HB

304

A RESOLUTION BY THE 3RD ANNUAL
YUKON-KUSKOKWIM DELTA MAYOR'S CONFERENCE

Bethel, Alaska
November 3, 4, 5, 1982

RESOLUTION NO. 82-13

A RESOLUTION REQUESTING THE 1983 ALASKA STATE LEGISLATURE TO PASS THE NECESSARY LEGISLATION TO ALLOW MUNICIPALITIES TO FORCE ACCOUNT CAPITAL PROJECTS AND NOT BE OBLIGATED TO PAY "LITTLE DAVIS-BACON" WAGES.

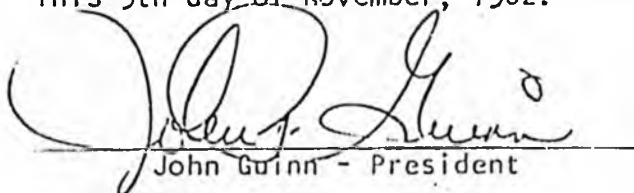
WHEREAS, municipalities have the local expertise in their own citizenry to construct and complete most public works projects; and

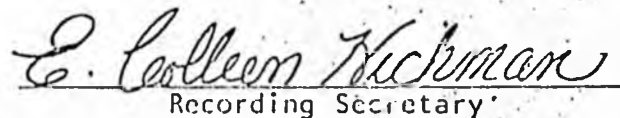
WHEREAS, municipalities are now receiving funding to construct roads and cities are executing these projects successfully through planning and force accounting; and

WHEREAS, the Little Davis-Bacon Act wages are prohibitive as far as local hire and successful project completion,

BE IT RESOLVED BY THE YUKON-KUSKOKWIM DELTA MAYOR'S CONFERENCE: To support legislation that would allow municipalities to force account local projects using local wage scales as a standard, which allows much needed employment for the local citizenry, rather than using Little Davis-Bacon Act wages which drastically depress local hire.

PASSED and APPROVED by the Third Annual YUKON-KUSKOKWIM DELTA MAYOR'S CONFERENCE THIS 5th day of November, 1982.


John Guinn - President


Recording Secretary

cc: Greg Capito
Village Safe Water Program

Norman Gorsuch
Attorney General
Department of Law

James Souby, Director
Division of Policy Development and Planning

Representative Al Adams, Chairman
House Finance Committee

Lisa Rudd, Commissioner
Department of Administration

Ron Lehr, Director
Division of Management and Budget

Robert W. Ward, Commissioner
Department of Transportation &
Public Facilities

MEMORANDUM State of Alaska

TO:	Donald R. Wilson Supervisor Wage & Hour Administration Department of Labor	DATE:	October 5, 1982
		FILE NO:	166-261-83
		TELEPHONE NO:	276-3550
FROM:	WILSON L. CONDON ATTORNEY GENERAL By: Robert W. Landau Robert W. Landau Assistant Attorney General	SUBJECT:	Applicability of AS 36 to Construction Projects Administered the Community of Cantwell, Inc.

You have requested our opinion as to whether the public contract requirements of AS 36 would apply to the proposed construction of a fire station and community water facility in Cantwell, Alaska. Our conclusion is that AS 36 applies to the proposed construction projects.

Cantwell is a rural community having no organized governing or legislative body. In 1981, several persons residing in the Cantwell area incorporated under AS 10.20 as a nonprofit corporation known as the "Community of Cantwell, Inc." One of the apparent purposes of such incorporation was to provide a vehicle for the receipt and administration of state grant monies for the improvement of public services and the construction of public facilities in the area.

Under the authority of AS 37.05.315 (Unincorporated Community Grants) and chapter 101, SLA 1982, the Department of Community and Regional Affairs proposes to grant up to $160,000 to the Community of Cantwell, Inc. for the express purpose of constructing a fire station and purchasing fire protection equipment for the Cantwell community. Under the proposed grant agreement, the Community of Cantwell, Inc. is regarded as "the contractor" for the performance of the project, subject to the specific terms itemized in the contract. One of those terms requires the contractor to perform the project in compliance with all applicable laws and regulations. The grant contract, however, does not contain any express language concerning the applicability of AS 36 or the requirement that employees working on public works projects be paid prevailing wages.

In addition to the fire station project, the Community of Cantwell, Inc. may also receive grant monies from the Department of Environmental Conservation under AS 46.07.010-.080 (Village Safe Water Act) for the purpose of building a public water well and a plumbing and holding tank. Additional grant funds have also been requested for the construction of a solid waste disposal system. It is

our understanding that the nonprofit corporation plans to administer and supervise these various projects, either by directly hiring persons to perform the construction work or by entering into appropriate construction subcontracts.

AS 36.05.010 requires contractors or subcontractors on public construction or public works projects to pay the prevailing rate of wages to employees working on such projects. AS 36.95.010(3) defines "public construction" and "public works" as

> ...the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, of highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board with respect to an educational facility under AS 14.08.161.

AS 36.05.070 further requires that contracts for public construction specifically include certain provisions concerning the payment of prevailing wages to employees on the project.

In a recent opinion, the Alaska Supreme Court adopted an expansive view of the concept of "public construction" under AS 36. City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982). The court declared that the fundamental purpose of Alaska's "Little Davis-Bacon Act" (AS 36.05) is to assure that employees engaged in public construction receive at least the prevailing wage. The focus of the Act is to the benefit of employees, not the contracting principals. 644 P.2d at 232.

In accordance with the broad interpretation of AS 36 adopted by our supreme court in Sitka, we believe that any employee who performs work on the construction or repair of a public facility that is funded with state grant monies is entitled to receive prevailing wages, regardless how the project is structured or what entity actually administers the grant funds. We note that federal regulations under the Davis-Bacon Act (40 U.S.C. § 276a) have adopted a similar broad view of "public work" as consisting of any construction work which is carried on directly by authority of, or with funds of, a federal agency to serve the interest of the general public, regardless of whether title to the project is in the federal agency or some other entity. 29 C.F.R. § 5.2(h) (1981). Accordingly, we conclude that

whenever state grant monies are transferred to a non-governmental entity, i.e., a non-profit corporation, for the express purpose of constructing public facilities within the state, the prevailing wage provisions of AS 36 apply and should be contained in the appropriate grant documents.

RWL:jg

cc: Patrick Poland, Dept. of Community & Regional Affairs
Tim Bergin, Dept. of Environmental Conservation
Community of Cantwell, Inc.

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 11, 1983

Honorable Albert P. Adams
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Application of Little Davis-Bacon Act (AS 36.05) to designated grants
Our file: 366-267-83

Dear Representative Adams:

You have requested our opinion whether construction contracts made by non-governmental entities which are financed by state-funded grants are subject to the provisions of the Little Davis-Bacon Act (AS 36.05) regarding payment of prevailing wages to employees working on public construction. You cite examples of grants made for a day care center, a "human services complex," and a public works facility. These grants were made by appropriations in which the grantees were specifically designated. In each case the grantee is a private non-profit corporation.

The grants to which you refer are commonly known as designated grants and are governed by the provisions of AS 37.-05.316 (Grants to Named Recipients). Another category of designated grant which is used to construct capital improvements in unincorporated communities is an Unincorporated Community Grant under AS 37.05.317. Because an unincorporated community is not a legal entity and therefore lacks the capacity to receive and administer a grant of public funds, AS 37.05.317(2) authorizes the Department of Community and Regional Affairs to make the grant to a private non-profit corporation or federally recognized tribal council which is representative of the unincorporated community. We recently expressed our view that construction contracted out by such an organization for an unincorporated community with grant funds provided by the state under AS 37.05.317 is subject to the provisions of the Little Davis-Bacon Act. 1982 Inf. Op.

03-C5LH

Att'y Gen. (October 5) 1/ A third category of grants, Grants to Municipalities under AS 37.05.315, provides state funds for a variety of local projects and activities directly to established political subdivisions of the state. The requirements of Little Davis-Bacon clearly apply to construction projects contracted out under those grants.

You now ask whether construction contracted out by non-governmental entities with grants made under AS 37.05.316 are also subject to that Act. We conclude that the answer to your question will depend upon the nature of the particular project being carried out by the grantee. If the project or improvement involves the undertaking or provision of traditional government facilities, services, or activities it is covered by the Act, despite the non-governmental status of the entity contracting out the work. However, if the work contracted out is not like that traditionally carried out or provided by government, it is not covered by Little Davis-Bacon. In order to define the line between those projects covered by the Act and those which are not, we recommend the adoption by the Department of Labor of regulations setting out the standards applicable to determining whether projects undertaken by affected grantees will be considered as covered or non-covered. By adopting regulations the department will put those entities on notice of their potential obligations under the Act and help assure uniform and consistent determinations of coverage or non-coverage. Our reasoning follows.

The fundamental requirement of the Little Davis-Bacon Act is set out in AS 36.05.010 which provides, in pertinent part, as follows:

> Sec. 36.05.010. WAGE RATES ON PUBLIC CONSTRUCTION. A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing wages for work of a similar nature in the region in which the work is done.

1/ We note that our October 5, 1982 opinion incorrectly referred to grants made under AS 37.05.315, which deals with grants to organized municipalities. This was obviously a typographical error as the problem which it addressed involved an Unincorporated Community Grant, which is covered by AS 37.05.317.

"Public construction" is defined in AS 36.95.010(3) as follows:

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

The answer to your question essentially revolves around whether work carried out with public funds by a designated grantee is "public construction" within the meaning and purpose of the Little Davis-Bacon Act. This is a question which has yet to be addressed by the Alaska courts and, while we believe the courts would follow the analysis which we apply here, we obviously cannot guarantee that our view will ultimately be adopted by them. 2/

In 1982, the Alaska Supreme Court adopted an expansive view of the concept of "public construction" under Little Davis-Bacon. City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982). In the Sitka decision, the court expressly stated that "[t]he fundamental purpose of Little Davis-Bacon is to assure that employees engaged in public construction receive at least the prevailing wage." It went on to emphasize that "[t]he focus of the act, quite clearly, is to the benefit of the employees, not the contracting principals." Sitka, 644 P2d at 232.

2/ It is particularly important to keep in mind that our view may or may not be adopted by the courts where, as here, the statutes with which we deal create certain rights and obligations on non-governmental third parties (e.g., contractors and workers) which, unlike state agencies, are not bound to adhere to the advice of the Attorney General. That precise situation arose in City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982) where the Alaska Supreme Court expressly rejected an earlier written determination by the Attorney General's Office that the Act did not apply to the facts of that case.

In deciding that the contract at issue in Sitka was subject to Little Davis-Bacon, the Supreme Court expressly rejected the argument that it was not covered because it was not in the form of a traditional construction contract. The City of Sitka had argued that the contract should be viewed in isolation as a timber sale contract, unconnected with the contract for the construction of a dam, even though the timber to be sold and cleared under that contract was to be removed in order to make the site suitable for construction of the dam. The court refused to follow Sitka's argument, however, saying that to do so "unduly exalts form over substance." Sitka, 644 P2d at 232.

Similarly, we believe that the court would reject the application of rigid tests which would only inquire whether a particular project was owned by a governmental entity or whether the project was being carried out under contract with a governmental entity. 3/ Certainly, in most situations it is to be anticipated that a "public work" will be owned by a governmental entity. However, nothing in Little Davis-Bacon expressly requires governmental ownership of the project. While ownership may often be indicative of the "public" nature of a particular project, we do not believe it is necessarily determinative. Similarly, the Act is not limited to projects under contract with the state or a political subdivision. In fact, the statute, at AS 36.95.010(3) expressly defines "public construction" as projects under contract for the state or a political subdivision, indicating that the legislature clearly had in mind application of a broader test for Little Davis-Bacon coverage than a simple mechanical inquiry into the status of the contracting entity.

3/ A rigid application of strict rules for determining whether a project is "public construction" could afford the opportunity to circumvent or evade Little Davis-Bacon simply by funding construction of projects such as roads, fire halls, police stations, or school buildings through designated grants. We do not believe our Supreme Court would permit such a result. "'While the ingenuity of man is apparently limitless, the court has held with unvarying regularity that one may not do by indirection what is forbidden directly.'" Sheldon Jackson College v. State, 599 P.2d 127, 132 (Alaska 1979), quoting Wolman v. Essex, 342 F.Supp. 399, 415 (S.O. Ohio 1972).

As in the Sitka case, the test to be applied in determining whether a particular project is "public construction" subject to the provisions of the Act is a functional one which inquires into the nature of the project under contract and its relationship to the purposes of Little Davis-Bacon. We believe that test is one which looks, among other things, to the nature of the project itself to determine whether it is the kind of project or activity which is traditionally undertaken by government. If it is, and if public monies are utilized, the Act applies, irrespective of questions of "ownership" and contractor status.

We arrive at our conclusion based both on our reading of the Sitka case and because of the similar approach taken by the U.S. Department of Labor in applying the federal Davis-Bacon Act (40 U.S.C. § 276a, et seq.). The definition of "public building" or "public work" for purposes of the federal Act is set out at 29 CFR § 5.2(h) and provides, in pertinent part, as follows:

> (h) The term "public building" or "public work" includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

The Alaska Supreme Court expressly stated in Sitka that, because Little Davis-Bacon is modeled after the federal Act and because the federal regulations implementing that Act were adopted before AS 36.95.010(3) defining "public construction" became law in 1972, it "will look to the federal regulations construing Davis-Bacon for assistance in interpreting Little Davis-Bacon." Sitka at 231, n.8.

The test which we have stated, while relatively simple to set out, may prove difficult to apply to some kinds of projects. Obviously, some projects such as roads, airports, sewers, municipal buildings and school buildings are traditionally governmental in nature. Others, such as construction of women's shelters, day care centers, and animal shelters, while serving a "public purpose", 4/ have probably not traditionally been con-

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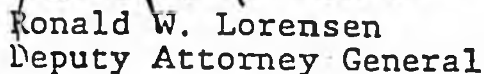
4/ Of course, any expenditure of state funds, whether through a governmental entity or a private organization must be made for a "public purpose." Article IX, sec. 6, Alaska Constitution.

structed by government. However, there will undoubtedly remain a "gray area" of projects which cannot be readily characterized as either governmental or non-governmental like health care facilities and power generation and distribution facilities. These kinds of projects are sometimes provided by government, sometimes by private entities, and sometimes by both in the very same community. In order to clarify the gray area and provide a basis for entities who receive designated grants and who may therefore be subject to Little Davis-Bacon to determine whether their project is subject to the requirements of the Act, we recommend to the Department of Labor, by copy of this letter to Commissioner Robison, that it adopt regulations setting out the kinds of tests or factors which it will apply in enforcing the Act. 5/ By doing so, that department will assure that designated grantees have notice of their potential obligations under Little Davis-Bacon and that determinations made by it are uniformly and consistently applied.

If you have any further questions regarding the scope of Little Davis-Bacon, please let us know.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL



By:
Ronald W. Lorensen
Deputy Attorney General

RWL:vrb

cc: Jim Robison
Commissioner
Department of Labor

5/ The Alaska Supreme Court expressly acknowledged Labor's authority, under AS 36.05.030, to determine whether a contract is subject to Little Davis-Bacon in Sitka at 229. The kinds of factors which might be applied could include, among others, ultimate ownership of the facility, who the intended operator and/or user will be, and who will bear the costs of operating and maintaining the facility.

72256 NL TDA NOME AK 72 03-02 332P AST

PMS REP JACK FULLER

0154

JUNEAU AK

MAR 2 PM 3 35

IV. Thanks for telegram. What's the status of getting funds from the city -

DEAR JACK:

DUE TO HAVING TO PAY DAVIS-BACON WAGES, PERFORMANCE BONDING AND ARCHITECT FEES WE NEED A MINIMUM OF DLRS75,000 TO 100,000 IN ADDITIONAL MONEY TO COMPLETE THE NOME RECEIVING HOME/GROUP HOME. IF NECESSARY, I CAN MAKE A TRIP TO JUNEAU WITH DOCUMENTATION FOR THE NEED. PLEASE ADVISE. SINCERELY,

BILL WEBB FOR BOARD OF DIRECTORS, NOME RECEIVING HOME

IVAN WIDOM, DENIS CAMBION, CHUCK FAGERSTROM, NOREEN DALY, ESTHER (KOBUK) CRAFT, AND DARLINE ISABELL

Rep. John G. (Jack) Fuller

c.c. Ivan Widom

HOME
P.O. BOX 689
NOME, ALASKA 99762
(907) 443-2968

WHILE IN JUN
POUCH V
JUNEAU, ALASKA
(907) 465-37
465-3764 46

Bill Sheffield, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

April 15, 1983

BILL ANALYSIS

RE: HB 304

SPONSOR: Representative Herrmann

Program Effects of the Bill

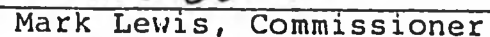
This bill would exempt communities with a population of 5000 or less from the provisions of AS. 36.

Comments

It is the position of this Department that the provisions of AS. 36 currently discourage local hire in rural communities

The requirement that prevailing wages be paid discourages "on the job training" of local labor and encourages importation of outside labor.

If this bill were to pass we feel it would, at least, remove one road block in the path of increasing local employment through state construction grants.



Mark Lewis, Commissioner

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST
Bill/Resolution No.: HB 304
Title: Wage Rates on Public Construction
Sponsor: Representative Herrmann
Requestor: House Labor & Commerce

II. FISCAL DETAIL
Agency Affected: Community & REgional Affa
Program Category Affected: Development
BRU, Program of Subprogram(s) Affected:
Local Government Assistance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Sponsor did not specify.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Doug Griffin Phone: 465-4707
Division: Local Government Assistance Date: 4/15/83

Approved by Commissioner: [signature] Date: 4/15/83
Department: Community & Regional Affairs

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

MEMORANDUM

State of Alaska

TO: Norman Gorsuch
Attorney General
Department of Law

DATE: March 2, 1983

FILE NO:

TELEPHONE NO:

FROM: Richard A. Neve'
Commissioner
Department of Environmental
Conservation

SUBJECT: Title 36

In October 1982, the Attorney General's office wrote an opinion (your file 166-261-83) stating that the provisions of AS 36 (concerning public contract requirements), applied to all public construction projects. On November 8, 1982, this Department requested clarification on the attendant issue of whether a non-profit entity is a political subdivision of the State (see attachment) and subject to the provisions of Title 36.

Most of our Village Safe Water projects are constructed by non-profit entities. These groups use local labor and have used the prevailing pay scale in a particular community. As you can see, if we are required to build facilities using a statewide scale versus a local or area-wide scale, fewer facilities will be constructed. I offer this observation only to point out the importance of receiving your opinion. I have also attached a resolution by the Yukon-Kuskokwim Delta Mayor's Conference on their view of the issue.

Given the importance of this issue to our Department's Village Safe Water Program and its potential impact on rural Alaskan villages, we would appreciate a response to our November 8, 1982, request for clarification of this matter.

Attachment

cc: Gary Hayden
Greg Capito

[illegible]

BRISTOL BAY NATIVE ASSOCIATION

P.O. BOX 189

DILLINGHAM, ALASKA 99576
by Executive Committee

TITLE 36, Public Contracts
Laborers' & Mechanics'
Minimum Rates of Pay

Resolution No. 83 - 16

WHEREAS, village governments are employers of village residents in their own respective villages; and

WHEREAS, village governments have their own pay scales which have worked successfully in their own respective villages; and

WHEREAS, village funding is very limited; and

WHEREAS, villages receive State monies for village projects; and

WHEREAS, wages for these projects are mandated by Title 36; and

WHEREAS, this mandate can greatly restrict the successful completion of these village projects; and

WHEREAS, this mandate further interferes with the successful completion of other villages projects; and

WHEREAS, this mandate also upsets the future village economy; and

WHEREAS, Representative Herrmann has introduced HB 304 which will solve this problem with Title 36 if enacted into law by the State Legislature.

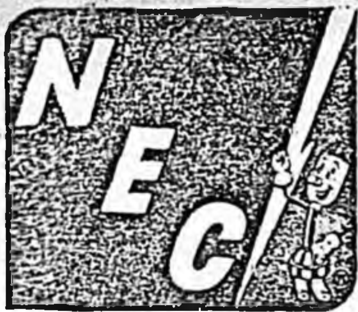
NOW THEREFORE BE IT RESOLVED, that the Executive Committee of BBNA fully supports the passage of HB 304 and ureges the Legislature and the Governor to act accordingly on HB 304.

SIGNED:
PRESIDENT

CERTIFICATION:

I, the undersiigned secretary of said Association, do hereby certify that the Executive Committee is composed of ten (10) members, of whom 7 were present at a meeting this 19 day of April, 1983, and that the foregoing resolution was adopted by the affirmative vote of 7 members.

SIGNED:
SECRETARY



NUSHAGAK ELECTRIC CO-OPERATIVE, INC.

P. O. BOX 197 . DILLINGHAM, ALASKA 99576 .. AREA CODE (907) 842-5251

ALASKA

January 19, 1983

Senator Bob Mulcahy
Pouch V
Juneau, Alaska 99811

Dear Senator:

The last session of the legislature included a legislative appropriation to Nushagak Electric Co-operative in the amount of $539,000 to expand the Dillingham waste heat system from the power house to various public entities and to pick up some costs remaining over the first phase of the project.

Funds for the first phase of the project were administered by the Alaska Power Authority. However, the Dept. of Community and Regional Affairs was assigned the responsibility for administering the $539,000.

We have encountered some serious problems however in getting these funds released. The Dept. of Community and Regional Affairs have requested that Nushagak Electric Co-operative sign a "contract" before they will release funds. Normally there would be no problem here except that this department states that we must pay the "prevailing wage rates" as defined by Title 36 (Alaska's little Davis Bacon Act) of the contract. The problem with these wage rates is that they are highly inflationary and are established with the purpose of utilizing union crews. We have no unions in Dillingham; we had, in fact, planned on extending the waste heat system with our own personnel. Unfortunately, the wage and fringe benefit program mandated by the State would completely upset our own wage and salary plan as well as those presently utilized in the community.

With this in mind we asked our attorneys to research this matter which they did in writing to Ms. Sue Perry-Piper at the Dept. of Community & Regional Affairs office in Anchorage. Repeated contacts with her have produced very little in the way of results. She states that her hands are tied and that the decision whether or not to grant NEC an exemption rests with Mr. Patrick Poland who is apparently supposed to get an opinion from the attorney general's office. Our efforts to contact Mr. Poland to date have been fruitless. I have been

Senator Mulcahy
Pouch V
Juneau, AK 99811

January 19, 1983

advised this date that he is in Juneau - I called Juneau and his office there says he is in Anchorage.

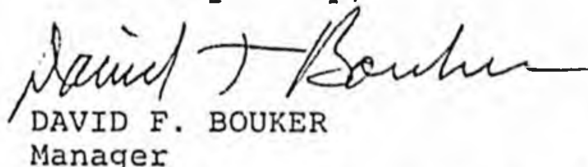
Senator, I believe there may be several problems associated with this situation. First of all, Title 26 is probably bad law and was initiated primarily by special interest groups who gave little thought to the effect it may have on small rural communities unless, of course, the intention was to force small communities to employ Anchorage union contractors. Secondly, this provision completely destroys initiative to efficiently perform tasks for the public good - it reduces the ability of this Co-operative to complete the job for which the funds were initially intended. Third, the responsiveness of the Dept. of Community and Regional Affairs has in my opinion been lacking.

I don't know what you can do about my first two complaints above, but would sure appreciate your efforts in getting Mr. Poland to communicate with us.

As a matter of interest, I am enclosing a copy of our attorney's interpretation of the application of Title 36 to Nushagak Electric Co-operative.

Your consideration of this matter would be deeply appreciated.

Yours very truly,



DAVID F. BOUKER
Manager

Encls Poland "Pat" and - Telephone

DFB:ka

KOLIGANEK VILLAGE COUNCIL
KOLIGANEK, ALASKA 99576 - VILLAGE TELEPHONE (907) 596-8001

Representative Adelheid Herrmann
Alaska State Legislature
Pouch V
Juneau, Alaska 99633

April 21, 1983

Dear Adelheid;

This letter is in regards to Title #36. Koliganek requested ~~has requested~~ and received legislative appropriations based on our own wage scale. Community & Regional affairs has thrown us a curve, by insisting on adherance to title #36, which we are unable to comply with, and will make it impossible to implement our construction projects. Some of our reasons for being opposed to title #36 include, but are not limited to the following:

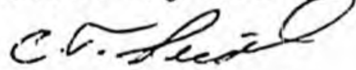
1. In the sense of public and state-wide fiscal responsibility we find #36 inflationary.
2. Construction in remote locations such as Koliganek, is by virtue of it's site, much more costly in freight and administration. These costs have to be offset someplace or a project cannot be implemented.
3. Koliganek, as our record will prove us out, can really stretch a dollar, and get the most for our legislative dollar. #36 is a goverment mandate to waste.
4. Isolated small communities like Koliganek, have a much stronger sense of community resonsibility & togetherness than larger urban communities on the road system. Hence we are willing to work together for the good of the community a smaller wages, in order to have a project that the community can benifit from.
5. If the contractors we are forced to seek out, are required to pay title #36, than they will choose to bring in outside union workforces, thereby continuing the unemployment of the local workforce, and in turn, the local work forces dependance on the State's Department of Public Assistance.

6. We in Koliganek would not presume to mandate wage & hour legislation for Anchorage, Fairbanks, or Juneau, therefore we feel threatened by the highhanded way in which Koliganek is told it must structure it's pay scale.
7. LSR&T of the DOT, can pay lower wages in order to have a local project, than so should the local entity also be able to pay lower wages to have a project.
8. Last but not least, just about everyone is crying to control inflation, and reduce goverment spending. Koliganek is more than willing to do just that, should the State legislature than dictate otherwise?

Hopefully you will make copies of this letter and provide them to the committe members, or possibly even non-committee members who may be unsure or opposed to repeal of title #36, or of more flexibility of it.

Keep up the good work, we all appreciate what you are doing.

Sincerely Yours,



C.T. Seidl
Village Administrator

MSG 83-00004534 PRTY 1 03/30/83 15:53:24 ORIG: LI00 IN= 0004 OUT= 0093
FROM: DOROTHY AND MASSA IN DILLINGHAM TO: JUNEAU
TARGET: LJHL SUBJ: POM MESSAGE

TO: REPRESENTATIVE HERRMANN

FROM: DAVE BOUKER, NUSHAGAK ELECTRIC, DILLINGHAM, ALASKA 99576

SUBJECT: HB304

VERY PLEASED WITH YOUR INTRODUCTION OF HB304. WE WILL BE HAVING 2 BOARD OF DIRECTOR MEMBERS OF NUSHAGAK ELECTRIC IN JUNEAU NEXT WEEK. WE'LL WATCH FOR PROGRESS AND MOVEMENT ON HB304.

THANKS FOR YOUR FINE HELP.

***EOM

MSG 83-00012365 PRTY 1 04/26/83 16:49:08 ORIG: LI00 IN= 0006 OUT= 0125
FROM: ANNA MAY, DILLINGHAM TO: JUNEAU INFORMATION
TARGET: LJHL SUBJ: POM

TO: REPRESENTATIVE ADELHEID HERRMANN
SENATOR JOHN SACKETT
POUCH V, JUNEAU, ALASKA 99811

FROM: CITY OF CLARKS POINT, CLARKS POINT, ALASKA 99569

SUBJECT: HB 304 AND SSSB 172

WE ARE IN FULL SUPPORT OF HB304, "THE LITTLE DAVIS BACON ACT".
WE ALSO FULLY SUPPORT SENATOR SACKETTS BILL, SSSB172, AND WE HOPE THAT THEY WILL GET THESE BILLS PASSED.

POM SENT BY ANNA MAY SORENSEN, DILLINGHAM LIO
OMNI NO. 12365.

STATEMENT OF ALASKA NATIVE BROTHERHOOD, ROBERT WILLARD, EXECUTIVE VICE PRESIDENT, RE: TITLE 36 - ALASKA STATUTES.

The Alaska Legislature has before it Senate Bill No. 172 and House Bill No. 378, "An Act relating to wage rates on public construction," or the so-called "Little Davis-Bacon Act."

The Alaska Native Brotherhood is the recipient of a State appropriation in the amount of one million dollars ($1 Million) to construct a Juneau Pilot Project - Community Building. Upon notification that the Governor would sign the appropriation measure into law, the ANB immediately proceeded with development planning. In this process encounter came to Title 36 of the Alaska Statutes namely the Little Davis-Bacon Act. (hereinafter Davis-Bacon).

If the ANB Project were to fall under the interpolation and application of Davis-Bacon, it goes without question that the costs would increase by 25 - 30%. A value engineering report by qualified consultants have confirmed this reality.

In our opinion, and that of our consultants, if strict application of Davis-Bacon had been applied, this project would not have been feasible, because of the escalated costs.

It should be made clear that the Alaska Native Brotherhood, or its affiliates, is not opposed to unions -- or organized labor. There are some union or contractor practices which we are not in total agreement, but in the overall sense , the ANB is not necessarily averse to unions.

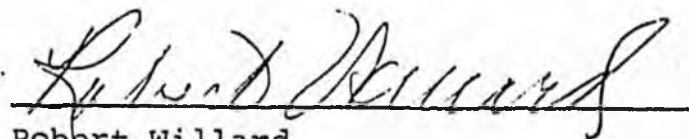
Upon reflection of the ANB project, and that of some projects which have been administered by the Tlingit and Haida Regional Housing Authority over the past ten years, it can be shown that full application of the Little Davis-Bacon Act resulted in increased construction costs

and created artificial costs of labor, thus decreasing the number of housing units that could have been built. Tlingit and Haida administrators estimate that by virtue of full application of the Davis-Bacon Act 23 - 27% more housing units could have been built. That equivalates to approximately one hundred and fifty (150) more families that could have had homes. The imposition of Davis-Bacon interpolated and applied to the rural areas have resulted in the creation of artificial costs of labor.

It is not the intent of the ANB to move towards the minimum wage. It is our concern that the "prevailing wage" as set by the Department of Labor in the populated areas and, as applied to the adjacent rural proximity of that urban center may not be reflective of the fair market value of labor and skilled services in the broad spectrum of enterprise in Alaska.

Moreover, this reality may be influenced by special interest groups such as unions and/or organized general contracto[illegible] and artificial influences such as labor-related requirements imposed by this legislation.

The Alaska Native Brotherhood, and its affiliates, urge passage of Senate Bill 172 and House Bill 378 thereby repealing Alaska Statutes 36.05.

Signed: 

Robert Willard
Executive Vice President
Alaska Native Brotherhood
318 W. Willoughby Avenue
Juneau, Alaska 99801

BUS: (907) 586-2049
586-3301

Bristol Bay Borough
BOX 189 • NAKNEK, ALASKA 99633

JIM D. CLARK
MAYOR

TELEPHONE
(907) 246-4224

April 25, 1983

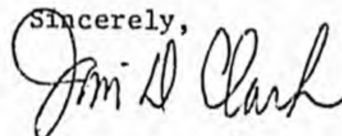
Representative Adelheid Herrmann
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Herrmann:

I support House Bill 304 exempting communities with a population of less than 5,000 from the Davis-Bacon Act.

Small communities with limited financial resources find it difficult to compete in the labor market, and the wage scales in some cases are much higher than the prevailing scale of the small communities.

Sincerely,



Jim D. Clark
Mayor

bjt

CITY OF AKUTAN

P.O. Box 557
Dutch Harbor, Ak. 99692
Phone (907) 698-2228

Anchorage Office
308 G Street, Suite 311
Anchorage, Ak. 99501
Phone. (907) 279-9245

April 28,1983

Representative Walt Furnace, Chairman
House Labor and Management Committee
Pouch V
Juneau, Ak 99811

Dear Representative Furnace:

It has come to our attention that the House Labor and Management Committee will be holding a public hearing next Monday on House Bill 304 which deals with wage rates for publicly funded construction projects. We are not on the teleconference network, and so will not be able to testify at that time. However, we are interested in the bill, and wish to indicate support for it.

AS 36.05 as presently written is a problem for us. We usually administer directly, relatively small projects, but they are over the $2,000 now exempted by statute. These projects are not usually of the scope to be attractive to outside bidders, because they are under $100,000 in value. When the cost of the project goes over that amount it goes out to bid and an outside contractor builds the project. The contractor brings his own crew with him so that he can get the job done in the shortest possible time and at the lowest possible cost to him. This takes the local labor force out of the running for the construction jobs. As you well know, unemployment in rural Alaska is very high, and employment on these projects would help to alleviate the problem.

The money that is made on the projects, through the ordering of materials and wages paid, goes out of the communtiy which generated it, except for the money paid locally for crew room and board. Sometimes the contractors bring in trailers for the crew, and the community does not even get that income.

We bring this up because the argument is often made that capital improvement projects in rural areas stimulate the local employment picture.

On projects between $2,000 and $100,000 which we carry out ourselves, AS 36.05 requirements often make it necessary for us to scale back the scope of the project because of the high costs. These projects are construction of relatively small, under 1000 square foot, buildings, or renovation of existing facilities. There is no local lumber yard so freight costs have to be added to all materials costs.

We have a city salary schedule which was adopted by the City Council. This schedule is considerably lower than the little Davis-Bacon wage scale, but reflects what the leaders of the community feel is adequate compensation for work done, and is commensurate with what people can earn working for fish processors, the only other possible employer.

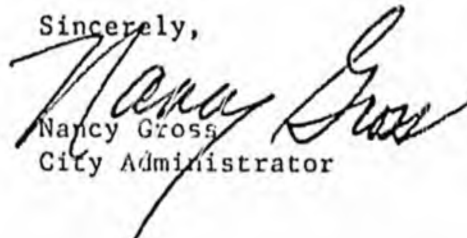
When we have to add freight costs for materials and Davis-Bacon wage provisions to the cost of a project, we find that we have to reduce the number of people we can hire, and cut back in as many other ways as we can think of, to stay within our budget.

Local people are often willing to work for less than Davis-Bacon for several reasons. It beats not working at all, and they are willing to make a contribution to the community welfare in reduced compensation, but they do not feel they can volunteer outright. They also know that the city is able to spread the money available for wages more widely through the community. Helping each other out is still important to the people of Akutan.

We used to think that Davis-Bacon and the little Davis-Bacon Acts would be helpful to us, but as projects have been carried out under these acts, costs of projects have escalated and village people, once again, ahve been left out of the process.

We support passage of HB 304. We appreciate your consideration of these views on the issue.

Sincerely,



Nancy Gross
City Administrator

cc: Mayor Jacob Stepetin
Representative Adelheid Herrmann
Senator Bob Mulcahy
Members of the House Labor and Management Committee

BRISTOL BAY AREA HEALTH CORPORATION

P.O. Box 10235
DILLINGHAM, ALASKA 99576

PHONE: (907) 842-5201

April 28, 1983

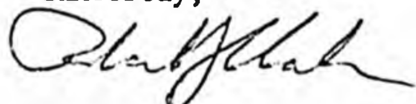
Representative Adelheid Herrmann
Pouch V
House of Representatives
Juneau, AK 99811

Dear Representative Herrmann:

Bristol Bay Area Health Corporation in the steps of Bristol Bay Native Association supports the passage of HB 304 as it relates to Title 36, Public Contracts, Laborers' and Mechanics' rates of pay.

Thank you

Sincerely,



Robert J. Clark
Executive Director

RJC:ksm

"HISTORICAL OVERVIEW OF THE DAVIS-BACON AND RELATED ACTS"

The Davis-Bacon Act is one of the oldest American labor laws and was the first federal law enacted to regulate the wages of non-government workers. Like most early federal labor laws, the Act was preceded by various state statutes. Kansas, for example, had enacted the first prevailing wage law for state construction projects in 1898. Federal congressional hearings were held as early as 1898 although legislation did not result until 1931. Today, all but 10 states have enacted prevailing wage laws governing state construction projects.

The principal impetus for government regulation of wages for workers employed on public construction projects was the economic and social conditions of the 1930's. During the Depression, the national conscience was aroused by the effect of widespread unemployment on the wages of workers. While the competition for limited markets forced employers to cut labor costs, the scarcity of work created an oversupply of labor that resulted in low wage rates. The absence of job opportunities further increased public reliance upon federal construction as a source of employment at a time when the federal government was required to award its contracts to the lowest bidder. This requirement prevented federal contracting agencies from dictating that successful bidders pay their employees wages comparable to those paid for similar labor in private industry in the same area as the government projects under construction. Some successful bidders took advantage of this situation by "selfishly import[ing] labor from distant localities and...exploit[ing] this labor at wages far below local wage rates." Local workmen were unable to compete with migratory laborers, and qualified local contractors found it impossible to compete with outside contractors who based their estimates for labor costs upon the low wages paid to imported laborers.

The Davis-Bacon Act, enacted on March 3, 1931, was designed to curtail such unscrupulous practices among government contractors during a decade in which public works were on an upswing and economists and politicians were particularly wary of depressed labor markets. The Act was also designed to prohibit wage differentials from becoming a major competitive advantage in bidding on government construction contracts, thereby insuring that the economic power of government as an employer would not contribute to a further depression of local markets. To accomplish these goals, the federal Act required government contractors to pay their "laborers and mechanics" the prevailing private industry wage rates.

The compulsory nature of the Act's prevailing wage rate provision was emphasized throughout the 1931 congressional debates in Davis-Bacon Legislation. Because the Act mandated that under all covered contracts the contractor pay the prevailing wage rate, the only variable was the exact rate to be paid. In the event of a dispute concerning the applicable wage rate, the government contracting officer was to attempt to adjust the rate in accordance with the character of the work performed and the locality in which it was performed. If the contracting officer could not resolve the dispute, the matter was then to be referred to the Secretary of Labor for a conclusive determination.

In the 50 years since the enactment of the federal Davis-Bacon Act, a series of executive orders and congressional amendments have generally broadened its scope and strengthened its impact. Additionally, more than 80 other federal laws relating to prevailing wages have been passed during this period, covering a wide range of federal projects and activities. The amendments to the DavisBacon Act as well as the variety of federal legislation requiring prevailing wages to be paid serve to indicate the continuing concern of Congress to preserve prevailing wage standards for government contract work.

In Alaska, legislation requiring the yment of prevailing wages on public construction work has also been in effect since 1931. The original Alaska prevailing wage laws were passed by the territorial legislature on an emergency basis, presumably in direct response to the passage of the federal Davis-Bacon Act by the U.S. Congress two months earlier. The Alaska version was introduced as Senate Bill 69 by Senator Lomen of Nome and was swiftly enacted into law effective April 29, 1931 (SLA 1931, ch. 69). Unfortunately there appears to be no written record or any legislative debate or committee hearings on the proposed Alaska legislation. The prevailing wage provisions were later included in the 1933 and 1949 compilations of Alaska law and, upon statehood, were carried over into state law and are now codified at AS 36.05.010-.110. In the years since the enactment of the original prevailing wage laws in Alaska there have been periodic amendments which further define the scope of the Little Davis-Bacon Act and establish enforcement procedures, largely in response to similar changes in federal law.

In addition to the legislative history, both federal and Alaska courts have had occasion to interpret the basic purposes and policies underlying prevailing wage legislation. In a leading federal case, the U.S. Supreme Court recognized the important wage protection purpose of the Davis-Bacon Act: "The language of the Act and its legislative history plainly show that it was not enacted to benefit contractors, but rather to protect their employees from substandard earnings by fixing a floor under wages on Government projects." U.S. v. Binghamton Construction Co., 347 U.S. 171, 177 (1953). The Alaska Supreme Court has quoted this language in at least two separate cases involving Alaska's Little Davis-Bacon Act, noting that the Alaska statutory scheme is closely patterned after the federal Act. City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227, 231-33 (Alaska 1982); Fowler v. City of Anchorage, 583 P.2d 817, 821-22 (Alaska 1978). In reviewing the policies underlying the Little Davis Bacon Act, the Alaska Supreme Court has further stated: "The fundamental purpose of Little Davis-Bacon is to assure that employees engaged in public construction receive at least the prevailing wage. The focus of the Act, quite clearly, is to the benefit of the employees, not the contracting principals." City and Borough of Sitka, supra, at 232. From these judicial statements, it is apparent that both the federal and state prevailing wage laws have as their primary objective the protection of local workers on government projects by establishing a required minimum wage in accordance with that prevailing in the area where the work is done. Both the legislative history and judicial interpretation of prevailing wage legislation strongly suggest that this primary objective is as fundamental and vital today as it was in 1931 when the legislation was first enacted.

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DAVIS-BACON WORKS—FOR MINORITIES

One of the most calculated and cynical arguments which opponents have leveled against the Davis-Bacon Act is that it hinders minority employment opportunities. The fact is that the Davis-Bacon Act poses no barrier to minorities; either to those who have already achieved journeymen status or to those seeking training in construction skills. *The Davis-Bacon Act has an effect on minority hiring, and it's all good.*

Union-busters who try to convince blacks, hispanics, women and others that wage cutting means more work for them are liars. And their record proves it.

Official government statistics show that minority participation in union programs is almost *double* the participation rate in nonunion programs. In 1978, 21 percent of all apprentices in union programs were minority workers, as compared to only 11.7 percent minority participation in nonunion programs. Union sponsored programs account for more than 90 percent of all minority graduates from registered apprenticeship programs.

The simple fact is that throughout the sixties and seventies minorities have successfully sought entry into the construction industry for one reason—the promise of a fair standard of living and skilled productive work. The major impact of increased minority participation in construction industry training programs will be fully realized in the 1980's.

It's ironic that the Associated Builders and Contractors, the U.S. Chamber of Commerce, and the rest of the far-out right-wing crowd are trying to make minority workers the patsies for a round of vicious wage cutting, at a time when they are just entering the building trades in significant numbers.

See other side

Opponents of prevailing wage laws like to claim that their calls for repeal are partially motivated by a desire to help minorities, but leaders of women's and minority organizations feel very differently about this issue:

". . . For years we have had to contend with the situation in which a Navajo carpenter working side by side with a non-Navajo carpenter received substantially less wages for the same work. **Davis-Bacon** prevents that from happening on federally-funded projects."

The Navajo Nation
(Statement of Tribal
Chairman Peter MacDonald)

"Women are beginning to gain entry into the construction trades in ever increasing numbers. Many of these women are now the principal breadwinners in their families. As women learn the skils which in the past have entitled men to decent wages, it would be inexcusable if legislation such as the **Davis-Bacon Act** was weakened."

Mildred Jeffrey
National Women's Political
Caucus

"Whereas the **Davis-Bacon Act** protects construction workers from exploitation by requiring that prevailing wages be paid to employees working on federally financed construction projects; and

Whereas, through the efforts of the NAACP, the labor movement and other interested parties, blacks are at long last gaining employment in the construction trades; . . .

Be it resolved that the NAACP goes on record against any effort to repeal the Act and deny workers in the construction industry a fair wage."

National Association for the
Advancement of Colored People
(Resolution of 70th Annual
Convention)

"We understand that a bill has been introduced to repeal the **Davis-Bacon Act**. As a member of a community that has long suffered the injustices and inequities of low wages . . . we urge you and appeal to you that you may work to defeat this attempt."

Mexican-American Unity Council

#095

Special Report

Connecting the Job Site with the Congress

THE BUILDERS

Room 603-815 16th St. N.W., Washington, D.C. 20006 (202) 347-1461

Fiction and Fact STRAIGHT TALK ABOUT DAVIS-BACON

FICTION: Repeal of Davis-Bacon will save taxpayers money.

FACT: A major reason for passage of the Davis-Bacon Act was to save taxpayers from the huge waste of funds caused by contractors who made low bids in the expectation that they could manipulate wages. These contractors were doing such shoddy work, and so many of them were failing to fulfill contract terms, that federal agencies had to go to a great deal of extra expense to finish the jobs.

FICTION: Davis-Bacon forces construction costs up by setting prevailing wages at top union rates.

FACT: About half the time, the U.S. Department of Labor sets prevailing wage rates at non-union levels. Moreover, a 1978 study by the Massachusetts Institute of Technology and the National Association of Homebuilders points out that higher wages result in higher productivity rates.

FICTION: Use of union wage rates under Davis-Bacon retards the entry of minorities into construction trades.

FACT: Union-sponsored apprentice programs included more than twice as many minority participants as non-union programs. Moreover, the union-busters want to undercut construction wage standards at the very time that minority members are beginning to enter the skilled construction trades in increasing numbers.

FICTION: The Department of Labor sets artificially high wage rates on Davis-Bacon projects, using high union rates in places where most construction is done by non-union labor.

FACT: Wage rates are set by reference to those paid on similar projects in the geographic area concerned. About half the time, non-union rates prevail.

FICTION: Application of prevailing wage rates under Davis-Bacon is inflationary.

FACT: The President's Council on Wage and Price Stability found, in a recent study, that the Labor Department's wage determinations are usually a little below the collectively bargained wage rates in the area. Government figures show that, for several years, construction industry productivity has been rising faster than all-industry productivity while construction industry wage increases have been lower than all-industry wage increases.

FICTION: Davis-Bacon record-keeping requirements add to the cost of public works.

FACT: Records required by contractors on Davis-Bacon projects are almost all things that a contractor would do anyway. Keeping payroll records, for instance, is a normal good business practice.

FACTS ON THE

Davis-Bacon Act

BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

One of the most common arguments used against the Davis-Bacon Act is that this law unnecessarily inflates the costs of federal construction. According to some critics, this happens because the wage rates required under Davis-Bacon tend to be set too high. Other critics claim that *any* sort of prevailing wage requirement will automatically have an inflationary effect. Neither of these arguments have much basis in logic or fact.

Davis-Bacon Wage Rates: Not Automatically the Union Rate

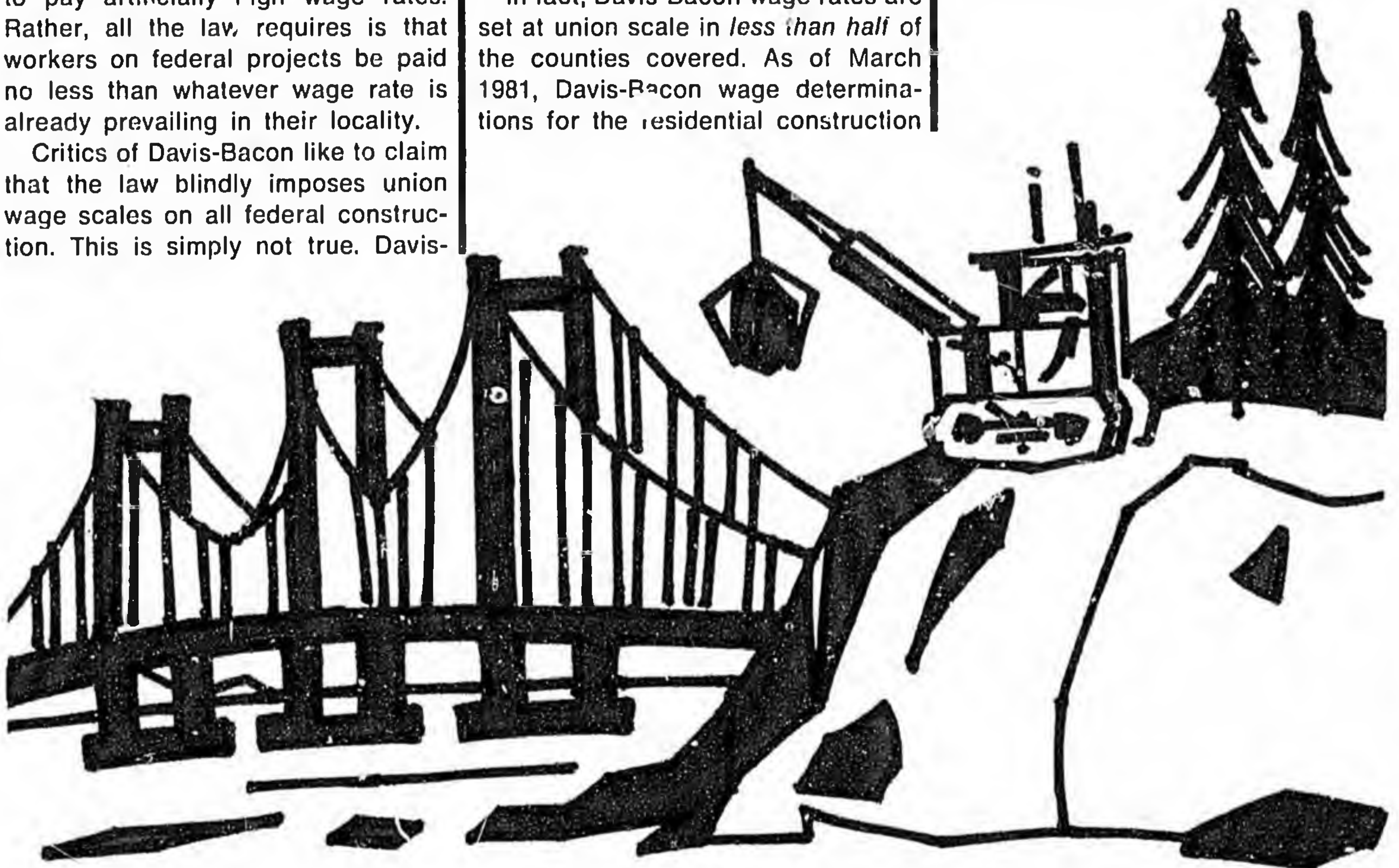
Contrary to the myths spread by its opponents, the Davis-Bacon Act does not compel government contractors to pay artificially high wage rates. Rather, all the law requires is that workers on federal projects be paid no less than whatever wage rate is already prevailing in their locality.

Critics of Davis-Bacon like to claim that the law blindly imposes union wage scales on all federal construction. This is simply not true. Davis-Bacon requires payment of union wage rates only in highly unionized areas, where these are the wages which actually prevail. In areas where open shop construction predominates, the Davis-Bacon rates will be based on the wage rates paid by non-union employers.

"THE DAVIS-BACON ACT IS NOT INFLATIONARY"

In fact, Davis-Bacon wage rates are set at union scale in *less than half* of the counties covered. As of March 1981, Davis-Bacon wage determinations for the residential construction sector were based on union wage rates in *only 14%* of the counties covered. For the more heavily unionized commercial building sector, the Davis-Bacon determinations reflected union rates in 55% of the counties covered. For heavy construction and highway construction, the corresponding figures were 50% and 47%, respectively.[1]

Further evidence that Davis-Bacon wage determinations tend to reflect actual prevailing wages is provided in a study sponsored by the President's Council on Wage and Price Stability. The authors of this study compared the Davis-Bacon rates set by the Labor Department in 19 large cities with the average wage rates found in a special survey of the con-



struction industry conducted by the Bureau of Labor Statistics. The results confirmed that the wage rates set under Davis-Bacon are generally quite close to actual prevailing wages. For commercial building, the Davis-Bacon rates were found to be 2.7% *below* the actual averages, and for residential construction the Davis-Bacon rates were only 3.1% above average.[2]

In short, the Davis-Bacon Act does not impose union wage rates on construction employers in nonunion areas, nor does it force federal contractors to pay excessive wages to their construction workers.

Substandard Wages Are Not a Good Means of Saving Money

A second set of criticisms bypasses the issue of the accuracy of Davis-Bacon wage determinations and contends that prevailing wage laws are by their very nature inflationary. The general idea is that workers can sometimes be found who are willing to take a job for less than the locally prevailing wage. By preventing the use of this cut-rate labor, the Davis-Bacon Act is held to create unnecessarily high costs.

This argument is completely fallacious, in that it ignores important differences in skills and productivity. Well trained and highly skilled construction workers are not often willing to work for substandard wage rates. The workers who can be recruited to work below the prevailing wage are likely to be less skilled and less experienced. In many cases, these will be people with no formal construction training and only a very casual attachment to the industry.

It seems clear that qualified, well trained workers will be able to complete a project much more quickly than workers with little construction experience. There's no advantage in employing someone at a few dollars an hour less if they take twice as long to finish the job.

It's not just a matter of productivity. Skilled, experienced workers are much more likely to do a high quality job. Using poorly trained personnel hired "off the street" can lead to all sorts of quality problems. While there might be some initial savings as a result of paying below the prevailing wage rate, these savings could be quickly wiped out by the need for costly repairs and maintenance.

Department of HUD Study Shows No Link Between High Wages and High Construction Costs

Because of these important differences in skills and productivity, the only valid way of examining the relationship between Davis-Bacon and inflation is by looking not at wage rates alone, but rather at the *total costs* of projects built under the law's requirements.

The only study of this sort presently in existence was conducted by the Department of Housing and Urban Development in an effort to identify the factors leading to high costs on HUD-financed housing built on Indian reservations. One possibility that the authors considered was that Davis-Bacon prevailing wage requirements might be leading to excess costs. However, their research indicated that this was not the case:

> "A comparison of average wage rates with average dwelling construction costs shows no correlation between high wages and high construction costs. Of the five Indian Housing Authorities with the *highest* average wage rates . . . only one had average dwelling construction costs which exceeded the median." [3]

Davis-Bacon Suspension Did Not Lead to Significant Savings

The Davis-Bacon Act was suspended for a brief period in 1971 by executive order of President Nixon. According to the claims made by opponents of this law, removal of prevailing wage requirements should have immediately led to a sharp reduction in costs on federal construction contracts negotiated during the suspension.

In reality, no such reduction occurred. Data are available for 1,263 projects which were bid under prevailing wage requirements and then re-bid during the suspension. On average, the second bid was lower than the first by *only six tenths of one percent.*[4]

Even this negligible amount cannot be assumed to represent savings resulting from removal of prevailing wage requirements. Rather, some price decline should be expected when a project is re-bid. The rebidding process allows each competitor to learn the amount of the bids submitted by other contractors. In cases where a contractor discovers that he lost the job by a relatively small amount, that contractor will have an incentive to lower his bid the next time around. In fact, further studies indicate that the cost reductions under the suspension were concentrated among contracts where the winning bid and the next lowest bid differed by less than 20%.[5]

In summary, all the available evidence indicates that prevailing wage protection does not lead to excess costs on government construction projects. On the contrary, paying the prevailing wage helps ensure that skilled and experienced construction workers will be hired, and thus promotes efficient, top quality work on government jobs.

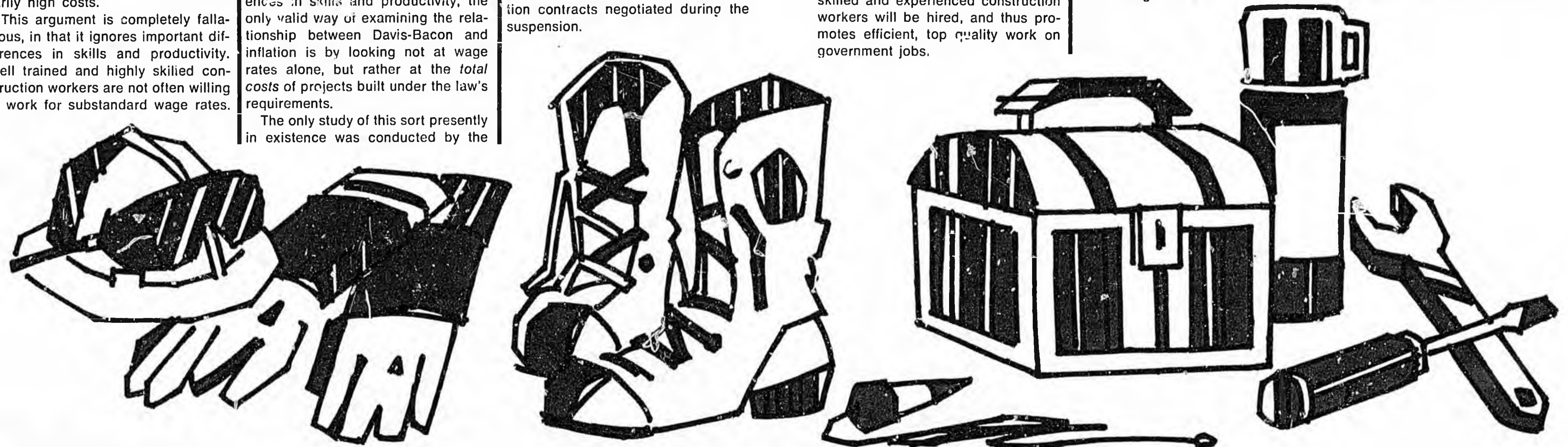
"The GAO's Report on Davis-Bacon: So Flawed as to Be Meaningless"

Many of the statistical claims about the allegedly inflationary impact of the Davis-Bacon Act are based on a 1979 report by the General Accounting Office (GAO) entitled "The Davis-Bacon Act Should Be Repealed." This report is so flawed in its facts and methods as to render its conclusions meaningless.

The GAO's basic contention is that the Department of Labor (DOL) sometimes sets the wage rates required under the Davis-Bacon Act at a level higher than the actual prevailing wage rate, thereby leading to excess costs on federal construction projects. The evidence for this allegation comes from a series of GAO wage surveys designed to check the accuracy of the DOL figures. Any difference between the DOL wage determination and the GAO survey results was taken as proof that the Labor Department had made an error in setting Davis-Bacon wage rates.

In fact, the validity of this "check" is very dubious. There are many reasons other than Labor Department error which can explain the differences between the DOL figures and the GAO figures. For example, the survey methodology used by the GAO investigators differed in important respects from that used by the Labor Department; the GAO personnel were inexperienced in conducting wage surveys; and the GAO admitted difficulties in securing the cooperation of construction employers in providing wage data. Further, in some cases, the GAO drew conclusions about prevailing wage rates for particular crafts based on wage data for only one or two workers, hardly an adequate basis for sweeping conclusions about widespread DOL error.

The GAO study used a sample of only 30 wage determinations, representing about two tenths of one percent of the more than 15,000 Davis-



Bacon wage determinations issued by the Labor Department in a typical year. In 18 of the 30 cases, the GAO concluded that the Labor Department wage determinations were too *low* rather than too high. These cases were discarded in drawing the report's conclusions, since the GAO was only interested in cases where the Davis-Bacon Act could be accused of driving up costs. The 12 remaining wage determinations (in which the GAO wage estimates were lower than the Labor Department figures) became the primary basis for the GAO's conclusions that Labor Department errors in setting Davis-Bacon wage rates could be costing the government hundreds of millions of dollars every year.

Such scanty evidence would be very weak support for any sort of conclusion and provides no basis whatsoever for the GAO's sweeping contention that the Davis-Bacon Act should be repealed.

1. Data supplied by the U.S. Department of Labor, Employment Standards Administration.
2. Robert Goldfarb and John Morrall, *An Analysis of Certain Aspects of the Administration of the Davis-Bacon Act*, a report issued by the Council on Wage and Price Stability, May 1976, p. 9.
3. U.S. Department of Housing and Urban Development, Region IX, Office of Program Planning and Evaluation, *Evaluation of the High Cost of Indian Housing*, June 1979, p. 26.
4. Armand J. Thieblot, Jr., *The Davis-Bacon Act*, Labor Relations and Public Policy Series, Report No. 10 (Philadelphia: University of Pennsylvania Press, 1975), p. 93.
5. John P. Gould and George Bittlingmayer, *The Economics of the Davis-Bacon Act: An Analysis of Prevailing Wage Laws* (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1980), p. 58.

BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

Robert A. Georgine, President

Joseph F. Maloney, Secretary-Treasurer

815 16th Street, N.W. Washington, D.C. 20006

FACTS ON THE

Davis-Bacon Act

BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

What does the Davis-Bacon Act do? It requires that workers on federally funded construction projects be paid no less than the wage rate prevailing in their local community for similar work.

This law was first proposed in Congress in 1927, and was enacted in 1931. It was designed to remedy problems which were occurring on government public works projects. Contracts were being won by fly-by-night construction companies who reaped large profits by paying very low wages to their employees in exchange for long hours of work. Many of these contractors came from outside the communities where the federal projects were being built, and sometimes brought in their own crews. These unscrupulous builders not only undercut the labor standards of the communities they operated in; all too often they also left the taxpayers saddled with a poorly constructed project.

Why a Prevailing Wage Law for Government Construction?

Wage-cutting practices, and the problems which result, are especially likely to occur on construction jobs because of the unique characteristics of the construction industry. Construction requires relatively little fixed capital, and the needed equipment can usually be leased rather than bought. Consequently, it is fairly easy to go into business as a contractor, and construction firms are constantly being formed and dissolved. The turnover in firms is matched by the turnover in employees. Generally, workers are hired only for the duration of a particular job, and move on to a new employer when the work is finished. Construction employment is also very unsteady. Last year, the unemployment rate in construction averaged 14.2%, roughly double that in the economy as a whole. All of this makes it very easy for a fly-by-night operator to go into the construction business, pick up some semi-skilled or unskilled workers at rock bottom wages, and make a quick profit.

"Fair to workers, contractors & taxpayers"

The government is particularly vulnerable to this kind of operation because of the nature of the government contracting proces. A private firm can control who it deals with, and can avoid these fast buck artists entirely and deal only with reputable businesses. The government, on the other hand, is required by law to award a contract to the lowest bidder (unless there is a compelling case that the firm is unqualified—something which is very hard to establish before the work is started). An unscrupulous contractor can easily cut costs on wages, cut corners on materials, and thereby win itself a government contract. The reputable business, committed to paying wage rates sufficient to attract and hold skilled, experienced construction workers, cannot hope to compete with these tactics.

Prevailing Wages: Fair to Workers, Contractors and Taxpayers

There are several reasons why the government has an interest in preventing these sorts of practices through prevailing wage requirements and other measures. First, this is a matter of basic fairness to the workers involved. The government should set a good example for others, and should avoid being a party to situations where the labor standards of the local community are being eroded.

Further, prevailing wage requirements provide important protections to reputable contractors by providing them with a fair chance to compete for government projects, instead of losing this work to disreputable competitors who underbid them by paying substandard wages. With a floor established under wage rates, contractors are forced to compete for public projects on the basis of their skills and efficiency, not on the basis of the low wages they pay.

Finally, the Davis-Bacon Act protects the government and taxpayers. Skilled and experienced construction workers are not generally willing to work for substandard wages. The contractor who tries to win government work by drastic reductions in wages will hire the lowest paid people he can find, who are almost certain to be those with the least training and experience in the industry. The likely consequences of this will be a generally shoddy construction job, extra costs and waste when faulty work must be done over, and higher expenses for maintenance and repairs over the life of the project. Of course, by the time the government finds all the problems with its new building, the contractor is likely to be long gone—off to another area to try this tactic again, or out of business to reappear later under another name.

These are the basic reasons which led Congress to pass the Davis-Bacon Act fifty years ago. The legislatures of 39 states reached the same conclusions on their own, and responded by enacting "little Davis-Bacon Acts" covering state-funded construction.

Over the past fifty years, conditions have improved greatly in the construction industry, partially as a result of the Davis-Bacon Act and other labor laws. However, the basic forces remain unchanged which allow unscrupulous contractors to win federal contracts by paying substandard wages. As a result, the Davis-Bacon Act continues to play an important role in preventing serious abuses on government construction work, and deserves to be preserved and strengthened.

"CONTINUING ABUSES IN CONSTRUCTION SHOW THE CONTINUING NEED FOR DAVIS-BACON"

Numerous violations of the Davis-Bacon Act are detected every year by federal agencies. For example, in a two-year period, one single agency—the U.S. Department of Housing and Urban Development—instituted labor standards enforcement actions which led to more than $5 million in back wages being restored to more than 11,000 workers on federal projects.

These violations cover the whole range of possible wrongdoing—payment of substandard wages, failure to make proper payments for health insurance and other benefits, forcing workers to "kick back" a portion of their wages as a condition for continued employment, phoney use of "trainee" classifications to exploit young workers seeking to learn construction skills, and so on. Often, these labor standards problems are associated with other sorts of problems involving shoddy work and poor contractor performance. If the legal protections provided by the Davis-Bacon Act were to be removed, these types of abuses would be expected to become much more common.

Here are two recent examples which demonstrate the problems which unscrupulous contractors cause when they seek to make a fast buck by slashing wage rates. Both of these accounts come from investigative reports aired on "Arizona Weekly," a public affairs program broadcast by television station KAET in Phoenix, Arizona.

The first of these stories involves a $5 million federal housing project on the San Carlos Indian Reservation in Arizona, a project where the contractor, Mendoza Drywall, relied on low-wage labor supplied by illegal aliens, among others:

REPORTER: ". . . we also found blatant violations of federally mandated wage rates. Who were the victims? The illegal aliens. The ones who couldn't speak up and go to the authorities, who had very few options as they lived and worked each day on the project. They were young men like Pedro.

"How much is he getting?"

ANSWER: "$1.50 an hour."

REPORTER: ". . . he wasn't the only one who was shortchanged. Other illegal aliens were paid just half the amount federal regulations required. The aliens were cheap labor, and that meant high profits for someone else.

"We soon discovered that Pedro didn't live like a citizen. He lived in this unfinished home on the project, where for some time there was no water, no heat, not even basic facilities. There were more than ten workers living in this house at one time. At least eight of them, their job foreman told us, were illegal aliens. The others were Navajo Indians. They slept on the floor on old matresses and they cooked on camp stoves. But mostly they just worked on the project . . ."

A second case involved Copper State Builders, a contractor working on several government projects, who was also found to have violated the Davis-Bacon Act by paying workers well below the prevailing wage. As is often the case with firms using cutrate labor, there seemed to be serious problems with the company's reliability and the quality of its work. Among other things, Station KAET's investigation disclosed that this firm had obtained its electrical contractor's license through forgery:

REPORTER: "Arizona Weekly has learned that the Registrar of Contractors is investigating all of the company's licenses because of this forgery (shown on camera). It appears on Copper State's electrical license. . . . In effect, the company said it was qualified to do electrical work when in reality no one in the firm was approved by the state to do it.

"Copper State Builders has never been reluctant to seek federal jobs though. The firm bid successfully on a project to improve federal housing on the west side of Phoenix. This contract was worth more than $185,000. The Executive Director of the Maricopa County Housing Authority, John Hollar, the man who administered the federal project, describes it as the worst job he's ever experienced. . . . Hollar says the biggest problem was that the work was never done right the first time. It had to be done over and over again. And each time it was redone, the project's inspectors and architect had to go back out and recheck the work. That cost taxpayer money. How much? Hollar says he doesn't know, but the taxpayers were footing the bill for the company's mistakes."

Continuing violations of the Davis-Bacon Act such as these serve as a reminder of the potential for serious abuse which still exists in construction. If the legal deterrents provided by Davis-Bacon were eliminated, it is safe to assume that these abuses would become more widespread, to the detriment of workers, fair contractors and taxpayers.

Robert A. Georgine, President

Joseph F. Maloney, Secretary-Treasurer

BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

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#097

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST
Bill/Resolution No.: HB 304
Title: Wage Rates on Public Construction
Sponsor: Representative Herrmann
Requestor: House Labor & Commerce

II. FISCAL DETAIL
Agency Affected: Community & REgional Affai
Program Category Affected: Development
BRU, Program of Subprogram(s) Affected:
Local Government Assistance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Sponsor did not specify.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Doug Griffin Phone: 465-4707
Division: Local Government Assistance Date: 4/15/83

Approved by Commissioner: [signature] Date: 4/15/83
Department: Community & Regional Affairs

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)

Bill Sheffield, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
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April 15, 1983

BILL ANALYSIS

RE: HB 304

SPONSOR: Representative Herrmann

Program Effects of the Bill

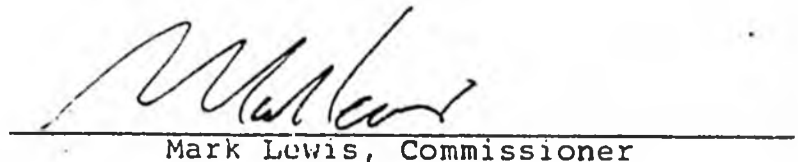
This bill would exempt communities with a population of 5000 or less from the provisions of AS. 36.

Comments

It is the position of this Department that the provisions of AS. 36 currently discourage local hire in rural communities

The requirement that prevailing wages be paid discourages "on the job training" of local labor and encourages importation of outside labor.

If this bill were to pass we feel it would, at least, remove one road block in the path of increasing local employment through state construction grants.



Mark Lewis, Commissioner

21-P1LH