

S B

174

1978

Recommendation No. 1

The statutory requirements for the ATC to regulate bulk-type carriers and recreational air carriers should be eliminated.

The Commission has supported the deregulation of bulk carriers in dump-type equipment. As pointed out in the "78" audit, a considerable amount of Staff time is spent in reviewing applications for authority and collection of annual reports. For calendar year 1982, 59% of all original applications for motor carriers was filed for dump-type authority.

The Commission has taken steps to make the application process for dump trucks as simple as possible while still insuring that the applicant is fit, willing, and able. The method the Commission has used to ease entry is to find in several orders that a continuing need exists in the construction industry for dump trucks and have found that public need can be satisfied by written shipper support. The Commission cannot prevent existing carriers from protesting new applicants as happened in 1982, which resulted in 31 1/2 hours of hearings.

It would be the Commission's suggestion that dump trucks involved in supporting the construction industry be deregulated as to entry, tariffs, and annual reports. Such carriers should be required to register, pay weight fees, provide proof of insurance necessary to protect the public, and be fully covered by the commercial vehicle safety program.

By amending Regulation 3 AAC 68.010 in 1980, the Commission defined who did not need an air taxi certificate. The Regulation as approved basically states that a certificate is not needed if the air transportation is incidental to another business. It has been the Commission's policy that guides and lodge owners would not need certificates if the air transportation is part of the package offered to the guest or client, and as long as such operators do not charge specifically for the transportation. A certificate would be needed if the only service provided is transportation.

The Commission involvement with such air carriers has become very limited and generally there appears to be little problem with the current policy.

Recommendation No. 2

The Statutes and Regulations governing the ATC should be reviewed.

The Commission has taken steps to clarify the regulations and the Legislature in 1980 passed several major revisions to the statutes. Since the audit report provided six specific examples, we will answer in the same format.

1. "Cease and desist authority is needed to stop illegal carriers." The Commission was given authority to issue Stop Orders in 1980 with the passage of Chapter 115 SLA 1980. The Stop Order authority has proven to be very effective for enforcement where clearly illegal activities of a continuing nature is discovered.

2. "A definition of scheduled air carrier and clarification of the definition of an air taxi operator should be provided." The necessary clarification was made by the Legislature with the passage of Chapter 115 SLA 1980 effective January 1, 1981.

3. "Procedural regulations for hearings conducted by the ATC should be adopted." The revised procedural regulations were formally adopted effective April 28, 1982. The revisions have proven quite effective in both speeding up the hearing process and shortening the length of oral hearings.

4. "A clarification of incidental transportation to some other primary business is needed." As stated earlier, the Commission amended 3 AAC 68.010 in 1980. While it could be argued that further definition in the statutes would assist in clarifying such carriage, the problem has generally not been serious for legitimate private carriers. The carriers that have had a problem are those that have in fact been proven to be operating without proper authority under the guise of private carriage.

5. "A statutory amendment is needed to give the Commission the authority to delegate their duty to preside over hearings to a hearing examiner." The use of hearing examiners without the presence of a Commissioner was found acceptable by the Supreme Court. The Court found that the use of hearing examiners violated neither the statutes nor constitutional due process. The case in point is ATC vs. Gandia, Sup. Ct. Op. No. 1964, 602 P2d 402 (1979). Therefore, this matter has been resolved.

6. "Registration fees (air only), weight fees (motor freight and passengers) and application fees for all types of carriers have not been increased for at least nine years." Fees have still not been increased. Such increases would require revision of the statutes which the Commission would support. The only fees that cannot be increased are registration fees for interstate carriers which are fixed by Federal Law.

This recommendation also pointed out that the maximum allowable civil penalty was only \$150 per violation. The Legislature in Chapter 115 SLA 1980 raised the maximum to \$1,000. The Commission has taken the higher maximum into consideration when levying civil penalties.

Recommendation No. 3

The Commission should seek the repeal of the Alaska Ferry Transportation Act.

Chapter 115 SLA 1980 removed ferry transportation from the jurisdiction of the Commission.

Recommendation No. 4

ATC should regulate the economics of the transportation industry as required by the Alaska Statutes.

A. Carriers should be required to submit all pertinent financial data necessary for economic regulation.

The Staff of the Commission now files accusations against carriers who do not file the required annual or quarterly reports. Failure to file reports can lead to either civil penalties or the revocation of the authority.

While the Commission still agrees that the collection of financial information could be of great benefit, the Commission also recognizes that the completion of detailed financial reports can be done only at a cost to the carrier. There is also a cost to the State since such reports would require considerable Staff time in verifying reports, enforcement of filings, completion of data and the dissemination of information. With current staffing, it is not possible to significantly improve the quantity of information gathered. There is a continuing effort to improve the quality of financial data currently received by improving reporting forms and utilizing the programs already in existence to catalogue the information.

B. ATC should audit the Carrier's accounting records to ensure they are prepared in accordance with regulatory accounting requirements and to determine the reasonableness of the financial data.

It has not been possible to significantly improve the survey of carrier's accounting records. While such indepth surveys or audits could be beneficial in determining whether or not the carrier is utilizing good accounting techniques, the fact is that numerous requests for positions to do such work have not been funded.

Further, this recommendation clearly demonstrates the unfortunate situation that exists in both the "78" and "82" audits, which is a continuing attempt to compare the APUC and the ATC. The two agencies deal with two different regulatory schemes. The APUC deals primarily with monopolies which in Alaska generally belong to either a governmental unit or the rate payers. The ATC deals with competitive privately owned businesses. While in both areas there are economic regulations designed to generate adequate rates to maintain the companies, there are within the transportation industries strong market forces at work that directly affect rates and markets. Another major difference is that utilities normally have necessary accounting staffs to maintain a complicated accounting system necessary to satisfy federal lending agencies, federal regulatory agencies, local governmental units, and bonding covenants required for revenue bonds. Transportation companies in Alaska tend to be of a much smaller size and, in many cases, use public accounting firms to maintain their accounts. The greatest difference between the two industries is in their control of their respective markets. The utilities have a fixed number of customers that over periods of time use a predictable amount of their service. On the other hand the transportation industry has little control over customers and certainly no control over the amount of services needed.

C. ATC should establish written basic policies and procedures for analysis of rate changes.

This recommendation was answered in part by the revisions to 3 AAC 69.395 and 3 AAC 68.180 that were effective May 8, 1980.

The major continuing problem in controlling tariffs that would insure a specific rate of return to a carrier, is that in a competitive market place such actions are impossible.

Transportation tariffs are not nearly as stable as utility tariffs for the reasons explained in B above. Stated simply, if one carrier drops its rates for a commodity between points A and B, then all other carriers servicing the same market must match it in short order or give up the freight. In utilities there is generally no alternative.

Recommendation No. 5

Improvement is needed in the enforcement of the ATC statutes and regulations.

A. ATC does not process enforcement actions in a timely manner.

An effort has been made to reduce the processing time for enforcement actions. The biggest problem in significantly reducing the processing time is in preparation of the case for hearing and getting the respondent to hearing. The lack of adequate Staff to handle the volume of work in enforcement has and will continue to cause some delays in processing each phase of the enforcement procedures.

Standard operating procedures have been developed for enforcement and are in use. Further, several memos and instruction sheets have been developed to standardize the enforcement effort.

B. The Commission frequently suspends all or part of the civil penalties assessed for violations.

The Commission still considers the suspension of part of a fine as a valid deterrent in its enforcement of the statutes and regulations. In determining the appropriate civil penalty to be levied in any case, various factors are normally taken into consideration by the Hearing Examiner and the Commission. Among the factors are:

1. revenue received as a result of the violation or violations;
2. duration and number of violations;
3. possibility of emergency circumstances;
4. availability of authorized carriers;

5. extent of respondent's experience in the transportation industry;
6. the quality of evidence submitted as provided in 3 AAC 60.290;
7. previous Commission orders assessing penalties for similar or comparable violations;
8. the nature and severity of the violations; and
9. mitigating circumstances provided by the respondent.

The value of suspending a portion of the penalty is that the suspended portion is a constant reminder to the respondent that new violations will result in not only new penalties but also the automatic levy of the suspension. With the current \$1,000 limit per violation, suspension of several thousands of dollars is a very effective reminder.

C. ATC enforcement staff duplicates the motor safety inspection done by the Department of Public Safety.

There have been several changes in the commercial vehicle safety program since the 1978 audit. Generally, the Commission would still contend that the work being done by enforcement agents at the time of the audit was a worthwhile augmentation of Public Safety's program. However, with the transfer of the scale house personnel and the completion of a federal grant that funded the scale house program, the entire commercial vehicle safety program reverted to the ATC effective March 12, 1983. The existing staff is developing a safety program that will effectively protect the public, the commercial drivers, and the cargo.

The auditor was correct in pointing out that safety activities detract from carrier surveys and investigations. However, the Commission believes the implementation of a safety program designed to identify and remove unsafe vehicles from the highways is of great importance.

Public Safety and local police agencies are still conducting safety inspections based on their police powers, but their program is designed to apprehend violators while a commercial vehicle safety program should concentrate on prevention of violations. Further, with the ATC authority under AS 42.07 and AS 42.10, action can be taken against the carriers that allow unsafe vehicles to be operated.

Recommendation No. 6

Applications should be processed by the ATC in a more timely manner and temporary operating authority should be granted in accordance with Alaska Statutes.

The Commission and the Staff have reduced the processing time of applications. In calendar year 1982 the processing time of non protested applications was less than two months. To further speed the processing of air applications, the Legislature in Chapter 115 SLA 80 provided in AS 02.05.070 that the Commission must get a completed application to hearing within 120 days of receipt or must deny the completed application within 60 days of a hearing if held. Failure to meet these dates results in an automatic grant of authority. To date there have been no automatic grants since the amendment.

The entire question of the grant of temporary authorities is unclear as to the intent of the law. Currently, the Commission has greatly reduced the number of temporaries granted. However, the Commission believes that the very tight definition placed on emergency or temporary authorities by the auditor was not the intent of the statutes. The audit implies that the statute would allow the issuance of a temporary only under emergency circumstances. The Commission disagrees, and believes it has some latitude in granting temporary authorities, especially where no current service exists or when a transfer of ownership takes place. Further, the Air Act gives the Commission the authority to consider the impact of denial of a temporary request on the applicant.

Recommendation No. 7

The Commission and Hearing Examiners should write the formal written decisions (orders) on application before the ATC.

The Staff normally does not prepare orders in cases that have gone to hearing. All such orders are prepared by the presiding Hearings Examiner. If a quorum of Commissioners is not present at the hearing, then the order is termed a Proposed Order and both parties have an opportunity to respond before the final Commission decision is issued.

To further expedite the issuance of orders, an effort has been made to use standard formats, so that drafting time is reduced.

It should be noted that any order written by staff is only a draft and must be approved by at least two Commissioners before issued.

The Commission is still of the opinion that little benefit would be derived by having one Commissioner with a legal background. As a quasi-judicial body, the decisions made must be based on the facts presented and not on the Commissioner's personal opinion as to what happened. Further, a Commissioner that had a legal background still could not represent the Commission in Court, as only the Attorney General's office can represent the State.

To overcome the problem of needing legal advise on matters in the hearing stage, the Commission uses one of the Hearing Examiners, both of whom are members of the Alaska Bar, as presiding officers. Since the Hearing Examiner is present in an official capacity, he can advise the Commission on evidentiary matters, motions, etc., from a legal standpoint. The assigned Assistant Attorney General represents Staff before the Commission at hearings and represents the Commission when rulings are appealed to the Superior Court. Further, the Assistant Attorney General researches legal questions posed by Commissioners and assists in responses to both the Civil Aeronautics Board and the Interstate Commerce Commission.

The need by the Commissioners for legal advice on procedural matters has been reduced by training programs that they have attended. The Commissioners have taken courses at the National Judicial College in Administrative Law Procedures. The courses provided by their institution are attended by persons appointed or elected to the various quasi-judicial boards and commissions throughout the United States. Many states also send judges recently appointed to their various courts to this same college.

Recommendation No. 8

The ethical conduct regulations should be complied with in matters before the ATC.

The Commission and Staff have made a concerted effort to remove any doubt that the ATC is a quasi-judicial agency and as such cannot accept information not correctly presented. Stated simply, most people both within the regulated industries and outside those industries do not understand the distinction between a quasi-judicial agency and the typical

agency in the executive branch of government. Therefore, these people think it totally proper to attempt to convince the ATC Commissioners or the staff as to how they would hope a matter should be handled. While very few of these people would ever dream of calling a judge to discuss a legal matter currently before his bench, to call the ATC is considered okay.

The Commissioners quite frankly are refusing to discuss cases that are in the adjudication process. They will talk with individuals who have general questions about transportation regulation or Commission procedures, but all such conversations are limited to generalities.

Recommendation No. 9

Neither Commissioners nor ATC staff should accept free transportation from any regulated carrier.

Since the incident of August 1978, no free transportation has been accepted by any Commissioner or staff member. Every effort is made to ensure that no one carrier is seemly given preference over another.

Recommendation No. 10

ATC should issue orders in accordance with the Alaska Statute.

The Commission did continue to issue some orders by telegram during the period 1979 to 1981. However, since early 1982 very few authorities, whether for temporary authority or not, have been issued by telegram. In all cases since 1981, a confirming order has been issued whenever a telegram was used.

A more thorough discussion of the ATC's disagreement with this audit recommendation can be found with this same finding in the 1982 audit.

Recommendation No. 11

The Statutory Qualifications for Commissioners of the ATC should require specific areas of expertise.

This matter was resolved by the passage of Chapter 115 SLA 1980 which amended AS 41.07.041. The amended section establishes that each of the three positions will have specific experience in various fields.

Recommendation No. 12

The ATC should give notice, hold open to the public, and maintain complete minutes of the Commissioners' weekly meetings.

The weekly meetings are currently held solely to make decisions in adjudicatory matters and are thus not open to the public as stated in the Response to Recommendation No. 8. The Commission can only listen to testimony if all parties are present so the concept of a weekly public meeting would only increase the possibility of accusation that decisions were made based on ex parte communication.

The specific regulation, 3 AAC 60.470, referred to in the Audit was repealed effective April 20, 1982. All hearings are open to the public and are duly noticed in the ATC Journal as required by AS 44.62.310. If any change to the administrative code is under consideration, notice is published in local newspapers as required.

Recommendation No. 13

An index system should be developed for the final orders issued by the ATC and decisions on appeals from the courts.

The staff and a Hearing Examiner has completed an indexing of all Commission Orders in a legal digest. The project began in 1980 and will be completed by July 1, 1983. The digest will be over 900 pages in length and will be made available to the public. The digest took about six man months of Hearing Examiner's time and about 12 man months of clerical support time.

It is believed that the digest will speed up processing time and possibly reduce hearing time as past decisions will be readily available so that the the same arguments will not have to be presented during each case.

Recommendation No. 14

The Assistant Attorney General and Tariff Analyst positions at Department of Law which are assigned to ATC matters should be placed organizationally and physically within the ATC.

The Assistant Attorney General position is still assigned to the Department of Law. In September of 1982, the incumbent in the position was required to relocate his office back

to the Department of Law's office area in Anchorage. Prior to the move, the attorney had been allowed to work at the Commission's office.

The move has caused some difficulties and does interrupt the work flow especially in the handling of enforcement cases.

The Commission has no idea what happened to the Tariff Specialist position assigned to the Department of Law.

The Commission is still of the opinion that the attorney should at the very least be assigned to physically work at the Commission's office. Further, with the current work load the Commission needs to add either another attorney or a paralegal assistant.

1982 Audit

Recommendation No. 1

The Alaska Transportation Commission should become a section within the Alaska Public Utilities Commission (APUC).

The Commission has prepared several written statements in depth as to its reasons for opposing this recommendation.

The principle reason for the ATC not agreeing with this recommendation is that the ATC and APUC provide economic regulation of two totally different industries. The APUC regulates essentially monopolistic utilities that are generally owned either by cooperatives or local governments. The ATC regulates highly competitive air and service transportation companies that are in private or cooperate ownership. The APUC's attention is primarily concentrated on rate cases while the ATC is primarily involved in determining applicant fitness and enforcement activities.

The work load of both agencies would appear to justify the continuance of the existing structure. In fact as of May 16, 1983, the ATC has opened 262 dockets as compared to 250 in the same time period in 1982 and has issued 341 orders as compared to 233 in 1982. It would appear that to combine the two agencies would place a very heavy work load on the remaining Commissioners. It could very well lead to the same problems that lead to the splitting of the old Public Utilities Commission in 1966. That split was designed to reduce delays and increase service to the regulated industries and created the APUC and the ATC.

Recommendation No. 2

Temporary authority should be granted in accordance with statutes.

The Commission does not agree that temporary authorities are being granted without considering the statutes.

In the past some temporary authorities were granted in what appears to have been an expedited manner. This is no longer the practice. While temporary authorities are still being granted, most are not granted until after publication in the Journal and then by written order. The use of telegrams has been greatly curtailed and restricted to only rare cases where there is a need for expedited service.

If there are known protestants to the application, the Commission will hold a short notice hearing limited to the question of the need for the temporary. In this way all known parties are guaranteed due process and the Commission can hear evidence as to the emergency situation that applicant believes exists.

The Commission is still of the opinion that the statutes provide adequate latitude to allow for the issuance of temporary exemptions. To limit the issuance of temporary exemptions to the narrow parameters suggested in this recommendation could be more of a disservice to both the public and the regulated industry than the granting of such permission.

It is also indicated in this recommendation that the processing time for applications not requiring a hearing was five months. A review by Staff of the 1982 orders issued for all applications that did not require a hearing indicated an average of approximately three months. This average time has been further reduced in 1983 with many applications being processed within 45 days.

Recommendation No. 3

The economic regulatory procedures of ATC should include financial analysis of data submitted by the carrier.

A. Processing of applications should include financial statements and financial data.

All applications are being reviewed by either a tariff specialist or an accounting technician during the initial processing. A review sheet is included in all dockets indicating the financial condition of the applicant. The applicant is contacted by letter if any additional information is needed to complete the evaluation. Failure on the part of the applicant to supply the information may result in rejection of the application as incomplete.

The Staff is considering a new application form that will require the applicant to submit both additional data as well as confirmation of assets and liabilities. However, it now appears that new regulations will have to be published and approved as the confirmation requirement would be an addition to the application process and can only be initiated through regulation.

B. ATC should require supporting documentation of tariff changes for review and analysis.

This recommendation would seem to be based, in part, on the failure of Staff to document its actions. While with only three tariff specialists it would not be possible for the ATC to control and set the rates for 200 common motor carriers and 225 air carriers, the Staff has rejected many tariff filings that do not meet filing requirements and that might be discriminatory toward selected shippers.

The Staff is now requiring rate justification to be submitted for some motor tariff filings and all air tariff filings. The motor carriers have indicated some opposition to the requirement to justify all rate increases. In a recent hearing before the Commission the carriers indicated that a requirement to submit cost justification for tariff adjustments is both costly and very time consuming. Further, in many cases the changes are only for a small section of their tariff and are based on competition rather than specific cost for the operation.

The Staff expects that the final determination of how much cost data will be required for tariff filings will have to be reduced through the promulgation of regulation. With the reduction of filing requirements by the federal agencies, ICC and CAB, there has developed a dual system wherein the federal filing requirements are more lenient than the State requirements.

C. Annual and quarterly financial reports should be analyzed.

The question of what is needed on annual and quarterly reports is most difficult to answer. The carriers generally resent having to file any reports, contending that reports are expensive to prepare and are open to the public, i.e., their competitors. The Staff is of the opinion that some carrier information is needed and can only be supplied by the carrier.

The ATC generally agrees that more financial reviews could be done. However, it should be noted that to do so will require more funding to cover support cost such as data entry, programming, computer time and support equipment. Possibly of even greater importance in considering

more review is the impact of its collection on the carriers as any increase in reporting requirements will directly impact them in increased cost of preparing the input documentation.

It should be noted that many jurisdictions are reducing reporting requirements as part of deregulation.

Recommendation No. 4

Complaints and accusations should be investigated and processed in a timely manner and accurate records of the complaint resolution process should be maintained.

Steps have been taken to improve the enforcement effort and to ensure that complaints, citations, and accusations are processed in as timely manner as possible. Part of the problem has been resolved by a better record keeping system for the agents and the assignment of specific cases to an agent. The objective is to have each agent be responsible for a case through the hearing process.

To further reduce delays the Hearing Examiners are closely monitoring the calendar to ensure that cases simply do not die because of failure to complete the hearing process.

While every effort is being made to increase the productivity of the enforcement agents, there is no way to ensure that cases are not going to extend over what appears to be an unusual length of time. The effort to collect adequate evidence takes time especially when the violators seldom cooperate. Further, the quasi-judicial process takes time as every reasonable effort must be made to guarantee the accused of his due process rights.

Recommendation No. 5

The number of field surveys performed each year should be increased and should include a limited financial compliance audit of accounting records.

The number of field surveys for both surface and air carriers has been increased. A new motor carrier survey format has been of assistance in discovering violations especially in the area of drivers' records and hauling unauthorized loads.

Normally, the survey team conducting surface surveys includes a tariff specialist who reviews the bills of lading against the posted tariff. Such surveys normally take at least two days and one survey took about two weeks. If an accusation results from the survey, several more weeks of Staff time is needed to finalize the investigation and prepare for the hearing.

It is Staff's opinion that surveys are a very important element in the enforcement of economic regulation. However, there is a direct conflict for time between the recommendation to promptly resolve all complaints and to conduct more indepth surveys. To do both would require more Staff.

Recommendation No. 6

The Commissioners and Hearing Examiners should write all the formal written decisions (orders) on docketed matters before the ATC.

The ATC does not disagree with this recommendation. However, it should be noted that the Hearing Examiners do write all of the orders generated by hearings over which they preside.

Since January 1, 1983, there have been 41 hearings in Anchorage and in 25 of them at least a quorum of Commissioners have been present. By attending the hearings, the Commissioners can render a decision without the interim step of a proposed order. This both shortens the time between hearings and final orders and speeds up the time necessary to grant an authority if applicant prevails. A side benefit is that in some cases it reduces the cost of all parties as the necessity of submitting legal briefs is reduced.

Recommendation No. 7

ATC should establish procedures for the accountability and collection of civil penalties.

Since this audit a greater effort is being made to ensure the collection of civil penalties is being made. Currently, there is a systematic call-up of overdue fines in order that reminder letters can be sent. If such letters prove unsuccessful, several alternatives are used.

The first is legal action either through the Department of Law for cases over \$2,000 or Small Claims for under \$2,000. If a certificated carrier is involved, a show cause order is issued requiring payment or revocation will be ordered. All three efforts have produced positive results.

Recommendation No. 8

Alaska Statutes should be amended to exempt dump truck operators from certification and economic regulation.

The Commission continues to concur that dump truck operation should be exempt from economic regulation and regulated only as to the safety of operation as commercial vehicles and to the filing of adequate insurance to protect the public.

The ATC does take exception to the comment that the Commission has "essentially exempted dump truck operation from economic regulation." What the Commission has done is to recognize the nature of the dump truck industry and to effect regulation with the least burden possible on applicants and permitted carriers while at the same time adhering to State law.

Recommendation No. 9

Regulation should be promulgated in a timely manner.

Of the four proposed regulations mentioned in the audit, two have been approved and published in the Administrative Code. The proposed regulation on tariffs and insurance is being rewritten and will need to be noticed for hearing. The reason in both cases is that the original proposed regulations are no longer applicable to current situations.

There is no question that revised regulations should not take two years, but in some cases it is better for the revisions to die under public comment than for an agency to push them through and create unworkable situations.

A major review of the regulations is needed, but would require the service of an additional attorney from the Department of Law. While the Staff can draft changes, the services of an attorney are required prior to and during the hearing process since all of ATC's regulations are quasi-judicial in nature and actions taken are directly appealable to the Superior Courts. Therefore, the ATC's regulations

must be reviewed not only from the basis of applicable State law, but also based on current State and Federal case law since in many cases interstate commerce is affected.

Recommendation No. 10

ATC should seek legislation to increase fees.

The ATC supports the concept of increased fees and further believes that language should be included in AS 42.07 to allow for the assessment of costs to participants similar to the language appearing in AS 42.05.651.

NEWCOMER TILL



Alaska State Legislature

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senator J. Kerttula
FROM: Senator Joe Josephson
DATE: May 11, 1983
RE: SSSB 174 Preferential Hire

Dear Mr. President:

While support for the substance of SSSB 174 appears virtually unanimous among the public and the legislators, some concerns regarding the fiscal note have emerged.

The Department of Labor has asked for six (6) new employees to enforce the provisions of SSSB 174 should it become law. The Department of Labor has very conservatively estimated wage savings to Alaskans in excess of 3.4 million dollars from the level of enforcement this funding would permit. Given the very conservative nature of Department of Labor's estimates this equals a greater than ten to one return to the citizens of Alaska for each State dollar.

The Senate Finance Committee has already included funding for four of the positions requested by the SSSB 174 fiscal vote as a special Alaska Hire unit within the Department of Labor. I believe we can anticipate a more active enforcement of Alaska hire by the new administration. I believe this fact, combined with the craft by craft requirement of SSSB 174, justifies the addition of all the requested six employees.

I would request your guidance and assistance as to how to best formulate the fiscal note to clarify this situation, guarantee adequate funding of Alaska Hire enforcement, and promote the passage of this legislation.

Joe Josephson
Senator Joe Josephson

JPJ/dd/cme

cc: Senator Sackett
Commissioner Robinson
Peter McDowell, Director OMB



Alaska State Legislature

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senators Keittula, Eliason, Mulcahy, Bennett, Sackett, and Rodey

FROM: Senator Josephson

DATE: May 5, 1983

RE: SS SB 174 Preferential Hire

Dear Colleague:

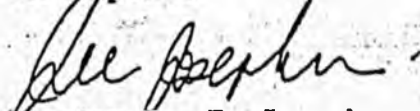
Over the past three weeks, I have received numerous letters, telephone calls and POM's concerning this legislation. You and I, and the people, want to strengthen the employment position of Alaskans in the face of outside employers using outside labor on local projects.

SB 174 was fashioned after an executive order approved in White v. Mass. Council of Constr. Emp., the United States Supreme court decision announced on February 28, 1983. The Court upheld a City of Boston executive order which required at least 50% bona fide resident hire on "any construction project funded in whole or in part by City funds, or funds which... the City expends or administers, and to which the city is signatory." The Court, in the face of a federal constitution Commerce Clause challenge, held that "the application of the mayor's executive order to the contracts in question did not violate the Commerce Clause...".

A recent Washington Supreme Court decision, has cast legal doubt about the validity of AS 36.10 as presently constituted. SB 174 takes advantage of the White decision and puts AS 36.10 in a form that should create a constitutionally permissible employment preference statute.

Subsection (a) addresses employment preference in municipalities only, thus falling well within the boundaries established in White, and avoiding the Commerce Clause challenge.

Subsection (b) addresses employment preference on construction projects partly or wholly funded by state money. This subsection requires that 95 per cent of all workers on such projects be Alaska residents. It also requires that each craft of workers be composed of 95% Alaskan residents. This craft by craft provision will insure that Alaskans will be offered jobs in all craft areas and prevent the importation of a particular craft of workers at the expense of Alaskan residents.


Senator Joe P. Josephson

I. REQUEST

Bill/Resolution No. SS for SB 174
 Title: "...employment preference..."
 Sponsor: Senator Josephson
 Requestor: Senate Labor & Commerce

II. FISCAL DETAIL

Agency Affected: labor
 Program Category Affected: Worker Protection
 BRU, Program of Subprogram(s) Affected: Labor Standards & Safety, Wage & Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		72.3	76.6	81.2	86.1	91.3
200 TRAVEL		0				
300 CONTRACTUAL		21.0	22.3	23.6	25.0	26.5
400 COMMODITIES		1.0	1.1	1.2	1.3	1.4
500 EQUIPMENT		3.0	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		97.3	100.0	106.0	112.4	119.2
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		97.3	100.0	106.0	112.4	119.2
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:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Donald R. Wilson *Donald Wilson*
 Division: Labor Standards and Safety *Jim Knight*

Phone: 465-4870
 Date: May 6, 1983

Approved by Commissioner: Jim Robison *Jim Robison*
 Department: Labor

Date: May 6, 1983

LEG:A:48

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)

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

TITLE: "An Act relating to employment preference."

AGENCY AFFECTED: Department of Labor

Page 2

Under this bill the Department of Labor will be required to closely scrutinize certified payrolls to assure that residents of an area, which has been designated as an area impacted by economic disaster, are given first preference for employment, where they are available and qualified, so that the economic effects of alleviating the disaster will be maximized. If resident labor is not available, the contractor will inform the department of the number of additional workers needed, the positions to be filled, and the efforts made at recruitment in the area. The department will investigate, and if it is determined that a good faith effort has been made by the contractor, will authorize the recruitment of qualified and available workers from areas adjoining the area impacted by such economic disaster; then followed by residents of the region, and then by residents of the State at large. This expansion of auditing and investigative service will be significant and labor intensive.

Staffing would provide a technician for full-time resident audits, and a full-time investigator in the office to review audit results, make investigations of violations uncovered by the audits, and investigate complaints from sources outside the agency. The investigator would travel throughout the state to provide a quick reaction capability to remote job sites where a majority of the violations occur.

Additional workload results from the requirement that residency is based on worker hours on a craft-by-craft basis.

Assumptions:

Effective date of July 1, 1983

Inflation rate of 6% per annum

Equipment Costs of \$9,000 is a one time item

Inclusion of additional funding (\$251.8 in the Senate Budget) in the final appropriations bill.

The original fiscal note submitted for Sponsor Substitute for Senate Bill 174 requested \$349.0 (6 positions). Of this amount, \$251.8 (4 positions) has been included in the Senate Budget for the Department. This fiscal note is the difference between the original amount requested and the amount included in the Senate Budget 97.3 (2 positions).

LEG:A:48

1.	POSITION TITLE Wage and Hour Technician I			RANGE/STEP 12A	BARG. UNIT GGI	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER SS for SB174	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT 99	LEG.	
3.	CONTINUATION LEVEL	ADDITION	XX	JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
	PERSONAL SERVICES								
5.	Salary		23,688						
6.	Benefits		3,759						
7.	Supplemental Benefits		1,452						
8.	Fixed Benefits		2,880						
9.	TOTAL PERSONAL SERVICES	01	31,779						
10.	Travel	02	-0-						
11.	Contractual	03	11,520						
12.	Commodities	04	500						
13.	Equipment	05	1,500						
14.	Other								
15.	TOTAL COST		45,299						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.	100	General Funds 1004		45,299					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
FOR B&M USE ONLY 4A KEY NUMBER _____									

This position will be required to audit certified payrolls to ascertain if contractors on public projects are employing local residents; if good faith efforts have been made to hire local residents; and further if labor from adjacent areas is being utilized when local skilled labor is not available.

Contractual service includes \$3,120 for indirect support services, and \$3,400 for rent. All other costs are normal operating expenses.

The \$1,500 in the equipment line item is to purchase basic office equipment.

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

13 REQUEST FOR
NEW POSITION

FY 84

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Revised Date

LEG:A:36

1.	POSITION TITLE Wage and Hour Investigator I			RANGE/STEP 16A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER SS for SB174	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT 99	LEG.	

3.	CONTINUATION LEVEL	ADDITION	X
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	30,888	
6.	Benefits	4,902	
7.	Supplemental Benefits	1,894	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	40,564
10.	Travel	02	0
11.	Contractual	03	9,468
12.	Commodities	04	500
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		52,032

JUSTIFICATION

This position would provide professional review of the audit trail for resident hire; make investigations of suspected non-compliance and enforce the required quotas of resident to non-resident. This position would also provide quick reaction response capability to remote areas to apprehend violators while the project is still in process and funds are available for retention by the contacting agency that would have been paid to displaced residents.

Contractual services include \$4,068 for indirect support services and \$3,400 for rent and \$2,000 for basic operating cost.

The position will require \$1,500 to purchase basic office equipment.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	52,032
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

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4A KEY NUMBER _____

3 REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Public Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

FY 84

Page 2 of 2

Revised Date _____

I. REQUEST

Bill/Resolution No.: SSSB 174
 Title: Employ. Preference, State Residents
 Sponsor: Josephson, Kerttula, et al.
 Requestor: _____

II. FISCAL DETAIL

Agency Affected: Department of Labor
 Program Category Affected: _____
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
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-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Guy Stringham *Guy Stringham*
 Division: Labor Relations

Phone: 465-4403
 Date: April 28, 1982

Approved by Commissioner: Lisa Rudd *L. A.*
 Department: ADMINISTRATION *11/2/82*

Date: 5/4/82

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 Copy to Requestor (if different from Sponsor)

3/8/83

Bill No. Sponsor Substitute for Senate Bill 174

Date May 4, 1983

Title "An Act relating to employment preferences for state residents; and providing for an effective date."

Contact: Judy Knight
465-2700

Bob Bacolas
465-4780

During the years when the Trans-Alaska Pipeline was being built, the department maintained an effective resident hire program, both within the construction of the pipeline and public construction contracts. A resident hire unit for enforcement of Title 36 was located within the Wage and Hour Administration, which was staffed with 12 employees, eight professional and four clerical support. Their activities were supportive of the activities of the three staff members assigned to public construction enforcement. Many newcomers finding it difficult to obtain oilfield work turned to traditional construction activities for employment. The resident requirements for "pipeline" employment were substantially more stringent than those for public construction. The result was that employers hiring for public construction and the Title 36 enforcement unit could rely on the activities of the "pipeline" enforcement unit for much of the leg-work required to verify residency. It was a simple matter to check for the "resident card" required under Title 38.

In 1978 the Supreme Court in the matter of Hicklin v. Orbeck, overturned the residency aspect of Title 38. Subsequently, in the budget process all twelve "pipeline" positions were deleted and the entire staff was laid off. Consequently, since 1978 the department has not had any positions funded for enforcement of resident hire.

The Department recently completed a survey to determine the wages paid to non-residents that should have been paid to residents on public construction. Based on this survey we projected the figures for the entire fiscal year ending June 30, 1983. To arrive at the dollar value of wages lost by displaced residents we used a 40 hour work week and a base level wage, plus benefits, for the lowest paid job class subject to our wage surveys. Therefore, the actual dollar value of wages lost to residents in FY 83 would be more than the figure estimated from certified payrolls.

Number of displaced residents:	3767
Estimated value of lost wages:	\$3,394,160.00

The Department supports this legislation which addresses resident preference in light of recent court decisions. This bill, coupled with the necessary staff resources to enforce resident preference, will do much to increase employment opportunities for Alaskan residents.

Approved:


Commissioner

POSITION PAPER/Department of Labor

STATE OF ALASKA
FISCAL NOTE

Revision Date Original, 1983

I. REQUEST

Bill/Resolution No.: SS for SB 174
 Title: "An Act relating to employment..."
 Sponsor: Senator Josephson
 Requestor: Senate Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Worker Protection
 BRU, Program of Subprogram(s) Affected: Wage & Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		217.0	230.0	243.8	258.4	273.9
200 TRAVEL		48.0	50.9	54.0	57.2	60.6
300 CONTRACTUAL		72.0	76.3	80.9	85.8	90.9
400 COMMODITIES		3.0	3.2	3.4	3.6	3.8
500 EQUIPMENT		9.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		349.0	360.4	382.1	405.0	429.2
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		349.0	360.4	382.1	405.0	429.2
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		6	6	6	6	6
PART-TIME						
TEMPORARY						

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

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Tom Wilson Phone 465-4870
 Division: Labor Standards & Safety Date: 5/12/83
 Approved by Commissioner: Jim Robinson Date: _____
 Department: Labor
 LEG:A:47

Distribution:

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 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

Detail Analysis Senate Bill 174

Under this bill, the Department of Labor will be required to closely scrutinize certified payrolls to assure that residents of an area, which has been designated as an area impacted by economic disaster, are given first preference for employment, where they are available and qualified, so that the economic effects of alleviating the disaster will be maximized. If resident labor is not available, the contractor will inform the department of the number of additional workers needed, the positions to be filled, and the efforts made at recruitment in the area. The department will investigate and, if it is determined that a good-faith effort has been made by the contractor, will authorize the recruitment of qualified and available workers from areas adjoining the area impacted by such economic disaster; then followed by residents of the region; and then by residents of the State at large. This expansion of auditing and investigative service will be significant and labor intensive.

Staffing would provide a technician in each regional office for full-time resident audits. The staffing would also provide a full-time investigator in each office to review audit results, make investigations of violations uncovered by the audits, and investigate complaints from sources outside the agency. The investigators would have a travel budget which provides a quick reaction capability to remote job sites where a majority of the violations occur.

Assumptions:

Effective date of July 1, 1983
Inflation rate of 6 percent per annum
Equipment costs of \$9,000 is a one-time item

1.	POSITION TITLE Wage and Hour Technician I			RANGE/STEP 12A	BARG. UNIT GGU	FORM #1	PAGE/LINE	COV.	(APPROV.)	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER SSforSB 174	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 99	LEG.		

3.	CONTINUATION LEVEL	ADDITION	XXX
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	23,688	
6.	Benefits	3,759	
7.	Supplemental Benefits	1,452	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	31,779
10.	Travel	02	-0-
11.	Contractual	03	11,520
12.	Commodities	04	500
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		45,299

JUSTIFICATION

This position will be required to audit certified payrolls to ascertain if contractors on public projects are employing local residents; if good faith efforts have been made to hire local residents; and further if labor from adjacent areas is being utilized when local skilled labor is not available.

Contractual service includes \$3,120 for indirect support services, and \$3,400 for rent. All other costs are normal operating expences.

The \$1,500 in the equipment line item is to purchase basic office equipment.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.	100	General Funds 1004	45,299
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

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13 REQUEST FOR
NEW POSITION

AGENCY Labor
PROGRAM Worker Protection
BRU Labor Standards and Safety
COMPONENT Wage and Hour

FY 84

Page 1 of 6
Revised Date _____

1.	POSITION TITLE Wage and Hour Technician I				RANGE/STEP 12A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER SSforSB 174	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT 99	LEG.		

3.	CONTINUATION LEVEL	ADDITION	XX
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	23,688	
6.	Benefits	3,759	
7.	Supplemental Benefits	1,452	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	31,779
10.	Travel	02	-0-
11.	Contractual	03	11,520
12.	Commodities	04	500
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		45,299

JUSTIFICATION

This position will be required to audit certified payrolls to ascertain if contractors on public projects are employing local residents; if good faith efforts have been made to hire local residents; and further if labor from adjacent areas is being utilized when local skilled labor is not available.

Contractual service includes \$3,120 for indirect support services, and \$3,400 for rent. All other costs are normal operating expences.

The \$1,500 in the equipment line item is to purchase basic office equipment.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.	100	General Funds 1004	45,299
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

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3 REQUEST FOR NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

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Revised Date _____

FY 84

1.	POSITION TITLE Wage and Hour Technician I				RANGE/STEP 12A	BARG. UNIT GGU	FORM 12	PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBR SSforSB 174	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT 99		LEG.		
3.	CONTINUATION LEVEL				ADDITION		XXX				
4.	TYPE OF EXPENDITURE				JUSTIFICATION						
	PERSONAL SERVICES*			This position will be required to audit certified payrolls to ascertain if contractors on public projects are employing local residents; if good faith efforts have been made to hire local residents; and further if labor from adjacent areas is being utilized when local skilled labor is not available.							
5.	Salary		23,688	Contractual service includes \$3,120 for indirect support services, and \$3,400 for rent. All other costs are normal operating expences.							
6.	Benefits		3,759	The \$1,500 in the equipment line item is to purchase basic office equipment.							
7.	Supplemental Benefits		1,452								
8.	Fixed Benefits		2,880								
9.	TOTAL PERSONAL SFRVICES	01	31,779								
10.	Travel	02	-0-								
11.	Contractual	03	11,520								
12.	Commodities	04	500								
13.	Equipment	05	1,500								
14.	Other										
15.	TOTAL COST		45,299								
16.	RECEIPT CODE	FUNDING SOURCE									
17.		Federal Receipts 1002									
18.	100	G.F. Match 1003									
19.		General Funds 1004		45,299							
20.		I-A Receipts 1005									
21.		Program Receipts 1028									
		Other									
FOR B&M USE ONLY											
4A KEY NUMBER _____											

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards and Safety

COMPONENT Wage and Hour

FY 84

13 REQUEST FOR
NEW POSITION

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Revised Date _____

1.	POSITION TITLE Wage and Hour Investigator I			RANGE/STEP 16A	BARC. UNIT GGU	FORM 12 PAGE/LINE - 8	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER SSforSB 174	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT 99	LIC.	

3.	CONTINUATION LEVEL	ADDITION		JUSTIFICATION
4.	TYPE OF EXPENDITURE		AMOUNT	
	1	2	3	
	PERSONAL SERVICES			
5.	Salary	30,883		
6.	Benefits	4,902		
7.	Supplemental Benefits	1,894		
8.	Fixed Benefits	2,880		
9.	TOTAL PERSONAL SERVICES	01	40,564	
10.	Travel	02	12,000	
11.	Contractual	03	12,468	
12.	Commodities	04	500	
13.	Equipment	05	1,500	
14.	Other			
15.	TOTAL COST		67,032	

This position would provide professional review of the audit trail for resident hire; make investigations of suspected non-compliance and enforce the required quotas of resident to non-resident. This position would also provide quick reaction response capability to remote areas to apprehend violators while the project is still in process and funds are available for retention by the contracting agency that would have been paid to displaced residents.

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

The position will require \$1,500 to purchase basic office equipment.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Hatch 1003	
18.		General Funds 1004	67,032
19.		I-A Receipts 1005	
20.		Program Receipts 1020	
21.		Other	

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4A KEY NUMBER _____

AGENCY Labor
PROGRAM Public Protection
BRU Labor Standards and Safety
COMPONENT Wage and Hour

13 REQUEST FOR NEW POSITION

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Revised Date _____

FY 84

POSITION TITLE
Wage and Hour Investigator I

RANGE/STEP 16A BARG. UNIT GGU FORM 12 PAGE/LINE
GOV. APPROV. DISAP.

TYPE OF POSITION PFT STAFF MONTHS 12 RP NUMBER SS for SB 174 PCN NUMBER

BRU PRIORITY LOCATION Anchorage ELECTION DISTRICT 99
LEG.

CONTINUATION LEVEL ADDITION

JUSTIFICATION

TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		
Salary	30,888	
Benefits	4,902	
Supplemental Benefits	1,894	
Fixed Benefits	2,880	
TOTAL PERSONAL SERVICES	01	40,564
Travel	02	18,000
Contractual	03	12,468
Commodities	04	500
Equipment	05	1,500
Other		
TOTAL COST		73,032

This position would provide professional review of the audit trail for resident hire; make investigations of suspected non-compliance and enforce the required quotas of resident to non-resident. This position would also provide quick reaction response capability to remote areas to apprehend violators while the project is still in process and funds are available for retention by the contracting agency that would have been paid to displaced residents.

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

The position will require \$1,500 to purchase basic office equipment.

RECEIPT CODE	FUNDING SOURCE	AMOUNT
	Federal Receipts 1002	
	G.F. Match 1003	
	General Funds 1004	73,032
	I-A Receipts 1005	
	Program Receipts 1028	
	Other	

FOR USE ONLY
KEY NUMBER

AGENCY Labor
PROGRAM Public Protection
BRU Labor Standards and Safety
COMPONENT Wage and Hour

QUEST FOR
NEW POSITION

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FY 84

TO: Senator Josephson
FROM: H.M. Lancaster II
DATE: March 22, 1983

RE: Senate bill 174--Alaska Hire Preference Law

The current preferential hire law facially discriminates against non-residents in public works employment. Residency, as applied in AS 36.010.100, is based upon one's domicile which is defined in AS 36.95.010(5). Simple residency requirements are analyzed under the Privileges and Immunities Clause of the U.S. Constitution, Article IV, sec. 2.

Not all discrimination under the clause is invalid. Toomer v. Witsell, 334 U.S. 385, 396 (1948). However, the discrimination must be motivated by an independent and valid state purpose, and the clause "does not bar discrimination beyond the mere fact that they are citizens of other states." Id. To demonstrate a substantial relationship between a valid state purpose and the discrimination at issue, the state must show that the "noncitizens constitute a particular source of evil at which the statute is aimed." Toomer, at 398; Hicklin v. Orbeck, 437 U.S. 518, 526 (1978). The Privileges and Immunities Clause ensures that this retained sovereignty will not render an individual an alien within his own nation. Paul v. Virginia, 8 Wall 168, 180 (1869).

States, do however, routinely act in capacities other than as a sovereign. In Hughes v. Alexandria Scrap Corp., 426 U.S. 794 (1976) and in Reeves Inc. v. Stake, 447 U.S. 429 (1980), the Court held that state and local governments, in the face of a Commerce Clause challenge, may participate in the market place and exercise the right to favor its own citizens over others.

The propriety of the principal of AS 36.010.100 has recently been tested in Labors Local Union No. 374 v. Felton Construction, 654 P2d. 67(Washington 1982). The Court decided the threshold inquiry of whether the interest of preferential hire subject to state legislation is a privilege or immunity within the meaning of the U.S. Constitution, Article IV, sec. 2. In the spring of 1980, the City of Aberdeen awarded a sanitary sewer project to the lowest bidder, the Felton Construction Company, a Montana corporation. The project was funded by 25 percent

state and local funds and 75 percent federal funds. Appellant sued Felton and the city alleging that Appellees had not employed the statutorily required percentage of Washington residents on the city sewer project.

The Washington court in its analysis stated the following rationale for discharging the state's preferential hire law:

- (1) no valid independent reason shown for discriminating against nonresidents
- (2) nothing was shown to indicate that noncitizens constituted a peculiar source of evil at which the statute was aimed.
- (3) no reasonable relationship between the danger represented by non citizens, as a class, and the discrimination practiced upon them.

The Court cited Baldwin v. Fish & Game Comm'n, 436 U.S. 371, 383 (1978) for the proposition that the extent to which the privileges and immunities clause protects a citizen's right to be placed on the same footing with citizens of other states so far as the advantages resulting from citizenship in the States are concerned, those rights are fundamental. The right to pursue a livelihood in a State other than one's own is a right that is protected by the Clause and points to those interests basic to the maintenance or wellbeing of the Union.

The Court analyzed the motive of the State and declared that "While the State's proprietary role would not exempt it from privileges and immunities scrutiny, it might justify an otherwise illegitimate legislative purpose of seeking to foster state economic welfare." Felton, at p. 70. The State failed to demonstrate a valid state interest. Secondly, "absent an indentified peculiar evil" stated the Court, "it is difficult to determine if the statute is closely related to eliminating the evil non-residents present."

The Court did not dispute the proprietary interest of the State. The project was a public works effort involving state tax dollars. However, the Court found that the statute was not limited to the ownership rights of the State. It specifically placed limitations on private contractors and their subcontractors. And in doing so the Court found

inappropriate the the hardship created by the statute because it affected private employers who had no direct dealings with the state. Felton, at p. 71.

It is at this juncture where the current Alaska employment preference law is infirm. It applies to "... any other retention of services necessary to complete any given project,". That language carries with it the prohibition elicited in Hicklin, "that an attempt to force virtually business that benefits in some way from the economic ripple effect... biases their employment practices in favor of the State's residents." at p. 532. The current statute is probably too broad in its application.

The viability of SB 174 rests upon the White Case. The court did not reach the Privileges and Immunities question. (NOTE: see the March 9, 1983 memo from Billy Berrier). However, the Court does quote the prohibition of Hicklin as to the broadness of applicability, and hints that a more narrowly drawn means of hiring local workers with a statement of local economic need may pass the test. The state as a market participant may be afforded the privileges of other private enterprises in the execution of its policy with its own resources.