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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 5, 1982

The Honorable Jalmar Kerttula  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Mr. President:

Under authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which clarifies the applicability of overtime compensation statutes to work performed on public contracts and imposes sanctions for a contractor's failure to comply with those statutes.

The bill would limit the prevailing wage requirement in public works projects to those projects whose costs exceed \$25,000 (rather than the present \$2,000). This will avoid subjecting employers on small projects (usually one-, two-, and three-person operations) to the extensive reporting requirements of AS 36.05 -- which in themselves increase the cost of doing business.

The bill would also require payment of time-and-a-half compensation to a worker for work in excess of eight hours a day or 40 hours a week, thus eliminating any question that laborers on public construction contracts have the same overtime protections afforded all employees under AS 23.10.060.

The bill establishes or clarifies five provisions relating to the enforcement of the provisions of AS 36.05. First, it allows the Department of Labor to accept assignment of wage claims under the chapter and to pursue claims on behalf of a class of employees whether or not a wage assignment has been filed. The department often uncovers violations of AS 36.05, but is arguably precluded from collecting wages due on behalf of employees who have not requested its assistance. This amendment avoids that problem.

Second, it provides that even if a public works contract does not set out the conditions which AS 36.05.070(c) requires to be included, these conditions are considered included in the contract. This precludes an employer from avoiding compliance with the chapter when a government agency fails to incorporate AS 36.05.070(c) in the public works contract.

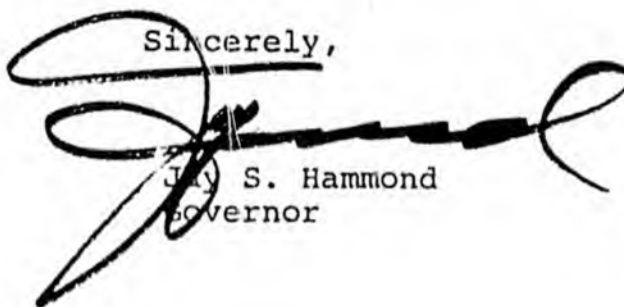
Third, it authorizes the Department of Labor to bar persons who have failed to comply with the overtime and prevailing wage requirements of the chapter from being awarded public works contracts for up to three years. These persons would be entitled to the full protection of the adjudication portion of the Administrative Procedure Act (AS 44.62) and to court review.

Fourth, it authorizes the attorney general to seek injunctive relief and civil penalties in the superior court for failure to comply with AS 36.05. Under existing AS 36.05.060, violation of the chapter is a misdemeanor. This enforcement mechanism has not been effective because of the nature of the penalty and the criminal standard of proof.

Fifth, the bill clarifies the definition of "public construction" or "public works", to exclude regular maintenance for the preservation of existing properties or facilities.

The bill includes a Jan. 1, 1983 effective date, to give adequate notice of the changes to contractors.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Jay S. Hammond". The signature is written over the printed name and title.

Jay S. Hammond  
Governor



Official Business

# Alaska State Legislature

## Senate

### Labor & Commerce Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

SB 724

Section 1) Contractor performing work on a public construction project in the State, the cost of which exceeds \$25,000, shall pay the current wage rate for work performed in the region (for work of a similar nature), based upon the latest prevailing wages rate as published by the Department of Labor, before the end of the pay period.

Section 2) Adds new section to AS 36.05 requiring the payment of overtime to workers on public construction projects, if the worker works more than 8 hours a day or more than 40 hours a week.

Section 3) Outlines the authority of the Dept. of Labor to take an assignment of a wage claim for the full amount an employee is entitled to, and to allow the Department to seek recovery of wages for all persons on a public construction project for whom wages are due, regardless of whether a wage claim has been filed.

Section 4) Stiffens penalties for violation of AS 36.05; if a court finds that a person has violated a provision of AS 36.05, the A.G., upon petition to the court, may recover on behalf of the state, a civil penalty of up to \$5,000 for each violation. A separate penalty could be imposed for each day the violation exists. A person who violates the terms of an injunction or a restraining order issued under the chapter, would be subject to a civil penalty of up to \$25,000 for each violation. Currently, a violation of this chapter is a misdemeanor punishable by a fine of \$100- \$1,000 per day or from 10 to 90 days in jail or by both.

Section 5) Amends AS 36.05.070(a) requiring the payment of minimum prevailing wages on public construction contracts exceeding \$25,000. Wage rates shall be adjusted to the wage rate for each pay period applicable under AS 36.05.010. See section 1 of the sectional.

Section 6) In the event that the Department of Labor has received notification that wages have not been paid as required under AS 36.05.010-015, the state or political subdivision shall withhold a portion of the payment due the contractor as is necessary to pay the laborers, mechanics, or field surveyors employed by the contractor.

Section 7) For all public works contracts, the State shall pay the amount withheld to the Department of Labor for disbursement directly to the laborers who have not been paid the rates of wages required by the contract.

Section 8) Adds a new section which states: A registered apprentice in a craft is entitled to be paid at least at the rate for a apprentice in that craft set by the US Department of Labor.

Section 9) Rewrites AS 36.05.090 which relates to the payment of wages from withheld payments and a listing of contractors who violate contracts. Allows Dept of Labor to bar contractors who violate law from being awarded contracts for up to three years. Person who has been barred may appeal the Departments decision to the Superior Court within 30 days of receiving the Departments decision.

Section 10) Adds a new section; When requested by the Department of Labor, the A.G. may :

- 1) enjoin in an act or practice which violates a provision or regulation of this chapter
- 2) Order payment of wages from the employer or surety
- 3) enjoin a person found in violation of this chapter from continuing to work on an existing public construction contract
- 4) impose a civil penalty under AS 36.05.060.

Further provides that in cases where the court has enjoined a person from work (further) on a project, the State or political subdivision could complete the work.

Section 11) Amends definition of "public construction" and "public works" by adding: "the terms do not include regular maintenance for the preservation of existing property or facilities.

Section 12) repeals AS 36.10.020 (see statutes)

Section 13) This act takes effect January 1, 1983

**Sec. 36.05.030. Authority.** (a) The Department of Labor has the authority to determine the prevailing wage, and whether or not §§ 10—110 of this chapter are being violated. The department may when necessary for the enforcement of §§ 10—110

- (1) conduct investigations and hold hearings concerning wages;
- (2) compel the attendance of witnesses and the production of books, papers and documents;
- (3) promulgate regulations.

(b) If a person violates §§ 10—110 of this chapter the attorney general shall, when requested by the Department of Labor, enforce these provisions. (§ 14-2-3 ACLA 1949; am § 2 ch 142 SLA 1972)

**Effect of amendment.** — The 1972 amendment rewrote this section.

**Sec. 36.05.035. Notification of contract awards.** Upon awarding a public construction contract, the state or a political subdivision of the state shall

(1) immediately notify the commissioner of labor of the amount of the contract, the effective date of the contract, the identity of the contractor and all subcontractors, the site or sites of construction and provide a project description; and

(2) verify that the bonding requirements of ch. 25 of this title have been met and that the requirements of AS 08.18 have been met. (§ 3 ch 142 SLA 1972)

**Sec. 36.05.040. Filing schedule of employees, wages paid and other information.** All contractors or subcontractors who perform work on a public construction contract for the state or for a political subdivision of the state shall, before the Friday of each week, file with the Department of Labor a sworn affidavit for the previous week, setting out in detail the number of men employed, wages paid, job classification of each employee, hours worked each day and week, and other information which the Department of Labor requires. (§ 14-2-4 ACLA 1949; am § 4 ch 142 SLA 1972)

**Effect of amendment.** — The 1972 amendment rewrote this section.

**Sec. 36.05.050. Hours to constitute day's work.**

Repealed by § 1 ch 3 SLA 1973.

**Editor's note.** — The repealed section derived from § 14-2-5 ACLA 1949; § 5, ch. 142, SLA 1972.

**Sec. 36.05.060. Penalty for violation of this chapter.** A contractor who violates this chapter, is guilty of a misdemeanor, and

upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for not less than 10 days nor more than 90 days, or by both. Each day a violation exists constitutes a separate offense. (§ 14-2-6 ACLA 1949; am § 6 ch 142 SLA 1972)

Effect of amendment. — The 1972 amendment, in the first sentence, deleted "subcontractor, or agent of a contractor or subcontractor, foreman or employer" following "contractor,"

deleted "§ 50 of" following "violates," substituted "\$100" for "\$50," and substituted "\$1,000" for "\$500." The amendment also added the last sentence.

**Sec. 36.05.070. Wage rates for laborers and mechanics on public contracts.** (a) The advertised specifications for a public construction contract exceeding \$2,000 to which the state or a political subdivision of the state is a party which requires or involves the employment of mechanics, laborers, or field surveyors shall contain a provision stating the minimum wages to be paid various classes of laborers, mechanics, or field surveyors.

(b) Repealed by § 17 ch 142 SLA 1972.

(c) A contract for public works in the state or a political subdivision shall contain provisions that

(1) the contractor or his subcontractors shall pay all employees unconditionally and not less than once a week;

(2) wages may not be less than those stated in the advertised specifications, regardless of the contractual relationship between the contractor or subcontractors and laborers, mechanics, or field surveyors;

(3) the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work;

(4) the state or a political subdivision shall withhold so much of the accrued payments as is necessary to pay to laborers, mechanics, or field surveyors employed by the contractor or subcontractors the difference between

(A) the rates of wages required by the contract to be paid laborers, mechanics, or field surveyors on the work, and

(B) the rates of wages in fact received by laborers, mechanics or field surveyors. (§ 1 ch 52 SLA 1959; am §§ 7, 8, 17 ch 142 SLA 1972)

Cross reference.—As to wage rates on public construction, see AS 36.05.-010.

Effect of amendment. — The 1972 amendment, in subsection (a), inserted "public construction" and deleted "for the construction, altera-

tion, or repair including painting and decorating of public buildings or public works of the state or a political subdivision" formerly appearing between "state is a party" and "which requires." The amendment also repealed subsection (b) and, in

subsection (c), substituted "shall withhold" for "may withhold" near the beginning of paragraph (4).

Similarity to Davis-Bacon Act. — This section, AS 36.05.080—36.05.110, and former AS 36.05.120 were copied almost word for word from the federal act on the same subject, the Davis-Bacon Act (40 USC 276a et seq.), 1961 Op. Att'y Gen., No. 17.

"Construction" has no reference to a contract for professional architec-

tural or engineering services. 1961 Op. Att'y Gen., No. 17.

Contracts between the state or any of its political subdivisions for professional architectural services or preliminary engineering services for work preliminary to the actual construction of public works projects do not come within the scope of this section, AS 36.05.080—36.05.110, and former AS 36.05.120. 1961 Op. Att'y Gen., No. 17.

**Sec. 36.05.080. Failure to pay agreed wages.** Every contract within the scope of § 70 of this chapter shall contain a provision that if it is found that a laborer, mechanic, or field surveyor employed by the contractor or subcontractor has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the state or its political subdivision may, by written notice to the contractor, terminate his right to proceed with the work or the part of the work for which there is a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties are liable to the state or its political subdivision for excess costs for completing the work. (§ 2 ch 52 SLA 1959)

*REPEALED  
REENACTED*

**Sec. 36.05.090. Payment of wages from withheld payments and listing contractors who violate contracts.** (a) The state disbursing officer in the case of a state contract and the local fiscal officer in the case of a political subdivision contract shall pay directly to laborers, mechanics or field surveyors from accrued payments withheld under the terms of the contract the wages due laborers, mechanics or field surveyors under § 70 of this chapter.

(b) The state disbursing officer or the local fiscal officer shall distribute to all departments of the state government and to all political subdivisions of the state a list giving the names of persons who have disregarded their obligations to employees. No person appearing on this list and no firm, corporation, partnership or association in which the person has an interest may work as a contractor or subcontractor on a public construction contract for the state or a political subdivision of the state until three years after the date of publication of the list. If the accrued payments withheld under the contract are insufficient to reimburse all the laborers, mechanics, or field surveyors with respect to whom there has been a failure to pay the wages required under § 70 of this chapter, the laborers, mechanics or field surveyors have the right of action or intervention or both against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in

construction, repair, preliminary surveys, engineering studies, consulting, maintenance work or any other retention of services necessary to complete any given project, 95 per cent residents shall be employed where they are available and qualified. If 10 or fewer persons are employed under the contract, then 90 per cent residents shall be employed where they are available and qualified. In all cases of public works projects, preference shall be given to residents. (§ 1a ch 177 SLA 1960; am § 11 ch 142 SLA 1972; am § 1 ch 208 SLA 1972)

Effect of amendments. — The first 1972 amendment substituted "or a political subdivision of the state" for "boroughs, cities and school districts" in the first sentence.

first sentence, substituted "consulting" for "or" and inserted "or any other retention of services necessary to complete any given project."

The second 1972 amendment, in the Am. Jur. reference.—43 Am. Jur., Public Works and Contracts, § 123.

**Sec. 36.10.020. Apprentices.** Apprentices must be properly registered apprentices in their particular craft. (§ 1c ch 177 SLA 1960)

**Sec. 36.10.030. Reduction of work force.** When a work force is reduced, resident workers, except supervisory personnel, shall be terminated last. (§ 1d ch 177 SLA 1960)

**Sec. 36.10.040. Application to contracts involving federal funds.** In a contract involving expenditure of federal aid funds, this chapter may not be enforced in a manner that conflicts with federal statutes giving preference to veterans or prohibiting other preferences or discriminations among United States citizens. (§ 2 ch 177 SLA 1960)

Am. Jur. reference.—43 Am. Jur., Public Works and Contracts, § 4.

**Sec. 36.10.050. Employment of aliens.**

Repealed by § 17 ch 142 SLA 1972.

Editor's note.—The repealed section derived from § 3, ch. 177, SLA 1960.

Am. Jur. reference.—43 Am. Jur., Public Works and Contracts, §§ 17, 51, 52, 123.

**Sec. 36.10.060. Employment of prisoners.** No prisoner currently serving sentence in a penal or correctional institution may be employed on a public works project subject to the provisions of this chapter. (§ 4 ch 177 SLA 1960)

**Sec. 36.10.070. Unavailability of resident workers.** (a) When resident labor is unavailable, the contractor shall inform the commissioner of labor of the number of additional workers needed. The commissioner of labor shall investigate the facts and designate the

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in outdoor tasks related to the operation of finding and delineating contour, dimensions, position, topography, as of any part of the earth's surface, by preparation of measured plan or description of any area or other portion of country or of road or line through any area or other portion of country ;

(3) "public construction" or "public works" means the on-site erection, rehabilitation, alteration, extension or repair, including painting or redecorating buildings, highways or other improvements to real property under contract for the state or a political subdivision of the state;

(4) "qualified" means one who, except for apprentices, is a journeyman mechanic in his particular trade;

(5) "resident" means a person who maintains his domicile in the state: domicile is the true and permanent home of a person from which he has no present intention of removing and to which he intends to return whenever he is away ;

(6) "state or a political subdivision of the state" means any state department, state agency, state university, borough, city, village, school district or other state subdivision ;

(7) "wages" includes fringe benefits. (§ 16 ch 142 SLA 1972)

# Alaska Statutes

## Title 36. Public Contracts.

### Chapter

25. Contractors' Bonds (§§ 36.25.010 — 36.25.025)

### Chapter 05. Wages and Hours of Labor.

#### Section

- 10. Wage rates on public construction
- 70. Wage rates for laborers and mechanics on public contracts

#### NOTES TO DECISIONS

AS 36.05.010 — 36.05.110 was modelled after the federal Davis-Bacon Act. 40 U.S.C. § 276a et seq. *Fowler v. City of Anchorage*, Sup. Ct. Op. No. 1699 (File No. 3586), 583 P.2d 817 (1978).

**Sec. 36.05.010. Wage rates on public construction.** A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done. The current prevailing rate of wages for each pay period is that contained in the latest determination of prevailing rate of wages issued by the Department of Labor before the end of the pay period. (§ 14-2-1 ACLA 1949; am § 1 ch 142 SLA 1972; am § 1 ch 89 SLA 1976)

**Cross references.** — As to city's duty to publish applicable minimum wage schedules as part of its bid specifications, see note to AS 36.05.070.

**Effect of amendments.** — The 1976 amendment inserted "current" in the first sentence and added the present second sentence.

**Sec. 36.05.030. Authority.**

#### NOTES TO DECISIONS

Applied in *Fowler v. City of Anchorage*, Sup. Ct. Op. No. 1699 (File No. 3586), 583 P.2d 817 (1978).

Sec. 36.05.035. Notification of contract awards.

NOTES TO DECISIONS

Since 1972 state has burden of verifying public construction contract bonds. — For cases arising after 1972, there is no doubt about who has the duty to check the validity of public construction contract bonds, since in 1972 this section was enacted, placing the burden of verifying such bonds on the state or its political subdivision. Arctic Contractors v.

State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977).

For case involving a dispute arising out of a 1962 construction contract holding that the state had the burden of verifying payment and performance bonds, see Arctic Contractors v. State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977).

Sec. 36.05.070. Wage rates for laborers and mechanics on public contracts. (a) The advertised specifications for a public construction contract exceeding \$2,000 to which the state or a political subdivision of the state is a party which requires or involves the employment of mechanics, laborers, or field surveyors shall contain a provision stating the minimum wages to be paid various classes of laborers, mechanics, or field surveyors and that the rate of wages shall be adjusted to the wage rate for each pay period applicable under AS 36.05.010.

(am § 2 ch 89 SLA 1976)

Effect of amendments. — The 1976 amendment added the language beginning "and that the rate of wages shall be adjusted" to the end of subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

NOTES TO DECISIONS

Similarity to Davis-Bacon Act.

The wording of this section is based upon the federal Davis-Bacon Act, 40 U.S.C. § 276(a). Fowler v. City of Anchorage, Sup. Ct. Op. No. 1699 (File No. 3586), 583 P.2d 817 (1978).

Construction of section involves balancing of hardships. — At least part of the intent of this section is to inform bidders of the minimum wage rates. On the other hand, the proper construction of this section, as it relates to the duties of the government entity, involves a balancing of hardships. There does not seem to be any special expertise needed or difficulty involved in requiring the contractor to determine the applicable minimum wage schedules. Fowler v. City of Anchorage, Sup. Ct. Op. No. 1699 (File No. 3586), 583 P.2d 817 (1978).

The city has a statutory duty to publish as part of its bid specifications

the applicable minimum wage schedules. Fowler v. City of Anchorage, Sup. Ct. Op. No. 1699 (File No. 3586), 583 P.2d 817 (1978).

The language of subsection (a) that "the advertised specifications . . . shall contain a provision" stating the minimum wages to be paid is mandatory, not directory. Fowler v. City of Anchorage, Sup. Ct. Op. No. 1699 (File No. 3586), 583 P.2d 817 (1978).

When such duty is met. — A city as the contracting government entity meets the requirement of subsection (a) by appending to its invitation to bid the most recent schedule of prevailing wages as published by the Department of Labor. Fowler v. City of Anchorage, Sup. Ct. Op. No. 1699 (File No. 3586), 583 P.2d 817 (1978).

Where neither the city or the contractor had knowledge of a change in the wage

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(1) the contractor is, and for two years immediately preceding the award of the contract has been, a licensed contractor having his or its principal office in the state;

(2) the contractor certifies that he has not defaulted on a contract awarded to him during the period of three years preceding the award of a contract for which a bid is submitted;

(3) the contractor submits a financial statement, prepared within a period of nine months preceding the submission of a bid for the contract and certified by a public accountant or a certified public accountant licensed under AS 08.04.010 — 08.04.690, demonstrating that the contractor has a net worth of not less than 20 per cent of the amount of the contract for which a bid is submitted; and

(4) the total amount of all contracts which the contractor anticipates performing during the term of performance of the contract for which a bid is submitted does not exceed the net worth of the contractor reported in the certified financial statement prepared and submitted under (3) of this subsection by more than seven times. (§ 1 ch 81 SLA 1978)

**Cross references.** — As to limitation of home rule power regarding municipal exemption on contractor bond requirements, see AS 29.13.100(38). As to require-

ment that a municipality use ordinances to exempt contractors from compliance with general requirements relating to certain bonds, see AS 29.48.130(a)(12).

## Chapter 95. General Provisions.

### Section

#### 10. Definitions

**Sec. 36.95.010. Definitions.** In AS 36.05.010 — 36.25.025 unless the context requires otherwise

(1) "contractor" means the contractor including subcontractors performing work necessary to facilitate public construction;

(3) "public construction" or "public works" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, of highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board with respect to an educational facility under AS 14.08.161;

(am § 3 ch 89 SLA 1976; am § 16 ch 147 SLA 1978)

**Revisor's notes.** — AS 36.95.010(3) has been corrected by the reinsertion of the word "of" before and after the word "buildings" to return to the original wording of sec. 16, ch. 142, SLA 1972.

**Effect of amendments.** — The 1976 amendment substituted "subcontractors performing work necessary to facilitate public construction" for "the

subcontractor" in paragraph (1) and inserted "field surveying" in paragraph (3).

The 1978 amendment, in paragraph (3) deleted "or" following "for the state" and added "or a regional school board with respect to an educational facility under AS 14.08.161" to the end.

§ 23.10.055 LABOR AND WORKERS' COMPENSATION § 23.10.060

AS 23.10.050 — 23.10.150 are directed toward a situation distinct from that of the Equal Pay for Women Act. *Brown v. Wood*, Sup. Ct. Op. No. 1551 (File Nos.

2564, 2565), 575 P.2d 760 (1978), modified on rehearing on other grounds, 692 P.2d 1250 (1979).

**Sec. 23.10.055. Exemptions.** Sections 23.10.050 — 23.10.150 do not apply to

(5) an individual employed by the United States or by the state or political subdivision of the state including prisoners not on furlough detained or confined in prison facilities;  
(am § 2 ch 124 SLA 1978)

**Editor's notes.** — As the rest of the section was not affected by the amendment, it is not set out.

**Cross references.** — As to gratuity for institutional work by prisoners, see § 33.30.225.

**Effect of amendments.** — The 1978 amendment added "including prisoners not on furlough detained or confined in

prison facilities" to the end of paragraph (5).

**Editor's notes.** — Section 3, ch. 124, SLA 1978, provides: "No position in the classified service existing on the effective date of this Act may be abolished in favor of employing a prisoner to carry out the responsibilities of the position."

NOTES TO DECISIONS

**Employees covered by and exempt from Fair Labor Standards Act.** — AS 23.10.050 — 23.10.150 apply to both employees covered by the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and those who are, because of insufficient connections to interstate commerce, exempt from the Fair Labor Standards Act. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No.

2245 (File Nos. 3979, 4139), 621 P.2d 850 (1980).

**Prisoners excluded from operation of chapter.** — See *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

Applied in *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

**Sec. 23.10.060. Payment for overtime.** No employer who employs employees engaged in commerce, or other business, or in the production of goods or materials in Alaska may employ an employee not acting in a supervisory capacity, either male or female, for a workweek longer than 40 hours or for more than eight hours a day, except that if the employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid, and this provision is considered included in all contracts of employment. This section does not apply with respect to

(2) Repealed by § 33 ch 127 SLA 1974.

(17) work performed by an employee under a flexible work hour plan if the plan is included as part of a collective bargaining agreement;

(18) work performed by an employee under a voluntary flexible work hour plan if

(A) the employee and the employer have signed a written agreement and the written agreement has been filed with the Department of Labor; and

(B) the Department of Labor has issued a certificate approving the plan which states the work is for 40 hours a week and not more than 10 hours a day; for work over 40 hours a week or 10 hours a day under a flexible work hour plan not included as part of a collective bargaining agreement, compensation at the rate of one and one-half times the regular rate of pay shall be paid for the overtime.  
(am § 33 ch 127 SLA 1974; am § 1 ch 31 SLA 1980)

**Effect of amendments.** — The 1980 amendment added paragraphs (17) and (18).

**Legislative history reports.** — For report on ch. 127, SLA 1974 (SCSHB 817 am 3), see 1974 House Journal, p. 657.

As the rest of the section was not affected by the amendments, it is not set out.

NOTES TO DECISIONS

**Article not void.** — The Alaska Wage and Hour Act merely requires higher minimum and overtime pay than the Fair Labor Standards Act, 29 U.S.C. §§ 201-219. Although compliance with both is more expensive than compliance with the federal act, it is not in any sense, impossible so as to make the Alaska law void. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

**Or preempted.** — Since, under the Alaska Wage and Hour Act, the number of hours required for the overtime rate is less than that under the Fair Labor Standards Act, the Alaska act provides for a lower maximum workweek within the meaning of 29 U.S.C. § 218(a) and consequently,

comes within the express saving clause so as not to be preempted by the federal law. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

**Definition of "supervisory"** in the Alaska Administrative Code, that the term as used in this section means a person who directs the activities of other employees and who does not perform duties which are regularly performed by the employees supervised, except for brief periods of time not to exceed more than eight hours in the supervisor's work week, is reasonable and not arbitrary. *Alaska Int'l Indus., Inc. v. Musarra* Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

**Sec. 23.10.065. Minimum wages.** An employer shall pay to each of his employees wages at a rate of not less than 50 cents an hour greater than the prevailing Federal Minimum Wage Law or \$2.60 an hour, whichever is greater, for hours worked in a pay period, whether the work is measured by time, piece, commission or otherwise. No employer may apply tips or gratuities bestowed upon employees as a credit toward payment of the minimum hourly wage required by this section. Tip credit as defined by the Fair Labor Standards Act of 1938 as amended does not apply to the minimum wage established by this section. (§ 4 ch 171 SLA 1959; am § 2 ch 2 SLA 1962; am § 1 ch 41 SLA 1974)

**Effect of amendments.** — The 1974 amendment added the language beginning "or \$2.60 an hour" to the end of the first

sentence and added the second and third sentences.

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FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No.  
 Title "An Act relating to payment of prevailing wages . . ."  
 Requested by Rules Committee Date 1/6/82

II. FISCAL DETAIL

Agency Affected Labor  
 Program Category Affected Public Protection  
 BRU, Program, Or Subprogram(s) Affected Labor Standards & Safety  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE January 6, 1982 PREPARED BY Judy Knight, Special Assistant  
 AGENCY Labor  
 Original: Legislative Finance PHONE 465-2700  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

*Judy Knight*