HB

182

STATE OF ALASKA
FISCAL NOTE

Revision Date Original, 1983

I. REQUEST

CS for House
Bill/Resolution No.: Bill 182 (HESS)
Title: "...residential drug abuse..."
Sponsor: Representative Barnes
Requestor: Health, Education, and Social Services

II. FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Worker Protection
BRU, Program of Subprogram(s) Affected: Labor Standards and Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		65.0	68.9	73.0	77.4	82.0
200 TRAVEL		12.4	13.1	13.9	14.7	15.6
300 CONTRACTUAL		23.2	24.6	26.1	27.7	29.4
400 COMMODITIES		2.5	2.7	2.9	3.1	3.3
500 EQUIPMENT		4.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		107.1	109.3	115.9	122.9	130.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		107.1	109.3	115.9	122.9	130.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: Not available.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
Division: Labor Standards and Safety Date: April 26, 1983

Approved by Commissioner: Jim Robison Date: April 26, 1983
Department: Labor

LEG:A:12

Distribution:
Original to Legislative Finance
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3/8/83

Detail Bill Analysis House Bill 182

Under this bill a large segment of the work force currently entitled to full coverage for minimum wage would no longer be covered, and as a result the Department of Labors' work load to ensure workers are not abused and unfair trade practices do not occur would be increased.

The Department will require one Wage and Hour Investigator located in Anchorage to handle the additional workload. In addition, a Clerk Typist II will be necessary to lend the investigator support and free the position to make field calls.

Assumptions:

Effective date of July 1, 1983
6% per annum inflation rate
Equipment cost in FY 1984 is a one-time item

Potential for 22 separate programs that will require monitoring (13 currently operati ; with an average monthly capacity of 350 clients).

LEG:A:12

1.	POSITION TITLE			RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
	Wage and Hour Investigator I			16A	GGU				
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER / PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PFT	12	HB 182		Anchorage				

3. CONTINUATION LEVEL | ADDITION . XX

4. TYPE OF EXPENDITURE	1	2	AMOUNT 3
	PERSONAL SERVICES		
5.	Salary	30,886	
6.	Benefits	4,902	
7.	Supplemental Benefits	1,893	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	40,561
10.	Travel	02	12,400
11.	Contractual	03	12,460
12.	Commodities	04	1,000
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		67,921

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.	100	General Funds	1004	67,921
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position will determine compliance with work therapy wage requirements; perform onsite inspection of facilitlies; interview patients and staff; re-review case records for determinations and personnel actions for wage rates.

The incumbent will be required to travel extensively throughout the State, therefore, $12,400 has been requested for in-state travel.

Contractual services includes $4,068 for indirect support services, $3,400 in rent, and $5,000 for basic operating expenses.

The equipment line items includes $1,500 to purchase basic office equipment for this position.

13 REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage and Hour

Revised Date

FY 84

01-1156 (7/82) - 13

1.	POSITION TITLE Clerk Typist II				RANGE/STEP 7A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER HB 182	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION	XX						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	17,657	
6.	Benefits	2,802	
7.	Supplemental Benefits	1,082	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES 01		24,421
10.	Travel 02		
11.	Contractual 03		10,725
12.	Commodities 04		1,500
13.	Equipment 05		2,500
14.	Other		
15.	TOTAL COST		39,146

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.	100	General Funds 1004	39,146
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position will lend clerical support to the Wage and Hour Investigator. Type correspondence for signature of composer; including preparation of technical or legal documents, complex material (i.e. regulations, form layouts and masters), transcribe from dictation, tape recording or draft. Compile Wage and Hour activity data, type statistical and/or investigative documentary reports.

Contractual services include $2,325 for indirect support services, $3,400 in rent, and $5,000 for other normal operating costs.

The equipment line items include $2,500 to purchase basic office equipment for this position.

13 REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage and Hour

Revised Date

FY 84

MEMORANDUM State of Alaska

TO: Robert L. Cole
Coordinator
Office of Alcoholism/Drug Abuse

DATE: April 12, 1982

FILE NO: J66-484-82

TELEPHONE NO: 465-3603

FROM: WILSON L. CONDON
ATTORNEY GENERAL

By: LS
Linda Scoccia
Assistant Attorney General

SUBJECT: Payment of Wages in Therapeutic Work Program

You have asked several questions regarding payment of wages to clients of Nugen's Ranch, a long-term alcohol treatment facility, for work that they do while residing at the Ranch. You state that a component of the program at Nugen's Ranch is work therapy, and that the program will develop a farm, with the clients engaging in such activities as harvesting crops, tending a greenhouse, and doing general housekeeping at the Ranch, as well as assisting nearby farmers with their crops. You also state that any proceeds in food or money will go back into facility operations.

You pose a series of questions regarding coverage of the client-workers for the above-mentioned activities under state and federal law; essentially, three issues are raised by your questions: (1) are the clients employees?; (2) if yes, are they working in covered employment?; and (3) if yes, are they exempt by virtue of their disability?

The state and federal laws which cover questions of minimum wage and overtime are, respectively, the Alaska Wage and Hour Act, AS 23.10.050-.150, and the Federal Labor Standards Act (FLSA), 29 USC §§201-219, and the regulations adopted thereunder. AS 23.10.065 /1 provides in pertinent part:

> 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.

/1 The federal counterpart is 29 USC §206. Since both federal and state law seem to apply, and state law is based on the federal law, see McGinnis v. Stevens, 543 P.2d 1221 (Alaska 1975), and, for purposes of this inquiry, they are virtually interchangeable, I shall not focus exclusively on either.

Both state and federal law have provisions exempting certain categories of workers from payment of the minimum wage /2 and providing, instead, for payment of less than the minimum wage. AS 23.10.070 provides in pertinent part:

> Sec. 23.10.070. EXEMPTIONS FROM MINIMUM WAGE. To the extent necessary to prevent curtailment of opportunies of employment, the commissioner may by regulations or orders provide for the employment at wages lower than the minimum wage prescribed in AS 23.10.050--23.10.150 or
>
> (1) an individual whose earning capacity is impaired by physical or mental deficiency, age, or injury, at the wages and subject to the restrictions and for the period of time which is fixed by the commissioner . . . /3

Under state regulation, however, persons participating in alcohol rehabilitation are specifically excluded /4 from the application of this statute. /5

/2 AS 23.10.070 and 29 USC §214, respectively.

/3 The federal exemption is similar, applying to those "whose earning capacity or productive capacity is impaired by age or physical or mental deficiency or injury", 29 USC §214(c)(1).

/4 Federal regulations, 29 CFR 529.1-529.17, discussed below, exclude such persons if their earning or productive capacity is so impaired that they are not able to earn the statutory minimum wage.

/5 8 AAC 15.120 provides in part:

> MINIMUM WAGE EXEMPTION FOR HANDICAPPED PERSONS.
>
> . . .
>
> (f) Persons undergoing rehabilitation treatment or therapy relating to narcotics or alcoholism are not considered handicapped for the purposes of AS 23.10.070 and this section.

Nor is the characterization of the work as "therapeutic" determinative; the question is whether the patient/client is an employee, that is, whether he or she is employed by the program. The FLSA simply defines "employ" /6 as "to suffer or permit to work". 29 USC §203(g). The test adopted by the federal courts looks to the "economic reality" of the situation in determining the existence of an employment relationship. In Souder v. Brennan, 367 F. Supp. 808 (D.C. Cir. 1973), patient-workers in state hospitals for the mentally ill and mentally retarded sought a determination that the provisions of the FLSA applied to them. The court found in their favor, and stated:

> [T]he reality is that many of the patient-workers perform work for which they are in no way handicapped and from which the institution derives full economic benefit. So long as the institution derives any consequential economic benefit the economic reality test would indicate an employment relationship rather than mere theraputic exercise. To hold otherwise would be to make therapy the sole justification for thousands of positions as dishwashers, kitchen helpers, messengers and the like.

367 F. Supp. at 813 (footnotes omitted).

After this decision, the U.S. Department of Labor promulgated, in 1975, new regulations /7 implementing the holding of this case. The regulations expressly apply to "patient-workers" in "residential centers for drug addicts or alcoholics". /8 The regulations define "employment relationship" as follows:

/6 The Alaska Wage and Hour Act does not define "employ", but AS 23.10.145 provides:

> DEFINITIONS. Terms used in AS 23.10.-050--23.10.150 shall be defined, where applicable, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it.

/7 29 CFR 529.1-529.17

/8 29 CFR 529.2(b) and (c)

"Employment relationship" generally arises whenever a patient is suffered or permitted to work. The toal facts surrounding a given situation, other than those factors specifically excluded in this subsection, determine whether the test is satisfied. A major factor in determining whether or not an employment relationship exists under this Part is whether the work performed is of any consequential economic benefit to the institution. Generally, work shall be considered to be of consequential economic benefit if it is of the type that nonhandicapped workers normally perform, in whole or in part, in the institution or elsewhere. A patient does not, however, become an employee merely if he or she performs personal housekeeping chores, such as maintaining his or her own quarters, or receives a token remuneration for his or her services. Nor does the patient become an employee if engaged in such activities as making craft products, where the patient voluntarily engages in such activity and the products become the property of the patient making them, or the funds resulting from the sale of the products are divided among the patients participating in that program or are used for purposes of purchasing materials consumed in making the craft products. On the other hand, determination of an employment relationship does not depend on the level of performance of the patient or whether the work is of theraputic value to the patient. /9

/9 29 CFR 529.2(d). Emphasis added.

Thus, the critical factor in determining the existence of an employment relationship is whether the program derives any "consequential economic benefit" from the work done by the clients or patients. As the regulation further states, such a benefit usually is found if the work is of the type that is usually performed by nonhandicapped workers. In the context of your program and the therapeutic purpose of the activities enumerated above, this question is not quite as susceptible of an easy answer as it is in the case of an institution such as a mental hospital which employs its patient as "dishwashers, kitchen helpers, messengers and the like". It does not seem as likely that at Nugen's Ranch a client tending a garden, for example, would be displacing or impairing the employment opportunities of another potential employee that the program would otherwise hire to perform that task. However, this question need not be decided, with respect to the activities you have described, because the final issue raised (I have saved the best for last) resolves the problem.

AS 23.10.055 lists employees who are exempt from the provisions of the Alaska Wage and Hour Act. Subsections (1) and (2) are dispositive. Subsection (1) provides:

> (1) an individual employed in agriculture which includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including forestry and lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market;

Subsection (2) provides:

> (2) an individual employed in the catching, trapping, cultivating or farming, netting or taking of any kind of fish, shellfish, or other aquatic forms of animal and vegetable life;

Thus under Alaska law, Nugen's Ranch is not required to pay minimum wages to individuals engaged in general housekeeping /10, harvesting crops /11, tending a greenhouse, caring for animals, or fishing; nor is it required to do so under federal law. /12 It must be emphasized, however, that the inquiry is a factual one, and therefore each situation must be individually examined to determine whether the minimum wage laws apply. If clients of Nugen's Ranch were to engage in activities other than those you have described, the questions regarding applicability of the minimum wage laws would have to be looked at anew.

LS/jf

cc: Don Wilson
Wage & Hour Divison
Department of Labor

/10 See 29 CFR 2(d), quoted above.

/11 Whether they perform this activity for the Ranch or for other farmers.

/12 29 USC 213(a)(5) and (6).

ployer and, where appropriate, the apprenticeship agency or responsible school official, setting out that representative's findings of specific pertinent facts and conclusions and that representative's order concerning the proposed annulment or withdrawal. In proceedings instituted for annulment, the order may provide for withdrawal instead of annulment if the proof warrants such withdrawal but fails to support adequately the annulment. Such an order shall be deemed issued and effective according to its terms when mailed.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76-2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28469, June 30, 1978]

§ 528.6 Review.

Any employer and, when appropriate, any apprenticeship agency or responsible school official, who expressed timely objection to the proposed action prior to issuance of an order of annulment or withdrawal may obtain review, limited to the question of whether the findings of fact support the order under the regulations in this part. Application for such review shall be in writing addressed to the Administrator and mailed within 15 days after the order is issued. The Administrator may affirm, modify, or reverse the order, or may remand it for further proceedings. The order under review shall not be stayed in effect pending such review. Any aggrieved person may obtain such review of an order entered in proceedings instituted under paragraph (c) of § 528.3.

[21 FR 5316, July 17, 1956, as amended at 22 FR 5683, July 18, 1957]

§ 528.7 Effect of order of annulment or withdrawal.

Except as otherwise expressly provided in such order, any order of annulment or withdrawal under paragraph (a) or (b) of § 528.3 shall be effective to terminate all certifications to which the regulations in this part apply in effect at the establishment where the cause for withdrawal arose or where the annulled certificate had effect. After such annulment or withdrawal, such employer shall be ineligible to obtain or exercise the privileges granted in such a certificate until he satisfies the issuing officer that he will not again give cause for annulment or withdrawal if a certificate is issued.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No 76-2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28469, June 30, 1978]

PART 529—EMPLOYMENT OF PATIENT WORKERS IN HOSPITALS AND INSTITUTIONS AT SUBMINIMUM WAGES

Sec.

AUTHORITY: Sec. 14, 52 Stat. 1068, as amended (29 U.S.C. 214).

SOURCE: 40 FR 5776, Feb. 7, 1975, unless otherwise noted.

§ 529.1 Statutory language and scope of regulations.

(a) The Fair Labor Standards Act as amended, among other things, makes provision for the employment of handicapped persons at subminimum wages under certificate. This provision is now designated as section 14(c) of the Act. It reads as follows:

(c) (1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment

under special certificates of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age or physical or mental deficiency or injury at wages which are lower than the minimum wage applicable under section 6 of this Act but not less than 50 per centum of such wage and which are commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

(2) The Secretary, pursuant to such regulations as he shall prescribe and upon certification of the State agency administering or supervising the administration of vocational rehabilitation services, may issue special certificates for the employment of—

(A) handicapped workers engaged in work which is incidental to training or evaluation programs, and

(B) multihandicapped individuals and other individuals whose earning capacity is so severely impaired that they are unable to engage in competitive employment, at wages which are less than those required by this subsection and which are related to the worker's productivity.

(3) (A) The Secretary may by regulation or order provide for the employment of handicapped clients in work activities centers under special certificates at wages which are less than the minimum applicable under section 6 of this Act or prescribed by paragraph (1) of this subsection and which constitute equitable compensation for such clients in work activities centers.

(B) For purposes of this section, the term "work activities centers" shall mean centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

(b) Authority to promulgate the regulations and issue the certificates referred to in section 14(c) has been delegated by the Secretary to the Administrator of the Wage and Hour Division (Secretary's Orders 13-71 and 15-71 (36 FR 8755 and 8756)).

(c) Patient workers whose earning or productive capacity is not impaired shall be paid at least the statutory minimum wage. For patient workers whose earning or productive capacity is impaired to the extent that they are not able to earn the statutory minimum wage, the regulations in this Part 529 govern certificates authorizing special minimum wages for patient workers in hospitals and institutions for the sick, the aged, and the mentally ill or defective with the following exceptions which are covered by Parts 524 and 525 of this chapter as appropriate:

(1) Patients of hospitals or institutions working for employers other than hospital or institution.

(2) Patients working in sheltered workshops, including work activities centers, as defined in Part 525, operated by the hospital or institution.

§ 529.2 Definitions.

(a) "Administrator" means the Administrator of the Wage and Hour Division, U.S. Department of Labor, the Administrator's authorized representative.

(b) "Patient worker" or "resident worker," hereafter referred to as "patient worker," means a sick, aged, mentally ill or defective individual who receives treatment or care by a hospital or institution, whether he or she is a resident or not, and has an employment relationship with such establishment, other than in a sheltered workshop program.

(c) "Hospital or institution," hereafter referred to as "institution," is a public or private, nonprofit or profit facility primarily engaged in (1) more than 50 percent of the income attributable to) providing residential care for the sick, the aged, or the mentally ill or defective, including but not limited to nursing homes, intermediate care facilities, rest homes, convalescent homes, homes for the elderly or infirm, halfway houses, residential centers for drug addicts or alcoholics and the like, whether licensed or unlicensed.

(d) "Employment relationship" generally arises whenever a patient is suffered or permitted to work. The totality of facts surrounding a given situation, other than those factors specifically excluded in this subsection, determine whether the test is satisfied. A major factor in determining whether or not an employment relationship exists under this Part is whether the work performed is of any consequential economic benefit to the institution. Generally, work shall be considered to be of consequential economic benefit if it is of the type that nonhandicapped workers normally perform, in whole or

In part, in the institution or elsewhere. A patient does not, however, become an employee merely if he or she performs personal housekeeping chores, such as maintaining his or her own quarters, or receives a token remuneration for his or her services. Nor does the patient become an employee if engaged in such activities as making craft products, where the patient voluntarily engages in such activity and the products become the property of the patient making them, or the funds resulting from the sale of the products are divided among the patients participating in that program or are used for purposes of purchasing materials consumed in making the craft products. On the other hand, determination of an employment relationship does not depend on the level of performance of the patient or whether the work is of therapeutic value to the patient.

(e) "Evaluation and training" means a program, authorized pursuant to section 14(c)(2)(A) of the Act, which provides competent instruction and supervision and is designed to determine a worker patient's potential and to teach adjustment to a work environment or the skills related to one or more types of work. The duration of the evaluation and training depends on the total facts of the situation, but in no case shall exceed 12 months. Time spent in an employment relationship in the institution prior to the effective date of these regulations shall be counted in determining the duration a patient worker is in evaluation and training. (Any workweek during which there was regular and recurrent engagement in work, even though small in amount, which gave rise to an employment relationship, shall be considered as a week spent in evaluation and training.)

(f) "Group minimum wage" means the minimum wage authorized pursuant to section 14(c)(1) of the Act which shall apply to all patient workers who have completed the evaluation and training program, if one has been authorized for the institution under this part (where no such program has been authorized, the group minimum wage applies immediately upon a patient's entering into an employment relationship with the institution), except for patient workers who are: Entitled to a commensurate wage higher than the group minimum wage; subject to an individual exception; or subject to a work activities center certificate, as defined in this part.

(g) "Individual exception" means authorization, pursuant to section 14(c)(2)(B) of the Act, to pay a particular patient worker whose earning or productive capacity is severely impaired less than the group minimum wage.

(h) "Work activities center" is an administrative classification given to a facility which has an approved program (other than a work activities center program as defined in Part 525), authorized pursuant to section 14(c)(3) of the Act, which is planned and designed exclusively to provide work activities for patients whose physical or mental impairment is so severe as to render their productive capacity inconsequential. The work activities shall be part of a recorded plan of therapy or care for such patients. Such activities need not, however, be restricted to a particular physical or program area of the institution, nor to a particular type of work. No program shall qualify for a work activities center certificate under this part unless the productive capacity of each individual in the program is so severely impaired as to make that person incapable of earning as commensurate pay at least 25 percent of the minimum wage under section 6 of the Act, and the patient workers are participating in the program as a part of planned therapy.

(i) "Commensurate pay" (the term used in these regulations) is intended to have the same meaning as "equitable compensation" and "wages related to the worker's productivity," which terms are used in the statute, and means wages which are commensurate with those paid nonhandicapped workers in the institution or in industry maintaining acceptable labor standards in the vicinity for essentially the same type, quality, and quantity of work. So for example, the commensurate pay of a patient worker who is 75 percent as productive, considering quality and quantity, as the average

nonhandicapped worker performing essentially similar work in the institution would be at least 75 percent of the wage paid to such nonhandicapped worker.

(j) "State agency" means the agency within the State which administers or supervises the administration of vocational rehabilitation services in any State of the United States, the District of Columbia, or any territory or possession of the United States.

(k) "The Act" means the Fair Labor Standards Act of 1938, as amended.

§ 529.3 Advisory Committee on Sheltered Workshops.

(a) The Advisory Committee on Sheltered Workshops, appointed periodically by the Secretary of Labor, shall advise and make recommendations to the Administrator concerning the administration and enforcement of this part and the need for amendments thereto and for such other purposes as may be desired by the Administrator.

(b) The Administrator may consult with the Advisory Committee on Sheltered Workshops prior to any action taken under this part and may afford the Committee 15 days, or such additional time as may be allowed, to present its views. The Administrator may also afford the Committee an opportunity to present its views in connection with any petition for review filed, any hearing held, and any petition for amendment of these regulations, or any proposed legislation by the Secretary of Labor pertaining to the problems dealt with in these regulations.

§ 529.4 Wage payments.

(a) A patient worker whose earning or productive capacity is not impaired shall be paid at least the statutory minimum wage. A patient worker whose earning or productive capacity is impaired to the extent that the individual is unable to earn at least the statutory minimum wage may be paid a subminimum wage but only after a certificate authorizing payment of such lower wage has been obtained from the Wage and Hour Division.

(b) Four types of certificates authorizing subminimum wages are available for patient workers in institutions: Evaluation and training, group minimum wage, individual exception, work activities center. All but the individual exception are group certificates. Under a group certificate, the patient is certificated and not the individual patient worker. In the case of the individual exception, authority to pay a subminimum wage must be obtained for each individual.

(c) Evaluation and training: Patient workers subject to an evaluation and training certificate shall receive at least commensurate pay; no minimum wage guarantee is required unless the Administrator, shall determine it is in the best interest of the patient workers that a minimum wage guarantee be set.

(d) Group minimum wage: Patient workers subject to a group minimum wage certificate shall receive at least the minimum wage authorized in the certificate or commensurate pay, whichever is higher. The group minimum wage shall not be less, and may be more, than 50 percent of the minimum wage under section 6 of the Act.

(e) Individual exception: A patient worker subject to an individual exception shall receive not less than the minimum wage authorized in the individual exception certificate issued for that patient worker or commensurate pay, whichever is higher. An individual exception shall not be less, and may be more, than 25 percent of the minimum wage under section 6 of the Act.

(f) Work activities center: Patient workers subject to a work activities center certificate shall receive at least commensurate pay; no minimum wage guarantee is required unless the Administrator, shall determine it is in the best interest of the patient workers that a minimum wage guarantee be set.

(g) Compensable time for a patient worker starts when the individual begins to perform work involving an employment relationship.

(h) Each patient worker's work performance shall be reviewed by the institution at three month intervals during the first 6 months in an employment relationship, and at least every 6 months thereafter and his or her wages adjusted accordingly. The review shall relate the patient wor

er's quantity and quality of performance to that of nonhandicapped workers receiving the prevailing wage in the institution for similar work or work requiring similar skills. If similar work or work requiring similar skills is not performed by nonhandicapped workers in the institution the prevailing wage paid nonhandicapped workers in the vicinity in industry maintaining acceptable labor standards shall be used. The review shall be made by a staff member or members who observe the patient worker(s) being rated on a continuing basis and who are familiar with appropriate nonhandicapped production standards.

(f) No part of the minimum wage and overtime earned by a patient worker can be deducted for the cost of room, board or services. The patient worker must receive his or her wages free and clear, except for legal payroll deductions. It is not the intention of these regulations, however, to preclude the institution thereafter from assessing or collecting the reasonable cost of room, board and other services actually provided to a patient worker to the extent permitted by applicable Federal or State law and on the same basis as it assesses and collects from nonworking patients.

§ 529.5 Application for certificates.

(a) Application for a certificate for an evaluation and training program, a group minimum wage, an individual exception, or a work activities center may be filed by any institution with the Regional Office or Caribbean Director of the administrative region or area of the Wage and Hour Division, U.S. Department of Labor, in which the institution is located. Application forms may be obtained from the appropriate Office.

(b) An application for an evaluation and training certificate and for an individual exception certificate for payment of a wage below 50 percent of the minimum wage under section 6 of the Act shall also be filed with the State agency. Before the Wage and Hour Division can act on such an application, the State agency must certify that the evaluation and training program meets the standards defined in § 529.2 or, in the case of an individual exception, that the individual's earning capacity is so severely impaired that he or she is unable to earn at least 50 percent of the minimum wage under section 6 of the Act.

(c) An institution initially applying for a certificate, other than an individual exception certificate, which does not have the information called for in the application, may be issued a temporary certificate if it meets the requirements of, and provides assurance of compliance with, this Part.

(d) Application for an individual exception certificate may be filed at the time of applying for a group minimum wage certificate or during the life of the certificate. The application must show, among other things, that the patient worker is unable to earn the minimum wage authorized in the group minimum wage certificate.

(e) An application for an individual exception filed before the patient worker has completed evaluation and training shall be considered timely. In such case, if action on the application is not completed before the expiration of the evaluation and training period, the minimum wage requested in the application by the institution (not less than 25 percent of the minimum wage) shall be the interim minimum wage.

§ 529.6 Criteria for consideration in issuance of certificates.

The following criteria will be considered by the Administrator in determining the necessity of issuing a certificate or certificates and the conditions to be specified therein:

(a) The present and previous earnings of the patient workers.

(b) Whether the patient workers are receiving commensurate pay.

(c) The nature and extent of the disabilities of the patient workers and the degree to which these factors affect earning or productive capacity of the patient workers.

(d) Whether the conditions required for certification under this part have been met.

(e) Whether the certification by the State agency has been made in accordance with this part.

§ 529.7 Issuance of certificates.

(a) Upon consideration of criteria specified in § 529.6, the Administrator may issue a certificate or certificates, as appropriate.

(b) If a certificate is issued, a copy shall be sent to the institution. If denied, the institution shall be notified in writing of the denial and the reasons therefor.

(c) A group minimum wage certificate may be issued for the entire institution or a department or departments of the institution.

§ 529.8 Terms and conditions of certificates.

(a) A certificate shall specify the terms and conditions under which it is granted.

(b) A certificate shall apply to every patient worker in the program for which the certificate is granted.

(c) A certificate shall be effective for a period to be designated by the Administrator, generally for a period of 1 year. Patient workers may be paid wages lower than the statutory minimum only during the effective period of a certificate.

(d) A group minimum wage certificate shall set a special minimum wage of not less than 50 percent of the minimum wage under section 6 of the Act. An individual exception certificate shall set a special minimum wage not less than 25 percent of the minimum wage under section 6 of the Act.

(e) An evaluation and training certificate and a work activities center certificate need not set a special minimum wage other than that required by paragraph (f) of this section or provided for by § 529.4.

(f) All patient workers subject to a certificate shall be paid wages commensurate with those paid nonhandicapped workers in the institution in which they are patients or in the vicinity in industry maintaining acceptable labor standards for essentially the same type, quality, and quantity of work, but not less than the certificate rate applicable if such a rate has been authorized.

(g) Patient workers shall be paid not less than one and one-half times the regular rate for all hours worked in excess of the maximum workweek applicable under section 7 of the Act.

(h) No patient worker shall be newly-employed under a certificate issued under these regulations while abnormal labor conditions, such as a strike, a lock-out, or other similar condition, exist in the institution.

(i) Each patient worker and his or her parent or guardian shall be informed promptly orally and in writing of his or her rights under the Act.

(j) The terms of any certificate may be amended for cause, upon request of the institution, or a patient worker or his or her parent or guardian, or upon the initiative of the Administrator.

§ 529.9 Renewal of certificates.

(a) Application may be filed for renewal of any certificate.

(b) If an application for renewal has been properly and timely filed prior to the expiration date of a certificate, the certificate shall remain in effect until the application for renewal has been granted or denied.

(c) Patient workers may be paid wages less than the statutory minimum after notice that the application for renewal has been denied, if review of such denial is requested in accordance with § 529.12: *Provided, however*, That if the denial is affirmed on review, the institution shall reimburse any person covered by the certificate in an amount equal to the difference between the applicable minimum wage and any lower wage paid such person subsequent to the effective date of denial.

§ 529.10 Records to be kept.

Every institution shall maintain and have available for inspection by the Administrator records of:

(a) Disability, which show the nature of each patient worker's disability.

(b) Productivity, which show the productivity of each patient worker on a continuing basis or at periodic intervals as defined in § 529.4(b).

(c) Prevailing wage, which show the prevailing wages paid nonhandicapped workers in the institution or in industry in the vicinity for essentially sim-

lar work to that performed by the patient workers.

(d) Production standards for an average nonhandicapped worker for each job being performed by a patient worker in the institution (for use as a norm in measuring patient worker productivity.)

(e) When an evaluation and training program is authorized by certificate, records showing which patient workers are in the evaluation and training program, and the total period of time each worker has been in such a category.

(f) When an institution holds both a work activities center certificate and a group minimum wage certificate, records showing which patient workers are under each certificate.

(g) Records showing the patient [illegible] tions have been authorized.

(h) In addition, the records required under all the applicable provisions of Part 516 of this chapter.

(i) Every institution having patient workers who are entitled to benefits under the Act shall at all times display a poster, as prescribed by the Administrator, in a conspicuous place in the institution where it may be observed readily by the patient workers and other workers in the institution.

(j) Records required by this section shall be kept for the periods specified in Part 516 of this chapter.

§ 529.11 Cancellation of a certificate.

(a) The Administrator may cancel any certificate for cause. A certificate may be canceled (1) as of the date of issuance, if it is found that fraud has been utilized in obtaining the certificate or in permitting a patient worker to be employed thereunder; (2) as of the date of violation, if it is found that any of the provisions of the Act or of the terms of the certificate have been violated; or (3) as of the date of notice of cancellation, if it is found that the certificate is no longer necessary in order to prevent curtailment of opportunities for employment, or that the requirements of this part have not been complied with.

(b) If a petition for review is filed under § 529.12, the effective date of the cancellation shall be postponed until action is taken thereon: *Provided, however,* That if the cancellation order is affirmed on review, the institution shall reimburse any person covered by the certificate in an amount equal to the difference between the applicable minimum wage and any lower wage paid such person subsequent to the effective date of cancellation.

(c) Except in cases of willfulness or those in which the public interest requires otherwise, before any certificate shall be canceled, facts or conduct which may warrant such action shall be called to the attention of the institution in writing and it shall be afforded an opportunity to demonstrate or achieve compliance with all lawful requirements.

[illegible]

Any person aggrieved by any action of an authorized representative of the Administrator taken pursuant to this part may, within 60 days or such additional time as the Administrator may allow, file with the Administrator a petition for review. Such review, if granted shall be made either by the Administrator or by an authorized representative who took no part in the action under review, who may, to the extent it is deemed appropriate, afford other interested persons an opportunity to present data and views.

§ 529.13 Submission of information, investigations, and hearings.

The Administrator may require at any time the submission of such information, other than that specified elsewhere in this part, as is deemed appropriate, or may conduct an investigation, which may include a hearing, prior to taking any action pursuant to this part. To the extent it is deemed appropriate, the Administrator may provide an opportunity to other interested persons to present data and views.

§ 529.14 Relation to other laws.

No provision of this part, or of any certificate issued under this part, shall excuse noncompliance with any other Federal or State law or municipal ordinance establishing higher standards

§ 529.15 Issuance of certificates for experimental purposes.

In addition to the issuance of certificates as provided in §§ 529.1 to 529.14, the Administrator may authorize the issuance of certificates to permit employment of patient workers in institutions at less than the applicable minimum wage under section 6 of the Act as part of experimental programs to increase employment opportunities for such persons. Such certificates shall be issued in such types of cases and on such terms and conditions within the scope of section 14 of the Act as the Administrator shall determine will best further any such experimental programs. Certificates issued under this section shall be limited to an effective period of not more than 1 year.

§ 529.16 Amendment of this part.

The Administrator may at any time upon his or her own motion or upon written request of any interested person setting forth reasonable grounds therefor, and after opportunity has been given to interested persons to present their views, amend or revoke any of the terms of this part.

§ 529.17 Review of regulations.

Approximately six months after the effective date of this part, the Wage and Hour Division will undertake a review of its program for administration and enforcement of this Part in consultation with the Advisory Committee on Sheltered Workshops.

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

AUTHORITY: Sec. 11, 52 Stat. 1066; U.S.C. 211, unless otherwise noted.

SOURCE: 24 FR 729, Feb. 3, 1959, unless otherwise noted.

§ 530.1 Definitions.

(a) The meaning of the terms "person," "employ," "employer," "employee," "goods," and "production," used in this part, is the same as in the Fair Labor Standards Act of 1938, as amended.

(b) "Industrial homeworker" and "homeworker," as used in this part mean any employee employed or suffered or permitted to perform industrial homework for an employer.

(c) "Industrial homework," as used in this part, means the production by any person in or about a home, apartment, tenement, or room in a residential establishment of goods for an employer who suffers or permits such production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homeworker in such production.

(d) The women's apparel industry is defined as follows: The production of women's, misses' and juniors' dresses, washable service garments, blouses and neckwear from woven or purchased knit fabric; women's, misses' children's and infants' underwear, nightwear, and negligees from woven fabrics; corsets and other body supporting garments from any material; other garments similar to the foregoing; and infants; and children's outerwear.

(e) The jewelry manufacturing industry is defined as follows:

(1) (i) The manufacturing, processing, or assembling, wholly or partially from any material, of jewelry, commonly or commercially so known. Jewelry as used herein includes without limitation, religious, school, college, and fraternal insignia; articles of ornament or adornment designed to be worn on apparel or carried on or about the person, including, without limitation, cigar and cigarette cases, holders, and lighters; watch cases; metal mesh bags and metal watch bracelets; and chain, mesh, and parts for use in the

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 19, 1983

SUBJECT: Minimum wage
(CSHB 182 (HESS))

TO: Representative Ramona L. Barnes

FROM: Russ Josephson
Legislative Counsel

The following is the sectional analysis that you requested:

Section 1 adds a new section to AS 23.10, providing that a participant in a residential drug abuse or alcoholism treatment program may be paid less than the minimum wage for work therapy performed by the patient.

Subsection (a) stipulates that the rate of pay must be approved by the commissioner of labor and that the rate must be in compliance with federal law.

Subsection (b) provides for the adoption of regulations by the commissioner of labor regarding the payment of wages for work therapy. Several factors are to be considered in the adoption of the regulations:

(1) Is the work the type that a participant in this type of program would do ordinarily and is the work for the mutual benefit of the patient and the program?

(2) Would the work ordinarily be done by full-time employees?

(3) Will the work produce income to the patient other than wages?

(4) What is the therapeutic benefit of the work, the skill required, and the role of work therapy in the patient's treatment plan?

(5) What is the impact of the wage scale on the program?

Section 2 adds a section to AS 47.37. Subsection (a) of this new section provides that the payment of wages for work therapy is an allowable cost, payable by a grantee with grant funds.

Subsection (b) provides that the wages may not be used for the costs of room, board or services, although reasonable costs of treatment may be assessed and collected, if done on the same basis as for non-working patients.

Subsection (c) provides that wages earned by a patient may be held in trust for the benefit of the patient and disbursed in several ways that are enumerated.

Section 3 adds a definition of "work therapy" to AS 47.-37.270.

RJ:ljb
15/013

CS HB 182

Phillip Volland - atty for Synanon Ranch + other abuse programs

1) Speaks for the Bill
2) drafted lengthy legal opinion
3) work important to recovery rehabilitate.
4) treatment centers become warehouses without
5) small non profit don't have work.
the financial advantages that larger can
6) Synanon Ranch work clients
$100,000 — 9-10 hrs per week for one year

7) Sec 14 Fed Law
precedent to appl for Certificate
rate paid on level of disability
Problem - State law - regs -
Alcohol + Drug clients can't be identified
as handicapped workers.
8) Certificate applicant
requires no less than 50% or $
min wage.

Present law doesn't allow grantees to apply for wages for worker / client. This bill allows for this

Proposed CSHB 182 (HESS)
Dave Palmer
April 4, 1983

Section 1: (a) Authorization is given for exemption to the State minimum wage (AS 23.10.050 - 50 cents per hour greater than prevailing Federal minimum wage or $2.60/hour whichever is greater) for participants in work therapy programs.

(b) The Commissioner is required to adopt regulations regarding payment for work therapy while considering specific criteria indluded in the bill.

Section 2: (a) Wages paid for work therapy are considered allowable operational costs and are eligible for reimbursement by grants.

(b) No part of wages earned may be deducted for room, board or services.

(c) Wages may be held in trust and disbursed, with consent for specific purposes.

Section 3: Work therapy is defined.

No effective date.

The impetus for HB 182 is the Nugen Ranch, a treatment facility for chronic and debilitation alcoholics. A component of the treatment program is work on the ranch in exchange for minimal compensation. With the intent on establishing lost work habits, developing self esteem, and rekindling positive work attitudes, work as therapy is used at the ranch. However, Federal and State minimum wage laws apply. HB 182 provides an exemption from the State minimum wage, which exceeds the Federal minimum wage.

Exemptions to the State minimum wage currently exist (AS 23.10.070) for:

1. Individuals whose earning capacities are reduced by physical or mental deficiencies, age or injuries.

2. Apprentices (approved by the Commissioner)

3. A learner, subject to conditions set by the Commissioner.

DHSS Position: The position paper relates to HB 182, not proposed CSHB 182. it is relevant. The DHSS asks that the exemption apply to programs designed to last over 120 days. Short-term programs would be required to pay prevailing minimum wage.

Fiscal Note: The fiscal note for HB 182 is zero. However, the CSHB 182 requires the development of regulations and implies that review of programs would be necessary to assure compliance with those regulations. If not done before the hearing, the fiscal note requires revision.

You might WELCOME Phillip Volland AT AN APPROPRIAK time - Let the committee KNOW he's here.

Ask Volland - I think this bill is AN EXEMPTION to STATE MIN. WAGE ONLY.

POSITION PAPER

HOUSE BILL 182

"An Act exempting participants in residential drug abuse and alcoholism treatment programs from Alaska's minimum wage provisions, and providing a wage scale."

The Department of Health and Social Services is supportive of this legislation.

The issues and remedies surrounding this proposed legislation arose with the advent of a long term care program for the chronic and significantly debilitated alcoholic. The individuals to be served by these programs have long histories of unemployment, skill depreciation, loss of positive employment experiences and loss of positive life experiences. Long term care is defined as treatment lasting from a minimum 120 days to a maximum of 2 years with an average length of 1 year.

One of the intents of long term care treatment program is to have clients engage in a form of work therapy as part of their overall treatment regime. Such work therapy will be designed to help the client re-establish or re-learn basic learning, life and employment skills. It is the intent of the long term care treatment program to be more than a warehouse for the most severely afflicted casualties of the disease alcoholism.

The Department is also concerned that clients' rights be protected. The Department is also concerned that short term treatment programs provide intensive therapy to appropriate clients. To this end the Department of Health and Social Services would recommend the following.

House Bill No. 182, lines 12 through 14 be amended to read:

> (b) Participants in residential drug and alcoholism treatment programs [designed to exceed 120 days in length,] may be paid less than the minimum wage prescribed in AS 23.10.050-23.10.150 for work therapy, as defined in AS 47.37.270.

House Bill No. 182, lines 16 through 19 be amended to read:

> Sec. 47.37.245. Wages of Patients. Participants in residential drug abuse and alcoholism treatment programs, [designed to exceed 120 days in length,] shall be paid for work therapy, as defined in AS 47.37.270, at the rates established under AS 33.32.050. [AS 33.32.050(a)].

These recommended changes would have the effect of limiting the applicability of the exemption from the minimum wage law. It is the Department's position that only long term care treatment programs (designed to exceed 120 days) be exempted.

POSITION PAPER/Department of Health & Social Service

Recommended by: George E. Mundell

George E. Mundell
Acting Coordinator
Office of Alcoholism/
Drug Abuse

Date: 3/1/83

Approved by: Robert London Smith

Robert London Smith, Ph.D.
Commissioner
Dept. of Health &
Social Services

Date: 3/4/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill No. 182 Date on Bill: 2/9/83
Title: "An Act exempting participants in residential drug abuse and alcoholism treatment
Sponsor: Barnes, Clocksin, Bussell, Liska, Larson
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-	-0-		

b. Revenues:

Revenue			-0-	-0-	-0-	-0-		

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It do not represent the policy of the Sheffield Administration or the final estimate of fis impact.

George E. Mundell

Prepared By George E. Mundell, Acting Coordinator AAA Phone: 586-6201
Division: Office of Alcoholism/Drug Abuse Date: 3/1/83

Approved by Commissioner: Robert Fowler Smith, Ph.D. Date: 3/4/83
Department: 3/1/83 Health & Social Services

5. Distribution:
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Copy to Sponsor

POSITION PAPER/Department of Health & Social Service

MAR 6 1984

POSITION PAPER

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POSITION PAPER/Department of Health & Social Service

Recommended by: George E. Mundell

George E. Mundell
Acting Coordinator
Office of Alcoholism/
Drug Abuse

Date: 3/1/83

Approved by: Robert London Smith

Robert London Smith, Ph.D.
Commissioner
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(Thousands of Dollars)

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Total			-0-	-0-	-0-	-0-		

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Revenue			-0-	-0-	-0-	-0-		

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It do not represent the policy of the Sheffield Administration or the final estimate of fis impact.

George E. Mundell

Prepared By: George E. Mundell, Acting Coordinator Phone: 586-6201
Division: Office of Alcoholism/Drug Abuse Date: 3/1/83

Approved by Commissioner: Robert Fowler Smith, M.D. Date: 3/2/83
Department: Health & Social Services

5. Distribution:
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2/8/83

4/20/83

Sect 2 TITLE 47 A.S. provides for work therapy as allowable cost

(b) language similar to fed language. FED REGS prohibit automatic deductions. This sec. would be rejd by fed's ANYWAY.

(c) Reflects what already exists in MOST D'ALC. programs. Reduces possibility of institutional theft & Removes READY cash from client.

Impact on STATE - minimal

AGRICULTURAL EXEMPTION - NOT PRIMARY DUTY of RANCH.

STATE LAW / FEDERAL LAW - Remove BARRIER

Pay 50% of AK MINIMUM WAGE would be least that could be paid.

See: 29 CFR 529 → AVAILABLE to RESIDENTS of drug & treatment centers

8AAC 10.120(F) → Residents of drug & treatment ctrs may

More

4/20/93

Phillip Volland teleconference

WORK THERAPY

1) WORK INCREASES SELF ESTEEM, EMPLOYMENT SKILLS
2) ELIMINATES WAREHOUSING - PRODUCTIVE WORK

COST - limited public funds

PRESENT LAW:

pay AK MIN. WAGE 3.85/hr

50 clients = $100,000 WAGE COSTS/YR

FEDERAL MIN. LAW SECT. 14 HANDICAPPED - CERTIFICATE MAY ALLOW for PATIENT WORKER. RATE PAID BASED ON disability.

STATE LAW ALCOHOL or DRUG treatment NOT clients. CONSIDERED HANDICAPPED

Reg. change IN STATE LAW to ALLOW to APPLY for APPLICATION to FED to PAY less than MIN. WAGE Minimum here is 50% of FED MIN. WAGE.

SECT. 1. EXEMPTS from STATE LAW MIN. WAGE 8 AAC 15.120 - DRUG & ALCOHOL handicapped NOT ~~handicapped~~

29 CFR 529 - PATIENT WORKER EXEMPTION

(b) FACTORS taken from WAGE & HOUR OPINIONS, FED REGULATIONS, or CASES except (5)

HB182

FEB 23 1983

LAW OFFICES OF
REESE, RICE AND VOLLAND
A PROFESSIONAL CORPORATION

JOHN REESE
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ANCHORAGE, ALASKA 99501
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February 18, 1983

Representative Barbara Lacher
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: House Bill 182

Dear Representative Lacher:

I would like to take this opportunity to comment on H.B. 182 and, in particular, address the issue of possible conflict between the proposed legislation and the federal Fair Labor Standards Act.

As you may recall, I represent Alaska Alcoholism Rehabilitation Services, Inc., the nonprofit corporation which owns and operates a long-term residential treatment center for alcoholics in Wasilla, Alaska. Last year, on behalf of my client, I advised the State Office of Alcoholism and Drug Abuse of my opinion that state and federal law required the payment of a minimum wage to patients at residential treatment centers who are engaged in work therapy. I suggested that legislation be adopted to lessen the economic impact of this problem, and sought the assistance of various legislators last year; however, the session was too far along to yield results. I presume that you have copies of my original opinion letter to SOADA, dated February 23, 1982, and my letters to Representatives Donald E. Clocksin, Patrick J. Carney, and Senator Jalmar Kerttula, dated April 2, 1982.

Since the session began this year, I have been in frequent contact with Russ Josephson of the Law Division, and this week with your aide, Joan Matthews. I am aware of your concern about possible conflict between H.B. 182 and the Fair Labor Standards Act and hope that my comments may assist you in evaluating the proposed legislation. You may feel free to share this letter with the named sponsors of the bill.

Let me begin by saying there are certain defects in H.B. 182 that I feel need correction, and that my opinion about possible solutions has changed since last year as a result of recent developments in case law. I have also proposed changes in H.B. 182 to address some problems which are not covered by the bill. Before explaining these issues in detail, let me first discuss my prior recommendations and the somewhat confusing legal principles that are involved in the state law/federal law conflict.

In my letter to SOADA of last year, I suggested that the application of the Fair Labor Standards Act (hereafter F.L.S.A.) to state-funded residential treatment centers could be avoided by adding language to state legislation which was keyed to the decision of the U.S. Supreme Court in National League of Cities v. Usery, 426 U.S. 833 (1976) (hereafter National League). This was because the National League decision held that the F.L.S.A. did not apply to wage and hour determinations which involve functions which state and local governments are created to provide, including those services which the states have traditionally afforded to their citizens. Among the services enumerated by the Supreme Court in National League was the field of "health care." The holding in National League was based on the application of the Tenth Amendment to the Constitution -- the constitutional provision which prohibits federal control over functions traditionally reserved to the states. Although the decision in National League was limited to states and their political subdivisions, the broad language used by the court suggested that the decision might also apply to state-funded, private organizations which deliver state services such as health care, and which are heavily regulated by the state.

Subsequent to the decision in National League, two federal courts specifically addressed the applicability of the holding in National League to local health care programs involving private nonprofit residential treatment centers funded by states. These two cases, Williams v. Eastside Mental Health Center, Inc., 509 F.Supp. 579 (N.D. Ala., S.D., 1980), and Richland County Assn. for Retarded Citizens v. Marshall, 660 F.2d 388 (9th Cir. 1981), were divided on the issue. Although the Richland County decision held that National League did not prohibit the application

of the Fair Labor Standards Act to a private nonprofit corporation which operated a residential home for mentally retarded adults, the Williams case reached the opposite conclusion under nearly identical circumstances. When I originally wrote my opinion letter, it appeared possible that well drafted legislation, which recognized the state's interest in treating drug addicts and alcoholics as an essential state function and which met this function through the provision of funding to private nonprofit corporations, could provide the necessary protection established under the National League decision, and therefore render such treatment centers exempt from the minimum wage requirement of the F.L.S.A.

However, after speaking with Russ Josephson last month, I updated my research on the subject. Decisions issued during the last year in federal district courts as well as the United States Supreme Court now indicate that the protection originally thought available under the National League decision is no longer applicable to private nonprofit organizations which receive state funding, regardless of whether or not they are involved in administering services otherwise provided by the state.

Since my original letter to SOADA last February, two decisions were rendered by the United States Supreme Court which involved the application of National League. These cases, Hodel v. Virginia Surface Mining and Reclamation Association, ____ U.S. ____, 101 S.Ct. 2352 (1981), and United Transportation Union v. Long Island Railroad Company, ____ U.S. ____, 102 S.Ct. 1349 (1982), set out a three-pronged test to be applied in evaluating the Tenth Amendment protection announced in National League. To claim that a federal statute would not apply under the National League principle, the challenging party would have to establish that: (1) the challenged statute regulates the "states as states"; (2) the federal regulation addresses matters that are indisputably "attributes of state sovereignty"; and (3) the states' compliance with the federal law would directly impair their ability "to structure integral operations in areas of traditional functions."

Although in National League the Supreme Court first cited fire protection, police protection, sanitation, public health, and parks and recreation as examples of services that are within the area of traditional operations of state and local governments, subsequent decisions of the U.S. district courts have refined these areas in far greater detail. See, e.g., N.L.R.B. v. Highview, Inc., 590 F.2d 174 (5th Cir. 1979) enforcement modified, 595 F.2d 339 (1979) (the care of the aged, sick and indigent); Enrique Molina-Estrada v. Puerto Rico Hwy. Auth., 680 F.2d 841 (1st Cir. 1982) (highway construction); Bonnette v. California Health & Welfare Agency, 525 F.Supp. 128 (N.D. Cal. 1981) (in-home support services for the blind, aged and disabled); Amersbach v. City of Cleveland, 598 F.2d 1033 (6th Cir. 1979) (operation of a municipal airport); and Alewine v. Cit, Council of Augusta, 505 F.Supp. 880 (S.D. Georgia 1981) (operation of a municipal transit system). The most significant development, however, has been the result of appeals in Williams v. Eastside Mental Health Center, supra, and Richland County Assn. for Retarded Citizens v. Marshall, supra, the two cases on which I based my earlier opinion.

The original Ninth Circuit decision in Richland County, which held that the Fair Labor Standards Act was applicable to private nonprofit residential treatment centers, was vacated by the Supreme Court on jurisdictional grounds in January of 1982, sub nom. Donovan v. Richland County Assn. for Retarded Citizens, ____ U.S. ____, 102 S.Ct. 713 (1982). Although the practical effect of the vacated judgment was to restore the district court's decision apparently holding the F.L.S.A. inapplicable to the treatment center, that opinion is unpublished and has little legal significance.

Of importance, however, is the chain of appeals on Williams. As you will recall, that decision held that the Fair Labor Standards Act was not applicable to a nonprofit treatment center because of its close relationship to the state via funding and regulations, and because the center served an essential state function in providing health care to citizens. The district court decision was reversed by the Eleventh Circuit on March 5, 1982 in a well-reasoned

decision. Williams v. Eastside Mental Health Center, 669 F.2d 671 (1982) (copy enclosed). The court held that the protection accorded by National League was not available to nonprofit corporations receiving funding from the state, even though they may provide health care services on behalf of the state. I encourage you to read this decision thoroughly because of the very close analogy it presents to nonprofit corporations in Alaska which provide services through state funding in the health care, drug abuse, and alcoholism fields. In August of 1982 the decision was appealed to the United States Supreme Court, and on November 2, 1982 the petition for certiorari was denied by the Supreme Court, Eastside Mental Health Center v. Williams, ____ U.S. ____, 51 U.S.L.W. 3340. The effect of the denial of certiorari is to uphold the Eleventh Circuit's decision. It is therefore clear that the Fair Labor Standards Act does apply to private nonprofit residential treatment centers in Alaska, even though those programs receive state funding, are regulated by the state and deliver services the state might otherwise choose to provide on its own. Thus, I recommend that it is futile to try to adopt legislation stating that the treatment of alcoholics and drug addicts through private nonprofit corporations serves an important state function in an attempt to pass valid legislation that will enable those programs to pay a minimum wage less than that provided under the F.L.S.A. Because it is now clear that federal law will apply to residential treatment centers, H.B. 182 must be drafted in such a way that it is consistent with the Fair Labor Standards Act.

To fully understand the issue of conflict between state and federal law, let me briefly explain two legal doctrines that come into play in this area -- "supremacy" and "preemption."

Supremacy is a constitutional principle, based on Article IV of the U.S. Constitution, that state laws are void to the extent that they actually conflict with a valid federal statute, that is, they present an obstacle to the purposes and objectives of the federal statute. It is a doctrine often confused with a similar principle based on the supremacy clause, the doctrine of preemption.

Preemption is a legal doctrine that prohibits the application of state statutes (whether in conflict with or consistent with federal statutes), if the federal legislative scheme evidences a congressional purpose to "occupy the field." Supremacy and preemption should not be confused. The preemption principle prohibits the states from legislating in a particular area; the principle of supremacy only prohibits the states from adopting legislation in conflict with federal legislation.

In the labor law area, the distinction between these two doctrines can be easily understood. The Fair Labor Standards Act did not preempt the field of labor law, Webster v. Bechtel, 621 P.2d 890 (Alaska 1980); see also 29 U.S.C. §218(a) (1975). Thus Alaska can adopt (and has adopted) its own laws governing the rates of pay for workers in the state. Nonetheless, the doctrine of supremacy prohibits this legislation from being in conflict with the Fair Labor Standards Act. Thus, Alaska cannot adopt a law that sets a lower rate of pay for workers in the state than is established under federal law. Therefore, the provisions of H.B. 182 cannot conflict with analagous provisions of the Fair Labor Standards Act.

This brings me to my analysis of H.B. 182 as presently drafted.

I have no problems with Section 1 insofar as it amends AS 23.10.070. The effect of the proposed amendment is to invalidate 8 AAC 15.120(f) which presently states that drug addicts and alcoholics are not handicapped workers with respect to AS 23.10.070. Because of problems with Section 2 of H.B. 182, however, and because of the need to address problems not covered by the proposed legislation, I have suggested some major additions to Section 1 of H.B. 182 (see discussion below).

AS 23.10.070 is analogous to Section 14 of the Fair Labor Standards Act, 29 U.S.C. 214, the "handicapped worker" provisions of the act. Thus it will be interpreted consistent with the F.L.S.A. and the regulations adopted thereunder. These regulations, codified at 29 C.F.R. 529 (copy enclosed), already provide a mechanism for the approval of the payment of subminimum wages to patient workers at "intermediate care facilities ... halfway houses, residential centers for drug addicts or alcoholics and the like whether licensed or not licensed." The practical effect

of amending AS 23.10.070 will be that affected treatment programs will have to apply for and obtain a certificate authorizing the payment of subminimum wages pursuant to the procedure set forth in 29 CFR 529.

Section 14 of the F.L.S.A. only permits the payment of subminimum wages, upon application and approval by the Department of labor, of not less than 50 percent of the prevailing minimum wage. In other words, the provision of federal law analogous to the amendment to AS 23.10.070 proposed by H.B. 182 does not allow the payment of any wage less than 50 percent of the prevailing minimum wage in Alaska, which is now $3.85 per hour.

Because of this fact, there is a conflict between H.B. 182 and the F.L.S.A. Section 2 of H.B. 182 sets the wages for work therapy "at the rates established under AS 33.32.050." If you refer to AS 33.32.050 you will note that the wage rate authorized therein may not exceed 50 percent of the minimum wage established under AS 23.10.065. In other words the bill, as presently written, authorizes the payment of wages less than what is required by federal law. This difference is fatal to the proposed legislation; if passed as presently written it will not survive a legal challenge based on the conflict with Section 14 of the Fair Labor Standards Act.

Another problem created by tying the wage rate to AS 33.32.050 is that AS 33.32.050 will automatically repeal in 1987. I suggest that it is imprudent to tie H.B. 182 to a law that will automatically expire four years from now. This will only mean that AS 47.37.245 would have to be amended again in 1987.

I have suggested additional amendments to Section 2 regarding the assessment of treatment fees to patient workers. My proposed subsection (b) is consistent with 29 C.F.R. 529.4(i). I have also added as subsection (c), somewhat similar to AS 33.83.50(c), clarifying a program's authority to hold wages in trust and disburse funds for appropriate purposes. As a practical matter, most residential treatment programs must hold money in trust in order to control the likelihood of intra-institutional

theft, and allocate money to the client consistent with his or her financial needs and other obligations.

I have no major problems with the definition of work therapy as defined in Section 3 of H.B. 182. I feel, however, that the present definition implies that work therapy will involve more formal "training" than actually occurs. I have suggested some minor changes in language which, I believe, more accurately reflect the concept of work therapy.

Any statutory definition of work therapy will, however, be incomplete. Litigation about this issue over the years, as well as opinions generated by the Wage and Hour Division of the Department of Labor, have only indicated the complexity of the concept. [See, e.g., Wyatt v. Stickney, 344 F.Supp. 373 (M.D. Ala. 1972), aff'd sub nom. Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974); Opinion WH-375, signed by Wage Hour Administrator Ronald J. Jones, March 1, 1976; Opinion WH-334, signed by Acting Wage Hour Administrator Warren D. Landes, April 18, 1975. For instance, personal housekeeping chores are not considered work therapy under any definition, but regular building maintenance responsibilities would be considered work requiring compensation. There remains a question of whether wages need be paid for work therapy which produces saleable items from which the patients themselves profit.] Lest AS 47.37.270(14) itself be subject to future litigation, I suggest that H.B. 182 mandate the Department of Labor to adopt regulations implementing H.B. 182. Presumably, these regulations will be consistent with 29 C.F.R. 529, and reflect input from programs utilizing work therapy concepts for their clients. The end result will give programs better guidance on when wages are required to be paid.

My proposed changes in Section 1 of H.B. 182 include a mandate for the development of regulations. The guidelines I have suggested are consistent with case law as it has developed under Section 14 of the F.L.S.A.

Finally, the impact of having to pay patients engaged in work therapy at least 50 percent of the minimum wage will be a slightly higher cost to the state than presently exists under the proposed terms of H.B. 182. Although it is now clear that the law requires the payment of wages, I am not convinced that influential members of SOADA and the legislature will meet this responsibility by budgeting sufficient funds for programs to meet this obligation without curtailing services. Last year, for instance, the Governor's Review Board on Alcoholism -- fully aware that clients would have to be paid wages for work therapy -- recommended a cut in the Nugen's Ranch budget exactly equivalent to the funds budgeted for client wages. It would be anomalous if the Legislature adopted H.B. 182, but residential treatment programs were not awarded sufficient increases in grant funds to pay even the subminimum wage. I have therefore proposed amendments in Section 2 to meet this concern.

In summary, I therefore make the following recommendations:

1. There is no need to add a purpose clause to H.B. 182, as I originally suggested, since it is now clear that the Fair Labor Standards Act, as amended, 29 U.S.C. 201, et seq., will apply to residential drug and alcohol treatment programs in light of the U.S. Supreme Court's denial of certiorari in Williams v. Eastside Mental Health Center, 669 F.2d 671 (11th Cir. 1982), cert. den., ____ U.S. ____, 51 U.S.L.W. 3340 (Nov. 2, 1982).

2. Amend Section 1 of H.B. 182 to read as follows:

> (b) (1) Participants in residential drug and alcoholism treatment programs may be paid less than the minimum wage prescribed in AS 23.10.050 - 23.10.150 for work therapy, as defined in AS 47.37.270, and at rates approved by the commission pursuant to this section.

(2) The commissioner shall promulgate relgulations regarding the payment of wages for work therapy. In establishing these regulations, the commissioner shall be guided by the following standards:

(A) Whether the work performed by the patient is that which is ordinarily carried on by patients in a residential treatment program and is not for the economic benefit of the program, but solely for the mutual benefit of the participants;

(B) Whether the work performed by the patient would ordinarily be performed by full-time employees of the program;

(C) Whether the work performed by the patient is work which may produce income to the patient, other than wages;

(D) The therapeutic benefit of the work to the patient, the skill required to perform the work, and the role work therapy plays in the patient's treatment plan;

(E) The impact of the wage scale on the program, considering its size, level of funding, and the therapeutic treatment services to be provided.

3. Amend Section 2 of H.B. 182 so that it reads:

Sec. 47.37.245 WAGES OF PATIENTS.

(a) Participants in residential drug abuse and alcoholism treatment programs shall be paid wages for work therapy, as defined in AS 47.37.270. The coordinator shall make sufficient grant-in-aid funds available to programs for this purpose.

(b) No part of the wage earned by the patient worker can be deducted for the cost of room, board or services. The program, however, after the payment of wages, may assess and collect the reasonable cost of treatment according to rates established in accordance with AS 47.37.240, and on the same basis as it assesses and collects from non-working patients.

(c) Wages earned by the patient worker may be held in trust by the program for the benefit of the patient, and disbursed by the program, with the patient's consent

(1) for the support of the patient's dependents,

(2) to pay a civil judgment,

(3) for the purchase of gifts, clothing, and items of personal use,

(4) to pay restitution or a fine,

(5) for other purposes deemed appropriate by the treatment program.

4. Amend Section 3 of H.B. 182 to read as follows:

Work therapy means an activity that involves a patient in basic employment skills and assists the patient in reintegration into a community, but does not include such activities as personal housekeeping chores or cooperative responsibilities ecpected of each patient in the program.

Finally, on behalf of my clients I want to thank you for all of your efforts in getting the legislation introduced. Your attention to the problems faced by many drug and alcohol treatment programs reflects your conscientious attitude toward your constituents.

I hope that my comments have been helpful. Please keep me apprised of developments with H.B. 182 and feel free to call if I can be of further assistance.

Sincerely,

REESE, RICE AND VOLLAND, P.C.

P. R. Volland

Philip R. Volland

Enclosures

cc: Board of Directors, AARS
Mr. and Mrs. Leonard Nugen

tive shall, after considering all pertinent matters presented, mail a letter to the employer and, where appropriate, to the apprenticeship agency or the responsible school official, setting out that representative's findings of specific pertinent facts and conclusions and that representative's order concerning the proposed annulment or withdrawal. In proceedings instituted for annulment, the order may provide for withdrawal instead of annulment if the proof warrants such withdrawal but fails to support adequately the annulment. Such an order shall be deemed issued and effective according to its terms when mailed.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76-2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28469, June 30, 1978]

§ 528.6 Review.

Any employer and, when appropriate, any apprenticeship agency or responsible school official, who expressed timely objection to the proposed action prior to issuance of an order of annulment or withdrawal may obtain review, limited to the question of whether the findings of fact support the order under the regulations in this part. Application for such review shall be in writing addressed to the Administrator and mailed within 15 days after the order is issued. The Administrator may affirm, modify, or reverse the order, or may remand it for further proceedings. The order under review shall not be stayed in effect pending such review. Any aggrieved person may obtain such review of an order entered in proceedings instituted under paragraph (c) of § 528.3.

[21 FR 5316, July 17, 1956, as amended at 22 FR 5683, July 18, 1957]

§ 528.7 Effect of order of annulment or withdrawal.

Except as otherwise expressly provided in such order, any order of annulment or withdrawal under paragraph (a) or (b) of § 528.3 shall be effective to terminate all certifications to which the regulations in this part apply in effect at the establishment where the cause for withdrawal arose or where the annulled certificate had effect. After such annulment or withdrawal, such employer shall be ineligible to obtain or exercise the privileges granted in such a certificate until he satisfies the issuing officer that he will not again give cause for annulment or withdrawal if a certificate is issued.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No 76-2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28469, June 30, 1978]

PART 529—EMPLOYMENT OF PATIENT WORKERS IN HOSPITALS AND INSTITUTIONS AT SUBMINIMUM WAGES

Sec.

AUTHORITY: Sec. 14, 52 Stat. 1068, as amended (29 U.S.C. 214).

SOURCE: 40 FR 5776, Feb. 7, 1975, unless otherwise noted.

§ 529.1 Statutory language and scope of regulations.

(a) The Fair Labor Standards Act as amended, among other things, makes provision for the employment of handicapped persons at subminimum wages under certificate. This provision is now designated as section 14(c) of the Act. It reads as follows:

(c) (1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, the Secretary of Labor, to the extent necessary in order to prevent curtailment of op

portunities for employment
tion or order provide for
under special certificates o
cluding individuals employe
whose earning or producti
paired by age or physical or
cy or injury at wages which
the minimum wage applical
6 of this Act but not le
centum of such wage and
mensurate with those paid
workers in industry in the v
tially the same type, quali
of work.
(2) The Secretary, pursu
lations as he shall prescrib
fication of the State agen
or supervising the adminis
tional rehabilitation service
cial certificates for the emp
(A) handicapped workers
which is incidental to traini
programs, and
(B) multihandicapped
other individuals whose ca
so severely impaired that th
engage in competitive empl
which are less than those
subsection and which are
worker's productivity.
(3) (A) The Secretary m
or order provide for the
handicapped clients in wo
ters under special certifi
which are less than the min
under section 6 of this Act
paragraph (1) of this subse
constitute equitable compe
clients in work activities cen
(B) For purposes of this
"work activities centers" sh
planned and designed exclu
therapeutic activities for
ents whose physical or me
so severe as to make the
capacity inconsequential.
(b) Authority to prom
ulations and issue the
ferred to in section 14(c
cated by the Secretary
strator of the Wage a
sion (Secretary's Orders
1 (36 FR 8755 and 8756
(c) Patient workers wh
productive capacity is
shall be paid at least
minimum wage. For pa
whose earning or produ
is impaired to the extent
not able to earn the s
mum wage, the regul
Part 529 govern certif
ing special minimum
tient workers in hospita

Alaska State Legislature

House of Representatives

Committee on

Health, Education & Social Services

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 21,1983

MEMO TO: Ramona Barnes

FROM: Dave Palmer House HESS Committee x3777

SUBJECT: HB 182

The attached opinion from Nugen's attorney states that due to recent decisions of the courts, it is clear that HB 182 will not withstand a legal challenge. Do you want to direct legal services to redraft HB 182 as a sponsor substitute or should we schedule hearings on the bill as it is presently written?

sent persons in *Haas* and *Schutten*, has absolutely no interest in the subject matter of the suit, i.e., the lease. Hence judgment against GNCC for cancellation of the lease and an accounting would have no effect, practical or otherwise, on Lowell Kramer. As a result, we conclude that his interest in this suit would not be prejudiced by his absence as a party.

The final consideration is whether, given Lowell Kramer's interest in the litigation, GNCC might be subject to multiple or inconsistent liability. As we noted above, only Challenge and GNCC have any interest in the lease; thus GNCC's liability can extend only to Challenge and in any case will be finally resolved in this suit. *Cf. Haas, supra* (judgment in favor of Haas without Glueck as a party could leave bank open to double liability should Glueck later win a separate suit against the bank). The only other possible prejudice to GNCC would arise if the corporation claimed indemnity from Lowell Kramer for all or part of its liability. Because, as explained above, Kramer would not be legally bound by a judgment in this case, GNCC could theoretically lose a later suit for indemnity against Kramer. GNCC, however, may protect itself against this possibility by impleading Lowell Kramer under Rule 14.[5] Consequently, GNCC also suffers no prejudice by the absence of Lowell Kramer. *See Smith v. State Farm Fire & Casualty Co.*, 633 F.2d 401, 405 (5th Cir. 1980).

Because Lowell Kramer does not fit any of the Rule 19(a) tests for persons who should be joined if feasible, he *a fortiori* is not an indispensable party under Rule 19. Accordingly, we reverse the district court's dismissal order.

REVERSED.

5. Such joinder would come under the ancillary jurisdiction of the court, so that the case could go forward despite lack of complete diversity. *E.g., Revere Copper & Brass, Inc. v. Aetna Casualty & Surety Co.*, 426 F.2d 709, 715 (5th Cir. 1970). The plaintiff, however, may not assert any claims against the third-party defendant which do not have an independent jurisdictional basis. *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 98 S.Ct. 2396, 57 L.Ed.2d 274 (1978).

David R. WILLIAMS, Plaintiff-Appellant,

v.

EASTSIDE MENTAL HEALTH CENTER, INC., a corporation, Defendant-Appellee.

No. 81-7284.

United States Court of Appeals, Eleventh Circuit.

March 5, 1982.

Former employee of mental health institution brought action against employer to recover an award of back pay allegedly owed under the minimum wage provisions of the Fair Labor Standards Act. The United States District Court for the Northern District of Alabama, J. Foy Guin, Jr., J., 509 F.Supp. 579 entered judgment in favor of former employer and former employee appealed. The Court of Appeals, Tuttle, Circuit Judge, held that: (1) not-for-profit mental health institution created by a statutory mental health authority was not a state or political subdivision and thus not exempt from the Fair Labor Standards Act on that basis, and (2) even if state had chosen to operate the institution as a state agency, the institution was not performing an integral function of the state and it thus would not be exempt from the Act.

Reversed.

James C. Hill, Circuit Judge, filed a special concurring opinion.

1. States ⇐4.16

In determining whether a state sovereignty has been unduly and unconstitutionally impaired by federal regulations, court

should look to the nature of the entity being regulated, the extent of control which the state maintains over the activities and administration of the entity in question, the function of the entity being regulated, and the nature of the federal regulation involved.

2. Labor Relations ⇐1248

In determining whether the Fair Labor Standards Act may constitutionally be applied to the activities of governmental entity, principles established in NLRB cases involving the issue of whether a particular entity is a political subdivision and thus exempt from the provisions of the National Labor Relations Act are applicable. National Labor Relations Act, § 2(2) as amended 29 U.S.C.A. § 152(2); Fair Labor Standards Act of 1938, § 6, 29 U.S.C.A. § 206.

3. Labor Relations ⇐1249

Not-for-profit mental health institution created by a statutory health authority was not a state or political subdivision and thus not exempt from the Fair Labor Standards Act because, although it was subject to substantial state regulation, it was analogous to a normal nonprofit institution in its basic corporate structure. Fair Labor Standards Act of 1938, § 6, 29 U.S.C.A. § 206.

4. Labor Relations ⇐1249

Even if state had chosen to operate not-for-profit mental health institution as a state agency, that institution was not performing an integral function of the state and thus would not be exempt from the Fair Labor Standards Act. Fair Labor Standards Act of 1938, § 6, 29 U.S.C.A. § 206.

5. Labor Relations ⇐1248

The type of integral state functions which are exempt from Fair Labor Standards Act are those which a state performs for or in relation to the society at large or the state as a whole. Fair Labor Standards Act of 1938, § 6, 29 U.S.C.A. § 206.

Reeves & Still, Edward Still, Birmingham, Ala., for plaintiff-appellant.

Beate Bloch, Associate Sol., Gregory O'Duden, Atty., U. S. Dept. of Labor, Div. of Fair Labor Standards, Washington, D. C., for Secretary of Labor amicus curiae.

Frank O. Hanson, Jr., Birmingham, Ala., for defendant-appellee.

J. Fairley McDonald, III, Asst. Atty. Gen., Ala. Dept. of Mental Health, Montgomery, Ala., for Ala. Dept. of Mental Health amicus curiae.

Before TUTTLE, HILL and JOHNSON, Circuit Judges.

TUTTLE, Circuit Judge:

This appeal involves a suit brought by the plaintiff-appellant against his employer for an award of back pay allegedly owed pursuant to the minimum wage provisions of the Fair Labor Standards Act [FLSA], 29 U.S.C.A. § 206 (1978). The district court, 509 F.Supp. 579, held that under the principles set out in *National League of Cities v. Usery*, 426 U.S. 833, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976), the defendant-appellee was exempt from the FLSA's minimum wage provisions. For the reasons that follow, we reverse.

I.

The plaintiff David R. Williams was an employee at the Eastside Mental Health Center [Eastside] from February, 1977 until May, 1979. Williams worked in Eastside's Transitional Home Program. This program operates as a type of halfway house, providing psychological rehabilitation services for individuals recently released from state mental hospitals or persons who might otherwise be heading for commitment to a state mental hospital. Eastside hired Williams as a live-in home manager. He was required to work in 96-hour shifts, residing at the home for four days, followed by four days off. Eastside paid Williams a fixed salary, and considered him to be on duty 24 hours per day for the four working days. In fact he was required to be at the home during the four working days only from 5 p. m. until 8 a. m. the following morning.

During the day he was allowed to leave the home if he was not needed. As a home manager Williams' primary function was to oversee and assist the training of residents in basic socialization skills and some routine daily activities.

Sections 206 and 207 of the FLSA require all employers subject to the Act to pay employees a certain minimum wage for the first 40 hours worked in a given week, and one and one-half times the regular wage for any time worked over the 40-hour base. *See* 29 U.S.C.A. §§ 206, 207 (1978). There is some dispute in the record from the court below regarding the number of hours Williams worked during his employment at Eastside. Assuming the facts as alleged by the plaintiff, the losing party in the district court's summary judgment order, the salary Williams received during his entire employment at Eastside was about $27,000 short of the minimum required under the FLSA.

II.

We must begin by describing the development and character of the defendant-appellee in this case, the Eastside Mental Health Center.[1] The state of Alabama first began treating mental patients in its state hospitals in 1861. Up through the 1960's Alabama provided comprehensive mental health services in state institutions such as Bryce Hospital, Searcy Hospital, and Partlow State School. In addition the state helped fund some smaller community mental health centers.

In 1965 the State Department of Public Health completed a two-year, federally financed study to plan for statewide provision of mental health services. This study recommended the establishment of a network of smaller, but comprehensive mental health centers throughout the state. Subsequently the state passed legislation creating the Department of Mental Health [the Department], *see* Ala.Code § 22-50-1 (1977), and enacted specific legislation to govern the creation and operation of regional authorities to administer a network of community mental health centers. *See* Ala.Code § 22-51-1 (1977). All boards and corporations established pursuant to the provisions of this Act are statutorily designated as public corporations. Ala.Code § 22-51-2 (1977). The Department then divided the state into mental health regions, and established mental health authorities under section 22-51-2 to organize and administer the provision of services for each region.

In 1969 the Jefferson-Blount-St. Clair Mental Health Authority [hereinafter "the Authority" or "the Jefferson Authority"] was incorporated as a public corporation under section 22-51-2 as the Authority for coordinating mental health services in the three named counties. The Authority divided its region into four catchment areas each with a population of roughly 185,000 persons, and determined that adequate services could be provided if there were established one comprehensive mental health center in each catchment area. Three such centers were in fact created, one of which was Eastside Mental Health Center, the defendant-appellee in this case. The other two were the Western Mental Health Center and the University Mental Health Center. These latter centers were established as public corporations under section 22-51-2.

Eastside opened its doors as a community mental health center on July 15, 1974. It operated out of a building purchased with state, county and city funds. Unlike its counterpart centers operating within the three-county region, Eastside was initially opened as an unincorporated service unit for the Jefferson Authority wholly owned and operated by the Authority. The Western and University Centers subsequently lodged a complaint that there was a conflict of interest in the Authority operating a center that was competing for funds with

1. For reasons that are made clear below, see pp. 676-678 *infra*, the issue of state sovereignty upon which the case turns requires a consideration of the nature of the entity claiming sovereignty, as well as the nature of its chief functions.

the other two centers.[2] In response to this complaint, the Authority then incorporated Eastside as a separate, non-profit entity under the Alabama non-profit statute. *See* Ala.Code § 10-3-1 (1977).[3]

As a non-profit corporation, Eastside is structured similarly to most private, non-profit institutions. Eastside has its own articles of incorporation and set of by-laws. These govern the general structure and management of the center, including appointment of its administrative board of directors. This board is responsible for seeing that adequate funds, staff and equipment are provided for the Center. The board also sets all major policies of the Center. Finally the board selects, hires, and fires the administrative staff of the Center.

Under the by-laws there are 14 separate agencies responsible for appointing the 18 members of Eastside's board of directors. Four directors are appointed by the Jefferson Authority; the other fourteen directors are appointed by a mix of state or public agencies and private, non-profit organizations.[4] The parties in the present controversy stipulated in the district court that 10 of the appointing organizations should be considered as state or public entities and six as private, non-profit groups. The status of the remaining two was to be determined by the district court. The by-laws also provide that the Jefferson Authority must ratify the appointment of all board members, including those appointed by private organizations. There is no indication in the by-laws that any of the appointing agencies or the Jefferson Authority has the power to remove a board member once appointed.

So far as disclosed by the record, all board members are to be motivated solely by what they believe is best for the Center and its clientele. They are not expected to represent or vote for policies favoring their appointing agency. Thus as long as state regulations are not violated, the administration of the institution is not subject to the legal dictates of any "official" state agency or officer.

Eastside's relationship to the Jefferson Authority and to the State of Alabama in general is controlled partially by provisions in the by-laws and articles of incorporation, partially by state licensing standards, and partially by the contracts it maintains with various state agencies for the provision of mental health services to its catchment area. In addition, federal regulations prescribe certain of the Center's activities, as Eastside receives about 38 percent of its funds from the federal government.

All mental health centers in Alabama, including Eastside, are subject to considerable state monitoring. Eastside must comply with the state's Standards for Community Mental Health Centers or be subject to revocation of its certification. Changes in the Center's articles of incorporation or by-laws must be approved by the Jefferson

2. Although the record is not clear on this point, it appears that the Jefferson Authority had some control over the dispersal of state funds to the three mental health centers in its region.

3. The court below determined that Eastside could not be established as a public corporation under section 22-51-2 because the community mental health centers statute allows only one public facility per county, and another center had already filed for incorporation "in the three-county area of Jefferson, Blount and St. Clair." *See* Mem. Op. filed March 24, 1981. Admittedly it is not clear how the statutory maximum had been reached if only one center had applied in a three-county area. Apparently each of the three entities, the Authority, and Western and University Mental Health Centers, had filled the statutory quota for each of the three counties.

4. The Health Departments of Jefferson, Blount, and St. Clair counties appoint one member of the board in rotation; similarly, the three counties' Departments of Pensions and Security, and the three counties' Associations for Retarded Citizens, each appoints one member in rotation. In addition the three County Commissions each appoints a member, the three appointees serving concurrently. Finally, the following agencies and organizations each appoints one board member: the Birmingham City Council, the Council for Exceptional Children, the Baptist Medical Center, the Hill Crest Foundation, Inc., the East End Memorial Hospital Association, the Mental Health Association of Jefferson County, the Occupational Rehabilitation Center, and the Birmingham Regional Health Systems Agency.

Authority. The Authority must also approve the Center's budget. Eastside is subject to auditing by both state and federal officials, and state examiners conduct frequent site visits to inspect its operations. Eastside also participates in Alabama's State Retirement System, and is exempt from state sales taxes. Finally, upon dissolution of the corporation, the articles of incorporation provide that all of Eastside's assets are to vest in the Jefferson Authority.

Eastside's general purpose is to provide comprehensive mental health and mental retardation services to a prescribed geographic area. The Center provides both inpatient and outpatient care, emergency care, consultation and educational services, as well as specialized services for children, elderly persons, and persons with alcohol or drug-related problems. In addition the Center runs the Transitional Home Program for people going to or about to return from a state hospital. The Center assists the local probate court in screening persons for state institutions. Finally, the Center provides some services for adult mentally retarded individuals. Some of these programs involve psychotherapeutic counseling, as well as prescribed medicine treatments. Eastside provides each of the services through contracts with schools, hospitals, nursing homes, or some other state facility or agency.

At present there are 25 community mental health centers in the State of Alabama. Twenty of these Centers are public corporations under Ala.Code § 22-51-2; two are operated directly by local governmental bodies. The remaining three are section 10-3-1 nonprofit corporations such as Eastside Mental Health Center.

III.

The defendant-appellee Eastside Mental Health Center claims exemption from the minimum wage provisions of the FLSA under the principles set out in the case of *National League of Cities v. Usery*, 426 U.S. 833, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976). Appellee asserts that the *Usery* case requires FLSA exemption for all state or public agencies performing traditional government functions. The appellee argues that because Eastside is so thoroughly allied with the State of Alabama, and furthermore because it is engaged in an ordinarily governmental function, namely, the provision of mental health services to the public, the *Usery* test has been satisfied and exemption is appropriate. We disagree with appellee's understanding of *Usery* and its corollary principles, and for the reasons that follow we hold that Eastside should not be exempt from the FLSA.

The overriding constitutional concern faced by the court in *Usery*, and thus by this Court in the present case, is the problem of affixing a clear and workable boundary between the two sovereignties in our federal system. The problem is amplified as always by the necessity that the result adhere to the facts before us while at the same time serve as a clear guide for future applications. And most importantly we are faced with the task of reaching a determination that is consonant with constitutional precedents.

The existing precedents make clear that the notion of state sovereignty is as important to a truly federal system of government as it is hard to define, let alone pigeonhole into any one constitutional provision. At least since the case of *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 410, 4 L.Ed. 579 (1819), the Court has recognized that state and federal powers must be preserved in a delicate equipoise in a federal system such as we have. The need for this balancing of state and federal power "rests on the conviction that each government, in order that it may administer its affairs within its own sphere, must be left free from undue interference by the other." *Metcalf & Eddy v. Mitchell*, 269 U.S. 514, 523, 46 S.Ct. 172, 174, 70 L.Ed. 384 (1926) (citing *McCulloch v. Maryland*, 17 U.S. (4 Wheat) 316, 4 L.Ed. 579 (1819)). There exist certain constitutional provisions that emphatically, though perhaps ambiguously, address the necessity of protecting the sovereignty and power of the individual state

governments. *See Hans v. Louisiana*, 134 U.S. 1, 21, 10 S.Ct. 504, 509, 33 L.Ed. 842 (1890) (Eleventh Amendment protects states against unconsented suits even if they arise under the Federal Constitution or laws of the United States); *Hodel v. Virginia Surface Min. & Rec. Ass'n*, 452 U.S. 264, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981) (Tenth Amendment contains limits on federal power to regulate states as states).[5]

Resort to specific constitutional provisions, or even individual case precedents, is nevertheless inadequate to a determination of the proper balance to be struck between the state and federal sovereignties. "Experience has shown that there is no formula by which the line may be plotted with precision in advance." *Metcalf & Eddy v. Mitchell*, 269 U.S. at 523, 46 S.Ct. at 174 (1926). Indeed such an approach is apparently inappropriate. In the most recent judicial attempt to determine the appropriate state-federal relationship, the Court in the *Usery* case relied upon a wealth of case precedents involving issues ranging from intergovernmental tax immunity, to federal regulation of commerce, to state control over the location of its state capitol. *See Metcalf & Eddy v. Mitchell*, 269 U.S. 514, 46 S.Ct. 172, 70 L.Ed. 384 (1926); *United States v. California*, 297 U.S. 175, 56 S.Ct. 421, 80 L.Ed. 567 (1936); *United States v. Darby*, 312 U.S. 100, 61 S.Ct. 451, 85 L.Ed. 609 (1941); *Coyle v. Oklahoma*, 221 U.S. 559, 31 S.Ct. 688, 55 L.Ed. 853 (1911). In line with the *Usery* precedent, we thus feel it appropriate, indeed constitutionally incumbent upon us, to look to a range of case sources interpreting a variety of constitutional provisions and penumbras in determining how to strike the proper balance in the present case.

[2] In determining whether a state's sovereignty has been unduly and unconstitutionally impaired by federal regulation, the courts have in the past considered several factors. First, they have looked to the nature of the entity being regulated. In *Usery* the Court acknowledged that attributes of state sovereignty emanating from the federal structure of our government put the states on a different footing from purely private entities with respect to federal regulation of their activities. Citing *Coyle v. Oklahoma*, 221 U.S. 559, 31 S.Ct. 688, 55 L.Ed. 853 (1911), the Court in *Usery* declared that even some affirmative grants of constitutional power to the federal government must be limited when national regulations directly affect a state or its political subdivisions in carrying out normal governmental activities. *National League of Cities v. Usery*, 426 U.S. at 845, 855–56 n.20, 96 S.Ct. at 2471, 2475–76 n.20 (1976).

Of course the determination that a regulation affects a state or its political subdivision is not always a simple one to make. There exist many public or quasi-public agencies the status of which, for purposes of determining a state sovereignty question,

5. The ambiguity of Tenth Amendment case law is merely coextensive with the ambiguity of its language. *Compare United States v. Darby*, 312 U.S. 100, 61 S.Ct. 451, 85 L.Ed. 609 (1941) (Tenth Amendment states but a truism), *with Fry v. United States*, 421 U.S. 542, 547 n.7, 95 S.Ct. 1792, 1795 n.7, 44 L.Ed.2d 363 (1975) (Tenth Amendment declares policy that Congress may not exercise power so as to impair the states' integrity or their ability to function effectively in a federal system), *National League of Cities v. Usery*, 426 U.S. 833, 842, 96 S.Ct. 2465, 2470, 49 L.Ed.2d 245 (1976) (relying on Tenth Amendment case precedents to strike down FLSA as applied to state and municipal governments), *and Hodel v. Virginia Surface Min. & Rec. Ass'n*, 452 U.S. 264, 289, 101 S.Ct. 2352, 2366, 69 L.Ed.2d 1 (1981) (citing Tenth Amendment as embodying certain limits on federal Commerce Clause regulations).

Even Eleventh Amendment jurisprudence suffers from substantial confusion and complexity. For example, the principle of state immunity from unconsented suits has been qualified or at least restricted by a countervailing principle distinguishing suits against a state from suits against an individual officer of the state. The latter type of suits, at least in some circumstances, is not barred by the Eleventh Amendment. *Compare Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908) (establishing equitable cause of action against state officers in their individual capacities notwithstanding Eleventh Amendment) *with Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974) (qualifying Ex Parte Young in situations where remedy requires payment of state funds as compensation for past damages).

is not easy to characterize. Frequently the courts have faced similar classification problems when deciding cases in the areas of state action doctrine, *see, e.g., Evans v. Abney*, 396 U.S. 435, 90 S.Ct. 628, 24 L.Ed.2d 634 (1970), § 1983 litigation, *see, e.g., Adickes v. Kress & Co.*, 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970), and Eleventh Amendment sovereign immunity questions, *see, e.g., Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974).[6]

At issue in *Usery* was the constitutionality of the Fair Labor Standards Act when applied to wages paid by state and subordinate political subdivisions to their employees. The Court held that this would seriously impair the right of the state to carry out its normal functions. It was only the payment of wages by *state or subordinate political bodies* that was involved there.[7] The Court in *Hodel v. Virginia Surface Min. & Rec. Assn., supra*, interpreted *Usery* as requiring that, *inter alia*, the federal regulation in question must address the "States as States" in order for there to be an infringement of state sovereignty. *Hodel v. Virginia Surface Min. & Rec. Assn.*, 101 S.Ct. at 2366 (1981).

[2] Beyond that we think the relevant inquiry is the extent of control the states maintain over the activities and administration of the entity in question. Indeed it seems to us appropriate to borrow from principles established by the court in NLRB cases involving the issue of whether a particular entity is a political subdivision and is therefore exempt from the provisions of the National Labor Relations Act, 29 U.S.C.A. § 152(2) (1973). *See NLRB v. Natural Gas Utility Dist.*, 402 U.S. 600, 91 S.Ct. 1746, 29 L.Ed.2d 206 (1971).[8] In *NLRB v. Natural Gas*, the Court in a close case considered relevant whether the entity seeking exemption was administered by individuals responsible to public officials or to the general electorate. *Id.* at 605, 91 S.Ct. at 1749–50. Although these cases turn on the construction of the Labor Relations Act and not on constitutional considerations of state sovereignty, we find them helpful in our inquiry, and until the Court holds otherwise we will adopt this approach.

Second, in deciding cases involving possible federal infringement of state sovereignty, the courts have assessed the function of the entity being regulated. In *Usery* the Court repeatedly emphasized that the FLSA directly affected a function that was traditionally a governmental activity, namely, the structuring of wage and hour policies. *National League of Cities v. Usery*, 426 U.S. at 845–46, 851–52, 96 S.Ct. at 2471–72, 2474 (1976). The Court alternately characterized this function as traditional, essential, fundamental, and integral. *Id.* at 845, 851, 96 S.Ct. at 2471, 2474. The Court listed several other functions that could be so characterized, including fire prevention, police protection, sanitation, public health, and parks and recreation. *Id.* at 851, 96 S.Ct. at 2474. Moreover, in overruling *Maryland v. Wirtz*, 392 U.S. 183, 88 S.Ct. 2017, 20 L.Ed.2d 1020 (1968), the Court

6. The Court in neither the *Usery* nor the *Hodel* case had to face this issue, as the nature of the regulated entities was not disputed in either case. In *Usery* many states were party to the suit, and the issue was whether the FLSA as applied directly to the states was within Congress' powers. *National League of Cities v. Usery*, 426 U.S. at 854, 96 S.Ct. at 2475 (1976). Similarly in *Hodel* the states were parties, and the Court did not question their status as states, but rather doubted that the states were being directly regulated by the federal government. *Hodel v. Virginia Surface Min. & Rec. Assn.*, 101 S.Ct. at 2366 (1981).

7. That subordinate bodies are included in the *Usery* exemption is a principle which derives from explicit language in the opinion, as well as by implication, at least insofar as the term relates to "such areas as fire protection, police protection, sanitation, public health, and parks and recreation." *National League of Cities, supra*, 426 U.S. at 851, 96 S.Ct. at 2474. The opinion specifically included "political subdivisions" as entities for which classification of sovereignties is appropriate. *Id.* at 855, n.20, 96 S.Ct. at 2476, n.20. Additionally, the Court mentioned state schools, hospitals, and other "subordinate arms of state government" as properly labelled sovereigns. *Id.*

8. We base our analogy to the labor cases on the simple fact that the precise term "political subdivision" is used in both the *Usery* case and the NLRB cases.

implicitly included the operation of public schools and hospitals as traditional functions of the states. 426 U.S. at 855, 96 S.Ct. at 2476. In *Hodel*, the Court listed the traditional nature of the function involved as the second condition precedent to a finding that a state's sovereignty has been constitutionally infringed by federal regulation. *Hodel v. Virginia Surface Min. & Rec. Ass'n*, 101 S.Ct. at 2366 (1981).

The third and final indicium of state sovereignty frequently considered by the courts is the nature of the federal regulation involved. The Court in *Usery* discussed at length the effects on state government operations that would result from application of the FLSA. The Court focused on the significant costs, both in terms of money and in terms of necessary restructuring of employment operations, that states would have to bear if forced to comply with the FLSA. *National League of Cities v. Usery*, 426 U.S. at 846–51, 96 S.Ct. at 2471–74 (1976). Similarly in *Fry v. United States*, the Court cited the unintrusive nature of the Economic Stabilization Act as a primary reason for upholding its application to state employees. *Fry v. United States*, 421 U.S. at 548, 95 S.Ct. at 1796 (1975). Finally, in the intergovernment tax immunity cases, the Court has been guided by an assessment of the interference with state government functioning. *See Helvering v. Gerhardt*, 304 U.S. 405 at 419–20, 58 S.Ct. 969 at 974–75, 82 L.Ed. 1427 (1938).

IV.

Before applying the foregoing principles to the facts of the case before us, we may well benefit from a quick study of Immanuel Kant's On the Old Saw: That May be Right in Theory but it Won't Work in Practice (E. B. Ashton trans. 1974). Precise legal guidelines easily applicable to particular fact situations do not exist in cases such as this involving broad constitutional concepts such as that of sovereignty. As will become clear shortly, our job is compounded in this case by the borderline nature of the facts before us. Nevertheless we are convinced that upon a consideration of all the factors, on balance it seems clear that Eastside is not and should not be treated as a sovereign entity in our federal system.

[3] The determinative fact in this case is simply that the entity with which we are dealing is not a state or a political subdivision of a state as defined by the Court in *Usery* and in other cases involving similar issues. Eastside Mental Health Center is not the State of Alabama, nor is it an agency or department of the State of Alabama. Indeed no party contends otherwise.

Moreover as it currently exists under Alabama state law, Eastside is not a public agency or corporation. As was noted earlier, the Center is incorporated as a non-profit institution under section 10–3–1, rather than as a public corporation under section 22–51–2 of the Alabama Code. The Center is in fact distinct from many of the other community mental health centers operating in the State of Alabama in precisely this regard. For whatever reason, Alabama did not elect to operate Eastside as a state institution with state employees; instead it set up a not for profit corporation with a separate, independent board of directors to administer it. Whatever may have been the state's reason for doing it this way, it must live with the consequences. It cannot claim an immunity based on a condition which it itself sought to avoid.

Here, then, lies the greatest difference between *Usery* and the facts of this case. Here we are concerned with application of the FLSA wages paid by a not for profit corporation which operates by contract with a public corporation of the State of Alabama and by contract with other entities. There is thus no impact on the state in its relation with its own employees. Thus, the FLSA does not affect the "States as States."

For such reasons as were satisfactory to it, the State of Alabama elected not to employ any persons to operate institutions performing such services as are performed by Eastside. By making this election it removed the agency from the protection of the Tenth Amendment as delineated in

Usery and *Hodel*. Instead, certain individuals organized a corporation under the general legislative authorization used by other citizens to organize all educational, religious and other eleemosynary institutions, which thereafter contracted with Jefferson, itself an independent corporation, to carry out these functions.

For purposes of the sovereignty issue before us, Eastside is thus best characterized as a private, non-profit corporation, licensed in the State of Alabama to perform the services of a community mental health center, and carrying out such services by means of ordinary contracts with various state and local agencies and institutions. It is thus analogous to a normal nonprofit institution in its basic corporate structure, while at the same time analogous to a private business doing contracting work for the state in its basic business operations.

Although the Center is subject to substantial state regulation, this fact does not change our characterization. With respect to the state licensing regulations, we find it difficult to distinguish Eastside from a variety of private corporations and professional individuals that are subject to similar state control pursuant to licensing statutes. Such controls are normal means by which states effectuate public policies through the regulation of private entities. These licensing controls do not, however, somehow magically transform the fundamental nature of the licensed entity into a public agency or official.

The additional control exerted by the Jefferson Authority over Eastside's budget, board of directors, and residual assets upon dissolution, are not so significant as to justify characterizing the Center as an arm of the state. With respect to the board of directors, not only does the State of Alabama not have control over the appointment of nearly one-half of the board membership, in addition it has no power whatsoever to dismiss any of the board appointments. Members of the board do not serve as representatives of the state or any of its agencies. For this latter reason it is clear that no member of the administrative board is directly responsible to a public official or to the general electorate. Under the test set out in *NLRB v. Natural Gas Utility Dist.*, 402 U.S. 600, 91 S.Ct. 1746, 29 L.Ed.2d 206 (1971), this factor indicates that Eastside is not a political subdivision of the State of Alabama. The other controls, while perhaps uncommon in the context of normal private corporations contracting with the states, must be viewed simply as stringent licensing standards necessary to the effective implementation of the state's police power in the mental health arena.

If the State of Alabama chooses to foster the provision of mental health services by allowing Eastside and similar mental health centers certain fringe benefits, including sales tax exemption and participation in the State Retirement System, this does not mean that Eastside should be viewed as an arm of the state. Alabama either provides or legally may provide similar benefits to entities that are declaredly not public agencies.[9]

[4] Our conclusion that the Eastside Mental Health Center is not a state agency or a political subdivision of the state is sufficient under the *Hodel* test for us to hold that it may not be exempt from the FLSA. Just as in *Hodel*, we need not reach the other factors in the sovereignty test if we initially find, as we do here, that the entity with which we are dealing is not a state. *See Hodel v. Virginia Surface Min. & Rec. Ass'n*, 101 S.Ct. at 2369 (1981). For this reason it is not necessary for us to consider the extent of the FLSA's effect on Eastside's function of granting mental health services, nor need we decide whether such function is traditional or essential. In

9. The State of Alabama does in fact grant sales tax exemption to many other private businesses. *See* Ala.Code § 40 23-4 (1975). In addition, membership in the State Retirement System is not limited to state agencies, as it is also available to employees of a "public or quasi-public organization." *See* Ala.Code § 36-27-6 (1975). Assuming Eastside is considered a quasi-public organization, it may participate in the retirement system and yet still not be a state or public agency within the meaning of the term as used in the *Usery* case.

view of the significance of the term "integral" used in the *Usery* opinion, however, we think it important to briefly discuss the application of this concept to the facts of this case. In short we believe that even if the State of Alabama had chosen to operate Eastside as a state agency, the Center is not performing an "integral" function and thus the *Usery* exemption would not apply.

In *Usery* the Court used the term "integral" to define the nature of a state operation that is protected by considerations of sovereignty. "We hold that insofar as the challenged amendments [of the FLSA] operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress by Art. 1, § 8, cl. 3." 426 U.S. at 852, 96 S.Ct. at 2474 (1976) (footnotes omitted).[10]

[5] Dictionary definitions indicate that the adjective "integral" signifies something that is a part of or is in itself a whole. *See Webster's New International Dictionary* 1290 (1936). We think an integral function is in this context one that a state performs for or in relation to the society at large, the state as a whole. One such function is the state's taxing power; another is the state's function of enacting laws for the public good through its legislative body. For purposes of determining whether a particular function is "integral" in the context of sovereignty decisions such as the one before us, we think it therefore helpful to look at whether the federal regulation in question affects a state function in a way that reverberates throughout the society as a whole.[11] For example, any interference with a state's provision of police protection to its citizenry, or its ability in general to pass laws in its legislature, clearly affects all people in the state. Such integral functions may be contrasted with those that, while perhaps traditional, are nevertheless not functions which relate to the entire state populace. An example of a non-integral function is a state's enactment of particular regulations addressing specific problems such as water usage, farming, railroads, utilities, etc. Even though such functions may have been traditionally carried out by the state, federal regulation thereof is not prohibited because the functions do not produce significant consequences affecting all persons in the state and thus are not, in our definition of the term, "integral" functions.[12]

With these principles in view, we find that Eastside's function of providing mental health services to the citizens of Alabama is

10. We believe that the term "integral" relates to the nature of the state function to be given sovereign protection. Admittedly the Court in *Usery* appears in the quoted passage to differentiate an "operation" from a "function." It may be said that the phrase "integral operation" refers to the manner in which the state chooses to carry out its traditional function, including the state's structuring of its wage policies for those employees carrying out such functions. Here the term "integral" would refer both to the fact that the setting of wage policies is *crucial* to the state's ability to carry out effectively a particular function, and to the fact that such policies affect the *whole* of the state's operations, in this case, all employees of the state. Under this view, it is of course true that any case such as the one before us involving the application of the FLSA to what is arguably a state entity involves an interference with the state's ability to structure its *integral* operations. In our opinion, however, the term "integral" also applies to the type of governmental function that is to be protected under a concept of state sovereignty.

At least one commentator agrees that the term "integral" is used in *Usery* to modify the type of state function involved. *See* Note, Taking Federalism Seriously: Limiting State Acceptance of National Grants, 90 Yale L.J. 1694, 1708 (1981). *See also, National League of Cities v. Usery*, 426 U.S. at 851, 855, 96 S.Ct. at 2476, (using phrase "integral governmental functions").

11. It bears noting that in this respect a determination of whether a function is integral requires an assessment of the effect of the federal regulation, which is in fact the third factor which the courts have considered in making sovereignty determinations. *See* pp. 678–679 *supra*.

12. Under our test regarding integral functions, the Court in *Hodel* could have easily found that the function of regulating the mining industry, while perhaps traditional, as the state parties argued, was nevertheless nonintegral because the federal interference did not affect the entire state citizenry.

comparitively inexpensive cost for establishing the long term alcoholism rehabilitation program so desperately needed in this state.

Secondly, the program may confront increased operational costs because of an obligation to pay clients at the facility a minimum wage while engaged in what is called "work therapy." The therapeutic design for Nugen's Ranch involved a scheme whereby clients, as part of their daily routine, would be involved in gardening, raising livestock, greenhouse activities, minor renovations on the facility, and the like. The program feels strongly that chronic alcoholics get no benefit from simply being "warehoused" at an institution for a period between six months and two years. Clients must be actively engaged in activities which will increase their health, occupy some of their time, and train them in minimal employment skills that can be helpful with their eventual reintegration into their community. This work therapy, when combined with traditional forms of counseling, should result in a high rate of success in treating chronic alcoholism.

But my analysis of state and federal law indicates that the program may be under an obligation to pay clients at least a minimum wage while engaged in the work therapy. For reasons that are not clear, state regulations pursuant to the Alaska Wage and Hour Act specifically exclude alcoholism and drug treatment programs from provisions which would otherwise enable the program to pay less than a minimum wage to clients. None of the specific exclusions of the Alaska Wage and Hour Act provide exceptions for long-term treatment facilities to pay clients less than a minimum wage. Because Alaska has not specifically identified this area of labor law as an issue of particular state concern, it is likely that federal law, in addition to state law, will require the payment of minimum wages. I have already provided SOADA with a detailed legal analysis of this problem, and am willing to provide you with a copy if you wish.

The impact on the program and the state is significant. Even with clients working only a few hours per day, the yearly cost of the program to pay a minimum wage to clients engaged in work therapy is estimated to be in excess of $230,000 per year. This adds a substantial cost to the operation of the program on a yearly basis.

The solution to this problem may be in a legislative amendment to the Alaska Wage and Hour Act exempting patient workers in residential drug and alcoholism treatment programs from the coverage of the statute, and an amendment to the Uniform Alcoholism Intoxication and Treatment Act

which would permit the payment of a sub-minimum wage to clients who are engaged in work therapy projects. I do not know whether legislation of this nature could be accomplished this session, and we look for your direction on this issue.

All of this is to say that the program needs your continued support on alcoholism monies this session, and assistance in possible legislative solutions to some of the problems already identified. The Ranch has been receiving strong and continued support from residents and organizations in the Mat-Su Valley, and we urge your continued support also.

You are more than welcome to call or write me if you have any questions.

Sincerely,

REESE, RICE & VOLLAND, P.C.

Philip R. Volland

PRV/kkr

cc: Leonard & Henrietta Nugen

The second problem with the current scheme is that it has no provisions for addressing the problem of the Department withholding a decision with respect to a pending grant application. In The Studio Club's situation, the grant for FY '82 had not yet been awarded. Therefore, the program had not entered into a contractual relationship with the agency, and there was no grant to suspend, nor was the pending grant ever denied. All that happened was that SOADA decided to "put on hold" any transactions related to the FY '82 grant application.

Undoubtedly, the program could have pursued remedies in court to secure certain protections during the process of review. But that is an illusory remedy for a non-profit organization that depends entirely on state funding. The program simply had no funds to finance the litigation that would have been necessary to prevent the kind of administrative abuse that the program never expected to happen in the first place.

It would appear to me that regulations could be adopted pursuant to 7 AAC 78.010 et seq. to provide the kind of procedural protections that I have listed above. This would certainly happen if the legislature amended AS 47.37 to mandate the appropriate regulations.

B. The Payment of Wages to Patient Workers

An entirely separate and unique issue to the program is the question of its legal obligation to pay clients a minimum wage for activities performed during "work therapy." As you recall, the scheme of Nugen's Ranch involves client activities in gardening, greenhouse work, housecleaning, and renovation work on the facility.

Although the question seems straightforward, the answer is not. I have enclosed with this letter my legal memorandum to SOADA outlining the results of my research. I encourage you to read it so that you can get a complete understanding of the various issues involved.

Current state and federal law clearly suggests that patient workers be paid a minimum wage. This is understandable in light of the fact that the case law developed from wholesale institutional abuses of clients in mental institutions who were required to perform work of questionable therapeutic value. But viewed from the program's perspective, this obligation makes little sense. First of all, the economic impact on the program is tremendous. Our estimates are that the increased operational costs for Nugen's Ranch for paying minimum wages to 48 clients

for only a few hours of work per day amounts to $230,000 annually. This is without an analysis of fringe, overhead costs, and the possible necessity to add additional clerical help to handle the administrative burden related to the payroll.

But the more important concern is the therapeutic value of the work to clients at the Ranch. It is in this area where the work therapy program planned for the Ranch differs from the activities normally required of patient workers in other institutions.

The program's treatment philosophy starts from the premise that it makes no sense to have clients sit around for two years while going through a long period of sobriety. The health of a chronic alcoholic has often deteriorated, and physical activity is necessary to restore this health. Equally true is the fact that a typical long-term inebriate has become a public pariah who lacks self-esteem, motivation, self-worth, and the most minimal of job skills. Work therapy can enable that individual to regain self-confidence and acquire some skills. And anyone in the treatment field will tell you that an alcoholic who has just recently stopped drinking needs something to occupy the time and energy that was once spent drinking. If nothing else, the work therapy helps keep the alcoholic from drinking by keeping him busy.

Unfortunately, the law does not address the different therapeutic values that work therapy holds for recovering alcoholics and drug addicts compared to patient workers in other kinds of institutions. The law simply applies an "economic reality test" as the rubric for when clients are to be paid the minimum wage. By definition, however, almost any form of work therapy will arguably meet the economic reality test and therefore require the payment of wages.

The options open to the program are not especially attractive. If the work therapy concept is scrapped because of the economic cost to the program, the Ranch will find itself stripped of a treatment technique which is critical to the success of the program. If the Ranch is compelled to divert substantial operational funds each year for the payment of client wages, other equally important aspects of the program - renovation, staff salaries, administration, etc. - will suffer.

The legal authority for the program to recoup wages paid to clients by charging them a higher fee for their cost of care amounts to a scam that has no practical or therpeutic value. The program would simply be "paying" clients with one hand, and taking it back with the other. This kind of charade to meet the requirements of the law would only serve to generate client resentment toward the program.

The program is not suggesting that the clients be paid no wages at all. Rather, it hopes to pay the clients some form of compensation so that each client can have his or her own money to use for the purchase of incidentals and gifts during treatment, and also be able to build up a reserve fund to be used at the time of release from treatment. All the program is asking for is relief from the obligation to pay each client $3.85 per hour.

I believe that this can be accomplished by an amendment to the Alaska Wage and Hour Act which would exempt drug and alcoholism centers from the obligation to pay a minimum wage to patient workers. I also believe it would be appropriate to amend the Uniform Alcoholism and Intoxication Treatment Act by adding a new section which would authorize the Department to fund programs for work therapy projects, including monies to pay a certain minimal compensation to clients (less than $1.00 per hour I would think). HL 194 currently contemplates an analogous institutional employment scheme for state prisoners and it might be possible to pay residents in long-term treatment centers at the same rate.

If these amendments are considered, it would be essential to include language stating that the legislation serves an important and exclusive state function (the treatment of alcoholism through funding to private, non-profit programs). This language, I believe, would protect the program from the application of the Fair Labor Standards Act by virtue of the holding in National League v. Usury.

Unfortunately, this entire problem regarding the payment of wages to clients just recently surfaced. I realize the practical problems of seeking these amendments this late in the legislative session. Please let me know if you see any way of obtaining the relief before the session ends.

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MEMORANDUM

TO: Governor's Review Board on Alcoholism

FROM: Philip R. Volland, Attorney for
Alaska Alcoholism Rehabilitation Services, Inc.

DATE: May 25, 1982

RE: Payment of Wages to Clients
Engaged in Work Therapy at Nugen's Ranch

In the program's FY '83 grant application, and SOADA's review of the funding request, reference has been made to the allocation of funds for clients engaged in work therapy at Nugen's Ranch. This memorandum has been prepared in order to assist you in evaluating the projected costs of work therapy at the facility.

As you are aware, an essential component of the treatment philosophy at Nugen's Ranch is to have clients there engage in a form of "work therapy." The work therapy is designed to provide clients with basic learning, life, and employment skills; to enhance the clients' sense of belonging at the facility; and to prevent the "warehousing" of clients over a long period of time. Work therapy projects for each client will be tailored to the client's individual treatment plan. Originally, the work therapy project was designed to involve clients in the final renovation of the facility (painting, laying carpet, etc.), as well as to involve them in gardening activities, the raising of livestock, etc.

The work therapy plan that was proposed for the Ranch raised a legal question of whether or not clients should be paid for their work. After a review of this question by my office, and the office of the Attorney General, it was concluded that the Alaska Wage and Hour Act (AS 23.10.050-150) and the the Fair Labor Standards Act, (29 USC 201 et seq.), required that clients be paid the statutory minimum wage ($3.85) per hour) for certain work (e.g., renovations), but not for other work (such as general housekeeping). Although I disagreed with the Assistant Attorney General's conclusion about paying clients for "farming" activities, it was clear that the program would have to budget monies for the payment of clients engaged in work therapy, particularly if the work resulted in any consequential economic benefit to the

program. Without discussing the legal aspects of this particular problem in detail, I will simply note that the issue presents some far-reaching implications for residential drug and alcoholism treatment programs which involve clients in work therapy. I have at my disposal and will provide to any interested Review Board members copies of the legal opinions prepared on the issue by myself and by Linda Scocsia, Assistant Attorney General.

The uncertainty surrounding this issue presented a unique planning problem for the program this year. Because of the original plan to engage clients in a variety of work therapy, including renovation of the facility, and because the legal questions about payment were yet unresolved, the program submitted a grant request sufficient to cover the payment of wages for all anticipated work therapy. At the same time, the program pursued the alternative of complete renovation of the facility by a general contractor and the elimination of renovation work from the client work therapy plan. Both alternatives had to be pursued while awaiting a response from the Attorney General's office. As a consequence, the FY '83 grant request includes approximately $235,000 for client wages even though the renovation contract for the facility calls for the completion of all finish work in the main building. Nonetheless, a sufficient amount of grant funds need to be allocated to the program to cover those work therapy activities which do require the payment of wages.

The program hopes to redesign its work therapy program so as to involve clients in activities which can provide the benefits of personal labor, but which will not require the payment of the statutory minimum wage. For instance, it is anticipated that clients could raise crops and bedding plants in a greenhouse for sale to the community, not be paid an hourly wage for this work, but yet retain the proceeds from sale in a special fund reserved exclusively for the benefit of clients. The program also intends to pursue legislative amendments to the Alaska Wage and Hour Act next year in order to provide a clarification of the current state of the law and enable drug and alcohol programs to fully fund work therapy projects.

None of this is to suggest that the program is opposed to paying clients a wage for the work they perform during work therapy. Rather, the payment of wages to clients has its own inherent therapeutic value -- it assists in the enhancement of personal pride and dignity and permits clients to manage their own finances. But the payment of a statutory minimum wage for all work therapy presents a significant economic cost to the program that threatens the development of successful work therapy projects unless adequate funds are provided. Hopefully, the problem can be resolved during the coming year.

Your evaluation of the program's request for grant funds to cover client wages should be made in recognition of the fact that this issue is yet unresolved, and that the work therapy program employed at Nugen's Ranch may not incur the expenses originally estimated by the grant request.

STATE OF ALASKA
FISCAL NOTE

Revision Date Original, 1983

I. REQUEST

CS for House
Bill/Resolution No.: Bill 182 (HESS)
Title: "...residential drug abuse..."
Sponsor: Representative Barnes
Requestor: Health, Education, and Social Services

II. FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Worker Protection
BRU, Program of Subprogram(s) Affected: Labor Standards and Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		65.0	68.9	73.0	77.4	82.0
200 TRAVEL		12.4	13.1	13.9	14.7	15.6
300 CONTRACTUAL		23.2	24.6	26.1	27.7	29.4
400 COMMODITIES		2.5	2.7	2.9	3.1	3.3
500 EQUIPMENT		4.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		107.1	109.3	115.9	122.9	130.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		107.1	109.3	115.9	122.9	130.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: Not available.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
Division: Labor Standards and Safety Date: April 26, 1983

Approved by Commissioner: Jim Robison Date: April 26, 1983
Department: Labor

LEG:A:12

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

Detail Bill Analysis House Bill 182

Under this bill a large segment of the work force currently entitled to full coverage for minimum wage would no longer be covered, and as a result the Department of Labors' work load to ensure workers are not abused and unfair trade practices do not occur would be increased.

The Department will require one Wage and Hour Investigator located in Anchorage to handle the additional workload. In addition, a Clerk Typist II will be necessary to lend the investigator support and free the position to make field calls.

Assumptions:

Effective date of July 1, 1983
6% per annum inflation rate
Equipment cost in FY 1984 is a one-time item

Potential for 22 separate programs that will require monitoring (13 currently operating with an average monthly capacity of 350 clients).

LEG:A:12

1.	POSITION TITLE Wage and Hour Investigator I			RANGE/STEP 16A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV. DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER HB 182	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.

3.	CONTINUATION LEVEL		ADDITION	XX

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	30,886	
6.	Benefits	4,902	
7.	Supplemental Benefits	1,893	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES 01		40,561
10.	Travel 02		12,400
11.	Contractual 03		12,460
12.	Commodities 04		1,000
13.	Equipment 05		1,500
14.	Other		
15.	TOTAL COST		67,921

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.	100	General Funds 1004	67,921
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

This position will determine compliance with work therapy wage requirements; perform onsite inspection of facilitlies; interview patients and staff; re-review case records for determinations and personnel actions for wage rates.

The incumbent will be required to travel extensively throughout the State, therefore, $12,400 has been requested for in-state travel.

Contractual services includes $4,068 for indirect support services, $3,400 in rent, and $5,000 for basic operating expenses.

The equipment line items includes $1,500 to purchase basic office equipment for this position.

13 REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage and Hour

Page 1 of 2

Revised Date

FY 84

1.	POSITION TITLE: Clerk Typist II			RANGE/STEP: 7A	BARG. UNIT: GGU	FORM 12 PAGE/LINE	GOV.	APPROV. / DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER: HB 182	PCN NUMBER	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT	LEG.

3.	CONTINUATION LEVEL		ADDITION: XX	
4.	TYPE OF EXPENDITURE			AMOUNT
	1		2	3
	PERSONAL SERVICES			
5.	Salary		17,657	
6.	Benefits		2,802	
7.	Supplemental Benefits		1,082	
8.	Fixed Benefits		2,880	
9.	TOTAL PERSONAL SERVICES	01		24,421
10.	Travel	02		
11.	Contractual	03		10,725
12.	Commodities	04		1,500
13.	Equipment	05		2,500
14.	Other			
15.	TOTAL COST			39,146

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.	100	General Funds	1004	39,146
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR O&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position will lend clerical support to the Wage and Hour Investigator. Type correspondence for signature of composer; including preparation of technical or legal documents, complex material (i.e. regulations, form layouts and masters), transcribe from dictation, tape recording or draft. Compile Wage and Hour activity data, type statistical and/or investigative documentary reports.

Contractual services include $2,325 for indirect support services, $3,400 in rent, and $5,000 for other normal operating costs.

The equipment line items include $2,500 to purchase basic office equipment for this position.

13 REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage and Hour

Page 2 of 2

Revised Date

FY 84

01-1136 (7/82) - 13

LEG-A-13

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER	STATUTE	ACTION
HB 180	18.56.098	REFERENCE
HB 180	18.56.101	ADDED
HB 180	18.56.101	AMENDED
HB 181	01.10.070	REFERENCE
HB 181	08.03.010	AMENDED
HB 181	08.86.010	REFERENCE
HB 181	08.86.070	REPL&REIN
HB 181	08.86.150	AMENDED
HB 181	08.86.180	AMENDED
HB 182	23.10.050	REFERENCE
HB 182	23.10.055	REFERENCE
HB 182	23.10.060	REFERENCE
HB 182	23.10.065	REFERENCE
HB 182	23.10.070	ADDED
HB 182	23.10.070	REFERENCE
HB 182	23.10.075	REFERENCE
HB 182	23.10.080	REFERENCE
HB 182	23.10.085	REFERENCE
HB 182	23.10.090	REFERENCE

SELECT A BILL NUMBER AND HIT ENTER BILL NUMBER HB 182 STATUTE 2310090

RETURN TO MAIN MENU ?

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER	STATUTE	ACTION
HB 182	23.10.090	REFERENCE
HB 182	23.10.095	REFERENCE
HB 182	23.10.100	REFERENCE
HB 182	23.10.105	REFERENCE
HB 182	23.10.110	REFERENCE
HB 182	23.10.115	REFERENCE
HB 182	23.10.120	REFERENCE
HB 182	23.10.125	REFERENCE
HB 182	23.10.130	REFERENCE
HB 182	23.10.135	REFERENCE
HB 182	23.10.140	REFERENCE
HB 182	23.10.145	REFERENCE
HB 182	23.10.150	REFERENCE
HB 182	33.32.050	REFERENCE
HB 182	47.37.245	ADDED
HB 182	47.37.270	ADDED
HB 182	47.37.270	REFERENCE
HSCR 1	24.30.130	REFERENCE
SB 1	01.10.060	ADDED

SELECT A BILL NUMBER AND HIT ENTER BILL NUMBER SB 1 STATUTE 0110060

RETURN TO MAIN MENU ?

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER	STATUTE	ACTION
HB 180	18.56.098	REFERENCE
HB 180	18.56.101	ADDED
HB 180	18.56.101	AMENDED
HB 181	01.10.070	REFERENCE
HB 181	08.03.010	AMENDED
HB 181	08.86.010	REFERENCE
HB 181	08.86.070	REPL&REIN
HB 181	08.86.150	AMENDED
HB 181	08.86.180	AMENDED
HB 182	23.10.050	REFERENCE
HB 182	23.10.055	REFERENCE
HB 182	23.10.060	REFERENCE
HB 182	23.10.065	REFERENCE
HB 182	23.10.070	ADDED
HB 182	23.10.070	REFERENCE
HB 182	23.10.075	REFERENCE
HB 182	23.10.080	REFERENCE
HB 182	23.10.085	REFERENCE
HB 182	23.10.090	REFERENCE

SELECT A BILL NUMBER AND HIT ENTER BILL NUMBER HB 182 STATUTE 2310090

RETURN TO MAIN MENU ?

Proposed CSHB 182 (HESS)
Dave Palmer
April 4, 1983

Section 1: (a) Authorization is given for exemption to the State minimum wage (AS 23.10.050 - 50 cents per hour greater than prevailing Federal minimum wage or $2.60/hour whichever is greater) for participants in work therapy programs.

(b) The Commissioner is required to adopt regulations regarding payment for work therapy while considering specific criteria indluded in the bill.

Section 2: (a) Wages paid for work therapy are considered allowable operational costs and are eligible for reimbursement by grants.

(b) No part of wages earned may be deducted for room, board or services.

(c) Wages may be held in trust and disbursed, with consent for specific purposes.

Section 3: Work therapy is defined.

No effective date.

The impetus for HB 182 is the Nugen Ranch, a treatment facility for chronic and debilitation alcoholics. A component of the treatment program is work on the ranch in exchange for minimal compensation. With the intent on establishing lost work habits, developing self esteem, and rekindling positive work attitudes, work as therapy is used at the ranch. However, Federal and State minimum wage laws apply. HB 182 provides an exemption from the State minimum wage, which exceeds the Federal minimum wage.

Exemptions to the State minimum wage currently exist (AS 23.10.070) for:

1. Individuals whose earning capacities are reduced by physical or mental deficiencies, age or injuries.

2. Apprentices (approved by the Commissioner)

3. A learner, subject to conditions set by the Commissioner.

DHSS Position: The position paper relates to HB 182, not proposed CSHB 182. it is relevant. The DHSS asks that the exemption apply to programs designed to last over 120 days. Short-term programs would be required to pay prevailing minimum wage.

Fiscal Note: The fiscal note for HB 182 is zero. However, the CSHB 182 requires the development of regulations and implies that review of programs would be necessary to assure compliance with those regulations. If not done before the hearing, the fiscal note requires revision.

POSITION PAPER/Department of Health & Social Service

MAR 8 1983

POSITION PAPER

HOUSE BILL 182

"An Act exempting participants in residential drug abuse and alcoholism treatment programs from Alaska's minimum wage provisions, and providing a wage scale."

The Department of Health and Social Services is supportive of this legislation.

The issues and remedies surrounding this proposed legislation arose with the advent of a long term care program for the chronic and significantly debilitated alcoholic. The individuals to be served by these programs have long histories of unemployment, skill depreciation, loss of positive employment experiences and loss of positive life experiences. Long term care is defined as treatment lasting from a minimum 120 days to a maximum of 2 years with an average length of 1 year.

One of the intents of long term care treatment program is to have clients engage in a form of work therapy as part of their overall treatment regime. Such work therapy will be designed to help the client re-establish or re-learn basic learning, life and employment skills. It is the intent of the long term care treatment program to be more than a warehouse for the most severely afflicted casualties of the disease alcoholism.

The Department is also concerned that clients' rights be protected. The Department is also concerned that short term treatment programs provide intensive therapy to appropriate clients. To this end the Department of Health and Social Services would recommend the following.

House Bill No. 182, lines 12 through 14 be amended to read:

> (b) Participants in residential drug and alcoholism treatment programs [designed to exceed 120 days in length,] may be paid less than the minimum wage prescribed in AS 23.10.050-23.10.150 for work therapy, as defined in AS 47.37.270.

House Bill No. 182, lines 16 through 19 be amended to read:

> Sec. 47.37.245. Wages of Patients. Participants in residential drug abuse and alcoholism treatment programs, [designed to exceed 120 days in length,] shall be paid for work therapy, as defined in AS 47.37.270, at the rates established under AS 33.32.050. [AS 33.32.050(a)].

These recommended changes would have the effect of limiting the applicability of the exemption from the minimum wage law. It is the Department's position that only long term care treatment programs (designed to exceed 120 days) be exempted.

POSITION PAPER/Department of Health & Social Service

Recommended by: George E. Mundell

George E. Mundell
Acting Coordinator
Office of Alcoholism/
Drug Abuse

Date: 3/1/83

Approved by: Robert London Smith

Robert London Smith, Ph.D.
Commissioner
Dept. of Health &
Social Services

Date: 3/4/83

Loren Jones

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill No. 182 Date on Bill: 2/9/83
Title: "An Act exempting participants in residential drug abuse and alcoholism treatment
Sponsor: Barnes, Clocksin, Bussell, Liska, Larson
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-	-0-		

b. Revenues:

Revenue			-0-	-0-	-0-	-0-		

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It do not represent the policy of the Sheffield Administration or the final estimate of fis impact.

George E. Mundell

Prepared By George E. Mundell, Acting Coordinator Phone: 586-6201
Division: Office of Alcoholism/Drug Abuse Date: 3/1/83

Approved by Commissioner: Date:
Department:

5. Distribution:
Original to Legislative Finance
Copy to OMB
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2/8/83