

3-31-82

MEETINGS w/  
ALASKA POWER  
AUTHORITY &  
STATE DIV. OF  
RISK MGT.

HOUSE LABOR & COMMERCE  
STANDING COMMITTEE  
March 31, 1982  
1:07 p.m.

Members Present: Rep. Martin, Chairman  
Rep. Bylsma, Vice Chairman  
Rep. Rogers  
Rep. Gardiner

Members Absent: Rep. Randolph

COMMITTEE CALENDAR

General meeting with Alaska Power Authority and Division of Risk Management regarding insurance practices.

WITNESS REGISTER

Dick Pettinger  
Alaska Chapter, Associated General Contractors  
Box 4-2500  
Anchorage, Alaska  
276-5354  
Position Statement: Opposed APA wrap-up insurance program (APCOP).

Eric Yould, Director  
Alaska Power Authority  
334 West Fifth  
Anchorage, Alaska 99501  
277-7641  
Position Statement: Explained why APA opted to use net of insurance.

John Haywood, Director  
Division of Risk Management  
Department of Administration  
Pouch C  
Juneau, Alaska 99811  
465-2180  
Position Statement: Explained why Division of Risk Management supported use of net of insurance by APA.

Daryl A. Cody  
Daryl A. Cody Company  
201 Danner Street  
Anchorage, Alaska 99502  
Position Statement: Opposed to APA's use of net of insurance.

Representative Sutcliffe  
Alaska State Legislature

Pouch V  
Juneau, Alaska 99811  
465-3715  
Position Statement: Asked questions of witnesses.

Don Koch, Director  
Market Surveillance Section  
Division of Insurance  
Pouch D  
Juneau, Alaska 99811  
465-2577  
Position Statement: Explained his division's involvement in  
APA's selection of method of insuring.

Kenneth Moore, Director  
Division of Insurance  
Pouch D  
Juneau, Alaska 99811  
465-2515  
Position Statement: Testified with Koch regarding division's  
involvement in APA's selection of method of  
insuring.

Ken Vassar  
Department of Law  
Pouch K  
Juneau, Alaska 99811  
465-3600  
Position Statement: Explained his role in providing legal advice  
to APA.

Commissioner Ernst W. Mueller  
Department of Environmental Conservation  
and  
Vice Chairman, Board of Directors  
Alaska Power Authority  
Pouch O  
Juneau, Alaska 99811  
465-2600  
Position Statement: Defended Board's decision to use net of  
insurance.

#### PREVIOUS ACTION

There were no bills before the committee. This was an  
informational meeting.

#### ACTION NARRATIVE

Tape #49  
Recording  
Number 000

The meeting was called to order by Chairman

Martin at 1:07 p.m. Members present were: Representatives Martin, Bylsma, Gardiner, and Rogers. Rep. Randolph was absent. Representatives Cotten, Sutcliffe, Grussendorf, and Haugen also attended the meeting. Rep. Martin explained the purpose of the meeting, which was to explore policy decisions regarding sole contract of insurance by the Alaska Power Authority.

Number 015

Dick Pettinger, Alaska Chapter, Associated General Contractors, said his association represented 675 construction-related firms. He said the Chapter opposes the Alaska Power Authority wrap-up insurance program known as APCOP. Pettinger said that, nationally, the association has been opposed to this type of insurance program for years. He described stands taken by the AGC in the past.

Number 040

Pettinger asked why regulation or statute permitted a wrap-up insurance program. He asked why APA instituted the program. He said that all bids on the Tyee project included insurance costs, and asked why APA did not notify the public of their intent before imposing the program on the project. He said APA said this program would be cost saving to the rate payer.

Number 054

Pettinger said one of the contractor's tools is removed by this type of insurance program. He explained how safety factors affect the cost of insurance. He said a company with a better safety factor would normally submit a lower bid. Pettinger said APCOP penalizes the safety-conscious contractor. He said that APA assuming insurance means the contractor would not be held responsible for claims. He questioned the ability of APA to ensure proper safety procedures. He questioned the savings as a result. (Pettinger promised to provide the committee with a copy of his written testimony.)

Number 084

Pettinger said major disadvantages are that owner controlled programs are disliked by most contractors. He said administration is a disadvantage due to the length of the project and turnover of personnel. He felt insurance company agents' interests may be diverse, hence there could be a conflict of interest with one company serving all

parties. He felt this could lead to claims control problems and legal difficulties, as well. He spoke about consolidating policies. Pettinger said the true cost of insurance is often not determined for 5-7 years after completion of a project. Pettinger felt with wrap-up insurance, the owner often becomes involved in many insurance disputes that normally take place between the general contractor and the subcontractor.

Number 123

Pettinger said the best incentive for risk control lies with self insurance programs. He felt APCOP would result in the opposite. He objected to government intervention into the private sector. He requested immediate elimination of APCOP.

Number 135

Rep. Martin asked when the situation first came to his attention; Pettinger responded that it was early in November, and added that the contract was let in August. There was discussion.

Number 165

Eric Yould, Director of Alaska Power Authority, and John Haywood, Director of the Division of Risk Management, then came before the committee. Yould said that APA had two options with respect to insurance: 1) bidding under normal procedures, with the contractor providing his own insurance; or, 2) bidding net of insurance (also referred to as a wrap-up program). Yould said the Division of Risk Management provided information that indicated benefits to APA in keeping the cost of insurance premiums down if they provided their own insurance. He said it is their intent to proceed with an owner-insured program. He said the Division of Risk Management used the state's present insurance brokers to provide coverage; AGC then objected to the program.

Number 216

Yould said at the last board meeting on March 21, the issue was reviewed. Division of Risk Management came before the board and indicated advantages to the state to take part in the program. The AGC opposed this, and Jeff Barry, Labor & Commerce committee aide, posed questions. He said many of the questions presented by Barry on behalf of the Committee should have been addressed to Risk Management, and said that Risk

Management had assisted in answering the questions.

Number 238

Yould said the next project is Terror Lake. He said bid opening is planned for April 26. He said APA would request two bids from each contractor--one reflecting costs with net of insurance, and one with the owner providing his own insurance. He said the board would then decide which type of insurance to use.

Number 250

Rep. Rogers asked when bid opening for Tye Lake occurred; Yould responded it was September 25, and that the board met on October 2. Rep. Rogers asked if the bids were for net of insurance or if they included costs of insurance; Yould responded the bids included insurance, and that they subsequently requested the winning contractor to remove insurance costs from his bid. Rep. Rogers asked if the other bidders had an opportunity to respond to the bid as modified; Yould said they did not. Rep. Rogers suggested this might have created a different lowest responding bidder. Yould said there was litigation against the bid award for another reason, and that no one else litigated. He said the board went forward with the bid on October 2, but did not sign the agreement until December 2. There was discussion to clarify the dates. Haywood said the program was in place at the time the bidder was asked to back out his insurance costs. He said the contractor voluntarily agreed to back out insurance costs. After that, at Risk Management's recommendation, they felt it would make sense to draft a memorandum of agreement, but the program was in effect at that time.

Number 319

Rep. Rogers said that the state is managing the contractor's risks. Haywood said they were talking about a situation where the state has a joint interest in workers compensation, general liability, and builders risk. He said the workers compensation statute has proven that state entities are liable in the event of a claim without adequate insurance. He said that since World War II, most major public construction authority programs have been handled by wrap-up programs. Rep. Rogers referred to the statute which requires a

contractor to submit proof of workers compensation insurance at the time of bid.

Number 360

Rep. Martin said Harrison Western was the fourth lowest bidder, and that they did not comply with the law in submitting proof of insurance. Haywood said he wasn't involved in opening of the bids, but he understood that Harrison Western was the second lowest bidder. He said at the time the insurance certificates came in, the decision had been made to go with the APCOP program. Yould said he understood Harrison Western did have insurance at the time of the bid. Rep. Rogers asked if they required notice of current coverage of workers compensation prior to awarding bids. Yould wasn't certain.

Number 402

Rep. Rogers was concerned about a couple issues where APA appeared to be circumventing or violating law. He asked if interim financing had been arranged for both Swan Lake and Tyee. Yould said it was. Rep. Rogers asked what would happen if revenue bonds could not be sold and the legislature did not make an appropriation. Yould said advisors and underwriters advised that long term bonds could be issued if necessary. Rep. Rogers asked what the obligation of the state would be if bonds went to 20%. Yould said APA is liable, but that the state would not let its credit be impaired. Rep. Rogers was concerned about an agency of the state making obligations on behalf of the legislature. He asked if there would be a capital reserve account. Yould said there would be, with bond proceeds. Rep. Rogers asked if Swan Lake had received complete legislative authorization. Yould said it had. Rep. Rogers asked if it was the same interim financing issue. Yould said there was a straight bank loan. Rep. Rogers said the Authority said it wouldn't incur debt service that would make the power provided more expensive than diesel. He asked how the APA could ensure this. Yould said the legislature could change the program.

Number 480

Rep. Rogers said current law speaks to a uniform power rate. He asked, if the rate goes above the ceiling, how both the law and the contractual obligation could be met.

Yould said it was not the intent of the legislature to increase the cost of power. Rep. Rogers said the legislature required 10% of the capital costs annually unless there was \$5-billion appropriated. Yould said the cost would still be lower than the cost of diesel. He said this was analyzed, and they do not foresee a situation where the cap will come into play. He said people will always have to remain in the system to pay their share of the debt service. Rep. Rogers asked if Yould was agreeing there is a ceiling. Yould said at least on their portion of the debt service. Rep. Rogers requested clarification. Yould responded that in the event the bond market goes, up, it is questionable whether revenue bonds could be sold to cover the program.

Number 554

Rep. Rogers asked if APA has an attorney. Yould responded that Ken Vassar, Department of Law, did legal work for them. He said Vassar doesn't review all the contracts, that they have other attorneys. He said the contract was reviewed by the Department of Law under the Transportation Section, but was primarily reviewed by private counsel.

Number 575

Rep. Martin asked if Division of Insurance had been consulted. Haywood said yes. He said owner wrap-up is a common way of handling major construction projects all over the country for the past 25 years. He said Alyeska was an owner wrap-up program. He said they met with the Division of Insurance several times before going into the program. Haywood said there had been a question of whether special regulations would need to be adopted, and that it had been decided they were not. He said they set the cutoff at \$50-million projects for a wrap-up program.

Number 614

Rep. Martin asked if Commissioner Hudson had given permission for a wrap-up program. Haywood said the risks of the state of Alaska would tap a majority of the world-wide marketplace capacity. He said the contract was on the basis of professional services, and would be kept in effect for 3-5 years. He said this was done early in 1981, and that Marsh & McLennan and Coroon & Black/Dawson were selected.

Number 654

Rep. Martin asked why these companies should get paid for an insurance program when the memorandum of agreement was dated three months after the insurance coverage went into effect. Haywood said the insurance was there by October 15. Rep. Martin asked if that was when they decided Harrison Western did not have coverage. Haywood responded that their lack of insurance was not an issue, and that they did not meet other specifications. Rep. Martin asked at what time the Commissioner signed the sole source contract. Haywood said the contract was put together for Tyee Lake insurance. He said insurance is a contract of "utmost good faith". He compared it to car or homeowner's insurance that is ordered by telephone. He said this was the same situation--the coverage was put into place as of 10/1, contracts followed. He said this is standard practice.

Number 734

Rep. Martin said he understood the contractor could not get insurance because they were a high insurance risk. He pointed out, in addition, that it was not a \$50-million contract. Haywood said it would be a \$90- to \$100-million contract when it was done. He said Terror Lake, with one prime contract for a \$175-million project, was a better example than Tyee, which was bid in three phases.

Side B, Number 005

Rep. Rogers asked if Coroon & Black would then get the insurance contract on Tyee, Terror Lake, and Susitna. Haywood said they didn't have a contract like that. Rep. Rogers asked if they could extend the contract to all projects. Haywood said it was part of the selection process.

Number 027

Haywood said they need four to five months lead time to give the broker time to put together the program needed. He said they now have two projects on-line: Terror Lake and Tyee. He said this is a Risk Management service, it is not separate.

Number 042

Rep. Rogers asked, since the contractor bears no cost of insurance, what is the incentive for a good safety program. Haywood says statistics show they run safer jobs. He said they build safety specs into the project, centralize safety coordinating

and facilities on the job, and report losses to the National Safety Council, so insurance modification factors continue to run. There was discussion of incentive for a good safety program.

Number 076

Haywood said the state isn't forcing safety on the contractor. He said statistics show these jobs are run safely. He said Rep. Rogers was missing the humanism. He said there are so many hidden costs related to an injury that no well-managed contractor would risk that. Rep. Rogers pointed out that a poorly-managed contractor might.

Number 111

Rep. Martin asked what public entities use wrap-up programs. He noted that it seems that private agencies are moving away from it. Haywood said wrap-ups are going as strong now as ever. He said the cutback in federal funds is slowing down major wrap-up programs. He passed out a partial list of owner-controlled programs and documented savings. (This list is available for inspection from the committee.)

Number 130

Rep. Martin asked if Commissioner Hudson signed a document to authorize this. Haywood said it went through contract review in the Department of Administration. Rep. Martin said the insurance was done after the fact. He said that, by regulation, the company selected was not qualified as it had no insurance included in the bid. Haywood said insurance was included in the bid.

Number 148

Rep. Bylsma said, in the contract with the insurance company, they provide APA and prime contractors with a safety incentive formula prior to conception. He asked how they could do this if the job was contracted before the insurance was in force. Haywood said the intention of the agreement is that language for policy be in the contract. He said it is designed for a project where language is included in the bid specification. Rep. Bylsma asked what the safety incentive formula is. Haywood responded that APA got a return of \$100,000 to use on other projects, and \$200,000 to use as incentive programs with contractors on the basis of good performance. Rep. Bylsma asked if the contractor and APA split that money. Haywood said the incentive is

based on losses.

Number 195

Rep. Bylsma said that, on 10/2, premium return was mentioned. He said he was led to believe it would come back to the state, not the contractor.

Number 215

Daryl Cody, president of Daryl A. Cody Company, a business consulting firm with offices in Anchorage and Washington state, said one of his specialties is assisting contractors in the acquisition of surety bonds and construction insurance. He listed his qualifications.

Number 250

Cody described wrap-up programs that were attempted to be instituted in Washington state in the 1960s that were stopped because what they suggested as savings was over anything they could justify. He said he has been injured by the action of APA, as they took insurance out of one of his clients' hands. He said he is co-chairman of the Insurance Taxing and Bonding Committee of the Alaska Chapter of AGC, and that he holds an office in the national AGC.

Number 280

Cody said he favors the free enterprise system. He is opposed to anything unnecessary, which is his first reason for opposing APCOP. He said it takes the normal insurance buying process away from the contractor. He said cost of insurance is a major consideration in putting bids together.

Number 297

Cody was opposed to government involvement in business where no need or purpose is served, as in this case. He said the state and the APA are in the private sector, where they aren't wanted or needed. Cody said in APA's public relations program, they said they would save money. He saw no way they could save money over the way general contractors buy their own insurance. He commented on the document which was passed out to justify use of a wrap-up plan. He said they went back 25 years to find 25 projects. He referred to one project showing a 38% savings. He said these savings have no credibility, as the base used to show savings was subject to question. He did not feel the statistics were credible. He said wrap-ups don't save

money; he believed it would cost more.

Number 360

Cody referred to APA's inference that money would stay in Alaska. He said they hired two of the largest brokers in the world, and that all the effort has been centered around the Seattle offices of those firms. Cody felt these firms could be considered non-Alaskan firms. Cody said the net of insurance does not save costs; it interferes with contractors' normal insurance buying processes; that contractual liability becomes confused because of the grey areas created by the net of insurance. He said the state is exposing itself beyond the protection of insurance, which is an additional cost.

Number 409

Rep. Sutcliffe asked if the state has liability by providing the wrap-up. Cody said they assumed a risk greater than they were insuring. There was discussion. Rep. Rogers asked if the builders risk could be larger than the state is insured for. Cody said, if for any reason coverage is denied by the carrier, the state is liable. He said the state is acting as an insurance intermediary. Rep. Bylsma asked if that would be different if the general contractor had private insurance. Cody said yes, the contract specifies the contractor is liable.

Number 470

Cody referred to exhibits attached to his prepared testimony.

Number 500

Rep. Rogers tried to clarify the order of events. Cody said the tone of the message to the contractor regarding the change order (after the court battle) was: "Here is the contract. We'll sign it if you sign the change order."

Number 550

Rep. Bylsma asked what law Washington had passed regarding wrap-up insurance. Cody said the committee has a copy of the law on file. The law prohibits an agency of state or local government in directing the purchase of surety bonds on a state or local project. He said the law was passed in 1967 or 1968.

Number 584

Rep. Sutcliffe asked, if the state of Washington had built and owned projects as Alaska will, if there was a wrap-up

insurance program and if the state couldn't totally fund the project, would there be any implication that the insurance companies would pay out so much it would reflect back on the state? Cody would not think of a situation where overall financial feasibility of projects could be affected. He believed brokers and Risk Management people capable of handling risk and risk management. He questioned their right to involve state government in private business, and the right of the contractor to protect himself as he wishes to be protected.

Number 625 Rep. Martin asked who paid for the public relations firm hired, and asked if there was any relationship between any of the board members of APA and the public relations firm hired. Cody assumed APA paid for the services. He said that, as of ten days ago, the firm was still working on the project.

Number 642 Rep. Martin announced that the hearing would be continued on Friday, when a bill or resolution might be introduced.

Number 645 Don Koch, Chief of Market Surveillance, Division of Insurance, and Ken Moore, Director of the Division of Insurance, came to testify before the committee. Moore said formal hearings were held in 1971 regarding the pipeline. Two years ago, when the pipeline was out and running, private enterprise approached them about having a wrap-up. As of August 26, the Division had published a worksheet of guidelines.

Tape 50, Number 003 Koch said he contacted other states to find out their attitudes toward wrap-up programs. He got very little response, and said that some did not know what it was. He commenced work last summer because of a potential wrap-up on the pipeline and on other projects. Rep. Martin said he understood there was a wrap-up on the marine ferries. Koch said there had been only one that he was aware of: the Alyeska pipeline, a private project.

Number 030 Rep. Martin asked Koch what advice he had given Risk Management and APA. Koch recalled discussions of self-insurance and wrap-up insurance. He said the discussion

was fairly general, and that he had given no advice.

Number 044 Rep. Martin asked if Koch foresaw the state being solely responsible for paying workers compensation claims. Koch was not sure. He believed that should be considered.

Number 058 Rep. Martin asked if the Division of Insurance had any overview responsibility, or if Risk Management was independent. Moore said Division of Insurance had no responsibility at all over Risk Management. Koch said they regulate provider coverage.

Number 071 Rep. Martin asked if they had evaluated the program. Koch said they had not. He said if they were directed to look at it, all they would be required to say is whether or not it covers workers. He said they don't have the expertise to say if it is an appropriate program for those circumstances; that this is not one of the Division's roles.

Number 093 Rep. Bylsma asked what effect elimination of wrap-up would have on workers compensation (he used Washington state as an example). Moore said it could have an effect. Koch said that whether compensation was a prime consideration when the legislation was created would be a factor.

Number 110 Rep. Martin asked if the Division could evaluate the policy--percentage of risk and true value to the state. Koch said they did not have the expertise, and that they would have to contract that out if they were requested to provide such an evaluation.

Number 125 Ken Vassar, attorney in the Department of Law, came before the committee. Rep. Rogers asked if he had reviewed the power sale agreement. Vassar had not. He responded to Rep. Rogers that he had not reviewed the interim financing agreement, either. Vassar said the APA has outside counsel, and he believed they had reviewed the documents in question. Rep. Rogers asked if Vassar had reviewed any of the insurance issues discussed. Vassar said he had. Rep. Rogers went over the occurrence of events:

07/27 APA met with Marsh & McLennan

08/06 Response of Marsh & McLennan with details  
08/11 Bids come in  
Aug/Sep APA chooses bidder  
10/02 APA board meets & approves concept of APCOP  
10/06 Change order issued  
11/09 Press release regarding APCOP  
11/23 and 12/02--sign memorandum of agreement

Vassar said this was not standard procedure. He was not familiar with the timeline. He said the decision to use the program was entered after the bid. He said this constitutes a change of circumstances. Vassar said the details came to the attention of the executive director after the bids were opened. There was discussion. Rep. Rogers asked if they were planning to review the sales agreement with Ketchikan and the interim financing agreement. Vassar said yes.

Number 190

Commissioner Ernst Mueller, vice chairman of the Board of Directors of Alaska Power Authority, said APA is a business in competition with private facilities. He feels it is his responsibility to investigate cost-cutting avenues. He said the only way to keep a cap on costs is to hire experts. Risk Management is one of their agencies used. He said decisions are rightfully in the hands of the Board. Mueller said that, at the meeting, there was sufficient justification to approve this approach. He said information to date has not changed his mind. He said the disadvantages of wrap-up insurance to general contractors are the same in the entire field of wrap-up programs, public and private. He said any decisions made about wrap-up programs should cover public and private contracts. Mueller said information to date indicates it is a good program.

Number 242

Rep. Rogers said, looking over the partial transcript of an APA board meeting, that Commissioner Webber had asked questions about board action and legislative approval, and that others had asked questions about liability, safety incentive, higher policy cost, and workers compensation; but that the Board had taken no action on these questions. Mueller said the Board could have delved more deeply into legal ramifications, and that there was no doubt

that this was an unusual procedure. He said it should have gone to bid differently, but the Attorney General did not seem to think it illegal. There was discussion.

Number 288

Rep. Rogers asked, regarding interim financing, if Mueller had ever seen the same situation (of the legislature being in a position to allow APA to default on interim financing, or approving funds to cover the financing). Mueller said he had not seen the same form. He said those building projects can't wait for a favorable bond market to do work. He said the Department of Revenue gives them money out of the general fund. He said one would have to speak to the APA Bond Council as to the processes involved. There was discussion of bonding. Rep. Rogers pointed out that there has been no legislative oversight of this project. Mueller agreed.

Number 358

Rep. Rogers asked if there were any inconsistencies in the Ketchikan power sales agreement in the ceiling versus statewide wholesale power cost rate. Mueller said they had asked Vassar to look at that to see if it conflicts with law.

Number 374

Rep. Bylsma said that, in the transcript of the 10/2 meeting, Slagle and Webber were talking about insurance when the Commissioner asked if the legislation was there. Slagle said he could not answer, "but we do it". Bylsma asked Mueller if he had questioned that. Mueller said they relied on the attorneys. There was discussion.

Number 400

Rep. Martin asked who was attending the 10/2 board meeting. Yould said he could provide a list of those attending.

Number 417

Rep. Martin noted, regarding a \$9-million contract to a Japanese firm, that \$570,000 was in advance. He asked if these monies had been authorized yet. Yould responded that they received bids to put in the submarine cable portion of Tyee. The Japanese firm was the lowest bidder. Insurance premiums have been provided for this portion of the program. Martin said this goes against the advertisement about keeping money in Alaska. He questioned

APA's procedure of insuring leased equipment but not insuring owned equipment, which would ensure that APA would get outside contractors because Alaskan contractors would own their equipment. Yould said this was to ensure that leased equipment would be insured. He said owned vehicles are already insured by the owner. Haywood said it was to insure items the owner has the greatest interest in. He said that owned equipment, vehicles, and aircraft are the contractor's responsibility. Martin said that was true, unless the contractor leases it. Haywood said to look at Tyee; they were concerned about someone grabbing a private plane or boat, crashing, and having no insurance. He said this could come back to the owner. Rep. Rogers said then it would make sense to rent or lease equipment, and that this would have an impact on future bids. He said there would be no reason to use one's own equipment, because the bid would be higher because of insurance on the equipment. Mueller disagreed, saying it would depend on the individual situation. Haywood said Tyee was not handled like a normal project. He said there was perhaps a valid concern regarding the conflict with competitive bid contracts. He referred to a companion program in place for contractors to use if they wished; the attorneys were not sure if insurance would affect low bids, so they elected to include subcontractors. He said they are not including aviation and watercraft coverage on future projects. There was discussion.

Number 597

Rep. Martin asked if the Japanese firm owned its equipment for cable laying. Haywood said it was leased on a time charter. Rep. Martin asked if the insurance covered them to and from the job. Haywood said it would cover marine exposure while bringing the cable to the jobsite.

Number 619

Rep. Bylsma questioned the length of the insurance contract. Haywood said there was no date because they were not sure when the exposure would end. Rep. Bylsma asked if they were insuring for the length of the program. Haywood said yes, that it was the same situation as when asking for a fixed price bid. He said change orders could increase or decrease the costs.

Number 654

Rep. Rogers said, regarding bids on various projects, that the difference between leased or owned equipment could make a difference in lowest bidder.

Number 678

Rep. Martin asked Mueller and Yould to clarify what legislation is needed to clarify this situation and make it legal. He said committee staff would prepare the opposite point of view. Yould said nothing precludes entering this type of program in Alaska. Vassar said the authority is broad enough under present law. Rep. Martin requested citation of specific authority. Vassar said nothing in the law expressly authorizes it; that it is general authority. There was discussion. Mueller said they asked many questions, wanting to clarify in their minds and ascertain if they had authority. There was more discussion.

Side B, Number 008

As Rep. Martin had announced that the hearing would be continued on Friday, April 2, and as there were no further witnesses wishing to testify, the meeting was adjourned at 3:35 p.m.

Absent:  
Randoepu

3/31/82

H. Labor &amp; Commerce

mtg w/ Alaska Power Authority, AGC, etc.

Sutcliffe Grussendorf  
Cotton Haugen

1:07

000

Call to order; purpose of mtg - policies on sole contract of insurance

015

~~Ret~~ Dick Pettinger, A&C Ch, AGC - 675 const-related firms - Chapter opposes APA wrap up ins pgm known as APCOP. Nationally, have been opp'd to this for yrs. Went over past stands taken.

040

Asked what reg or statute that permits wrap-up ins pgm.

Why did APA institute pgm? All bids on Tiger included ins. Why did APA not notify pub of intent before imposing pgm on the project. They says its to save money to rate payer.

054

One of contractors tools is removed by this. Explained how safety factors affect cost. Co w/ better safety factor wd normally submit lower bid. APCOP penalizes safety-conscious contractor. APA assuming ins ~~is~~ means contractor wd not be held responsible for claims. Questions ability of AAA to ensure proper safety procedure. Questions savings as a result.

081

Promised to provide written testimony tomorrow.

084

Major disadvantages:

- owner controlled pgms disliked by most contractors
- admin is disadvantage due to length of project & turnover of personnel.

- ins. co agents interests may be diverse; hence conflict of interest serving all parties; claims control pbms also. legal difficulties

- better to write w/one policy (auto liability & \_\_\_\_\_); separate policies bind themselves to create.

→ true cost of ins often not determined for 5-7 yrs after project.

116 - owner becomes involved in many ins disputes that normally take place bet gen contr & subcontr.

123 Best incentive for risk control lies w/self insurance pgms. APCOP will result in opposite. Object to govt intervention into private sector. Requested immediate elimination of APCOP

135 Martin asked when first came to his attn; - early in Nov (Pettinger) <sup>contract let in August</sup>  
Rogers - clarification; asked if state provided ins on any other project. Pettinger said no.

Martin asked if this makes st resp for WC claims, bondage, etc.  
Pettinger said st assumes liability of prime contractor

165 Eric Yould & John Haywood - <sup>Yould</sup> Chronology of events  
Dir, APA Dir, Risk Mgmt

APA had 2 options

- 1) bidding under normal proc - const provide own ins
- 2) bidding net of insurance (wrap up pgm)

Dir Risk Mgmt provided info that indicated benefits to APA to keep cost of ins premiums down if they provided own ins. Their intent to proceed w/ owner-insured pgm. Dir RM used state's present ins brokers to provide coverage.

ABC then objected to pgm.

216 At last board mtg (3/21), ~~we~~ had issue rwd - Dir RM came before bd & indicated advs to state to ~~g~~ take part in pgm; ABC opposed; Barry posed qstns. Many qstns raised shd be addressed by RM; they assisted in ans'g qstns.

238 Next project is Terror Lake; bid opening 4/26. Will request 2 bids fm each contr - 1 net ins, 1 owner ins. Bd will then decide for which type ins to use.

250 Rogers asked when bid opening for Tyce

Y - Aug Sep 25; bid mtg 10/2; ~~10/2~~  
Rogers - net of ins or we ins?

Y - we ins; subly requested winning entri to remove ins fm bid.  
R - others had no oppy to respond as modified?

Y - correct

R - that might have created diff lowest resp of bidders

Y - had litigation against award for other reason; no one else sued.  
10/2 went fwd w/ bid, but didn't sign agmt until 12/2.

Clarification of dates.

Haywood - pgm was in place at time bidders was asked to back  
out ins. ~~Had to~~ Later voluntarily agreed to back out ins  
costs. After that, since RM's recomdn, felt it wd make  
sense to draft memo of agmt, but pgm ~~was~~ was in effect.

319 R - state is mg managing entri's risks.

H - talking abt stn where st has joint interest in wks comp,  
gen liab, + bldrs risk. WC Statute has proven that  
st entities are liable in event of claim w/o adequate ins.  
Since WWII, most major pub const auth pgms have been  
handled by wrap up pgm.

Rogers indicated statute saying entri must admit proof of WC ins at  
time of bid.

360 Martin said Harrison Western was 4th lowest bid, & did not comply w/ law in submitting proof of ins.

H - wasn't involved in opening of bids; understood they were 2nd lowest. At time ins certificates came in, decision had been made to go w/ APCOP pgm. You'd understood they did have ins at time of bid.

390 R - Do you require notice of current coverage of WC prior to awarding bids; You'd wasn't certain.

402 R - <sup>concerned on</sup> couple issues when APA is ~~stating~~ circumventing or violating law

Interim financing - has it been arranged for both Swan Lake & Tyee?

- yes. R - what wd happen if rev. bonds cd not be sold & legis did not make appn?

You'd - fin advisors & underwriters advised long term bonds cd be issued ~~to~~ if necessary.

R - what is ob'n of state if bonds went up to 20%?

Y - <sup>APA</sup> ~~state~~ is liable, but state wd not let its credit be impaired.

R - concerned abt agency of state making oblig'n on behalf of legis. Will there be capital reserve acct? Y - yes, w/ bond proceeds.

R - Swan Lake - need complete legis auth'n? Y - yes.

R - same interim fin'g issue? Y - straight bank loan.

R - the Auth says it won't incur ~~any~~ debt swt that wd make jwr more expensive than diesel. How can you ensure this?

Y - ~~APA~~ legis can change pgm.

- 480 R- current law says uniform pwr rate; if rate goes above ceiling, how can both law + contractual ob'n be met?  
Y- not intent of legis to increase cost of pwr  
R- legis said 10% of capital costs annually unless \$5B in .  
Y- cost will still be lower than cost of diesel. Analyzed - don't foresee sit'n where cap will come into play. People will always have to remain in system to pay their share of debt svc.  
R- then you say yes there's a ceiling - Y- at least their portion of debt svc.  
R- ~~event~~ requested clar'n. Y responded. - in event bond ~~market goes up, gettable whether revenue~~ bonds cd be sold to cover pgm.
- 554 R- APA has a thy? Y- Vassar. Doesn't rw all contracts; have other attys. Contract was rw'd by dept law under xptr sec, but primarily rw'd by private counsel.  
R- uniform rate w/ cap tied to diesel rate in their area for all projects? Y- yes.
- 575 Martin asked if consulted w/ Div Eng H. yes. Owner wrap up common way of handling major const projects all over Litchy for last 25 yrs. Alyeska was owner wrap up. Met w/ Div Eng sev times before going into pgm. ~~at~~ Qatr if special req wd need to be adopted; decided no. Set cutoff at \$50M projects for wrap up pgm.

614 M - did Hudson give permission  
Comm

H - Risks of AT of ok top majority of world wide marketplace capacity. Contract on basis of profit Aves, kept in effect 3-5 yrs. This was done early 1981. Marsh, McLennan & Carson & Black were selected.

654 M - why shd they get pd for ins pgm when memo<sup>of agmt</sup> was dated 3 months after ins coverage went into effect.

H - insurance was there by 10/15

M - that's when you decided Harrison Western did not have coverage.

H - their lack of ins was not an issue; didn't meet other specifics.

M - at what time did Comm. sign sole source contract?

H - contract was put together for Tyee Lake ins. Ins is contract of utmost good faith. Compared to car or homeowner's ins ordered by phone. Said same sitn - put coverage into place as of 10/1, contracts followed. Standard practice.

731 M - understood Lnta can't get ins because they were high risk. also, not a \$50M contract.

Side B H - \$90-100M contract when done.

005 Terror Lake w/one prime cutr for a \$175M project better example than Tyee, which is bid in 3 phases.

R - so Carson & Black can get ins contract on Tyee, Terror, Susitna?

H - they don't have a contract like that.

R - you can extend contract to all projects?

H - part of selection process.

027 H- we need 4-5 mo lead time to give broker time to put together  
pym needed. Now have 2 projects on line - Terror Lake  
& Tye. This is a risk mgmt svcs, not separate.

~~Here~~

044 R- since cntr bears no cost of ins, what is incentive for  
good safety pym?

H- statistics show they run safer jobs. Build safety pxcs  
into project, centralizing safety coord'g & facilities on job,  
& still report losses to rate safety council so ins mod'n  
factor continues to run. By cntrs have self-ins  
or captive ins cos that are basically pure self-ins.

~~long term~~

068 Discussion of incentive for good safety pym.

076 H- state isn't forcing safety on cntr. Stats show these jobs  
are run safely. Missing humanist<sup>m</sup>. So many hidden  
costs on injury, no well mgd cntr will risk that.

R- & but poorly mgd cntr will.

091 M asked who pays safety audit svcs

R- comes out of ins premium; ~~talking about it~~ be  
breaking svcs into co wd normally provide into  
component parts & subcontracting them.

~~105~~ H - ~~letter~~ Discussion of contracts.

111 M - you said private & public industries do wrap ups -  
What public ones do? & it seems private are moving  
away from it.

H - going as strong now as ever; cut back in fed'l funds slowing  
down major wrap up pgms.

Passed out partial list of owner-controlled pgms &  
documented savings.

130 M - did Hudson sign doc to auth this?

H - went th contract w/ in Dept Admin.

139 M - we're doing this ins after the fact; by your regs, this  
co was not qualified as it had no ins included in the bid.

H - Ins was in bid.

148 Pryloma - in contract w/ ins Co, they provide APA & prime entrs  
w/ safety incentive formula prior to conception; how'd they  
if contracted before ins. was in force?

H - ~~that's an~~ <sup>intentional</sup> agmt is that language <sup>for policy</sup> be in contract. Designed  
for project where lang is included in bid specification.

B - what is safety incentive formula?

H - ~~determined~~ APA got a return of \$100,000 to use on other  
projects, & \$200,000 to use as incentive pgms w/ entrs  
on basis of good performance.

B - entrs & APA split that?

H - <sup>incentive</sup> based on losses

195 B - on 10/2 ~~at a meeting~~ premium return was mentioned;  
led to blw it wd come back to state, not cnts.

208 Martin said mtg wd be cont'd Friday.

215 Darrell Cody, pres, Darrell A Cody Co, business consulting  
firm (201 Danner, Ane): one specialty is assisting  
cnts in acq'n of surety bonds & const ins. Listed  
his qual'ns.

250 Two pgms were attempted to be instituted in <sup>Washington st. in</sup> 1960s that they  
were able to stop because what they suggested as  
savings was over anything they cd justify. Also  
involved in many major hydro projects in Wash + Ore,  
almost none had public wrap up pgm. Said he's  
been injured by actions of APA since they took ins  
out of ones of his clients' hands. Also co-chair  
of Ins Taxing + Bonding Comm of AGC, also holds  
rate ofc in AGC.

280 Favors free enterprise system. Opp'd to anything  
unnecessary. ~~The~~ First reason for opp'g APCOP.  
Takes normal ins buying process away from cnts.  
Cost of ins major consideration in putting bids together.

297 Opp'd to govt involved in business where no need or purpose served, as in this case. Stay & APA in private sector, where they aren't wanted or needed.

In pub relations pgm, said they'd save money. See no way they can save money over the way gen conts buy their ins.

Commented on wrap-up doc handed out by H (Y?). Said they went back 25 yrs to find 25 projects. Referred to one project showing 38% savings - a great deal of that pgm was marine work. At that time, marine cont had surcharge of 56% on W/C rates. At same time, had marine conts wkg on same type work; they pd 100%, not 156%. These savings have no credibility. Have to start at same base to determine savings. Don't feel statistics are ~~any~~ credible. Don't save money. Believes it will cost more.

360 Also say dollars will stay in Ak. ~~B~~ They kind of the best brokers in the world; all the effort has been centered around Seattle ofis of those firms. All ~~they~~ firms cd be considered outside firms.

~~specific~~  
specific  
~~objections~~  
objections

- 1) doesn't save costs
- 2) interfere w/ enter normal ins buying processes
- 3) ~~grey areas bet parties in contr' liabilities, position~~  
become confused because of the grey areas  
created by net of ins. State exposing itself  
beyond prot'n of insurance, which is add'l cost.

~~4~~

409 Sutcliffe - by st providing th/wrap-up, state has liability?

Cody - they assumed risk greater than they are insuring.

Discussion.

~~S~~ R - bldrs risk may be larger than we're insured for?

C - anything if for any reason coverage is denied by carrier,  
state is liable. State acting as ins. intermediary.

B - wd that be diff if gen contr had private ins?

C - yes; contract specifies contr is liable.

470 Cody - has enclosed exhibits w/ prepared testimony. ~~or~~

~~4~~ He described exhibits

500 Rogers tried to clarify ~~some~~ order of events.

Cody - tone of msg to contr re change order (after court battle)

was - here's contract; we'll sign it if you sign  
chang order.

550 Byfoma - mentioned Wash passed law re wrap-up - what was it?

Cody - common has on file copy of that; prohibits agency of st or local govt in directing purchase of surety bonds on st or local project; was done in 1967 or 68.

574 B - client was connected w/Tyer lake? C - yes B - you lost insur w/conts? C - lost consulting fee on contract.

584 Sutcliffe - if st of Wash had built & owned projects as Ak will, if there was wrap up & if state can't totally fund proj, there wd be no implication insur wd pay out so much it wd reflect back on st?

Cody can't think of <sup>overall</sup> where <sup>overall</sup> feasibility of projects cd be affected. Blw brokers & RM people capable of handling risk & RM. Qstns their right & involvement of st govt in private bus, & right of conts to protect himself as he wishes to be protected.

605 ~~Cody~~ M - you mentioned fact PR firm was hired - who paid for this? Any relationship bet APA & Co?

C - assumes APA pd for it; as of 10 days ago, they were still wky on project.

642 M announced he will be cont'd Fri, where bill or resolution may be drafted.

645 Don Koch, Market Surveillance, Div of Ins & Moore, Div, Div of Ins Moore - ~~the~~ formal hqs held 1971 re pipeline - then dir Bill Futz issued order. Went th; then 2 yrs ago when pipeline out + running, approached by private enterprise abt having wrap up. As of 8/26, published guidelines (worksheet).

Tape 2

003 Koch - contacted other states to find out their attitude toward wrap up; very little response; many didn't know what it was. Commenced w/ last summer because of pot's wrap up on gas pipeline & other project.

M - understood there was wrap up on marine ferries

K - only one he was aware of was on Alyeska pipeline - private.

030 M - what advice did you give on this pgm?

K - recalled there were discs of

1) self-ins - didn't see how it be done legally

2) wrap-up - disc dealt w/ criteria they had at that point.

Discussion was fairly gen'l; no advice given.

044 M - concern abt who or solely resp for paying WC claims. Do you foresee that?

K - no opinion; not sure. Blue shd be considered

058 M - <sup>Div of Ins</sup> many overview responsibility, or is Risk Mgmt independent?

~~the~~ Moore - do resp at all

Koch - ~~the~~ <sup>regulate</sup> provider coverage

071 M - have you evaluated pgm?

K - no; if they were directed to look at it, wd be req'd to say whether or not it covers wks. Don't have expertise to say if it's appropriate pgm for those circumstances. Not one of division's roles.

093 B - st of wash carries own WC; wdnt ~~that tend to be~~ elimination of wrap up have effect on WC?

Moore - could have.

K - whether comp was prime consideration. When legisn enacted ~~that be consid~~ wd be factor.

110 M asked if they cd evaluate policy - % of risk & true value to state

K - don't have expertise; wd have to contract it out.

125 Ken Vasser, <sup>a Hy for APA</sup> ~~Dept of Law~~ - fm Dept of Law -

R asked if he'd need pur sale agmt? No

interim financing agmt? No

V- APA has outside counsel; b/c they need these.

R - need any ins issues discussed? Yes

R Timeline - 7/27 APA met w/ Marsh + McC

8/6 responds M+M w/ details

8/11 bids come in

Aug - Sep APA chooses bidder

10/2 APA bd meets & approves concept APCOP

10/6 change order

11/7 press release<sup>re</sup> APCOP

11/23 + 12/2 sign memo of agmt

after that - policy.

V - not standard procedure. Wasn't familiar w/ timeline.

Decision to use pgn was entered after bid; constitutes

chang of circumstances; details came to attn of

Exec Dir after bids opened.

R - Clarified timeline. V - unfamiliar

R - planning to use sales agmt w/ Ktn a int fincl agmt?

V - yes.

186 R asked of APA bd members present.

190 Comm Ernie Mueller, V. Chm, Bd Dir, APA -

He re his feelings abt APCOP - APA is a business in competition w/ private facilities. He feels its his resp to investigate cost cutting avenues. Only way to keep cap on costs is to hire experts. RM is one of their agencies used. Decisions rightly in hands of bd. At mtg, there was sufficient justification to approve this approach. Info to date hasn't changed his mind. Disadvantages to go into are to entire field of wrap up pgms, not just public ones. If there are disadvantages, <sup>any decisions</sup> should cover public & private contracts. Info to date indicates its a good pgm.

242 R - looking over xcerpt - Comm. Webber asked qstns abt bd action, legis appl; Lehrer re liability; Wheldon re <sup>safety</sup> ~~intention~~; Chmn Conway re higher policy; qstns abt WC; <sup>but</sup> no action by bd on this.

Mueller - ~~staff~~ asked same kinds of qstns as AGC. Bd cd have delved more deeply, into legal ramifications. No doubt unusual procedure. Shd have gone to bid diff'ly but AG doesn't seem to think illegal.

280 R - qstns.

Mul - most bi members change over summer.

288 R - interim fin'g - any problem w/ putting legs in plan of allowing APA to default on int fin'g or app's funds - ever seen ~~or~~ same situ before?

Mu - not same form. Those bldg projects can't wait for favorable bond market to do work. Dept Revenue gives money out of gen fund. ~~If bond market falls~~  
Have to speak to APA bond council as to processes involved.

325 R - gen ob'n bonds are voted on, new bonds are for project.

Mu - responded. People fin'g looking to state's moral oblig'n, but no legal oblig'n.

R - want legislative appl<sup>on bonds</sup> because of past <sup>bad</sup> experience.

There has been no legislative oversight of this project.

Mu agreed.

358 R - Ken pwr sales agent - ceiling vs. statewide wholesale pwr cost rate - inconsistencies?

Mu - we asked Ken to look at that to see if it conflicts w/law

374 B - in Xcrypt of 10/10 mtg - Slagle, ~~PA~~ & Welber talking abt ins, Comm asked if legis'n was there; Slagle said he edn't answer, "but we do it." Didn't you get that?

Mu - rely on attys.

397 Discussion.

400 M - 10/2 first mtg as bd member?

Mu - thought so

M - anyone else there besides bd of APA & RM?

Mu - yes. You'd said cd provide list of people.

M - requested up of ads.

417 M - re another contract - \$9M to Japanese firm, \$50,000  
in adv - monies auth'd yet?

You'd - rec'd bids to put in submarine cable portion of Tyee;  
Japanese firm lowest bidder; ins premiums have been  
provided for this portion of pfm.

M - goes against ad abt keeping money in A/C; also, you  
insure lease eqpt but not owner eqpt, which  
ensures you'll get outside rates because A/C rates  
have eqpt.

Y - was to ensure that leased eqpt wd be insured;  
burned vehicles already ins'd by owner.

H - to insure items owner has greatest <sup>interest</sup> in.  
owned eqpt, vehicles & A/C are cnts resp.

M - unless he leases it.

H - look at Tyee; concerned abt someone grabbing private  
plane or boat, crash, no ins. Cd come back to owner.  
~~Don't want~~

R - ~~It~~ wd main: sens to rent or lease, then wd  
Chng impact of future bids. No reason to use one's  
own eqpt, because bid wd be higher, because of  
ins.

Mueller disagreed. Depends on ind's situ.

H - Type not handled like normal project. Perhaps valid concern re conflict w/ competitive bid contracts.

~~Wanted~~ Had companion pgm in place for contractors to use if they wished. Attyz weren't sure if this wd affect low bids; then elected to include subcontractors.

Not including av & watercraft coverage on future projects.

Discussion.

597 M - insuring job firm for cable laying - vessels, everything.

Do they own eqpt?

H - leased on time charter.

M - covers them to & from job?

H - covers marine exposure while bringing cable.

619 B - ~~to~~ what is state paying for?

H - no date because not sure when exposure will end.

B - ins for length of pgm?

H - yes; same situ when asking for fixed price bid; change orders cd increase or decrease costs.

654 R - re bids on various projects - diff bet leased or owned  
egpt cd make diff in lowest bidder.

678 M asked Mueller & Gould to clarify what legisn is  
needed to clarify this & make legal; said staff  
wd prepare opposite pt of view.

Gould - nothing precludes entering this type projn in A/c.

Vasser - ~~authority~~<sup>stat</sup> is broad enough under present law.

M requested specific authority.

V - nothing in law expressly authorizes it; general authority.

Discussion.

740 Mu - we asked many qstns - wanted to clarify in our  
minds & ascertain if we had authority.

Discussion.

Side B

008 adjourned . 3:35

## SIGN-IN SHEET

Name (please print)	Address	Representing	Testify? (YES or NO)	Phone Number
D. ROULEAU	Juneau	A.S.D.C.L.	No	586-3107
KURT DZINICH	"	Senate Advisory Council	No	465-3130
ERWIE Muelle	Pouaou, Juneau	ADEC	"	465-2600
*Eric P. Gould	334 W 5th Anchorage, AK 99501	AK Power Brm	Yes	277-7641
Jean Kline	134 Franklin	A.H.C.	No	6-1740
Dick Pettenges	Bx 4-2500 Ansh.	A.H.C.	Yes *	276-5354
Daryl Cody		Daryl Cody Co	Yes	
DEU Koski		Admin - RM		465-2181
Susan Burke	319 Seward Juneau	APCOP	No	586-2777
Kenneth Moore	S O B	Div of Ins	No	465-2515
DON KOCH	POUCH D JUNEAU	DIV OF INSURANCE	No	465-2577
Paul R. Troch	5921 Sunset, Ind	Self	Possibly	586-6856
* JERRY WOOD	JUNEAU	Plnk Cmt.	YES *	465-2180
Ray N. Carlson	14116-60th Ave. - Edwards, Wash.	MALCO & McLENNAN	No	206 223-1248
Thomas J. Shute	Juneau	Risk Mgmt	No	465-2180
JR McC	Seattle, Wa.	Coram + Bl - Is	No	5832300
ALLEN SHATTUCK	JUNEAU	SHATTUCK + GRUMMETT	No	586-2414
Ken Moore →				
Don Koepf				
Ken Vasser				



LABOR & COMMERCE COMMITTEE  
DAILY COMMITTEE HEARING

Date: 3/31/82

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

<u>Members</u>	<u>Present</u>	<u>Absent</u>	<u>Time Arrived</u>	<u>Time Left</u>
Rep. B. Bylsma, V. Chair	_____ ✓	_____	11:03	
Rep. D. Randolph	_____	_____ ✓		
Rep. B. Rogers	_____ ✓	_____	11:03	
Rep. T. Gardiner	_____ ✓	_____	11:31	
Rep. T. Martin, Chair	_____ ✓	_____	11:00	

Subject Matter:

House Bill No. \_\_\_\_\_

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

Special Orders:

Cotton  
Sutcliffe  
Grussendorf  
Haugen

# ALASKA POWER AUTHORITY

Partial Transcript of Board Minutes  
of  
October 2, 1981

Mr. Yould: The final action under Tyee has to do with Insurance. Normally, - one shouldn't say normally, but what we have anticipated with the Tyee Project, - what has been normally done within the State on large projects such as this is to require that the contractor provide his own insurance for, to protect against various contingencies that would come up during construction. However, Terry McGuire has been working with the state's Risk Management section which has indicated that the Power Authority might find it desirable to enter into a wrap-up insurance program whereby the Power Authority would request that the civil contractor, Southeast-Harrison Western, allow us to secure the necessary insurance on his behalf. The advantage being that that insurance alone is going to cost somewhere in the neighborhood of, we're just guessing, \$3 million for the various programs and policies that he is going to have to be taking out. But based on a proration of what we anticipate the insurance claims will actually be should this be a normal project we can anticipate a premium return of somewhere in the neighborhood of 30 to 50%. This is something that can come back to the state and be offset against the project rather than relinquishing the contractor. That's why in dealing with Risk Management we feel that it's a very desirable thing to do. If you would like to I think all we want to do is make you aware of this technique and this procedure and let you ask questions which you might have. But we do have a gentleman from Risk Management, and Mr. McGuire has been working on this particular technique.

Comm. Webber: I'd sure like to hear that one.

(voices interacting are inaudible for this space)

Mr. McGuire: It was not until late July, early August (inaudible) some bills were passed or signed into law or passed into law that we knew that we had the insurance requirements associated with certain contracts during construction and we did not come to a decision based upon discussions with Risk Management that it would be advantageous to establish wrap-up policy until early in August. At that time we had considered sending out an addendum to that major civil contract, but it was getting so close to the bid date of August 11th that we felt it would confuse the bidding process and we decided we could actually, if we

instituted this type program after evaluation, we could go to the contractor early on, say don't put your insurance in force. You don't have to have to worry about losses above your experienced level, which would impact your rates in the future, or we will provide the insurance, we can probably provide a greater degree of course possibly for a lower rate since it's a wrap-up policy and we would issue a change order to your existing contract to effect this and reduce the contract amount by the value that he had anticipated paying for insurance. What you have, what I just handed out is a letter from John Haywood the Director of Risk Management. That's the initial letter, and then there's a brief statement, brief, some articles covering wrap-up policies that gives you a little idea of where they stand in the industry. And then there's another copy of the August 6, 1981 letter which is also in your Board packet from Marshall McClennen. We have here with us today Mr. Tom Slagle, who is an assistant to John Haywood, both he and I will be able to answer any questions, I think, that you have. Some additional advantages of this program are: in a project where you are having eight to ten or eleven, even, major contracts, plus you'll have sub-contractors for those prime contractors, you're constantly having to establish for each individual contract insurance limits and they must meld with each other and we have to get certification of that coverage for all contractors and sub-contractors and it comes somewhat of an administrative burden in some respects. And, as Mr. Yould stated, should the losses associated with the program or the claims associated with, that could be filed during the construction phase of the project associated with professional liability, general liability, workmen's compensation, and so on, the loss activity is low, well actually the contractors are going to obtain the premiums that, you know, a rebate on premiums in some respects, whereas the Power Authority and the state can achieve that rebate on premiums. If the experience factor is high the advantage to the contractors is their loss would have been high, well then it is not impacting their ability to get future contracts because their individual firm's insurance premiums. So that there are some advantages to both contractors and to the state. We feel there will be a cost savings by instituting this wrap-up program. Another advantage is that when you have each contractor buying their own individual insurance you're going to have many parties involved and if there are claims sometimes they'll be many people involved in a suit. There can be claims against both. Contractors can make claims both the owner, design engineers, and so on, construction management firm. It becomes extremely complicated. And with a wrap-up program with all parties having the same coverage with the same policy the resolution of the claims is handled by that one broker.

You're not having insurance companies having high expense trying to recover losses associated with their insurance programs with each other. You're dealing mainly with one broker who basically is covering insurance areas and coverage for that individual project. Another advantage is that this can be expanded and it will be accomplished initially just on this Lake Tyee project. We anticipate trying to expand it to our overall program, our overall construction program. The reasons we are looking at Marsh and McLennan right now is that the Division of Risk Management in the past year had sent out RFP's to all the major national brokerage firms and had selected Marsh and McLennan to provide coverage in this area for the state and Corroon/Black and Dawson had been selected to buy coverage in that area of property insurance, and other areas too. They felt due to the time constraints the desire to get this wrap-up policy, possibly in place, for this one project, we should not go out with a RFP which could take three months, possibly, to evaluate. It could be a very complex RFP to prepare, could be a complex RFP to evaluate and we would not be able to institute the program and save the state possibly some money unless we went to Marsh and McLennan for this coverage initially on the Lake Tyee project. Sometime in the next few months we are going to be sending out a RFP that will outline what our insurance requirements will be on a program basis, not just on the Lake Tyee project, but on a program basis, and we'll be working closely with Risk Management in the development of that RFP and in an ultimate evaluation and we may end up having oral presentations before the Board at some future Board meeting by the top, what we consider, on the written submissions, the top firms to make oral presentations to the Board at some future meeting. That's where we stand, it was both Risk Management and ourselves, wanted the Board to have the opportunity to ask some questions, to understand what we are approaching here, what this program is. We desire to institute it, I don't know if it requires any formal blessing of the Board or not. We don't know definitely that we'll be able to even institute for the Lake Tyee project, because if we can't get the contractor to accept a change order to reduce basically his contract by the value of what he would have been paying for insurance, well then we would have to look at the option of just doing it for the Transmission line and substation contracts yet to be awarded and treat that somewhat as a separate project for insurance purposes if the brokers would accept that.

Chmn Conway: Questions from the Board members?

Mr. McGuire: Tom Slagle is right there.

Dr. Lehr: Would you use part of yourself insurance pool to cover

this, to make a saving that are potential or would it be 100%, no deductible?

- Mr. Slagle: Yeah, we've used part of it, especially in the excess part. Ten million on up. We have an umbrella with the state program on any cash loss type claims. We invisioned this program as being probably the first ten million and again, going into the state's program, on any excess insurance.
- Dr. Lehr: Is there any potential that the state could all of sudden find themselves in a horrible lawsuit that our coverage wouldn't cover? I mean, would the dam, I don't know, the thing could break or something like that, is there a chance we could all of a sudden find ourselves in a billion dollar lawsuit?
- Mr. Slagle: I think the potential is there. I think our coverages are probably as broad as you're going to get in the insurance industry. The potential is always there for that type of lawsuit, yes.
- Mr. McGuire: To expand on that, we have discussed with John Haywood the fact that this program that we're talking about here is insurance during construction and we also want to investigate what transpires nationally relative to coverage of projects in operation. The problem is that very few of them are privately owned. Many of them are owned by local governments, state governments, and federal government predominately. But we are going to investigate that in an area of property insurance, loss of operations insurance and so on for individual projects and a system as soon as we can.
- Dr. Weeden: I guess I tend to be too simple minded about these things, but it seems to be right now when the contractor carries the insurance he benefits from a low number of claims. If the state carries the insurance the contractor does not benefit from a low number of claims.
- Mr. McGuire: That's correct.
- Dr. Weeden: So, does that mean we'll kill more people on the operations?
- Mr. McGuire: No, I don't believe it will because basically the contractor, the insurance firms and the Power Authority, and the contractors are still going to be interested in keeping any safety, insuring that construction takes place in a safe manner.
- Dr. Weeden: Well, those safety nets, I guess to use a Reagan phrase, are there in accordance with law in any case, aren't they? Insurance or no insurance. In other words, if

certain OSHA and other agencies require certain fundamental, you know, features, when you back up a heavy piece of equipment it's. I guess can see that in a generalized sense the contractor, the person doing the work on the ground, handling the shovels and mixing the cement and so on, has a kind of a generalized incentive, even if the state carries the insurance, to reduce accidents. But that incentive is not as sharply focused as when the contractor, himself, could get, let's say could look forward to a substantial rebate on premiums.

Mr. McGuire: If an accident occurs, on a job site, the individual or whatever, which id going to be making a claim, is going to make his claim and if it exceeds the limits of insurance, that does not preclude any possible plaintiff from still trying to recover more than the limits of insurance coverage from parties involved. The contractor themselves, construction managers, Power Authority.

? (mostly inaudible conversation, intermixed between about three people)

Chmn. Conway: All you're saying is that you're going to wind up with a policy that's much larger because it's going to be placed through the state's own Risk Management systems and therefore tends to give you greater protection, but I'm a little bit with Dr. Woeden and I circled two points on here. One of them, Marsh and McLennan and you've answered that question as to why it's going this particular route. If you're comfortable with that original RFP and I assume are, I don't have any more questions on that point. The other one I circled was on the Workmen's comp portion of it, which is really where the incentive is. To run a job properly, is the state, for example, going to have people there? I'm not talking about the safety inspectors now, I'm talking about the insurance people. Are we going to have someone there? Who is really going to be out after the interests of that, the policy holder.

? (inaudible)

Chmn. Conway: Well (inaudible) and, it's the workmen's comp thing that I'm ..... the rest of it I can understand, there's great savings to be accrued here but the comp thing I just don't (inaudible)

Mr. Slagle I think you (inaudible), I pondered that question myself. I think you could have some incentive in the programs for the contractors (inaudible). One of the things that we're looking for on this project from their Risk Management point of view is using this as a model for loss control programs. We're going to have state people from our loss control section there, we're going to have

people from Marsh McLennan. We're hopeful that we can get some real points on this and have a continuity of loss control for other projects that come up and we

Chmn. Conway: You raised a very good point. And that would be some incentive, that would in fact accrue back to the contractor or contractors in this case, otherwise you've got two problems. One that we've been addressing is, how are you going to run the job and the other problem is, now you've raised that, is you're going to have the myriad of inspectors floating around that job. Frankly, if I was the contractor and had no incentive, I wouldn't be very hospitable to all these inspectors, they drive you nuts, but, if I'm going to get something from the benefit of their being there, I'm running a very safe job, then I'll accept the inspectors.

Dr. Weeden: You wouldn't run 'em all through the cement mixer?

? Then they'd sue you.

Chmn. Conway: Five thousand guys would come out of the woodworks and come and drink your coffee and eat your grub at lunch, and in this case you've got to take care of them because they're the inspectors. That happens all the time, but, is there a method that can be cranked back in that would return some of this which would from your scenario would be accruing back to the state and that's good. But, a portion for a good record and account therein.

Mr. McGuire: Mr. Chairman, I think that's entirely possible and I think that that's going to be something that will develop as a result of our discussions with the main civil contractor who has already been awarded the contract outside of the wrap-up policy and since he realizes that there are benefits to him by not exposing his work on this project to impact his overall loss record. But he also is possibly losing the potential benefits. And I think that we could develop some arrangement whereby the contractor receives a percentage of potential premium return based upon loss experience. I can only say that I think it is extremely possible, worth looking at anyway.

Com: Webber: One question. Did I understand that somehow the Power Authority's liability is limited by the state? Did I understand that? I don't know just how it came through but I think I heard that basically there would be a cap on the liability of the Power Authority if they utilize this insurance?

Mr. Slagle: Well, there's a cap on the insurance policy. I think we'd be extending. What we get to the contractor any claims that arose out of the activities of this project.

would come under the state program on large catastrophic claims.

Com. Webber: That's what I wanted to get to. How is that funded?

Mr. Slagle: That is basically funded through the different state departments, the cost of risks are allocated back to the departments and they in turn

(inaudible interaction)

Mr. Slagle: .....Insurance Company. We send a premium notice to different departments based on their, the number of buildings they have and their loss history

Com. Webber: And in that scenario you can pick up this type of an agency and treat it as a department or any insured.

Mr. Slagle: Right.

Com. Webber: And is the legislation there to do that?

Mr. Slagle: That I can't answer but we do it.

Mr. McGuire: Basically, Commissioner, I think that for purposes of the state's basic programs it would be beneficial that the Power Authority be separated for the allocation of the insurance premiums, the variable rates from the rest of the Department of Commerce.

Com. Webber: That's I know what you're saying

Dr. Lehr: Would that adversely affect Commerce rates?

Dr. Lehr: They are semi-accrual of how they charge their rates. Because we have a self insurance pot and then we have a, the other one's we go out for premiums on, then every year they adjust a little bit. The trouble is those won't adjust after you cut your budget numbers, but you pay some of that in your Risk Management charges. Then your department wouldn't pay much because you have a low loss whereas Fish and Game and DOT pay a whole lot

TRANSCRIPTED DECEMBER 29, 1981.

# Alaska Independent Insurance Agents & Brokers, Inc.

SEND REPLY TO:



Dianne M. Leighton  
Box 164A Eagle River Rd.  
Eagle River, Alaska 99577

March 12, 1982

Mr. Kenneth Moore, Director  
Division of Insurance  
Dept. of Commerce & Economic Development  
State of Alaska  
Pouch D  
Juneau, Alaska 99811

RE: Alaska Power Authority Hydro-electric Insurance  
"Wrap-Up" Program

Dear Mr. Moore,

The Alaska Independent Insurance Agents & Brokers Board of Directors held their semi-annual board meeting in February. John Heywood, Risk Manager for the State of Alaska was kind enough to briefly address our group.

Mr. Heywood gave us some background information on the insurance wrap-up program for the hydro-electric projects under the direction of the Alaska Power Authority. A question and answer period followed his comments.

The board has several areas of concern dealing with the State becoming involved with private enterprise. There were no public hearings held and there were no requests for competitive bids from the insurance community for this program. The board strongly objects to these procedures and as a result of our concern we resolve the following:

WE OBJECT TO THE HYDROELECTRIC INSURANCE WRAP UP PROGRAM AS PRESENTED BY RISK MANAGER JOHN HEYWOOD ON THE BASIS OF IT BEING A POSSIBLE VIOLATION OF STATE STATUTES INVOLVING RESTRAINT OF TRADE; WE FURTHER OBJECT ON THE GROUNDS THAT THE STATE IS BECOMING INVOLVED IN PRIVATE ENTERPRISE IN DIRECT COMPETITION WITH THE INSURANCE INDUSTRY TO THE DETRIMENT OF THE ALASKAN INSURANCE BUYER.

We urge your office to conduct a complete investigation into this matter and should you find that the State has wrongly involved itself in this project, issue an order prohibiting further involvement by the State on this and future projects.

In advance, we thank you for your assistance and look forward to a reply at your earliest convenience.

Sincerely,

Dianne M. Leighton  
Executive Vice-President AIIAB

Copies to:

Mike Pate, Pres. AIIAB  
Pate Ins. Agency  
P.O. Box 257  
Homer, Alaska 99603

Ken Murray  
Ken Murray Ins. Agency  
Box 1007  
Fairbanks, AK 99707

Mr. Joe McLean  
Ely, Guess & Rudd  
Suite A Mendenhall Bldg.  
Juneau, AK. 99801

Hon. Jay Hammond  
Governor, State of Alaska  
Pouch A  
Juneau, AK. 99811

Hon. Terry Miller  
Lt. Governor, State of Alaska  
Pouch AA  
Juneau, Alaska 99811

Mr. Charles R. Weber, Commissioner  
Dept. Commerce & Economic Development  
Pouch D  
Juneau, Alaska 99811

Mr. Robert W. Ward, Commissioner  
Dept. Transportation & Public Facilities  
Pouch Z  
Juneau, AK. 99811

Mr. Wilson L. Condon, Attorney General  
Pouch K  
Juneau, AK. 99811

Mr. John Heywood, Director  
Division of Risk Management  
Pouch C  
Juneau, AK. 99811

Mr. Jeff Berry, Special Assistant  
House Labor & Commerce Committee  
Pouch B  
Juneau, AK. 99811

Mr. Terry Martin, Chairman  
House Labor & Commerce Committee  
Pouch B  
Juneau, AK. 99811

Mr. Jalmar Kerttula, Senate President  
Pouch B  
Juneau, Alaska 99811

Mr. Joe Hayes, House Speaker  
Pouch B  
Juneau, AK. 99811

Mr. Gary Jenkins  
NFIB  
P.O. Box 194  
Auke Bay, AK. 99821

Mr. Richard M. Pittenger  
Associated General Contractors  
Box 4-2500  
Anchorage, AK. 99509

Mr. Tom Sewney, Pres-Elect AIIAB  
Sweeney Ins. Inc.  
P.O. Box 1395  
Kodiak, AK. 99615

EXHIBIT III

PUBLIC AGENCY

OWNER-CONTROLLED COORDINATED INSURANCE PROGRAMS

<u>Owner</u>	<u>Location</u>	<u>Project</u>
Bay Area Rapid Transit District	San Francisco, CA	Rapid Transit System
Metropolitan Atlanta Rapid Transit Authority	Atlanta, GA	Rapid Transit System
Baltimore Rapid Transit System	Baltimore, MD	Rapid Transit System
Niagara Frontier Transportation Authority	Buffalo, NY	Rapid Transit System
Dade County Metro	Miami, FL	Rapid Transit System
Washington Metropolitan Area Transit Authority	Washington, DC	Rapid Transit System
Tri-County Metropolitan Transportation District	Portland, OR	Rapid Transit System
New York Housing Authority	New York, NY	Housing Construction
New York Port Authority	New York, NY	Verrazano Narrows Bridge
New York Port Authority	New York, NY	World Trade Center
New York Port Authority	New York, NY	3rd Tube Holland Tunnel
New York Port Authority	Buffalo, NY	Niagara Power Project
New York Port Authority	Buffalo, NY	St. Lawrence Seaway Project
Metropolitan Transit Authority	New York, NY	Subway Construction
Metropolitan Wastewater Management Commission	Eugene, OR	Wastewater Treatment Plant
New Jersey Sports Complex	Hackensack, NJ	Construction of Stadium
Federal Reserve Bank of San Francisco	San Francisco, CA	Construction of Building
New York University	New York, NY	Various Construction Projects
University of California	Berkeley, CA	Various Construction Projects
Province of Quebec	Montreal, Quebec	Olympic Stadium & Subway
United Nations	New York, NY	United Nations Building
Omaha Public Power District	Nebraska City, NB	Power Generating Project
South Carolina Public Services Authority	South Carolina	Coal Burning Power Project
City of New York	New York, NY	New York Power Project
Sacramento Municipal Utility District	Sacramento, CA	Nuclear Power Plant
Societe d'Energie de la Raie James	Montreal, Quebec	Hydro Electric Project
City of New York	New York, NY	Lincoln Center

COORDINATED INSURANCE PROGRAMS

ACTUAL COST SAVINGS

	<u>Savings</u>
BART - San Francisco, California	35.7% <u>1</u> (\$16.3 Million)
WMATA - Washington, D. C.	36.8% <u>1</u> (\$36.2 Million)
MARTA - Atlanta, Georgia	34.9% <u>1</u> (\$21.4 Million)
MTA - Baltimore, Maryland	40.3% <u>1</u> (\$18.6 Million)
NFTA - Buffalo, New York	30.4% <u>2</u> (\$ 8.4 Million)
Gulf States Utilities	\$ 7.8 Million <u>3</u>
Arizona Public Service Co.	39.2% <u>4</u> (\$ 6.2 Million)
Palo Verde Power - Arizona	50.0% <u>4</u>
Tri-Met - Oregon	30% - 40% <u>5</u>
Southern California Edison	25% - 30% <u>5</u>
Societe d'Energie de la Baie James - Montreal, Canada	\$22.0 Million <u>5</u>

1 U.S. Department of Transportation Insurance Study

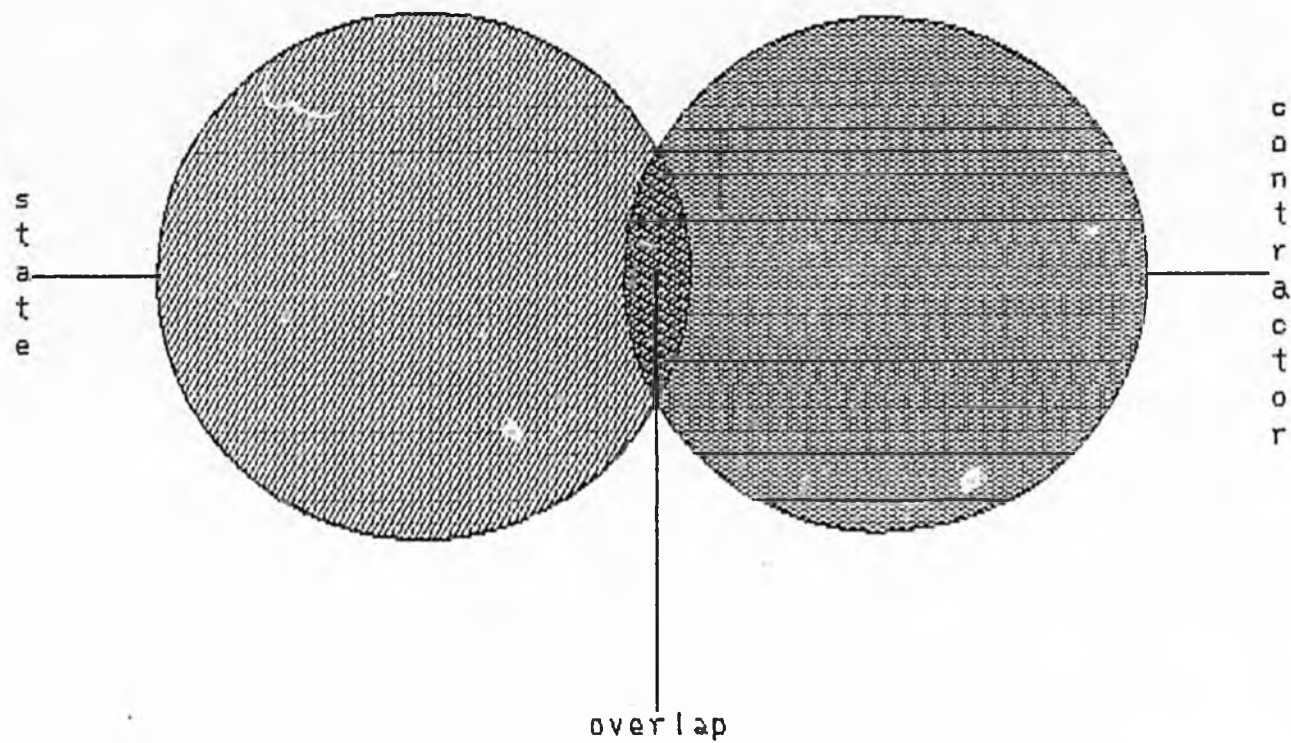
2 Warren, McVeigh & Griffin Inc. 3/2/82

3 Business Insurance 9/7/81

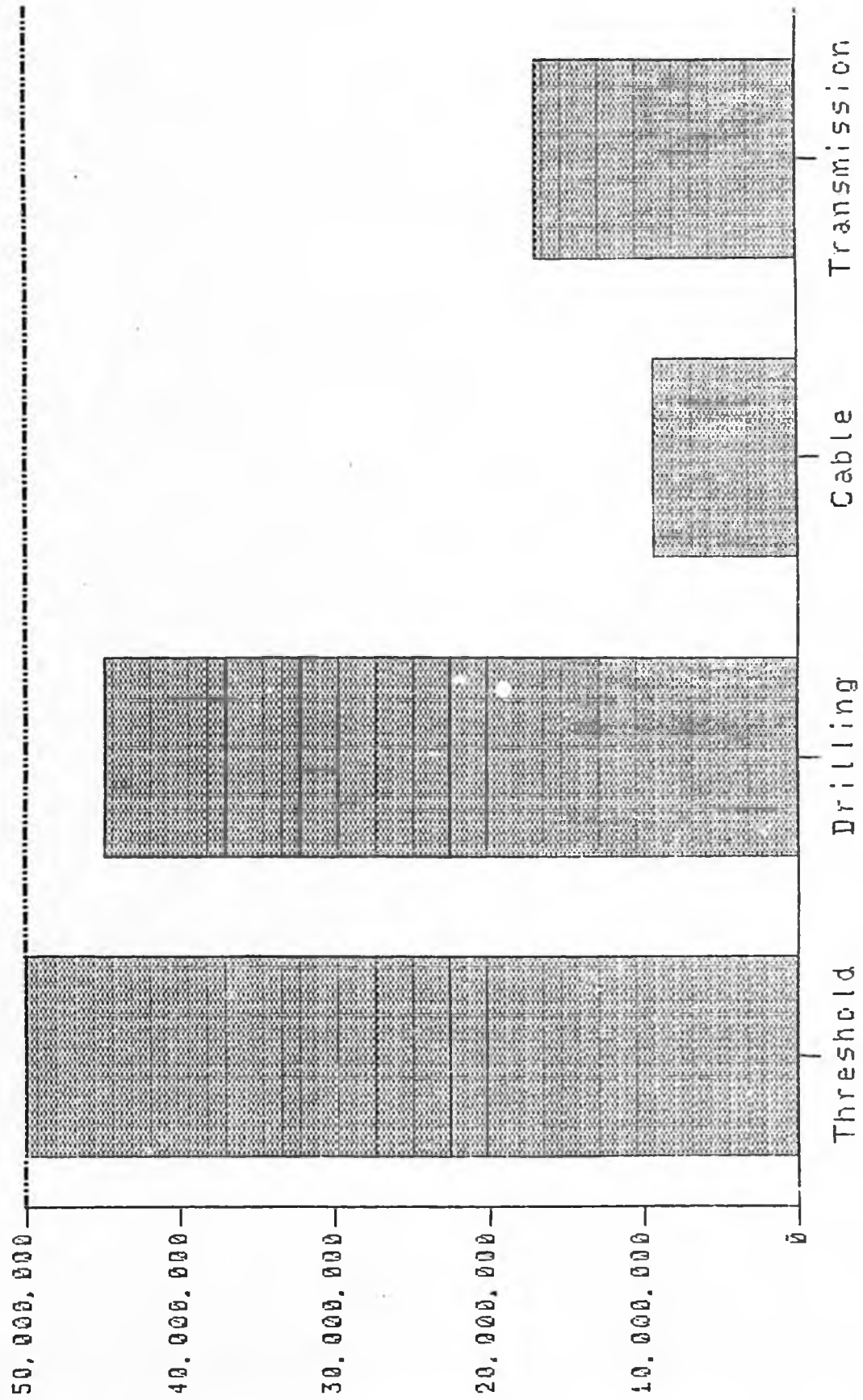
4 The Wyatt Company 3/15/82

5 Warren, McVeigh & Griffin 3/15/82

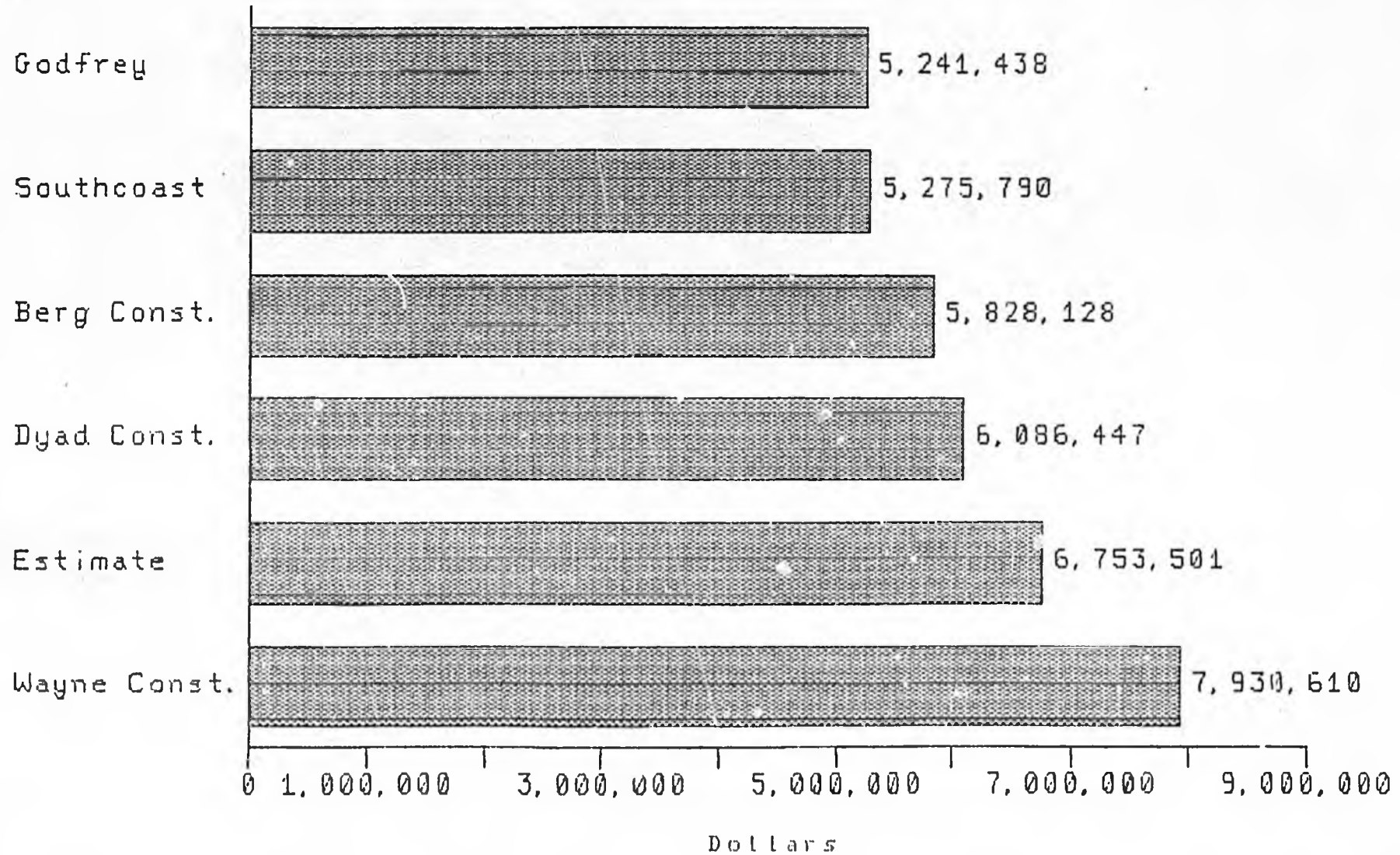
# liability relationship



# A P A Project Chart

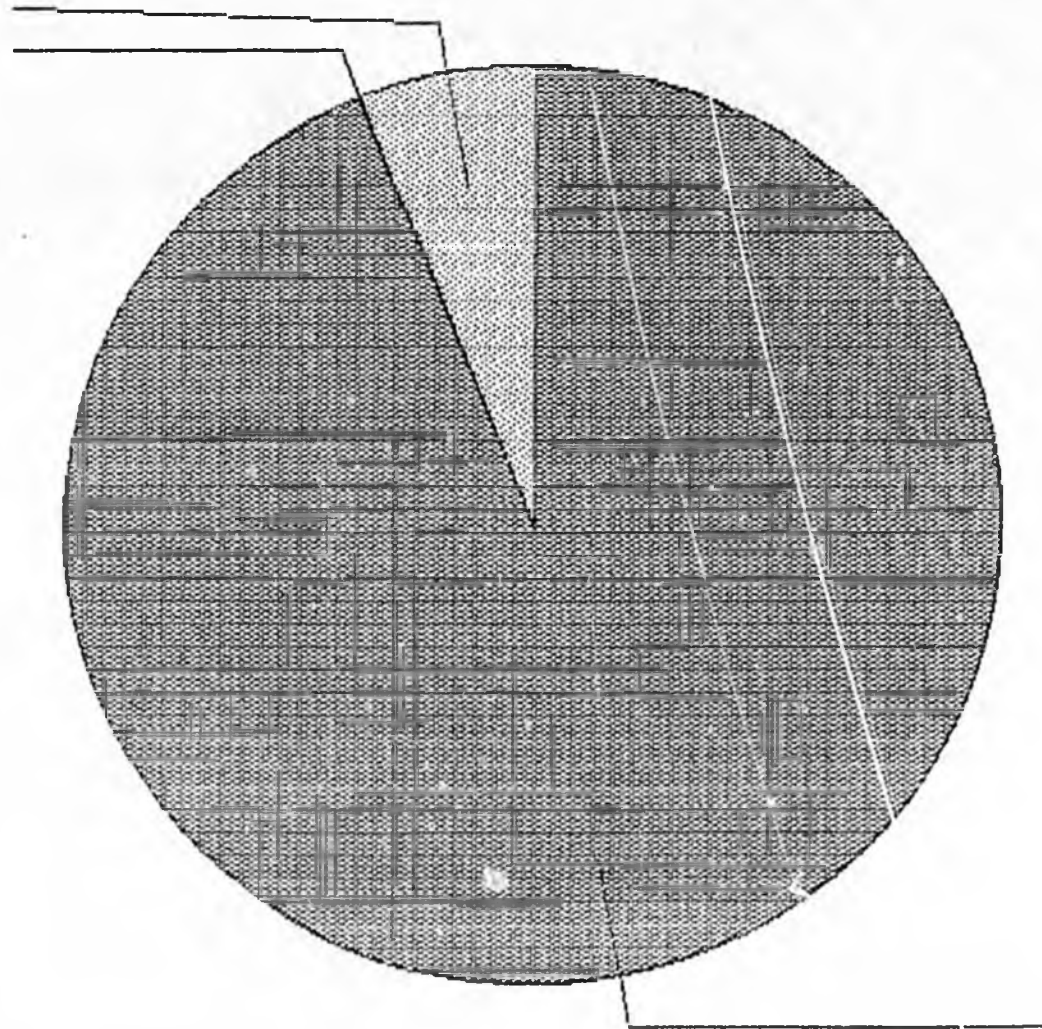


# South Wrangell Roads IFB R10-81-54



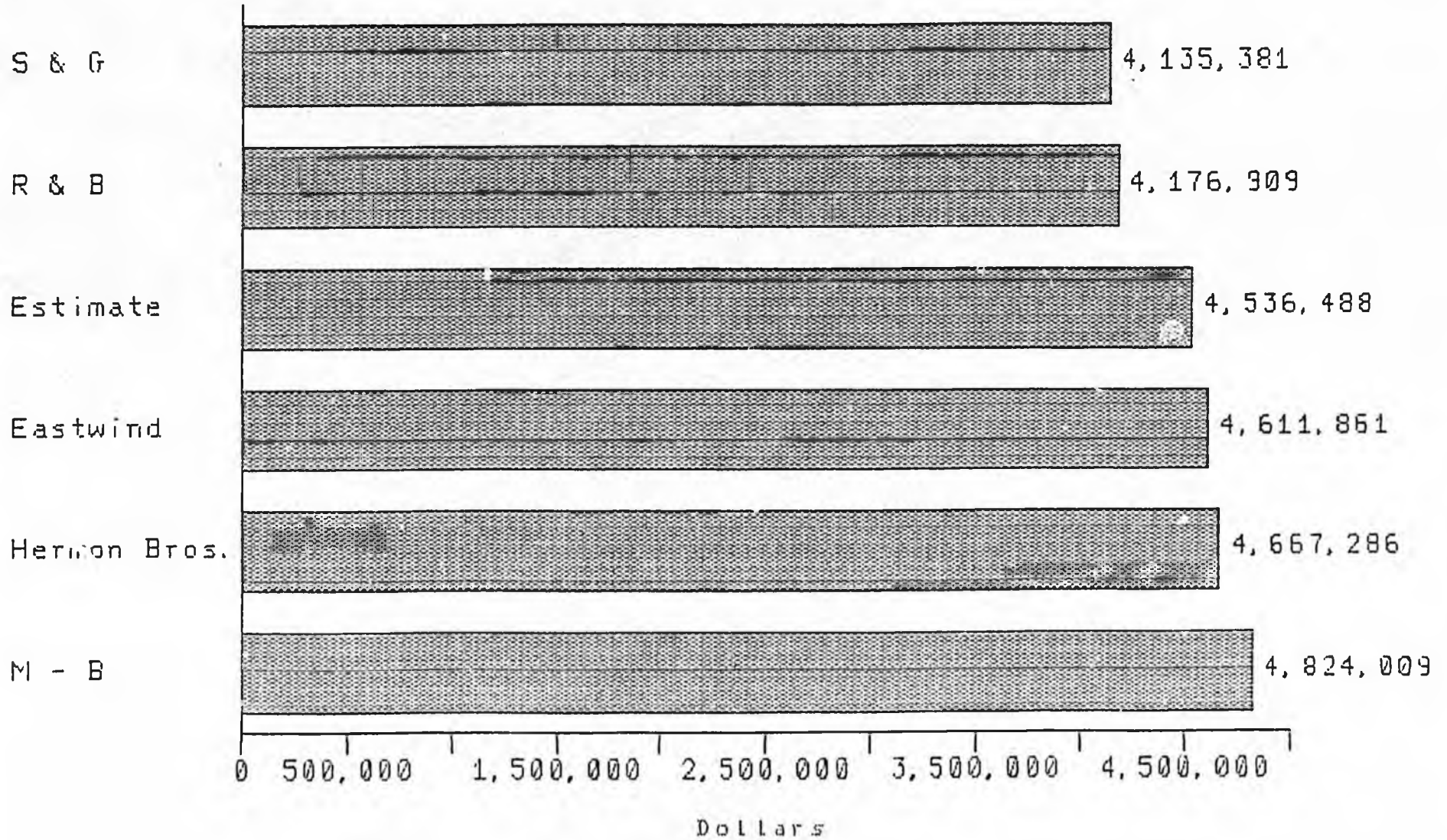
South Wrangell Roads  
IFB R10-81-54

6% Insurance  
0% Southcoast



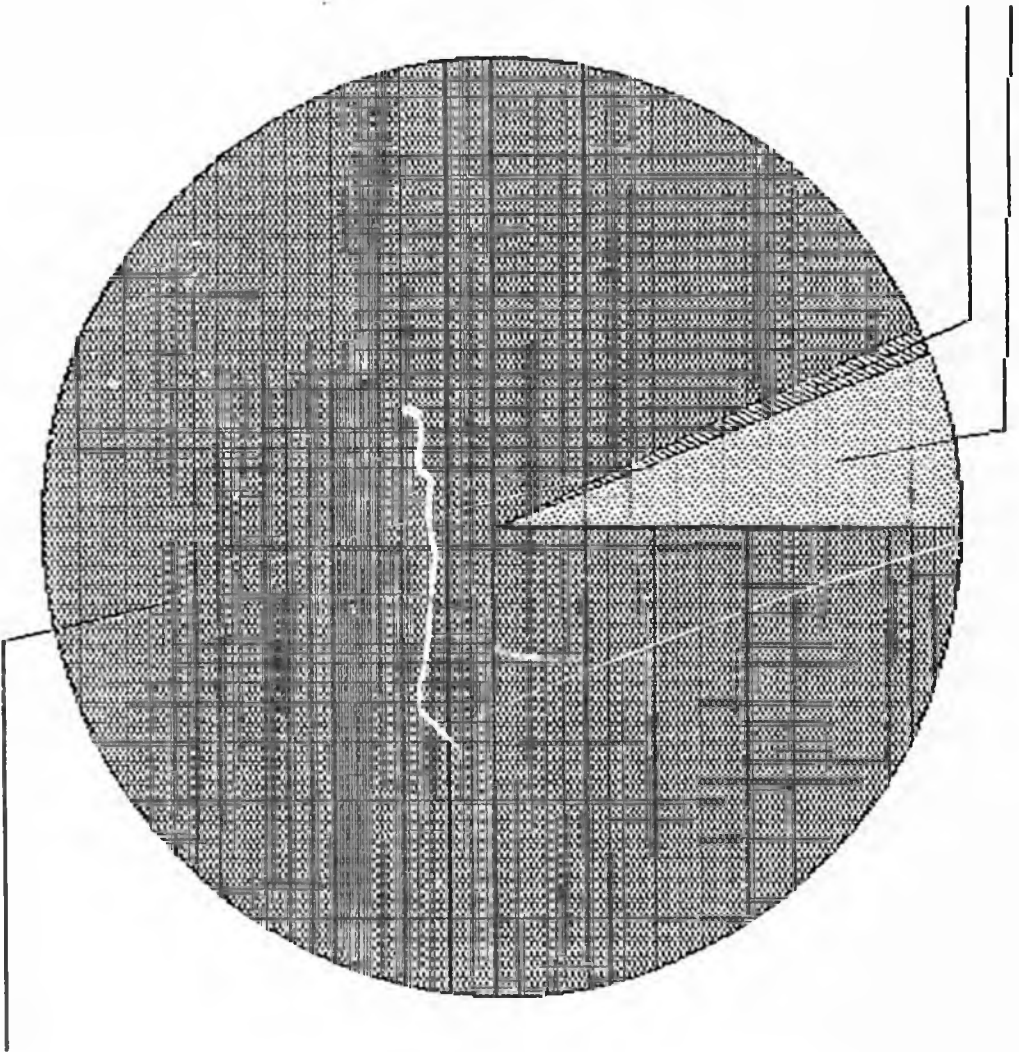
Godfrey

# North Birchwood Interchange F-042-1(77)



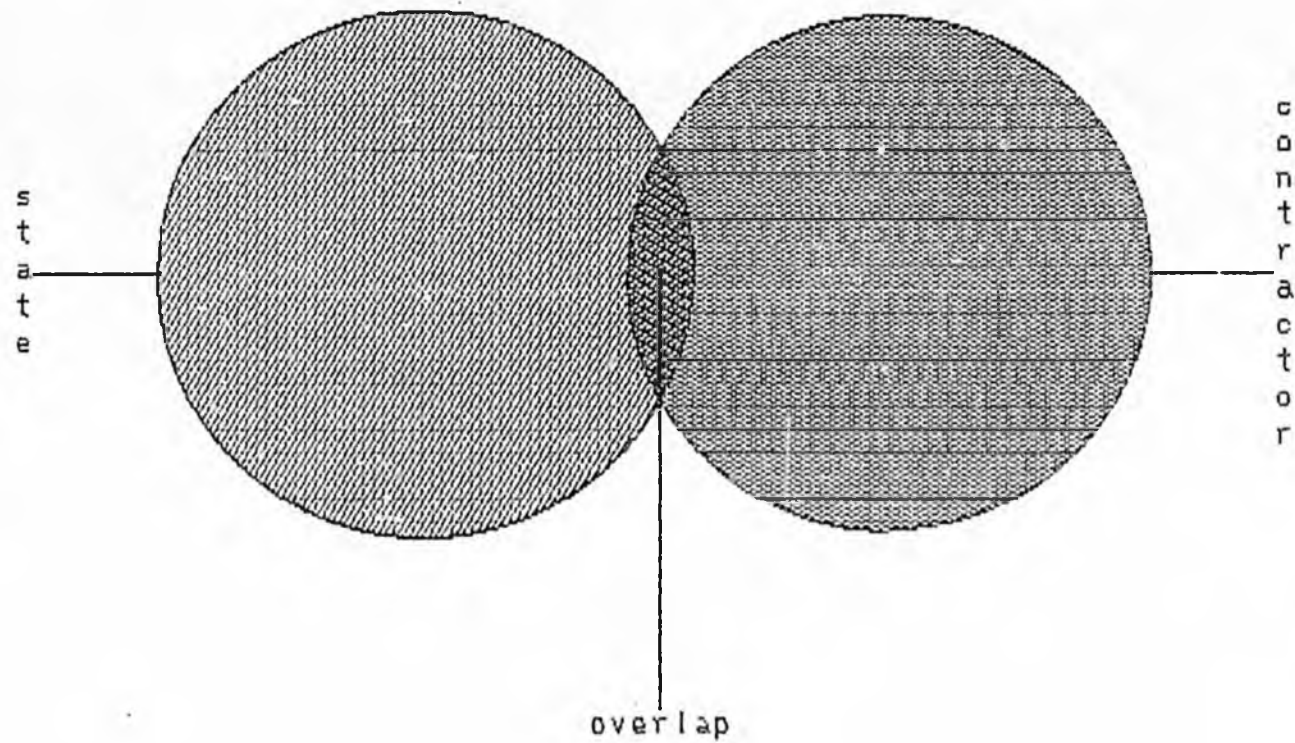
North Birchwood Interchange  
F-042-1 (77)

6% Insurance  
1% R & B

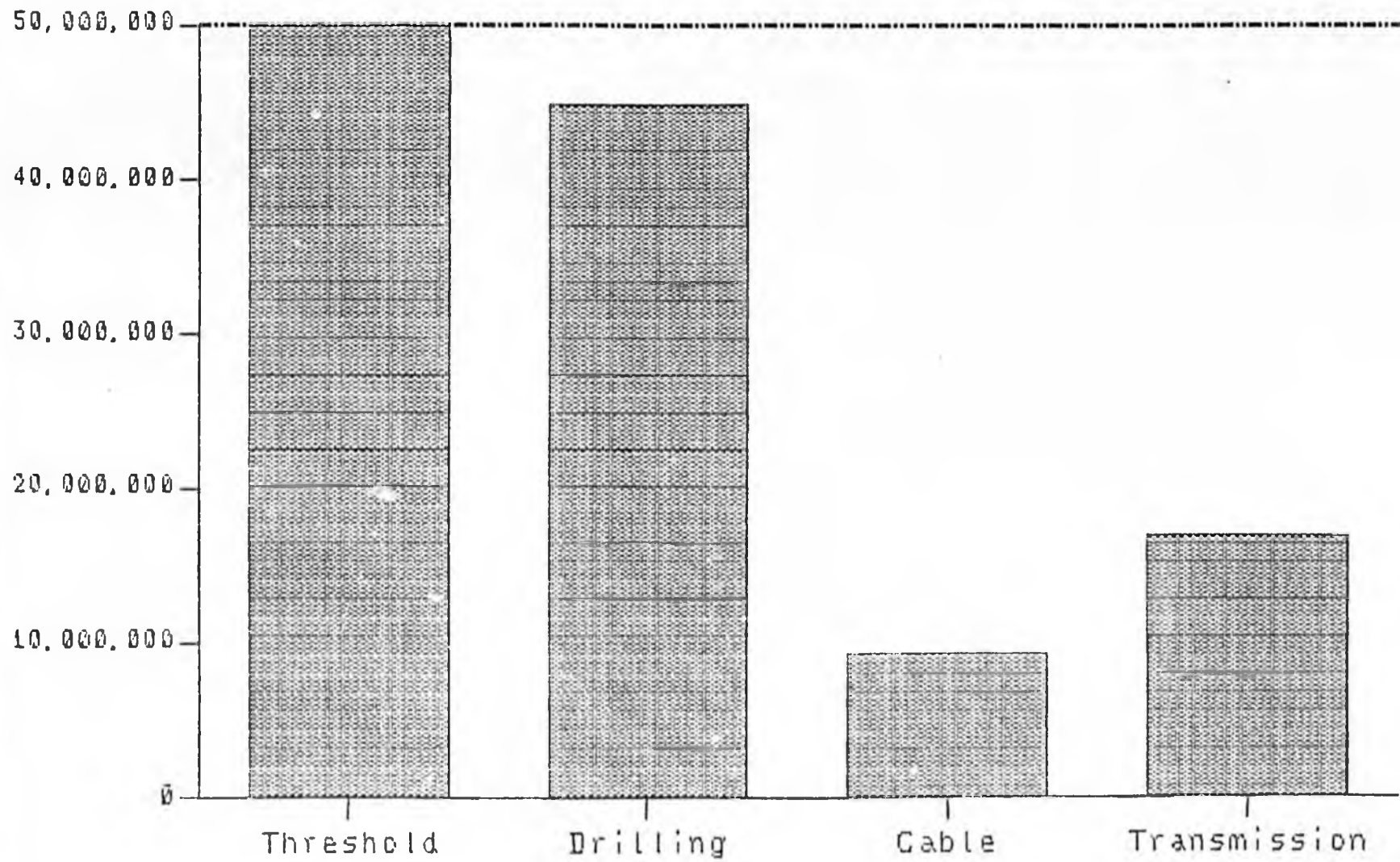


S & G

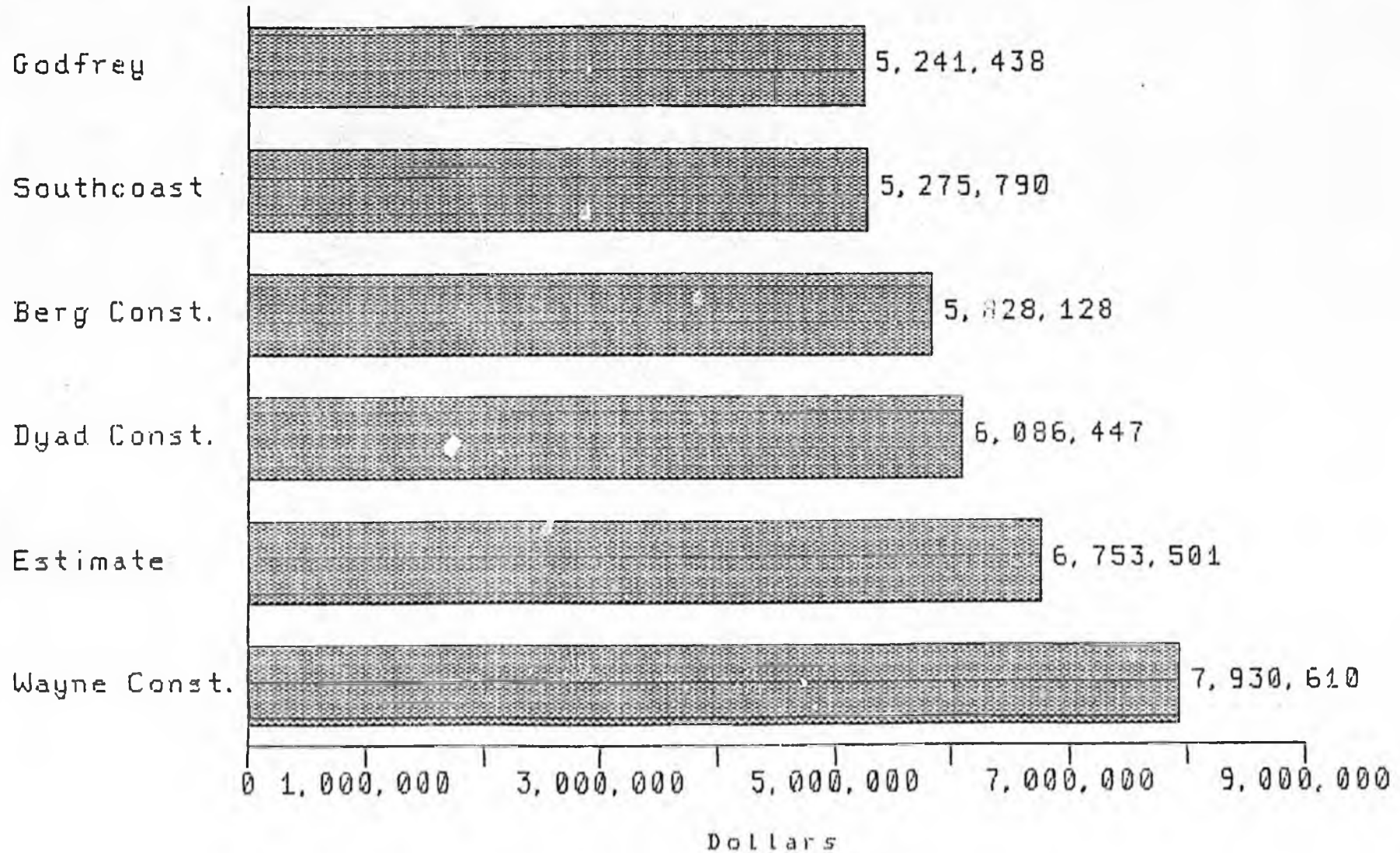
# liability relationship



# A P A Project Chart

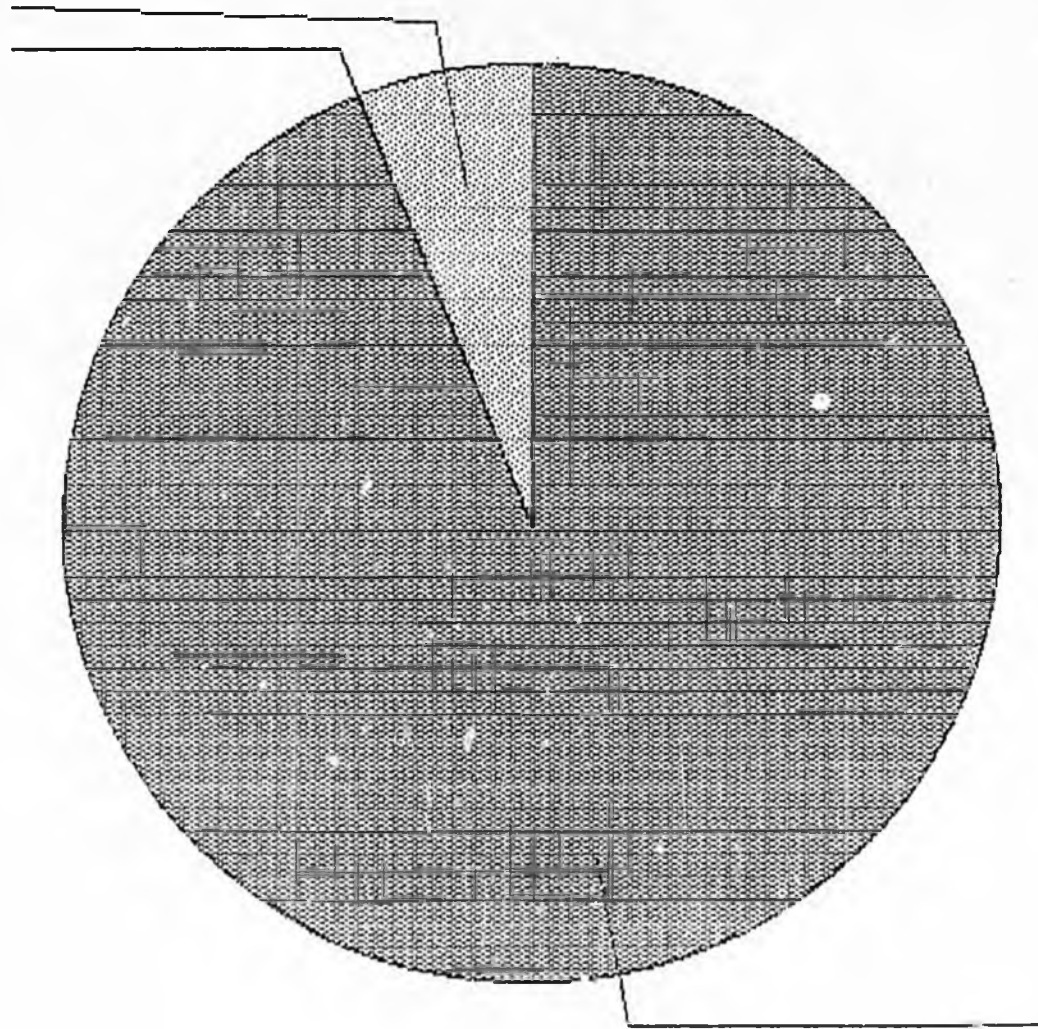


# South Wrangell Roads IFB R10-81-54



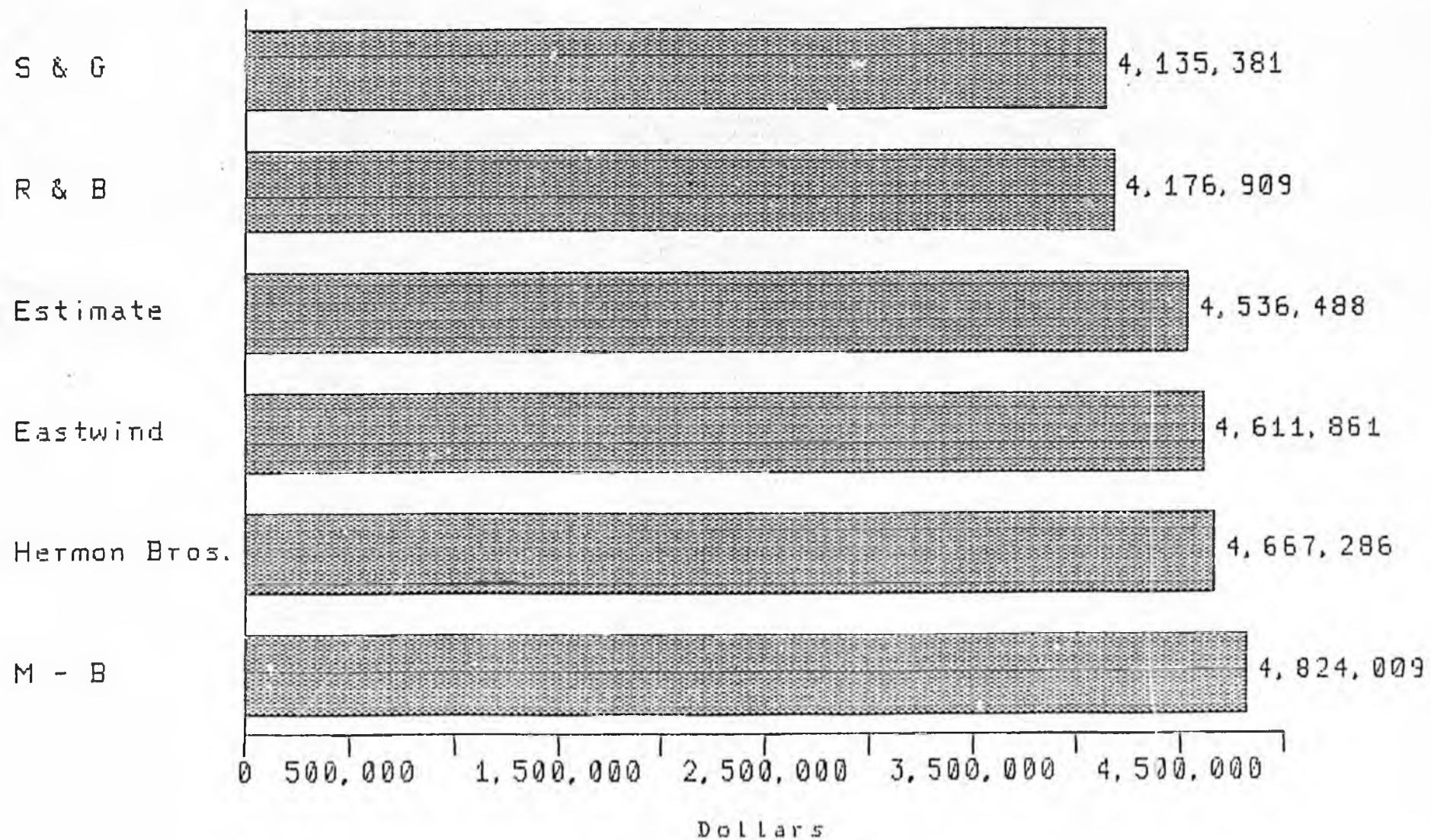
# South Wrangell Roads IFB R10-81-54

6% Insurance  
0% Southcoast



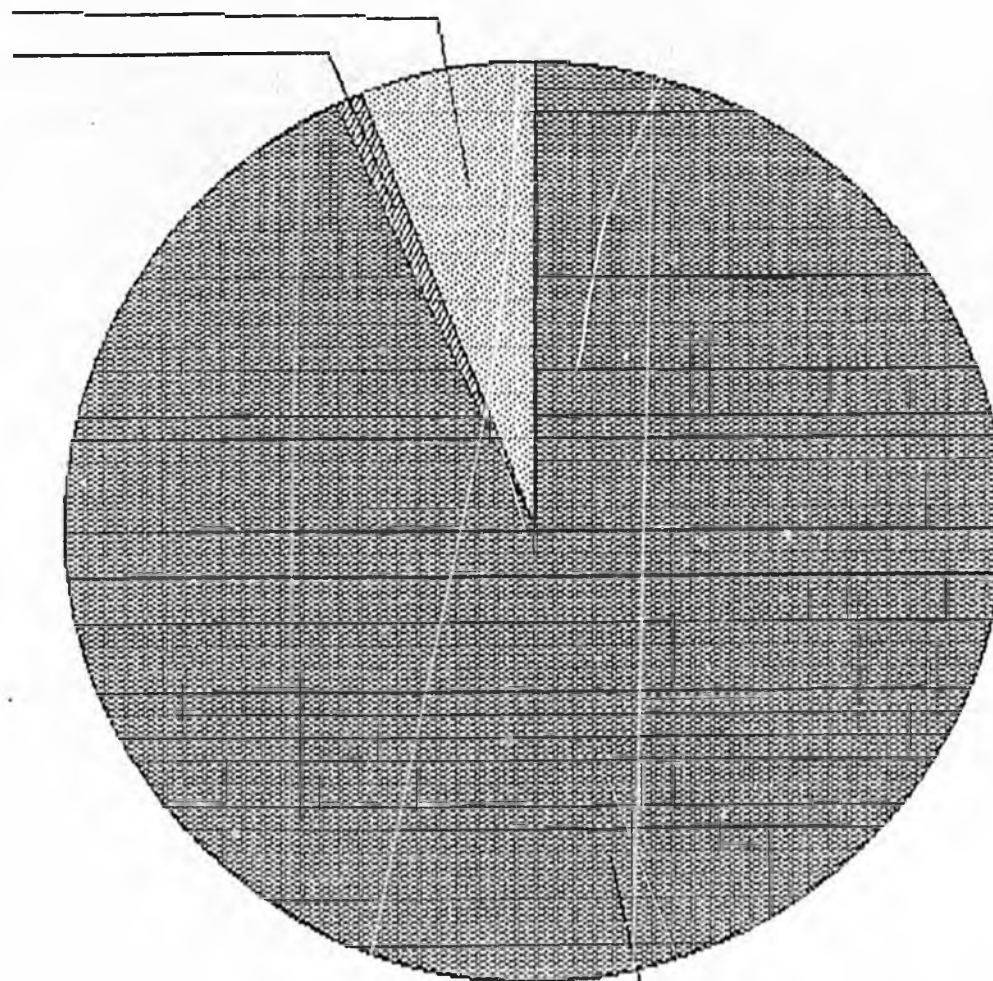
Godfrey

# North Birchwood Interchange F-042-1 (77)



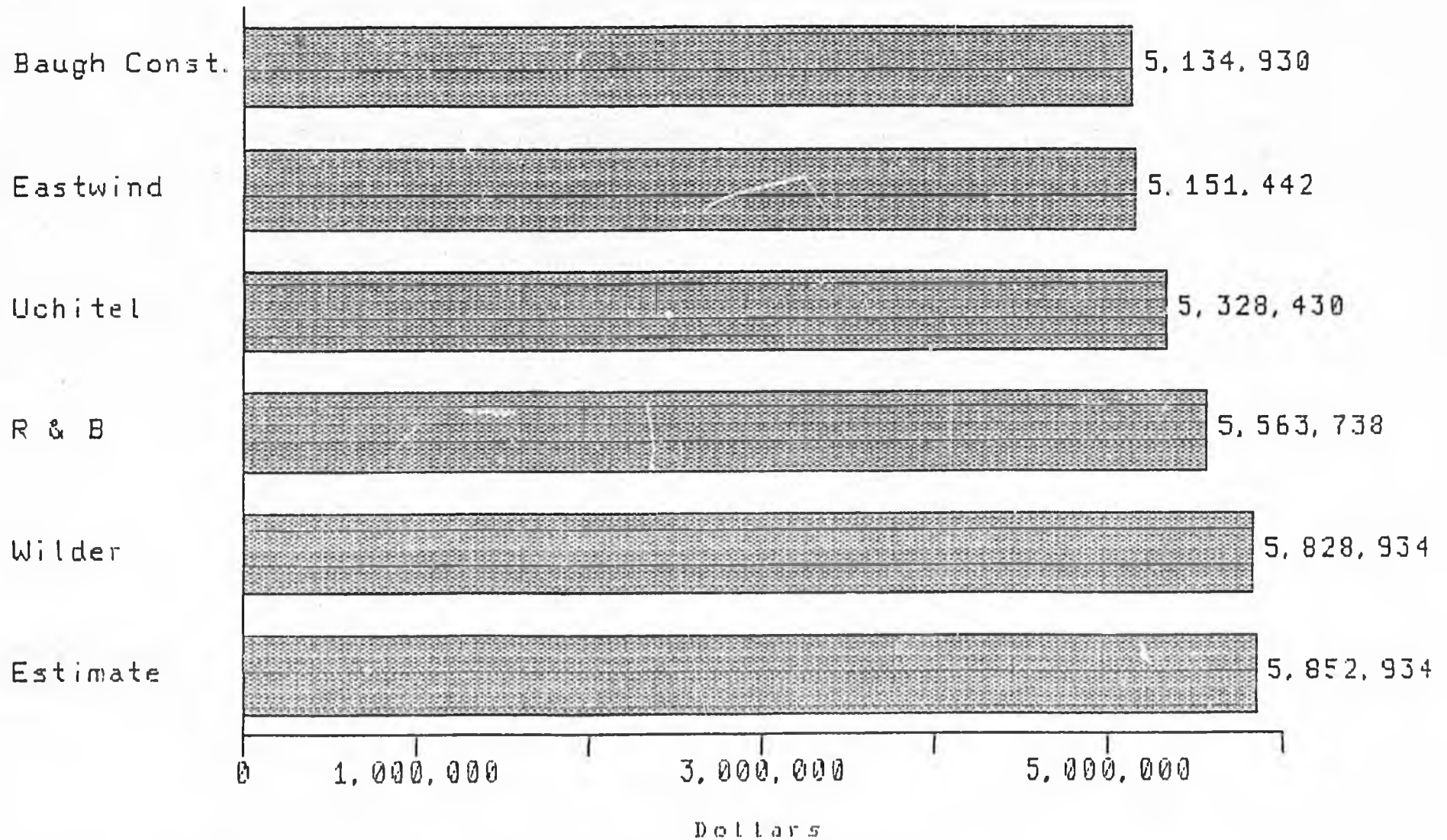
# North Birchwood Interchange F-042-1 (77)

6% Insurance  
1% R & B



S & G

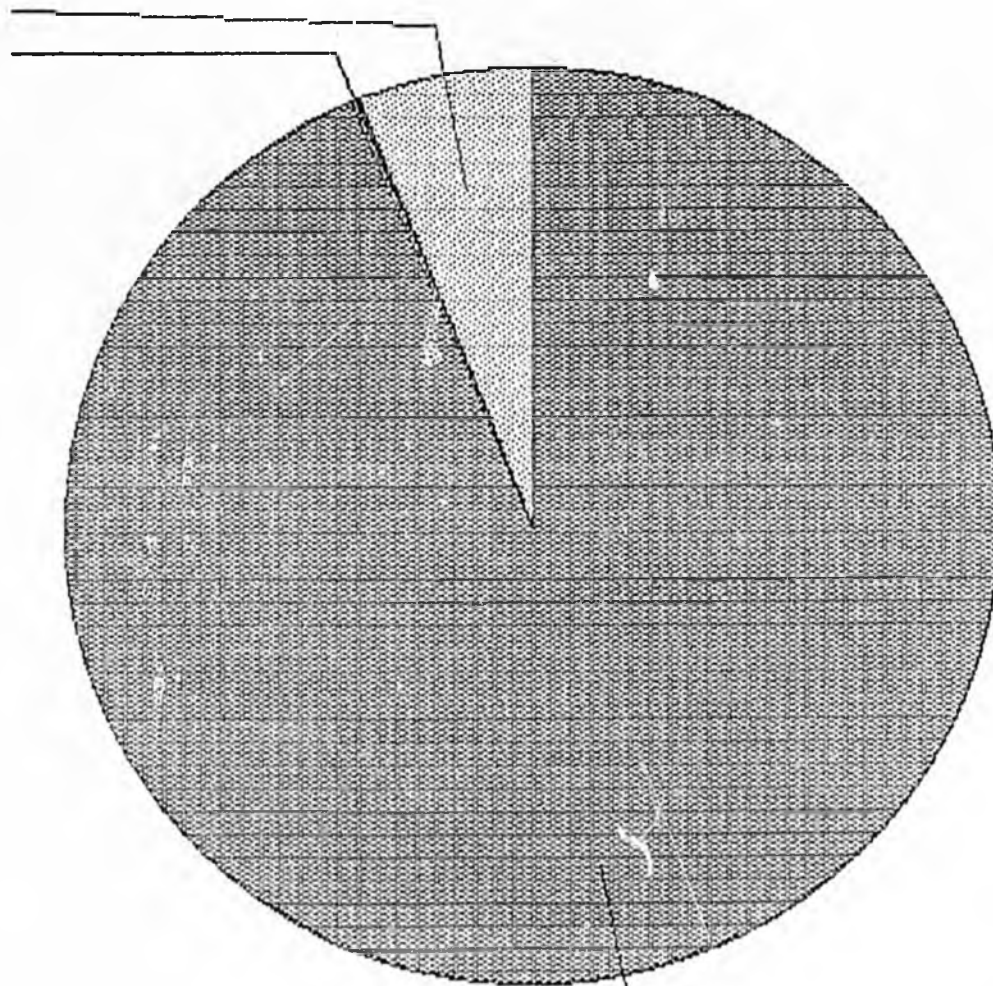
Northern Lights Blvd.  
X-14604



# Northern Lights Blvd.

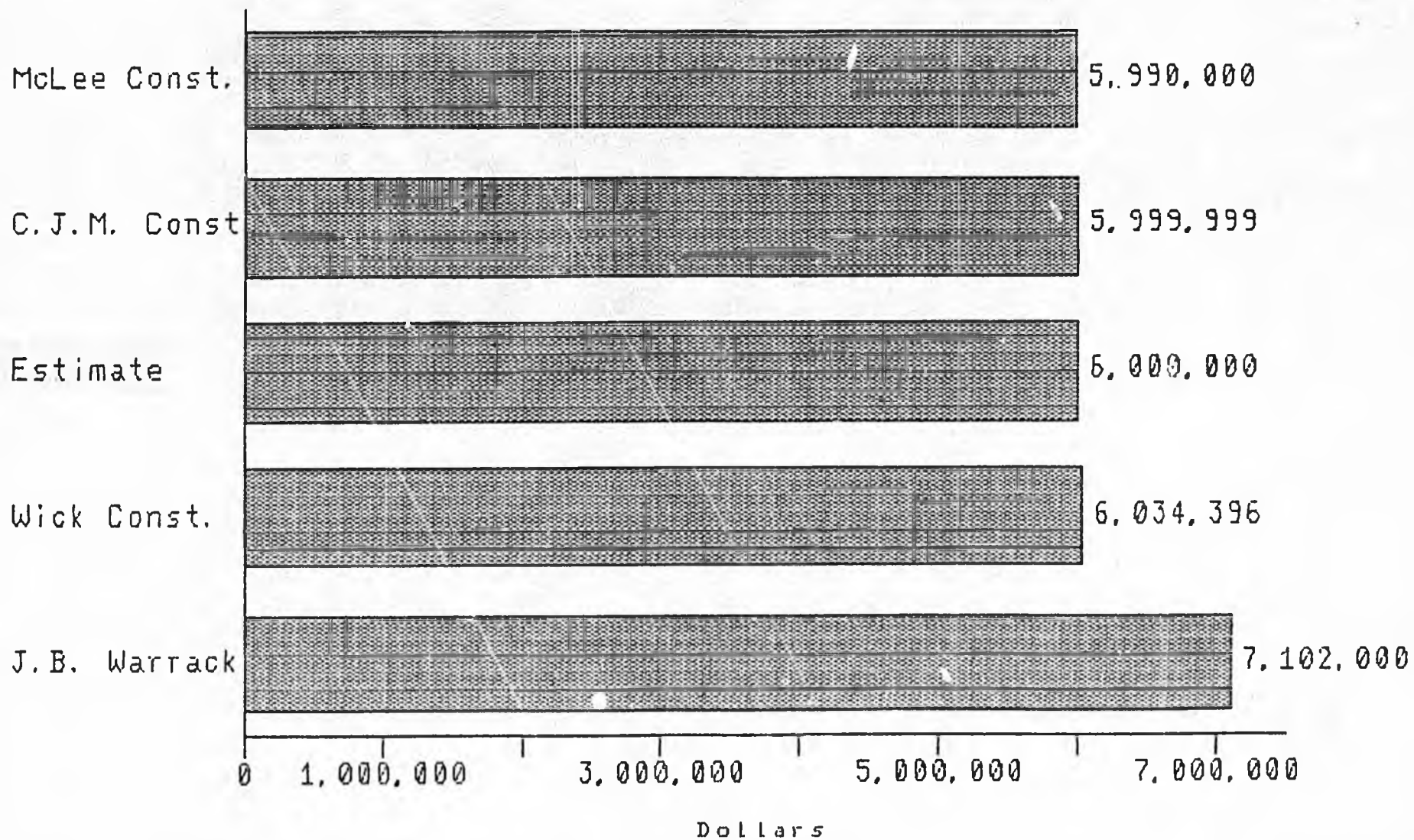
X-14604

6% Insurance  
0% Eastwind



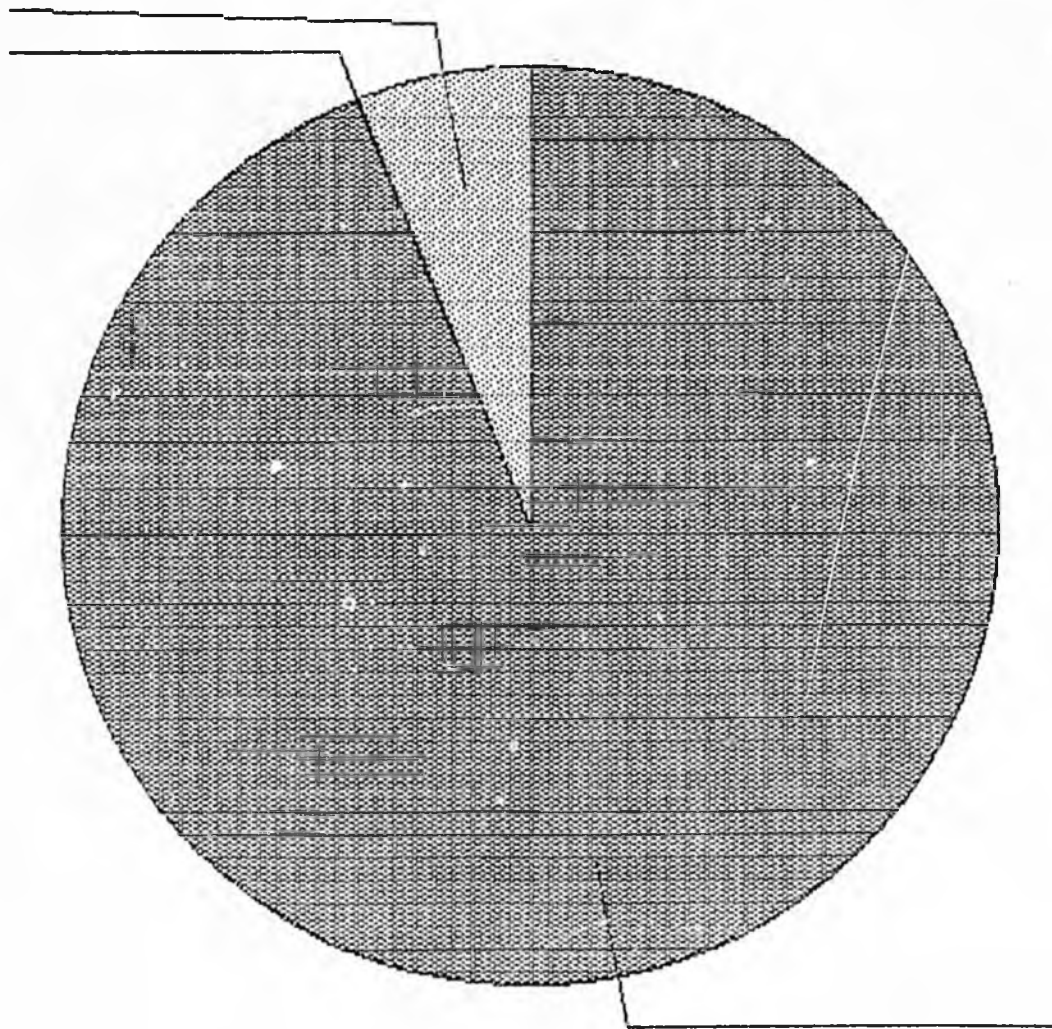
Baugh Const.

# Valdez Community Auditorium



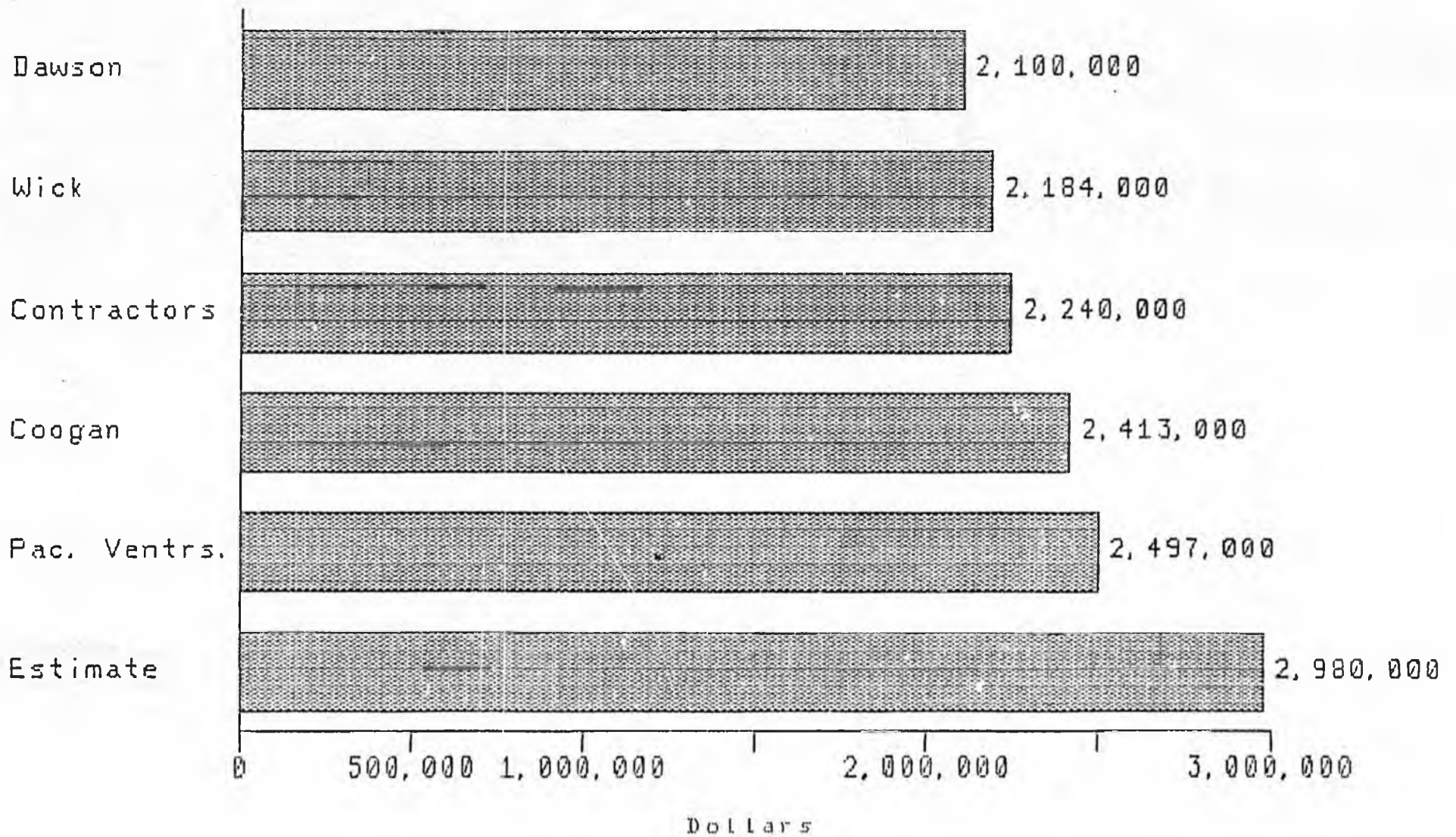
# Valdez Community Auditorium

6% Insurance  
0% C. J. M. Const



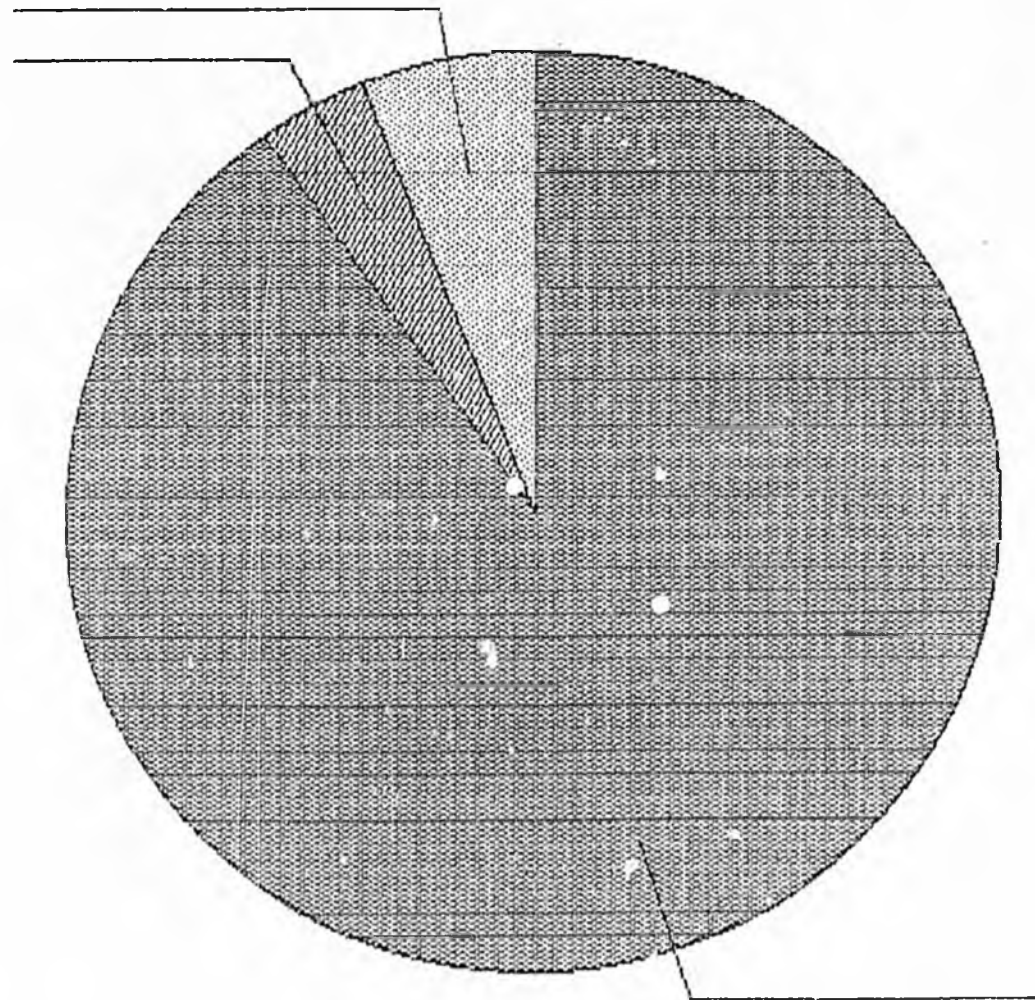
McLee

# Harborview Elementary School



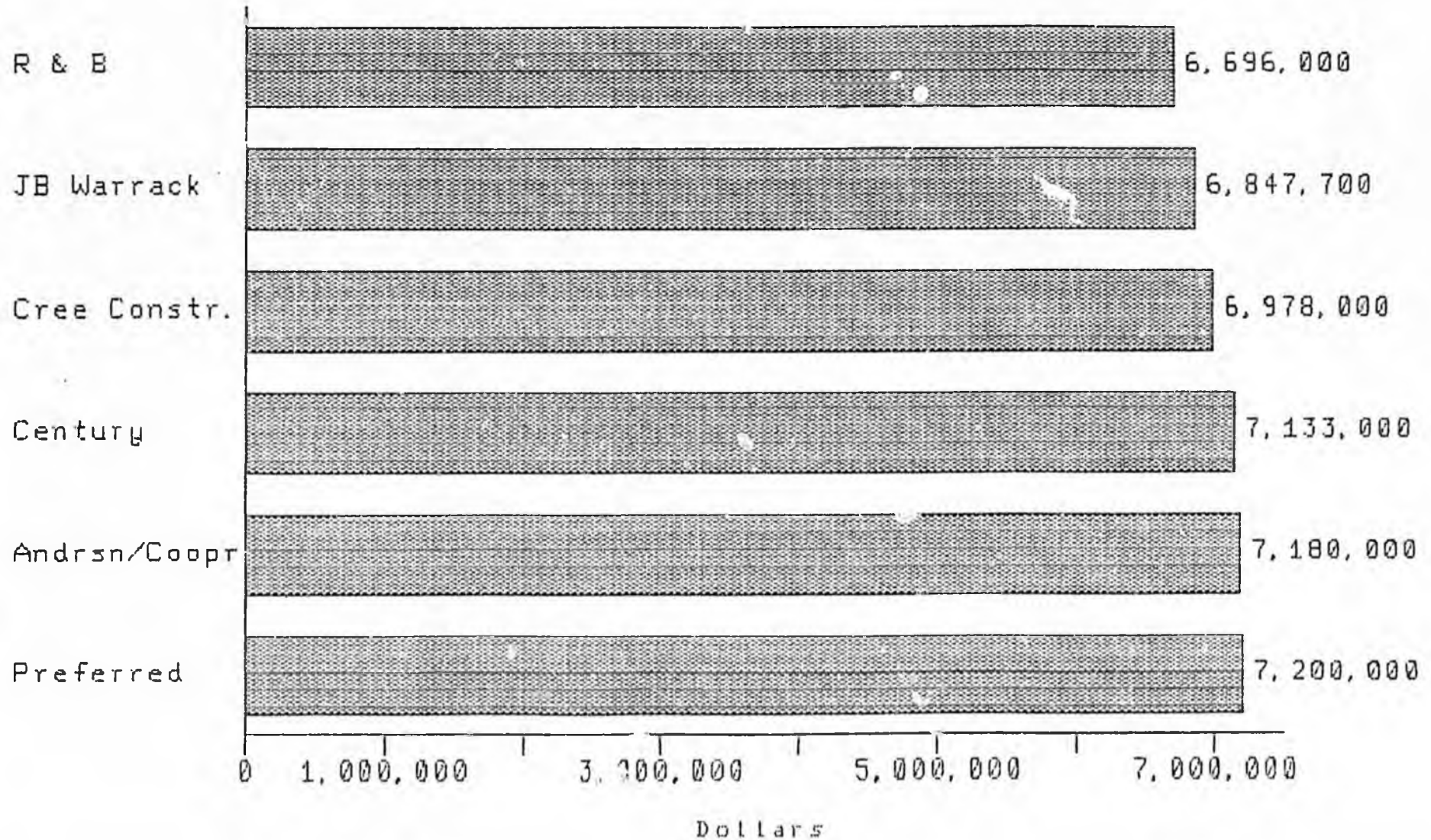
# Harborview Elementary School

6% Insurance  
4% Wick



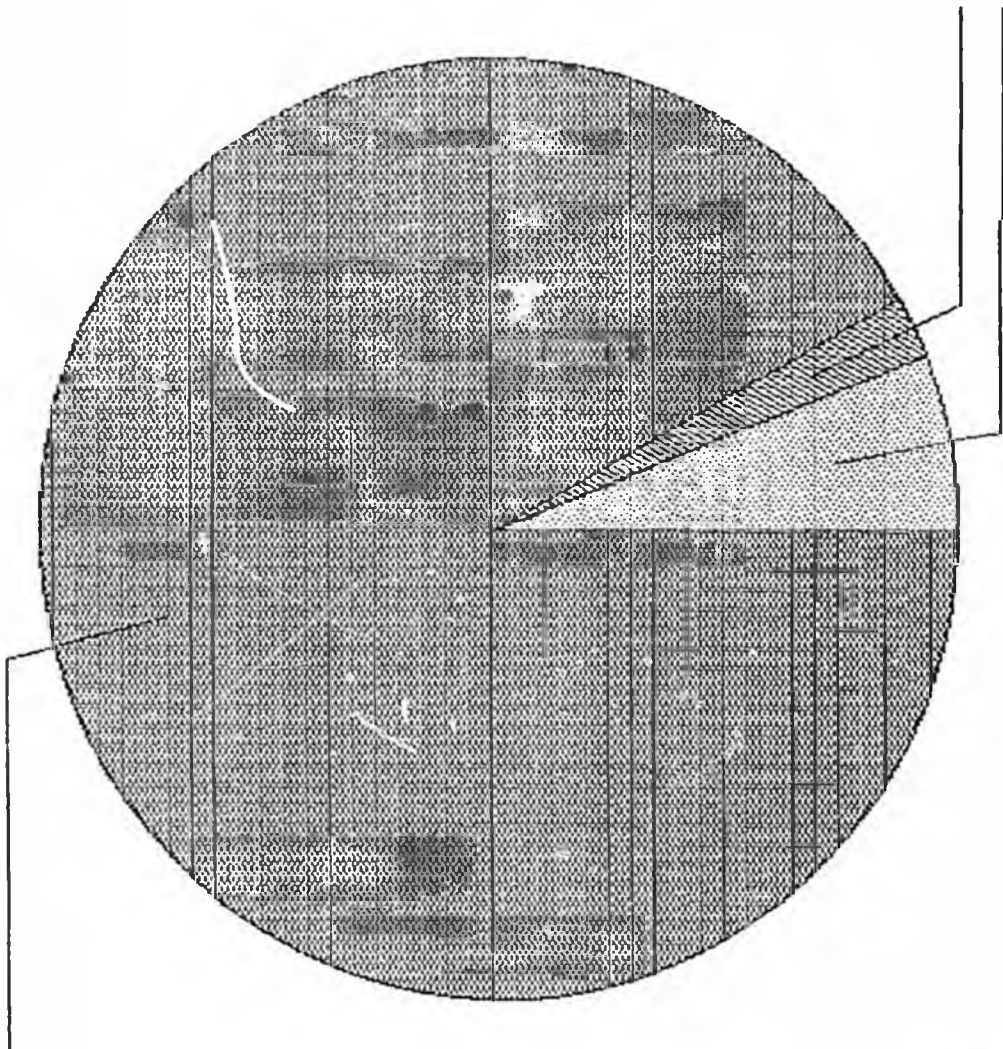
Dawson

# Soldatna Sports Center



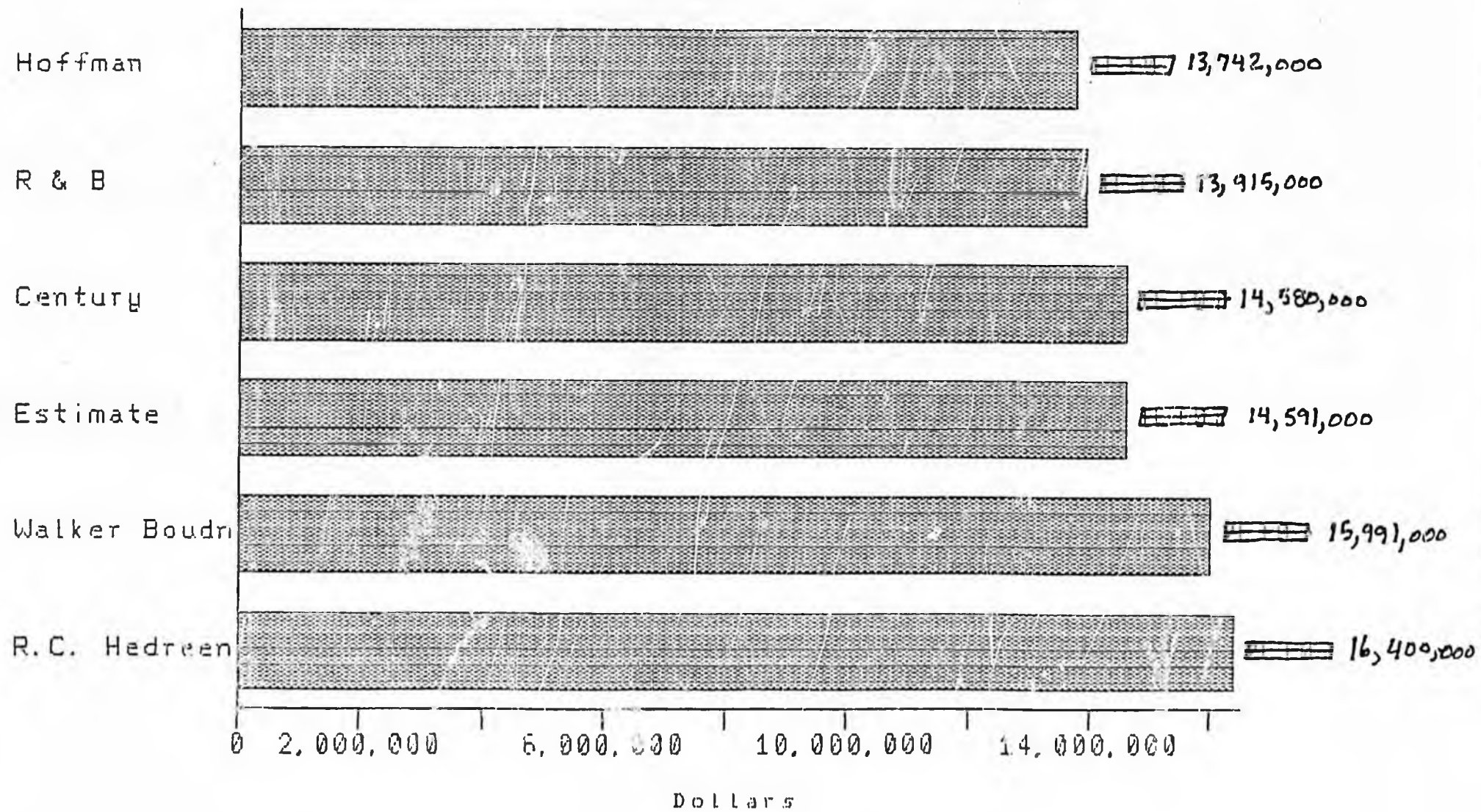
# Soldatna Sports Center

6% Insurance  
2% WATRACK



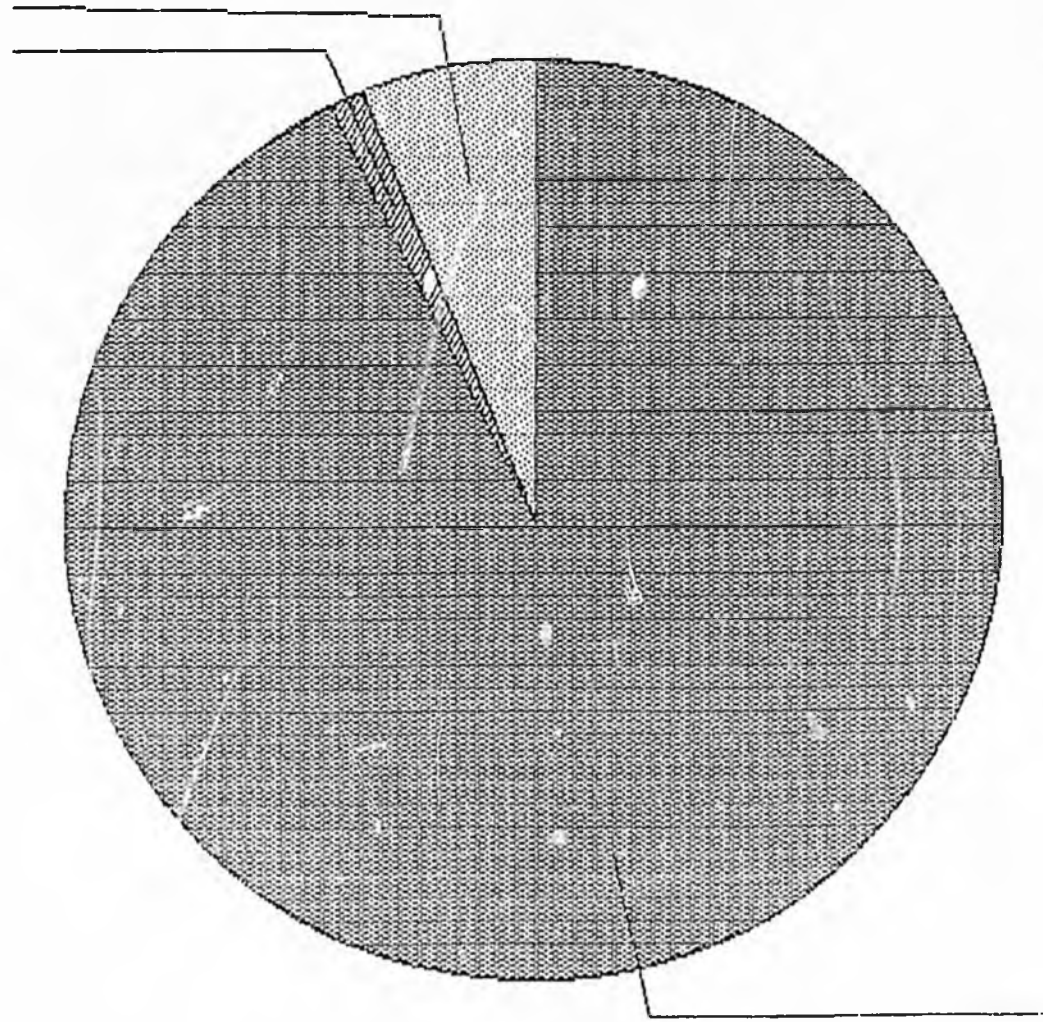
R & B

# Eagle River Chugiak Jr. High



# Eagle River Chugiak Jr. High

6% Insurance  
1% R & B



Hoffman