this section,  
21 it shall pay interest to the contractor under AS 45.45.010(a) on the  
22 amount due. If a failure to make a payment due under this section  
23 continues for 60 days or more, the state shall pay the contractor a  
24 penalty of 10 percent of the amount due plus interest.

25 #2 Delete - (d) In this section "state" means a department, office, agency,  
26 or other organizational unit of the executive branch, except one  
27 expressly excluded by law, but does not include an agency in the  
28 judicial or legislative branches of the state government.

29 (e) The state is liable to a contractor registered under AS 08.18  
or a political subdivision of the state.  
-1- CSSHB 146(L&C)

#3 Add

delete the section